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Rede de Filantropia para a Justiça Social

Assessments of the Legal Environment for Civil Society Actors including Philanthropic Support Organizations in Brazil

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Presentation of the Giving for Change collection

The Giving for Change collection was conceived by the Brazilian Philanthropy Network for Social Justice and launched in 2021, within the scope of the Giving for Change program. Created in view of South-South cooperation and funded by the Dutch government, the program develops a number of actions to reinforce community philanthropy and philanthropy for socio-environmental justice. Within the Network, it will serve the purpose of reinforcing those agendas among its members and partners at the local, regional and international levels, promoting advocacy actions, challenging the long-established philanthropy systems, and encouraging debates and initiatives concerning local power, freedom of expression and the giving culture, among other correlated issues.

In this sense, the Giving for Change collection aims to create a space for reflection and debate, based on the production of publications promoting community philanthropy and philanthropy for social justice as a strategy to achieve community-led development, championing the claiming of rights, focusing on political minorities. The seal proposes to collect work materials, publications resulting from theoretical debates, reinforcing capabilities and the sharing of experiences, offering free access and distribution and translations to other languages.

About the Report

This Report was presented to Africa Philanthropy Network in order to provide baseline data for influencing in-country national state and societal actors to support the development of community philanthropy by creating favorable conditions to promote the power of domestic philanthropic giving as a form and driver of social and systems change.

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Presentation

Understanding the legal environment where civil society organizations operate is key to stimulate the establishment of a giving culture in Brazil.

Historically, the role played by civil society organizations (CSOs) in the fight for human rights in the country have not been able to rely on a corresponding advance in sustainability mechanisms for their activities. The result is that they have experienced threats arising from legal uncertainty and from the fragility of financing mechanisms.

Tax treatment, tax incentives, access to the banking system, and other elements are key to make donations arrive to civil society organizations. In addition, in recent years there has been a growing restriction on the participation of CSOs in the civic space, which includes criminalizing social movements organizations and also affects their reliability and the expansion of donations, not to mention the risks to human rights activism and activists.

In this sense, the publication Evaluation of the legal environment for civil society actors, produced within the Giving to Change program, intends to: (1) share an assessment of problems and opportunities related to the legal environment of CSOs; (2) disseminate agendas and initiatives to improve the legal environment of CSOs; (3) provide information to organizations that might wish to engage with advocacy actions to improve their legal environment; (4) recommend contents and other sources of information on the subject.

The structure of this publication addresses three topics, breaking them down in the following dimensions: problems, challenges and opportunities:

1. Constitution and taxes for CSOs: Legal personality, registration and tax treatment.

2. Fundraising: grants, tax incentives, equity funds and access to the banking system.

3. Civic space: Supervision and control, restriction to participation and criminalization.

Expanding donations in the country depends on political, economic, social, and cultural factors. Identifying the instruments that might boost this transformation also means understanding and transforming this legal environment,

in order to provide the expansion of resources for community philanthropy and social justice.

The Giving for Change Program, in which the Philanthropy Network for Social Justice acts as a partner organization, brings new challenges and opportunities for strengthening giving culture and promoting a broader reflection within the philanthropic ecosystem about the aim and reach of their agendas.

This publication joins three others, produced and published by the Philanthropy Network for Social Justice within the Giving for Change label, and aims to offer knowledge to drive this transformation.

Mônica Ribeiro

I. Introduction

Organized civil society, as well as other actors, is subject to a series of national laws and regulations, which govern the way in which they are to be incorporated, the tax treatment dispensed or how they can formalize partnerships with public authorities. Such rules, however, must always respect the right to freedom of association, established by the International Covenant on Civil and Political Rights and confirmed by the Brazilian Federal Constitution of 1988. Analyzing the legislation that directly impacts civil society organizations - which govern the way they are constituted and act in the national territory - is fundamental to understand to what extent Brazil has a favorable environment for the performance of organized civil society, as well as to analyze if the right to freedom of association has been ensured in the country.

The purpose of this report is to present an analysis of the legal environment in which CSOs operate in Brazil and compose a broader framework for assessing the legal environment for organizations in the global south, carried out within the scope of the Giving for Change (GfC) project. The main purpose is to support advocacy actions by civil society and strengthen freedom of expression in eight different countries in the Global South, in order to enhance the community voices that claim their rights. To this end, we aim to identify and understand the Issues that have been faced by civil society organizations in the legal sphere, as well as to map solutions and inputs available to be used to face these challenges. It is assumed that the necessary resources to promote changes and improve the legal environment are available in the territory and must be mobilized by Brazilian society.

The report is structured in three main parts: the executive summary, the analysis of the legal environment and the completed WINGS/ICNL tool tables. The first item summarizes and visually simplifies the main points of the study. The second deals with the analysis itself and is subdivided into three items: (i) donations and fundraising, (ii) formalization and management and (iii) autonomy. In each of these themes, the main Issues, their implications, the challenges for making changes and the opportunities that CSOs have to promote changes and build a more favorable legal environment for their performance were identified. The third and last item of this report is the spreadsheets formulated by WINGS and ICNL, filled out based on the Issues and solutions and strategies identified.

II. Methodology

The analysis of this report was carried out in two stages: the first of bibliographic review and evaluation of the legislation, in which information was gathered and analyzed to provide an overview of the regulatory landscape of civil society in Brazil; and a second phase of perception analysis, in which the impressions of various actors from civil society about the main challenges and potential for improving this scenario were collected. With regard to the bibliographic review, studies were systematized and analyzes related to the normative treatment given to CSOs in Brazil were carried out. The bibliographic review was carried out through the identification and systematization of studies (secondary sources) and content produced by the organizations themselves regarding the evaluation of the legislation of CSOs in Brazil.

The perception analysis, in turn, was carried out through semi-structured interviews with selected actors to collect impressions from Brazilian civil society organizations about the legal environment. To select the organizations invited to conduct an interview, the profile diversity criterion was used, being (i) an organization that makes up the Philanthropy Network for Social Justice; (ii) a philanthropic organization or association representative of that profile; (iii) an organization with experience in fundraising or a representative association of this profile; (iv) a grassroots organization or association representative of that profile, (v) an organization that acts in the defense of rights. The selection of entities, based on these profiles, was made in partnership with the Philanthropy Network for Social Justice, as well as the construction of the interview script.

Three interviews were carried out in March 2021, on the 25th and 29th, which aimed, mainly, to identify Issues in the legal environment of the third sector in Brazil. Respondents were asked to point out the difficulties that most affect the development and functioning of CSOs, which result both from regulatory norms and from the treatment of public entities or other practical challenges. Thus, the organizations selected for the interview were able to analyze the impact of these Issues for CSOs and point out possible ways of solution.

III. Executive Summary

Topic
Donations and fundraising

Subject	Issues	Implications	Challenges	Opportunities
Taxation of donations	Taxation of donations to CSOs	barrier to transferring privateresources to CSOs	Opt for changes at the federal or state level, difficulty to change legislation in 27federative entities, difficulty in approvingPEC	engagement of organizations,recent positive changes and ongoing proposals
Foreign donations	controversy over taxation offoreign donations	juridical insecurity; reduction of resources for CSOs due to the collection of the tax	understand the impact of the STF decisionfor donations previously made; focus on the new supplementary law; guide the impact on donations to CSOs in the publicdebate	recent STF decision established thatit is unconstitutional for states to tax foreign donations, a new supplementary law on the subject
Tax incentives for donations from individuals	instrument restricted to certain causes and to projects previously approved by the government	Low use of the instrument	Overcome the logic of specific law for eachcause; difficulty in building a unified proposal; tax reform and emergency PECs	Sensitivity of the national congress to the theme; tax reform

Endow-mentfunds	uncertainty regarding the taxtreat-ment of the managing CSO; absen-ce of tax in-centives and regulation of the use of the Culture Incentive Law	legal uncertainty	become an attrac-tive instrument for CSOs,to attract re-sources	articulation of CSOs that coor-dinates advocacy actions onthe topic (Coalition for Phi-lanthropic Funds);
Composi-tion	legal na-tures are unable to encompass the diversity of profiles of the organi-zationsthat exist	profusion of laws that try to create dif-ferentiations betweenCSOs; complex sys-tem	difficulty in building a common proposal among CSOs; need for efforts on the part of the public autho-rities	maturity of Brazilian civil society; broad legal framework of the thirdsector

Topic
Formalization and Management

Register	costs and requiremen-tsmade by notaries	Cost and time spent to meet requirements; CSOs in an irre-gular situation and groups	Low CSO enga-gement with the subject; absence of a broad proposal to reformulate the current model; ab-sence of	Changes occurred during the Covid-19 pandemic (digita-lization of the re-gistration process, digital
		that choose not to forma-lize	spaces for dialogue with the Notaries	signatures, virtual meetings)

Tax Treatment	unequal granting of tax benefits, requiring distinctand bureaucratic requirements; exemptionsgranted in different areas	few organizations have access toimmunities; difficulty understanding the functioning of immunities and exemptions and cost to meet the requirements	difficulty in building a common proposaland promoting changes in the Constitution; absence of public data; economic crisis	tax reform; new definition of considerations for immunities; simplified tax regime proposal forCSOs
Banks and access to the financial system	restrictions on opening checking accounts at banksand accessing credit cards	difficulty in raising funds; interference in resource management autonomy	ignorance of what CSOs are by the actorsin the financial system; absence of spacesfor dialogue	accumulation of reflection on the subject; Recommendation No. 8; articulation (Coalition of CSOs by FATF)
Public Prosecutor's Office (MP)	there is no clear definition of the criteria for managementof foundations required by the MP	bureaucratizes management of foundations, time spent meetingrequirements, reducing innovative capacity	directly impacts foundations, which represent less than 2% of CSOs, necessaryamendment to the Civil Code	consolidated and active articulation of entities representing the foundations in several states
Bureaucratic criminalization	creation of obstacles, through the execution of excessive requirements andprocedures	too much time spent by CSOs torespond to requirements, discouraging the use of public funding	identify and map the cases; dependence of part of CSOs on public resources	results control provided for in the MROSC; training of civil servants

Topic				
Autonomy				
Govern-mentSu-pervision	attempts to control and supervise CSOs	bullying; res-triction of free-domof asso-ciation	Government policy guidelines; need for resources to monitor actions; restricted advocacy due to pandemic	sensitive parlia-mentarians; judi-ciary; philanthropy support
Restric-tion of the operating space	termination of several collegiate bodies of the federal public admi-nistration	restrict the participation of society in the follow-up and monitoring of public policies	there is no prospect of changing the go-vernment's stance in the short term	Proposals that are being processedin the National Con-gress; judiciary
Criminali-zation and delegitimi-zation	accusation of the practice ofcrimes	criminalization, persecution of activists, de-legitimization beforepublic opinion	there is no prospect of changing the go-vernment's stance in the short term	High credibility in the context of the pandemic; judi-ciary

IV. Analysis of the Legal Environment

In recent decades, Brazil has built a legal framework that guarantees and promotes the performance of organized civil society. Although improvements were needed, especially in mechanisms and rules that facilitate and promote the economic sustainability of CSOs, Brazilian legislation preserves freedom of association and recognizes the fundamental role played by civil society. The recognition of the relevance of CSOs by legislation can be perceived in several ways. Examples of this recognition are the possibility of entering into partnerships with the government to implement public policies or to provide services to vulnerable publics, the existence of a mechanism that allows action to be taken to protect and claim rights, and the guarantee of participation in public policies monitoring and monitoring bodies. So many advances, achieved in the last thirty years, have come to suffer threats and risks of setbacks more recently, especially after 2018.

The constitutional guarantee of freedom of association is relatively recent in Brazil. This right started to be guaranteed after the promulgation of the 1988 Constitution, which marks the end of the civil-military dictatorship that has governed the country since 1964. During this period, marked by authoritarianism and the suspension of civil and political rights, free association between people was not allowed, which forced civil society to act informally. With the re-democratization and the possibility of entities being constituted without the need to obtain any authorization from the Government, Brazilian civil society developed and became more complex, having its own regulatory treatment.

However, even though over the years there has been a significant increase in organized civil society*, the focus of legislation on the third sector in Brazil since then has been especially regulating the transfer of resources from public authorities to organizations. In a first cycle, in the 1990s, the first laws governing these partnerships were enacted. In the context of the rise of neoliberalism and the questioning of the role played by the State, in which private entities began to assume a greater role in the implementation of public policies, the Law on Social Organizations (OSs) was enacted, which creates a regime for delegation of execution of public policies for organizations that meet certain requirements. In the following year, another law was enacted, establishing a new partnership

* *There has been a significant increase in the number of organizations in Brazil, especially after the 2000s. According to data from 2018, just over half (52.2%) of existing organizations in Brazil (Lopez, 2018) and 60% of philanthropic organizations associated with GIFE were created in 2001 (GIFE, 2019).*

regime, focused on the support of CSOs by public authorities, the Law of Civil Society Organizations of Public Interest (OSCIPs).

A second cycle begins in 2010, when, in parallel with efforts to rethink the legal framework, the production of data and analysis of the State's relationship with civil society was inserted in the research agenda of public institutions. Between 2010 and 2014, the federal government undertook strategies in order to improve the legal environment of the third sector, focusing on relations between public entities and CSOs. These efforts resulted in Law 13.019, of 2014, known as the Regulatory Framework for Civil Society Organizations (MROSC). The objective was to simplify and homogenize the legal treatment of partnerships between CSOs and public authorities, in order to ensure greater transparency. This was done through a broad and participatory process, and the Presidency of the Republic instituted a "Platform for the New Regulatory Framework", composed of lawyers, entities from different areas, members of social movements, ministers of state, among others. This group promoted, over the course of four years, research, studies, seminars and interlocutions to present a Bill of Law that would protect the rights of CSOs and represent their needs.

