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The Legal Environment for Civil Society Organizations in Mexico. Analysis and recommendations.

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AUTHORS:

María Huerta

Irerí Ablanedo

Mariana Vázquez del Mercado

With the collaboration of:

Maru Cortazar

Patricia Villa

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ACRONYMS

AC	Asociación Civil (Civil Association)
ADS	Authorized Donee Status
CEMEFI	Centro Mexicano para la Filantropía (Mexican Center for Philanthropy)
CLUNI	Clave Única de Inscripción al Registro Federal de las Organizaciones de la Sociedad Civil (registration code for the Federal Registry of Civil Society Organizations)
CSA	Civil Society Activity Program
CSO	Civil Society Organization (CSOs in Plural)
DIF	Sistema para el Desarrollo Integral de la Familia (National System for the Integral Development of Families)
GDP	Gross Domestic Product
GoM	Government of Mexico
IAP	Institución de Asistencia Privada (Private Assistance Institution)
IBERO	Universidad Iberoamericana
INDESOL	Instituto Nacional de Desarrollo Social (National Institute for Social Development)
KII	Key Informant Interviews
LES	Legal Environment Survey
LFFAROSC	Ley Federal de Fomento a las Actividades Realizadas por Organizaciones de la Sociedad Civil (Federal Law for the Promotion of the Activities of Civil Society Organizations)

LISR	Ley del Impuesto sobre la Renta (Income Tax Law)
PAN	Partido Acción Nacional (National Action Party)
PRI	Partido Revolucionario Institucional (Institutional Revolutionary Party)
RFC	Registro Federal de Contribuyentes (Federal Registry for Tax Identification Numbers)
RFOSC	Registro Federal de las Organizaciones de la Sociedad Civil (Federal Registry for Civil Society Organizations)
SC	Sociedad Civil (Civil Society)
SEDESOL	Secretaría de Desarrollo Social (Social Development Ministry)
SEGOB	Secretaría de Gobernación (Ministry of Interior)
SEMARNAT	Secretaría del Medio Ambiente y Recursos Naturales (Natural Resources and Environment Ministry)
SHCP	Secretaría de Hacienda y Crédito Público (Ministry of Finance)
USAID	United States Agency for International Development
HICD	Human and Institutional Capacity Development

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USAID MEXICO CIVIL SOCIETY ACTIVITY

The USAID Mexico Civil Society Activity seeks to improve the institutional capacity and sustainability of Mexican civil society organizations (CSOs) engaged in activities related to crime and violence prevention, justice reform, and Human Rights. To complement the Government of Mexico's ongoing efforts in these areas, and to achieve USAID/Mexico's Country Development Cooperation Strategy (CDCS) Development Objectives, the Civil Society Activity seeks to engage key stakeholders to improve the legal environment for civil society organizations in Mexico and to reduce barriers for CSOs' registration and ongoing compliance, as well as strengthening CSOs own capability to comply with legal requirements and obligations.

The USAID Mexico Civil Society Activity aims to promote a more enabling environment and to develop human and institutional capacities of CSOs so that they are better positioned to effectively advocate for better policies; monitor and evaluate their programs; and provide improved services to their beneficiaries. It also stresses the need to develop CSOs capacities to build strategic alliances with both the private and public sectors in order to obtain sustainable, long-term results.

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EXECUTIVE SUMMARY

This report analyzes the legal environment that Mexican CSOs navigate with the objective of identifying the elements in the normative framework that help to promote the activities of CSOs, as well as those elements that represent barriers for the development of the sector.

This research incorporates the local systems framework by carefully analyzing the systemic elements that have shaped the norms that regulate CSOs and how the roles, rules, resources and relationships within the system have to change in order to modify the inefficiencies caused by the way the sector is currently regulated.

The last twenty-five years have been an important transition period for organized civil society in Mexico. The profile, composition, and sources of funding of the sector, as well as the causes that organized civil society supports, have been in constant evolution to adapt to the changing reality of the country. This transition has been accompanied by changes in the relationship that the CSO sector has with the Government of Mexico (GoM), which is reflected in the laws that regulate the sector and in the manner in which such laws are implemented.

The legal framework for CSOs in Mexico has two, sometimes contradictory, purposes. This ambiguity is the result of the different moments in history in which these laws were drafted and the different views on the role of civil society that usually collide within the government at any given time.

Therefore, we have a normative framework with elements that recognize the value of the CSOs and promote their activities and advocacy efforts by, for example, establishing participation mechanisms and public funds for that purpose. At the same time, however, the normative framework contains dispositions that seek to exercise more control and that put a disproportionate burden on the sector. The conflicting views that coexist in the current legislation can be best illustrated by the contrast between the Federal Law for the Promotion of the Activities of Civil Society Organizations, a law that emerged from civil society itself and that stresses the rights of organizations, as well as the need to protect their autonomy and support their public-benefit activities, and the Income Tax Law, which establishes dispositions that seek to regulate internal aspects of the organizations and that limit the growth and professionalization of the sector.

In order to better understand the normative framework for CSOs, and the challenges it poses for the daily activities of CSOs in Mexico, this research relied on different sources of information and expertise. The first was the revision of existing literature on the organized civil society sector in Mexico. Given that the landscape of the sector and its legal framework are considerably different from what they were up until very recently, the literature review focused primarily on studies generated over the past 10 years, including academic analysis of the development of the sector and the systemic elements that have influenced legislation. To complement this analysis and to provide a more thorough insight into how the regulation that affects CSOs has evolved, the CSA team approached experts that have studied the subject and that in many occasions helped to shape CSOs' agenda on legal reform. The incorporation of their perspective and their feedback was essential to understand the subtler elements of the context that have influenced the sector and the legislation.

Although CSOs experience the consequences of the legal framework on their activities on a daily basis, given the complexity of the subject, CSOs are oftentimes reluctant to get involved in the discussion on the necessary reforms to improve it. This task then tends to fall on a relatively small group of organizations and experts, who are both aware of the importance of reforming it and have access to decision-makers to try to do so. For that

reason, while gathering information from experts was essential to this report, this research made a conscious effort to also incorporate the point of view of regular CSOs from around the country. To do this, CSA designed and applied a survey to assess the legal environment in which CSOs in all 32 states of Mexico operate.

The key findings from the research are summarized below.

KEY FINDINGS

- Considerable progress has been made in the past years to improve the legal framework that regulates organized civil society in Mexico. New regulations and public policies have been put in place to advance the rights of civil society organizations and to recognize their valuable contribution to national development. However, there are still measures to be taken in order to have a coherent and unified public policy on civil society organizations that effectively promotes their growth, professionalization and sustainability. One of the first measures to achieve this, is to promote greater harmony between federal and local laws, and to address gaps and contradictions that still exists among federal laws.
- Civil society organizations compose a diverse sector, with varying levels of institutionalization, working in numerous causes and with various intervention models. Different laws apply to different CSOs depending on factors as the degree of formalization, amounts and sources of funding of the organization, or the sphere in which the organization wishes to make an impact.
- Citizens that decide to organize themselves to pursue a lawful purpose are protected by free association rights in the Mexican Constitution and international Human Rights treaties, and are not legally required to formalize or to subscribe to any registry. However, to acquire certain rights and prerogatives necessary for day-to-day operations and the sustainability of the organization, CSOs are subjected to various registration requirements and obligations.
- Despite the existence of several local and federal laws aimed at promoting the activities of the sector, in practice much of this effect is offset by the elements of the legal framework focused on asserting more control over organizations.
- The Federal Law for the Promotion of the Activities of Organized Civil Society, while an important cornerstone for civil society in Mexico, is insufficient to truly promote the sector nationwide. In order to achieve its purpose, it should be accompanied by the establishment of clear operation rules that guarantee transparency and enable equal opportunities for CSOs to obtain public funds, as well as an enlargement of public funds to promote the sector.
- The regulation of the CSO sector at a local level tends to be directed at their specific activities and not on the promotion of the sector as a whole. Additionally, there are only 17 States that have specific laws for the promotion of CSOs activities, leaving 15 States without a local normative framework for the promotion of the sector.
- One key gap is the fiscal treatment of the sector. The Income Tax Law currently grants tax exemptions exclusively to those organizations that have the authorized donee status, which is available to only a fraction of CSOs. This is inconsistent with what is established in the Federal Law for the Promotion of the Activities of CSOs.
- Obtaining authorized donee status (ADS) is essential for many organizations, as it is the means by which they can access larger national and international donations. However, obtaining and maintaining this status is not easy, and CSOs have to invest a significant amount of time and money in the process. This

can be attributed to a lack of coordination between GoM institutions, a lack of understanding of the requirements in the law both by organizations and by many professionals (including lawyers, accountants, and notaries) and unclear (sometimes arbitrary) additional processes determined by the fiscal authority, both at the local and federal level. An example of this is the process to obtain the so called “accreditation letter.”

- Once an organization has achieved authorized donee status, they face an entirely new challenge: complying with the regulations the Income Tax Law imposes on them. For example, regardless of the policies of the donors (who in general, already impose limits on overhead), these regulations limit the resources an authorized donee can spend on “administrative expenses” to 5% (a percentage that was determined with no basis and without taking into account best practices). Regulations also limit the percentage of their income that they can get from economic activities, or “activities different from the organizations legal purpose.” In both cases interpretation may vary.
- For CSOs that do not have authorized donee status either because they decided not to seek the status due to the costs and burdensome obligations it entails, or because they haven’t been able to obtain it, their fiscal regime remains uncertain. Despite their non-for-profit nature, Article 79 (fraction XXV under Title III) of the Income Tax Law establishes being an authorized donee as a prerequisite for tax exemption. This has very serious implications for the sector, as it corners organizations into becoming ADS even if they do not wish to provide tax-deductible receipts, or if they do not receive donations at all. It also places many organizations at risk, as the interpretation of this disposition has not been consistent throughout time, and many organizations are unaware of the implications for them.
- Aside from tax regulations being a source of concern for CSOs, other regulations and registries involve additional costs and obligations. More troubling is the fact that many organizations fail to fully understand these obligations and are not even aware of their failure to comply.
- The advocacy efforts of organized civil society to improve their own legal framework have varied in their degree of success. Efforts tend to be divergent, often without a clear strategy or careful planning. Frequently, it has taken a clear threat to the sector in the shape of a new and more restrictive legal disposition to unify the sector and rally organizations around a common agenda.
- Some of the advocacy efforts to improve legal framework for CSOs have taken long periods of time to payoff, only to face new setbacks shortly after. Also, its success has often heavily relied on the influence of a few powerful actors and their access to decision-makers.
- In order to advance reforms to generate a more enabling environment for CSOs, organizations must learn from effective advocacy experiences in Mexico that have been successful in the past, both on this topic and for other causes, involving more actors, using diverse tools and strategies, and seizing opportunities opened by changes in political context and public opinion.

INTRODUCTION

THE LEGAL FRAMEWORK THAT REGULATES CSOs IN MEXICO REPRESENTS A BARRIER FOR THE STRENGTHENING OF THE SECTOR AS A WHOLE, STRESSING A SPIRIT OF CONTROL OVER PROMOTION.

Legal framework has an enormous impact on the development of civil society. It sets the tone for the relationship between government institutions and civil society organizations. It can drive CSOs to engage in productive dialogue or collaboration with government and foster alliances with other sectors or perpetuate distrust and separation from the government and other sectors.

The legal framework can incentivize or disincentivize organizations to formalize, become more transparent and accountable, professionalize their activities and have long term planning. It affects the ability of organizations to recruit and retain qualified staff, diversify their sources of funding and innovate on their practices.

Even when not fully enforced, laws influence organizations' decisions and actions, their ability to increase their impact, and even their ability to survive.

For these reasons, in order to help civil society organizations in Mexico to thrive and effectively carry out their activities for the public benefit, we must address the legal barriers that inhibit their growth, formalization, sustainability and efficiency. The present study aims to identify such barriers and analyze how they affect civil society organizations. It also intends to be a tool for advocacy and reform, providing recommendations on how to move forward.

The document is structured in eight sections. The first section puts Mexican legislation in perspective by providing a brief overview of the instruments of International Law that apply to civil society organizations, and how the recognition and exercise of association rights around the world illustrates the relationship between States and CSOs and the level of democratic maturity of a country. The second section of this research analyzes the local legal framework that regulates CSOs, highlighting the systemic elements that have influenced the relationship between the State and CSOs by reviewing Mexico's most recent history. The third section of this research reviews the laws that regulate CSOs in the country, both at a national and local level, and the impact that these have over the development of the sector.

The fourth section analyzes the legal framework through a magnifying glass, with the intention of identifying specific aspects that either help to promote the activities of CSOs or that thwart them by prioritizing governmental control over the sector. This analysis will take into account the direct experience of CSOs nationwide regarding the normative framework that regulates them.

The fifth section presents the most important elements for CSOs to obtain the different registrations and comply with the obligations those registrations entail, both essential for CSOs to navigate the legal framework that regulates them. This section highlights the elements that create barriers for CSOs on each of the legal dispositions for registration. The experience of CSOs with registration and compliance will be discussed in this section to illustrate how the legal environment affects CSOs across the country. The sixth section is dedicated to the analysis of the Income Tax Law, because of the important influence this law imposes over CSOs.

The seventh section will analyze how civil society organizations can successfully advocate to improve the legal environment that regulates them. Two relevant cases in recent history that showcase how civil society promoted new legislation or reforms will be analyzed. First, the Federal Law for the Promotion of the Activities of Civil Society Organizations and the collective and personal efforts that were directed towards the promotion of this law will be examined. Systemic elements for advocacy will be highlighted as lessons learned in this process. Additionally, the reforms to the Income Tax Law that were advocated by civil society actors in 2012, 2014 and 2016 will be presented and analyzed to illustrate the evolving nature of the relationship between the State and CSOs given the state of fiscal law. Finally, the last section will present a set of conclusions and recommendations.

I. METHODOLOGY

GENERAL OBJECTIVE OF THE RESEARCH:

The objective of this study is to identify the legal barriers, both new and long-standing, that hamper the activities of civil society organizations in the country.

SPECIFIC OBJECTIVE:

This study is expected to identify the major barriers in the legal framework that regulates CSOs and the experience of organizations facing these obstacles. It will also highlight the opportunities for improvement, identifying how organizations themselves can contribute to improving the rules that govern them. Additionally, a road map of organizations, public officials, academics and experts seeking to improve the legal framework will be included, to identify the diverse parties that construct the system. Both elements seek to support the work of organized civil society in the country.

SOURCES OF INFORMATION:

This research draws from an extensive review of literature, both from international best practices and studies on Mexican civil society and its legal framework. It also incorporates the expert opinions of key actors and organizations, and the experience that regular CSOs have had with the legal system in all 32 Mexican states.

DATA COLLECTION

Online survey questionnaire for CSOs referred to as Legal Environment Survey (LES): This tool was developed by the Mexican lawyer, Óscar de los Reyes, who is currently head of the department of Legal Studies and International Relations in the Instituto Tecnológico de Monterrey in Mexico City. With a strong background as a researcher of civil society, De los Reyes designed the methodology to collect information from CSOs nationwide. The overall methodology has the following criteria:

- In order to have a sample that includes different profiles of organizations (subscribed to different registries, and with different legal types), the researchers developed a unified database that includes all civil society organizations that have registered under the Federal Registry of CSOs (that maintain “active” status) and organizations that have been granted authorized donee status by the tax authorities.
- The data-gathering methodology takes into account common challenges for these kinds of exercises, such as out-of-date or imprecise information contained on government registries used to build the database, and low response rates due to reticence of respondents to share sensitive information about their organizations.

The following table depicts the expected sample collection and the actual collected sample:

Collected Sample per federal entity under the 200-feasible scenario					
	Population (N)	Percentage	Sample to collect (n)	Collected Sample	Difference
Aguascalientes	293	1.1	2	3	-1
Baja California	881	3.3	7	4	3
Baja California Sur	193	0.7	1	4	-3
Campeche	150	0.6	1	3	-2
Coahuila	542	2	4	1	3
Colima	218	0.8	2	1	1
Chiapas	1093	4	8	8	0
Chihuahua	794	2.9	6	3	3
Distrito Federal	6030	22.3	45	24	21
Durango	587	2.2	4	3	1
Guanajuato	742	2.7	5	6	-1
Guerrero	557	2.1	4	3	1
Hidalgo	577	2.1	4	1	3
Jalisco	1177	4.3	9	5	4
México	2331	8.6	17	9	8
Michoacán	977	3.6	7	4	3
Morelos	653	2.4	5	2	3
Nayarit	230	0.8	2	2	0
Nuevo León	769	2.8	6	3	3
Oaxaca	1702	6.3	13	5	8
Puebla	1056	3.9	8	1	7
Querétaro	454	1.7	3	2	1
Quintana Roo	279	1	2	4	-2
San Luis Potosí	360	1.3	3	3	0

Collected Sample per federal entity under the 200-feasible scenario					
	Population (N)	Percentage	Sample to collect (n)	Collected Sample	Difference
Sinaloa	473	1.7	3	4	-1
Sonora	572	2.1	4	5	-1
Tabasco	309	1.1	2	4	-2
Tamaulipas	368	1.4	3	2	1
Tlaxcala	247	0.9	2	2	0
Veracruz	1678	6.2	12	9	3
Yucatán	533	2	4	11	-7
Zacatecas	260	1	2	6	-4
Total	27085	100	200	147	53

(SOURCE: DEVELOPED FOR THE PURPOSE OF THIS RESEARCH)



OPEN SOURCE ONLINE PLATFORM: The LES was designed on an online platform called Kobo Toolbox. This platform allows the user to prepare questions and upload them into their system, so that respondents are able to access it online. All the submissions are registered in the online profile and are available for analysis at any point.

COMMUNICATION CAMPAIGN: The culture of distrust in Mexico in general, and amongst CSOs in particular, makes members of organizations highly wary of giving out information (online, or even in person) to individuals or institutions they don't have a longstanding relationship with (low levels of trust in Mexico have been documented in national and international surveys, like “Latinobarómetro” or ENCUP)¹. The low levels of trust have become more acute in recent years due to the activities of organized crime. Furthermore, previous surveys directed at CSOs (including CSA’s rapid assessment conducted from December 2016 to February 2017) have showed organizations’ reluctance to answer online questionnaires, especially when they have to share sensitive information. To overcome this challenge, a communication campaign was designed to inform CSOs of the purpose of the survey, the use to of their information, and the relevance of research on the legal environment for CSOs to understand the sector and improving the legal framework that affects them. The campaign included a video that was sent to the new database and reached over 25,000 CSOs.

LAUNCH OF SURVEY: Following the communication campaign, the CSA team sent the survey to a randomized selection of CSOs and put together a task force to give individual follow-up through phone calls and emails to the organizations, in order to ensure the maximum response rate.

DATES: The survey was firstly distributed in the second week of April 2017. Responses were received from the third week of April up to the second week of September, having sent and received the LES for 21 weeks.

KEY INFORMANT INTERVIEWS (KII).

Two members of the CSA team conducted personal interviews (KII). The information collected in the interviews was deployed and registered using Google forms and then aggregated into a data collection/analysis instrument. The interviews were conducted in a semi-structured format to recover all the information that experts could/would share.

INTERVIEWED EXPERTS (KEY INFORMANT INTERVIEWEES) Alfonso Poiré (Advisor for Save the Children and CSO expert) , Ángeles Anaya (Director of Fortalece Legal A.C), Carlos Zarco (Mexico Program Manager, LINC), Consuelo Castro (Founder and Director of the Latin American Center for Non-Profit Law), Lorena Cortés (Director at Gestión Social y Cooperación, GESOC) , María Magdalena López (CSO specialist at Convergencia A.C) , Pilar Parás (Directive Council at Fundación Merced), Sergio García (Advisor at Center for Urban security and Prevention), Miguel de la Vega (Director at Sustenta Ciudadanía A.C), María Elena Moreira (President at Causa en Común), Manuel Tron (Lawyer and specialist in fiscal regulation for CSOs).

GROUP DISCUSSIONS WITH CSOs THAT ATTENDED TRAINING SESSIONS ON LEGAL FRAMEWORK.

During the course of the first semester of 2017, CSA provided trainings on the basic legal framework for CSOs. The trainings have been administered to 391 participants each representing a CSO. During those sessions a set of questions were asked to determine the awareness of the CSOs about their legal obligations as well as their capacity of compliance in terms of the existing difficulties that they might identify.

¹ See: Corporación Latinobarómetro. “Informe 2016”, in: <http://www.latinobarometro.org/latContents.jsp>; and INEGI. Encuesta Nacional sobre Cultura Política y Prácticas Ciudadanas (ENCUP) 2012, in: <http://www.beta.inegi.org.mx/proyectos/enchogares/historicas/encup/>

DESK REVIEW OF DOCUMENTS: EXISTING LITERATURE AND PUBLIC DATA

Summary of data collection methods:

DATA COLLECTION METHOD	NO. OF RESPONDANTS
ONLINE SURVEY	153 CSOs
KEY INFORMANT INTERVIEWS	13
MEMBERS OF CSOs PARTICIPATING IN LEGAL TRAININGS	391
DESK REVIEW	Please revise the chapter of Bibliography for further reference.

LIMITATIONS

The limitations for this study are the following:

The online survey captures only the organizations that have been able to obtain at least one type of registry. As previously stated, the sample of CSOs that were invited to participate in the online survey was selected from a database that includes organizations that are either registered in the Federal Registry of CSOs, have Authorized Donee status, or both. Therefore, the sample does not capture the experience and perceptions of CSOs that have not been able to obtain either registry or that have chosen not to pursue them.

The decision to design the sample in this way was derived for methodological and logistical reasons: there is no public nationwide database that could help identify organizations that are not in the Federal Registry and don't have Authorized Donee status. Without knowing what the universe of unregistered organizations is and how they're distributed geographically, it would be extremely challenging to construct a randomized sample that could be statistically representative of those organizations. Additionally, identifying and locating unregistered organizations one by one (without having a database or registry as a point of departure) would be complex, owing largely to the fact that these organizations tend to limit their activities to their local communities or to specific and sporadic actions, which limits their visibility. Selecting unregistered organizations would also mean that the researchers would require access to detailed information on the structure, financing and goals of each organization, in order to determine case-by-case if it fits the definition of CSO established by Law and used for the purposes of this study.

Possible selection bias due to lack of trust and/or lack of updated contact information. As mentioned before, there is a generalized culture of mistrust and a reticence from CSOs to provide information to outsiders. This means that, even in a randomized sample, there is bound to be a certain self-selection bias; those organizations that are more distrusting and hermetic will be under-represented, as they will not be willing to answer the survey. To address this risk, the team implemented two measures: (a) an information campaign, prior to the launch of the survey; and (b) follow-up procedures for each organization, reaching out to those that initially didn't answer to reassure them their information would be properly protected and handled.

In the same vein, there is a selection bias since an important percentage of organizations do not update their contact information in the Federal Registry of CSOs (this is less of an issue with the information in the directory of Authorized Donee). That means that CSOs in the Registry that have not updated their data are more difficult to contact, and therefore, less likely to receive and answer the survey. To address this challenge, the research team exhausted all possible ways to contact the CSOs in the sample when it encountered outdated information in the database, including searching for websites, Facebook pages or other public information through Internet searches. In many cases, when an organization couldn't be located, it meant that it had already been dissolved or ceased operations.

WILLINGNESS TO RESPOND: It is important to consider that this research has found a degree of reluctance of the CSO sector to provide information regarding their internal structure and their experience when interacting within the legal environment in Mexico. Even amongst those CSO that decided to participate and answer the Legal Environment Survey (Legal Environment Survey, 2017), it is possible to find contradictory information or information that is inconsistent. This depends on the person that answers the LES and how each question is interpreted.

I. INTERNATIONAL CONTEXT OF THE LEGAL FRAMEWORK FOR CIVIL SOCIETY ORGANIZATIONS IN MEXICO

THE INTERNATIONAL AND NATIONAL GUARANTEES FOR THE FREEDOM OF ASSOCIATION AND THE SYSTEMIC ELEMENTS THAT ALLOW THE DEVELOPMENT OF ORGANIZED CIVIL SOCIETY.

Starting from a broad international perspective, the international legal framework that enables the development of Civil Society Organizations (CSOs) is introduced to establish a legal foundation upon which the sector can thrive. This research aims to highlight the systemic elements that influence the adoption of the international legal framework and contribute to the design and application of local legislation for CSOs in Mexico. Additionally, there are some systemic elements that are considered essential to understand the ability and intent of civil society to organize and consolidate as an effective counterweight and complement to the government and private sector.

The fundamental right to freedom of association requires the promotion and guarantee from states, which are ultimately responsible for ensuring a legal environment that guarantees such freedom. A healthy organized civil society requires commitment to the rule of law and basic democratic processes. This implements the design and operation of a system that promotes the development of civil society by passing, reviewing and improving laws and regulations that balance the privileges these organizations are granted and the responsibilities they are expected to comply with. Excessive restrictions can undermine the freedom that civil society organizations might enjoy, just as the lack of legal safeguards can undermine the public trust on what these organizations can contribute to society (ICNL, 2005).

Article 22 of the International Covenant on Civil and Political Rights establishes that every person has the right to freely associate with others. This right is only subject to the restrictions set forth in the law, which are considered necessary to preserve a democratic society, in the interest of national security, public safety, public order and to protect the rights and freedoms of others (OHCHR, Article 22). In the same spirit, Article 15 of the American Convention on Human Rights recognizes the freedom of association, emphasizing that no restrictions may be placed other than those in conformity with law (American Convention on Human Rights, 1969). Moreover, there are over 11 international obligations and standards that recognize the right of association as a fundamental freedom that has to be guaranteed by States worldwide (ICNL, 2017).

IMAGE 1. INTERNATIONAL LAW: INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS AND THE AMERICAN CONVENTION ON HUMAN RIGHTS



(IMAGE MADE FOR THE PURPOSE OF THIS RESEARCH, 2017.)

The legal framework developed by every state for the promotion and/or regulation of organized civil society varies between countries and is built upon a cultural perception of how civil society is conceived. It is also heavily influenced by the political, economic and social context of each country (ICNL, 2011). How civil society is perceived ultimately determines how it is regulated, which arguably reflects the democratic maturity of a country. In this sense, the institutional arrangements that enable and regulate organized civil society can be an indicator of the relationship between the sector and the government. The ability of a state to foster a strong and organized civil society and the means to achieve such a strong and organized civil society can differ greatly from one country to another (Muñoz Grandé, 2014).²

WHAT IS THE RELATIONSHIP BETWEEN ORGANIZED CIVIL SOCIETY AND DEMOCRACY AND WHY IS THIS IMPORTANT TO CONSIDER?

As argued by the United Nations Program for Development (UNDP) report “Our Democracy,” there has been a transition as to how civil society is perceived and understood, beyond the right to vote or be voted, but rather as the ability to participate in the design of a more equal society, where citizens can hold their government accountable and civic rights are fulfilled. In Latin America, the discussion on democracy has evolved to contemplate not just its existence, but rather the quality of democracy. The measure of democracy is not only the electoral act itself, but the environment in which citizenship is substantiated through active participation (UNDP, 2010).

In this sense, the presence of a strong organized civil society in any given context indicates that citizens are encouraged to participate in the decisions that affect their lives. However, it is essential to consider that organized

² This analysis is a general overview of the Latin American region as a whole. It does not consider that within each country, organized civil society might evolve differently from the regional trend.

civil society coexists in a complex system with multiple interconnected actors and institutions. Still, the sector plays a role in the evolution of society given that it is constantly shaped and redefined by political regime and sociopolitical context, is regulated by a legal framework that follows political and institutional incentives and has a place in the complex economic system. Overall, organized civil society is both a cause and a consequence of the context in which it exists.

DOES A PARTICULAR CONTEXT AFFECT HOW ORGANIZED CIVIL SOCIETY IS SHAPED AND REGULATED? HOW DOES THE RELATIONSHIP BETWEEN THE GOVERNMENT AND CSOs AFFECT THE SECTOR AS A WHOLE IN DIFFERENT COUNTRIES?

Within Latin America, organized civil society has similar historical origins that have influenced the way in which citizens relate to the government. This relationship can arguably be attributed to religious historic background and political regimes that have characterized the region (Muñoz Grandé, 2014). It has been argued that there is a relationship between the political regime and the growth and development of the sector (Helmut Anheier in Muñoz Grandé, 2014). Such relationship can be seen in Table 1.

TABLE 1.
ALTERNATIVE SCHEMES OF RELATIONSHIP BETWEEN THE POLITICAL REGIME AND ORGANIZED CIVIL SOCIETY

POLITICAL REGIME	ORGANIZED CIVIL SOCIETY	EXAMPLE
Corporate Governance	Organizations work with the state to complement public policy through social demands.	France and Germany
Statist Governance	The state uses the sector as a mechanism of control.	Argentina under Perón's regime
Liberal Governance	Organizations might react to the expansion of the state and offer alternatives for public goods and services.	USA
Socio Democratic Governance	Governments invest heavily on social welfare, so organizations focus on advocacy activities.	Sweaden

(MUÑOZ GRANDÉ, 2014)

In many Latin American countries, such as Argentina, Chile and Mexico, the government has implemented a specific regulatory framework that functions as a mechanism that enables dialogue between the government and the sector. Ideally, this would activate a principle of shared responsibility regarding the future of governance and democracy (Ablanedo, 2009).

However, this process is not linear or finished. The role of organized civil society is in constant transformation and is highly influenced by the complexity of the system as a whole. In Latin America, the sector moves within a threshold that ranges from voicing social demands and assisting basic needs to articulating a public agenda that aims to solve urgent problems in social development. What follows is the construction of a collective awareness on human rights, mainly political, that may result in the empowerment of society to define, implement and evaluate public decisions (Muñoz Grandé, 2014).

Over the past 25 years, organized civil society in Mexico has been through a significant process of change to adapt to the development of the country. To understand how organized civil society has emerged and transitioned through the various phases in recent history, it is important to highlight some of the most general characteristics of the country. The following table illustrates Mexico on a snapshot, with the demographic, economic and geographic considerations that enable this research to establish the context in which CSOs emerge, develop and aim to consolidate.

