

## 5TH EMES INTERNATIONAL RESEARCH CONFERENCE ON SOCIAL ENTERPRISE

### BUILDING A SCIENTIFIC FIELD TO FOSTER THE SOCIAL ENTERPRISE ECO-SYSTEM

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## **The legal framework for Solidarity Economic Enterprises in Brazil: backgrounds and perspectives**

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### **INTRODUCTION**

The social and solidarity economy currently goes beyond countries and continents. In Brazil, as well as in several Latin-American countries, these concepts usually refer to economic organisations aiming at financial gain for their members, but also benefits in terms of quality of life and citizen participation. Such goals are achieved mainly through a great effort which mobilizes the capacity of the associated workers. Because of their social and community embeddedness, these initiatives also fulfill a number of functions in the fields of health, education, environmental protection, etc., encompassing a multitude of social segments, agents and institutions.

Such initiatives have been emerging, step by step, since the 1980s, giving new amplitude to a history whose roots go further back in time but which is also discontinuous. The inconsistency of available statistics hinders even the analysis of those sectors that have a stable regulatory framework and a reasonable degree of institutionalization, such as cooperatives. Moreover, if there were systematic and comprehensive statistics on the most common forms of solidarity organisations, under the prevailing conditions of conceptualization, it would be inappropriate in most cases. The reason is that such organisations usually adopt one of the available institutional formats – basically association or cooperative – precisely because they lack alternatives more suited to their goals and their sui generis dynamics. As such, these choices are often an uncomfortable stopgap solution they find to avoid informality, but not a real membership.

Therefore, the solidarity economy has not identified itself with the associative sector or with the cooperatives. Its new enterprises are searching for their institutional identity and a compatible legal framework. As participants in a new wave of economic solidarity, they go against traditional institutionalised formats; this is particularly true of their main representative, cooperatives: there is no associative or cooperative movement in the solidarity economy, but instead a unanimous demand so that the Brazilian regulatory framework comprises new juridical forms, which should be consistent with concrete experiences and concepts generated from this field of practices.

For at least a decade the establishment of a legal framework suitable for solidarity economy has been one of the central points on the agenda of solidarity enterprises, supporting organizations and public authorities. Progress was made in some sectors, such as work cooperatives, but obstacles and difficulties persist, postponing the adoption of a specific national law. In addition to disputes between social actors involved in the solidarity economy, it faces major opposition from the traditional cooperative sector, whose

institutionalization occurred during the military regime, guaranteeing the uniqueness of representation and broad economic benefits for its own organisations.

To approach these subjects, the first section of this paper outlines the history of solidarity economy in Brazil, with a view to tracing the dividing line between older and more recent experiences. Particular prominence will be given to the unique characteristics of solidarity economy and the reason for its incompatibility with the legal alternatives currently available to its organisations (section 1). After highlighting the progressive political convergence amongst the main social actors of solidarity economy in legal matters, the text examines the main innovations covered by the current proposals for a national legal framework, underlining the main obstacles to its approval and establishment. As an example of these difficulties, the text ends with an analysis of the new cooperative work laws, a crucial sector as much for the solidarity economy as for traditional cooperativism in Brazil.(section 2).

## **1. THE LACK OF A SUITABLE REGULATORY FRAMEWORK**

In Brazil, the concept of solidarity economy typically refers to economic initiatives that aim at generating employment and income, as well as social benefits for their members and their social environment, such as an improvement in the quality of life and citizen participation. Solidarity primarily refers to cooperation in economic activities and in the socialisation of the means of production, thereby dissolving separation between capital and labour, typical of salaried employment<sup>1</sup>. Although the solidarity economy might be perceived as a recent phenomenon, due to its expansion and to the resulting gain in notoriety that it achieved in recent years, the solidarity economy gave new impetus and continuity to an extensive history, featuring countless experiences of popular solidarity. Indeed, in Brazil, as in Latin America in general, the solidarity economy has a long-running history, beginning with pre-Columbian indigenous forms of production and the collective systems adopted by freed slaves.

In the nineteenth century, some mutual aid initiatives (*caixas laborais* – collective funds pooled by workers) have been developed primarily by family farmers and urban labourers. In certain cases, these initiatives persisted as indigenous forms of organising and enhancing community life. However, the services provided, particularly in health and education, were generally incorporated into new institutional dynamics, primarily private (religious, mainly) and state philanthropy, often devolving into paternalistic patterns and contributing to the preservation of the hegemony of the political elites.

Associativism, in turn, since the nineteenth century played an important historical role, especially for small family farmers, from the moment it entered the Brazilian agricultural arena. However, the legal framework of associations is extremely ample: with few exceptions, it encompasses the entire gamut of individuals that unite to engage in common activities and have no economic objective. Community centres in peripheral urban areas, culture and leisure centres and large professional sports' societies, such as football clubs, are registered under the legal form of associations. Their activities can include remunerated professional labour and generate economic dividends, provided they constitute a means to fulfil the social goals of the associated entity and are not a source of private enrichment for its members. To make their activities viable, they are allowed to contract or create subsidiary companies, which can have a different judicial nature and be profitable. Given the impossibility of normalising such a vast and heterogeneous set of organizations, the functioning of each associated body is regulated according to its specific activities, in accordance with the respective regulatory framework, for which the associated judicial status makes no significant differentiation. Like third sector organisations (Fernandes 1994), associations are negatively defined in Brazil, more for what they are not (or cannot be) than for what characterises and unifies them. This sector has no specific morphology, identity, or general representative bodies.

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<sup>1</sup> As a result, in this country and on the Latin American continent, the solidarity economy is viewed by many authors as *another* economy, different from capitalism, or a future *alternative* to capitalism.