This cycle was interrupted a few years later, having as a landmark the impeachment process of the President of the Republic in 2016. Political changes in the Government and in the National Congress due to the impeachment resulted in the stoppage of several public policies, including the civil society agenda. Since then, there have been significant changes in the Brazilian political scenario, combined with an increase in the political polarization of society and the rise to power of the far right after a troubled electoral process full of uncertainties in 2018. Right after the inauguration, the new elected government brought great concern when it published on January 1, 2019 the provisional measure (MP 870/2019) which, among other matters, proposed the inspection and general supervision of civil society organizations.

The 2018 election is also marked by a significant change in the composition of the Congress, bringing new challenges to the CSO advocacy actions. Less than half of the deputies managed to be re-elected*, with 102 taking office for the first time. This new legislature is also marked by the representation of the largest number of** parties since the re-democratization. In the States, the picture was not very different, as traditional parties ended up losing space instate

* *Only 240 of the 513 federal deputies were re-elected.*

** *There are 513 federal deputies from 30 different political parties.*

governments* while parties that were running for their first election managed to elect governors. Significant changes in the representatives in the Legislative and the Executive require new efforts by the political mapping organizations of these decision makers, as well as they can imply changes in the previously made political analysis**.

In addition to the changes in political composition, there was a series of questions in the 2018 presidential campaign regarding the work carried out by CSOs, with disbelief in the performance of mainly those with a more activist profile and linked to environmental guidelines. Since then, there has been an expansion of the delegitimation of work carried out by organized civil society, coupled with actions to restrict civic space, especially the channels of social participation, and the criminalization of their work. In addition to this scenario, the Covid- 19 pandemic, in which Brazil stood out for the disastrous management of the Federal Government, and the situation of the Brazilian economy, which in 2020 had a negative GDP of 4.1%*** when compared to the previous year, being the worst result of the historical series that started in 1996.

The results presented herein aim to reflect this trajectory. The first two blocks deal with necessary regulatory improvements, which have emerged over the years of development of civil society and which have not yet been resolved. The first one deals with fundraising, with special emphasis on donations, as this is one of the main sources of financing for CSOs. The second focuses on the challenges faced in the constitution and day-to-day management of CSO activities, passing through points such as forms of constitution, registration of activities, tax treatment and financial management. The third block, on the other hand, is dedicated to analyzing the threats of restriction to the autonomy of CSOs, intensified in the last period.

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* *The MDB, which had governors elected in 7 states in 2014, now has 3 governors after the 2018 election. PSDB, in turn, dropped from 6 governors-elect in 2014 to 3 in 2018.*

** *In the construction of the advocacy strategy it is recommended that a risk analysis be carried out, including changes in the political scenario. To learn more: Guia para a Construção de Estratégias de Advocacy: como influenciar políticas públicas, Imaflora, 2019.*

*** *Source: IBGE indicator panel, available at: https://www.ibge.gov.br/indicadores, accessed on 04/26/2021.*

1. Donations and fundraising

The available data and studies indicate that the financing of CSOs in Brazil occurs mainly based on own resources and private donations. According to a study by Cetic* (Center for Studies on Information and Communication Technology, under the auspices of Unesco), of the total of non-profit entities surveyed, 24% have private donations as their main source of funding. The weight of these donations increases to 30% in the case of organizations considered to be small (which have no formal workers) and up to 65% for religious organizations, in which the culture of giving is historically stronger**. Self-financing also represents a large part of CSO income. It is common for associations to develop activities such as selling products, providing services and exchanges to maintain their activities. In addition, as pointed out by the Cetic survey, 26% of the associations have as their main source of resources the associative contribution (monthly fee or annual fee paid by members).

The use of federal public resources by CSOs is infrequent in Brazil. A survey by the Institute of Applied Economic Research*** of 2019 indicates that, of the more than 800 thousand CSOs in Brazil, only 2.7% of them received federal funds between 2010 and 2018. The amounts transferred represent 0.5% of the Federal Government's annual budget. In addition, it is possible to notice a decrease in the volume of public resources accessed by CSOs in recent years. As of 2016, there was a decrease in the number of transfers, which amounted to 14% in 2010, going to 9.8% in 2018****.

Another alternative for financing CSOs is philanthropic organizations (also called "private social investors" in Brazil). According to available data*****, the investment of resources in own projects among Brazilian philanthropic organizations still prevails instead of financing third party projects. However, in 2018, the volume invested in third-party projects represented 35% (BRL 1.1 billion) of the total investment, having reached the highest proportion in the historical series (GIFE, 2019). Among the types of third parties that received re-

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* *CENTER FOR STUDIES ON INFORMATION AND COMMUNICATION TECHNOLOGIES (CETIC), 2014.*

** *General Secretariat of the Presidency of the Republic, 2014.*

*** *ANDRADE; MELLO; PEREIRA, 2019.*

**** *ANDRADE; MELLO; PEREIRA, 2019.*

***** *The data on philanthropic organizations present in this report were extracted from the GIFE Census, one of the main researches on Brazilian philanthropic entities, being carried out biannually since 2001. However, it is worth mentioning that only entities associated with GIFE respond to the Census.*

sources fromphilanthropic organizations, organizations were identified as the main choice: 64% of respondents pass on resources to CSOs (GIFE, 2019). Even though organizations are the main recipients of funds transferred to third parties, it is clear that there is room to expand the volume invested by Brazilian philanthropy in CSOs.

In general, the Issues related to fundraising listed by the literature and by the organizations interviewed are related to the mobilization of domestic resources. It is estimated that there have been some advances in the last decade with the enactment of two new laws, one that establishes a new regime of partnerships and access to public resources by CSOs and another that introduces a specific regulation on heritage funds in the Brazilian system. The first, known as MROSC*, aims to standardize and simplify, at the national level, the rules for partnerships between public authorities and civil society, in order to ensure greater transparency and security in the transfer of public resources. This legislation applies to the partnerships executed by Federal Government, States and Municipalities and allows the latter - States and Municipalities - to regulate the law in order to adapt it to the specificities of each location. The other novelty is the law** , which created specific rules for heritage funds, a long- term financing instrument for CSOs that has its own regulatory treatment in several countries.

However, there are still a number of regulatory barriers to raising private and domestic resources. For this reason, most of the Issues listed below are related to barriers identified in the mobilization of local resources by CSOs. As for access to foreign resources, it is worth mentioning that there is no legal prohibition on the receipt of this type of resource by organizations in Brazil. This does not mean, however, that there are no certain barriers to access them and, therefore, there is a point dedicated to describing this Issue in this item.

1.1. Taxation of donations

Issues

The main issue in relation to **fundraising by CSOs through donations is that these are, in general, taxed such as inheritances and private donations** (Pannunzio, 2019). In Brazil, donations to CSOs are taxed by the same tax that is levied on the transfer of inheritance and donations between individuals - to tax the anticipation of inheritance - the Estate and Donation Tax (ITCMD). A recent

* *Federal Law No. 13.019/2014.*

** *Federal Law No. 13.800/2019.*

study points out that among 75 countries analyzed, only Croatia and South Korea adopt a model similar to that of Brazil and tax donations to CSOs (Carvalho, 2019).

In addition, as it is a tax within the jurisdiction of the states, **the rules on taxation are different in each of the 27 federal entities** (26 states and 1 Federal District). However, even though the states have the autonomy to legislate on the matter, the maximum ITCMD rate is defined by the Federal Senate, currently being 8%. Within the competence of each state is the autonomy to define the hypotheses of exemption from the ITCMD, that is, in which situations it will not be necessary to collect the tax. For this study, it is interesting to present two cases of exemptions: by value cap and because the recipient of the transfer of resources is a CSO.

In the case of **exemptions for the transfer of the fund, 17 of the 27 federative entities provide for this hypothesis** (Vilella, 2019). In such cases, if the donation or inheritance transferred is less than the established ceiling, it will not be necessary to collect the tax. On the other hand, 10 federative entities tax the donation regardless of its value. In other words, even a donation of BRL 1 would have to collect the ITCMD in those states where there is no provision for exemption by value.

Among the 27 federative entities, only 9 establish some type of exemption from the ITCD for donations directed to CSOs, and normally they are restricted to certain areas of activity (culture, sport, environment, among others) (Vilella, 2019). In addition to restricting the exemption to CSOs that act on certain causes, it is common for states to establish that, in order to have access to this exemption, CSOs must comply with a series of bureaucratic and costly procedures and requirements (Vilella, 2019). In the state of São Paulo, for example, only CSOs that work with culture, human rights and the environment are exempt from paying the ITCMD. However, to have this right recognized, they must go through several stages, as described by Varella:

> In order to illustrate the above considerations, the example of São Paulo is highlighted below. The state provides exemption for cultural, human rights and environment entities. For the formal recognition of this exemption, the CSO must use the procedure expressed in CAT Ordinance No. 15, which determines the submission of an application addressed to the Regional Tax Delegate, accompanied by several documents. Among these documents, there is a certificate issued by the

> thematic secretariat (culture, environment or human rights), which also requires its own procedure. Thus, the CSO, in São Paulo, goes through two different procedures (one before the thematic secretariat and the otherbefore the Treasury) to request the benefit of the exemption (Varella, 2019, p. 61).

Thus, CSOs in Brazil face several difficulties in raising funds through donations, whetherdue to the tax treatment given to this type of transfer, the complexity of the legislation or therequirement to comply with various requirements to have access to the exemption, when theyexist.

Implications

The main impact is the disincentive to donations to CSOs due to the similar taxation between donations in the public interest and private transfers of resources. Other countries, when compared to Brazil, tend to tax private donations and inheritances at higher rates and to exempt or reduce the rates of transfers to CSOs precisely to generate a stimulus that private resources are intended to support causes of public interest.

If the states started to foresee cases of exemption from donations to CSOs, the impact on the collection would be minimal. According to Oliva, the resources collected as a whole with the ITCMD, which includes both the taxation of inheritances and donations, correspond to less than 1% of the current net revenue of the states (Oliva, 2019). By analyzing only the collection of ITCMD in donations to legal entities (which includes both companies and non-profit organizations), an even lesser value is reached:

> In none of the cases for which information could be obtained, the ITCMD contribution collected from donations to legal entities exceeds 0.021% of the UFs' current net revenue (Oliva, 2019, p. 110).

It is also worth noting that the obstacle caused by the ITCMD affects donations of higher values more, since there are 17 states that establish a limit of value in which donations are not taxed*. In the case of CSOs, the tendency is

* *This does not mean that there is no impact for donations of lesser value. The case of the Movimento Arredondar, which works in attracting micro donations and is unable to act in the federal entities that tax the*

that the willingness to make donations of greater value are from companies or philanthropic organizations than from individuals. Thus, it can be said that states that provide for an exemption ceiling limit end up encouraging that donations be of lower values and fit within the ceiling so that they are not taxed.

Another implication of this situation is that tax exemptions are more accessed by CSOs with greater availability of resources. due to the complexity of the legislation and the need to meet several requirements, it is possible to assume that organizations with this profile are more capable of hiring specialized professionals to guide them, as well as bearing with bureaucratic costs.

Finally, it should be noted that even though data are not available, it is estimated that a portion of the organizations will end up not paying the tax on the donations they receive, either due to ignorance of the legislation or the difficulty in obtaining recognition of the exemption. This situation generates special concern in the current context in which there are indications of attempts by governments to restrict - or even to persecute - the performance of CSOs.

Challenges

The first question that arises when thinking about changes in the taxation of donations in Brazil is which path to choose, whether the focus should be to promote changes at the state or federal level. In the latter, the great challenge would be to approve a constitutional amendment that guarantees tax immunity for all CSOs, which would solve not only the taxation of donations, but all issues related to the collection of taxes for the third sector. However, the rite of approval of a Constitutional Amendment is very complex, as it requires a qualified quorum for approval - 60% of federal deputies and favorable senators - in a vote held in two rounds in both Houses of Congress. Another alternative at the federal level would be the approval of a Senate Resolution to end the taxation of donations, but there is a risk that the decision will be considered unconstitutional because it suppresses the competence of the states to institute the tax. Another front of action may be at the state level, seeking the exemption for CSOs in the legislation of each state. The challenge in this case is to mobilize the necessary resources to guarantee the change in the legislation of the 27 federative entities.

donation regardless of the amount, is publicly known.

In recent years, several organizations have been engaged in trying to solve this issue. In one of the interviews, it was pointed out that:

> "We argue that the tax should end. [...] Since it is not possible, in the beginning, to end legislation harmonization at once, guarantee the possibility of exemption, guarantee lower rates, they are undoubtedly good paths".

In this sense, it is possible to observe mobilizations both at the state level, which seek to expand the hypotheses of exemption in the states, as well as at the federal level, which propose the creation of a different national maximum rate for donations directed to CSOs, as well as changes in the Federal Constitution. At the state level, some examples of the results of this engagement are State Law No. 7.786/2017, which expanded the chances of exemption from ITCMD in Rio de Janeiro; Rio de Janeiro State Decree No. 47.031/2020, and Santa Catarina State Law No. 18.064/21, the latter two of which established the self-declaration recognition of the ITCMD exemption in donations to CSOs.