TABLE 2.
MEXICO IN A SNAPSHOT

Population	119,938, 473 (2015)
Number of states	32
Top five states in terms of number of population:	<p>Estado de México: 16, 225, 400</p> <p>Ciudad de México: 8,985,339</p> <p>Veracruz: 8,112,505</p> <p>Jalisco: 7,880,539</p> <p>Puebla: 6,183, 320</p>
% of the population nationwide, that considers themselves as part of an indigenous group	21.50% (2015)
Population that considers themselves as part of the Catholic Religion	84,217, 138 (2015)
% of the population that are economically active	50.3% (2015)
Entities with the highest percentage of economically active population	<p>Quintana Roo: 59%</p> <p>Baja California Sur: 58.3%</p> <p>Colima: 56.9%</p> <p>Ciudad de México: 56%</p> <p>Baja California: 56%</p>
% of the population that is not economically active (over 12 years old)	49.4% (2015)

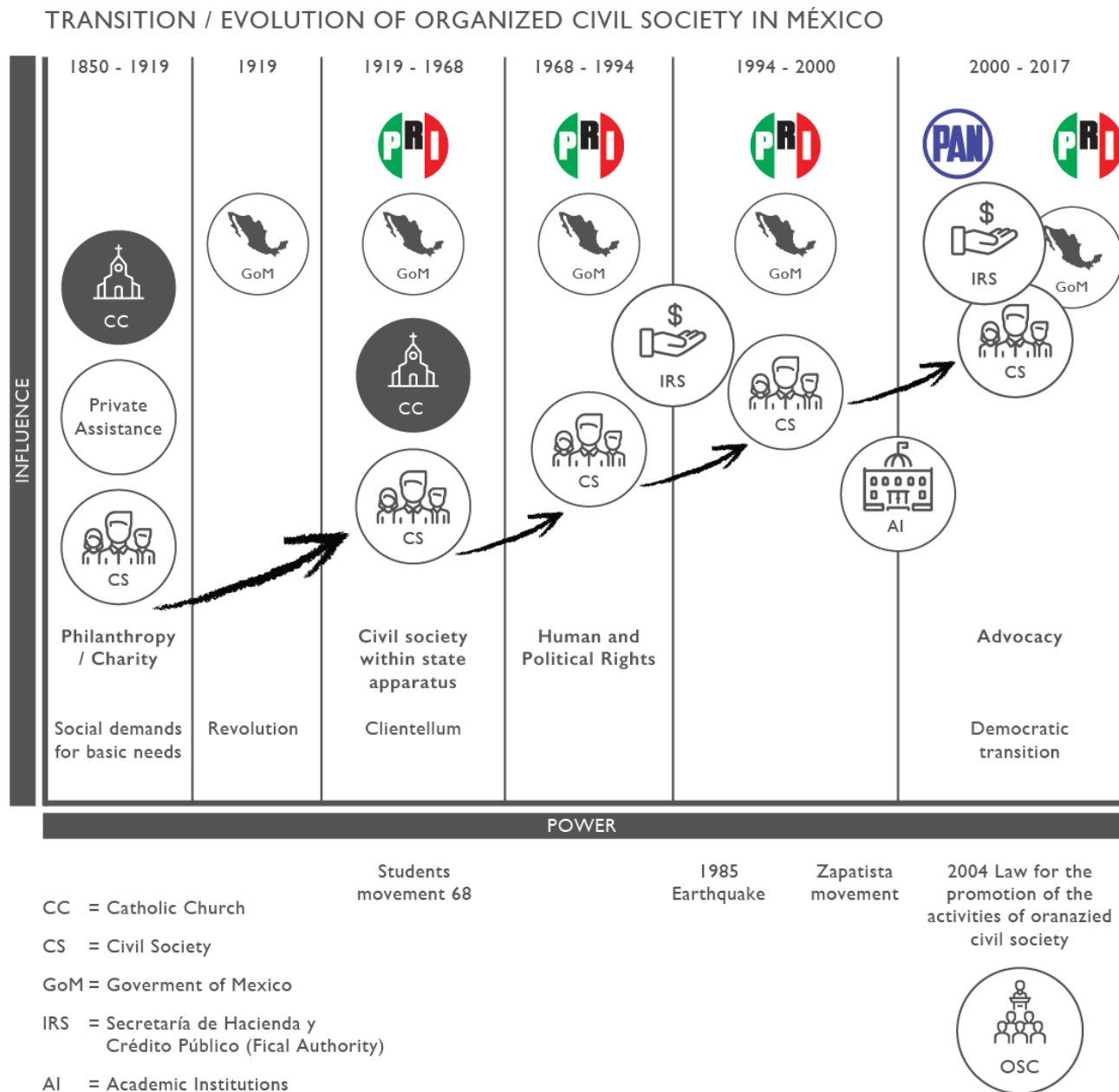
States with the highest percentage of economically inactive population	Zacatecas: 57.8% Oaxaca: 55.8% Guerrero: 55.4% Chiapas: 55.3% Durango: 53.9%
Literacy rate	92.4% (2015)
Entities with the highest literacy rate	Ciudad de México: 97% Coahuila: 96.6% Baja California: 96.3% Sonora: 96.3% Aguascalientes: 96.2%
Number of people living in conditions of poverty	53,418, 151 (43.6%) (2016)
Number of people living in conditions of extreme poverty	9,375,581 (7.6%) (2016)
Number of people with educational lag	21.3 million (17.4%) (2016)
Number of people without access to health services	19.1 million (15.5%) (2016)
Number of people without access to social security	68.4 million (55.8%) (2016)
Number of people with poor housing and living conditions	14.8 million (12%) (2016)
Number of people without access to basic services	23.7 million (19.3%) (2016)
Number of people with food insecurity	24.6 million (20.1%) (2016)

(TABLE MADE WITH DATA FROM INEGI, 2015 AND CONEVAL, 2016.)

Without representing a complete historical evolution of Organized Civil Society in Mexico, Image 1 aims to illustrate some of the most important historic benchmarks for the sector. The 1850-1919 period was characterized by a colonial period in which charitable activity emerged promoted by the Catholic Church. Organized or collective activities were led by the Church and were aimed at providing basic need assistance (or aid in modern terms) to those in need. Following the Revolution, the political regime established by the Institutional Revolutionary Party (PRI, for its Spanish acronym) centralized all aspects of public life and social development activities. As such, for decades, organized or collective actions were connected to patronage or

political intent (Muñoz-Trejo, 2014). The PRI regime crafted a paternalistic and client state, characterized by a dualism in its relationship with civil society: on the one hand, co-opting all autonomous attempts from citizens to participate in the public sphere, and on the other, repressing those who wouldn't fall in line. (Ablanedo, 2009).

IMAGE 2.
TRANSITION OF ORGANIZED CIVIL SOCIETY IN MEXICO



(IMAGE DESIGNED FOR THE PURPOSE OF THIS RESEARCH WITH INFORMATION FROM MUÑOZ GRANDÉ 2014 AND ABLANEDO 2009.)

Organized civil society emerged slowly as an independent and lively sector both as a cause and an effect of the democratic transition in Mexico. This was a long and complex process, in which certain historic events were important tipping points for organized civil society: most notably, the 1968 student's movement, the 1985 earthquake in Mexico City and the Zapatista rebellion of 1994. According to citizens who were advocating for

the recognition of the sector between 1994 and 2000³, the time following was the first time the government recognized the size and the importance of the sector, accepting the need for formal legislation (Miguel de la Vega, Key Informant Interview, 2017). At the same time, the international framework for the recognition and respect for human rights became a strong influence for organizations that voiced support for human rights issues and demanded a stronger national recognition of them from the Mexican government (Carlos Zarco, KII 2017).

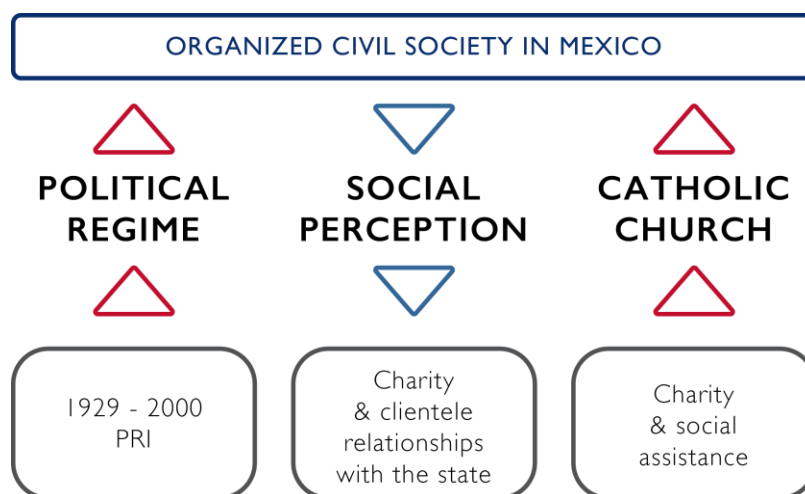
After the democratic transition, with the National Action Party (Partido Acción Nacional or PAN) in power, CSOs became more confident in their ability to establish dialogue with authorities and to demand the institutional backing to formalize citizen participation in public affairs. In this context, organized civil society transitioned towards becoming a counterweight for the government. The enactment of the Federal Law for the Promotion of the Activities of Civil Society Organizations was the benchmark that represented a new relationship between CSOs and the state (De la Vega and Enríquez, 2014).

INFLUENCE OF LOCAL COMPONENTS IN THE LEGAL FRAMEWORK OF CIVIL SOCIETY ORGANIZATIONS IN MEXICO

Keeping in mind the analysis of the previous section, it is important to visualize the historical background of organized civil society in Mexico in order to incorporate the components of the system that are present to this day. There are important relationships that are worth highlighting in order to understand how the nonprofit sector is perceived today and where the motivation and incentives to regulate it come from.

Image 2 aims to highlight two of the most important systemic elements that have influenced organized civil society – the Catholic Church and the Political Regime. The green arrow illustrates how both elements have shaped public perception. Each element will be further explored in the following section.

IMAGE 3.
INFLUENCE ENTRY POINTS FOR ORGANIZED CIVIL SOCIETY IN MEXICO:



(IMAGE DESIGNED FOR THE PURPOSE OF THIS RESEARCH WITH INFORMATION FROM MUÑOZ GRANDÉ 2014 AND ABLANEDO 2009)

³ Some of the involved citizens for the promotion of the CSO sector and members of advocacy groups for the enactment of a Law were the following organizations: CEMEFI, Fundación Miguel Alemán, Foro de Apoyo Mutuo, Convergencia de organismos civiles por la democracia (KII, Miguel de la Vega, 2017).

THE CATHOLIC CHURCH

Historically, the Catholic Church has had a profound impact in the shaping of organized civil society. In the second half of the 19th century, the first formally recognized associations were those linked to the Catholic Church as philanthropic institutions or private charities. These organizations were some of the first forms of organized social action after Mexico earned its independence. After the recognition of individual guarantees in the 1857 Constitution, charity organizations proliferated because the role of the Church was limited by the 1857 Reforms (Muñoz Grandé, 2014). The nonprofit sector, mainly made up of charities (known as “private beneficence institutions”), took on the task of providing social welfare to the most vulnerable, effectively filling in for the state, which was unable to tend to all social needs. Following the 1910 Revolution, the relationship between the Catholic Church and organized civil society evolved as the state took on a more prominent role, incorporating functions previously carried out by charities into the government functions, co-opting citizen organizations into the political establishment and attempting to exclude the Church from the public sphere as much as possible.

In the late sixties, a progressive movement within the Catholic Church, known as the Liberation Theology led to a re-examination of its role in helping to combat social injustices and inequalities. Numerous Ecclesial Base Communities (EBCs) (associations meant to serve as the “motors of liberation”) emerged around the country. By 1999, there were 3,317 EBCs with 44,461 members. The EBCs adopted as one of their main tasks the promotion of the awareness and participation of citizens in order to strengthen civil society. They did so by supporting social movements that promoted justice, democracy, the defense and promotion of human rights, the fight against corruption, and solidarity-based economic initiatives to fight poverty (García Ruiz, 2015). The Liberation Theology was highly influential in the Zapatista Movement of 1994, the movement for the defense of migrant rights and, more recently, the movement of the families of those missing. It is estimated that nowadays there are over one hundred human rights organizations in Mexico that were inspired by the Theology (Mendoza-Álvarez, 2014), including some of the most prominent in the field: Centro de Derechos Humanos fray Francisco de Vitoria, O.P; Centro de Derechos Humanos Miguel Agustín Pro Juárez; Centro de Derechos Humanos Fray Bartolomé de Las Casas; Centro Diocesano para los Derechos Humanos “Fray Juan de Larios”; Centro de Derechos Humanos Fray Matías de Córdova A.C.; Centro de Derechos Humanos Juan Gerardi, Centro de Estudios Ecuménicos, among many others.

Given the role of the Church in shaping civil society in Mexico, it is no surprise that there is still a strong perception among the general public that civil society organizations are connected to the Catholic Church. This percentage can be seen as an underlying reason for some regulations (both old and new), which assume that the activities of these kind of organizations should rely exclusively on the work of selfless individuals, and that expecting decent salaries is unethical, and as a result other expenses that would be normal in any professional institution are frowned upon.

Finally, it must be said that while there are many social organizations that function under religious dogma,⁴ and many of the leading CSOs in the country were inspired by religious beliefs, organized civil society in Mexico is largely comprised of organizations unaffiliated with religious organizations. The modern definition of “civil society organization,” put forward by the Federal Law for the Promotion of the Activities of Civil Society Organizations, actually excludes explicitly those organizations that carry out any kind of religious proselytism.

⁴ There are 8,908 religious organizations in Mexico (SEGOB, 2017).

http://www.asociacionesreligiosas.gob.mx/work/models/AsociacionesReligiosas/pdf/Numeralia/AR_por_EF_concentrado.pdf

POLITICAL REGIME

The post-revolutionary regime in Mexico established a political system that greatly influenced the relationship between the State and civil society. In the years that followed the 1910 Revolution, the Institutional Revolutionary Party established a political regime that functioned as a channel to centralize all public and social demands for over 70 years (1929-2000). That governance model was an institutional arrangement (more than just a political party) that set a specific *modus operandi* on how the State related to specific actors within civil society, namely through the promotion of specific political agendas that were beneficial to private/citizen elite.

Civil society in Mexico lacked the institutional channels to participate in public matters, as these were centralized by the political party in power. There was an absence of truly autonomous participatory mechanisms, which limited the ability of society to be part of decision-making processes. This lack of effective citizen participation was the consequence of a fraudulent spurious democratic model, where even if there was normative recognition of citizen rights, the enactment of them was dependent on the authority's selective interpretation of these rights (Merino, 2010).

Civil society effectively began to participate in public affairs not because of the consolidation of a real democratic model, but by its involvement in decisive moments, such as the student movement of 1968, the 1985 earthquake or the Zapatista Movement. These events are considered a turning point in terms of citizen-led organized movements, regardless of the political environment of the time, which followed the consolidation of organized civil society over the next two decades. (For more on the evolution of the relationship between the government and civil society from 1968 to 2000, see Isunza & Hevia "Relaciones sociedad civil-Estado en México. Un ensayo de interpretación.")

HOW HAVE THESE SYSTEMIC COMPONENTS INFLUENCED SOCIAL PERCEPTION OF ORGANIZED CIVIL SOCIETY?

As mentioned before, both the Catholic Church and the political regime established by the PRI have greatly influenced how organized civil society became involved in public matters and how society perceives CSOs. These two forces have also shaped the laws that regulate civil society in Mexico. On the one hand, the vision that all CSOs should function as charities, mostly with volunteers and minimum resources, seems to be reflected in regulations that limit the ability of CSOs to spend resources on capacity-development for themselves (the so call "5% limit on administrative expenses") or the prohibition by law to carry out activities for "self-benefit" (that is, activities of the organization that use public funds to benefit their members or their relatives until the fourth degree – even if they are in need). On the other hand, the tradition left by the PRI regime that favored the centralization of all public demands through the party and the government meant that civil society organizations are seen as political adversaries and not legitimate, non-political entities that deserve a space in the public sphere.

Perceptions on CSOs, their prominence and the way they relate with the government and the private sector vary in different states in Mexico. This is clear if we examine how organizations with Authorized Donee status (that rely on private donations for their funding, and tend to be closer to the profile of more traditional charities)

distribute in comparison with organizations that have CLUNI (meaning that they rely more on public funding).⁵ Similarly, southern States that have a strong historical background of social insurgence, like Oaxaca, Guerrero and Chiapas, have had a tendency to cultivate organizations that demand recognition for Human Rights which are generally perceived as “anti-government” collective or social movements.

In summary, as a result of how society perceives CSOs, the government of Mexico has conceived and enacted laws that regulate organized civil society. But these laws also have the potential to influence how society perceives the legitimacy of CSOs.

CONCLUSION

The international legal framework guarantees the freedom of association that is the base for the activities of CSOs. Additionally, in Mexico there have been other systemic elements, such as the political regime and religion, that have shaped how society perceives and understands CSOs and their development. The systemic components highlighted in this section serve as a foundation to the following sections as they provide an overview of the factors that have influenced the construction of the legal framework governing CSOs. The following section further describes the elements of CSOs in Mexico.

KEY FINDINGS

- The fundamental right to freedom of association requires the promotion and guarantee from States, who are ultimately responsible for ensuring and enabling a legal environment that guarantees such freedom. However, how civil society is perceived ultimately determines how it is regulated, arguably reflecting the level of democratic maturity of the country.
- Over the past 25 years, organized civil society in Mexico has been through a significant process of evolution and adaptation to changes in society, government and the international sphere.
- The Catholic Church has had a lot of influence on civil society, both through the creation of philanthropic institutions for charity purposes and inspiring progressive movements that claim for social justice and the respect for Human Rights. Catholic morality and the self-sacrifice it preaches seem to also be quite influential in terms of how the sector thinks of itself, how it is perceived, and how it's treated by the law. Even when not explicitly (or even consciously) mentioned, many regulations seem to assume that CSOs should be sustained by selfless volunteers and operate with minimum resources, without getting too involved in political or controversial issues.

⁵ The Civil Society Activity (USAID) was able to testify the differences between the profiles of organizations first-hand, through the trainings on Legal Framework for CSOs that it carried out in 12 States in Mexico as a result of an alliance with Indesol.

- The PRI regime in Mexico (1929-2000) set a distinct governance model that dictated how the State related to specific actors within civil society. In this model, CSOs in Mexico had few channels for autonomous participation in the public sphere and were either assimilated and absorbed into the ruling party or suffocated and repressed when the regime deemed it necessary.
- Civil society effectively began to participate more in public issues not because of the consolidation of a real democratic model, but by its involvement in decisive moments, such as the student movement of 1968 or the 1985 earthquake and the Zapatista Movement.

II. LOCAL CONTEXT FOR CIVIL SOCIETY ORGANIZATIONS IN MEXICO

In Mexico, the recognition of civil society organizations and their regulatory environment is supported by international Covenants and Human Right frameworks, as well as a strong national legal base that is meant to support and promote a strong and dynamic civil society. However, there seems to be a gap between what those regulations suggest and reality. Despite the fact that there is favorable legislation that supports freedom of association and the promotion of civil society activities, many experts have pointed out that Mexico's organized civil society is still an underdeveloped sector, lagging well behind other countries with similar characteristics.

For example, the John Hopkins Civil Society Index ranks Mexico in the 32nd position, out of 34 countries. This ranking considers capacity (size, effort and activities), sustainability (how the sector is able to sustain over time legally, financially and socially) and impact (the contribution of the sector to economic, political and social life) (John Hopkins University, 2011).

There is no single explanation for why Mexican organized civil society ranks so low in the index. The previous section highlighted how religion, politics and general social perception have influenced the development of organized civil society and how the regulation of the nonprofit sector can be related to such elements.

ARE THERE OTHER SYSTEMIC ELEMENTS THAT CAN EXPLAIN WHY MEXICO RANKS SO LOW IN THE CIVIL SOCIETY INDEX?

SIZE OF THE SECTOR

Although the size of the sector in Mexico is hard to determine, particularly if we take into account organizations that haven't legally registered, some numbers can help us gauge the size of the sector.

The National Institute of Geography and Statistics (INEGI) in Mexico has developed in recent years a "Satellite Account" for non-profit institutions, which have helped to generate information that is more accurate and comparable with data generated in other countries, as it follows UN recommendations and international standards. It must be noted, however, that the concept of "non-profit sector" is not equivalent to the concept of "civil society organizations," which is why we use a sub-group, private non-profit organizations. Still, it is likely that a good portion of the 60,205 private non-profit organizations identified by INEGI do not fall (at least not under the current legislation) into what Mexican Law considers to be a civil society organization and would not be eligible for either the Federal Registry or the Authorized Donee status.

According to the Federal Law for the Promotion of the Activities of Civil Society Organizations, a CSO must be non-for-profit, without religious or political proselytism purposes, and carry out public benefit activities (excluding their own members). Only 37,852 CSOs that fit that definition have obtained their registry and, from those, only 23,276 have continued to comply with their obligations and remain active. An even smaller number have been able to obtain the Authorized Donee status: 9,136.

TABLE 3.
NON-PROFIT PRIVATE SECTOR IN MEXICO AND CONTRIBUTION TO THE ECONOMY

Number of organizations within the Non-profit private sector (2014):	60,205 non-profit private organizations nationwide
GDP Non-Profit Private Sector	232, 495 (millions MXN) 1.4% of national GDP (46.3% corresponds to volunteer work)
Volunteers in the Non-profit Private Sector	1,674, 202 (millions of people) 47.7% are woman 52.3% are men
Economic value of volunteer work in the non-profit Private Sector	107,536 (millions MXN)
Number of CSOs registered at the Federal Registry of Civil Society Organizations (also known as CLUNI) (2017)	37,852 CSOs (23,276 of them with “active” status)
Number of CSOs with Authorized Donee Status (2017)	9,136 CSOs
Registry of CSOs with International Authorized Donee Status (2017)	3,341 CSOs

(INEGI, REPORT ON NON-LUCRATIVE ORGANIZATIONS, 2014, INDESOL 2017, SHCP 2017.)

INFORMALITY AND LOW LEVELS OF INSTITUTIONAL DEVELOPMENT

Although there are many organizations that operate without having gone through a process of formal registration (CSOs can choose whether to adopt a legal personality and register with GoM authorities or not), registering can indicate a certain degree of professionalism, and it can be an important element for sustainability, since it gives access to funds and incentives.

Informality is not exclusive of organized civil society. INEGI estimates that nearly 60% of the country’s active economic population is part of the informal economy (Mendoza-Trejo, 2014). The complications and costs derived of dealing with permits, paperwork, and paying taxes disincentives people for seeking formalization. The World Bank “Doing Business” report, ranks Mexico 114th worldwide in terms of the ease to pay taxes (World Bank, 2017). If this is true for entities that are for-profit, it seems to be even more pertinent for non-for-profit organizations that have less resources and staff to dedicate full time to these tasks.

Informality, however, is not only due to a lack of capacity to deal with the costs and burdens of the paperwork and obligations necessary for obtaining formal status. It is also due to a lack of trust on behalf of many organizations, which do not wish to establish any link with the government, particularly if that entails being subject to their supervision. (Mendoza- Trejo, 2014)

Beyond choosing whether to register or not, institutional development and sustainability are hard to achieve for CSOs. Researchers have found that the life span of CSOs in Mexico can be very short. For example, a study by the Metropolitan Autonomous University (UAM) found that almost 7,000 organizations disappeared every year, while about 8,500 were created annually (Calvillo & Favela, 2004). The International Center for Nonprofit Law has highlighted that CSOs are in many cases under-resourced and lack the necessary tools to operate successfully and sustainably (ICNL, 2012). Some of the elements of low institutional capacity present in Mexican organizations are:⁶

- Limited staff and informality in labor schemes/conditions within organizations.
- Lack of resources to comply with their administrative and legal obligations.
- Inability to attract highly qualified personnel due to lack of funding/financial resources.
- Lack of investment (due, largely, to the fact that few donors are willing to fund this). (Mendoza Trejo, 2014).
- Strong tendency to focus on aid or assistance activities inspired by specific groups or individuals, who sometimes lack the technical capacity to establish goals, strategic planning, impact evaluation among other necessary tools (Mendoza Trejo, 2014).
- Lack of long-term vision and planning beyond a specific project with allocated funding.⁷ (Red ExpoSocial, 2016).

FUNDING SOURCES

Finding the right sources of funding for their activities is key for CSOs. For an organization to be able to plan and carry out their activities in an effective manner, it needs some degree of certainty of a continual flow of resources it can count on for a period of time. However, it also needs to strike the right balance between building stable relationships with certain funders and retaining its identity and autonomy. An organization that relies too heavily on a single source of funding can be particularly vulnerable. For example, Mendoza Trejo argues that while the contribution of international donors to the sustainability of the CSO sector is important (particularly in the case of the so-called “expressive organizations”, i.e. organizations that promote rights), CSOs often become subject to shifting donor dynamics and decisions, which can lead them to sacrifice their original purpose and true agenda in order to adapt to these shifts (Mendoza-Trejo, 2014).

For this reason, it is important for organizations to consider their options in terms of funding schemes, depending on their goals, the geographical region in which they work, the type of relationship they want to establish with the private sector and the government, the legal restrictions and reporting requirements they’ll have in each case, among other factors.

A recent study that analyzes the donations of time, talent and money that sustain civil society organizations in Mexico argues that CSOs that have legally registered and that have gone through the process of obtaining the Authorized Donee status are likely to have more access to national and international donors, whereas those

⁶ In an effort to further understand the legal barriers that CSOs encounter, Section 4 of this research will analyze CSOs institutional or internal capacity through professionalism indicators such as employment formality, access to legal and accounting assessment, budget allocation in operational and administration schemes.

⁷ Evidence supports the notion that some projects are designed only to access available public funding, and organizations are formed only to obtain and implement these funds, and subsequently disappear.

CSOs that have not obtained the authorized donee status or have not formally registered are less likely to receive financial support. However, even for organizations that have the Authorized Donee status, the main source of income is through sources other than donations, which represent only a fifth of their total income (Layton, Rosales et al, 2017).

Access to private donations is also dependent on the location of the CSO. Only four states (Mexico City, Nuevo León, Estado de Mexico and Jalisco) count for 51% of all the Authorized Donee and (what's more shocking) 76.7% of all donations in the country. The inequalities are not only geographical. The first three deciles of Authorized Donee (equivalent to 1,971 CSOs) concentrate 97% of all income. While the average income of CSOs in the first three deciles is 56 million pesos (\$2,908,568 USD), the average income in the last seven deciles is 850,000 pesos (\$44.151 USD) (Layton, Rosales et al, 2017).

On the other hand, public funds for civil society organizations are hard to access and unevenly distributed. According to official data, in 2016 only 2,979 CSOs nationwide received federal funds (SHCP, 2016). The problem, however, was not only the percentage of CSOs that received funding, but the way these funds were allocated. From a total of \$6,983,449,858 MXN pesos (\$ 364,866,741 USD) granted by the different federal government institutions, at least \$1,739,336,588 pesos (\$90,342.745 USD) were allocated to entities that are not technically civil society organizations, but institutions created by the GoM to channel funds (for example, for the education of adults, or promotion of professional sports). This would mean that, optimistically, the average amount of public funding received by those organizations that were lucky enough to get federal funds in 2016 was \$1,806,446.18 MXN (\$ 94,362 USD). In 2009, an analysis commissioned by the GoM found an enormous concentration of resources, 47% of all public funds were concentrated in 3% of registered CSOs (Ocejo, et al., 2009). Posterior analysis has suggested that the average amount of public funds that registered CSOs receive (if we take away organizations that function as operative arms of government) is \$635,100 MXN (\$33,008 USD) (Verduzco, 2015).

A 2016 study on organizations with “active” status in the Federal Registry of CSOs⁸ found that recovery fees are a significant source of funding for registered CSOs, and that 57% of active organizations charge them. The study argues that this is a wise decision for CSOs in terms of finding alternatives for their financial sustainability, but also points out that fees can be taboo among CSOs, given that there is a social perception that the work performed by civil society organizations should be non-reimbursed (RedExpo Social, 2016).

This study, as the others, also suggests that the disparities in access to funding are rather severe. Using information from a sample of active CSOs, it found that 40% of them had obtained annual financing for 100,000 to 400,000 MXN (\$5,225 USD to \$20,898 USD) in the past 3 years, while only 8.6% had raised funds for more than 6 million pesos (\$313,474 USD). (RedExpo Social, 2016)

All this data is particularly relevant if we consider that, according to CIVICUS, civil society organizations with annual budgets of \$50,000 USD (a little less than a million pesos) tend to have more paid staff, are more likely to have a governing body and to form alliances with other organizations and networks. In sum, they are more likely to have the institutional base for more sustainable work (Cortés, Sánchez, Ruesga et al., 2011).

⁸ The Federal Registry of CSOs classifies registered organizations in “active” and “inactive” to indicate that the CSO is up to date with its reporting obligations. Those that have failed to present their annual report fall into an “inactive” status (even if they might still be carrying out activities) because the Law prevents them from accessing federal funds.

CONCLUSION

The context in Mexico for civil society organizations is quite complex. The sector is characterized by lack of formality and limited institutional development, with little access to funds, all within a context in which most resources are concentrated in a very small group of organizations.