Therefore, not all associations played the same kind of role in the emergence of the solidarity economy. As mentioned, associations have a broad legal framework, which encompasses all bodies of people that come together to carry out ordinary activities, provided they differentiate themselves from more specific organisations (churches, foundations and political parties) and have *no* economic purpose. As such, associativism remained devoid of individual personality and representation mechanisms, and was in the past largely co-opted or encouraged to function as an additional constraint for oligarchic domination<sup>2</sup>.

Although the associative legal framework leaves the door open to a series of ambiguities and contradictions, it contains an element of considerable interest to the solidarity economy: the power of decision must be exercised under conditions of equality by associated individuals, with no interference from their shares of capital or from their economic participation in the associated entity. That is why there are many stories behind associations, including that of truly popular associativism. Since the 1970s, against the backdrop of demographic flows that resulted in today's urban centres, associations have been a popular instrument of organisation and struggle for housing rights and better living conditions. Community associations played a clear role as the mainstay of broader social mobilisations, such as democratic disputes and electoral clashes that led to the revival of political parties and more left-wing governments. At the same time, associations functioned as the centre of local initiatives, driving them and providing institutional safeguards. The association is currently the predominant legal format in the solidarity economy. Community projects aimed at income generation and economic development also sought the legal support of associations. The result is a hybrid: socially-based community activities merge with enterprises with an economic purpose, in itself devoid of legal support. This solution avoids complete informality, but postpones economic formalisation of the enterprise, which is then deprived of the prerogatives and advantages of the lawful exercise of its activities.

Comparing cooperatives, mutual societies and associations, we might state that only cooperativism - though permeated by different concepts and interests - reached institutional level in Brazil. Cooperatives were originally introduced in the country by European immigrants, in the late nineteenth century, as a way to overcome the conditions of blatant abandonment in which they lived. These early forms were consumer, credit and farming cooperatives; they were particularly present in southern Brazil, a focal point for European colonisation. Consumer cooperatives expanded in the 1950s and 1960s. Subsequently, urban cooperatives showed signs of stagnation, attributable to official discouragement, resulting in a series of obstacles to their growth and survival. As economic development favoured the expansion of large capitalist corporations, it boosted these capitalist corporations to replace services previously provided by cooperatives (Schneider and Lauschner 1979).

Agricultural cooperatives were in turn gradually encouraged during the 1970s with a view to expanding agricultural productivity in response to demographic growth and the need to increase exports, in accordance with the development plans of military governments in power since 1964. Moreover, the competitive demands of the market made it impossible for small cooperatives to survive. Since then, the predominant type of agricultural cooperativism in Brazil has restored the dominance of the conservative elite, aimed at primarily agro-export economy (agribusiness) and serving as a corporate alliance mechanism highly sensitive to economic power. This explains its dependence on government policies and the abilities of its leaders to deal with the state.

The lack of an appropriate legal framework for the solidarity economy is particularly connected with the history of cooperativism. National cooperative legislation was established during the military regime, by Law 5.764, of 1971. It bowed to the interests of entrepreneurial cooperativism, a sector that keeps the Organisation of Brazilian Cooperatives (OCB) under control. The law is very generic; it aims to promote and regulate cooperativism, but imposes bureaucratic demands that hinder the formalisation of solidarity

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<sup>2</sup> In inland areas of the country, it was common practice to create or favour associations in return for the loyalty of members to lords (commanders and colonels), reproducing in this way the political power of the ruling elites.

enterprises. Because of its historical origins and political profile, the OCB lacks legitimacy to attract cooperatives from new sectors, which explains the emergence of independent currents, such as the Confederation of Agrarian Reform in Brazil (CONCRAB), linked to the Landless Rural Workers Movement. For similar reasons, cooperatives identified with the solidarity economy keep their distance from the OCB, usually providing information only for strictly legal bureaucratic purposes, in accordance with their regulatory body's requirements.

This framework has been initially supported by a policy of social control and state intervention that brought no significant changes for cooperatives' workers in rural areas. During decades, cooperatives had served small-scale farmers as an instrument of economic development, strengthening communities and remaining accessible and close to the farmers' interests; but the new model imposed since the 1970s contributed to instilling distrust of cooperativism amongst these farmers. Urban cooperativism, on the other hand, gained new impetus with the creation of several labour cooperatives in the 1980s. During the rapid growth of these cooperatives, up until the 1990s, several studies indicated that they were largely a means of making work relationships flexible, outsourcing services and reducing labour costs (Lima 2007; 2008)<sup>3</sup>. However, genuine cooperatives, such as recovered factories, were also identified, appearing as one of the first forms of the solidarity economy.

We may state that on the few occasions where cooperatives carried considerable weight, they faced significant obstacles to maintain their own structure and role as an alternative to the prevailing forms of economic organization. Their predominant function was that of strengthening the market economy, or they were an instrument to compensate for the social ills caused by economic development. In this contradictory context, the solidarity economy gave rise to a new generation of cooperatives, motivated by the belief that, though imperfect, this format was the most comprehensive self-management model of economic solidarity and the basis of a system capable of catering to the needs of workers. To that end, solidarity cooperatives have aligned in favour of a new model that questions the political profile and impasses of the cooperative sector, related to inconsistency in its doctrinal principles and historical development. This model would replace traditional cooperativism and recover cooperatives made obsolete by the centralisation of power or created fraudulently, as a corporate ploy to evade social contributions. However, the success of these strategies and the viability of solidarity cooperatives depend on their ability to create socioeconomic environments that strengthen them and convert them into a unique and expandable element within the current economic system.