At the federal level, although there has been no legal change, two legislative proposals have recently been proposed that propose changes in the taxation of donations to CSOs. One of them is the Constitutional Amendment Proposal (PEC) No. 14/20, which determines that the ITCMD does not focus on "transmissions and donations to civil society organizations and to non-profit research institutes". This proposal, according to the interviews carried out, is the result of a dialogue and engagement of the organizations with the National Congress. Another proposal is the Senate Resolution Project (PRS) No. 13/20, also presented in the context of the Covid-19 pandemic, which sets a maximum ITCMD rate of 0.5% for "donations that are proven to be destined for private non-profit civil entities who apply the resources to meet the population needs arising from the pandemic". Although positive, if this PRS were approved, it would reduce the ITCMD rate only for cases of use of the donated resources in the fight against the pandemic and would have a fixed term, i.e., as long as the state of public calamity continues due to the pandemic.

1.2. Foreign donations

Issues

The main issue in this context is the **lack of definition on the need, or not, to collect taxes on donations from outside Brazil**. The question arises from a controversy over whether states are competent to impose taxes on foreign donations in the absence of a definition by federal law. According to the 1988 Constitution, the supplementary federal law regulates the imposition of taxes on donations from outside the country, which has not yet occurred. In this context of uncertainty, some states began to demand from the CSOs the payment of the tax, which generated a debate on the subject that reached the judiciary*. There are cases in which banks, due to the risk of being responsible for the non-payment of the tax, started to charge CSOs the payment for carrying out the exchange.

Recently, in early 2021, the controversy was decided by the STF. The plenary, by majority of votes, understood that the states do not have the competence to institute a tax on donations from abroad until a complementary law defining this competence is enacted. This understanding becomes valid as soon as the decision - "judgment" - of the STF is published, which has not yet been done. In addition, it was decided that the decision should not retroact, which ends up making the taxation of donations by the states that occurred before the publication of the judgment by the STF legal, as well as protecting CSOs that questioned the collection of the tax in the judiciary.

In addition, another potential issue pointed out by organizations is an obstacle to foreign donations by the Brazilian government. One person interviewed stated that:

"It is possible that, at any time, with arguments that it hinders, for example, international money laundering in Brazil, that the government passes a measure preventing the receipt of international donations, as several countries have already done that and have been increasingly doing. And many Brazilian organizations are financed with international resources, and the government may even use the FATF's discourse at times out of sheer desire to criminalize the organizations' work."

* *In 2020, three actions were pending in the Supreme Federal Court (STF) on the subject (Machado, Pavan, 2020).*

Implications

Organizations working in the defense of rights in Brazil have a history of accessing resources from outside the country. For this reason, advocacy CSOs tend to be the most impacted by the extent of the controversy over foreign donations for so many years.

Despite the decrease of the flow of resources from outside the country to CSOs in the early 2000s, due to the rise of Brazil to the level of emerging country, there is a perception that in recent years, especially after 2018, the flow of international resources funding for CSOs for the defense of rights would gradually be resumed (Souza, Oliveira, 2020). In this situation, the STF's decision to remove taxation by states from foreign donations becomes even more relevant.

Finally, we highlight the cases of organizations that questioned in the judiciary the taxation of foreign donations by the states. The definition that the STF decision only takes effect after its publication has a caveat, which are the cases that have been judicialized. In other words, if CSOs have sued the judiciary to refute the payment of the tax, they will not actually have to collect the amount. In this sense, CSOs that judicialized the issue were benefited and the greater probability is that those who have the resources and conditions to cover this expense have done so.

Challenges

A first challenge for organizations is to understand the impact of the STF decision. As the decision has not yet been published, we do not yet have access to the full vote of the ministers. In addition, the modulation of the effects - that is, the definition that the decision only becomes valid after publication - raises the doubt about how the cases of receipt of foreign donations that happened before the decision was released will be interpreted, especially when there was no judicial questioning on the collection of the tax.

In addition, one of the consequences of the STF decision must be the proposal for a supplementary bill by the National Congress regulating the competence to institute a tax on foreign donations. In this case, it will be essential for organizations to monitor and influence the process of processing this proposal. However, a point of attention is that to be able to include in the debate the impact of the taxation of foreign donations to CSOs, since in the judiciary the decision was based on the receipt of private donations by individuals. It is also worth mentioning that CSOs should face difficulties if they try to include in this supplementary law the proposal for exemption from taxation of foreign donations to

CSOs. Such a proposal must be considered unconstitutional, as it terminates the competence, protected by the constitution, of the states to institute the ITCD.

Opportunities

The recent decision of the STF that established the unconstitutionality of states to tax foreign donations represents a significant advance for organizations that operate in Brazil, especially for those that defend rights. The proposal of a complementary bill regulating the issue also opens an opportunity for CSOs to focus on the process and guide the potential impact of taxing the donations they receive. An alternative would be to take advantage of the suggestion contained in PRS 13/20, which proposes a maximum differentiated rate for donations to combat the pandemic, and include foreign donations to CSOs within this limit.

1.3. Tax incentives for donations from individuals

Issues

The current model of tax incentives for donations from individuals imposes a double restriction that ends up limiting the capacity of this instrument (Salinas, Salla, Sanches, 2019). The first is that **incentives are restricted to support certain causes**, such as culture, sport, social assistance for children, adolescents and the elderly, health, support for people with disabilities and cancer care. Each of these causes has its own specific legislation, which provides its own rules on how the incentive donations should be operationalized.

The second constraint refers to the need for the encouraged **donation to be directed**

to a project, in some of these causes, previously approved by government programs or funds. Thus, individuals can deduct donations made to the National Fund for the Elderly, the Funds for the Rights of Children and Adolescents, cultural projects (Rouanet Law) and audiovisual activities (Audiovisual Law), sports and para-sports projects (Sport Incentive Law), to the National Program to Support Oncological Care (PRONON) and to the National Program to Support Health Care for People with Disabilities (PRONAS / PCD). Thus, it is not possible for the donation of individuals to be directed to institutionally support the CSO, they must be allocated to projects that were previously approved by the government.

Implications

This limitation of tax incentives for specific themes and projects, in addition to excluding part of civil society organizations that operate in different areas (such as, for example, the environment, climate change, housing, public security, education, etc.), does not guarantees the institutional development of organizations in the long term and on a permanent basis. Thus, what can be observed by analyzing data from 2012 to 2015 is, in practice, the restriction of the scope of tax incentives for individuals (Salinas, Salla, Sanches, 2019). A small percentage of taxpayers, among those who would have potential, make incentive donations. Between 2012 and 2015, less than 0.5%* of individuals who could actually make incentive donations used this instrument (Salinas, Salla, Sanches, 2019b). Therefore, the number of effective donors under the individual tax incentive model is far from its full potential.

At the other end, the projects that received incentive donations, in the same period from 2012 to 2015, were 10,303**. Although there are no data on the number of CSOs benefited by encouraged donations - and even if there is an organization that has more than one incentive project - it is possible to say that there are very few CSOs that access incentive resources in Brazil if we consider the number of approximately 780,000 organizations currently existing in Brazil***.

Challenges

Although the current scenario points to the need to improve this instrument, there have been no significant regulatory changes in recent years despite the fact that several proposals have been submitted to the National Congress proposing the expansion of tax incentives for individuals to new areas. A survey carried out in 2019 identified 37 proposals being processed by the National Congress that propose changes in tax incentives for donations from individuals. (Salinas, Salla, Sanches, 2019b). However, among the 37 bills, only one proposes a single regime of incentive donations, applicable to donations destined to any public interest organization regardless of the cause.

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* *The number of effective donors in 2012 corresponded to only 0.16% of potential donors, and in the following years there was a small increase, in 2013 it was 0.32% and in 2014 and 2015 the 0.45% mark was reached. (Salinas, Salla, Sanches, 2019).*

** *This figure considers incentive donations made by individuals and legal entities in the following incentive modalities: PRONAC, FIA (national), National Fund for the Elderly (national), Sports Incentive, PRONAS/PCD, PRONON.*

*** *IPEA, 2021.Available on: https://mapaosc.ipea.gov.br/resultado-consulta.html, accessed on: 04/25/2021.*

The absence of broad support for a single proposal indicates the difficulty in finding common points for elaborating improvements and overcoming the logic of having a law for each cause. CSOs that work on causes that may receive incentive donations do not want changes, while those that work on causes that are not foreseen in the legislation want to be included, but they reproduce the same model, that is, a specific law for each cause.

The possibility of changing tax incentives for donations from individuals in the short term is low due to the context of the economic crisis that Brazil has been facing. As the current incentive model is based on a 100% deduction from the donation, it ends up being completely dependent on public resources. Therefore, it is difficult for the government to agree to expand the possibilities of encouraged donations. The greatest risk is that the current model of encouraged donations will be reduced, or even extinguished, which is threatened by a proposal presented by the government, PEC 187/2019.

Opportunities

Expanding and creating new incentive models for individuals would be a way of boosting the growth in the number of donors in the country and strengthening the link between society and organizations that defend causes of public interest, in order to strengthen a free and plural organized civil society. An opportunity that could be used to propose changes to the current model is the debate on tax reform, which has gained greater relevance in Brazil since 2019. There are currently three main proposals on the subject in the National Congress: PEC 45/2019, PEC 110/2019 and PL 3.887/2020.

In addition, the number of proposals on tax incentives for individuals that are being processed in the National Congress indicates an opening of parliamentarians to the issue. Although a large part of these propositions reproduce the logic of creating specific rules for a given cause, organizations could take advantage of the parliamentarians' sensitivity to advance in a broad proposal, which includes all causes of public interest. Some are even beginning to move in this direction, as stated in the interviews:

> "That is why we focus on issues such as [...] tax incentive laws, we are starting to build a unique proposal for a tax incentive law in Brazil."

1.4. Endowment funds

Issues

Even though a specific law (Law 13.800/19) on endowment funds in Brazil has recently been enacted, legal obstacles to expanding the use of this instrument still remain. In this case, issues already identified above also impact the funds' ability to attract private resources, such as tax treatment, taxation of donation and tax incentives.

The first one is related to the **tax treatment granted to the Heritage Fund Management**

Organization (OGFP). Law 13.800/2019 requires the creation of a specific legal figure - which may be an association or foundation - to be the OGFP, which is responsible for transferring the fund's income to the supported institutions (which may be both public and private). However, it should be clarified whether OGFPs also enjoy the immunities and exemptions already provided by law for organizations (Pasqualim, 2019).

Another point refers to the regulation of the tax incentive contained in Law No. 13.800/19, which provides for **use of the Culture Incentive Law for** donations directed to heritage funds (Fabiani, 2019). As it has not yet been regulated, there is no clarity on how the incentive donations should be operationalized.

Finally, there is also a demand for **creation of new tax incentives** for donations directed to funds, since the law provides only for those donations to CSOs that operate in the culture area. The perspective is that new incentive instruments, covering all causes, would favor the attraction of private resources to the funds (Fabiani, 2019).

Implications

Since the beginning, the main objective of Law No. 13.800/2019 has been to make a fundraising and financing instrument available to public entities. The proposal emerged in September 2018, shortly after the tragic fire of the National Museum, as an alternative to facilitate the receipt of donations and the transfer of resources to public institutions, in particular to enable the reconstruction of the Museum itself (Hirata, Grazzioli, Donnini, 2019).

Although the Law establishes different rules for endowment funds depending on the profile of the supported institution (private or public), being more

rigid in the case of support to public entities, it is required that a minimum fund management structure be created. Accordingly, the OGFP must have at least three governance bodies: Board of Directors, Investment Committee and Audit Committee. The maintenance of this structure implies an extra cost for organizations to create their endowment funds in the model of Law No. 13.800/19, without providing any additional benefit. For this reason, CSOs that are formally incorporated and that have resources invested to finance their activities have no incentive to adopt this instrument as provided in Law No. 13.800/19. In addition, doubts remain about the tax treatment given to OGFPs and the taxation of donations received and made by the funds, which creates legal uncertainty and hinders the diffusion of this model.

Challenges

One of the challenges of endowment funds is to become an attractive instrument for CSOs. The model proposed by Law No. 13.800/19 determines that the management entity adopts a minimum governance structure, establishes a set of rules on how to use the resource, without presenting advantageous considerations for those who choose the model. Another challenge is to be able to attract resources for the formation of endowment funds, which becomes even more difficult in the context of the economic crisis that Brazil has been facing. The tendency is for available resources to become scarcer, with a reduction in the willingness to donate to causes of public interest.

An instrument that could enhance the attraction of resources for funds would be the use of the Culture Incentive Law, which still depends on regulation by the Executive branch. The various changes that have occurred in the Special Secretariat for Culture since the beginning of the current Government, in 2019, end up delaying the regulation of the use of incentive donations for culture funds and making it difficult for CSOs to maintain a dialogue with the public authorities.

A risk for the endowment is to reproduce the logic of the legislation on third sector in Brazil and to have its own rules for specific situations or causes. There is already an ordinance creating specific rules for heritage funds to support science, technology and innovation; as well as a proposal to regulate emergency funds in the National Congress. This profusion of rules, instead of encouraging the use of the instrument, can make its use even more complex.

One of the factors that contributed to the enactment of the law that regulates the patrimonial funds in Brazil was the mobilization made by the organizations. Since 2018, these organizations have been articulated in the Coalition for Philanthropic Funds, which has acted to coordinate the advocacy actions aimed at improving this instrument. It is notable not only the engagement promoted by the Coalition, but also the accumulation of reflections - events, publications, booklets - produced by CSOs in recent years.