KEY FINDINGS

- The John Hopkins Civil Society Index indicates that Mexico has an underdeveloped CSO sector considering its capacity (size, effort and activities), sustainability (how the sector is able to sustain over time legally, financially and socially) and impact (the contribution of the sector to economic, political and social life).
- According to the Federal Law for the Promotion of the Activities of Civil Society Organizations, a CSO must be non-for-profit, without religious or political proselysm purposes, and carry out public benefit activities (excluding their own members). 37, 852 CSOs that fit that definition have obtained their registry at the Federal Registry of CSOs. From those, 23,276 have continued to comply with their obligations and remain with an “active” status.
- An even smaller number of organizations has been able to obtain the Authorized Donee status – 9,136 organizations.
- The complications and costs derived of dealing with permits, paperwork, and paying taxes disincentivises people in Mexico from seeking formalization. This is true both for profit and non-profit organizations, but is particularly relevant for CSOs, given that they often lack the resources or staff to deal with this burden. Another reason is a lack of trust on behalf of many organizations, who do not wish to establish any link with the government, particularly if that entails being subject to their supervision.
- Institutional development and sustainability are hard to achieve for CSOs, which leads many of them to disappear before achieving them. Thousands of organizations disappear every year.
- Studies have found that some elements that hinder institutional development and consolidation are:
 - Inability to attract highly qualified human resources due to scarcity of funding/financial resources;
 - Limited staff and informality in labor schemes. This leads the sector to survive on a self-exploiting work-force, trying to do more with less, which at some point leads to burn out or defection of their members in favor of the for-profit sector.
 - Insufficient resources to comply with their administrative and legal obligations.
 - Scarce investment on organizational capacity (due, largely, to the fact that few donors are willing to fund this)
 - Need for a more long-term vision and planning beyond a specific project, given that many organizations form exclusively around a project and to pursue a funding opportunity, without long term planning.

- Finding the right sources of funding for their activities is key for CSOs. For an organization to be able to plan and carry out their activities in an effective manner, it needs some degree of certainty and continuity in the resources they can count on for a period of time. However, it also needs to strike the right balance between building a stable relationship with certain funders, and retaining its identity and autonomy, so the organization does not abandon its goals in order to bend to funders priorities.
- Additional to the scarcity of funding, a challenge is the concentration of resources in a few states and organizations:
 - Only four states (Mexico City, Nuevo León, Estado de Mexico and Jalisco) make up 51% of all the Authorized Donees and 76.7% of all donations in the country.
 - The 3 first deciles of Authorized Donees (equivalent to 1,971 CSOs) account for 97% of all income.
 - Approximately 47% of all public funds are concentrated in 3% of registered CSOs.
- Recovery fees are a significant source of funding for registered CSOs, and 57% of active organizations charge them. While this is a wise decision for CSOs in terms of finding alternatives for their financial sustainability, fees can be taboo among CSOs, given that there is a social perception that the work performed by civil society organizations should be non-reimbursed.

III. LEGAL FRAMEWORK THAT REGULATES ORGANIZED CIVIL SOCIETY IN MEXICO

The purpose of this chapter is to present a comprehensive overview of the normative framework for civil society in Mexico, analyzing the systemic elements that have shaped how CSOs are perceived and how these perceptions have influenced the issuance of laws at the federal and local level. This chapter will also highlight the duality that exists in the legal framework by arguing that while the Mexican legislation has implemented laws that promote the activities of CSOs, the ability of these laws to fulfill that objective is limited by other laws that stress the need for control of the sector.

WHAT ARE THE SYSTEMIC ELEMENTS THAT HAVE SHAPED THE REGULATION OF CSOs IN MEXICO?

- I. There are 3 main visions of the role of CSOs in Mexican laws: the first group of laws recognizes CSOs for the contribution they make to general welfare through their activities (the Federal Law for the Promotion of the Activities of Civil Society Organizations is a good example); the second group of laws recognizes organizations themselves (for their role and value in society) and considers them of public interest (the Social Welfare Law, or Ley de Asistencia Social); the third group of laws does not recognize explicitly the value of organizations or their activities, and sees them as marginal actors or exclusively as subjects of regulations and obligations (Ablanedo, 2009).
- II. CSOs have occupied a contested space within the system. The political context has influenced how civil society organizations are treated as subjects of the law and how they are understood by government authorities. This means that CSOs are sometimes envisioned by the law as passive entities, that will be consulted or summoned when the authorities deem it prudent (for example, in the Ley de Planeación, or Law of National Planning), and sometimes they are considered crucial actors in the design, implementation, monitoring and evaluation of public policies (for example, in the Ley General de Desarrollo Social, or the General Law for Social Development).

The following table depicts a few of the most relevant federal laws that regulate CSOs and the different understandings of the sector that are reflected on each one.

FEDERAL REGULATION OF CSOs IN MEXICO

TABLE 4. FEDERAL LAWS THAT REGULATE CSOs:

LAW	RESPONSIBLE AUTHORITY	DEFINITION OF CSOs (SUBJECT OF THE LAW)
Income Tax Law (Ley de Impuesto Sobre la Renta-LISR)	Ministry of Finance (Secretaría de Hacienda y Crédito Público or SHCP)	<p>Charities authorized by the Private Assistance Institutions Laws and/or the Social Welfare Law, mainly or nonprofit civil associations that have Authorized Donee Status (ADS).</p> <p>These are CSOs that carry out activities that are established and approved by the Income Tax Law, and that have requested and obtained Authorized Donee status, which requires obtaining an endorsement by the “pertinent authority”.</p>
Federal Law for the Promotion of the Activities of Civil Society Organizations (Ley Federal de Fomento para las Actividades Realizadas por Organizaciones de la Sociedad Civil, or LFFAROSC)	<p>The Commission for the Promotion of CSOs Activities, which is made up of representatives of:</p> <p>the Ministry of Social Development (SEDESOL, represented by INDESOL, which heads the Commission); the</p> <p>Ministry of Interior (SEGOB), the</p> <p>Ministry of Finance (SHCP) and the Ministry of Foreign Relations (SRE).</p>	<p>Mexican organizations that are legally incorporated, non-for-profit, without political or religious aims and that carry out the activities that are specified in the law. These organizations also must include certain specific clauses in their bylaws and not pursue any “self-benefit” for their members or their relatives.</p>
Social Assistance Law (Ley de Asistencia Social)	National System for the Integral Development of Families (Sistema Nacional para el Desarrollo Integral de la Familia, DIF).	<p>Charities that are legally incorporated as “private social welfare institutions” (“instituciones de privadas de asistencia social”). The institutions must register in the National Directory of Social Welfare Institutions, comply with the Mexican Official Standards issued by the authorities, and coordinate with the DIF.</p>

LAW	RESPONSIBLE AUTHORITY	DEFINITION OF CSOs (SUBJECT OF THE LAW)
Federal Law for the Prevention and Identification of Operations with Resources Derived from Illicit Sources (also known as the “anti- money laundering law”) (Ley Federal para la Prevención e Identificación de Operaciones con Recursos de Procedencia Ilícita)	Ministry of Finance (Secretaría de Hacienda y Crédito Público)	Nonprofit Organizations that receive private donations above a certain threshold.
General Law for Social Development (Ley General de Desarrollo Social)	Ministry of Social Development (SEDESOL)	Civil or social organizations that are legally incorporated, formed by people or groups that wish to participate for the purpose of conducting activities related to social development.
Federal Civil Code	Civil Tribunals, Notaries, Public Registry.	<p>“Civil Associations” (Asociaciones Civiles) defined as “When several individuals come together in a way that is not entirely provisional, to pursue a common goal that is not prohibited by the law and that does not have a predominantly economic character”.</p> <p>“Civil Societies” (Sociedades Civiles), which are formed by a contract in which the members mutually obligate themselves to combine their resources or efforts in order to realize a common purpose of a predominantly economic character. The goal of the society must not, however, constitute commercial speculation.</p>
Federal Labor Law	Ministry of Labor and Social Care (Secretaría del Trabajo y Previsión Social)	Does not make a specific distinction of CSOs, it regulates generally all corporate entities as employers. The employer is the person or company that hires the services of one or many workers.

LAW	RESPONSIBLE AUTHORITY	DEFINITION OF CSOs (SUBJECT OF THE LAW)
General guidelines for the empowerment, creation, organization and functioning of the mechanisms of citizen participation in the federal public administration entities.	Federal Public Administration Entities	Collectives Civil Society Organizations Social Organizations Indigenous Communities

(Table made for the purpose of this research, 2017.)

In addition to federal laws, there are state laws that regulate CSOs according to the local understanding of the sector. The following table lists the local laws that regulate CSOs in Mexico:

LOCAL REGULATION OF CSOs IN MEXICO

TABLE 5. LOCAL LAWS THAT REGULATE CSOs IN MEXICO

Local Law	No. of States with legislation
State Laws for the Promotion of Civil Society Organizations Activities ⁹	17
Citizen Participation Laws	28
Civil State Codes	32

⁹ The concepts that are used to name and describe the Law vary between each of the 17 States that have a local Law for the Promotion of organized civil society.

THERE IS AN ABSENCE OF INTEGRATED NATIONAL POLICY FOR THE PROMOTION OF CSOs ACTIVITIES.

Since the passing of the Federal Law for the Promotion of the Activities of Civil Society Organizations, there has been much discussion on the absence of a national, coherent policy for the promotion of CSOs' activities nationwide. This debate has even reached the Commission for the Promotion of CSOs' Activities, the inter-Ministerial Commission in charge of coordinating and evaluating federal policies in the matter. At the time, the Commission found that the coordination among the different institutions of the Federal Government was considerably lacking and had to be improved in order to build a common vision on civil society (Commission for the Promotion of CSOs' Activities & Technical Advisory Council, 2012). If coordination and a shared vision are missing among the Federal Government, the gap is even more accentuated between local and federal authorities. Some elements that help demonstrate the consequences of this lack of coordination:

- I. CSOs are regulated according to the legal personality they adopt, their activities and the obligations and rights they acquire through legal registrations.
- II. There is a lack of coordination between the Federal Registry and the local registries for CSOs. Therefore, there are registration mechanisms at a local level and the federal level, but they are not connected and they don't exchange information. This applies additional bureaucratic hurdles for CSOs, as they have to register twice, and then report to both registries. However, the lack of coordination is not only a burden for CSOs, but a missed opportunity for authorities; the exchange of information between registries could help building a database that would paint a much more accurate image of civil society nationwide, knowing how many organizations are based in each state, the kind of topics they are working on, and how public funds are being distributed among them. That kind of information could be an extraordinarily useful tool for public policies. Moreover, if requiring organizations to register and report is designed to be a way to prevent abuse and misuse of resources on behalf of CSOs, better communication among registries is essential. Further analysis on registration processes will be presented in the following section of this research.
- III. Laws of each state establish different requirements for registration. For example, the state of Tlaxcala requires the presentation of an Annual Work Plan, complete with a schedule of activities and a justification of how the objectives of the organization fit into the State Development Plan. They also ask for the renewal of their registry every year, and present a complete list of the members of the organization, with their electoral code (the code of their voter id). The differences in requirements could incentivise organizations to register in a certain state, particularly if being registered in a state does not guarantee access to state funding.
- IV. The laws also differ in the emphasis they put into promoting an active role of civil society organizations on the design, implementation, monitoring and evaluation of public policies. While some recognize the right of CSOs to participate actively in these processes, others seem to think of CSOs as mere recipients of public funds.
- V. Not all Local Promotion Laws include the 18 activities that the Federal Law for the Promotion of the Activities of Organized Civil Society describes in Article 5 (See Annex 1). The State of Tlaxcala for example only includes 6, whereas Morelos includes all 18 activities (Incidencia Social, 2010). However, depending on the state the activities can be wide and inclusive or narrow in their scope. The important thing to consider is the difference between each legislation and how this might affect how CSOs are regulated.

WHAT IS THE IMPORTANCE OF LOCAL PROMOTION LAWS FOR CSOs?

As previously mentioned, there are currently 17 States that have enacted a Law for the Promotion of CSOs' activities (although under different names, and some of them more focused on regulating than on promoting their activities). However, the absence of promotion laws in some States is worth analyzing, because even when a law does not guarantee a boost to the sector, it is an important indicator on the kind of relationship the state government wants to build with civil society organizations.

The presence of specific laws defines the rights, incentives and obligations that are recognized for CSOs locally. State laws have local Registries for CSOs (such as Mexico City and Jalisco), which establish the mechanisms for the participation of CSOs in the design, implementation and evaluation of public policy as well as the means by which CSOs can be eligible to obtain public funds in a local level.

The registry itself can be useful for the promotion of CSOs because it contributes to transparency and sets the legal criteria upon which local authorities interact with CSOs (Incide Social, 2010). However, this is not the case in all 32 states in Mexico. There are states, like Nuevo León where a Law for CSOs has not been approved by the local Congress, limiting the institutional mechanisms to support CSOs at the state level. Presently, the local government has established an online service for CSOs to register, through the Social Development Ministry internet portal, but this is not a long-term policy based on a Law to promote CSOs, but rather a government initiative (that uses elements from other laws) to register projects, which is subject to the present administration (Nuevo León Government, Internet Portal for CSO registration "REDCC", 2017).

In addition to the state registries in some States, there are also municipal CSOs registries (for example, the Municipal Government of Tijuana has a Registry, and a program to promote civil society organizations activities which offer funds to registered organizations of the program). If they have chosen to constitute themselves as "institución de asistencia privada" (private assistance institution or private welfare institution), organizations must also register, pay fees and report to the local Private Charity Board (Junta de Asistencia Privada in Spanish). All of these mechanisms are independent from the Federal Registry for Civil Society Organizations (RFOSC), and from their registration as Authorized Donee with federal tax authorities.

The multiplicity of registries has been called a barrier for development by some experts, since it burdens CSOs excessively in terms of their ability to comply with the obligations associated with each registry (De la Vega and Enríquez, 2014). The next section will further explain some of the more relevant registration options.

HOW CAN LOCAL LAWS CONTRIBUTE TO THE PROMOTION OF CSOs IN MEXICO?

While the existence of a law aimed exclusively at the promotion of civil society organizations' activities is not a precondition for the development of the sector, and certainly does not guarantee it, a state law can serve as a good supplement to federal and international legislation in the matter.

Furthermore, a state law that recognizes the unique role of CSOs in the public sphere, that protects their autonomy and provides incentives for their public benefit activities while clearly delineating rights and obligations,

can go a long way toward fostering the growth and vitality of civil society organizations. It can also lay the foundation for a respectful dialogue, participation and collaboration with the local government.

Not all state laws achieve this, however, there are some that have incorporated valuable elements for the promotion of CSOs. The following table aims to highlight some of these elements by illustrating the examples of Baja California and Mexico City.

TABLE 6.
BEST PRACTICES: LOCAL LAWS FOR THE PROMOTION OF THE ACTIVITIES OF CSOs IN THE STATES OF BAJA CALIFORNIA AND CIUDAD DE MÉXICO (PREVIOUSLY KNOWN AS DISTRITO FEDERAL OR DF)

MEXICO CITY (FORMERLY D.F.)	BAJA CALIFORNIA
<p>Mexico City has the biggest concentration of CSOs in the country¹⁰. The local law establishes rights and obligations that are unique in the country.</p>	<p>The State of Baja California has a unique council that was designed to promote the activities of CSOs.</p>
<p>Rights and obligations of CSOs according to the Law for the Promotion of the Activities of Social Development of Civil Organizations (Chapter III):</p> <p>Registration- only CSOs that are registered can have access to promotion programs and public funds.</p> <p>Support and economic incentives- local government (Ciudad de México Government) has various programs to support CSOs. Additionally, the local Board for the Private Assistance awards economic support to Private Assistance Institutions.</p> <p>Support and fiscal incentives - CSOs that are registered can have tax exemptions on items such as land tenancy and tax over salary¹¹. CSOs can participate in the design, execution, monitoring and evaluation of public policies as long as they also comply with other Citizen Participation Laws, which include the right to participate in plebiscites and referendums.</p> <p>Promotion and professionalization of CSOs- training is available through 'Co Investment' programs. Through the DF CSO registry, legal assessment on fiscal issues for example is available.</p>	<p>The State Law for the Promotion of the Activities of Wellbeing and Social Development establishes the creation of a State Council¹², responsible for the execution of the Law.</p> <p>The State Council promotes and coordinates actions that CSOs execute for welfare and social development.</p> <p>The State Law is the first one that actively includes CSOs, since it was promoted by the sector in 1998 and 1999. The Law was enacted in 2001.</p> <p>The local Congress allocates budget to the State Council, although the administration and coordination of the implementation of the Law falls under the local Ministry for Social Development.</p> <p>The Council is designed to represent municipalities in both the public and CSO sector, making the selection of CSOs that receive public funding much more transparent.</p> <p>The Council can request information to the Ministry for Social Development and offer recommendations. They may also investigate identified irregularities and present law initiatives.</p> <p>The allocation of public resources is open and transparent, since all levels of government participate as well as CSOs.</p>

(TABLE MADE FOR THE PURPOSE OF THIS RESEARCH WITH INFORMATION FROM LEY DE FOMENTO A LAS ACTIVIDADES DE DESARROLLO SOCIAL DE LAS ORGANIZACIONES CIVILES PARA EL DISTRITO FEDERAL, 2000 AND THE LEY DE FOMENTO A LAS ACTIVIDADES DE BIENESTAR Y DESARROLLO SOCIAL DEL ESTADO DE BAJA CALIFORNIA, 2015).

¹⁰ According to the Federal Registry of Civil Society Organizations and the Authorized Donee Registry, there are 7,620 CSOs that are registered in Mexico City, making it the highest concentration of CSOs in the country.

¹¹ Tax exemption over land tenancy applies only on properties that are used for the fulfillment of CSOs social objective.

Tax exemption over salary: CSOs must prove that they have serious economic issues and are unable to fulfill their social objectives (Article 300 of the Ciudad de México Financial Code).

¹² The State Council for the Promotion of the Activities of CSOs for welfare and social development is integrated by 8 members of government (one for each municipality and three State officials) and 11 representatives of CSOs that are elected to represent all municipalities (5).

CONCLUSION

The framework that regulates CSOs in Mexico lacks unification and coherence in their treatment under the law by different states in Mexico and on different subject matters. The existence of a strong legal framework is not enough to promote the development of the sector, there is still an absence of an integrated national policy. Furthermore, the existence of a federal legal framework that regulates the sector, while essential in providing the base for the promotion of civil society organizations activities, lacks practical connections to local legislation. Local laws have established more mechanisms for control (registration) for CSOs than promotion or development.

Additionally, the absence of promotion laws for CSOs in some states (15 of them have not enacted a local Law on the subject) is illustrative of the understanding local authorities have of the sector, and also of the lack of formal, legal mechanisms for organized civil society participation in public affairs.

KEY FINDINGS

- There are 3 main visions of the role of CSOs in Mexican laws: the first group of laws recognizes CSOs for the contribution they make to general welfare through their activities; the second group of laws recognizes organizations themselves for their role and value in society and considers them of public interest; and the third group of laws does not explicitly recognize the value of these organizations or their activities, and sees them either as marginal actors or exclusively as subjects of regulations and obligations.
- Even though there is a robust legal framework for the sector at the federal level, there is an absence of an integrated national policy that promotes the growth of CSOs.
- The normative framework for CSOs has taken shape locally (in specific entities), through locally driven legislative processes, which is illustrative of the different ways in which the CSO sector is understood across the country.
- Some states focus on promoting certain CSOs activities through laws and public policies, leaving out other activities which are equally important for a thriving and critic civil society.
- Although not indispensable for the flourishing of a strong CSO sector, the absence of laws for the promotion of CSO activities in some States is worth analyzing, given that they define the incentives and obligations that are recognized for CSOs locally.

IV. BALANCE BETWEEN THE PROMOTION OF CSOs ACTIVITIES AND THEIR CONTROL ON THE LEGAL FRAMEWORK

This following section aims to highlight the two main impulses that underlie the laws that regulate CSOs. It is argued that there is a considerable distance between the intent of certain laws to foster CSO activities and their actual ability to do so. This section will present what experts have identified in the Mexican normative framework: that while there are some positive elements that might promote the development of the CSO sector, they are often offset by other elements that focus almost exclusively on exercising control and over-regulating.

The following table presents the laws that regulate the CSO sector, and some of the elements of promotion and control that were identified for this research. It is important to establish that these are subjective opinions from experts who have worked in the sector and who understand the impact of legislation in the development of CSOs. The consequence of these laws for CSOs is also expressed in this table, using as sources the expert opinion of key actors and some of the available literature on the subject.

TABLE 7.
ANALYSIS OF LAWS THROUGH A MAGNIFYING GLASS:

Law	Elements that promote CSOs activities	Elements that inhibit the promotion of CSOs activities	Consequences for CSOs
Federal Law for the Promotion of the Activities of Civil Society Organizations -Enacted: 2004 - Last reformed: 2016	The approval of this law represented a new relationship between the State and Civil Society Organizations based on legality and shared responsibility. (De la Vega y Enríquez, 2014).	This law does not represent federal public policy because in practice it does not strategically coordinate the efforts of different public institutions to enable the growth of organized civil society. (De la Vega y Enríquez, 2014).	This law mandates the Federal Government to promote civil society activities and establishes a common ground in terms of requirements and obligations for civil society organizations to access incentives and support, but since there is a lack of clarity within the Mexican government's public programs, instead of simplifying access, in many cases it just adds a layer of regulation.

Law	Elements that promote CSOs activities	Elements that inhibit the promotion of CSOs activities	Consequences for CSOs
	<p>This law is the result of coordinated advocacy efforts of civil society and a reflection of the democratic process that facilitated its approval.</p> <p>(De la Vega and Enríquez, 2014)</p>	<p>This law was originally designed to provide a framework for the promotion of CSO activities. In reality, however, it is mainly focused on control aspects.</p> <p>(Carlos Zarco, KII 2017).</p>	<p>While this law establishes a diverse set of rights and incentives for CSOs, in reality the easier aspects to operate for the authorities have been the aspects aimed at imposing limits, and supervising compliance with certain pre-requisites in order to access public funds. This means that the focus for most authorities ends up being</p> <p>Registration and reporting, instead of improving coordination and finding ways to better promote the activities of CSOs.</p>
<p>Income Tax Law (Ley de Impuesto sobre la Renta) (LISR)</p> <p>(CSOs that have authorized donee status)</p> <p>Enacted: 2013</p> <p>Last reformed: 2016</p>	<p>According to this fiscal law, CSOs regulated under article 79 (under title III of the IRS Law) are exempt from paying income tax.</p>	<p>According to this research, this law does not regulate CSOs as a whole, but only those considered under article 79 to have Authorized Donee Status (ADS).</p>	<p>This creates legal uncertainty for those CSOs that are non-profits in terms of the Civil Code, but that are treated as for-profits if they do not obtain ADS. (Further analysis on this topic will be done in the next section)</p>
	<p>CSOs can decide to apply to receive ADS, through which they are able to emit a tax-deductible receipt to donors. This is an essential incentive for donors to donate. It's also an incentive for CSOs to look for funds outside the public sector.</p>	<p>The application process to obtain ADS is challenging due to the complexity and length of the registration process and the obligations CSOs have to fiscal authorities.</p>	<p>CSOs must have certain technical ability to navigate through the registration requirements, as well as investing resources with respect to compliance. (Further analysis on this subject will be introduced in the following section).</p>

Law	Elements that promote CSOs activities	Elements that inhibit the promotion of CSOs activities	Consequences for CSOs
Income Tax Law (Ley de Impuesto sobre la Renta) (LISR)		The vision of CSOs in the Income Tax Law and the Federal Law for the Promotion of the Activities of Organized Civil Society is completely different, as the first one lacks elements for promotion that match those of the second one. (Ángeles Anaya, KII 2017).	The Federal Law for the Promotion of the Activities of Civil Society Organizations does not single out organizations that have ADS. The promotion law regulates the activities of all CSOs, independently from their ADS, so the additional classification of the Income Tax Law adds another layer of complexity and compliance for CSOs.
(CSOs that have authorized donee status)			
Enacted: 2013			
Last reformed: 2016			
	5% cap on the amount of tax-deductible donations that can be used for administrative expenses. (LISR, 2017).	The 5 % limitation has proven to be arbitrary and unprecedented (very few countries have limits on administrative expenses). ¹³ (Ángeles Anaya, KII 2017).	For CSOs, it is unclear how to determine if an expense is operational or administrative. This leaves organizations in legal uncertainty since they could be mistakenly reporting expenses that should be administrative as operational or vice versa. Authorities have also been erratic in their interpretation of this rule, occasionally using it as a tool to question any expense the organization makes that is not deemed as indispensable. This not only has implications for a CSOs autonomy, but also for its professionalization and long-term impact. If expenses related to “non-indispensable” items are not allowed, then staff salaries, equipment, evaluations and studies, and other investments essential to build the institutional capacities of a CSO are out the question.

¹³ According to the research conducted by Mendoza- Trejo, the only other countries that limit the amount of resources that can be used for administrative purposes are India, that has a 20% margin and Armenia, Moldova and Russia, that have a 20% cap for administrative allocation of resources (Mendoza-Trejo, 2014).

Law	Elements that promote CSOs activities	Elements that inhibit the promotion of CSOs activities	Consequences for CSOs
<p>Income Tax Law (Ley de Impuesto sobre la Renta) (LISR)</p> <p>(CSOs that have authorized donee status)</p> <p>Enacted: 2013</p> <p>Last reformed: 2016</p>	<p>CSOs are required to demonstrate that they carry out the activities stated on their social objective by obtaining a letter from the “competent authority”, in order to obtain ADS.</p>	<p>Obtaining the letter to certify activities in order to apply for ADS can be complicated because the procedure is not well defined by the law. Different authorities impose different requirements to give this letter. In some cases, the institutions don’t even have a procedure to give the letters, which means they either deny them or give them out discretionary basis.</p>	<p>CSOs are expected to obtain the letter to certify their activities by approaching government agencies, explaining the reason why they need it, waiting for the agency to reply and hoping the information provided will be suitable for the fiscal authority. There is no unified protocol for government agencies to make this process run smoother.</p> <p>Further, the purpose of this procedure (to ensure that the CSOs that obtain access to tax incentives are legitimate) is not achieved. Since most government agencies do not have enough staff, resources or adequate procedures to verify that the applicants are indeed carrying out their stated activities, they end up giving the letter on the basis of documents, or only to those organizations that work closely with them.</p>

Law	Elements that promote CSOs activities	Elements that inhibit the promotion of CSOs activities	Consequences for CSOs
<p>Federal Law for the Prevention and Identification of Operations with Resources Derived from Illicit Sources (also known as the “Anti- Money Laundering Law”)</p> <p>Enacted: 2012</p>	<p>This law establishes a list of activities that are considered “vulnerable” for money laundering, one of them is receiving donations by nonprofit organizations. CSOs are required to register in the anti-money laundering portal when they receive a donation of over \$7,000 USD and to file monthly reports (when receiving over \$15,000 USD) including personal and business information from their donors.¹⁴</p>	<p>CSOs are responsible for requesting, gathering and verifying information from their donors (whether they are Mexican or foreign) and they are not allowed to accept donations if the donor refuses to provide the requisite information.</p>	<p>This rule can potentially limit CSOs access to funding, scaring off donors that are wary of divulging that much personal information.</p> <p>Also, this compliance requirement adds to the number of regulations to which CSOs are already subject to. (Mendoza-Trejo, 2014).</p>

(SOURCE: DE LA VEGA & ENRÍQUEZ 2014; ABLANEDO, 2009; ICNL 2012; MENDOZA-TREJO, 2014; INTERVIEW: ÁNGELES ANAYA, 2017.)

As Stated by the previous arguments, there are some elements that promote CSOs activities in the laws that regulate the sector. The Federal Law for the Promotion of the Activities of CSOs certainly defined a new relationship between the State and organized civil society by recognizing the value of their work for the benefit of the country. One of the concrete, positive elements derived from this law is the availability to CSOs of public funds and institutional training and professionalization mechanisms (Indesol, 2017). However, in everyday practice, the registration and compliance mechanisms established can skew the balance between promotion and control, particularly in the case of the fiscal regulation on CSOs.

Because the fiscal framework has a significant influence on the life of CSOs, the following section will be dedicated to analyzing some of the most important aspects of these regulations.

¹⁴ See Chapter 3 for further details on the requirements imposed by this Law.

CONCLUSION

The Income Tax Law has elements that promote CSOs activities, such as tax exemptions and the possibility to extend tax-deductible receipts to donors for organizations with ADS. However, this enacts complex processes for registration and compliance, in addition to the obligations under other laws. It is important to clarify that the existence of several laws is not what is considered as a barrier per se, but rather the fact that certain laws do not work together, and that the positive elements of some are often counterbalanced by the gaps, inconsistencies and over-regulation imposed by others, can result in barriers on CSO activities. The following section will illustrate the ability of CSOs to navigate the previously mentioned legal framework, by analyzing the process CSOs go through to formally register and comply with their obligations.

KEY FINDINGS

- The practical application of the law and the registration and compliance requirements can weigh heavily in the balance between promotion and control, due to the existence of other legislations with a more regulatory or controlling nature.
- The Federal Law for the Promotion of the Activities of Civil Society Organizations mandates that the Federal Government promote civil society activities and establish a common ground in terms of requirements and obligations for civil society organizations to access incentives and support. However, due to the lack of clarity within GoM public programs, instead of simplifying access, in many cases it simply institutes an additional layer of regulation.
- The Federal Law for the Promotion of the Activities of Civil Society Organizations has not been able to implement a real public policy because it does not effectively coordinate the efforts of different public institutions to enable the growth of organized civil society.
- The Income Tax Law does not recognize the nonprofit nature of CSOs as a whole; only those considered under article 79 which have been given ADS. This means that the rest of civil society organizations are not given the exemptions they should be granted.
- There is a lack of harmony between federal laws, particularly the Income Tax Law and the Federal Law for the Promotion of the Activities of Civil Society Organizations.
- Obtaining the letter to certify that a CSO is effectively carrying out the activities stated in its mission to obtain ADS is complicated by the lack of a unified protocol for the letter to be granted.
- The 5% cap on the amount of funds derived from donations that can be used by an Authorized Donee for administrative expenses is arbitrary and unprecedented by international standards. The lack of clarity on the interpretation of the rule leaves a broad margin for discretion to the authorities and leaves CSOs subject to uncertainty. The rule not only has implications for an organization's autonomy, but for their legitimacy and long-term impact.