*Last but not least*, from the 1970s onwards the spread and perseverance of informality in urban areas led to the realisation that it formed part of broader survival strategies, through which informal categories organised themselves and established mobilisation fronts. Indeed, new social movements emerged in the rural-urban fringe, fighting for housing, urban services, income and the right to work. Community initiatives multiplied and gradually aroused the interest of civil organisations, such as Christian churches inspired by Liberation Theology and microfinance institutions, creators of the so-called "women's banks", predecessors of current solidarity lending initiatives. Grassroots communities, residents associations and family farmer's associations sprung up, giving rise to the first collective income-generation experiences in the 1980s - the origin of the solidarity economy in Brazil and many Latin American countries.

Informal and primarily urban groups account for 30% of the enterprises surveyed by the second National Solidarity Economy Mapping (Gaiger *et al.* 2014); their share has almost tripled in the last decade. When

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<sup>3</sup> The phenomenon of the increasing number of false labour cooperatives significantly inflated the figures of this sector and resulted in numerous criticisms, in addition to feeding scepticism of cooperativism itself. Since statistics do not distinguish between authentic and false cooperatives, this mission is the exclusive responsibility of supervisory agencies, whose involvement has led to contestations regarding their excessive severity and the fact that they are based on inappropriate legislation, which does not differentiate cooperatives from other companies.

these enterprises thrive despite their informality, it is a sign that their members have abandoned the traditional attitude of constantly adapting to circumstances and view their activity as a force capable of creating new situations and influencing the pace of their targeted changes. This transformation is favoured by the use of individuals' primary resources and their social relationships, converting commensal relationships based on personal ties and customs into an enterprising and solidary economic logic, sustained by cooperative relationships (Razeto 1990). Equipped with this new foundation, informal enterprises mitigate the instability and uncertainty that affect the life of the poor by extending the retention limits of the surplus value they produce. From the point of view of economic culture, these enterprises contribute to the rationalisation of solidarity since they promote its intentional and daily implementation (Gaiger 2006). At the same time, they provide valuable work experiences that encourage the formation of new subjects (Veronese 2008).

However, from a regulatory point of view, the situation of informal enterprises is definitely the most discrepant. Not only in Brazil, but in Latin America as a whole, informality is a trait of the popular economy, and a crucial aspect of the solidarity economy. Within informality, in its peculiar social logic, there is a number of habitual forms of popular solidarity that must be understood, especially in urban areas<sup>4</sup>. In informality we face forms of the economy which can be considered as instituted, judging this fact from the viewpoint of guideline compliance (even though such guidelines are sometimes implicit), which determines a standard for business. It does not function without rules, though; rather, informal enterprises auto-regulated. Yet, informality involves organisations deprived of a framework in the national legislation.

## 2. THE STRUGGLE FOR OFFICIAL RECOGNITION

The legal neglect of the solidarity economy is a generally well established (Gonçalves 2005; Kruppa *et al.* 2012) if unsurprising fact: since its beginning, solidarity economy "tied itself to the needs of groups historically excluded from access to public policy formulation and, as a result, to processes of development" (Da Silva and Silva 2015: 91). This scenario partially changed in the last two decades, beginning with the coalition government led by the Worker's Party, in such a way that solidarity economy has gradually become part of the State agenda in Brazil.

In institutional terms, the politics of solidarity economy unfolded initially in municipal and in some state governments, driven by the demands of the organized networks of the solidarity economy that one encounters in governments of the left, sensitive to these demands. The first Brazilian experiences of this nature began in the 1990s, in the city of Porto Alegre, followed by other municipalities of cities in Rio Grande do Sul and of other states, such as the cities of Belém (Pará) and Santo André (São Paulo). In the 2000's, one notes the cases of the cities of Recife (Penambuco) and of São Paulo, significantly increasing the number of municipal governments that developed politics for the promotion of the solidarity economy, the overwhelming number being governed by the Worker's Party. At the level of state governments, the main instance of pioneering public policy is that of the government of the State of Rio Grande do Sul (1999/2002) that subsequently served as a reference in the establishment of national public policy. Subsequently, other States assumed policy for the solidarity economy, amongst which one can observe the governments of Bahia, Pará and Acre" (Dubeux *et al.* 2011:13).

A survey conducted in 2011 (Gaiger 2012) identified 22 ministries (out of 37) with programmes related to solidarity economy. Particularly prominent were policies on healthcare, productive inclusion, land reform, security, citizenship and, primarily, the set of policies and programmes of the National Solidarity Economy Secretariat – SENAES, part of the Ministry of Labour and Employment. National public institutions, such as the National Bank of Economic and Social Development (BNDES), guaranteed funding for important EES support programmes. In addition, 15 of the Federation's 27 states carried out some solidarity economy supporting initiative, including 9 provincial laws aiming at fostering the solidarity economy<sup>5</sup>. This multitude of

<sup>4</sup> In accordance with the second national review, 59% of informal EESs are concentrated in urban areas (Gaiger *et al.* 2014).

<sup>5</sup> Gonçalves (2005) presents various pioneering initiatives of public import to the solidarity economy, mainly at the state level in the legislative context.

initiatives prompted the creation of the Solidarity Economy Public Manager's Network, favouring the exchange and confluence of policies. A more recent and highly relevant factor was the recognition and incorporation of solidarity economy into the *Brazil without Extreme Poverty programme (Brasil sem Miséria)*, possibly the most cross-cutting and far-reaching government initiative in the country's history aimed at reducing its severe social and economic inequality.

However, there remains an absence of a general regulatory framework for solidarity economics. This framework should meet four objectives, according to the conclusions of the 2<sup>nd</sup> National Solidarity Economy Conference (2010): a) recognize the essential characteristics of solidarity economy enterprises b) institute public policy of specific relevance to these enterprises, including budgetary support to ensure permanent resourcing c) define the scope of the jurisdiction of the State, with a national reach and efficacy, d) promote the institutional strengthening of solidarity economy initiatives and public policy.