As noted earlier, the endowment funds of Law No. 13.800/19 are an opportunity to support, especially, public entities. Thus, this is an instrument to be explored by philanthropic organizations interested in making resources available to public institutions, such as museums or universities. This is the bet of the National Development Bank (BNDES), which recently opened a public process for modeling the endowment fund of the Brazilian Museum Institute (IBRAM), a federal agency responsible for the direct management of 30 museums.

The interest of certain entities of the public power on the subject is something that can be taken advantage of by the CSOs. An example is ordinance* issued by the Ministry of Science, Technology, Innovations and Communications, which establishes specific rules for the creation of heritage funds for science, technology and innovation. In 2020, the same Ministry organized a series of** webinars to discuss the topic. It is also important to note the Ministry of Economy, which has dealt with the issue through the National Investment and Impact Business Strategy (Enimpacto).

With the Covid-19 pandemic, a number of civil society initiatives have emerged to combat the effects of the pandemic. Some of them focused on the creation of funds - not necessarily in the model of Law No. 13.800 - to attract donations and to be used in actions to confront Covid-

In September 2020, Bill No. 4450 was presented by Senator Anastasia, which aims to regulate the creation of emergency funds in situations of public calamity.

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* *Ordinance No. 5.918, dated 10/30/2019.*

** https://antigo.mctic.gov.br/mctic/opencms/salaImprensa/noticias/arquivos/2020/08/MCTI_PROMOVE_SERIE_DE_W*EBINARIOS_SOBRE_FUNDOS_IMOBILIARIOS.html*

2. Formalization and Management

Freedom of association, provided that it is for lawful purposes, is guaranteed by the Constitution of the Federative Republic of Brazil (Article 5, XVII-XXI). The only constitutional prohibition is the creation of paramilitary associations. The Federal Constitution also establishes that the creation of associations does not depend on government authorization, that state interference in their operation is prohibited and that they can only "be compulsorily dissolved or have their activities suspended by judicial decision, requiring, in the first case, the res judicata".

The form that non-profit organizations can take - i.e., legal personality - is established by the Civil Code. The main one is the association, a personality that represents more than 82%* of existing organizations in Brazil. The association is characterized by being a group of people organized for non-economic purposes. As the focus is on gathering people with a common interest, associations are not required to have a minimum equity for their constitution. Another legal personality provided for in the Civil Code are foundations, which are made up of assets intended for purposes of public interest**. Unlike associations, in the case of foundations, initial equity is required for constitution. This is one of the reasons that explains why the vast majority of organizations in Brazil are associations. Finally, there is a third legal personality provided in the Civil Code, religious organizations, which are defined and constituted for a specific purpose. Although there are clear differences between these personalities, they fail to represent the variety of profiles of organizations that currently exist in Brazil.

The organization constitution process, in general, is considered simple and inexpensive (Szazi and Storto, 2015). However, the practice indicates that the pro-

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* *In April 2021, Brazil had 781,922 organizations, 647,003 (82.75%) of that total are associations. Source: Map of CSOs, IPEA, 2021. Available on: https://mapaosc.ipea.gov.br/ , accessed on 04/04/2021.*

** *Article 62. To create a foundation, its institute will make, by public deed or will, a special equity of free assets, specifying the purpose for which it is intended, and declaring, if it wishes, the way to manage it.*
Sole Paragraph. The foundation may only be constituted for the purposes of:
– social assistance;
- culture, defense and conservation of historical and artistic heritage; III - education,
- health;
– food and nutritional security;
– defense, preservation and conservation of the environment and promotion of sustainable development;
- scientific research, development of alternative technologies, modernization of management systems, production and dissemination of technical and scientific information and knowledge;
- promotion of ethics, citizenship, democracy and human rights; IX - religious activities; and
X - (VETOED).

cesses have been more bureaucratic and costly for CSOs than it might have been assumed at first. In the case of foundations, there is a peculiarity that makes the process even more complex, which is the inspection by the Public Prosecution. However, this situation will be addressed later in the item on supervision.

It is also noteworthy that associations are free to operate without legal personality, so registration is not mandatory. However, as the country adopts the Civil Law model, legal personality is essential to establish legal relationships and own assets. CSOs incorporated in another country that wish to operate in Brazil in accordance with their constitutive acts and be managed by people without domicile in the country - i.e., without founding a local association -, must undergo a special procedure in the Ministry of Justice. This process occurs before registration with the notary service.

The legal personality assumed by CSOs - an association, foundation or religious organization - is irrelevant for access to tax benefits. The granting of benefits in Brazil depends on the nature of the activity carried out by the organization. The legislation determines that in order to access them, CSOs must provide specific areas of action in their incorporation acts. In addition, organizations must have certifications or titles, granted by the government, which recognize the fulfillment of the requirements necessary to obtain tax immunity or exemption. There is also no transparency on the immunities and exemptions granted, and information on the organizations that access the tax benefits is not systematically disseminated.

2.1. Constitution

Issue

The legal nature that private and non-profit entities can assume, as provided in the Civil Code, are three: association, foundation and religious organization. The latter was introduced in the Brazilian system in 2003, granting its own personality for the formalization of institutions for religious purposes. Initially, it should be noted that each legal type is based on different criteria. In the case of the association, it is a group of people gathered for a certain common purpose, without defining what that purpose would be. The foundation, on the other hand, is the gathering of a heritage to be used in some of the purposes provided in the Civil Code, generally classified as "public interest". Finally, the main mark of the religious organization is the purpose, which can only be one, the religious.

The main issue is that these **juridical natures are unable to cover the diversity of profiles of organizations that exist in Brazil**. Among the three, the

association is the predominant nature. However, the type of entity that adopts this personality varies a lot. Associations may include professional and class associations, pension funds, credit guarantee funds, public consortia under private law, among others*. This exemplifies how associations can be formed for the most diverse purposes, both linked to the more general interests of society, as well as specific interests of the group that formed it (as is very characteristic of class or professional entities). Another differentiation that the legal personality does not offer is between philanthropic entities, which transfer resources to other organizations, and organizations with a more grassroots or community profile.

Implications

The consequence of the impossibility of differentiating entities based on their legal nature is the profusion of rules that try, in some way, to create this distinction. For this reason, a series of titles, records and certifications are provided in Brazilian legislation (federal, state and municipal). One of the objectives of these instruments is to function as a "differentiation mechanism" for CSOs, which allows access to certain tax benefits or which are framed in a specific legal regime of contracting with the government (Lopes, Santos, Xavier, 2014). Although the most well-known certifications are issued by the federal government, states and municipalities can also create their own. This diversity of titles, registrations and certifications makes it difficult to manage CSOs, which live with different rules and requirements.

The elaboration of public policies and regulations becomes even more complex since a very different profile of entities takes the form of association. There are some analysis efforts that try to better understand this universe and establish criteria to differentiate them. IPEA, for example, classifies existing CSOs in the country according to their purpose. According to the Map of the CSOs, a platform managed by IPEA, 47.4% of Brazilian organizations are focused on the development and defense of rights; 22% are religious entities; 13% are for culture and recreation; and 4.3% are for social assistance.

Finally, although some terms are used to differentiate between CSOs, as the conceptsare not legally defined, there is a wide variety of interpretations about them. An example is precisely "philanthropic organizations", which is interpreted differently depending on the interlocutor.

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* *According to the classification of the Brazilian Institute of Geography and Statistics (IBGE). Available on: https://concla.ibge.gov.br/estrutura/natjur-estrutura/natureza-juridica-2016/399-9-associacao-privada . Accessed on 04/22/2021.*

Challenges

One of the main challenges at this point is the construction of a common proposal. There is a consensus among CSOs that the certifications need to be revised and that an important step was taken with the approval of Law 13.019/14, which characterizes non-profit entities as civil society organizations based on certain criteria, and for that purpose there is no need for recognition by the public authorities. However, there is little reflection on the problem itself, and the promotion of changes in this direction has not been the focus of articulations or organizations. For this reason, **there are no definite proposals placed in the public debate being defended by CSOs**.

In addition, any legal change that goes hand in hand to create a positive distinction between CSOs, which aims to strengthen them, demands public work to collect data, analyze and dialogue with civil society. Unfortunately, the federal government's efforts in recent years have signaled the opposite direction of what needs to be done.

Opportunities

The creation of a broad legal framework for the third sector, which was not just concerned with regulating the transfer of public resources to CSOs and which was elaborated based on a process of broad dialogue and reflection with the sector, would be a way of propose solutions to this problem. The suggestion was made by one of the people interviewed:

> "The first major point, which is more conceptual, is that, from the point of view of economics, from the point of view of structuring society, from the normative point of view, we do not see civil society organizations, the nonprofit sector, as a sector in itself, which needs to deserve legal attention. The existence of the understanding that we are a sector of the economy means that economic, legal and political agents do not operate for the development of the sector itself. So there are very few legal propositions, for example, that are made in the name of the sector, there is no effective legal framework on what is the nonprofit sector, what are nonprofit organizations. [...] And you have a lot of standards being created that directly impact without taking the sector into account."

2.2. Registration

Issue

Rather, it should be noted that this point is based on the demands made on associations, the main legal personality assumed by CSOs in Brazil. Although there are analyzes that consider the formalization process of CSOs in Brazil bureaucratic and accessible, organizations interviewed for this analysis indicated **the costs and requirements made by the Notaries** as a issue. This issue was pointed out by one person interviewed, which mainly affects smaller associations and activities with the vulnerable population:

> "The vast majority of organizations, collective or group [...] do not want to know about institutionality. [...] From the point of view of the legislation, we know that the vast majority of organizations must have minutes, a meeting, makes a minute and register itat the registry office. The vast majority do not have the money to do this. [...] And manyorganizations are currently experiencing this issue: they did not hold an assembly, theydo not think they can do it over the internet, others do not trust, [...] so there are many obstacles that seem to be bureaucratic."

As protected by the Constitution, no state authorization is required for the constitution of CSOs. It is enough that the entities register the basic documents that attest to its creation in the Civil Registry of Legal Entities. Legal personality is granted automatically with the registration, and no communication to public entities is necessary. However, the legal personality only becomes effective with federal tax attainment, which is necessary to open accounts, issue invoices, hire employees, among others. In addition, CSOs may also need other licenses and authorizations for their regular operation, issued by different public bodies, such as authorization to operate the establishment.

Currently, CSOs are required to register not only the constitutive documents with the Registry, but also other information that has effects in relation to third parties, that is, in addition to their associates. In this case, any changes in their statutes, information about who are the associate members that make up the governance bodies, who can represent them and the minutes of the meetings of the highest governance body - the Shareholders' Meetings - must be registered with a notary. In order to carry out these registrations, associations

must pay fees, which are the costs of services provided by Notaries. The values are all listed, i.e., the price paid for the service will always be the same regardless of the registry office. These costs were pointed out in the interviews as a barrier for organizations to maintain their regularity, especially in the current context that many suffered an economic impact with the Covid-19 pandemic.

Another difficulty is the demands made by the Notaries for the registration of documents. The rule for document registration is unclear and accessible, especially on important issues for CSOs - such as what information and documents must be delivered, which signatures must appear on the documents, if signature recognition is required - and is not even followed by notaries' own officers, who end up establishing their own rules individually. The opinion of the interviewees about the performance of the notary service is interesting:

> "Go to a Registry and see how people work. People work thinking that they are doing you a favor, they are rude, they think they can be rude, you have to be polite."

Thus, organizations understand the registration process as something bureaucratic, complex and laborious, since a single registration can demand repeated requests before the Registry Office.

Implications

During the interviews, it was pointed out that many associations, mainly the smaller ones that operate in peripheral regions, with a population in a situation of social vulnerability, have little knowledge about the rules of registration and maintenance of a CSO. Thus, there is a portion that prefers not to register to avoid bureaucracy. In addition, those who choose to register spend time and resources to maintain their regular activity. There are also situations in which CSOs are unable to keep up with their obligations due to the difficulty of bearing the costs of an accounting or legal advisory service, and have no experience to deal with bureaucratic procedures alone. As a result, registration with the Federal Revenue Service is suspended.

These problems are a major obstacle for associations, especially with regard to fundraising, because large donors and financiers only make transfers to institutions that have a CNPJ - in some situations due to legal requirements - and that are in a regular situation. Sometimes the "CNPJ loan" is used: collectives and

groups that do not want to formalize or associations in an irregular situation seek a partner who has the proper registration with the Federal Revenue to appear as the recipient of the donation. According to one of the interviews:

"We started more or less to install a fiscal sponsor model - always for those who do not have a CNPJ, find a partner organization, make a tripartite contract, creating a link between the organization. As we worked with those who are receiving the donation not only in the activity itself, but in the management of the organization, in the financial statements, because it is part of our idea to strengthen the structure of these organizations. So the fiscal sponsor was actually a channel for the money to get there, but we were going to work there all the time to help structure that organization. [...] Today, organizations are increasingly starting to charge administration fees, and higher and higher administration fees. [...] In addition, we start to have issues like this, you don't have many organizations that are structured enough to be fiscal sponsors of another [...], willing, that are in a regularized situation."

Challenges

There is little interest from CSOs in engaging to promote changes in the registration process in Brazil. One of the signs of this lack of interest is the absence of a public debate on the topic, as well as concrete proposals for improvements. It is also worth noting the lack of dialogue that exists between CSOs and the main actors that implement these measures, the notaries.