V. LEGAL FRAMEWORK FOR REGISTRATION OF CSOs IN MEXICO

ENABLING ENVIRONMENT OR ADMINISTRATIVE BARRIERS FOR CSOs?

As mentioned in the previous sections, International Law and the Mexican Constitution guarantee the rights of assembly and association, and there are Federal and state laws that recognize the public value of the activities of civil society organizations and establish the need to promote them. However, there are still elements in the Mexican legislation that tend to undercut these principles, by prioritizing control and regulation. The first part of this section will highlight the registration possibilities for CSOs, separated for analysis into 5 sections: (a) Legal Constitution of Private Non-for-Profit Organizations and registration to obtain Tax Identification Number (RFC); (b) Enrollment in the Federal Registry for Civil Society Organizations (to obtain what is known as CLUNI); (c) Registration to obtain the Authorized Donee Status; (d) Registration to obtain the International Donee Status, (e) registration of activities under the Anti-Money Laundering Law.

Each of these registration possibilities will be analyzed incorporating the point of view of CSOs that have gone through these registration processes, highlighting the conveniences and barriers they have encountered. An in-depth analysis of the laws that establish registration and compliance regulation will be done in an effort to identify whether these contribute to the promotion of the CSO sector or act as a control mechanism.

WHAT IS UNDERSTOOD BY FORMAL REGISTRATION?

Article 9 of the Mexican Constitution recognizes the freedom of association, as long as it is for lawful purposes. This right enables all Mexicans to associate freely without being legally required to go through a process of formal registration. However, if a group of citizens that has decided to come together for a common purpose decide they wish to formalize their association and become a legal entity that allows them access to public and private funds, enter contracts, seek fiscal benefits or open bank accounts (among other reasons), they need to consider legal registration.

It is important to note that CSOs that have not legally registered are not necessarily less professional than those that are formalized: many CSOs can operate successfully without registering and can do so with the sole protection of the Constitution. That said, formal registration is the process CSOs can go through to:¹⁵

a) Obtain legal entity

- Notarize bylaws and register them in the Public Register.
- Register to obtain a Tax Identification Number (RFC for its acronym in Spanish).

b) Access public funds and incentives, gain visibility and demonstrate compliance with specific obligations as formalized CSOs.

¹⁵ Considering that there could be other registrations, the previous list of registrations has been defined according to the most common practices for CSOs.

- Register with the Federal Registry for Civil Society Organizations (RFOSC for its acronym in Spanish) and other local registries at the state or municipal level.

c) Obtain a specific legal status, and access to tax incentives

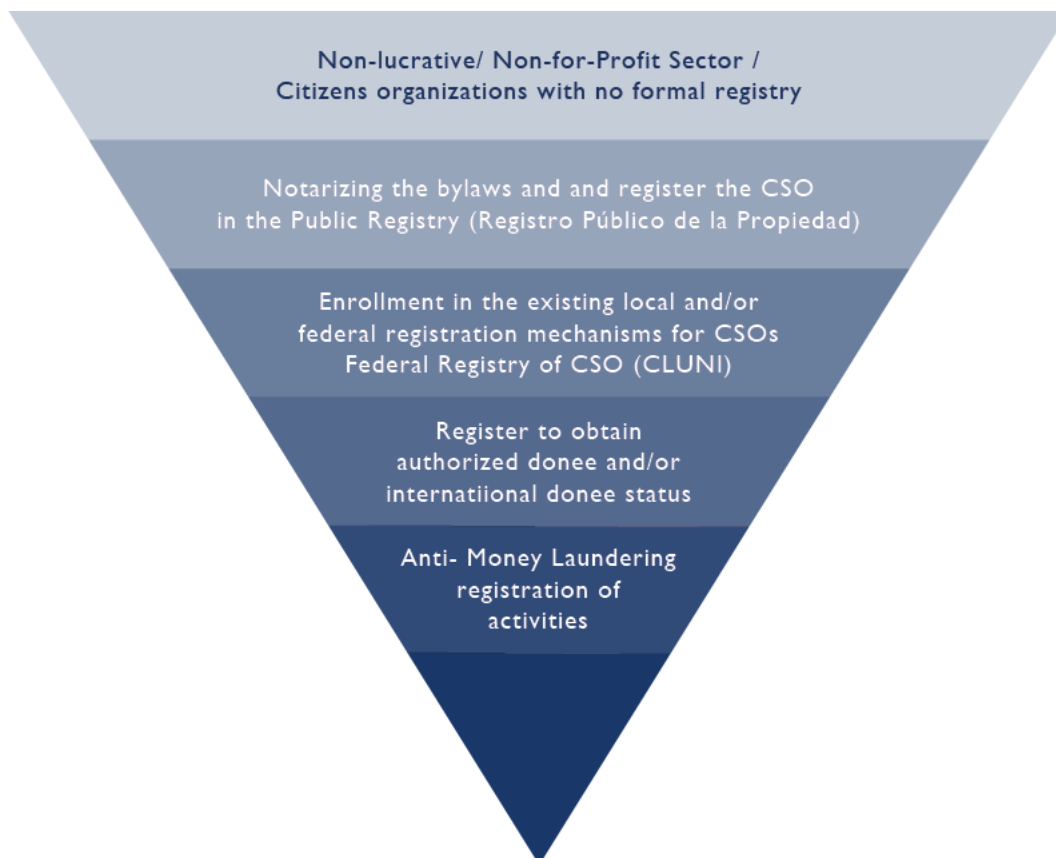
- Authorized Donee Status and International Donee Status

d) Comply with a specific obligation (derived from receiving a certain amount of donations)

- Anti- Money laundering registration of activities

The following image illustrates the various formal registration mechanisms available for CSOs. The first level of this pyramid is composed by the nonprofit sector, including all civil society organizations in the country. The next levels of the pyramid correspond to the two formal registration mechanisms available for CSOs, the Federal Registry for Civil Society Organizations (CLUNI for its acronym in Spanish) and Authorized Donee Registry from the fiscal authority (SHCP), followed by the Registry of CSOs with International Donee Status and finally, the Private Assistance Institution Boards that conglomerate Private Assistance Institutions (IAPs in Spanish). Each of these levels have a legal framework complexity that will be analyzed in the following segments.

IMAGE 4.
REGISTRATION MECHANISMS



(IMAGE MADE FOR THE PURPOSE OF THIS RESEARCH WITH INFORMATION FROM INEGI, 2016 INDESOL, SAT AND CEMEFI, 2017).

I. LEGAL CONSTITUTION OF PRIVATE NONPROFIT ORGANIZATIONS

CSOs have the freedom to choose the type of legal entity they want to become when undergoing the process of legal constitution. The most common are Civil Association, Private Charity (or “Private Assistance/Welfare Institution”) and Civil Society. The specific regulation for the constitution of a CSO is in the Federal and State Civil Code (for Civil Associations and Civil Societies) and the Private Assistance Institutions Laws of each state (for Private Charities). This process is formalized when CSOs determine their bylaws to obtain a notarial certification.¹⁶

BOX 1. LEGAL REQUIREMENTS TO FORMALLY REGISTER/CONSTITUTE A CSO:

- Two or more people are required to form a CSO.
- Registration can only be done by a person who is over 18 years old.
- Registration can only be acquired by a person who is intellectually capable.
- There is no requirement of minimal capital (financial or in goods) to obtain a formal registration as a Civil Association.
- For some Private Charities, there is a requirement of capital.

(CEMEFI, 2012)

The following table depicts the main legal entities that CSOs choose when they formally register, according to the Federal Registry of CSOs:

TABLE 8. LEGAL PERSONALITIES ADOPTED BY CSOs WHEN REGISTERING

LEGAL ENTITY (FORMAL REGISTRATION)	ACRONYM IN SPANISH (COMMON USE)
Civil association (94.9%)	Asociación Civil (AC)
Private assistance institution or private charity (3.3%)	Institución de Asistencia Privada (IAP), Institución de Beneficencia Privada (IBP) or Asociación de Beneficencia Privada (ABP)
Civil society ¹⁷ (0.8%)	Sociedad Civil (SC)
Other (0.99%)	

(INDESOL, 2017)

The Federal and Local Civil Codes, in its chapter on Associations and Societies, define the main difference between these two types in terms of the objective of the entity, making a distinction between those organizations

¹⁶ Process of notarizing bylaws: By hiring the services of a Notary, the CSO must explain the non-lucrative activities that they are conducting. All members of the CSO must agree upon the bylaws, examples of these are available in the ‘Corresponsabilidad’ Internet portal and in the SHCP Internet portal. After this process, associate members of the CSO sign the bylaws, so do the legal representatives and the members of the Directive Board. Once the bylaws are notarized, the CSO receives one or two copies (necessary for the CSO to register in the RFOSC).

¹⁷ Despite de name, “Civil Society” is actually an uncommon legal entity for civil society organizations, since it’s more fit for organizations with economic activities. The Federal Registry of CSOs only accepts them if their bylaws demonstrate they don’t have a lucrative purpose.

created mainly with for-profit purposes (Societies) and those that are registered mainly with a nonprofit motivation (Associations); since CSOs have mainly nonprofit purposes there are only rare cases of CSOs registered under the Civil Society legal type (1% according to the Federal Registry of CSOs).

An interesting option is the Private Assistance Institution or Private Charity legal type. This type is only regulated in State Laws and may take different names in each state: for example, Private Assistance Institution (Mexico City) or Private Welfare Association (Nuevo León). The differences between them are minimal in terms of the objective, and all of them establish that the organization must have a nonprofit purpose.

Two of the main differences between a Private Assistance Institution and a Civil Association is the required capital and the corporate aspects. The following table illustrates the differences between Civil Associations and Private Assistance Institution.

TABLE 9.
DIFFERENCES BETWEEN CIVIL ASSOCIATION AND PRIVATE CHARITY

CIVIL ASSOCIATION	PRIVATE ASSISTANCE INSTITUTION OR EQUIVALENT
Corporate structure consisting of an assembly and administrative council.	Corporate Structure consisting of a Board of Trustees (Patronato) and optional councils.
No minimum capital requirement.	In some States, such as the CDMX, a minimum amount of capital is required.
No local public board of associations supervises or supports associations.	A local Public Board of Private Assistance Institutions (Junta de Asistencia Privada) supervises and supports these organizations. These Boards may charge a small percentage (6/1000 in CDMX) of the annual income of the organization in order to pay for the services provided by the board.

LEGAL CONSTITUTION PROCESS

To guarantee the fulfillment of the rights recognized in the international framework and the Mexican Constitution, it is essential that the State enables the best possible practices for the formal registration of CSOs, through a process that is fast and easy, and contemplates relatively low bureaucratic administrative requirements. Arguably, this expectation is met in Mexico, as the legal registration of a CSO is relatively simple to achieve. CSOs go through the following steps to formally register:

- 1 Application with the Ministry of the Economy (Secretaría de Economía in spanish) to obtain the right to use the name the CSO has chosen. This application can be done by the organization itself or with the assistance of a public notary.
- 2 Drafting of bylaws, which must be certified by a public notary and registered with the Public Registry (Registro Público de la Propiedad in spanish). The drafting of the bylaws requires the founders of the organization to decide on the objectives of the organization, the internal governance structure, the

role of the members and also designate a legal representative. To formally adopt bylaws and for them to have legal effects on third parties, a Public Notary has to certify the bylaws and have them registered with the Public Registry. The CSO gets certified copies of the bylaws to enable it to proceed with other registrations.

- 3 Registration with the Federal Taxpayers Registry, to obtain a Tax Identification Number, or RFC. This can be done by the Public Notary, or directly by the CSO. Through the Federal Taxpayers Registry the CSO obtains an RFC as a fiscal identification and determines a fiscal domicile. Additionally, the organization receives a list of the fiscal obligations they will have to comply with.

2. REGISTRATION TO OBTAIN THE TAX IDENTIFICATION NUMBER

Obtaining a Tax Identification Number is particularly important for the CSO, since it's tied to the fiscal treatment and obligations it will acquire. After a public notary has certified the bylaws and listed them in the Public Registry of the State where the CSO is legally constituted, the CSO has to begin the process to obtain a tax identification number. This is done either by the CSO directly, or through a public notary.

The process includes obtaining an electronic signature (called FIEL for its acronym in Spanish) that will be used to identify the CSO in formal transactions that are conducted through electronic means. To obtain their FIEL, CSOs have to locate and apply in the local office of the federal tax authority (Servicio de Administración Tributaria, or SAT) that corresponds to the State where the CSO is constituted. The applying CSO will have to provide biometric and specific data of at least one legal representative of the CSO. During such procedure, the legal representative will create users and passwords for accessing the digital platforms of the relevant tax authorities. Once the process is completed, the electronic signature is downloaded to an USB memory drive and kept in the custody of the legal representative. This procedure has to be updated every 4 years. Once the electronic signature is available, the CSO representative or the notary accessing the SAT digital platform will follow the specific steps and fill in the necessary information to determine the fiscal treatment that the CSO will have.

This process is a key part of the registration process of the CSO, because it is related to their ability to comply with their fiscal obligations. Further analysis on this will be presented in the following section.

WHAT IS THE MOTIVATION BEHIND CHOOSING A SPECIFIC LEGAL ENTITY FOR A CSO IN MÉXICO?

As stated earlier, for the purpose of this study, a survey was designed to collect the views and experiences of members of civil society organizations in Mexico: Appleseed's Legal Environment Survey, or LES. This was important since the debate around the legal framework for CSOs, which is highly technical, tends to be dominated by a few experts practicing in the field. While these experts are valuable, it is also important to go back directly to the organizations, to ascertain how they navigate in practice the laws and the processes derived from them.

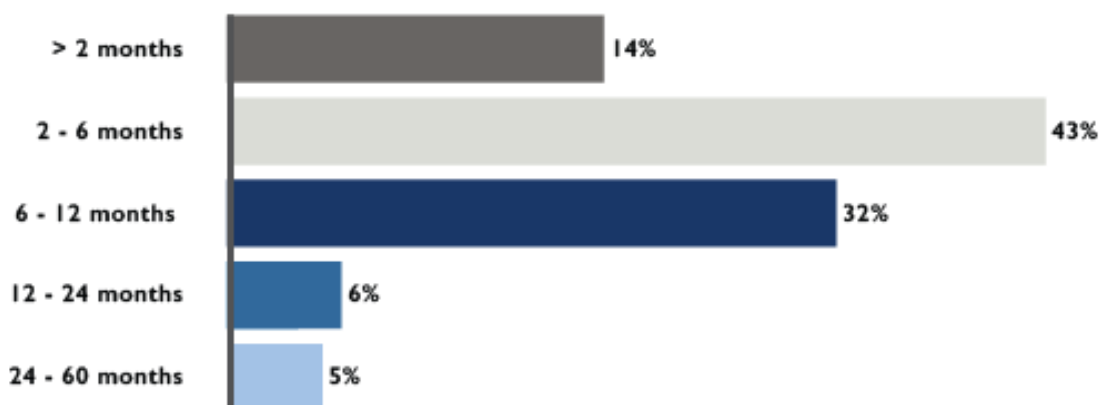
The randomly selected CSOs that were surveyed by the LES were asked 37 questions on how they navigate the legal framework. The first section of the survey was designed to uncover the daily administration and operations of the CSOs, and if there were any complications that required the support or advice from experts. This section

of the survey provided insight into how CSOs viewed the registration processes and whether the existing norms are effectively achieving the promotion of civil society organizations activities with the right amount of supervision, or if compliance with regulations hinders their operations. (For further detail on the methodology behind this research, see the chapter on titled “Methodology”).

In order to better understand how CSOs view the process of choosing a legal entity, CSOs were asked what they considered was the primary benefit of registering under a specific legal type (Civil Association, Private Charity or other) to which 45% of CSOs responded that it was the possibility of being autonomous and being able to establish their own governing bodies and determining their bylaws. On the other hand, 27% responded that their main motivation for choosing a specific legal type was the access to certain benefits, such as tax deductions and other incentives. Additionally, 18% of CSOs stated that they chose a particular legal entity because of the simplicity of the process, and 10% chose other reasons to do so (LES, 2017). These results summarize what most experts consider is the main quandary for organizations when choosing a legal type: while the Civil Association type provides greater autonomy (and this is why most organizations will choose it), the Private Charity type has easier access to fiscal incentives and other benefits, but which are burdened with heavier oversight.

Through the LES, CSOs were also asked how much time they had invested in the process of obtaining a legal entity by notarizing their bylaws. While 38% of CSOs stated to have invested less than six months in this process, 43% of CSOs mentioned it took them between two months and six months, and 19% of CSOs stated that it took them more than six months and even one or two years, which reflects how much of a hurdle this process can become to CSOs

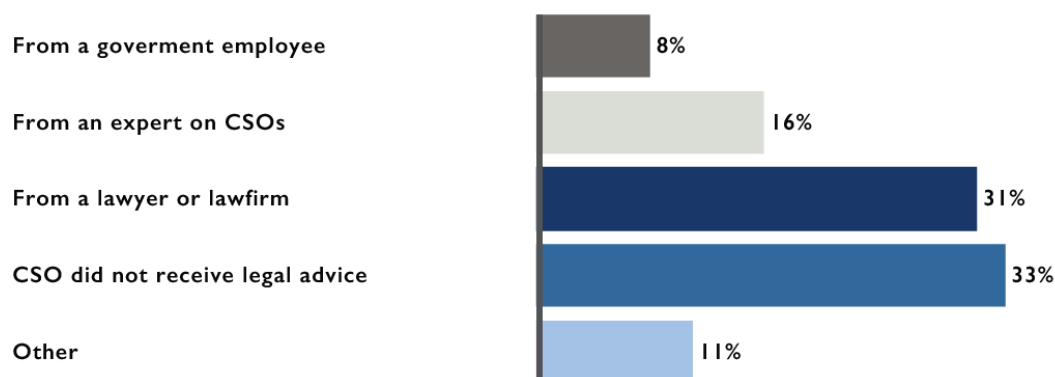
GRAPH 1.
TIME INVESTED IN THE PROCESS OF OBTAINING A LEGAL ENTITY



(LES, 2017)

Given that the process seems to pose certain challenges to organizations seeking formalization, CSOs were asked if they had looked for any legal advice on which type of legal entity to adopt. While it is clear most organizations required some kind of external legal advice, only a fraction had access to professional advice from a legal firm or lawyer (31%), and a significant percentage of organizations didn't seek or obtain any advice at all (33%). Additionally, 16% stated that they received advice from an expert in civil society, and 8% received advice from a government official. Another 11% of CSOs stated that they did receive advice but did not specify what kind of advice they received.

GRAPH 2.
CSOs AND THE RECEPTION OF LEGAL ADVICE



(LES, 2017)

It is important to highlight that the quality of the advice CSOs receive is essential to go through the registration process without any inconvenience and will also determine the possibility of the CSO continuing with further steps -for example, applying for ADS or for CLUNI. If an organization does not receive proper advice, it will likely result in the CSO taking even more time – and money – to continue with registration processes because they will have to retrace certain steps that they did incorrectly.

One of the possible explanations for why CSOs don't obtain or seek expert legal advice (besides the fact that there are few professionals that specialize on CSOs) is the fact that these services can be costly, and include associated costs and expenses incurred in connection with obtaining such legal advice (transportation, for example). Additionally, notary fees and registration fees charged by the Public Registry, which may vary from state, can be burdensome for an organization that is just starting operations. In Mexico City for example, CSOs can pay in average \$9,000 MXN to cover their legal constitution costs, which is similar to other cities (De los Reyes, 2017). In some cases, local governments or certain institutions establish agreements with notaries, so that the notarial charges for services provided are more affordable to CSOs. However, such agreements are occasional (CEMEFI, 2012) and have not always worked as intended.

In terms of the Federal Law for the Promotion of the Activities of CSOs Article 13, the authorities have been mandated to support the development of CSOs by, among other means, promoting coordination agreements between public agencies. Also, Article 11th of the mentioned law establishes that the Commission for the Promotion of Civil Society Organizations Activities¹⁸ is tasked with enhancing the dialogue amongst public and private stakeholders to improve public policies that favor the sector. Accordingly, the Commission and the Federal Government in general have both the legal capacity and the interest to advance agreements that are further reaching and permanent, with the Bars of Notaries and other associations of professionals.

¹⁸ The Commission for the Promotion of Civil Society Organizations Activities is responsible for the design, execution, monitoring and evaluation of actions and measures to promote the activities established in article 5 of the law. The Commission is confirmed by a representative, with rank of undersecretary or homologous, at least, of each of the following dependencies: I. Ministry of Social Development; II. Ministry of the Interior; III. Ministry of Finance and Public Credit, and IV. Secretary of Foreign Relations.

WHAT ARE THE POSSIBLE LEGAL REGISTRATION PROCESSES THAT CSOs CAN GO THROUGH?

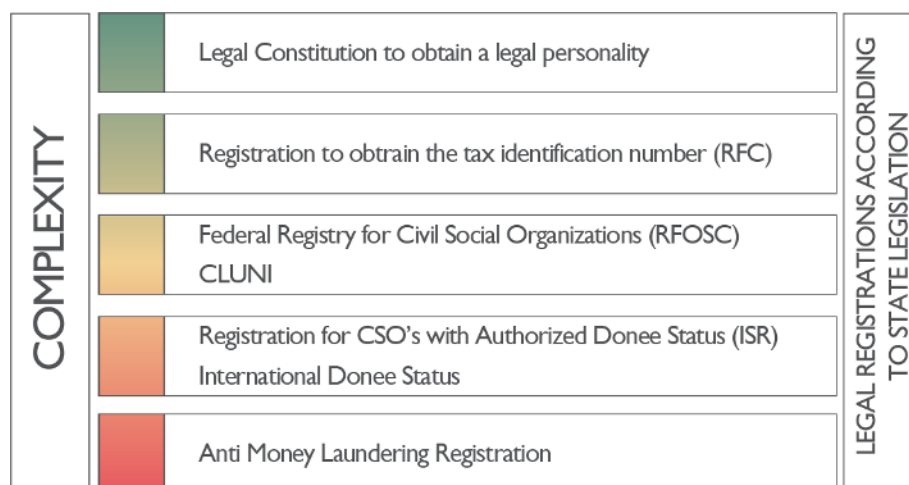
As previously mentioned, CSOs formally register to gain a different level of formality, to receive public and private resources/donations, as well as to enable the consolidation of their organization. Following the initial legal registration of a CSO, there is a process through which organizations may transition to other registrations and add further formality. This process takes place as CSOs navigate the normative framework through registration mechanisms that award them certain rights and benefits, but which also adds a set of complex obligations and compliance responsibilities.

The following image depicts the process that CSOs may go through to legally register. Each level depicts a more complex process for CSOs, not only in the registration process itself but also in the responsibilities associated to each registry. The scale of colors placed on the right, depicts the increasing complexity of each process. It must be highlighted, however, that they are not necessarily connected. In order to register in the Federal Registry of Civil Society Organizations or obtain ADS, an organization must have fulfilled the first two steps (being legally constituted and having RFC), but the other processes are independent of each other.

CSOs therefore have the freedom to choose whether they want to register in the Federal Registry of CSOs and/or State or Municipal registries. Regardless of whether they have registered in any of those registries, they can also choose if they want to get ADS and International Donee Status. They are not required to be authorized donee status in order to receive donations but will need such status if they want to give their donors a tax-deductible receipt. This means for example, that CSOs can register and obtain the CLUNI and not register or seek to obtain ADS, or vice versa.

The Anti- Money Laundering registry is also independent from the Federal Registry and the Authorized Donee Status. Accordingly, if an organization receives donations in excess of a certain amount, it will have to register, regardless of whether it has CLUNI or ADS.

IMAGE 5.
SCALE OF CSO FORMALIZATION THROUGH FORMAL REGISTRATION OPTIONS



(IMAGE MADE FOR THE PURPOSE OF THIS RESEARCH THROUGH INTERNAL ANALYSIS, 2017)

WHO IS RESPONSIBLE FOR THE REGISTRATION OF CSOs?

The following table illustrates the authority responsible for administrating and operating the previously mentioned registration options for CSOs. It also depicts the number of CSOs that are currently registered under each one and the purpose of such registrations.

TABLE 10.
REGISTRATION AUTHORITIES/ SIZE OF THE FORMALLY REGISTERED SECTOR

AUTHORITY	REGISTRATION	NUMBER OF REGISTERED CSOs	PURPOSE OF REGISTRATION
Instituto Nacional de Desarrollo Social (National Institute for Social Development, or INDESOL) part of Ministry of Social Development (SEDESOL) ¹⁹	Federal Registry of Civil Society Organizations- (also known in the sector as “CLUNI”)	37,852 CSOs, out of which 14,583 have an inactive status (December, 2017)	Obtain an identification number known as CLUNI to apply for federal funds and other incentives

¹⁹ The Law establishes that the Federal Registry of CSOs is administered and overseen by the Technical Secretariat of the Commission for the Promotion of CSO Activities, which corresponds to the Social Development Ministry. The Ministry then delegates this role to INDESOL.

AUTHORITY	REGISTRATION	NUMBER OF REGISTERED CSOs	PURPOSE OF REGISTRATION
Servicio de Administración Tributaria (Internal Revenue Services, or SAT), which depends from the Secretaría de Hacienda y Crédito Público (Ministry of Finance or SHCP)	Registration of organization to obtain ADS	9,136 (July, 2017)	Authorization to emit a tax-deductible receipt to private donors
Servicio de Administración Tributaria (Internal Revenue Services, or SAT), which depends from the Secretaría de Hacienda y Crédito Público (Ministry of Finance or SHCP)	Registration of organizations with International Donee Status (IDS)	3,341 (July, 2017)	Authorization to emit tax- deductible receipts to international private donors (mainly from the United States of America)
Secretaría de Hacienda y Crédito Público	Registration of CSOs that are subject to the terms of the anti-laundry law	3,881 (2017)	Registration as a CSO that is subject to the law and registration of the identification information of donors.

(INDESOL, 2107; SAT, 2017; SHCP, 2017)

KEY FINDINGS:

- Legal constitution of CSOs takes on average between 2 and 6 months.
- Only 31% of CSOs obtain expert legal advice when looking to formally constitute.
- The cost of legal constitution can be burdensome for organizations (in Mexico City for example a CSO may cover up to \$9,000 MXN).
- The most common legal types that CSOs chose are Civil Association and Private Assistance Institution. Two of the main factors they consider when choosing a legal type are the autonomy they'll have and the access to public funds and support.
- CSOs have various options for formal registration; CSOs that do not legally register can still be fully operational and in compliance with applicable law. The most common incentives for legal registration for CSOs is to seek a higher level of formality or professionalization, and access to incentives and funding (financial donations and other resources) from public and private actors.

- Several of the registration processes are independent from each other and are not necessarily in sequential order. This can be positive in the sense that an organization can choose the mix of registrations it deems adequate for its needs (being an Authorized Donee, but not filing in the Federal Registry of CSOs; registering in both the Federal and State registries but not being an Authorized Donee; having all registries, etc.). The downside, however, is that the organizations have to invest time and resources to apply for each status and registry, submitting in some cases, the same papers over and over, complying with reporting obligations, dealing with all the relevant authorities, etc.

3. REGISTRATION TO THE FEDERAL REGISTRY OF CIVIL SOCIETY ORGANIZATIONS (CLUNI) AND OTHER LOCAL REGISTRIES AT STATE LEVEL.

The Federal Registry of Civil Society Organizations is the governmental unit that the Federal Law for the Promotion of the Activities of Civil Society Organizations has authorized for CSOs to enroll and obtain an identification number referred to as CLUNI (Clave Única de Inscripción al Registro Federal de las OSC in Spanish). The Registry is administered and overseen by the Technical Secretariat of the Commission for the Promotion of CSOs Activities, which is a part of the Social Development Ministry, who delegates this role to INDESOL. The CSOs are able to register in the RFOSC through a website and using the electronic signature (FIEL) that was obtained during the legal constitution process²⁰.

This registration is available for all CSOs who want the protection of the aforementioned Law. Even though the main purpose of the Registry is not the regulation of access to public funds, in practice, however, this is probably the most visible and concrete benefit for CSOs that decide to register, being able to apply for federal programs and public grants.

ARTICLE 3 OF THE FEDERAL LAW FOR THE PROMOTION OF THE ACTIVITIES OF CSOs, DEFINES CSOs AS:

“Those Organizations that being legally constituted, carry out one or some of the activities referred to in article 5 of the law and do not have for-profit, political-electoral, or religious proselytism purposes.”

The above definition aims to restrict the benefits of the law to those CSOs that fit the described criterion. The Federal Registry will review the organization's bylaws to make sure that they meet these criteria before granting them the CLUNI. Article 31 of the law provides that organizations will have their registration canceled and their CLUNI revoked if they: (a) use public funds to benefit their members or their direct relatives (“self-benefit activities”), (b) distribute financial or material remnants from public funds they had received among the CSO members, (c) misuse public funds, or (d) get involved in activities that imply political-electoral proselytism or religious proselytism. However, it should be noted that the oversight capacities of the Commission for the

²⁰ The portal for RFOSC registration is www.corresponsabilidad.org.mx

Promotion of CSOs Activities is quite limited, and the mechanisms in place for detecting and sanctioning offenses are often insufficient to supervise compliance among the thousands of organizations in the Registry.

To date, only 25 organizations have ever been indicted. Of these, 11 have been sanctioned with a fine, and 8 have had their CLUNI cancelled (with one of them having filed a protective action, known as Amparo). The remaining 6 didn't receive any sanctions.

There are 37,831 organizations currently registered in the RFOSC. The following graph depicts the number of organizations that are registered in the Federal Registry of CSOs. These are predominantly Civil Associations (35,650), followed in number by the Private Assistance Institutions (1,099):

The following table depicts the main obligations of this law and the rights CSOs gain by being part of the Federal Registry for Civil Society Organizations.