When postulating this legal recognition, the interested social actors of the solidarity economy have in their favor an ample national consensus regarding the fundamental characteristics of the economic organizations in question. This consensus reflects itself in the term "solidarity economy enterprise" term "solidarity economy enterprise" (*empreendimento econômico solidário*) and its acronym EES, adopted gradually in Brazil over the 1990s, when the solidarity economy became the preferred expression over other names, such as socioeconomic solidarity, popular solidarity economy or self-management economy<sup>6</sup>. As its use became more common, it served different purposes - outlining the universe of civil authority expertise or the scope of public policies; ensuring the unity of organisations participating in networks, forums and other forms of social mobilisation; or still for academic purposes in empirical research and theoretical studies. These simultaneous applications of the term have spontaneously made it somewhat inaccurate, producing a set of language whose underlying meaning encompasses different perspectives, sometimes with normative connotations related to assumptions and goals of transforming reality. Particularly on this last front, the concept has been the subject of extensive debate, agreements and revisions, largely on the part of major agents in the field, such as the Brazilian Solidarity Economy Forum (FBES), the National Solidarity Economy Secretariat and the National Solidarity Economy Council (CNES), which are legally responsible for outlining the conceptual and programme guidelines of state action and, indirectly, for social movement support institutions<sup>7</sup>. This joint construction produced a widely accepted conceptual reference, functioning as a common denominator in the essential characteristics (effective or desirable) of EESs.

## 2.1. THE GENERAL LAW OF SOLIDARITY ECONOMY

Such convergence advanced significantly at the National Solidarity Economy Conferences held in 2006 and 2010. The Final Document of the 1<sup>st</sup> Conference<sup>8</sup> states that:

"3. Solidarity economy is, therefore, a means of organising production, distribution and consumption based on the equal rights and responsibility of all participants in solidarity economy enterprises. The means of production of each enterprise and the goods/services it produces fall under the control, management and collective ownership of its members. Likewise, there are associations, cooperatives and informal consumer groups, small-scale individual or family farmers and service providers that work separately (each in their own establishment), but are engaged in the joint purchase of supplies, marketing or processing of their products (...). 5. Solidarity economy initiatives have in common equal rights, responsibilities and opportunities for all participants of solidarity economy enterprises; this implies self-management, that is, democratic participation with the exercise of equal power for everyone in decisions, aimed at overcoming the contradiction between capital and labour." (Final Document, 1<sup>st</sup> National Solidarity Economy Conference, authors' own translation).

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<sup>6</sup> The gradual consensual adoption of the term solidarity economy and its underlying vision were the object of a thesis on the sociology of knowledge (Lechat 2004).

<sup>7</sup> The FBES, founded in 2003, is an important element of unification for the organisations and is responsible for national conferences and social mobilisations. The CNES, created in 2006, is the largest public authority with representatives of organisations from different sectors of the state and civil society.

<sup>8</sup> Available in: [http://www.fbes.org.br/index.php?option=com\\_docman&task=cat\\_view&id=332&Itemid=18](http://www.fbes.org.br/index.php?option=com_docman&task=cat_view&id=332&Itemid=18).

These defining characteristics of EESs have been specified and listed in the preparatory document for the 3<sup>rd</sup> National Conference<sup>9</sup> (held in November 2014) and incorporate the decisions made previously. According to the National Solidarity Economy Secretariat and the National Solidarity Economy Council, authors of the document, an EES should:

- I. Be a collective, single or complex organisation whose members or associates are urban or rural workers;
- II. Carry out economic, socio-environmental and cultural activities that are the main reason for the organisation's existence;
- III. Be a self-management organisation whose members or associates collectively manage their economic activities and determine how results are shared through transparent and democratic governance, sovereignty of the general Assembly and the individual votes of members, complying with its statute or internal regulations;
- IV. Be a permanent organisation, considering both enterprises in operation and those being implemented; in the case of enterprises being implemented, the group should already be defined and the economic activities, established." (Authors' own translation).

This understanding regarding the typical features of EESs guided joint initiatives in favour of a new national legislation suited to the solidarity economy. A national campaign for a Popular Initiative Law<sup>10</sup>, led by the Brazilian Solidarity Economy Forum, provides a similar characterisation of EESs to that proposed by the National Congress itself, particularly Bill 4.685/2012, still under consideration, which establishes a national policy, a national system and a specific fund for the solidarity economy. Article 4 of this Bill considers EESs as having the following simultaneous characteristics:

- I. A solidarity economy enterprise is a collective, single or complex organisation whose members or associates are urban or rural workers;
- II. The enterprise's economic activities are the mainstay of its existence;
- III. The enterprise is a self-management organisation whose members or associates collectively manage their economic activities and determine how results are shared through transparent and democratic governance, sovereignty of the general Assembly and the individual votes of members, complying with its statute or internal regulations;
- IV. The enterprise's members are directly or predominantly involved in achieving its social objective;
- V. The financial results of the economic activity are distributed according to the decisions of the enterprise's members, considering the economic operations performed by the collective;
- VI. The enterprise holds at least one quarterly general meeting to decide on issues related to the organisation of its activities; and
- VII. The enterprise allocates part of its net operating income to other equal organisations experiencing difficulties in their constitution or consolidation, in favour of community development and for the political, economic and social formation of its members.

Paragraph 1. For the effects of this law, solidarity economy enterprises may take different corporate forms, provided they include the characteristics mentioned above.

Paragraph 2. Enterprises whose corporate purpose is the intermediation of the subordinate workforce will not be considered as solidarity economy enterprises". (Authors' own translation).