Opportunities

Despite all the difficulties, the Covid-19 pandemic opened the possibility for several procedures and requirements to be reviewed and simplified. The need for face-to-face attendance at notaries and physical signature of documents are some examples of changes, the process of digitizing registration requests has been accelerated and the validity of digital signature on documents has been legally recognized. Legal authorization* to hold virtual meetings until October 30, 2020, although there is no provision to that effect in the entities' bylaws, is yet another example of the positive changes that the context has produced. In this sense, PL 5.546/20, which amends the Civil Code, is being processed, "to authorize the holding of assemblies, meetings and voting by electronic means in associations, foundations and religious organizations".

* *Law 14.010/20, Article 5.*

2.3. Tax Treatment

Issue

In Brazil, the three federative levels - federal, states and municipalities - have the capacityto institute taxes. Thus, it is possible that tax benefits will be granted to CSOs at each of these levels. The issue most frequently pointed out by the existing analyzes and by the CSOs interviewed is **granting unequal tax benefits to organizations, requiring different and bureaucratic requirements**. Not all organizations have access to tax benefits that, in general,are granted based on the area of activity of the organization, such as education, health, human rights, the environment, among others. Thus, there is no link between the legal personality adopted by the organization and the tax treatment given thereto.

The main tax benefit granted to CSOs is tax immunity, which prevents taxation at the three federal levels. Immunity is provided for in the Federal Constitution (Article 150, IV, c) and establishes that income, assets and services provided by education and social assistance organizations cannot be taxed by the federal government, states and municipalities. By ensuring the non-taxation in a widely manner (revenue, equity and services) and for being safeguarded by the Constitution, the immunity is the most desired tax benefit by organizations. This benefit, however, is restricted to entities that work with certain subjects (education, social assistance and health) and cannot be accessed by CSOs that work with other subjects.

In addition, CSOs need to comply with certain requirements to access tax immunity, as well as need recognition from the public authorities that they meet legal requirements. The requirements, however, vary according to the area of operation of the CSO. The National Tax Code presents the basic requirements for obtaining immunity by CSOs, being, mainly, not to distribute profits among members, keep accounting records, make periodic financial reports, limit the use of resources to the national territory and commit its capital solely its social purposes*. There are also other legal requirements, provided for in other laws, which makes it difficult to understand how to use them. One such example is the rule on the remuneration of directors of exempt and immune CSOs**. The

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* *Federal Law no. 5.172/66, article 14.*

** *For years in Brazil it was not possible for immune or exempt CSOs to remunerate their managers. "It was the Federal Public Utility Law of 1935, which first instituted the prohibition of remuneration, providing as a condition for recognizing the federal public utility of non-remuneration entities 'for the positions of the executive board, audit, decision-making or advisory committees. This provision was replicated in other regulations*

requirements are: (a) the remuneration of statutory officers must be less than 70% of the salary limit for the employees of the Federal Executive Branch; and (b) the total amount paid for the directors' remuneration must not exceed 5 times the individual amount. If the public authority attests to the fulfillment of these requirements, the CSO obtains a certification that guarantees access to tax immunity. The complexity of this model was pointed out in the interviews:

> "The tax problem for me starts with certifications. In fact, the tax problem starts from themoment we make the minutes, register and we are a non-profit organization. [...] Then itsays that we have immunity, we were born with immunity. The problem is that afterwards immunities and exemptions are mixed and then we discover that there are some certifications, and that they are becoming unattainable."

On the other hand, unlike the restricted tax immunity, there is a tax benefit that is more widely granted to CSOs: the tax exemption on income tax and social contribution on profit*. Still, states and municipalities can establish hypotheses of exemptions for CSOs on the taxes that they are competent to institute, such as ITCD, IPVA and IPTU. Thus, states and municipalities have the autonomy to define the exemption hypotheses for each of their taxes, as well as the requirements and procedures necessary to obtain them. In this sense, it is common for organizations to need to obtain some type of certification or title from the respective public entity recognizing the fulfillment of the requirements to be entitled to the exemption. The result is that CSOs live with a series of bureaucratic rules established by the different federal entities, which makes access to tax benefits extremely complex.

It should also be pointed out that one of the factors that explains the prevalence of thismodel - that to obtain access to immunity and tax exemption, it is necessary to have a certification - is the fact that the legal nature of CSOs does not differentiate between differenttypes of organizations. The granting of the tax benefit is justified by the performance of organizations in causes that interest society more broadly ("public interest"), generally characterized in the legislation by the performance themes. However, as indicated in the previous item, asso-

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and the prohibition is now provided for in our law as a condition for: (I) the enjoyment of the tax benefits of immunity (Article 12, Second Paragraph, "a" of Law 9.532/1997) and exemption (Article 15, Third Paragraph of Law 9.532/1997); and (II) obtaining the Social Assistance Charity Entity Certification (Article 29, I of Law No. 12.101/2009) "(Lopes, Santos, Xavier, 2015).

* *Law No. 9.532/97, Article 15.*

ciations can be formed to bring together people with common interests, which are not necessarily those recognized as being in the public interest.

Finally, there is no transparency on the immunities and exemptions granted to CSOs. As the publication of IPEA, the main public entity that organizes and analyzes data from CSOs in Brazil, points out, the unavailability of these data ends up hampering the elaboration of public policies related to the financing of organizations (Lopez, 2018).

Implications

The main consequence is that **few organizations have access to tax immunity in Brazil**, which corresponds to the non-taxation of OSC's income, assets and services. This is because immunity is restricted to certain areas of activity (education, social assistance and health) and because of the requirements to access them. Thus, action in the defense of rights (or human rights) is not included in the tax immunity provided in the Constitution. There are cases of advocacy CSOs that are able to access this tax benefit, but this may mean having to adapt their activities to meet legal requirements.

Organizations need to spend time and resources to understand and meet the requirements necessary to obtain certification, which guarantees tax immunity. Once this certification is obtained, they are obliged to follow the legal requirements that impose some limitations on their performance. As reported by an interviewed organization:

> "Donation to individuals, we have so much problem that we are stopping it. Because the revenue, especially in the CEBAS issue, has a weird understanding that when you are donating to the individual, you are actually passing the exemption that is yours to an individual that has no exemption and that is tax evasion, or tax fraud. [...] You cannot give a scholarship to the individual. We already wanted to do a program aimed at lawyers who support organizations in the field, popular lawyers, and give scholarships so that lawyers can survive a year and serve small organizations. We were unable to do the scholarship programs, because with the scholarship programs we are going to face difficulties with these agencies to whom we answer for our exemptions."

Thus, the entities that obtain the desired tax immunity have to live with limitations imposed by the interpretation that is made of the law and with a constant fear of losing this benefit.

As pointed out, due to the lack of available data, it is not possible to know which organizations have tax immunity in Brazil. At first, it could be assumed that philanthropic organizations would have more access to this benefit for two reasons: because they have a large proportion of them who work with education (one of the areas covered by immunity) and because they have a greater capacity to hire professional assistance to attend legal requirements. However, even though the research carried out by GIFE points out that 80% of the associates work on education, only 3% have the* education certification that guarantees tax immunity (GIFE, 2019). Adding the percentages of GIFE members who have some of the certificates that guarantee tax immunity, we have only 12%** (GIFE, 2019). Thus, not even among the philanthropic organizations associated with GIFE there is a significant number of entities that enjoy tax immunity.

A reflection of how complex the rules on tax immunity are, is the number of lawsuits that are being processed at the Supreme Court on the subject. There are controversies related to the characterization of social assistance charities (which requirements they must meet and how these requirements should be legally established), the scope of immunities (which taxes the immunity encompasses) and who else can have access to immunity (extension of immunities for other entities) (Machado, Pavan, 2020).

However, even though few organizations have broad tax immunity, **CSOs, in general, have legally guaranteed the tax exemption on income tax and profit**.

Challenges

The unequal tax treatment between CSOs makes it difficult to build a common proposal for change, promoting a division between those who are entitled to tax immunity in the current model, who are afraid to propose changes, and those who cannot access immunity and would like to be contemplated. The formation of a certain consensus among CSOs, in this case, is even more necessary since to increase tax immunity, it is necessary to change the Federal Constitution. This requires a qualified voting quorum, three-fifths of state deputies and senators.

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* *Certificate of Education Charity - CEBAS Educação.*

** *Among the respondent members of the GIFE Census, 8% declared that they have CEBAS Assistance, 3% have CEBAS Educação, 1% Cebas Saúde.*

There is a possibility to expand exemptions from state and municipal taxes for CSOs, but this would also require changes in the legislation of 27 federal entities and 5,568 municipalities. The division of competence for the institution of taxes in Brazil is an obstacle in promoting a specific tax treatment for CSOs.

Another difficulty is the lack of public data. Without information on how many and which organizations have access to immunity and exemption, it is complex to propose changes and assess the impact - especially budgetary - of an expansion proposal. When changes of this type are proposed, which reduce the collection of public power, an impact study is legally required. The resistance of governments to accept an increase in the possibilities of non-taxation tends to be even greater in a context of economic crisis.

Opportunities

The return of the public debate on tax reform, through the proposals of PEC 45/19 and PEC 110/19, may be an occasion to propose changes in tax immunities. Attention should also be paid to the proposal for a new regulation of the criteria required by CSOs to access tax immunities. A recent STF decision* defined that the** considerations required from education and social assistance entities to obtain the Social Assistance Charity Entity Certification (Cebas) are unconstitutional. For this reason, a supplementary law should be edited, which has a qualified quorum for approval by the National Congress, establishing the new criteria.

There is also a proposal defended a few years ago by CSOs, which is to create a simplified taxation model for non-profit entities, similar to the "simples nacional". Finally, organizations could take advantage of the proposals that are often presented in the National Congress on debt installments***, generally focused on companies, which aim to reestablish their fiscal regularity. Both suggestions were mentioned in one of the interviews:

> "There must be tax legislation for civil society organizations. This tax simplification is for small businesses, for MEI, or for

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* *"Direct Action for Declaration of Unconstitutionality No. 4.480*

** *The counterparts are provided in Law No. 12.101/09.*

*** *This is a Tax Recovery Program (Refis) which, according to the Federal Revenue Service, "consists of an optional tax debt installment scheme proposed to legal entities with debts before the Federal Revenue Service - SRF, the National Treasury Attorney General's Office - PGFN and the National Social Security Institute - INSS", available at: http://www.receita.economia.gov.br/orientacao/tributaria/pagamentos- e-installments / installments-special / installments-refills-2013-program-of-recovery-fiscal-pages-and-links / orientations-general-refills # ob Accessed on: 05/04/2021.*

> CSOs. [...] The tax part is very complicated for CSOs. This implies our successes and mistakes - and many of our mistakes means indebtedness. And every time you have a REFIS, it puts us like a company. [...] The value that appears to us is very high."

2.4. Banks and access to the financial system

Issue

Another point present in the organizations' reports is the **difficulty that they have faced in opening checking accounts and accessing a credit card**. The entities' assessment is that the implementation of FATF measures in the national territory has created barriers tothe organizations in the financial system. The interviews identified that even today there are banks that refuse to offer services to CSOs. One interviewee cites that

> "There is no protocol in the financial sector on how to deal with NGOs, so many banksrefuse to open accounts".

Thus, the assessment made by organizations in the interviews is that there is a general lack of knowledge among the actors in the financial system about what organizations are andwhat they do. Some measures and rules published recently, which have had a negative impact on organizations, reinforce this assessment. An example was the change in relation to the issuance of bank slips, which now has stricter rules of identification and deadline* and endedup affecting donations made to CSOs through this instrument. The need to go to the bank inperson to confirm the recurring donation through direct debit can also be cited. These decisionsare taken to combat money laundering, so they are important and necessary due to Brazilianparticipation, but they do not take into account the negative impact on philanthropy as a whole.

Another sign of this omission is the fact that donations are not recognized by the rules of thefinancial system, which leads to being classified as "payments".

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* *The policy that changed the process of issuing payment slips was known as the "New Collection Platform" and was proposed by the banking sector. More information at: https://portal.febraban.org.br/pagina/3150/1094/en- us/services-new-platform-boletos*

Implications

These difficulties imply a challenge for raising funds from CSOs and maintaining philanthropy in the country as a whole. Having access to the banking system is essential for the movement of capital and for making financial transactions. It is about respecting the autonomy of CSOs to manage their own resources. In addition, new rules for the financial sector, resulting from FATF recommendations, are largely related to fundraising, as they make donations to nonprofits organizations more difficult.

Challenges

The main challenge on this front is the way in which FATF measures are implemented in Brazil. According to Recommendation no. 8* of the FATF, organizations "are particularly vulnerable" and can be used as a means of financing terrorism. The FATF states in its recommendations that financial institutions should be required to have policies, controls and procedures to manage and mitigate the negative effects of adopting measures to combat money laundering and terrorist financing. However, it is noted that until now the policies adopted by the Brazilian public administration have not been concerned with assessing the impact for CSOs. It is noticed a general lack of knowledge of the actors that are part of the financial system about what the organizations are, what works they do and how they are financed. The absence of spaces for interaction between actors in the financial system and CSOs also makes it difficult to create channels for dialogue between them.

Opportunities

One answer that has been defended by organizations is the creation of a specific type of regulation for donations, which recognizes this form of transfer of resources and differentiates it from payments in general. The engagement of organizations in the subject resulted in the presentation of the bill known as the Donations Banking Framework (PL 3.384/2019), which proposes changes to the law that provides on the Brazilian Payment System:

> "We proposed the donation banking framework bill, which is a way of including donations in the financial order as a separate financial transaction from the payment, so that the

* *Recommendations are available at: <https://www.fatf- gafi.org/media/fatf/documents/recommendations/pdfs/FATF-40-Rec-2012-Portuguese-GAFISUD.pdf>. Accessed on: 05/03/2021.*

financial system creates instruments and identifies the donation differently from the payment for both to avoid fraud as well as to build instruments that meet the needs of the sector."