TABLE 11.
FEDERAL REGISTRATION FOR CIVIL SOCIETY ORGANIZATIONS

Rights		Obligations	
1	Subscribing to the Federal Registry of Civil Society Organizations.	1	In order to be able to receive public funds and incentives, CSOs must:
2	Participating in consultation and participatory processes.	2	Be registered at the Federal Registry for Civil Society Organizations.
3	Being part of the mechanisms of participation established by the Federal Government.	3	Have legally constituted the organization so as to define their internal government and representation structures.
4	Participating in social auditing mechanisms (Contraloría Social).	4	Have an accounting system that is suitable to comply with accepted standards.
5	Having access to government funds and incentives for the promotion of the activities of CSOs.	5	Provide information when requested by the competent authorities about their social objective, programs, activities, beneficiaries, sources of funding (national or international), assets, administrative and financial operation, use of the public funds and incentives that are received.
6	Enjoying fiscal incentives and other forms of economic and administrative support established by the norms.	6	Present an annual report of the activities that the CSO has executed in the fulfillment of their social objective, and a report on their financial, accounting and overall asset situation, clearly reflecting the use and the results of the usage of public funds that the organization might have received. This requirement is meant to assure transparency, and to feed the Information System of the RFOSC. This report must be presented in January every year.
7	Receiving donations, according to the applicable fiscal dispositions.		

Rights	Obligations
8 Collaborating with the competent authorities in the provision of public services.	7 Notify the Federal Registry if the CSO forms part of networks and when they cease to do so.
9 Having access to benefits for CSOs derived from international treaties or covenants that are related to the realization of their activities and social objective.	8 Notify the Federal Registry when the constitutive act is modified, when there are changes in their internal organs, address or representation (changes must be notified within 45 days).
10 Receiving counseling, training and support from public institutions in order to fulfill CSOs social objective and activities.	9 When a CSO is dissolved, the CSO must transfer the patrimony that had been procured via public funding to other CSOs that conduct similar activities and that are part of the Federal Registry for CSOs.
11 Participating in the planning, implementation and monitoring of public policies, projects, and programs carried out by government institutions.	10 CSOs must conduct the necessary actions to fulfill their social objective.
12 Being respected in their autonomy regarding internal decisions.	11 CSOs must promote the professional standards and training of their members.
	12 CSOs are not allowed to conduct political, electoral and / or religious proselytism activities.
	13 CSOs are expected to be impartial and not discriminate in the selection of beneficiaries.

Organizations also won't be able to receive public funds when:

- 1 There is any conflict of interest or kinship relationship between the person that grants the funds or incentives, and the senior managers of the organization.
- 2 They hire with public funds any person that is related to the organization's senior executives (including relatives until the forth degree of consanguinity).

(FEDERAL LAW FOR THE PROMOTION OF THE ACTIVITIES OF CIVIL SOCIETY ORGANIZATIONS, 2017)

Despite reporting requirements established by the Law to guarantee transparency and the good use of public funds, some experts express a concern of whether the annual reports that are presented by compliant CSOs are being read and/or reviewed by the applicable authorities. This may be caused by a lack of personnel available to perform these tasks diligently, or the lack of a budget to process the filed information more efficiently (Zucely

Morales, KII 2017). Additionally, the fact that no feedback is given to CSOs may also decrease any incentive or willingness to present quality reports.

When CSOs fail to present their annual report for two consecutive years, the Federal Registry classifies them as “inactive”. However, this status is for informational purposes only and does not have any legal consequences. Any non-compliant organizations can regain their active status by presenting all their overdue reports. In practice, CSOs with inactive status are able to operate and function, although they will not have access public funds. Accordingly, given that these non-compliant CSOs are not presenting their annual reports, there is no mechanism to systematically follow up with such non-compliant CSOs to obtain reliable information on their activities. The condition of active or inactive CSOs will be further explored in the next section of this research.

WHAT ARE THE MAIN CHALLENGES FACED BY ORGANIZATIONS WHEN REGISTERING IN THE FEDERAL REGISTRY OF CSOs?

In order to get a better understanding on the challenges faced by CSOs when registering in the RFOSC, the Legal Environment Survey (LES) asked CSOs about their practical experiences. Organizations were asked whether they had incurred any expense when registering under the RFOSC or obtaining a CLUNI. To this question, 50% of CSOs responded that they had not invested any resources to obtain registration. 30% stated they had incurred expenses associated to transportation costs and only 12% declared they had hired an agent²¹ to help with the procedure. Additionally, 8% of CSOs had to make changes to their bylaws in order to obtain the registration (LES, 2017).

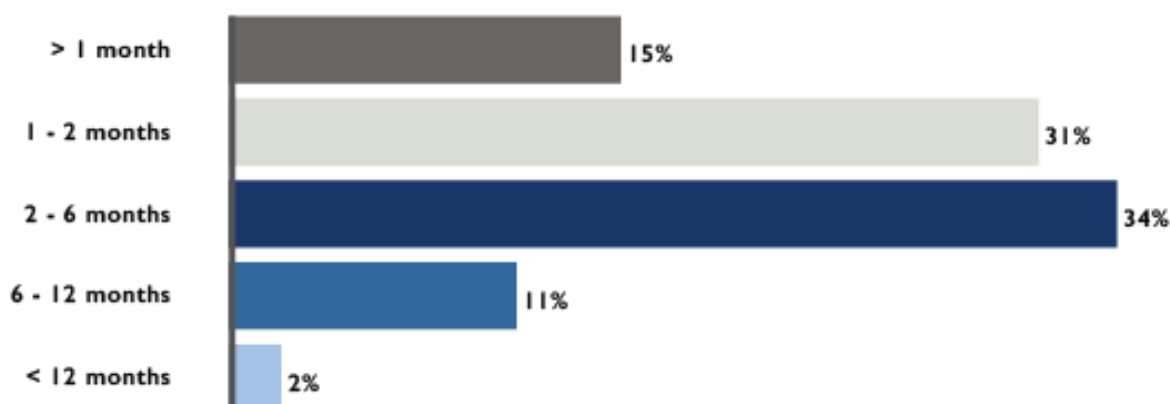
It is important to highlight that, officially, the registration process has no cost. The Registry doesn’t charge any fee and the process is simple enough that it should be possible for organizations to complete it without the need to hire professional help. For this reason, it is striking to know that 12% of organizations have resorted to hiring an agent.

The Federal Registry has tried to deter the use of agents because they view the involvement of the organization in its own registration process important. This is because the Federal Registry wants the organization to have direct contact with the authorities to receive proper guidance, to be aware of the rights and obligations it acquires, and to guarantee that the information that is provided by the organization to the Registry is true and accurate. For this reason, each requirement and step is published on their website (www.corresponsabilidad.gob.mx) with a very visible caption that reads, “Remember that all procedures are free, and no agents are needed to complete them”.

Surveyed CSOs were also asked the amount of time they had invested in registering in the RFOSC.

²¹ Agents, or “gestores” are private citizens that provide the service of carrying out an administrative procedure before the authorities in the name of the organization/person, for a cost. Gestores are in no way endorsed by the authorities.

GRAPH 3.
AMOUNT OF TIME INVESTED FOR THE REGISTRATION PROCESS FOR CLUNI:



(LES, 2017)

The responses show that, even when the process is simple, and the law establishes that it should take no more than 30 working days (about a month and a half), there is still a significant percentage of organizations (11%) that require more than two months to complete the process, and even 47% of organizations that require between six months and a year. This could be due to different reasons that are attributed to both the Registry and the application process. For example, if the organization presents its documents and the Registry responds that the bylaws don't meet the requirements and don't include the mandatory clauses established by the Law, the organization will have to go back to the public notary to reform the non-compliant bylaws and get them re-certified again, before submitting them again to the Registry.

Still, it is worth mentioning that the registration in the RFOSC for the overwhelming majority takes less than two months, which means that it takes significantly less time than the process to legally constitute and obtain the RFC, and the process to obtain ADS.

On the other hand, when CSOs were asked if they considered that the effort to register under the RFOSC and obtain the CLUNI was worth the time and money invested, 84% answered that it was, while only 10% considered it was not. The following are some of the comments expressed by those who considered that the effort was not worth it:²²

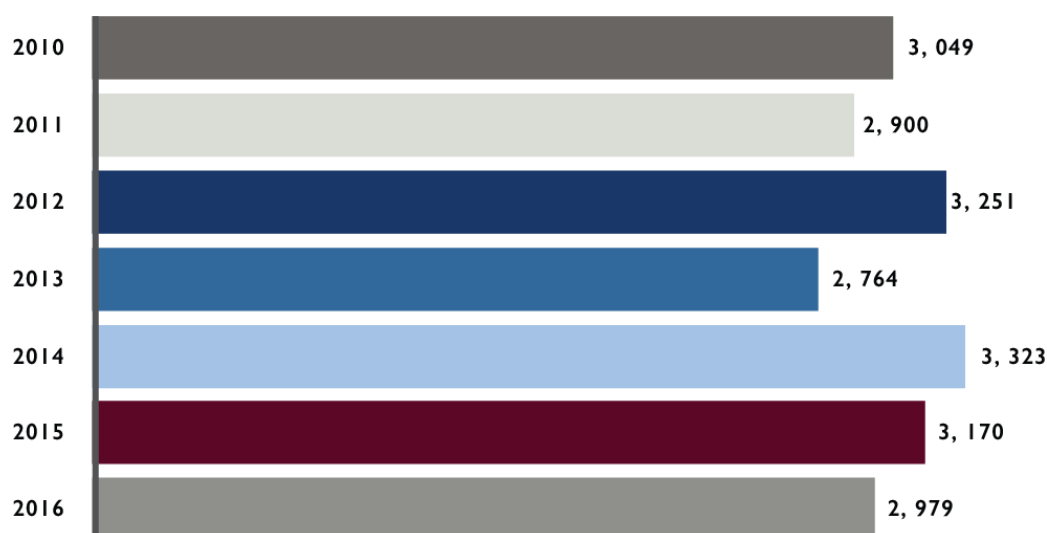
- "After operating for 40 years, the necessity of obtaining CLUNI has just come up, it was never necessary before and there were never so many steps to receive support." (CSO from the State of Morelos, LES 2017).
- "We have encountered many barriers with the government. There are too many requirements to be supported through public resources and there are few organizations that actually achieve this." (CSO from the State of Veracruz, LES 2017).
- "The availability of public funding is very scarce and even though we were not lucky to be awarded public funding, we think there needs to be transparency in how public resources are assigned to CSOs." (CSO from the State of Veracruz, LES 2017).

²² 6% of CSOs stated to not have the CLUNI, which is why there are 94% of responses.

- “The registry is not useful as a tool for CSOs, it does not contain information on what other Civil Associations do or the best practices we could share. It does not allow us to see if there are other CSOs that operate near my community, it is just a bureaucratic process.” (CSO from the State of Yucatán, LES 2017).
- “We don't speak Spanish as our first language, and the process is hard for us to understand. We are unable to spend time trying to understand the information and whenever we have asked for help to build our proposals for public support, we have received bad treatment from public servants.” (CSO from the State of Mexico, LES 2017).
- “We are not experts in preparing proposals to obtain government funding and we have been told that our organization conducts activities that are not in the interest of the government.” (CSO from Mexico City, LES 2017).

These answers reflect a frustration expressed by many CSOs, which is that, while obtaining the CLUNI is a requisite to apply for public funds, having it in no way guarantees being able to obtain them. In fact, while the number of organizations in the Federal Registry has grown steadily each year, the amount of public funds granted to CSOs by the different government institutions has not increased at the same pace. More importantly, the number of organizations that gets access to public funds has remained relatively the same: 3,049 CSOs received federal funds in 2010; 2,900 CSOs in 2011; 3,251 in 2012; 2,764 in 2013; 3,323 in 2014; 3,170 in 2015; and 2,979 in 2016.

GRAPH 4.
NUMBER OF CSOs WITH CLUNI THAT RECEIVED PUBLIC FUNDS FROM THE FEDERAL GOVERNMENT PER YEAR:



(DATA FROM ANNUAL REPORTS PRESENTED BY FEDERAL GOVERNMENT INSTITUTIONS TO INDESOL)²³

²³ The detailed information per year and per GoM institution can be found in the website of the Commission for the Promotion of CSOs Activities, specifically in: <http://www.corresponsabilidad.gob.mx/?p=482bd57ea95bb42cc15c82d63af42ea9&idContenido=25y>.

If the number of organizations that have access to the most concrete benefit of the Federal Registry of CSOs – public funds- is not increasing, that means that many organizations may grow frustrated as they are continuously left out. This in turn is reflected in the number of organizations that seem to have lost interest in keeping their information at the Registry updated. More alarmingly, it leads to many of them complying with their reporting obligations.

BOX 2.

ACTIVE AND INACTIVE CSOs IN THE RFOSC:

Active or inactive status of CSOs- Red Expo Social

In 2016 Red Expo Social led a research on the profile and differences of active and inactive civil society organizations in the Federal Registry of CSOs. The active status is given to CSOs that comply with the obligation of presenting their annual report to the Registry; those who fail to submit the report for two consecutive years are automatically given inactive status.

According to the study, active CSOs are characterized by the following:

- 1 Good strategic planning.
- 2 Delegation of responsibilities.
- 3 Task distribution.
- 4 Strong support for financial control and good bookkeeping.
- 5 Strong institutional communication, especially through social networks

Inactive CSOs are characterized by the following:

- 1 Lack of strategic planning.
- 2 Poorly structured human resources (either on payroll and under volunteer schemes).
- 3 No financial control.

The reports sheds light on the “active/inactive” phenomenon and presents some interesting findings:

- 1 CSOs under inactive status are not necessarily inactive in practice. In fact they might be operating their social programs fully, but have been unable or unwilling to report annually to the Federal Registry of CSOs (Indesol).
- 2 Over 54% of CSOs (both active and inactive) have weak institutional designs (lack of strategic planning and/or poor human resource engagement) with a high turnover of leadership staff.
- 3 Both active and inactive CSOs lack indicators to monitor and evaluate impact.
- 4 The majority of CSOs know their legal obligations but consider that compliance is unnecessarily complicated, especially fiscal reporting obligations of CSOs that have the authorized donee status.

(ACTIVAS O INACTIVAS, 2016)

KEY FINDINGS

- The Federal Registry of Civil Society Organizations is the governmental unit that the Federal Law for the Promotion of the Activities of Civil Society Organizations has authorized for CSOs to enroll and obtain an identification number referred to as CLUNI. Registration is available for CSOs who want the protection of the Law, which grants them a series of rights that include respect for their autonomy, participation in the design, implementation and evaluation of public policies and access to diverse forms of support from the government.
- Even though the main purpose of the Registry is not the regulation of access to public funds, in practice this is one of the most visible and concrete benefits for CSOs, and one of the main incentives for registering.
- The Federal Registry will review the organization's bylaws to make sure that they meet the criteria established by Law before granting them the CLUNI. These criteria include not having for-profit, political-electoral, or religious proselytism purposes. The Law also establishes sanctions for those organizations that fail to comply with their obligations, which in the most extreme cases, can be revocation of the CLUNI.
- Oversight capacities of the Commission for the Promotion of CSOs Activities are quite limited, and the mechanisms for detecting and sanctioning offenses are often insufficient to supervise compliance among the thousands of organizations in the Registry. Up to now, only 25 organizations have been indicted, of which, 8 were sanctioned with the cancelation of their registry.
- While the registration process into the Federal Registry of CSOs is designed to be a simple and straightforward process with no cost to the organization, 50% of CSOs have expressed that they have incurred some kind of expense in obtaining their CLUNI, either through associated costs (like transportation, or the Notary fee to modify bylaws) or paying an agent (gestor) to help them with the procedure. For CSOs with limited resources, this can be a barrier.
- The overwhelming majority (84%) of CSOs who responded to the LES consider the effort (time and money) invested in obtaining the CLUNI worth it. Those who considered the effort not worth it, mentioned among other reasons that the process to obtain public funds is complicated and competitive, and that they don't know how to apply for them.
- While the number of organizations with CLUNI has increased dramatically in the past years, the number of organizations that actually receive public funds from the Federal Government has remained relatively steady, about 3,000 CSOs. Organizations that are repeatedly excluded from access to public funds might be less motivated to be compliant with their reporting obligations towards the Federal Registry.
- Almost 4 out of every ten organizations in the Federal Registry of CSOs are classified as "inactive". This status serves only informational purposes and is not a legal sanction established by the Law. Organizations are deemed inactive when they fail to present their annual report to the Registry for two consecutive years, however, they can regain their active status by presenting all their overdue reports. In practice, CSOs with inactive status may still be operating and functioning, although without the possibility to access public funds.
- Organizations that fall into inactive status tend to lack strategic planning, and to have poor human resources and financial management.

The following section will be dedicated to the analysis of the process that CSOs go through when registering to obtain ADS. This section is particularly important given the burden that fiscal regulation has in the daily operational and administrative lives of CSOs.

4 REGISTRATIONS TO OBTAIN THE AUTHORIZED DONEE STATUS

This registration is particularly relevant in terms of the fiscal regime that corresponds to CSOs. First, as in the previous sections, the registration process to obtain ADS will be presented. Subsequently, a deeper analysis of the Income Tax Law will be presented, in order to portray the uncertainty or loophole in the law in terms of the fiscal regime of the CSOs that is closely associated to the registration to obtain the Authorized Donee Status.

CSOs that have gone through the process of formal registration are able to receive national and international donations without having to comply with additional legal requirements. In fact, many donors don't consider ADS as a requisite to give donations to a CSO: a study on Corporate Philanthropy in Mexico carried out by Alternativas y Capacidades, A.C., for example, found that only 48% of companies with philanthropic programs in Mexico established ADS as a condition for granting funding (Carrillo, Vargas et al, 2009).

However, CSOs that have registered to obtain the ADS may have access to a bigger pool of donors and to higher donations, as they'll be able to provide a tax-deductible receipt to donors (who will now be able to deduct about 30% of their donation). Many donors see the ADS as a seal of approval that guarantees that the organization is professional and legitimate.

According to the International Centre for Not-for-Profit Law's report on Mexico, it is a common aspiration for CSOs to obtain the ADS because it increases the possibility of obtaining donations from the private sector and other sources. Nonetheless, obtaining ADS is not a guarantee for CSOs to instantly receive donor support (ICNL, 2015).

This report also highlights that obtaining ADS opens the door for CSOs to participate in requests for proposals from the private sector, but it also implies the adoption of legal obligations that have to be met and require institutional maturity (ibid, 2015). The following table depicts the rights that CSOs acquire by having the ADS and the obligations they adopt.

TABLE II.
REGISTRY OF CSOs WITH AUTHORIZED DONEE STATUS, INCOME TAX LAW

RIGHTS		OBLIGATIONS	
For CSOs:		1	Submit an annual Transparency Report.
1	CSOs are treated as non lucrative organizations and are exempted from paying the income tax (impuesto sobre la renta- isr).	2	Submit an annual fiscal declaration (February 15th).
2	CSOs can provide a tax-deductible receipt for the national donations received.	3	Provide a tax-deductible receipt for each received donation complying with the tax authority guidelines.
		4	If the CSO engages in advocacy activities, an additional report must be submitted.

RIGHTS	OBLIGATIONS
<p>3 CSOs can provide a tax-deductible receipt for the donations received from United States of America's donors. Only deductible from the income revenue generated by these donors in Mexico. The name of this status is international authorized donee; however, it is only applicable to USA donors with commercial activities that generate income in Mexico.</p> <p>4 With previous authorization, CSOs are exempted of the international commerce tax, when the merchandise is used to further their social objective.</p> <p>For donors:</p> <p>1 Private donors (individuals and companies) are able to deduct the donation from their tax basis, as long as the donations do not exceed 7% of their utility. (in cases where these donations are given to public governmental institutions the percentage is 4%).</p>	<p>5 CSOs must assign all income received by donations to their social objective. Any excess income is not to be assigned to a person or another private entity.</p> <p>6 If the CSO closes, is liquidated, or changes fiscal residency, all resources and patrimony must be donated to another authorized donee.</p>

(INCOME TAX LAW, 2017)

WHAT ARE THE ACTIVITIES THAT THE INCOME TAX LAW DESCRIBES AS BEING ELIGIBLE FOR CSOs TO OBTAIN THE AUTHORIZED DONEE STATUS?

The following are the activities that are described in the Income Tax Law (regulated in Article 79, fraction XXV):

- 1 Promotion of the organized participation of citizens in the actions that improve their living conditions, benefit the community or in promotion of actions for citizen safety.
- 2 Support in the defense and promotion of human rights.
- 3 Civic actions, focused on promoting citizen participation in public affairs.
- 4 Promotion of gender equality.
- 5 Support for the sustainable exploitation of natural resources, the protection of the environment, protection of flora and fauna, the preservation and restoration of an ecological balance, and the promotion of a sustainable development at a regional and community level, in both rural and urban areas.
- 6 Promotion and support of educational programs in culture, art, science and technology.

- 7 Participation in civic protection actions.
- 8 Services directed at supporting the creation and strengthening of organizations that conduct activities in accordance with the Federal Law for the Promotion of the Activities of Civil Society Organizations.
- 9 Support agricultural and artisanal projects that on average receive an income below the national wage and are located in the most deprived areas of the country (according to the classification of the Consejo Nacional de Población), and that comply with the general rules that the income revenue service establishes.

(INCOME TAX LAW, ARTICLE 79, FRACTION XXV, 2017)

The following graph depicts the amount of CSOs that have obtained ADS in 2017. It is important to highlight that from 2016, there has been a variation of 1.99% of CSOs with ADS, which means that there were 9,851 CSOs with ADS in 2016, and there are 9,136 in 2017. Additionally, according to the data published through the SAT Internet portal, 821 CSOs lost ADS because they did not present their transparency report, which is one of the central obligations of this registration.

In 2017, the entities that have the largest number of CSOs with the ADS are Mexico City (2,755), Estado de México (708) and Jalisco (634)

GRAPH 5.
TYPE OF LEGAL ENTITY OF CSOs THAT HAVE OBTAINED THE AUTHORIZED DONEE STATUS:

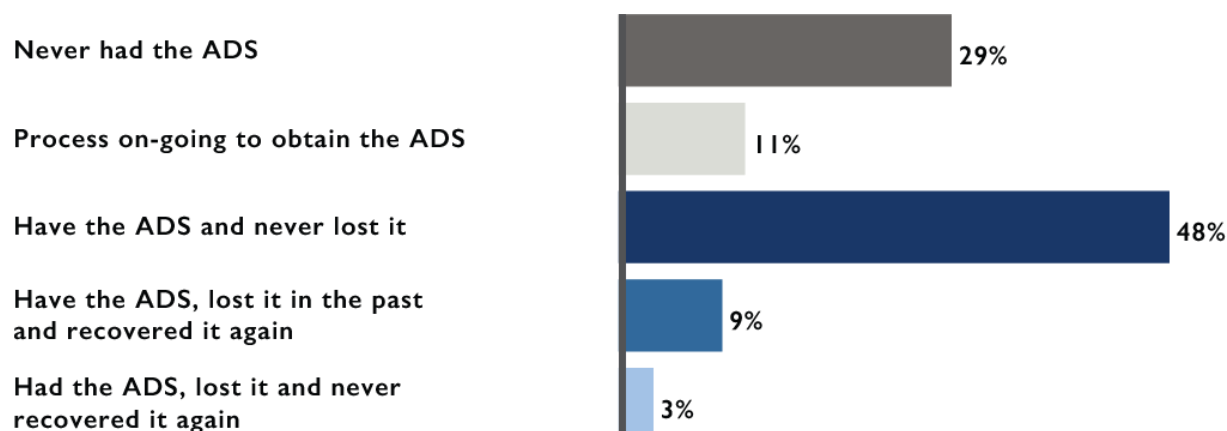


(SELF-ELABORATION USING THE SAT DATABASE 2017).

WHAT IS THE EXPERIENCE OF CSOs TO OBTAIN THE AUTHORIZED DONEE STATUS?

Through the Legal Environment Survey, CSOs conveyed their experience of the process to obtain ADS. The sample, as explained in the methodology section of this research, included organizations both from the Authorized Donee database and the Federal Registry of CSOs database (which includes organizations with and without ADS).

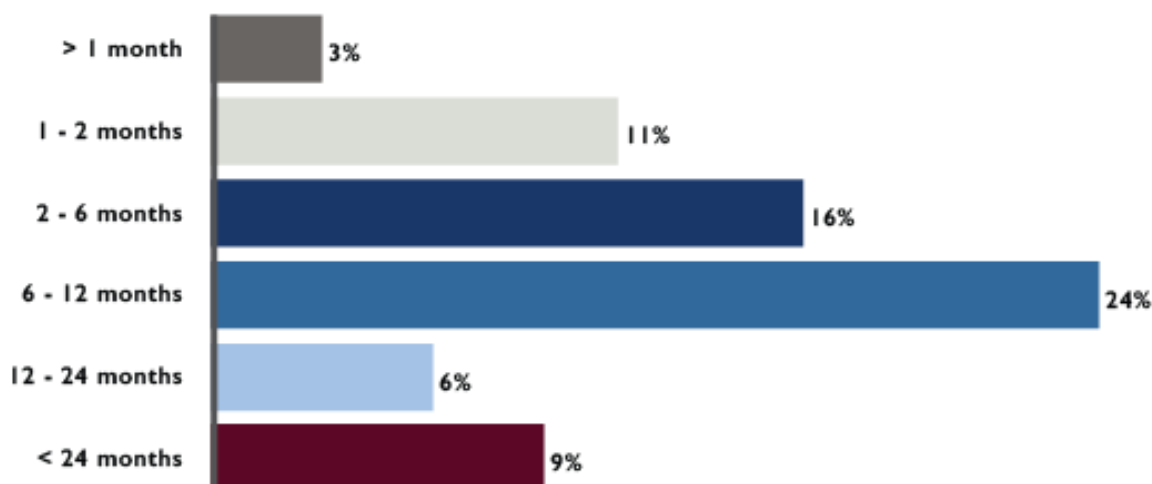
GRAPH 6.
CSOs THAT HAVE REGISTERED TO OBTAIN ADS



(LES, 2017)

GRAPH 7.
CSOs STATED THE FOLLOWING REGARDING THE TIME INVESTED TO OBTAIN ADS:

TIME INVESTED TO OBTAIN ADS



(LES, 2017)

Results show that 24% of CSOs spend between six months and a year in the process, 6% of CSOs spent between one and two years, and 9% of CSOs spent more than two years attempting to obtain ADS. It is important to highlight that, according to the guidelines that the fiscal authority has made public, this process should take on average three months (SHCP, 2011).

CSOs that have gone through this process have expressed that in reality, this registration takes more time because it has significant barriers. The following are some of the challenges that were identified:

- I CSOs have to review and in many occasions change their bylaws according to the criterion that the fiscal authority considers to be valid to obtain ADS. This means that CSOs have to hire the services of a Notary to modify their bylaws and go through this process all over again.

- 2 In order to obtain ADS, CSOs have to present a “letter of accreditation”. This document is meant to be granted by other government institutions that can certify activities from a specific specialized field. For example, if the CSO works on environmental issues, the SEMARNAT (Secretaría del Medio Ambiente y Recursos Naturales) would be the institution to provide this letter. Even though there is a Directory (published in the SHCP website) of government institutions that can provide this letter for each activity, there is little knowledge on this topic inside government agencies, and virtually no trained personnel to follow through with a certification letter requirement. This can be particularly challenging for CSOs that are constituted outside of Mexico City, since the majority of the agencies available in the Directory are located in Mexico City²⁴.
- 3 The most recent fiscal reform (2016) introduced important changes to the requisites that CSOs have to comply with when obtaining ADS. These will be reviewed in section VI.
- 4 According to experts, CSOs are expected to upload a great deal of information through a digital portal. This portal only functions with specific internet browsers and requires a high level of technical expertise, as well as considerable knowledge of fiscal language (María Magdalena López, KII 2017).
- 5 Recently there has been a tendency to deny CSOs ADS if the fiscal residency (the country where the CSO is legally constituted) is not stated clearly in the bylaws. This will also be analyzed in section VI.

According to the guidelines provided by the fiscal authority, the process to obtain ADS is free of cost (SAT, 2017). However, when CSOs were asked if they had invested any resources to obtain the ADS, only 20% of CSOs stated that have not spent any resources on this process, whereas 20% of CSOs stated that they have invested resources for transportation and administrative activities. Surprisingly, 38% of CSOs stated that they hired the services of a Notary because they were required to change their bylaws to obtain ADS²⁵ (LES, 2017).

Having to invest resources on a registration process that is meant to be free of charge constitutes a barrier of entry to the sector, in the sense that many CSOs are not in a position to start this process for lack of resources. Even when they can afford these expenses, for many CSOs the investment of resources to obtain this registration can be very burdensome for their budget.

The LES also aimed to learn how much of a burden the registration process to obtain ADS is for CSOs. They were asked to assess the burden represented by five steps in the process to become ADS, and whether these were a significant barrier to become an Authorized Donee.

The following table illustrates the answers CSOs chose from a scale of 1 to 5, where 1 means that the specific steps of the process was no burden at all, and 5 means the process was a great burden for the CSO²⁶.

²⁴ http://www.sat.gob.mx/terceros_autorizados/donatarias_donaciones/Documents/acreditantes2017.pdf

²⁵ 24% of CSOs stated to not having the ADS status, and therefore did not answer this question in the LES.

²⁶ Methodological note: the scale from which CSOs could choose has the following meanings: 1) not a burden at all, 2) some burden, 3) burdens, 4) considerable burden and 5) a great burden.