These examples sufficiently illustrate the existing political convergence surrounding the EES concept. At the same time, they serve to reinforce certain traits of the EESs, such as: the emphasis placed on the economic

<sup>9</sup> Available in: [http://portal.mte.gov.br/data/files/FF8080814373793B0143BB08893640E8/Texto\\_de\\_Referência\\_-\\_gráfica.pdf](http://portal.mte.gov.br/data/files/FF8080814373793B0143BB08893640E8/Texto_de_Referência_-_gráfica.pdf).

<sup>10</sup> This initiative uses a constitutional provision that stipulates the referral of legislative proposals by citizens through a minimum number of signatures.

function of EESs; the fact that they are managed by the workers (or consumers, or users) themselves, who participate in its activities and are members and holders of capital; the goal of achieving economic results and the legitimacy of their redistribution amongst members, primarily in exchange for the work provided by members<sup>11</sup>; finally, the fact that they are self-managed, a concept that goes beyond democratic governance.

The law reform bill 4.685/2012 has been in passage in the National Congress since 2012 under the initiative of the Solidarity Economy Parliamentary Front (FPES). It counts on the support of the Brazilian Forum of Solidarity Economy, and of representative groups, from the National Union of Cooperativist Solidarity Organizations (UNICOPAS) and the federal government, through to the National Secretary of Solidarity Economics, the Ministry for Work and Employment (MTE), Social Development (MDS), Agrarian Development (MDA) and Education (MEC). Its institutional passage followed a steady though slow path, receiving improvements in various legislative assemblies. In 2014, when it was ready to leave the Chamber of Deputies to be evaluated by the Federal Senate,<sup>12</sup> the Commission of Agriculture, Livestock, Fuel, and Rural Development (CAPADR), requested its analysis, where it remains until the present moment. This commission unites interests connected with land management and the agriculture industry in Brazil, whose representatives are concentrated in the Parliamentary Livestock Division (FAP). This group, connected to the Organization of Brazilian Cooperatives (OCB) associates itself with this front, in its turn, organized via the Cooperative Parliamentary Front (FRESCOOP)<sup>13</sup>, refractory to the General Law of Solidarity Economy.

Following from this, the representatives of the economically dominant and politically hegemonic factions of Brazilian cooperativism constitute at this moment the greatest obstacle to the installation of a legal framework for the solidarity economy. The main intention of this framework would be precisely that of legalizing forms of associative and cooperative economy. The reasons for this impediment are clear: the OCB is resistant to the idea of losing its prerogative as the only legal representative of the cooperatives in Brazil, according to current understanding within the General Law of Cooperatives (5.764/71); the OCB also does not admit that the economic associative act could be the legal object of other social modalities [corporate forms] beyond the cooperative one, as the Law Reform Bill 4.685.2012. stipulates. In both cases, it would lose the power that was initially given it by the military regime.<sup>14</sup> Beyond this, its strategy of dealing

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<sup>11</sup> This criterion distinguishes this surplus from the private generation and appropriation of profit.

<sup>12</sup> In the bicameral system of the Brazilian National Congress, law reform proposals can originate in the Chamber of Deputies (513 deputies) or in the Federal Senate (81 senators), it being necessary to have approval in both, before it can be sent for presidential sanction.

<sup>13</sup> FRESCOOP was created in 1986, being one of the oldest parliamentary fronts of the national congress. It counts, in 2015, on a significant group of 239 parliamentarians. It is a cross bench front with members from throughout the ideological spectrum present in the congress, but with a clear leadership and management by parliamentarians connected with the rural and enterprise cooperativism sectors.

<sup>14</sup> The Current General Cooperativism Law, Bill 5.764 passed in 1971, attributes to the OCB the function of “representing and centralizing all the measures related to cooperativism in Brazil”, beyond obliging all the cooperatives to register with the OCB, with the authorization of the formation and functioning of affiliated cooperatives remaining its jurisdiction. In 1988, the new Federal Constitution guaranteed the rights of liberty of organization and of “non-intervention of the State in the functioning of cooperatives”, withdrawing with this the public prerogatives of the OCB. However, it continues to act as a federal body, controlling cooperativism. One currently sees a situation of nonconformity of the Law 5.764/71 with the constitutional intentions established in 1988 and of its violation by the insistence of the OCB in maintaining its controlling role, which acts for example, to vet the register in the commercial juntas of the cooperatives which refuse to affiliate themselves with the OCB. “Beyond having its representativity guaranteed from top to bottom, guaranteeing even unity in its interior which it probably would not have without the Law 5764, the OCB also has privileged access to public funds, which other representational entities are far from achieving. It is the case with the resources of the SESCOOP [National Service of Cooperativist Learning], managed through infra-legal determination by the OCB and which guarantees for the entity the management of a budgetary resources that greatly surpass the totality of the resources of the federal government for direct support to the cooperatives” (Kruppa *et al* 2012: 39/17/47).

with dissent through changes to the cooperative system by way of specific adjustments to the current law, equally in transit through the national congress, would remain weakened.<sup>15</sup>

It is a dispute subject, for political, economic, and ideological reasons, to grave consequences. The current bottleneck and the doubtful chance of victory for the solidarity economy in the short term, clearly reflects the impediments to institutional innovation in Brazil, particularly regarding the formation of the public agenda and the conduct of the agents involved.