Another point to be highlighted is the articulation of CSOs to monitor the implementation of the FATF measures, in order to ensure that the integrity and reputation of civil society organizations are respected and the restriction of their actions is avoided, through *Global NPO Coalition on FATF*[*]. The work carried out by this group has been deployed in the creation of local articulations, aimed at carrying out a closer monitoring of the effects of adopting the recommendations for CSOs. In Brazil, at the end of 2020, the Coalition of CSOs by FATF was created, which has led the debate on the topic.

[*] *Information about this Coalition is available at: https://fatfplatform.org/*

3. Autonomy

As already mentioned in the previous item, freedom of association is guaranteed by the Federal Constitution, and it is forbidden for the State to interfere in the functioning of organizations (Article 5, XVIII). Thus, there is no constitutional authorization for any legislation to establish the supervision of associations by the government. Likewise, there are no legal restrictions on the political engagement of CSOs in Brazil or legislation that regulates lobbying in the country. The freedom guaranteed by the Constitution also extends to their participation in the political debate, with no limitations on the holding of campaigns, activities of political influence - participation in public hearings, meeting with representatives of the public power, support or rejection of legislative proposals - and support for political candidacies. However, it is possible that the organizations propose these restrictions in their articles of incorporation

In Brazilian law, there are two cases of legal restriction in this regard. One of them is related to organizations qualified as Civil Society Organizations of Public Interest (OSCIP). This is a certification granted by the Ministry of Justice to CSOs that meet certain requirements, which allows them to enter into partnerships with the state and receive public resources. For organizations qualified as OSCIP, there is a prohibition for them to participate "in campaigns of political party or electoral interest, in any way or form" (Law 9.790/99, Article 16). The other restriction applies to CSOs that receive incentive donations from companies. In such cases, the benefited organizations are prohibited from participating in "campaigns of political party or electoral interest, under any means or forms" (Article 84-C, sole paragraph Law 13.019/14).

However, although constitutionally guaranteed, there is an increase in disrespect for the autonomy of organizations and threats of control. There are situations in which the public authority exceeds the legal support it has to demand certain obligations, as in the case of partnerships signed with CSOs, or to exercise specific control, as occurs with the inspection of the Public Prosecution over foundations. There are also concrete cases of restriction of the scope for civil society, attempts to control and monitor, as well as criminalization of the activities of organizations, especially those that work with the environment.

In this scenario, the monitoring and advocacy actions by civil society are even more necessary. The performance of these activities and the engagement of CSOs requires human, technological and, especially, financial resources. Therefore, it is essential to support Brazilian philanthropy to CSOs in general, es-

pecially in institutional strengthening, so that they are resilient in this period. The risk of deterioration of the operating environment of CSOs is also perceived by philanthropy. According to the GIFE Census, 36% of respondents indicate a less favorable context for CSOs that support or have a partnership and 39% perceive a worsening for the field in general (GIFE, 2019). Thus, there is an opening to expand the engagement of philanthropy, since the task of defending Brazilian civil society and democracy must be shared by the entire ecosystem.

3.1. Public Prosecution Control

Issue

One of the issues identified in relation to supervision is related to the inspection that the Public Prosecution exercises over foundations. The Civil Code requires that foundations beinspected by the Public Prosecution Office of the State in which they are located (Article 66, CC).As the foundations are characterized by being formed by a patrimony destined to a determined public purpose, it is up to the Public Ministry to ensure that the will of the donor is respectedand that the resources are used according to the indicated public interest.

The main problem is that **there is no definition of criteria related to the formalizationand management of foundations**, such as if there is a minimum equity for the creation of a foundation. Thus, **it is up to the Public Prosecution of each state to establish these definitions**, which generates different rules depending on the location of the foundation. The interviewees' perception is that:

> "The legislation is not clear, it is not clear enough, and how much the supervisory bodies, in this case the Public Prosecution Office, who acts as a supervisor/inspector, does what it wants."

In addition, although the provision for such supervision and control is in the legislation,representatives of foundations point out that there is a difficulty by the Public Prosecution tounderstand the reality of these organizations. The documents that the foundations must present to the MP, such as accountability, work plan, annual budget, as well as their governancemodel, are in practice very inflexible; the criteria for accepting these documents are extremely

high, which makes it even more difficult for entities to function and maintain. One of the interviewees even pointed out that

> "absolutely everything you do you need authorization from the Public Prosecutor".

This monitoring by the MP and the difficulties it imposes on the day-to-day activities of organizations is one of the factors that explains why many entities choose to formalize themselves as an association instead of a foundation. Even organizations connected to companies, which have an initial equity for their formation, have recently adopted the association model.

Implications

This follow-up by the Public Prosecution Office bureaucratizes the management of foundations and makes people who work in them spend part of their time trying to cope withthe demands made. Monitoring also restricts the innovative capacity of these entities, who, in order to avoid questioning, often choose to adopt the more conventional path. According to areport by one of the people interviewed for this study when describing the impacts of monitoring by the Public Prosecution Office:

> "We stop doing things, moving, adjusting, creating things [...] so that we don't have to do a pre-approval process. [...] Everything is very complex. [...] I think it makes it very difficult for a regular management of organizations"

The result is the reduction of the capacity of foundations to propose innovations and, institutionally, to act in the end activities, because they need to devote time and resources to account for the ancillary activities.

In addition, there have been some recent episodes in which the MP has also understood that its monitoring role extends to all organizations receiving public resources. In this sense, state prosecutors specializing in foundations have been requiring from CSOs, including associations, to submit accountability directly to the MP. So far, two cases are known, the Pará State and Federal Dis-

trict MPs*,**. Thus, one should pay attention to these requests from the MP that impose a new requirement and cost to CSOs that make partnerships with the public authorities: in addition to reporting to the government they also have to report to MP.

Challenges

The main challenge of the control of the Public Prosecution Office is that this monitoring is legally provided only for the cases of foundations. Thus, a small portion of CSOs are impacted. According to IPEA data, in 2021, less than 2% of existing CSOs in Brazil are foundations. Thus, it can be difficult to engage other organizations, such as associations, to promote change. In addition, in the case of foundations, this monitoring is established in the Civil Code, which would require changes in this law.

Opportunities

One advantage is that, although not so numerous, foundations have a history of articulation and engagement in relevant subjects to the sector. Several states have entities representing these articulations, such as the São Paulo Foundation Association (APF), in São Paulo; Fundamig, Minas Gerais Federation of Foundations and Associations of Private Law, in Minas Gerais; Funperj, Federation of Foundations and Associations of Rio de Janeiro, among others.

3.2. Bureaucratic criminalization***

Issue

A trend that has been observed in more recent analyses and that has also been mentioned in the interviews is **creating obstacles by the public administration, by requiring the execution of excessive requirements and**

* *Joint Provision 005/2020-MP/PGJ/CG-MP*

** *Ordinance No. 1 dated February 23, 2021. Available at: https://www.mpdft.mp.br/portal/pdf/portarias/PJFEIS/2021/Portaria_2021_01_PJFEIS.pdf Accessed on: 05/04/2021.*

*** *"The term "bureaucratic criminalization" was coined to designate this phenomenon that is materialized especially through the administrative-bureaucratic route and through entanglement in countless procedures, which often drain the institutional capacities of CSOs and materialize in the form of fiscal or administrative liabilities. An environment with obstacles to the existence of organizations, consequently, negatively impacts the performance of CSOs and drains the ability of positive intervention and assertive reaction of society. In our recent research, we have identified that bureaucratic criminalization of CSOs materializes with the unequal, non-isonomic treatment of CSOs in relation to other types of legal entities, through the same patterns that institutional prejudice manifests itself in relation to other vulnerable groups in our society." (Lopes, Storto, Reicher, 2019, p.72).*

procedures, especially in situations where legislation allows it to require compliance with obligations by CSOs. The possibility for the public authorities to require compliance with certain obligations arises, especially in cases where it formalizes partnerships with organizations. Because of the need to ensure the correct and transparent use of public resources, some charges are imposed on organizations receiving these resources. Currently, the legislation provides for different regimes of partnerships between the government and CSOs*. In common, all require organizations, when receiving public resources through partnership, to deliver reports and accountability**. However, the issue identified here is beyond legal requirements, although they often support this behavior.

Therefore, situations are perceived in which the government takes advantage of its prerogative to demand more detailed information, sometimes beyond what is provided by law, or to demand that a certain process be repeatedly conducted, in order to require time and dedication of organizations to meet the requests made.

Implications

Excessive time spent by CSOs to respond to demands negatively impacts the institutional capacity of CSOs, making them have to reduce the time spent on core activities. Due to the bureaucracy and demands made, CSOs are discouraged from accessing public resources and end up looking for other sources of funds. In addition, the government may impose sanctions on CSOs if it considers that there has been non-compliance with what has been agreed, and may even prevent the execution of partnerships with the public authorities for a specified period.

Challenges

Identifying and mapping cases where the government commits excesses and evaluate the impact on CSOs is the first obstacle to better understanding this issue. Although overcharging may discourage the search for public funding, the difficulty of finding funding alternatives puts several entities as dependent on these resources.

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* *Partnerships between CSOs and the public authorities are governed in particular by the following laws: Law No. 9.637/98, Law No. 9.790/99 and Law No. 13.019/14.*

** *In the specific case of partnerships signed with the public authorities based on Law No. 13.019/14, organizations are required to disclose on their website and in their head office information such as the name of the body with which the partnership was concluded, the description of the object, the value of the partnership and the remuneration of the team.*

Another challenge concerns the performance of civil servants. One interviewee pointed out that a change in the behavior of these people would be the main change needed to solve this issue:

> "Training of personnel within these government structures that are in charge of registration and supervision of the work of organizations. Training in the sense that they can be there to support development, rather than being there to boycott the work, which is what they end up turning."

Opportunities

The MROSC already contains the legal basis for the evaluation of partnerships to be done primarily through the control of results rather than focusing on accountability. This does not mean disregarding accountability, but reinforcing that bureaucratic control should not prevail to the detriment of the goals and results achieved. Thus, it is important to strengthen the implementation of MROSC and promote training on the law. A survey of cases of bureaucratic criminalization of CSOs has also been prepared in the project implemented by the MROSC Platform, which is supported by the European Union. This study will undoubtedly help in a more detailed understanding of this issue.

3.3. Government Supervision

Issue

In recent years, it has been possible to observe **the emergence of direct threats to restrict freedom of association through attempts to control and supervise Cross**man example was the edition of **Provisional Measure (MP) No. 870** in early 2019, which began to provide for supervisory and supervision of CSOs by the Federal Executive Branch. In addition to raising several doubts in organizations about the possibility of the government controlling and reducing its autonomy, the measure had its constitutionality questioned both in the National Congress and in the Supreme Federal Court*. The mobilization of organizations to reverse this prediction resulted in the revision of the text of MP No. 870. This was approved by the National Congress providing only the competence of articulation of the Federal Government (Law 13.844/2019, Article 5, XI), which already had provision in previous legislation.

* *ADI 6.076*

Also, in an emblematic episode of increased supervision and lack of transparency, President Jair Bolsonaro **appointed an agent of the Brazilian Intelligence Agency (ABIN) to "Coordinator-General of Articulation with Civil Society Organizations**". However, the appointment did not contain the name of the agent appointed to the post Presidency Government Secretariat, only a registration number. The appointment was annulled by a decision of the Federal Justice, after the NGO Conectas Direitos Humanos filed a public interest civil action.

The interviews show that there are sectors most affected by this intimidation:

> "There are also organizations that, depending on the area, for example the environment, human rights movements, feminist – but on the subject of abortion –, of seizing material, or pressuring people who defend this, including in the area of justice, to have to leave the country. This criminalization, this terror for people, it's been done. However, in relation to organizations, of course this government as soon as it began has already been trying to supervise..."

To make it difficult, these attempts are not restricted to the Federal Government. There are several proposals in progress in the National Congress, proposed by parliamentarians, who aim to establish some kind of control over CSOs.

Implications

As most of the reported cases are characterized by attempts at control by the Government, the main consequence is the intimidation of CSOs. They also have their autonomy (and freedom of association) in check. These cases also raised an alert in CSOs, which began to adopt security measures and protocols about their activities, information and team members.

As with ABIN, there is also a risk that other institutions will be mobilized to carry out this follow-up closer to the activities of CSOs. A point of attention is the institution of the National Data Protection Authority (ANPD), a body created by the General Law for the Protection of Personal Data that aims to "ensure, implement and monitor compliance with this Law throughout the national territory"*. As the law recently came into force in Brazil, the ANPD implementation process is still ongoing. In this sense, care must be taken to avoid misappropriations in actions performed by the agency.

* *Law 13.709/2018, Article 5, XIX.*

Challenges

This point, like the following two, is the result of the political vision that prevails today in the Federal Government on the role of CSOs and that has no prospect of change while the same government remains. It is a far-right government of authoritarian bias, which has eroded part of the democratic policies and processes accumulated in the country in recent years and that puts what is left at permanent risk. It is essential to monitor these actions by CSOs, whether to produce data and information or to provide grants for advocacy actions. However, such activities are only possible if financial resources are available for their financing. For this, it is essential to sensitize Brazilian philanthropy to support and finance actions aimed at preserving freedom of association and the pillars that sustain the entire sector.