TABLE 12.
EXTENT TO WHICH THE REGISTRATION PROCESS TO OBTAIN ADS WAS A BURDEN FOR THE CSOs:

PROCESS TO OBTAIN ADS	CSOs' EXPERIENCE
Change bylaws to comply with the requirements of the fiscal authority	<ul style="list-style-type: none"> • 46.8% of CSOs did not perceive it as a burden to make changes to their bylaws. • 36.6% of CSOs perceived it as a burden to have to make changes to their bylaws.
Interact with the fiscal internet portal	<ul style="list-style-type: none"> • 26.6% perceived the interaction with the fiscal Internet portal to be accessible and relatively easy. • 21.1% perceived the interaction with the fiscal Internet portal to be complicated and hard to understand.
Obtain the letter of accreditation for the activities of the CSO	<ul style="list-style-type: none"> • 29.4% indicated that obtaining the letter of accreditation for activities to not be a challenge. • 14.7% indicated that obtaining such letter to be a great challenge.
Conduct internal adjustments in order to comply with the fiscal authority ²⁷	<ul style="list-style-type: none"> • 25.7% indicated that making internal adjustments to comply with the fiscal authority is not a challenge. • 19.3% indicated that the process was slightly challenging. • 27.5% found the process to be complex. • 11.9% found the process to be very complex. • 15.5% indicated that the process was extremely difficult and complex.
Cover the costs related to the process to obtain ads (hire specialized staff, accountant, lawyer) in order to comply with the requirements established by the fiscal authority	<ul style="list-style-type: none"> • 18.3% indicated that the cost related to the process of obtaining and complying with requirements is not a challenge. • 24.8% indicated that the cost related to the processes is considerably complex. • 20.2% indicated that the cost related to the processes is very complex. • 23.9% found that the cost of registration and compliance is very high, and the process is extremely complex.

(LES, 2017)

Taking into consideration the previous elements, CSOs were asked if they thought that the effort invested to obtain the ADS was worth it. Out of the CSOs that stated to have the ADS (27% do not hold the ADS), 63% considered the effort to be worth it, while 9% stated that it was not worth it.

Some of the reasons why surveyed CSOs did not consider the effort invested to obtain ADS to be worth it are the following:

²⁷ Internal adjustments are: purchase necessary technology to comply with obligations, train or hire knowledgeable staff, change processes or internal paperwork organization.

“We have not been able to conclude the process and it has been very straining for the CSO because the internet portal is very complex” (CSO from the State of Campeche, LES 2017).

“In Tabasco, there is no trained staff to assist in this process and the accountants lack the knowledge to help us” (CSO from the State of Tabasco, LES 2017).

“This process has taken too much time and effort, it seems it will never happen. We have only been asked for this after 40 years of successfully operating our organization, this sort of requirements keeps increasing” (CSO from the State of Morelos, LES 2017).

“We have been attempting to obtain ADS for over two years and we have never received any feedback, either positive or negative” (CSO from the State of Chiapas, LES 2017).

“I have not been able to obtain ADS for over two years. The first time I attempted to upload everything through the internet portal and I waited for 6 months for a negative reply stating that my documents were not legible. This is inconsistent with the technical requirements of the portal. Overall, I think the service is bad and public officials are indifferent. To me, their objective is to deny ADS to organizations (CSO from the State of Guanajuato, LES 2017).

“We were unaware of the proceedings and administrative burden, so we looked for advice from an expert, who was never able to tell us what we need to know and was not available to answer doubts” (CSO from Estado de Mexico, LES 2017).

BOX 3.

KII- EXPERT OPINION ON REGISTRATION TO OBTAIN AUTHORIZED DONEE STATUS:

According to Ángeles Anaya, director and founder of Fortalece Legal (an organization that specializes on providing legal advice to other CSOs on their fiscal obligations) the registration process to obtain the ADS is very complicated, requiring thorough knowledge of fiscal regulation, which is very hard to achieve for most CSOs. Additionally, CSOs are not used to receiving advice from fiscal experts because they don't have the resources or the time.

Furthermore, obtaining the ADS (process that can be easily achieved by some CSOs but can be very difficult for others) is not a process that guarantees the procurement of resources. Many CSOs that have obtained the ADS are part of an elite group of CSOs, which have transitioned to a more mature model and have enough resources to comply with several legal obligations and use their status to secure funding. However, many smaller CSOs that obtain the ADS, are unable to cover the costs and invest time in this effort and so they are constantly rejected and pushed behind, creating a gap within the sector.

(Ángeles Anaya, KII 2017)

5. REGISTRATION TO OBTAIN THE INTERNATIONAL AUTHORIZED DONEE STATUS

Many CSOs in Mexico tend to seek international donations to support their projects. Experts argue this is an incentive because there are limited donation sources in Mexico, due to the complex dynamics between the private sector and CSOs, and between CSOs and the government. This is particularly true for organizations pursuing causes related to human rights or other sensitive topics that are seldom funded by government or where the organization feels receiving government funding would hamper their independence and ability to do their work properly (for example, taking a critic stance on public policies or targeting specific public officials for violating human rights).

Additionally, as it has been argued in this research, the legal framework that CSOs have to navigate is complex and in many cases makes it more difficult for organizations to procure funding from other sources. For these reasons, international donors are a coveted source of funding for Mexican CSOs. However, there is evidence that the expectation that international donors will compensate for the lack of national funding isn't necessarily fulfilled, as data shows that CSOs with Authorized Donee status receive only 10% of their donations from abroad (Layton, Rosales et al, 2017)²⁸.

While civil society organizations don't need to have International Authorized Donee Status (International ADS) in order to lawfully receive donations from other countries, some seek this status as a means to increase their chances of obtaining financial support from abroad, particularly from the United States (Layton, Rosales et al, 2017).

The United States is the largest and wealthiest donor country in the world. Over two thirds of all private development assistance come from private sources in the USA (Development Initiatives, 2017). Taking this into account and given the close relationship that exists between Mexico and the USA (through migration, international commerce, cultural exchange, financial links, etc.), it is natural that when seeking funding from abroad, most CSOs turn their attention to American donors. For organizations wishing to obtain private donations from the USA, it is reasonable to look for the International Authorized Donee Status ADS, which in practice is applicable only for donations from American entities, on the basis of a US-Mexico treaty to avoid double taxation.

The actual benefits for American donors giving to an International Authorized Donee in Mexico are unclear. The normative dispositions that regulate this status have been difficult to navigate in practice, because fiscal authorities in both countries have to recognize that the donation is made to a legitimate authorized donee (the equivalent to a 501(c)(3) in the USA) and, to make the tax deduction effective, the companies or individuals that give the donation have to have taxable income in the country where the donation is received. This means that only the American donors that generate income for economic activities in Mexico will be able to deduct their donations to Mexican CSOs that have International ADS. Additionally, the implementation of the normative dispositions have become more complex due to the changes to fiscal regimes in both countries, and constant change in staff in government agencies from both sides of the border (Layton, Rosales et al, 2017).²⁹ For these reasons, it is important to consider that even if a company or an individual in the USA directs a donation towards an International Authorized Donee CSO, there is no guarantee that they will be able to deduct the donation.

²⁸ According to Michael D. Layton, the normative dispositions for transparency that CSOs have to comply allow researchers to know how much of their income originates from abroad. It is argued that every year, the number of CSOs that are given the International Donee Status increases, but the amount of actual donations has barely increased over the years (Layton, 2017).

²⁹ The normative disposition for international donation schemes is established in the US-Mexico Treaty to Avoid Double Taxation (Tratado para Evitar la Doble Tributación). Article 22 refers to non-lucrative organizations and cross border donations. A donor from the United States can make a donation (to CSOs with ADS) and deduct the proportional tax if the company or individual receives income in Mexico. The same applies for individuals or companies that make donations to the United States.

Even if there is no certainty that the donor will be able to deduct the donation, many CSOs consider obtaining the International Authorized Donee Status strategic. There are currently 3,341 organizations with this status in the country (SAT, 2017).

From the organizations that responded the Legal Environment Survey, 60% of respondent CSOs stated that they have never had the International ADS, 37% that they currently have the International ADS and have never lost it, 2% that they are currently undergoing to process to obtain it and only 1% answered that they got the International ADS, lost it but recovered it afterwards.

Some of the surveyed CSOs that have the International ADS conveyed the following reasons for obtaining it:

“The majority of the founding partners of the CSOs are American, so they benefit greatly from being able to deduct taxes for their donations” (CSO from the State of Guerrero, LES 2017).

“It is very important to capitalize the reception of donations from the area where we are located. There are many Americans living in this region (particularly in the Los Cabos area) that want to make tax-deductible contributions” (CSO from the State of Baja California Sur, LES 2017).

“We have found that there is more support to our projects in the United States than in Mexico, so the International ADS is essential to procure donations that sustain our activities” (CSO from the State of Michoacán, LES 2017).

“The International ADS allows us to search and apply to international funding programs such as the ones from the Inter-American Development Bank” (CSO from Mexico City, LES 2017).

The following are some of the arguments that CSOs conveyed for not having the International ADS:

“We want to obtain the national ADS first and then see if there are additional benefits to obtaining the International ADS” (CSO from Ciudad de México, LES 2017).

“We are unaware of the legal obligations that this registration would imply, and we lack the resources to hire accountants or lawyers to carry out this process” (CSO from the State of Campeche, LES 2017).

“We have not been able to do the process, it is very complicated because there is always something missing, we are still trying though” (CSO from the State of Hidalgo, LES 2017).

The regulatory framework for cross border reception/emission of donations has become more complex following two normative dispositions. The first is the enactment in 2013 of the Federal Law for the Prevention and Identification of Operations with Resources Derived from Illicit Sources (also known as the “Anti- Money Laundering Law”). The second is the modification to the Income Tax Law in 2013, where Congress approved the homogenization of the activities that CSOs could conduct to become ADS, with those that are present in the Federal Law for the Promotion of the Activities of Civil Society Organizations. According to experts, both regulations generated controversy with the United States fiscal authority, making the interpretation of new dispositions a challenge³⁰ (Layton, Rosales et al, 2017).

³⁰ The changes in normative dispositions that took place in 2013 affected US fiscal authorities perception of the Mexican authorized donee in two ways: firstly, the homologation of activities of CSOs with ADS with the Law for the Promotion of the Activities of Civil Society Organizations changed the numeration of paragraphs in the Law and therefore made it harder for the fiscal authority to find the equivalences with their codes. Secondly, the Income Tax Law reform in Mexico introduced the authorization for organizations with ADS to participate in advocacy activities (“incidencia en políticas públicas”). The interpretation of what constitutes advocacy is problematic, as American authorities may confuse it with lobbying, which is an activity is very restricted in the United States.

KEY FINDINGS

- Civil society organizations are not required by Law to obtain Authorized Donee Status in order to receive private donations, and many donors don't establish this as a requirement to grant funds. For example, some studies have found that only 48% of companies with philanthropic programs in Mexico establish ADS as a condition for granting funding (Carrillo, Vargas et al, 2009).
- Nevertheless, obtaining the ADS opens the possibility for CSOs to receive national and international donations from more sources, turning it into a coveted status among many CSOs. However, the status implies the adoption of legal and fiscal obligations that have to be met by having reached a certain degree of institutional maturity.
- The registration process to obtain the ADS should, according to the fiscal authority, take up to three months. However, CSOs have spent on average between 6 months and a year in this process.
- Having to invest resources on a registration process that is meant to be free of charge constitutes a barrier for the development of the sector, many CSOs are not in a position to start this process because of a lack of resources.
- Many CSOs in Mexico tend to seek international donations to support their projects. This is particularly true for organizations pursuing causes related to human rights or other sensitive topics that are seldom funded by businesses or government or where the organization feels receiving funding from national sources would hamper their independence and ability to do their work properly (for example, taking a critic stance on public policies or targeting specific business or public officials for violating human rights).
- However, there is evidence that the expectation that international donors will compensate for the lack of national funding isn't necessarily fulfilled, as data shows that CSOs with Authorized Donee status receive only 10% of their donations from abroad.
- Despite interest of many CSOs on obtaining the International ADS, currently only 3,341 CSOs in Mexico have it.
- The regulatory framework for cross border reception/emission of donations makes it hard for donors to benefit from tax exemptions and has become more complex following two normative dispositions; a) the Anti-Money Laundering Law and b) the 2013 modification to the Income Tax Law.

6. ANTI-MONEY LAUNDERING LAW

CSOs that receive financial donations have to comply with the Federal Law for the Prevention and Identification of Operations with Resources Derived from Illicit Sources (also known as the "Anti- Money Laundering Law") by registering in the anti-money laundering portal when they receive a donation from the same donor of over 7,000 USD.³¹ CSOs also have to submit a monthly report accounting for all received donations from the same donor (in the previous 6 months) when they receive \$15,000 USD or more. To do so, CSOs must apply to a new registration process launched by the tax authority known as the Anti-Money Laundering Portal. CSOs are

³¹ Received by the same donor as a single donation or by the same donor in partial donations that put together in a period of six months add up to the amount of 7,000USD.

responsible for requesting, gathering, verifying, filing and submitting personal and business information of their donors, whether they are Mexican or foreign. CSOs are prohibited from accepting donations if the donors are unwilling to provide the requested information.

It is important to note that, there has been an increased international preoccupation with monitoring and identifying money-laundering activities, which became even more accentuated after September 11. This led the Financial Action Task Force (FATF), an independent inter-governmental body, to elaborate recommendations on policies “to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction”.

These recommendations, designed to promote transparency and accountability regulations that could allow the competent authorities to determine the degree of vulnerability of the activities of certain actors and sectors, initially identified non-for-profit organizations as vulnerable. Fiscal authority in Mexico followed this international tendency to promote transparency and regulated accordingly through the Anti-Money Laundering Law, specifying the activities that are considered as vulnerable (Mendoza Trejo, 2014).

For CSOs, the reception of donations is considered a vulnerable activity when it exceeds the threshold of \$121,161.45 MXN (registration threshold \$7,000 USD) from the same donor within a six-month period. At this point, CSOs are expected to register in the Internet Anti-Money Laundering Portal. Following their registration, the CSOs must identify and report information on the person that made the donation (identity of the person and detail of the activity they conduct). When a CSO receives a donation of over \$242,322.90 MXN from the same donor within a six-month period, a report or notification must be presented in the same portal.³² However, if CSOs do not receive a donation that meets the threshold in a single donation or accumulated within in a six-month period, it shall still report that during the current period there are not any donations to report. (Anti-Money Laundering Portal, 2017).

On the 17th of every month the CSOs have to access the portal and report whether they received donations that meet the threshold, which is a monthly administrative burden. While recognizing the importance of this law to avoid money-laundering activities, the regulation may limit the ability of CSOs to successfully receive donations because individuals and companies may not want to share what is considered sensitive information. Additionally, this law can be difficult to understand and represents yet another regulation that CSOs must incorporate in their daily activities and compliance processes.

To verify whether this law is complex, the Legal Environment Survey aimed to identify how CSOs perceive the regulation and were asked to determine on a scale of 1 to 5 their level of knowledge and understanding of the law (1 being no knowledge and understanding and five being full knowledge and understanding of the law). The following Graph illustrates CSOs' knowledge of the Law:

Out of the surveyed CSOs 31% declared not having any knowledge or understanding of the Law, 27% of CSOs stated to have some knowledge, whereas 15% stated to have reasonable understanding of the Law. Only 26% of the respondents assured to have full knowledge and understanding of the law. It is important to highlight that the understanding of this Law means CSOs are able to comply with their obligations as ADS. If this is not understood and the process is unclear, the risk of losing the ADS increases.

³² The threshold for the amount of donations that CSOs may receive is established in the following website:
<https://sppld.sat.gob.mx/pld/interiores/umbrales.html>

CONCLUSION

This section of the research aimed to portray the established legal framework for CSOs who chose to register. Each of the registration options that have been presented carries particular rights and obligations that require a higher level of engagement and professionalization for CSOs.

In summary, the systemic elements that make the registration process complex and the challenges to comply with the legal obligations are: (a) the amount of resources CSOs have to invest in these processes; (b) the amount of time CSOs require to achieve these processes; and (c) the reduced use of lawyers, accountants and other professionals to provide legal advice to CSOs, especially to navigate the fiscal framework effectively.

Overall, it can be concluded that the Mexican normative framework for CSOs, while having some positive aspects, has not accomplished enough for the promotion and the strengthening of the sector as a whole. The Mexican legal framework that regulates CSOs that in theory seeks to promote the sector is challenged by the set of laws that establish the conditions for registration and the necessary legal obligations to obtain the benefits of such registrations. Registration and compliance can be a barrier for CSOs and may become a constraint for the activities of CSOs, as well as a barrier for their formalization, sustainability and professionalization.

VI. INCOME TAX LAW

The Income Tax Law (Ley del Impuesto Sobre la Renta, or LISR) is especially relevant for civil society organizations, because it defines the fiscal regime for non-profits, as well as the main obligations that authorized donees need to comply with to maintain their status. In this part of the analysis, the focus will be on the fiscal regime for CSOs, since the obligations of authorized donee have been analyzed in previous sections.

The main fiscal regimes established in this law are:

- 1 Title II: General Fiscal Regime for Corporate Entities
- 2 Title III: Fiscal Regime of Non-for-Profit Entities
- 3 Title IV: Fiscal Regime of Individual Tax Payers

IS IT CORRECT TO ASSUME THAT ALL NON-PROFITS FALL WITHIN TITLE III?

As seen in previous sections, the two main types of CSOs in Mexico are Civil Associations (A.C.) and Private Assistance Institutions (I.A.P.). According to the Federal and Local Civil Codes, one of the main differentiating characteristics of a Civil Association against other types is that they pursue an objective that is not “predominantly economic”. The local laws that regulate Private Assistance Institutions also state that those entities are defined by their “non-lucrative purposes” among other characteristics.

Therefore, it is correct to understand that under Civil Law, both Civil Associations and Private Assistance Institutions are by essence non-profits. Following this logic, it would be natural to assume that Title III of the Income Tax Law, as its name would suggest, would be applicable to any CSO that has the legal type of Civil Association or Private Assistance Institution, since these legal types are by essence non-profits. Unfortunately, in reality the situation is more complex than what the name of Title III of the Income Tax Law would suggest.

This is the breaking point of discussion about the regulation of the fiscal regime of CSOs in the Income Tax Law, since the essence of a non-profit Civil Association or a Private Assistance Institution seems not to fall under Title III of the Income Tax Law, which is named in the law as “About the Fiscal Regime of Non-for-Profit Entities”.

The Income Tax Law Title III begins in its Article 79 by describing a list of entities that are not obligated to pay income tax, but it does not define what a non-profit is. Besides the lack of a description of what a non-profit is, it also incorporates the ADS as a new element to describe the entities that are considered as non-profits by the Income Tax Law.

In order to understand this lack of definition and the implications of ADS, it is necessary to refer to the timeline of the creation and reforms to the laws that regulate CSOs.

The Income Tax Law that is structured with titles (II, III and IV) was drafted in 2002. Since then, the law has a limited list of entities recognized as non-profits, which incorporates ADS.

For the following decade, the Income Tax Law remained mostly unchanged in terms of the list of entities recognized as non-profits. In 2004 the Federal Law for the Promotion of the Activities of Civil Society Organizations was published.

Article 6 of this law established that one of the main rights for civil society organizations is to “enjoy fiscal incentives and other economic and administrative support measures established by legal norms on the matter” and included in its Article 3 is a definition of CSOs. This definition, as seen in previous chapters, included some conditions like legal constitution, the activities performed and the purpose or objectives of the entity. Very notoriously, it also established that organizations that are non-profits could not carry out political or religious proselytism.

Thus, by 2004 there were two main regimes in the Mexican law on non-profit organizations: the one put forward by the Income Tax Law of 2002, and another, put forward by the Federal Law for the Promotion of Civil Society Organizations. However, and despite what Article 6 of the Federal Promotion Law established regarding the right of CSOs to access tax incentives, the two laws were not harmonized. Without harmonization, the SAT continued to use the Income Tax Law in the same way it had before, and the definition of non-profit used by the tax authorities continued to be derived from the limited list of entities and ADS established in Title III.

Therefore, ADS that exists since 2002 has been the key element that determines the fiscal regime of CSOs, and whether they fall under Title III. This means that the Income Tax Law does not respond to the essence or nature of the legal type of the CSOs, or to their social objective. It does not consider the notion or activities regulated by the Federal Law for the Promotion of the Activities of Civil Society Organizations. What the Income Tax Law considers deeming civil society organizations as “non-profits” and exempt them from paying tax is whether they have obtained ADS.

IS ADS AN ESSENTIAL ELEMENT OF THE CSOs?

ADS is meant to be an option for non-profit organizations. A status that recognizes the public benefit activities that the organization carries out and therefore the need to incentivize the flow of private funds to support those activities, by exempting donations given to the CSO. In this sense, ADS, as most tax provisions, is a public policy tool for the state to promote an activity that deems beneficial for the public good.

However, ADS is not an essential element for Civil Associations or Private Assistance Institutions. Civil Associations and Private Assistance Institutions can perfectly and legally exist and operate without ADS.

As understood by the Federal Law for the Promotion of the Activities of CSOs, access to tax incentives is a right, and not a defining trait or an obligation for CSOs. Therefore, they should be able to legally exist and be taxed according to their non-profit nature, even if they choose not to seek the tax exemptions that ADS would grant to their donors.

IS IT CORRECT TO ASSUME THAT IF A CSO DOES NOT HOLD ADS, IT SHALL AUTOMATICALLY FALL UNDER THE GENERAL FISCAL REGIME FOR CORPORATE ENTITIES (TITLE II)?

To add to this analysis, we shall consider the other two titles of the Law:

- Title II: General Fiscal Regime for Corporate Entities
- Title IV: Fiscal Regime of Individual Tax Payers

The Income Tax Law has been structured without a specific definition of non-profits since 2002. Before that year, the name of this Title was: “About those that do not contribute to the income tax” (“De los no contribuyentes” in Spanish) (Tron, 2002). That could be the reason why the first Article of the Title III begins by listing those entities that do not contribute to the income tax. In any case, the law is lacking a specific definition and instead it presents a list of those entities that are not obligated to pay income tax. Therefore, it is understood that if an organization is not explicitly listed in Article 79, then it must be subject to a pay income tax according to a different title.

Without engaging in an in-depth analysis of the other two titles, Title IV of the Income Tax Law, “About the fiscal regime of individual taxpayers”, does not apply at all to CSOs since in Mexico all associations are to be formed by a minimum of 2 individuals to become a collective entity. So, the only title that remains is Title II, which regulates collective entities as opposed to individuals that are regulated in Title IV.

Title II begins by establishing that the calculation of income tax would be defined by obtaining the fiscal annual result. This result is obtained based on the annual profits of the entity. At this point it is interesting to go back to the essential purpose of the Civil Associations and Private Assistance Institutions: their objective is non-profit. Following this logic, it could be assumed that if an entity does not have profit, then it would not be possible to make a calculation of an income tax if the calculation is based on a “profit”, since the profit simply does not exist. This means that organizations that have been recognized as non-profit by the Federal Law for the Promotion of the Activities of CSOs (the ones that have CLUNI) should be placed automatically under Title III of the Income Tax Law.

To answer the opening question of this section, it is not correct to assume that a non-profit organization that does not have ADS shall contribute the income tax under the regime of the Title II, since this title regulates and calculates the payable tax based on the profit.

HOW IS IT POSSIBLE THEN TO CALCULATE AN INCOME TAX OVER A “PROFIT” IN A NON-PROFIT ORGANIZATION?

It is possible for a Civil Association or a Private Assistance Institution to perform profitable activities related or not directly related to their social objective. However, all the income derived from those activities must be used in the pursuance of the non-profit objectives of the organization.

This is a very important concept to understand, since the sustainability of CSOs depends on their ability to perform some for-profit activities. By doing so, CSOs are able to gain resources for their sustainability, instead of relying exclusively on donations and/or public funds.

Fortunately, Title III considers the occasions in which a non-profit would be obligated to calculate the income tax. In those cases, the Income Tax Law establishes the processes to calculate the tax, and sometimes refers to Title II of the Law for specific considerations of the payable tax.

Therefore, there are some activities that could generate profit in a non-profit organization; however, these are not predominant for the CSO and are never their main objective, but a means to an end. Additionally, when profit is generated, Title III already contemplates the obligations for organizations and the process to comply with them, so this shouldn't constitute a problem that challenged the non-profit nature of the CSO.

SO, IF TITLE III REGULATES THE POTENTIAL PROFIT THAT A CSO COULD OBTAIN AS INCOME; WHY IS IT NOT CORRECT TO ASSUME THAT THE APPLICABLE TITLE FOR CSOs IS TITLE III OF THE INCOME TAX LAW? WHAT WOULD BE THE CORRECT TITLE UNDER WHICH CSOs SHALL ATTRIBUTE THEIR INCOME TAX IN PARTICULAR CASES?

Title III does not automatically regulate CSOs because it is conditioned to those entities that hold ADS. However, Title II does not automatically regulate CSOs either because it applies only to for-profit entities. Therefore, the fiscal regime of the Civil Society Organizations is uncertain.

However, the closest regulatory framework applicable to CSOs is Title III. That is the reason why in practice, the registration process to obtain the taxpayer number for CSOs, before the reform of 2014, was automatically in Title III without the pre-condition of having ADS.

Back to the timeline of reforms of the Income Tax Law and the Federal Promotion Law: in 2013 the applicable income tax law was the one enacted in 2002. By the end of 2013 this law was abrogated and substituted by a new one that was approved by Congress in 2013 and became valid since January 2014.

This was an important moment in terms of the harmonization of the Federal Promotion Law and the Income Tax Law. Article 95 of the 2002 Income Tax Law turned into Article 79 in the 2014 Income Tax Law, and this new Article 79 included in its list of eligible activities for ADS almost all the activities that, 10 years before, were defined by the Federal Promotion Law as eligible for CSOs under its Article 5. However, the Income Tax Law conditioned the recognition of "non-profit entities" only to those organizations that perform the listed activities and that are authorized to receive tax-deductible donations.

This nuance has led many experts to point out that the harmonization of the Income Tax Law with the Federal Law for the Promotion of the Activities of CSOs did not solve the problem and, did not reflect a spirit of promotion, since it doesn't recognize all the civil society organizations as described in Article III. The proof is that under the current normative framework, an organization could be registered in the Federal Registry of CSOs, therefore being recognized as a non-profit organization entitled to apply for federal funds; and if it hadn't applied and obtained ADS, the organization would not be recognized as a non-profit for fiscal purposes. The contradiction is even more striking if we consider that the authority that gives the CLUNI is the Commission of Promotion of CSOs Activities, composed by four ministries, including the Ministry of Finance (SHCP). That means that the Ministry of Finance can recognize the non-profit character of an organization for the purpose of receiving public funding, and not recognize that character to the same organization for purposes of being tax-exempt.

It is important to note that ADS has been a condition that pertains to the Title III regime since before 2002. At that time, defining ADS as a condition served two purposes:

- 1 Provide donors with a tax-deductible receipt that would serve as an incentive for donations.
- 2 Limit the universe of non-profits that would be exempted from income tax.

To date, the first purpose is recognized by 90% of the surveyed CSOs that mentioned that they were interested in obtaining ADS in order to increase their donations.

The second purpose is incoherent since by nature CSOs do not generate income, and if they do there are dispositions under Title III to ensure taxation of that income. So, if by essence non-profits do not make a profit, the motivation to limit the universe using ADS is misrepresented. ADS is not what determines a non-profit's nature to a CSO; it is the bylaws and the social objective that confer that condition to the organization. Thus, the universe of non-profits is already limited; the ADS only applies to a sub-universe of non-profits that can provide tax-deductible receipts to its donors.

HOW DOES IT WORK IN PRACTICE?

As mentioned in Chapter V, the process in practice begins with the registration of the CSO to obtain their tax identification number or RFC.

Before the 2014 reform of the Income Tax Law, the registry for the tax identification number was flexible in terms of assigning CSOs directly to Title III. This changed after 2014, and since then, CSOs are automatically registered in Title II of the Income Tax Law, as general entities that determine the amount of income tax they must pay is based on their profits.

Today, CSOs that obtained their tax identification number after 2014 fall automatically into the Title II of the Income Tax Law, which means that if the organization has any income during the fiscal year they are obligated to pay income tax, even if that income is not technically a profit.

From time to time, public officials from the tax authorities have justified this by stating that it would not be desirable for all these organizations to be tax-exempt, since that would be considered “unfair competition” with the rest of the entities in the economy. One of the examples that is often used is that of private schools; which are often legally incorporated as civil associations. In their eyes, it would be unfair to exempt these schools from paying income tax, given that they are “earning large sums of resources” through the tuition fees they charge. Why should they be tax-exempt, while other schools that are incorporated under another legal type (S.C., for example) pay their fair share of income tax?

The problem with that logic is that it's focusing on how the organization obtains the income (through tuition fees), instead on how it invests and uses that income. The destination of this income matters, and it should be what makes the difference. If a non-profit earns an income, those resources should not to be understood as profit, since those funds will never be distributed amongst the founders, members, or associates of the organization.

This can be better understood when we analyze the course of the income of a non-profit compared to the for-profit organizations. The key element of the non-profit is that it always re-invests its income in the social objective of the entity whereas for-profit entities distribute the profits amongst the shareholders.

An example can be the following:

- Private Hospital NON-PROFIT:
 - Charges for giving health services
 - Earns a determined income
 - After payments of the employees and general expenses, if there is any remaining income, it cannot be distributed among the associates. This excess income shall be invested only in the social objective determined by the Hospital in its bylaws.
- Private Hospital FOR PROFIT:
 - Charges for giving health services
 - Earns a determined income
 - After payments of the employees and general expenses. if there is any remaining income, it is a profit, and the income tax of that profit shall be calculated then profits can be distributed among the shareholders.
 - The capital that the shareholders decide to invest in the hospital purposes can be re-invested; however, this is not an obligation.

In practice, CSOs that do not have ADS will be left in uncertainty in terms of the payment of the income tax. If they have excess income by the end of the fiscal year, several of them may choose to calculate an income tax over their remaining income and pay the corresponding tax in order to avoid issues with the authorities. Other CSOs do not calculate the income tax and do not pay it, since they do not consider their funds to be taxable income. In any case, many of them are uncertain on how to better comply with their obligations according to the essence of their legal non-profit type.