In the case in question, the economic and corporative interests of the already well organized business community are in play, having at their disposal efficient mechanisms of representation and influence over the legislative and executive powers. The national congress constitutes, naturally, one of the principal spaces for this action. Given that the system of financing of parties by businesses, amongst other factors, has permitted economic power to impose itself on party political interests and to broadly determine the result of electoral decisions, such financial contributions become decisive and demand their pound of flesh, distancing legislative decisions from ideological or programmatic considerations and making pragmatic agreements of a deterministic nature prevail. Defensive bodies involved in these practices, like the OCB, which counts on a means of penetration in the political arena without encountering further resistance, does so in such a way that the coalition governments, though directed by reformist parties, need to tolerate and make use of the same techniques. Given this, the Livestock Parliamentary Front, widely known as the *ruralist front* effectively integrates parliamentarians united in the FRENCOOP, which in this way maintains the national cooperative system under its control. Beyond this, the ruralist front has been strengthening itself, a fact which became clear in the back tracking to the right which occurred in the general elections in 2014, in which 139 deputies were reelected. It counts today on 257 deputies, amongst 513 in the congress. It is enough to remember beyond this, that it includes amongst its hosts the current Agriculture Minister, ex-president of the main corporative organization of the sector, and the Confederation of Agriculture and Livestock in Brazil (CNA).

The experience and capacity for integration of these sectors is much greater than the power for action of the forces of innovation and resistance to these dominant interests, who refuse to employ the same techniques or lack the economic ballast in its represented body to negotiate its proposals on an equal footing. Behind the political visions related to cooperativism, one finds broader questions, connected to land management, economic models, and to reproduction, with pragmatic aims, of the current political system. According to data of the Federal Chamber, the Parliamentary Front of Solidarity Economy counts, in the current legislature, on 203 in the congress, as such, on a considerable number of votes. However, its fragility is similar to that of the government's, whose solidarity economy politics remain restricted to certain areas, sometimes in a peripheral manner and strongly subject to the circumstances and misadventures of the State apparatus. The conciliatory politics instituted starting from the first mandate of president Lula, in 2013, has permitted incremental advances, as already seen, but distances solidarity economics from the agenda for discussion in the centers of power. The executive, in this and other questions of relevant social interest, shows itself generally reluctant, or ends up giving margin to political forces contrary to innovation but paradoxically installed in government. "The environment of the intersection of the executive and the legislature being the exact place in which one aggravates the conflicts of interest between the social classes and the antagonistic groups", one finds "profound disequilibrium in the relation between independence and harmony" (Da Silva and Silca 2015: 94), in favor of interests solidly represented by the national congress and in detriment to the new politics implemented or intended by the Executive.

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<sup>15</sup> In the legislative front for reform of the General Law of Cooperatives, the last advance was achieved by the supporters of the solidarity economy with the approval by the Federal Senate (16/12/2014) of a substitution which guarantees the liberty of association of the cooperatives, authorizing them to affiliate with the OCB or the UNICOPAS, to neither of them, or to both of them. The proposal is still to be voted on by the Chamber of Deputies.

A third impediment to innovation of the nature of a national regulatory framework of the solidarity economy is resultant on the form of these proposals and of the very dynamic of the social movements active in such reforms. In the case of the solidarity economy, there was an ample discussion between the diverse social actors involved, through the multiple forums and plenary that culminated in the 2<sup>nd</sup> National Conference of Solidarity Economics (2010), with the proposal of the already cited General Law of Solidarity Economy, with a base in the Law Reform Bill 4. 685/2012. It was however an internal discussion, strongly led by social transformative forces or by a break with the status quo, interrupting the incremental changes realized during the period, and, owing to this, with restricted power of penetration in the public agenda and of mobilization of sympathetic elements who could act as potential allies. The lack of an institutional unity at the level of the OCB, which the relevant parties sought to overcome with the formation of the UNICOPAS<sup>16</sup> in 2014, has been another limiting factor on the solidarity economy.

The current problematic situation does not permit the making of a diagnosis, it being probable that the proponents of the new national law on solidarity economy persist in their proposals, against the visible inequality of forces. Two basic questions are in play: a) the character of the legislative propositions in question, whose principal points of disagreement coincide, on one side, with the uniformity or diversity of the social form of cooperative and associative tendencies and, on the other hand, over the unity or plurality of the representation and affiliation of such organizations; b) the principal object of legislative deliberation, which can be as much the General Law of Solidarity Economy (Bill 4.685/2012) as the General Law of Cooperatives (Bill 5.764/1971), or both. In the second case, remodeling should occur in the cooperativist system, but only with difficulty there would be a frank openness to para-cooperative forms of organization, such as the informal efforts of the solidarity economy, and to a decentralization of power in the interior of the system.

## 2.2. The new Law of the work cooperatives

The law reform bill 4.685/2012 establishes the general basis for the regulatory framework of the solidarity economy. Its principal innovation is that of constituting the EESs as the subject of rights, though its specific juridical forms remain indeterminate in law. It does not define new social forms, a question that remains relegated to complementary legislation. In this manner, for the EESs to effectively possess the guaranteed rights, normative work that regulates new societal forms and establishes criteria relevant to the constitution and their functioning and management becomes indispensable.

Undoubtedly, this will be the case of the informal EESs and of those who adopt for the moment the juridical statute of association, amply supported at the present moment<sup>17</sup>. It will probably be necessary to have in mind existent models in other countries, such as social businesses (Nyssens, 2006). Revising the juridical guidelines of the micro and small businesses (MPE) or of individual micro businessmen (MEI), to be able to incorporate associative entities, would be another way. The most probable outcome however, is that one seeks to renew the legal framework of the cooperative, since one deals with a historical model of reference which is identified as the principal representative organization of the solidarity economy. There are ideological and juridical reasons for this:

“Even though Cooperativism and the Solidarity Economy cannot be confused, cooperative societies are the only entities that can formally bring together the inherent characteristics of solidarity economy enterprises given that they realize economic activity without the pursuit of profit, the management of the society is democratic, the possession of the means of production is collective between the workers which they utilize for

<sup>16</sup> The UNICOPAS unites the main solidarity economy organizations in Brazil: CONCRAB (cooperatives of the Landless Agriculturalists Movement, connected to agrarian reform), the UNICAFES (Cooperatives of Familial Agriculture) and UNISOL (Cooperatives of Solidarity Enterprises).