The Covid-19 pandemic also poses extra challenges for the advocacy actions of the CSOs. The remote working of the National Congress due to the pandemic, as well as the restriction of the topics considered during this period, reduced the possibilities of conversations and meetings with parliamentarians and the ability to exert political pressure when voting on proposals of interest to CSOs.

Opportunities

To contain the setbacks in the autonomy of CSOs, dialogue with parliamentarians sensitive to the work of entities should be strengthened, in order to count on allies to approve positive propositions and contain progress in the processing of negative propositions. Proof that there is a portion of parliamentarians close is that in the last legislatures several parliamentary fronts have been created that have the participation of civil society, some focused on subjects and other cross-subjects. The Judiciary must also play a key role in preserving constitutional guarantees. Some Brazilian organizations already have a tradition in conducting strategic litigation and have even used this expertise to mobilize the judiciary and avoid setbacks. The perception of the deterioration of the environment by philanthropy is also an opportunity to stimulate funding and institutional support to CSOs. The relevant role of CSOs in combating the effects of the Covid-19 pandemic could also be explored in carrying out a civil society advocacy campaign. Finally, it is worth noting the articulations of organizations that have been dedicated to monitoring the subject, such as the MROSC Platform, the Pact for Democracy and the Collaborative Advocacy Network (RAC).

3.4. Operating space restrictions

Issue

Another example more directly related to the restriction of the space of action of organizations was **the extinction of several collegiate organs of the federal public administration** through Federal Decree No. 9.759/2019. These collegiate entities relied on the participation of CSO representatives and had the purpose of guaranteeing the participation of civil society in the monitoring and management of public policies. The estimate of the Ministry of Government Administration was that 700 collegiate bodies would be affected, resulting in the termination of traditionally recognized councils - such as the National Council for the Rights of Persons with Disabilities, the National Council for the Eradication of Child Labor, National Council to Combat Discrimination and Promotion of LGBT Rights and the National Council to Combat Trafficking of Human Beings. The constitutionality of the act was questioned in the Supreme Federal Court, which decided to suspend only part of the validity of the decree, i.e., authorized the termination by decree only of those collegiate bodies that were not instituted by law.

Implications

By excluding the participation of organizations from the spaces, it ends up restricting the participation of society in the elaboration, follow-up and monitoring of public policies. Thetendency is that with the end of these spaces of dialogue, public policies lose quality, because they are less connected with the direct demands of the population, and that the supervision ofgovernment activities is reduced, since these agencies allow closer and direct monitoring bycivil society.

Challenges

There is no indication that the current Federal Government will change the policy it has been implementing to restrict the space for civil society participation, which reduces the expectation of any positive progress in the short term. Representatives of organizations have a very pessimistic analysis of the situation, such as the interviewee who pointed out that:

> "Now the only thing we're going to get is to stop it from getting any worse."

Another risk is that state and municipal governments will take federal policy as a model, restricting or even terminating the spaces for participation of civil society. The Covid-19 pandemic tends to be a factor that makes it even more difficult to make changes. Although it is not an obstacle in fact, due to the possibility of using electronic means, the need for social distancing can be used as an argument for not holding meetings.

Opportunities

Several social participation bodies were created through decrees - rather than law - which allowed them to be terminated by the Government without the authorization of the National Congress. Thus, a possibility of instituting these spaces more perennially is throughthe approval of a law. Some proposals are being made in the National Congress with proposalsto this effect, such as PL 128/2019 and PL 8048/2014, which create the "National Policy of SocialParticipation". It is also worth mentioning the monitoring of attacks on the civic space that some organizations have made and that contribute to organize these actions in a systematized way*.

3.5. Delegitimization and criminalization

Issue

Part of the threats that organizations have suffered in recent years is the prosecution of crimes by CSOs. Although it is not a novelty, it is perceived a deepening of this pattern in the most recent period. One of the risks is the framing of CSOs' actions as terrorist practices, and we have specific legislation on the subject - the Anti-Terrorism Act** - since 2016. The proposal was presented as a bill on the eve of the 2014 World Cup in Brazil and sanctioned in the year of the Olympics in the city of Rio de Janeiro. Driven by the pressure to adapt to international safety recommendations, such as those given by FATF, the legislation brings overly broad and ambiguous devices and definitions. Since its processing, social movements and CSOs denounce that it can be used to curb the right to freedom of expression and legitimate manifestations on politically controversial issues. Martins (2020, p. 171) points out that

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* *An example of this is the "GPS of the Civic Space", quarterly bulletin edited by the Igarapé Institute. To learn more, visit: https://igarape.org.br/temas/espaco-civico/gps-do-espaco-civico/*

** *Law 13.260/2016.*

> "technical and legal elements, combined with their uses and abuses by the criminal justice system – even starting from empirical analyses – made it possible to verify the concrete risks of arbitrary use of these laws to improve and recrudesce criminalization process of social movements that are popular in the country."

The perspective does not seem so distant if we analyze the actions of the current Federal Government. Also in the first months of the administration, in 2019, **the Minister of the Environment suspended all partnerships** of the Ministry with the CSOs. Already in 2020, a new rule* was issued, which excluded the participation of organizations in the management of the National Environment Fund.

Another example is the direct persecution of organizations operating in the Amazon. The president and the minister of environment, Ricardo Salles **accused brigadists and NGOs of being responsible for the fire that struck Alter do Chão**, in Pará, in September 2019. At the time, the headquarters of one of the accused organizations was searched by the Civil Police of Pará, provoking a series of demonstrations of repudiation to the conduct of the investigation. Months later, the participation of brigadists in the fires, which were arrested, was ruled out by the Federal Police. In early 2021, the investigation was dismissed, although the Federal Prosecutor's Office indicated the action of deed forgers as a possible cause of the fire.

Threats to CSOs also depart from the National Congress. In 2019, Senator Pliny Valerio submitted **a request to establish a "Congressional Investigative Commission (CPI) of NGOs"**, focused on investigating the release of public resources for organizations operating in the Amazon and the use of the Amazon Fund (fund with national and foreign government funding, mainly from Norway and Germany, aimed at forest preservation). The request came shortly after the president of Brazil, **Jair Bolsonaro, hold NGOs responsible for expanding deforestation** in the area (without any evidence), and paralyzing more than 2.2 billion Brazilian Reais (around 400 million U.S. Dollars) from the Amazon Fund.

However, it should be remembered that it is not a novelty to establish CPIs to investigate organizations in Brazil. Previously, two CPIs focused on NGOs were carried out by the Federal Senate, the first between 2001-2002 and the second between 2007-2010. The main conclusion they reached was on the need

* *Federal Decree No. 10.224/20.*

to review the rules governing partnerships between organizations and public authorities, and the bills produced by the CPIs, in the end, were converted into Law 13.019/14, the MROSC (Pannunzio, Souza, 2019).

Implications

The episodes reported above imply the criminalization of organizations, the persecution of activists and the restriction of freedom of association. One interviewee answered the question about the intimidation measures applied by the new government as follows:

> "First it was to interrupt; interrupted at the very beginning several transfers. And the second is individual threat. You are within an organization, you get to receive a call with someone saying 'your family will be killed'. [...] Other organizations have suffered, the person leaves the organization, moves, goes elsewhere."

They cause even greater damage, which is difficult to measure, which is the delegitimization of CSOs before society. An effort to understand some of this impact was made a few years ago by ANDI when analyzing media coverage of issues related to organizations. The result is that there is still a portion of the media that produces generalizations about the entire sector when reporting specific cases of corruption of public resources involving partnerships with CSOs*. The effects of this exposure in the media, especially when reinforced by public authorities, last for years and deteriorate society's confidence in the work done by organizations.

Challenges

As has already been noted, there is no prospect of changing the government's position in the short term. On the contrary, one can predict a continuity or even a worsening of the threats made to organizations.

Opportunities

The social mobilization of organizations to combat the effects of the Covid 19 pandemic demonstrates the importance of Brazilian civil society. Sev-

* *Children's Rights News Agency - ANDI. Media Analysis: the Brazilian press and civil society organizations, 2013.*

eral actions were carried out to provide medical equipment, food and resources to families in situations of social vulnerability.According to the Covid 19 Donations Monitor, by April, more than BRL 6 billion was given tofinance responses to Covid in Brazil*. In such a difficult and challenging context, the work oforganizations acquires an even greater centrality. Taking the moment to carry out a nationalcampaign, which reinforces the credibility of CSOs with society, can be a good opportunity - an idea that has even been thought of by some associations, as the interviews cite:

> "We are discussing with some organizations the construction of a more medium-term, more permanent campaign, of valuing organizations, valuing the sector, of building a positive narrative of what are NGOs. [...] A campaign that goes in this direction for us to work with public opinion and the press."

* *Available at: https://www.monitordasdoacoes.org.br/pt . Accessed on: 04/25/2021.*

V. Conclusion

The environment of civil society in Brazil has had significant changes in recent decades, having as its starting point the inclusion of the guarantee of freedom of association in the 1988 Constitution. This process was accompanied - and is also a consequence - of the complexification of CSOs in Brazil, which grew in absolute numbers and diversified the form and causes in which they operate. The general assessment is that, even if improvements are needed, a legal environment favorable to the performance of CSOs was built, which guarantees autonomy, does not restrict political action, provides for mechanisms for fundraising, allows partnership with the public authorities and does not control or obstruct the receipt of foreign resources. It is also necessary to recognize an advance in the production of data and knowledge about the field, both by public research institutes and by the organizations themselves. Another point to highlight is the articulation of CSOs, which formed several coalitions and fronts to monitor and focus on the subjects. Several of the issues listed in this report already have exits built by the organizations, which have been engaged to promote changes that improve legislation and its implementation.

Undoubtedly, it is necessary to advance in the mechanisms of fundraising and in the tax treatment provided to CSOs. In addition, there is a portion of data and information to be collected and explored, such as access to tax benefits, forms of financing of Brazilian CSOs and the relevance of foreign resources. However, the current moment requires special attention due to the risks of setbacks in the achievements obtained in recent decades. The recent attempts described in this report on the control, surveillance and criminalization of CSOs threaten the main pillar, which underpins this entire structure, freedom of association. More than ever, organizations need to be attentive, closely monitor these threats and strengthen joint action in defense of Brazilian democracy and civil society.

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VII. Annexes - WINGS/ICNL tables

PART 1 – ISSUE FORM – Registration

Area: Registration

Describe the issue	Costs and requirements demanded by the Registry Offices for registration
Is the root of the issue in the text of the law or inthe way the law is implemented?	Both. Prices for registration of documents in the notary service are fixed, and considered very expensive by small associations. Still, the rules for registration are bureaucratic, little known and are not respected by thenotaries themselves.
Describe the impact, including the severity of theimpact, of this issue.	Cost and time spent to meet requirements. Some organizations prefer not to register as they consider theprocess and maintenance of an official association complex.
How does this issue affect philanthropy organizations? Does this overlap with the interestsof other CSOs?	The absence of registration, and consequently of CNPJ, is an impeding, or very difficult, factor for donations andthe financing of philanthropic activities.
Who might be interested or invested in addressingthis issue?	Representative associations of the third sector, Judiciary
Is this issue linked to other types of repression in the overall environment?	Yes, bureaucratic criminalization
Have there been previous efforts to address this? Ifso, What happened? Has anything changed?	Yes, on certain specific points. There is pressure from organizations to approve a project that authorizes CSOs tohold assemblies, meetings and votes by electronic means.
Are there particular features of the local or nationalenvironment to consider?	The position that notary publics have in Brazil.

PART 2 - MAPPING ISSUE PRIORITIES AND TIMELINE REQUIRED FOR POSSIBLE RESPONSES

	SHORT-TERM *May be addressed relatively quickly and with limited complications, for example through education and dialogue*	**MEDIUM-TERM** *May require additional time and be more complex to address, for example through changes to administrative guidance*	**LONG-TERM** *May require significant time and be quite complex to address, for example through changes in the legal framework*
HIGH PRIORITY *Very seriously impacting the operation of civilsociety*			
MEDIUM PRIORITY *Significantly impacting the operation of civilsociety*	Produce and disseminate information materials on bureaucratic procedures for grassroots associations.	Conduct training with agents who workat notary publics	Improve or facilitate the rules for submitting documents; Change the values of fees for registration of CSOs, especially smallones.
LOW PRIORITY *Impacting the operation of civilsociety*	Build dialogue channels with notaryoffices.		

PART 3 - MAPPING POTENTIAL CHANGEMAKERS & ALLIES

DESCRIBE THE ISSUE: The rules for registering documentation in the Legal Entities Register are very bureaucratic, little known and disrespected by the officers.			
Potential Changemaker or Ally	Power to Influence	Degree of interest	Extent of Knowledge
Judiciary	High	Low	General understanding of Issue, but do not know details
Representative associations of the 3rd sector	High	High	Good extent of knowledge
Possible Actions to Increase Interest or Knowledge	Resources Available for Advocacy	Resources Needed for Advocacy	Strength of Opportunity
Provide data about the impact of the issue	Is responsible for the rules of the notary service		
	Access to information and data	Relationship with the judicial power	

PART 1 - ISSUE FORM – Constitution

Area: Registration

Describe the issue	The legal personalities foreseen in the Civil Code are unable to cover the diversity of profiles of organizations thatexist in Brazil.
Is the root of the issue in the text of the law or inthe way the law is implemented?	The Issue is the legislation.
Describe the impact, including the severity of the impact, of this issue.	The consequence of the impossibility of differentiating entities based on their legal nature is the profusion of rules that try, in some way, to create this distinction. For this reason, a series of titles, records and certifications areprovided in Brazilian legislation (federal, state and municipal).
How does this issue affect philanthropy organizations? Does this overlap with the interests of other CSOs?	The Issue affects philanthropic organizations to the extent that it does not differentiate them from other organizations. The absence of a legal definition makes “philanthropy” an indefinite concept, with no common understanding of what it means to be a “philanthropic organization”.
Who might be interested or invested in addressingthis issue?	
Is this issue linked to other types of repression in theoverall environment?	Yes, with the Issue related to immunities and tax exemptions.
Have there been previous efforts to address this? Ifso, What happened? Has anything changed?	Not so specifically, but there was an idea that the Regulatory Framework for Civil Society Organizations (MROSC)was broader and encompassed the topic, which did not materialize.
Are there particular features of the local or nationalenvironment to consider?	The current context in which the federal government has made several threats to civil society organizations.