WHAT WOULD BE THE HARM OR THE RISK TO REMOVE THE CONDITION OF ADS AS A REQUIREMENT TO FALL INTO THE FISCAL REGIME OF TITLE III?

Those who argue against broadening the spectrum of civil society organizations that fall under Title III to encompass not only authorized donee but all non-profits that carry out activities for the public good argue that the State would be forfeiting the collection of a significant amount of taxes.

That vision however fails appreciate the contribution that CSOs make to society.

It is necessary to change the perspective. The question should be: What is the advantage of including all CSOs (as understood in the Federal Law for the Promotion of Activities of CSOs) into the Title III of the Income Tax Law? What would be the impact in the growth of the economy and the fundamental development of Mexico?

In order to understand the contributions that the CSOs make to the State, it is necessary to visualize the wider picture of taxes that the CSOs must pay. The CSOs are final payers of the Value Added Tax (VAT), since they do not make the VAT creditable as they are for-profit entities. They contribute with payments of social security

fees as any other employer. Moreover, unless they are exempted by a specific local disposition³³, they're subject to the payment of local taxes and contributions, such as property tax in case they own real state. And finally, all the salaries for employees is subject to corresponding income tax, payable by the employee directly or retained by the CSO and paid to the fiscal authority every month.

Unfortunately, there is not data available about the amount of income the State receives from CSOs as tax payments, but there is information about the contribution that CSOs make to the gross domestic product (GDP). As mentioned before, the National Institute of Geography and Statistics has measured the contribution of the Non-Profit Institutions in Mexico, calculating that it amounts to 1.4% of the national GDP (68% of that amount coming from volunteer work).

Consequently, CSOs are not only paying general taxes but also contributing to the GDP of the country, as much as some for-profit industries do.

In the light of these considerations, the Mexican State should balance the costs and benefits of registering more CSOs as non-profits for fiscal purposes. On the one hand, if Article 79 fraction XXV of the Income Tax Law included all CSOs as defined by the Federal Law for the Promotion of the Activities of Civil Society Organizations, without the pre-condition of having ADS, the state would most likely collect fewer resources through the Income Tax. On the other hand, however, this modification would provide legal certainty to a segment of taxpayers that currently lacks it. More importantly, broadening the spectrum of organizations included in Title III of the Income Tax Law would foster the growth and boost the financial sustainability of the sector, increasing its contribution to GDP, promoting the creation of jobs and adding to the state revenue through other taxes and social security fees.

Moreover, while the contribution of CSOs in terms of job creation, taxes and other fees must be taken into account, the even wider and more necessary perspective is the contribution that CSOs make to the development of the country and to overcome its critical societal issues.

In a country where 43.6% of the population lives under poverty conditions (CONEVAL, 2016), and where social issues like crime and violence, access to justice, human rights violations or the protection of the environment, the fiscal regime should work as a policy tool that promotes the involvement of civil society in the solution of public problems.

³³ For example, the Mexico City mayor decreed in April 2017 that from that moment until the end of the year, Private Assistance Institutions and Civil Society Organizations registered in the Mexico City Registry of Citizen Organizations would receive a waiver, under certain conditions, from paying property tax, payroll tax, water user fees and other contributions. In order to benefit from this disposition, CSOs should demonstrate that during the previous year they had invested resources in social development activities for a value higher than the value of the taxes and contributions for which they requested the write-off.

KEY FINDINGS

- The current fiscal regime in Mexico leaves most Civil Society Organizations in an uncertain position. This, given the fact that, despite their non-profit nature, Article 79 fraction XXV of the Income Tax Law doesn't consider Civil Associations or Private Assistance Institutions to be comprised under the Title III (which is dedicated to "Non-for-Profit Entities"). Organizations are considered to be regulated by Title III only if they carry out one of the activities listed in Article 79 *and hold ADS*.
- In the present system, CSOs that do not hold ADS automatically fall under Title II of the Income Tax Law, which regulates for-profit corporate entities.
- While it is possible for a Civil Association or a Private Assistance Institution to perform profitable activities related or not-related directly to their social objective, their essence as non-profits is not altered. Since all the income derived from those activities must be used in the pursuance of the non-profit objectives of the organization, the profit-making activities are a means to an end. No utility is distributed among their associates. Therefore, they should be still considered as non-profits and be taxed as such.
- ADS is meant to be an *option* for non-profit organizations. A status that recognizes the public benefit activities that the organization carries out and therefore the need to incentivize the flow of private funds to support those activities, by exempting donations given to the CSO. In this sense, ADS, as most tax provisions, is a public policy tool for the state to promote an activity that deems beneficial for the public good. It should not, however, be an obligatory status for CSOs.
- The inclusion of non-profit organizations into Title III of the Income Tax Law, regardless of whether they have ADS or not, would be coherent with their non-profit nature and their social objectives. It would also be more consistent in terms of an integral public policy towards CSOs from the federal government, given that currently the same authority can deem an organization to be non-profit for the purpose of accessing public funds (by granting them the CLUNI) and classify them as for-profit for fiscal purposes.
- Moreover, taxing civil society organizations under Title III of the Income Tax Law wouldn't mean that they wouldn't contribute to state revenue and to the public good in general. CSOs contribute in several ways to the treasury of the state, besides income tax. CSOs are final payers of the VAT, since they do not make the VAT creditable as they do for-profit entities. They contribute with payments of social security fees as any other employer. Moreover, unless they're exempted by a specific local disposition, they're subject to payment of local taxes and contributions, such as property tax when they own real state. And finally, all the salaries for employees is subject to the corresponding income tax, payable by the employee directly or retained by the CSO and paid to the fiscal authority every month.
- The Mexican State should balance the costs and benefits of registering more CSOs as non-profits for fiscal purposes. On the one hand, it is true that the state would most likely collect fewer resources through the Income Tax. On the other hand, however, this would provide legal certainty to a segment of taxpayers that currently lacks it. More importantly, broadening the spectrum of organizations

included in Title III of the Income Tax Law would foster the growth and boost the financial sustainability of the sector, increasing its contribution to GDP, promoting the creation of jobs and adding to the state revenue through other taxes and social security fees that CSOs do pay.

- Moreover, while the contribution of CSOs in terms of job creation, taxes and other fees must be taken into account, the even wider and more necessary perspective is the contribution that the CSOs make to the development of the country and to overcome its critical societal issues. Overall, it is in the interest of the public good to have sustainable civil society organizations mobilizing resources of all kinds (human, financial, intellectual) to attend to Mexico's most serious problems.

VII. ADVOCACY FOR AN ENABLING LEGAL ENVIRONMENT

HOW CAN ORGANIZED CIVIL SOCIETY SHAPE THE LEGAL ENVIRONMENT?

The legal framework for CSOs in Mexico often struggles to find the balance between promoting activities to further social development and the fulfillment of rights while also needing to regulate, oversee, and control those activities. It is this struggle that has made the ongoing advocacy efforts of CSOs crucial over the last two decades. During this time, CSOs have continuously worked to affirm the need for laws and public policies that recognize their rights, guarantee respect for their autonomy, and facilitate their work.

The following sections aim to illustrate the influence of civil society on the legal framework that regulates CSOs by focusing on two examples: the enactment of the Federal Law for the Promotion of the Activities of Civil Society Organizations and the reforms to the Income Tax Law. In each of these examples, we will highlight the alliances and compromises necessary for dialogue advancement, as well as the role that individuals, institutions, and authorities played at each stage, and identify elements for replicability.

We also consider how civil society's role in legislative advocacy has been both circumstantial and contextual. Specifically, over the past two decades, the opening of new communication channels has allowed civil society to influence public policy. These new channels illustrate how there has been an evolution from the traditional mechanisms to influence public policy, such as social mobilization (via protests or social demands) to direct participation in the design of public policy (Cortés, 2011). However, there is also evidence that these efforts tend to happen as a social reaction to a specific change in the legislation, suggesting that they lack continuity and long-term vision. In addition, the most successful of these efforts have been the result not of new publicly available channels, but rather a result of personal relationships and connections between key individuals and legislators or the relevant authority.

ADVOCACY EFFORTS FOR THE ENACTMENT OF THE FEDERAL LAW FOR THE PROMOTION OF THE ACTIVITIES OF CIVIL SOCIETY ORGANIZATIONS

The Federal Law for the Promotion of the Activities of Civil Society Organizations (the “Law”) was the result of a joint effort between organized civil society and the public, academic, and private sectors to advocate for the rights of CSOs, as well as strengthening and promotion of CSOs by the State. Table 14 outlines key events that took place during the ten-year period leading up to the enactment of the Law.

TABLE 13.
FEDERAL LAW FOR THE PROMOTION OF THE ACTIVITIES OF CIVIL SOCIETY ORGANIZATIONS:
TIMELINE

1993	Consolidation of the first organized group to promote the law, conformed by: <ul style="list-style-type: none"> • CONVERGENCIA DE ORGANISMOS CIVILES PARA LA DEMOCRACIA, A.C. • CENTRO MEXICANO PARA LA FILANTROPÍA, A.C. • FORO DE APOYO MUTUO, A.C. • FUNDACIÓN MIGUEL ALEMÁN, A.C.
1995	First Law project of the "Law for the Promotion of Welfare and Social Development Activities" to the Special Commission of Citizen Participation in the Chamber of Deputies.
1997	The initiative was promoted in the Citizen Participation Commission, the Ministries of Interior and of Social Development.
2001	Presentation of the Law Project 'Law for the Promotion of the Social Development Activities of Civil Society Organizations' to the Citizen Participation Chamber in the Deputy's Hall.
2002	Members of the Commission presented before the Deputy Hall (after considerable changes) the Law proposal. The legislators recognized the changing nature of the relationship between CSOs and the State, due to the increasing involvement of organized citizens in issues of public interest. Legislators recognized that such involvement required not only a clear legal framework in which clear rules and responsibilities were delineated, but also the importance of a public policy that favored CSOs actions and strengthened their development.
2004	The Law for the Promotion of the Activities of Civil Society Organizations was approved on December 10th, 2003 and published in the Official Journal of the Federation on February 9th, 2004.

(DE LA VEGA Y ENRÍQUEZ, 2014.)

Some important elements to consider:

- 1 The design and approval of the Law took place between 1994 and 2004, a period of 10 years during which the democratic transition took place in Mexico, effectively ending more than 70 years of the PRI regime. During this process, the advocacy effort that civil society took on was characterized by numerous meetings, consultations, and open forums that enabled an open discussion. This ultimately led to the consolidation of proposals and the reaching of a national consensus between the involved actors.
- 2 A critical aspect of the Law was to include a legal framework that by nature sought to develop the civil society sector. This development facilitated a conversation focused on the activities of civil society and how to enable them, but not a discussion centered on how civil organizations should be regulated (María Magdalena López, Kil 2017).

SYSTEMIC CONSIDERATIONS FOR THE ADVOCACY EFFORTS OF CSOs IN MEXICO

DIALOGUE AND OPEN MECHANISMS FOR ADVOCACY

Many of the actors involved in the advocacy efforts for the passage of the Law agree that such passage was only possible because of the involvement of institutions that facilitated the dialogue between different sectors of civil society with government authorities. For instance, Iberoamericana University (IBERO), provided an impartial physical common space for all parties to engage in dialogue to reach agreements on what was expected of this Law.

Similarly, the Centro Mexicano para la Filantropía (CEMEFI), an umbrella organization with links to broad networks of CSOs across the country and with the private sector, was instrumental in coordinating the effort of dialogue with government authorities, CEMEFI was also key in helping to incorporate the viewpoints of many organizations and validating the process as a whole. Convergencia de Organismos Civiles A.C was also key articulating and representing several CSOs in Mexico (Consuelo Castro and María Magdalena Hernández, KII 2017).

The mechanisms for dialogue had to incorporate not only civil society and government, but also the private sector. The dialogue between all sectors was essential to establish the differences between them. According to experts, the distinction between organized civil society and the private sector was hard to convey to government authorities, because there had been no real understanding of this difference prior to this effort. In this sense, the law became an educational process for government authorities (Sergio García, KII 2017). However, it also made clear for CSO what they needed and wanted to achieve a more formal recognition of their rights and an outline of a legal framework which could ultimately contribute to strengthen Mexican democracy (KII, Carlos Zarco, 2017).

LESSONS FOR ADVOCACY

1) Advocacy for public policy modification and for legislative change can be eased through open dialogue mechanisms enabled by impartial organizations and institutions. These neutral spaces can help to build a safe environment wherein different views are discussed without antagonizing the other side; 2) Legitimacy of the parties involved is key: organizations, institutions, and individuals that participate in the dialogue must be able to represent several groups and CSOs, assuring the inclusion of different perspectives. Even if those directly involved in the negotiations have more technical knowledge or a deeper understanding of the issues, consultations with a broader base is necessary to ensure that those who are going to be directly affected by the changes in policy are taken into account; 3) CSOs are part of a system of interrelated actors. Therefore, an effective advocacy strategy requires (a) identifying stakeholders on the policy or legislative reform, (b) ascertaining their beliefs and interests, and (c) how to neutralize or leverage those facts, depending on whether they can help or thwart the CSOs agenda. In many cases, this will entail informing and persuading other actors of the need of their involvement; in this case, an agenda to promote the third sector ought to include not only the government, but also the private sector.

POLITICAL ENVIRONMENT AND COLLECTIVE PERSEVERANCE

One the most important aspects of this advocacy process was that civil society was focused on obtaining a legal framework that would promote the rights of the sector, rather than investing time and effort advancing a particular political agenda. According to experts, CSOs were politically independent and as such, were able to

build a dialogue with different political parties (Carlos Zarco, KII 2017). However, being politically independent also resulted in an advocacy process that took 10 years in the making.

From the perspective of some of the people involved, the advancement of dialogue was always dependent on whoever was in power in the legislative chambers. It has been argued that the PRI agenda limited the promotion of the Law for many years because of a lack of political will to understand the role that CSOs could have in society and the need for a legal layout that could frame their activities (Consuelo Castro, KII 2017). It was not until the democratic transition (represented by the alternation of political parties in the presidency, from PRI to PAN) that the dialogue with authorities ignited and a new perception of CSOs came about, ultimately setting the ground for a new recognition of CSOs rights (María Magdalena López, KII 2017).

The political environment was always influential in the advancement of the Law. According to experts, the belief that civil society functioned as a counterweight for government and the private sector, naturally created a certain degree of resistance among politicians. Before the enactment of the Law, political figures had control over CSOs and Private Assistance Institutions by sponsoring their activities or assigning them public resources. There was no real understanding of the role of organized civil society for the consolidation of democracy. Until this point, civil society had reacted to certain events in Mexico, such as the 1968 student movement and the 1985 earthquake, emerging as an actor within a system that was predominantly controlled by the government (Sergio García, KII 2017).

Considering that the Law took over 10 years to pass, some experts have pointed out the importance of having close relationships with particular political figures and lawmakers. The personal relationships that members of the CSO community and their allies developed over the years became instrumental in the advancement of the Law. There is a tendency for single individuals to seek solving a problem using personal connections instead of institutional mechanisms or following a particular agenda. As a result, individuals may establish a personal relationship with high rank government officials and lawmakers, in an effort to influence the decision-making process. This is not necessarily a bad thing; however, it does highlight the inconsistency of collective dialogue and institutionalized mechanisms for advocacy and civic participation (Miguel de la Vega, KII 2017).

LESSONS FOR ADVOCACY

1) For advocacy processes, it is key to take the political environment into account, in order to seize the opportunities opened by changes in the landscape. 2) The personal connections of some individuals to decision makers can be a valuable asset and can be used to open discussions and introduce some issues into the legislative and government agenda. However, there must be a balance between collective advocacy and personal agenda setting. This can be achieved by opening multiple dialogue mechanisms, where more views are represented, and by a commitment from those in the negotiation table to transparency and accountability, informing the rest of the actors of the proposals being presented and the results of those negotiations. 3) For meaningful change to occur, and to maintain the progresses gained, CSOs and their allies need to inform and raise awareness among not only decision makers, but also the wider public, as the value of CSOs lays in their public good; 4) Furthermore, CSOs need to build an agenda for strengthening the sector that goes beyond a specific moment or event. Civil society organizations need to find common ground, beyond their specific causes, ideological affiliations or particular interests, and promote an agenda that can be proactive instead of reactive perceived threats. 5) Finally, the experience of advocating for the Law illustrates how these efforts can take time, so a notion of long-term changes must prevail over short-term results.

REFORM TO THE FEDERAL LAW FOR THE PROMOTION OF THE ACTIVITIES OF CIVIL SOCIETY ORGANIZATIONS

One of the most recent advocacy efforts to improve the implementation of the Law took place in 2015, after a group of organizations³⁴ and individuals advocated for the harmonization between the Law and the Income Tax Law. After a thorough proposal was presented to Congress, only 20% of it was accepted. According to individuals and experts involved in the process, the fiscal authority took part in the decision-making process and blocked the proposal to create a trust fund (with 1 million pesos) that would increase transparency in how public resources are awarded to CSOs (KII, Miguel de la Vega, 2017). One possible interpretation of this refusal is that political parties have little to no interest in losing their control over budgetary allocations granted to organizations.

ADVOCACY AGENDA FOR FISCAL REFORM

Fiscal regulations have long been a sore point in the relationship between civil society organizations and the Mexican government. Indeed, that it has been easier to promote regulations for the public funding for CSOs, than to promote reforms which incentivize private donations or economic activities for the financial sustainability of the sector is a testament to the historic distrust of the political establishment towards the involvement of private actors into the public sphere.

As noted throughout this analysis, Mexico has a complex web of legal and fiscal compliance mechanisms for CSOs, where the spirit of the Federal Law for the Promotion of the Activities of Civil Society Organizations and other laws are often hindered by the control mechanisms of the fiscal framework and other restrictive regulations. CSOs have not only consistently tried to advocate for a more flexible fiscal environment, but also demonstrate to lawmakers and fiscal authorities alike to the contributions of CSOs make to the public good, and of the effects certain norms have on their activities. This has caused an interesting pattern, in which fiscal regulation towards CSOs becomes slightly less restrictive as decision makers become aware of these issues and get to know the sector; but then, as lawmakers and/or public officers leave, and new ones arrive, new waves of stricter laws are put into place by those less familiar with the function and utility of CSOs.

This cycle can be accelerated when organizations abuse the system or violate the laws arise by either drawing media attention and public outrage, or when isolated cases catch the attention of public officers in high positions. This rapid acceleration can (and does) occur regardless of whether these cases of abuse are a reflection of a widespread problem or exceptional incidents. Ultimately, the result being new regulation and processes that are more intricate for all CSOs.

Regulatory backlashes in the fiscal arena tend to unify and mobilize civil society organizations around a single cause, so these episodes have proven to be catalysts for some of the most significant advocacy efforts in the sector.

The proximal section will examine some of these efforts by highlighting the reaction that civil society has had to fiscal reforms considered harmful for the sector. It will also analyze the systemic elements that have caused these recurring cycles of regulatory backlashes.

Specifically, the following section will discuss the reforms and changes in the interpretation of the Income Tax Law during the last decade that have affected CSOs the most.

REFORMS TO THE INCOME TAX LAW (TITLE III)

The Income Tax Law has defined the fiscal regime that regulates non-for-profits as it is organized today since 2002. The records of this regulation go back to 1989, when the fiscal regulation for the CSOs changed and became more demanding in terms of requirements. However, by 1999, Title 3 of the Income Tax Law was named: “About those that are not contributors of the income tax” and required only a free format letter for the application to obtain the Authorized Donee Status (García et al, 2007).

From 1994 onwards, CSOs that support other CSOs were regulated under Title III; the same reform process eliminated deduction limits, which until 1993 existed for the donations (Calvo, 1994). In 1995, Title III was added to members of condominium associations and real estate management organizations. In, 1997 the ecological preservation activities were also included in this Title (Calvo, 1997). Since then, the Income Tax Law has sustained several reforms; however, these reforms have been more relevant since the abrogation of the law of 2002 and the promulgation of the new law in 2013, valid until 2014.

Throughout these different reforms to the Income Tax Law, and some failed attempts to impose even more constraining regulations, it is important to highlight the role that organized civil society has had stopping or reversing measures that thwarted the activities of the sector.

TABLE 14.

TIME LINE FOR ADVOCACY EFFORTS IN THE FISCAL NORMATIVE FRAMEWORK:

2005	CEMEFI, the Instituto Tecnológico Autónomo de México (ITAM), Incide Social, the International Center for Not-for-Profit Law and Alternativas y Capacidades, amongst others, organized consultation forums and gathered experts to define a fiscal agenda as well as a fiscal manual for CSOs. (Alternativas y Capacidades, 2007)
2007	CEMEFI, Alternativas y Capacidades, amongst other members of civil society organizations, negotiate with Congress in order to eliminate from the Income Tax Law reform proposal of that year, the elimination of the tax deduction applicable to donations. ³⁵ CSOs also exposed their concerns about the 10% limit to non-taxable income obtained for the performance of activities different from the social objective of the CSOs.
2009	The decree to remove the payable tax applicable to the income obtained through the performance of activities different from the social objective of the organization when it exceeds 10% of the total income was approved (Since then, it has been renewed and continues to be valid up to 2017).

³⁵ <http://portales.colson.edu.mx/anteriores/227/>

2014	Legal Experts and Alternativas y Capacidades promote the harmonization of Article 79 of the Income Tax Law to the Article 5 of the Federal Law for the Promotion of Activities of CSOs.
2016	Legal experts, the alliance of organizations known as UNIDOSOC, CEMEFI, Alternativas y Capacidades, among others, express their disagreement to the reforms to the Income Tax Law approved in November of that year, particularly regarding the new legal disposition that establishes the certification of social impact for authorized donee (providing differentiated fiscal incentives associated to the certification results).
2017	A dialogue between legal pro bono experts, UNIDOSOC, CEMEFI, Alternativas y Capacidades amongst other actors directly with the Mexican Income Revenue Service (SAT) have led to specific technical proposals to be considered by the authority.

WHAT SYSTEMIC ELEMENTS HAVE INFLUENCED THE CONSTRAINING NATURE OF FISCAL REGULATION?

In 2007, a group of organizations, academic institutions, and CSO experts worked together to identify and address the fiscal barriers that CSOs faced in the Mexican legal context. This initiative identified and made proposals that are worth mentioning as an example of how civil society, in collaboration with key allies, can work together at the highest technical level. In this research, experts identified a few systemic elements that have influenced the constraining nature of fiscal regulation for CSOs. In many ways, these elements continue to be present to this day.

According to this study:

- 1 Tax collection policy in Mexico is not articulated with social policy.
- 2 There is a constant tendency to reduce or lock down financial support for CSOs.
- 3 There is a tendency to support charitable organizations, rather than advocacy or public policy proposals.
- 4 There is a lack of fiscal incentives to promote a culture of donations in Mexico.
- 5 There is a tendency to perceive CSOs as private entities, as opposed to organizations that are involved in public matters.
- 6 There is a tendency to exercise more fiscal control over CSOs that are perceived as being involved in political movements.

(ABLANEDO, 2007)

Even though it could be argued that the relationship between the fiscal authority and the CSO sector has evolved for the better over the past 10 years (for example, spaces for dialogue are now more open and permanent), many of these elements remain to be systemic and pose a severe challenge for CSOs. As these elements are rooted in a misconception of the role of CSOs as well as a general distrust towards them that is widespread among the political establishment and –to a large degree, the public - any advancements made towards a more supportive legal environment is transitory, and regulatory backlashes continue to surge on a recurring basis.

INCOME TAX REFORMS 2013 APPLICABLE IN 2014

The law that was applicable from 2002 to 2013 was repealed in December of 2013 giving way to the new applicable law of 2014. This is a major key point for the regulation of CSOs, since the movements in favor of the harmonization of the Federal Law for the Promotion of the Activities of CSOs with the Income Tax Law, saw this as an opportunity to introduce the activities recognized in the Article 5 of the Federal Promotion Law to be part of the list of entities that are recognized and regulated under Title III of the Income Tax Law.

Given the analysis of the fiscal regime that was presented in the previous section, this section will focus on the changes that were achieved by the CSOs advocacy efforts during the described period. It is important to note that the previous Law was abrogated, therefore all articles were changed so that Article 95 that listed the entities regulated by Title III is now Article 79. The change from Article 95 to Article 79 implied that the inclusion of new fractions was added to previous ones. In particular, fraction XXV was the addition that the advocacy efforts of CSOs achieved. (Kil Angeles Anaya). Also, the fraction VI was modified to add more activities that are regulated in the Law.

However, not all the activities from article 5 of the Federal Promotion Law were harmonized, only the following activities were included:

In fraction VI,

- Support for the development of indigenous peoples and communities.
- Contribution of services for the care of social groups with disabilities.
- Promotion of actions to improve the “popular economy”.

Fraction XXV,

- Promotion of the organized participation of the population in actions that improve their own livelihood conditions for the benefit of the community or in the promotion of actions in the area of citizen security.
- Support in the defense and promotion of Human Rights.
- Civic, focused on promoting citizen participation in matters of public interest.
- Promotion of gender equality.
- Support in the use of natural resources, protection of the environment, flora and fauna, preservation and restoration of the ecological balance, as well as the promotion of sustainable development at regional and community level, in urban and rural areas.
- Educational, cultural, artistic, scientific and technological promotion.
- Participation in civil protection actions.
- Provision of support services for the creation and strengthening of organizations that carry out activities to be promoted in terms of the Federal Law for the Promotion of the Activities of Civil Society Organizations.
- Promotion and defense of consumers rights.

Additionally, a new fraction for sports activities was added:

- Sports Associations recognized by the National Sports Commission, as long as they are members of the National Sports System, in terms of the General Law of Physical Culture and Sport.

However, the inclusion of these activities in the new fractions and additions to existing fractions has an essential restriction: it only applies to CSOs who practice such activities and that hold the Authorized Donee Status. As discussed earlier on this study, this creates an uncertainty in terms of the fiscal regime of the CSOs that do not hold the ADS.

An additional important change during this year was the modification of Article 97 of the Income Tax Law, which became Article 82. Before the reform, authorized donee were banned from performing advocacy activities and were only allowed to do research or to provide technical assistance to government institutions.

After the reform of the Article 82 (fraction III), it was allowed for authorized donees to engage in advocacy activities, as long as they shared the following information to the tax authority:

- 1 The subject matter of study;
- 2 The legislation that is intended to promote;
- 3 The lawmakers with whom the advocacy activities are carried out.
- 4 The social, industrial or branch of economic activity that would benefit from the proposal.
- 5 The materials, data or information they provide to legislative bodies, clearly identifiable as to their origin and authorship.
- 6 The conclusions.
- 7 Any other related information determined by the general rules issued by the SAT.

An additional change, not in the Law but in the system of registration of the tax payer number was also activated in 2014, with the consequences described before of qualifying all new CSOs under Title II of the Income Tax Law.

INCOME TAX REFORMS 2016 APPLICABLE IN 2017

In November of 2016 the Congress passed a major reform on the articles that regulate the CSOs under the Title III of the Income Tax law.

Table 15 portrays the mentioned reforms and the consequences of these changes in the activities and operations of CSOs.

TABLE 15.
REFORMS TO THE INCOME TAX LAW AND CONSEQUENCES FOR CSOs

Previous Content	Reformed Content	Consequence for CSOs
Art.79. Did not include social productive projects as non-for-profit.	Art. 79 Adds letter (J), which includes social productive projects from the agricultural or artisanal industry located in marginalized areas of the country. This is limited to those productive projects that have a total annual income of 4 times the annual minimum salary.	The productive projects of the marginalized areas will have the chance to receive donations from authorized donee.
<p>Art.80: Established that the CSO can receive a maximum of 5% of their income through activities non-related to the social objective exempted of income tax for those who are not authorized donee.</p> <p>Establishes a maximum of 10% of income generated through activities non-related to the social objective of the CSOs as exempted of income tax for those who are authorized donee.</p> <p>The following types of income are considered related to the social objective of a CSO:</p> <ol style="list-style-type: none"> 1 Donations received from the federal government. 2 Sale of fixed assets 3 Membership fees 4 Interests 5 Royalties 6 Income from renting real state 7 Returns on Capital Investments 	<p>The reform of the article adds:</p> <p>The following types of income are considered related to the social objective of a CSO:</p> <ul style="list-style-type: none"> • Recovery fees 	<p>A common practice of the CSOs is to charge a fee to the beneficiaries of some projects or to the participants of certain activities. This income is now considered as related to the social objective of a CSO. So, it does not have a limit in terms of the percentage of income that it represents.</p>

Previous Content	Reformed Content	Consequence for CSOs
<p>Art. 82 V.</p> <p>Establishes that if an authorized donee is liquidated it shall pass all its remaining assets to another authorized donee.</p>	<p>The reform adds two paragraphs to subparagraph V.</p> <p>If an authorized donee (AD) loses its status as AD and it does not get it back or changes the country of residence; it shall prove that the donations received while holding the ADS were indeed used in the social objective of the organization and that in case it is not proved, the CSO shall transfer the remaining funds from donations that were not invested in the social objective but obtained while holding the ADS to another CSO with ADS.</p> <p>If in this case, there are funds to be transferred to other ADSs, then this transfer shall be made before the end of a 6 months period after the organization lost its ADS.</p>	<p>It regulates the case of CSOs that do not renovate their ADS but continue to operate or move from Mexico to another country.</p> <p>This involves a process of verification of the use of the donations that the organizations will have to prove in the case they lose their ADS, also a process of transferring funds (that were not proved to have been used in the social objective) to another AD.</p>

Art. 82. To be considered as an authorized donee, the CSOs shall:

New addition.

- Fraction. IX

The addition is number IX.

To be considered as an authorized donee, the CSOs shall:

Have a Corporate Governance Structure according to the SAT requirements if their income per year is over 100 million pesos or if the organization has assets that sum a value of over 500 million pesos.

This reform is directed to civil society organizations with relatively high income (over 100 million pesos of annual income or with 500 million pesos in assets).