<sup>17</sup> According to final data from the second national review of solidarity economics, 60% of the EESs are associations, 30.5% are informal enterprises, and 8.9% are cooperatives (Graiger *et al.* 2014).

the realization of their activities, and the distribution of the production occurs in a manner proportional to the participation of each one in the operations of the enterprise. Beyond this, according to the trend, social capital is limited, a single partner being unable to subscribe more than 1/3 of the totality, according to what the article 24, § 1º, of the Law 5.764/71 establishes, and this, such that the withdrawal of a partner would not threaten the continuity of the enterprise” (Miranda 2009: 43).

Legislative deliberations of this nature have been occurring over recent years, such as the Law 9.867/1999 which instituted the social cooperatives. These advances gave margin for optimism: “if we accept that solidarity economy enterprises are cooperative societies, we will be resolving the problem of the judicial framework, it being necessary to simply fit with the already existent one” (Gonçalves 2005: 3). However, a persistent effort of “institutional entrepreneurship” (Lawrence and Suddaby 2006) will be necessary. The option for the revision and amplification of the cooperative framework will face historical adversaries of the solidarity economy, before a vacillating executive power and a discredited national congress, unworthy of confidence, but, even with this being the case, the holder of the last word.

A maybe more decisive, additional challenge, resides in the probable lack of convergence between the visions and proposals of the supporters of the solidarity economy. Even after innumerable debates and attempts at agreement, it is probable that the discordant positions will prevail, creating fissures and bringing fatigue to sectors overcome or obliged to concede their positions. In this scenario we already have an important precedent for the occasion of the reform of the juridical framework of the work cooperatives that culminated with the approval of the Law 12.690/2012. Despite resulting in a united effort of public power and civil society, the new legal statute was not welcomed by all. To the contrary, it received disapproval and divided opinions, including those of the representative entities that allied themselves to form the UNICOPAS.

The passage of the Law 12.690/2012 took six years, its regulamentation by the complementary legislation and its effective application to the work cooperatives still being in process. The origin of the proposition of a regulatory framework for the work cooperatives was the increase of this type of cooperative starting from the 1970s. This movement spread in the 1980s, in reaction to structural unemployment and to company insolvency, provoked by technological and organizational changes. Another of its causes was the emergence of alternative forms of production, such as recuperated factories (Lima, 2006). At the moment of their greatest expansion, various studies showed that these cooperatives were generally a way of making work relations more flexible and precarious, outsourcing services and diminishing labor costs (Lima, 2002; Piccinini, 2004). The peculiarities of the genuine work cooperatives, such as those that identified with “self-managing enterprises” or were profiled under the name of solidarity economics, were only recognized later on, a fact that led to a number of authors relativizing the dominant theses, generally pessimist, regarding the character and the possibilities of the development of these cooperatives.

As we saw in a previous study (Gaiger and Anjos 2011), in this context two situations have been visible: on one hand, the purely superficial cooperatives that exploit the legal framework to make use of low cost labor, by way of outsourcing and subcontracting, maintaining as such the social division between capital and labor and depriving workers of social rights; on the other hand, the genuine cooperatives, born of a premeditated and deliberate associative act by workers, with the objective of providing work and income to its members by way of the production of goods or the provision of services. In this case, the functioning of the cooperative should be periodically defined in collective instances and decision making councils.

“In reality, not all the work cooperatives contracted by firms are false. A good number of them are formed by unemployed workers, who dispute their previous employment with labor go between. For them the loss of rights is already a consummated fact and if they were obliged to find employment as outsourced labor they would possibly suffer beyond this a marked drop in salary. Other labor cooperatives are made up by workers who were paid by intermediary companies and who preferred to organize themselves in cooperatives to be able to make use of part of the gain that those companies obtain at their costs” (Singer 2004: 4).

The Law 12.690/2012 offers an indispensable legal framework to one of the sectors of greatest relevance within cooperativism, owing to its numerical presence and to its potential to demonstrate the viability of forms

of economic production that avoid the situation of subordination resultant on salaried labor, or the fragility of individual worker autonomy, especially in the case of workers of modest resources and low wages. In the first place, the Law judicially defines the labor cooperatives as a specific type of economic society based on collective work and self management. For this reason, the cooperatives in which labor is potentially individualized, leaving them destitute of associative and democratic life, were excluded<sup>18</sup>. In contrast, the Law demands effective practices of democratic management, especially through the greater role given to the assembly of partners. In second place, this new legislation seeks to counteract the destabilization of labor by considering worker's rights as irreducible human rights (Kruppa *et al.* 2012: 71) and demanding the observance of a basic set of rights and guarantees in all of the cooperatives, as guaranteed in the Federal Constitution. The cooperatives were also obliged to respect health and safety work regulations. In third place, the Law reduces the minimum number of partners, from 20 to 7. With this, it resolves a judicial controversy whose most serious effect was to impede small associated work initiatives from converting themselves into cooperatives and collecting the benefits of their formalization. At the same time, the Law instituted forms of support to the cooperatives through the public power, via the National Program of Promotion for Labor Cooperatives – PRONACCOOP.

The promulgation of the Law required the resolution of a series of equivocal or contrary positions, especially in the Brazilian judicial sphere, making use of foreign legislation and of current understanding regarding Recommendation 193/2002 of the International Labor Organization (OIT), that seeks to promote the cooperatives, for this. During our debates and after entering into effect, one of the important arms of solidarity economics, represented by the Centre of Solidarity Cooperatives and Enterprises (UNISOL), maintained itself favorable, while entities like the Confederation of Agrarian Reform Cooperatives in Brazil (CONCRAB), the National Confederation of Agricultural Workers (CONTAG) and the National Movement of Collectors of Recyclable Material (MNCR) expressed disagreement. Paradoxically, one of the most enthusiastic entities, in this case, was the OCB:

“What one proposes is a decent work and salary relation, sustained by the conjoined effort of citizens that chose to be cooperativist. And, in this context, the new norm presents, amongst other diverse benefits, the guarantee of some of the social rights of the worker already guaranteed in the Federal Constitution of 1988. It comes to valorize the legitimately backed cooperatives, created by the initiative of the workers themselves, and combats the prejudice that labor cooperativism is synonymous with precariousness and cheap labor. Contrasting with this perception, the sector would unite exclusively professionals that opt for self management. This would be, in truth, its great differentiator. Therefore, cooperatives constituted contrary to cooperativist principals, that have in mind individualism and not the collective will be excluded. With the advent of the Law n.º 12.690/2012, the group will count on greater judicial security and access to all the markets, including in the field of outsourcing” (OCB 2012b:5).

The objections to the new Law vary, from arguments regarding the vulnerability of rural workers to form cooperatives, or to meet the worker's rights according to the new legal dispositions, to allegations related to the incapacity of institutions of oversight and auditing to reprimand and punish fraud. There has also seen a certain legal imprecision which remained. It was also opined that the “new law creates a barrier of costs for popular initiatives to constitute themselves as labor cooperatives, especially those of production”, which would culminate “in the maintenance of informality of the smaller production group and with greater necessity for technical assistance and revenue generation” (Pereira and Silva 2012: 71). The defense of the autonomy of the cooperatives, supposedly achieved by certain restrictions of the Law in question related to the

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<sup>18</sup> In accordance with the Law, cooperatives of “associated production”, in which the work process is undertaken individually and the final products are aggregated, as well as health assistance cooperatives and in the greater number of cases, transport cooperatives, and cooperatives of liberal professionals and doctors were excluded. The density of associative action can be measured by the relation between incorporated partners and employed workers. According to data of the OCB referent to 2011, in labor cooperatives in general there are 69 associates for each employee; in the transport cooperatives, 15 (OCB 2012a).

remuneration of labor, amongst others, would lead certain categories of worker to require its exclusion of the application of the law, “similar to what CONTAG did for the rural workers” (Pereira and Silva 2012; 72).

### 3. FINAL CONSIDERATIONS

The problem is that there are no other ways of creating an institutional environment and culture receptive to associated labor. In this manner avoiding retreating before possible advances seems to be the better option. The cooperative sector is heterogeneous, as is in its way the solidarity economy, which makes the formation of consensus able to perceive what is essential or secondary in the construction of an appropriate judicial framework difficult. This process does not seem viable, if not other than through progressive incremental means, capable of dealing with the current contradictions:

“in this way, and not by accident, one maintains in effect the Law 5.764/1971 – that defines National Cooperative Politics and establishes the judicial regime of cooperative societies – forged during the period of the military dictatorship, especially to benefit the project of “conservative modernization” of Brazilian agriculture; and one constructs a new law, supposedly favorable to “authentic” cooperativism and to the solidarity economy that does not find itself recognized by any <sup>19</sup> of the country’s principal worker’s organizations” (Pereira and Silva, 2012: 73).

Similar conditions characterize advances in other fields of interest for the solidarity economy, such as the social cooperatives (Penafiel and Pinho 2015) and the national politics of residual solids, of great impact on cooperatives and associations of collection and recycling. In these processes of the formation of the public agenda, legislative proposals and deliberation, whose development easily extends over ten years, maybe the most frequent complaints are generally addressed to the State, for its lack of commitment, insufficiency of resources or the simple disengagement of the executive. It so happens that the conceptions and priorities of the government result in a constant internal debate, between factions of the principal political powers and the other members of the ample political coalition constituted to attain governability, at the price of permanent difficulties to maintain minimal coherence and continuity in public policy. This system of agreements, which aims at generating at least temporary consensus, in the case of the solidarity economy has been exercised in relation to civil society in an exemplary manner. As such, the said process implies complex and lengthy negotiations, given that the interaction of the social actors with the government involves successive consultations with the social factions that they represent, which in their turn make use of their bargaining power, and their power of censure, or even of veto on the government proposals.

As such, the slowness of the State has to do in large part with the intrinsic complexity of the deliberative democratic processes and in the Brazilian case, with the profound social and political inequalities that maintain such fragile procedures vulnerable to corruption. In the field of solidarity economics, these asymmetries enclose an aggravating agent when the actions of popular entrepreneurs find themselves aided through the participation, in the first instance, of mediating agents connected with civil organizations and political pressure groups who cease to function as a traditional accessory to popular movements. They begin to contest space and resources, to gain power in their own name, claiming equality of treatment in relation to the popular leadership itself. This is an impossible equality however, given that such agents and their organizations, leaving aside certain exceptions, are not solidarity entrepreneurs and act according to institutional directives and strategies themselves, being guided according to the circumstances, to prioritize, omit, or leave to the side the solidarity economy. From this point of view, an bearer of good tidings in recent years has been the emergence of entities of representation constituted by initiatives and principally through the participation of the leadership of the EESs, which tends to bring to these spheres of political and institutional action the voice of experience and the principle of self management, fundamental to the solidarity economy.

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<sup>19</sup> Reference to the National Confederation of Agricultural Workers (CONTAG).

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