According to Layton (2013) the numbers of organizations that manage large amounts of income in Mexico are 97. The top 10 of these organizations have an income of around 100 million pesos or more per year.

This disposition is argued to violate the right of self-determination since the governance of the CSOs is an internal matter of the organization.

Previous Content	Reformed Content	Consequence for CSOs
		<p>However, it is also argued that corporate governance requirements are common in terms of regulations and that they are desirable as a useful balance for large budget entities.</p>
<p>Art. 82. BIS</p>	<p>The addition is the Article 82. BIS.</p> <p>For those authorized donee with an income (per year) of over 100 million pesos or if the organization has assets that sum a value of over 500 million pesos, it shall inform the SAT about the:</p> <ul style="list-style-type: none"> • ID Data of the real estate that they own. • ID of the companies or organizations that received the totality of its real estate assets. <p>Otherwise the value of the non-informed assets will be considered as income and charge with the IRS tax.</p> <p>The companies or organizations that receive real estate assets from the mentioned ADS, shall give them a receipt according to the IRS authority rules. This receipt is not deductible.</p>	<p>This article regulates high income CSOs (over 100 million pesos of annual income or with 500 million pesos in assets).</p> <p>It obligates these CSOs to provide information of their real estate assets and regulates its transference, so that the organizations cannot deduct income tax of the donated assets and also so that the recipients of the assets are well identified.</p>
<p>Art. 82. TER</p>	<p>The addition is the Article 82. TER.</p> <p>The authorized donee has the option to get a certification of:</p> <ul style="list-style-type: none"> • Compliance with their fiscal obligations • Transparency • Social impact 	<p>These measures will be applied to all CSOs with the Authorized Donee Status.</p> <p>It is not an obligation but, according to some experts from the sector, this could have a damaging effect in terms of the gap between the organizations with resources to pay for these</p>

Previous Content	Reformed Content	Consequence for CSOs
	For the organizations interested in this, the tax authority will offer mechanisms to facilitate this certification.	certifications and those who do not. This might enhance a segmentation of the sector not related to the compliance of obligations, transparency or social impact evaluation, but with the capacity to pay for the certification.
	The organizations that will provide the certification will be recognized experts, authorized and regulated by the SAT.	
	The tax authority will publish on its website the names of those certification entities as well as the certified CSOs.	

IMPORTANT ELEMENTS AND REMARKS ON THE REFORM OF 2017:

- 1 **About productive projects:** Experts consider that this can be a step towards the possibility of authorized donees to support vulnerable groups that do not hold –and wouldn't be able to get– the ADS. This disposition is only understood by analyzing the obligation of ADS to invest all their income on their social objective with the restriction of not distributing any of that income to any person or entity, unless they hold the ADS or that the payments are made for services effectively provided to the CSO. Therefore, this disposition could allow ADS to support communities of farmers or artisans, by donating resources to them.

However, the rules under which these donations shall be recorded involve the expedition of a fiscal electronic invoice from the side of the productive projects, which is not likely to be plausible for the type of vulnerable communities that the article considers. (Rule 3.10.26)
- 2 **About the recovery fees:** The sub regulation of Article 80 of the Income Tax Law, which explains the functioning of recovery fees, define two essential aspects: a) the recovery fees are fees that CSOs can charge for services directly related to the social objective of the organization and b) these fees are recognized as a source of income that shall contribute to the sustainability of the day-to-day activities of the CSOs. This reflects a positive vision in terms of how the Income Tax Law can promote the growth of the CSOs sector.
- 3 **About the change of residency:** It is important to point out that when this disposition was published, it created confusion among many CSOs, as some of them mistakenly interpreted this rule as applicable to a change of address, which is different from a change of residency. In terms of the Income Tax Law, the change of residency refers to the country of residency. This disposition is not applicable to those CSOs that are located at a specific address and then relocate to a different address within Mexico. The correct understanding is that this notion is applicable only if an organization moves from Mexico to another country.
- 4 **About the certification:** According to experts and available data of the position of different CSOs regarding the certification, this part of the reform is critical as it set in motion remarkable efforts of the organized civil society on various flanks.

- **Jurisdictional flank:** CSOs promoted an action against this disposition arguing that it violated the equal principals of the Mexican Constitution. A total of 45 CSOs from 5 states promoted this “amparo” action. The different tribunals denied all the actions promoted, replying that since the disposition was optional, there was no violation of any right. (Alternativas y Capacidades, 2017). This effort is a tangible example of successful advocacy efforts of CSOs when working closely with the jurisdictional system.
- **Dialogue and negotiation flank:** To express the perceived drawbacks regarding certification, various organized civil society groups were advised by pro bono legal experts (lawyers and law firms) and have created channels of dialogue with high level authorities. Their objections include the problem of creating more inequities in the sector, the fact that the tax authorities lack the competence to certify social impact, the complexity of the measurement of social impact and the costs of it, and the inconsistency of adding more requirements to the already existing ones. These negotiations are not yet final, so the results are still to be seen. However, in the process of this dialogue the organized advocacy groups have learned more about the way the certifications are intended to be applied and have incorporated other elements of their fiscal agenda to these conversations.
- Both of these efforts show the concentration and strength of a civil society that is interacting in different ways with the authorities in order to express their demands, as well as an authority (or at least some sectors within the tax authority) willing to open certain channels of dialogue. The results are yet to be observed so future follow up will be necessary to see the results of this process.

FOLLOW-UP OF THE PROPOSALS REGARDING THE INCOME TAX LAW ADVOCATED SINCE 2007

Since 2007 there have been other specific proposals to amend the Income Tax Law that have been articulated by the CSOs. The following table illustrates some of these proposals for fiscal reform promoted by some groups of organizations.

TABLE 16.
PROPOSED CHANGES FOR FISCAL REFORM

2007	Achieved	Present in 2017 Agendas
Dispose, within Title III of the LISR, a chapter with regulations applicable exclusively to authorized grantees.		X
Make the appropriate adjustments to the Income Tax Law, to provide legal certainty to receivers of donations and donors.		X
Revise that the tax regime of authorized donee applies to all eligible CSO categories for that status.		X
Establish a mechanism that differentiates micro, small, medium and large organizations, similar to those that apply to companies and, consequently, develop rules according to their size. At present, it is the same as all CSOs without considering the amount of their income, number of employees or activity.	There was a modification regarding corporate governance in 2017	
Elevate the threshold of donations received for the mandatory submission of the tax report, to make it higher. In addition, a similar logic - which considers the specific characteristics of the organization - should apply to other areas.	Achieved. This requirement was abrogated.	
Establish clear and reasonable criteria for documenting expenditures and activities, particularly for organizations working in rural or marginalized areas where CSOs work but often have difficulty trying to obtain proof of expenditure.	Achieved. Regulation in Article 79.	
Eliminate the regulation of the percentage of administrative expenses imposed by the SHCP, leaving this decision to the management of the authorized donee itself.		X
Clearly define the characteristics of organizations that should be classified as "donor institutions". Promote the creation of more donor institutions through differentiated fiscal incentives.	Partially achieved.	The donor institutions are recognized; however, the donation to non-ADS is still in process.
Accept the Annual Declaration of the organization instead of demanding a second procedure.		X

SYSTEMIC CONSIDERATIONS FOR ADVOCACY

One of the primary issues that needs to be considered when advocating for CSOs is that the relationship between authorities and CSOs is characterized by mistrust. Authorities have little knowledge about what CSOs are, what they do, how they operate, their incentives, or the role they play within the system. More often than not, authorities and the political establishment perceive CSOs as organizations that are either avoiding taxation, promoting private interests, or covertly serving the political agendas of certain parties or individuals. CSO advocates have struggled to convey to decision makers that CSOs pay all other taxes (including the final payments of VAT and social security) and make important contributions to both the GDP and the public good--bet it through the provision of basic services to population in need, through the monitoring and improvement of public policies, the defense of Human Rights, or in other ways.

On the other hand, CSOs fear that, at best, authorities do not understand or recognize their work, or, that authorities will try to undermine their autonomy and undercut their work, at worst. Indeed, even for those organizations that are not inherently distrustful towards the government, the fiscal authority can be intimidating, as most organizations lack a full understanding of the applicable fiscal laws.

The mistrust from both sides results in a vicious cycle: CSOs worry about how much information they should or should not provide to the government authorities and authorities see that as a confirmation of their preconceived notion that CSOs are not transparent and seek only to benefit themselves.

A second consideration is that, as already mentioned, the Income Tax Law regulates the sector under the assumption that all CSOs have, or at least should have, the Authorized Donee Status. This is certainly not the case (there are only 9,136 CSOs with ADS in 2017), and the fact that the regulation is tailored to fit only this segment of the total universe of not-for-profit organizations creates a legal loophole when new CSOs are constituted, being automatically considered for-profit organizations (placed under Title II, rather than Title III of the Income Tax Law). The advocacy efforts, currently led by CSO experts and pro bono lawyers, seek to convey the urgency to fix this situation to the fiscal authority.

The fact that fiscal regulations fail to recognize the nature of civil society organizations as fundamentally different from that of businesses is both a reflection of a systemic misconception of the sector, and a factor that helps to perpetuate this error. Furthermore, it is a reflection of the lack of a coherent public policy, and of the multiple visions within government on what civil society is and what its role should be.

Furthermore, the excessive regulation for CSOs can also be explained by the lack of capacity on the part of the authorities to effectively monitor compliance of the Law, detect and sanction cases of infringement, and prevent them from happening again. Given that the chances of getting caught are slim, the authority tries to compensate with a complex system aimed at elevating the barriers of entrance and minimizing abuse. For example: fearing businesses will use donations to avoid taxes, the tax authority puts a limit of 7% on the percentage of the income a business can donate to an authorized donee with a tax exemption. This means that, instead of detecting and punishing those businesses that abuse the system, it simply assumes all businesses that donate “too much” are suspicious.

For this reason, some experts argue in favor of better oversight to guarantee that violations are promptly detected and sanctioned. Additionally, proponents of improved oversight efforts wish to see improved means of defense for the organizations accompanied by adjustments to the legal framework to make compliance easier and more reasonable.

Finally, people and organizations advocating for a better fiscal regime for CSOs have identified the limited supply of technical advice for CSOs on legal matters, especially outside Mexico City. This creates a void for CSOs that must navigate the fiscal framework without proper guidance: both in terms of being able to comply with their obligations and defending their rights, and in terms of being able to advocate for reforms on this topic with technically solid arguments and proposals.

HOW DO CSOs PERCEIVE THEIR ROLE AS ADVOCACY AGENTS?

One of the key elements for the advocacy efforts that led to the enactment of the Law was the sector's self-awareness and recognition of its own power to influence public policy.

Accordingly, this research attempted to learn if CSOs perceive themselves as active agents and if they seek to promote systemic change through advocacy. In order to do so, the Legal Environment Survey included a section on the advocacy efforts of CSOs.

The survey revealed that only 34% of CSOs have participated in advocacy activities. This is consistent with what other studies have revealed: for example, CIVICUS Index identified in 2010 that only 42% of civil society organizations in Mexico had tried to influence public policy (Cortés, Sánchez, Ruesga et al, 2011).

CSOs were also asked if they had participated in monitoring and evaluation of public policy programs, to which only 19% stated to have done so. Similarly, 17% of CSOs stated to have participated in advocacy efforts for the enactment of a Law or for the reform of a Law. Interestingly enough, barely 6% of CSOs stated to have ever participated in strategic litigation actions. (LES,2017).

The Legal Environment Survey also aimed to gain more information as to why CSOs might not engage in advocacy activities, some of the reasons they expressed were the following:

- Advocacy is not part of the CSO objective/ profile.
- There are no resources to engage in advocacy activities.
- Lack of formal or institutionalized mechanisms to establish dialogue with the authorities.
- Lack of knowledge or technical capacity to engage in advocacy efforts. (LES, 2017).

KEY FINDINGS

- Over the past two decades, civil society has been able to open new communication channels that have allowed the sector to influence public policy. These new channels illustrate how there has been an evolution in the mechanisms for civil society to influence public policy; however, there is also evidence that these advocacy efforts tend to happen as reaction to specific changes in the legislation, and they lack continuity and long-term vision.
- Advocacy for public policy modification and for legislative change can be eased through open dialogue mechanisms enabled by impartial organizations and institutions. These neutral spaces can help to build a safe environment, where different views are discussed without antagonizing.

- Legitimacy of the parties involved in advocacy is key: organizations, institutions and individuals that participate in the dialogue must be able to represent several groups and CSOs, assuring the inclusion of different perspectives.
- CSOs are part of a system of interrelated actors. An effective advocacy strategy requires identifying the actors that have a stake on the policy or legislative reform, what their beliefs and interests are, and how to neutralize or leverage them, depending on whether they can help or thwart the CSOs agenda.
- An agenda to promote a more enabling environment for CSOs ought to include not only the government, but also the private sector.
- The personal connections of some individuals to decision makers can be a valuable asset in order to open discussions and introducing some issues into the legislative and government agenda; however, there must be a balance between collective advocacy and personal agenda setting. This can be achieved by opening multiple dialogue mechanisms, where more views are represented, and by a commitment from those in the negotiation table to transparency and accountability, informing the rest of the actors of the proposals being presented and on the results of those negotiations.
- Fiscal regulations have for long been a sore point in the relationship between civil society organizations and the Mexican government. Civil society organizations have many times tried to advocate for a more enabling fiscal environment and worked to sensitize lawmakers and fiscal authorities of the contributions of CSOs to the public good, and of the effects certain norms have on their activities. This has caused a cycle in which fiscal regulation towards CSOs becomes slightly less restrictive as decision makers become aware of this issue and get to know the sector; and then, as lawmakers and/or public officers leave and new ones arrive, new waves of stricter laws are put into place.
- The cycle can be further accelerated when cases of organizations abusing the system or violating the laws arise. This, regardless of whether these cases are a reflection of a widespread problem or exceptional incidents. The result ends up being new regulation and more intricate processes for all CSOs.
- In order to make meaningful change, and to maintain the progresses gained, CSOs and their allies need to inform and raise awareness among not only decision makers, but a wider public, on the value of CSOs to the public good;
- CSOs need to build an agenda for strengthening the sector that goes beyond a specific moment or event. Civil society organizations need to find common ground, beyond their specific causes, ideological affiliations and particular interests, and promote an agenda that can be proactive instead of simply reacting to perceived threats.
- The experience of advocating for the Federal Law for the Promotion of the Activities of Civil Society Organizations illustrates how this efforts can take time, so a notion of long term changes must prevail over short term results.
- The self-awareness of the sector and the recognition of its power to influence public policy was essential to achieve the enactment of the Federal Law for the Promotion of the Activities of Civil Society Organizations. The recognition of the CSO sector as an active agent that can advocate for legislative change is increasingly being understood and put into practice in the country, although heavily concentrated in some geographic areas, particularly in Mexico City.
- The relationship between authorities and CSOs in Mexico is mainly characterized by mistrust. From the authorities' perspective, there is little knowledge of what CSOs is, what they do, how they operate, their incentives and the role they play within the system. More often than not, the authorities and the political establishment perceive CSOs as organizations that are avoiding taxation, promoting private interests or covertly serving the political agendas of certain parties or individuals.

- There is also a degree of mistrust from CSOs towards the government, fearing authorities don't understand or recognize their work, at best, or they will try to undermine their autonomy and even undercut their work when it challenges their interests. Even for those organizations that are not inherently distrustful towards the government, the fiscal authority can be intimidating, as most organizations lack a full understanding of the fiscal laws.
- Mistrust from both sides feeds into a vicious cycle: organizations fret about giving more information of their activities and finances to government authorities and avoid engaging into dialogue with them. In turn, authorities keep the perception that organizations are not transparent and seek personal benefit.
- Excessive regulation for CSOs can also be explained by the lack of capacity on the part of the authorities to effectively monitor compliance of the Law, detect and sanction cases of infringement, and preventing them from happening again. Given that the chances of getting caught are slim, the authority tries to compensate with a complex system aimed at elevating the barriers of entrance and minimizing abuse
- There is limited supply of technical advice for CSOs on legal matters, especially outside Mexico City. This creates a void for CSOs that have to navigate the fiscal framework without proper guidance: both in terms of being able to comply with their obligations and defending their rights, and in terms of being able to advocate for reforms on this topic with technically solid arguments and proposals.

VIII. CONCLUSIONS AND RECOMMENDATIONS

The purpose of this research was to analyze the normative framework that regulates CSOs in Mexico and highlight the components that serve to strengthen the sector as well as those that elements that hamper its development.

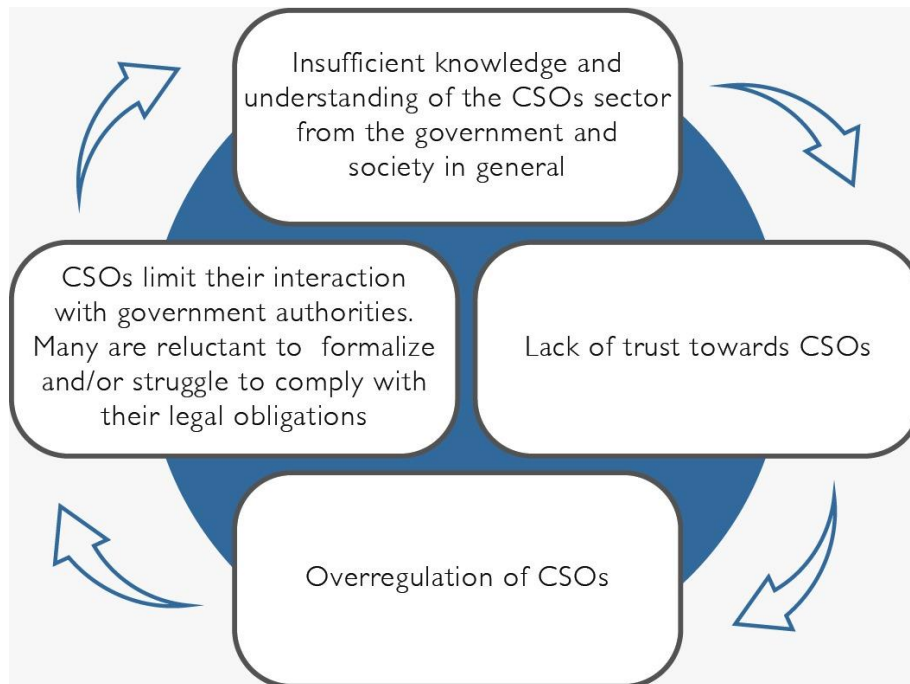
By highlighting the legal barriers that CSOs face when navigating the legal framework, this document intended to identify the areas of opportunity to improve the regulation of the sector and set a road map for those interested in promoting an environment where solid, sustainable organizations can flourish and best contribute to the public good. Organizations that have enough autonomy and resources to be an effective counterweight to the government and enterprises, but also have means for working together with these sectors on common goals. Organizations not burdened by excessive regulation and red tape, but that are also transparent and accountable.

The main takeaway of this study is that the relationship between authorities and civil society organizations in Mexico is mainly characterized by mistrust. This lack of trust has historical and cultural roots and is perpetuated by a limited knowledge and understanding of what CSOs are, what they do, how they operate, their incentives and the role they play within the system.

From the authorities and the political establishment perspective, CSOs are either avoiding taxation, promoting private interests or covertly serving the political agendas of certain parties or individuals. This view is in a way shared by wide sectors of society, which means there's little social support or real pressure to improve public policies and regulations in favor of the sector.

From the perspective of CSOs, there is also a great deal of mistrust towards the government. For some organizations, interaction with the government is a burden, with little concrete benefits to offset the costs and obligations that all the regulation entail. For others, interacting with the government can be overwhelming due to the complexity of the legal framework, so they seek to avoid it. And for yet other organizations, avoiding governmental regulation and oversight is about protecting their autonomy and their ability to challenge the authorities' actions and policies when there is reason to do so. Overall, there is a widespread sense among CSOs that authorities don't understand or recognize their work, which is not a good foundation for collaboration and dialogue.

Mistrust from both sides feeds into a vicious cycle: many organizations avoid formalization and feel reluctant to share information of their activities and finances with government authorities or elude engaging into dialogue with them. In turn, this contributes to the perception that organizations are not transparent and seek personal benefit, prompting even more regulation. (See image 6)



In order to break this vicious cycle, a balance between proper oversight of civil society organizations and the promotion of their activities has to be achieved. There is indeed a legitimate reason on the government side to seek to regulate the sector, ensuring that public funds (and tax incentives, which indirectly imply the use of public funds by means of a tax sacrifice) are well used, that organizations are being accountable to their donors and society, and that the public interest is being served.

However, there is no reason why these legitimate objectives cannot coexist with the proper incentives and liberties that foster a strong and independent civil society.

The following are some of the areas of opportunity that this research has identified in order to begin to establish that balance:

KEY FINDING 1: IN MEXICO, THERE IS INSUFFICIENT KNOWLEDGE AND UNDERSTANDING OF THE CSO SECTOR, WHICH GENERATES MISTRUST

Both the Government of Mexico and society in general have limited knowledge about the social impact that CSOs can have in the country. Generally, little is known and understood about the CSO sector and the potential impact that organizations can have on the development of the country: not only through their work on high impact social issues, but their overall contribution through employment, taxation and to national GDP (1.4%).

However, mistrust is mutual, as CSOs avoid (to a certain extent) regularization or formalization in order to keep the authorities at a distance. This is also the case because organizations tend to feel overwhelmed by the legal framework because they do not understand it properly.

RECOMMENDATIONS:

- 1 Encourage CSOs to take on the responsibility to learn, understand and comply with their legal obligations, so as to fully exercise their rights and be transparent. This requires an investment on internal professionalization and access to updated information and proper advice on the legal framework.
- 2 Promote transparency as a mechanism to build trust between sectors and within the CSOs sector.
- 3 Design and promote effective communication mechanisms to better convey how CSOs contribute to the development of the country, social wellbeing and democracy.

KEY FINDING 2: THERE IS NEED FOR AN INTEGRATED AND COHERENT NATIONAL PUBLIC POLICY FOR THE PROMOTION OF THE CSOs SECTOR

Since the publication of the Federal Law for the Promotion of the Activities of CSOs in 2004, there has been a continual debate over the fact that there is no integrated and coherent national public policy focused on the promotion of the activities of CSOs. Laws at state and municipal level show different views of what CSOs role should be and which rights and obligations they should have. There is no real consistency and complementarity between local and federal laws on the matter. An example of this is that federal and local registrations for CSOs are not coordinated, which means that an additional burden is placed on CSOs, without actually achieving efficient supervision of the sector. This also represents a missed opportunity for the government to gather accurate and comprehensive information on the sector that could help to better understand it and to design ad hoc national public policies.

RECOMMENDATIONS:

- 1 Promote a unified understanding of the CSO sector at a national level, and articulation of different processes and regulations (including coordination between registration mechanisms).
- 2 Promote the promulgation or reform of local laws for the promotion of CSOs activities, particularly in the 15 states that are still lacking a specific regulatory framework for this purpose. This process should be done with the active participation of local CSOs and be accompanied with technical advice based on best practices.

KEY FINDING 3: SOME OF THE REGISTRATION MECHANISMS REPRESENT A LEGAL BARRIER FOR CSOs

The right of free association is recognized in article 9 of the Mexican Constitution and in multiple international conventions, which means citizens are free to associate to pursue a common goal -as long as it is a lawful one- without being required by law to register. CSOs have the freedom to choose whether they want to formally register under various mechanisms in order to ease their interactions with other actors, acquire certain rights, access some incentives and formalize their activities, among other reasons. When CSOs voluntarily decide to register, they are given new rights, but they also obtain new legal responsibilities.

CSOs that decide to register have the option to do so at a federal, state and even municipal level, and with multiple authorities for different purposes. This translates into a significant increase on their administrative and legal responsibilities.

Some of the systemic elements that make the process of obtaining registration and maintaining it very complex are:

- Organizations often have limited resources to finance the associated costs of obtaining registrations and complying with the obligations derived from them (costs may increase as they seek registration at various levels).
- Time invested in obtaining registration is another burden. The regulation may establish time limits for the duration of these processes to ensure the authority gives a prompt response; however, in reality organizations may invest considerable time understanding the requirements, seeking expert advice, getting internal documents ready and even transporting to the registration offices. The time spent in these processes adds up, as many organizations register to different mechanisms.
- CSOs rarely have access to professional guidance or advice, necessary to go through these processes successfully. CSOs may not have access to law professionals or accountants that have specific knowledge of the sector, especially outside Mexico City.

RECOMMENDATIONS:

- 1 Promote effective dialogue with the competent authority in order to make registration processes more efficient in terms of time, cost and administrative burdens.
- 2 Homologate the requirements and processes that are requested from different government authorities, both among federal authorities, and between federal, state, and municipal authorities.
- 3 Coordinate local registration mechanisms with the Federal Registry of CSOs, so as to allow the exchange of information and reduce information requirements for CSOs.
- 4 Train local government authorities so that they may guide CSOs on their registration process.
- 5 Promote more transparency and clarity on the obligations that CSOs obtain from each registration and avoid hidden processes.
- 6 Train law professionals in order to build a local system that supports the CSO sector with the administrative burden of the regulatory framework.

KEY FINDING 4: FISCAL REGULATION FOR CSOs GENERATES UNCERTAINTY; MAKES COMPLIANCE COMPLEX AND RISKS CSOs SUSTAINABILITY

From their legal constitution, CSOs acknowledge their activities as non-for-profit and their actions as a contribution to wellbeing, economic development and job generation.

According to the definition of the Federal Law for the Promotion of the Activities of CSOs, civil society organizations do not seek to profit from their activities, which would mean that they should have to be regulated as non-for-profit entities under Title III of the Income Tax Law.

However, due to the lack of knowledge and understanding of the sector, the fiscal authorities automatically consider CSOs that don't have the Authorized Donee Status (given by the fiscal authority) as for-profit enterprises. This places a big portion of CSOs in Mexico under Title II of the Income Tax Law, meaning they are expected to pay the income tax.

The Authorized Donee Status should be considered an option for non-for-profit organizations. A status that recognizes the public benefit activities that the organization carries out and therefore the need to incentivize the flow of private funds to support those activities, by exempting donations given to the CSO. In this sense, the Authorized Donee Status, as most tax provisions, is a public policy tool for the State to promote an activity that deems beneficial for the public good. It should not, however, be an obligatory status for CSOs, and it should not be a pre-condition to recognize their non-for-profit nature.

RECOMMENDATIONS:

- 1 Reform the Income Tax Law (article 79, fraction XXV) and remove the reference that only CSOs with the Authorized Donee status are to be placed under Title III (as non-for-profit entities). This would recognize that CSOs have a non-for-profit character and that they have a public value, therefore being exempt of paying the income tax.
- 2 Extend the decree to allow CSOs to exceed the 10% limit on the portion of their income that can be obtained from activities that are different from their social objective.
- 3 Eliminate the limit on the percentage of the CSOs income that can be used on administrative expenses. Otherwise, better define in the Law what “non-administrative expenses” are so as to provide legal certainty to CSOs, clarifying that those expenses necessary for the effective operation of the organization in the pursuance of its social objective are not to be considered “administrative”.

KEY FINDING 5: ADVOCACY ACTIONS BY CSOs TO IMPROVE THEIR LEGAL FRAMEWORK ARE FREQUENTLY A REACTION TO A PERCEIVED THREAT

The role that CSOs have taken to promote changes in legislation and public policies that affect them has frequently been circumstantial or a response to a specific measure that is perceived as a threat to the sector.

In order to make meaningful change, and to maintain the progresses gained, CSOs in Mexico need to build an agenda for strengthening the sector that goes beyond a specific moment or event. Organizations need to find common ground, beyond their specific causes, ideological affiliations and particular interests, and promote an agenda that can be proactive instead of simply reacting to perceived threats. Furthermore, CSOs and their allies need to expand their network of support by informing and raising awareness among decision makers and society in general of the value of CSOs to the public good, and by including the private sector more actively in the discussion.

- Advocacy for public policy modification and for legislative change can be eased through open dialogue mechanisms enabled by impartial organizations and institutions. These neutral spaces can help to build a safe environment, where different views are discussed without antagonizing.

- Legitimacy of the parties involved in advocacy is key: organizations, institutions and individuals that participate in the dialogue must be able to represent several groups and CSOs, assuring the inclusion of different perspectives.

RECOMMENDATIONS:

- 1 Generate mechanisms for effective dialogue through the involvement of various actors, in which participants commit to transparency and accountability (informing the rest of the actors of the proposals being presented and on the results of those negotiations), and where legitimacy concerns are addressed (by seeking representation of those affected directly by the regulation).
- 2 Promote debate within and outside the sector with a solid technical base.
- 3 Establish a long-term agenda that seeks to promote the growth of the sector, rather than having a short-term reaction to legislation initiatives.

The development and consolidation of a strong, dynamic civil society is essential to a healthy democracy and an invaluable ally to tackle down the complex challenges Mexico faces. However, for civil society organizations to be able to reach their potential and contribute to public good, they need a legal environment that guarantees their rights and enables their work.

The legal framework is not an accessory element in the promotion of the activities of CSOs. Laws do not only set the rules of the game, providing incentives and redistributing resources. Laws have also a strong symbolic power; they are the vehicle for the State to delineate priorities and send a clear message on what is socially desirable and what is not. This is why, even when not enforced, laws can affect perceptions and influence the behavior of the actors within the system.

In this sense, the norms illustrate how government authorities perceive civil society organizations. A legal framework that overregulates and imposes increasing mechanisms for control, conveys the message that the sector is not considered to be essential for the development of the country, but rather a burden and unworthy of trust. A legal framework that provides incentives and reasonable oversight, on the other hand, can be instrumental for the promotion of a strong civil society, help to promote collaboration among sectors and foster transparency and accountability. To the extent that civil society organizations can participate in the definition of a new set of rules, and advocate for a more enabling legal environment for their activities, not only organizations but the country as a whole with benefit.

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