PART 2 - MAPPING ISSUE PRIORITIES AND TIMELINE REQUIRED FOR POSSIBLE RESPONSES

	SHORT-TERM *May be addressed relatively quickly and with limited complications, for example through education and dialogue*	**MEDIUM-TERM** *May require additional time and be more complex to address, for example throughchanges to administrative guidance*	**LONG-TERM** *May require significant time and be quite complex to address, for example through changes in the legal framework*
HIGH PRIORITY *Very seriously impacting the operation of civil society*			
MEDIUM PRIORITY *Significantly impacting the operation of civil society*	Establish dialogue between the different profiles of organizations to build a common proposal		Approval of a broad legal frameworkfor the third sector
LOW PRIORITY *Impacting the operation of civilsociety*			

PART 3 - MAPPING POTENTIAL CHANGEMAKERS & ALLIES

DESCRIBE THE ISSUE: The legal personalities foreseen in the Civil Code are unable to cover the diversity of profiles of organizations that exist in Brazil.			
Potential Change-makeror Ally	Power toInfluence	Degree of interest	Extent of Knowledge
National Congress	High	Low	Little knowledge
Representative associations of the3rd sector	Medium	Medium	Good extent of knowledge
Possible Actions to Increase Interest or Knowledge	Resources Available for Advocacy	Resources Needed for Advocacy	Strength of Opportunity
	Data on Brazilian organizations (OSC Map - IPEA)	Data on the impact of possible changes	

PART 1 – ISSUE FORM – Tax exemptions

Area: Tax

Describe the issue	Tax benefits (immunity/exemption) granted unequally to organizations, requiring distinct and bureaucratic requirements
Is the root of the issue in the text of the law or in the way the law is implemented?	Legal, the tax immunity on income, assets and services is protected by the Federal Constitution only for education, social assistance and health entities and, to access them, it is necessary to fulfill a series of requirements to obtain a specific certification. The other organizations can have access to tax exemptions (federal, state and municipal) and it is generally required to have some type of certification from the respective public entity recognizing the fulfillment of the requirements to have this right.
Describe the impact, including the severity of the impact, of this issue.	Few organizations have access to immunities; difficulty understanding the functioning of immunities and exemptions and cost to meet the requirements
How does this issue affect philanthropy organizations? Does this overlap with the interests of other CSOs?	The Issue also impacts philanthropic organizations
Who might be interested or invested in addressing this issue?	Organizations that do not have access to tax immunity
Is this issue linked to other types of repression in the overall environment?	Yes, taxation of donations
Have there been previous efforts to address this? If so, What happened? Has anything changed?	Yes, there are several lawsuits pending before the Supreme Federal Court on tax immunity, which even led to the declaration of unconstitutionality of the law that establishes the criteria for certification of CSOs.
Are there particular features of the local or national environment to consider?	In Brazil, the three federative levels - federal, states and municipalities - have the capacity to institute taxes. Thus, it is possible that tax benefits will be granted to CSOs at each of these levels.

PART 2 - MAPPING ISSUE PRIORITIES AND TIMELINE REQUIRED FOR POSSIBLE RESPONSES

	SHORT-TERM *May be addressed relatively quickly and with limited complications, for example through education and dialogue*	**MEDIUM-TERM** *May require additional time and be more complex to address, for example through changes to administrative guidance*	**LONG-TERM** *May require significant time and be quite complex to address, for example through changes in the legal framework*
HIGH PRIORITY *Very seriously impacting the operation of civil society*		Monitor and influence the supplementary law bill that must be presented in the National Congress regulating the considerations for thetax immunity	Constitutional amendment that extendstax immunities for any cause of public interest
MEDIUM PRIORITY *Significantly impacting the operation of civil society*		Review the procedures for recognizing exemption	Review the tax exemption hypotheses of state and municipal laws
LOW PRIORITY *Impacting the operation of civilsociety*	Campaign to work public opinion, building a positive view on the thirdsector in society.		

PART 3 - MAPPING POTENTIAL CHANGEMAKERS & ALLIES

DESCRIBE THE ISSUE: The rules for registering documentation in the Legal Entities Register are very bureaucratic, little known and disrespected by the officers.			
Potential Changemaker or Ally	Power toInfluence	Degree ofinterest	Extent of Knowledge
Parliament	High	Low	General understanding of Issue, but do notknow details
Financer's and Representative'sAssociations	Medium	High	Good extent of knowledge
Press	Medium	Low	Very few knowledge
Possible Actions to Increase Interest or Knowledge	Resources Available for Advocacy	Resources Needed for Advocacy	Strength of Opportunity
Provide data on CSOs affected; provide examples of laws in neighboring countries; provide information on international legal standards	Relationship with financiers who may be interested in the issue	Hard data and concrete stories from affected CSOs and individuals; Examples of laws in neighboring countries.	9
Coordinate studies on the issue	Access to information and data	Relationship with legislators	9
Create relationship with CSOs	Capacity to impact and influence citizens and legislators	Knowledge of the issue	7

PART 1 – ISSUE FORM – Tax Donations

Area: Fundraising

Describe the issue	In Brazil, donations to CSOs are taxed by the same tax that is levied on the transfer of inheritance and donations between individuals, the Estate and Donation Tax (ITCMD). In addition, as it is a tax within the jurisdiction of the states, the rules on taxation are different in each of the 27 federal entities and only 9 establish some type of exemption from the ITCMD for donations directed to CSOs.
Is the root of the issue in the text of the law or inthe way the law is implemented?	The Issue is the legislation.
Describe the impact, including the severity of theimpact, of this issue.	Taxation of donations to organizations is a barrier to the transfer of private resources to organizations. Anotherimplication of this situation is that tax exemptions are more accessed by CSOs with greater availability of resources due to the complexity of the legislation and the need to meet several requirements.
How does this issue affect philanthropy organizations? Does this overlap with the interestsof other CSOs?	Philanthropic organizations are also affected, especially those that donate resources, because they are alsolegally responsible for paying the tax.
Who might be interested or invested in addressingthis issue?	Organizations that are funded by donations; philanthropic organizations donating resources
Is this issue linked to other types of repression inthe overall environment?	Yes, taxation of donations is directly connected with tax immunities and exemptions
Have there been previous efforts to address this? Ifso, What happened? Has anything changed?	There were mobilizations both at the state and the federal level. The main achievements occur at the state level, such as Rio de Janeiro Law No. 7.786/2017, which expanded the chances of exemption; and Santa Catarina State Law 18.064/21, which established the self-declaration recognition of the tax exemption.
Are there particular features of the local or nationalenvironment to consider?	The competence to institute a tax on donations to organizations belongs to the federative entities, with Brazilhaving 27 federative entities.

PART 2 - MAPPING ISSUE PRIORITIES AND TIMELINE REQUIRED FOR POSSIBLE RESPONSES

	SHORT-TERM *May be addressed relatively quickly andwith limited complications, for example through education and dialogue*	**MEDIUM-TERM** *May require additional time and be more complex to address, for example throughchanges to administrative guidance*	**LONG-TERM** *May require significant time and be quite complex to address, for example throughchanges in the legal framework*
HIGH PRIORITY *Very seriously impacting the operation of civilsociety*		Approval of a Federal Senate resolution establishing a differentiated maximum rate for donations to CSOs	Approve amendments to the Federal Constitution that determines that the ITCMD does not affect donations to organizations
MEDIUM PRIORITY *Significantly impacting the operation of civilsociety*		Promote changes in the procedures for recognizing the exemption, making it self-declaratory	Promote changes in state laws that guarantee exemption from ITCMD indonations to organizations
LOW PRIORITY *Impacting the operation of civilsociety*			

PART 3 - MAPPING POTENTIAL CHANGEMAKERS & ALLIES

DESCRIBE THE ISSUE: In Brazil, donations to CSOs are taxed by the same tax that is levied on the transfer of inheritance and donations between individuals - to tax theanticipation of inheritance - the Estate and Donation Tax (ITCMD).			
Potential Change-makeror Ally	Power toInfluence	Degree ofinterest	Extent of Knowledge
State ExecutiveBranch	High	Low	Very few knowledge
State Deputies	High	Medium	Very few knowledge
Senators and Federal Deputies	High	Medium	Very few knowledge
Philanthropicorganizations	Medium	High	Good extent of knowledge
Possible Actions to Increase Interest or Knowledge	Resources Available for Advocacy	Resources Needed for Advocacy	Strength of Opportunity
Getting to know the work done by CSOs	Data on the budgetary impact of the exemption; Coalition of CSOs working on the subject	Data on the volume of donations to CSOs and the impact of taxation	7
Getting to know the work done by CSOs	Data on the budgetary impact of the exemption; Coalition of CSOs working on the subject	Data on the volume of donations to CSOs and the impact of taxation	8
Getting to know the work done by CSOs	Data on the budgetary impact of the exemption; Coalition of CSOs working on the subject	Data on the volume of donations to CSOs and the impact of taxation	7
Understand the relevance of the topic to CSOs	Data on the budgetary impact of the exemption; Coalition of CSOs working on the subject	General resources (research funding, advocacy actions)	8

PART 1 – ISSUE FORM – Endowments

Area: Fundraising

Describe the issue	Even though a specific law (Law 13.800/19) on equity funds in Brazil has recently been enacted, legalobstacles remain to expand the use of this instrument as if equity fund management organizationscan also enjoy immunities and tax exemptions, absence of tax incentives for donations directed tofunds and the regulation of the use of the Culture Incentive Law
Is the root of the issue in the text of the law or in the way the lawis implemented?	The Issue is the lack of regulation
Describe the impact, including the severity of the impact, of thisissue.	The structure required by the law implies an extra cost for organizations to create their equity fundsin the model of Law No. 13.800/19, without providing any additional benefit. For this reason, CSOsthat are formally incorporated and that have resources invested to finance their activities have noincentive to adopt this instrument as provided in Law.
How does this issue affect philanthropy organizations? Does this overlap with the interests of other CSOs?	There is also an interest from philanthropic organizations in solving the Issue
Who might be interested or invested in addressing this issue?	Philanthropic organizations and Brazilian philanthropy more broadly
Is this issue linked to other types of repression in the overallenvironment?	Yes, tax treatment of CSOs and access to immunities and exemptions
Have there been previous efforts to address this? If so, What happened? Has anything changed?	Yes, the Coalition for Philanthropic Funds has made efforts to try to solve the Issues, having alreadymade interfaces with the Ministry of Economy and the Special Secretariat for Culture
Are there particular features of the local or national environment to consider?	

PART 2 - MAPPING ISSUE PRIORITIES AND TIMELINE REQUIRED FOR POSSIBLE RESPONSES

	SHORT-TERM *May be addressed relatively quickly andwith limited complications, for example through education and dialogue*	**MEDIUM-TERM** *May require additional time and be more complex to address, for example through changes to administrative guidance*	**LONG-TERM** *May require significant time and be quite complex to address, for example through changes in the legal framework*
HIGH PRIORITY *Very seriously impacting the operation of civilsociety*	Clarification by the Federal Revenue Service on the tax treatment given to fund management organizations	Regulation on the use of the Culture Incentive Law for donations directed to cultural funds	
MEDIUM PRIORITY *Significantly impacting the operation of civilsociety*			Approve a law that expands tax incentives for donations to equity funds
LOW PRIORITY *Impacting the operation of civilsociety*			Approve a law that rules the creation of emergency equity funds

PART 3 - MAPPING POTENTIAL CHANGEMAKERS & ALLIES

DESCRIBE THE ISSUE: Even though a specific law (Law 13.800/19) on equity funds in Brazil has recently been enacted, legal obstacles to expanding the use of thisinstrument still remain.			
Potential Changemakeror Ally	Power toInfluence	Degree ofinterest	Extent of Knowledge
Ministry ofEconomy	High	Low	General understanding of Issue, but not know detalis
Special Secretariat for Culture	High	Low	No knowledge
Possible Actions to Increase Interest or Knowledge	Resources Available for Advocacy	Resources Needed for Advocacy	Strength of Opportunity
Know the positive impacts of tax incentives	Data on the use of incentives	Impact assessment data in case of expansion of incentives	7
Know the positive impacts of tax incentives	Data on the use of incentives	Impact assessment data in case of expansion of incentives	5

PART 1 - ISSUE FORM - Tax incentives

Area: Fundraising

Describe the issue	The current model of tax incentives for donations from individuals imposes restrictions that limit the capacity ofthis instrument. The first is that incentives are restricted to supporting certain causes, such as culture, sports,health, among others. The second constraint is the need for the encouraged donation to be directed to a project previously approved by government programs or funds
Is the root of the issue in the text of the law or inthe way the law is implemented?	The Issue is the restrictions imposed by current legislation
Describe the impact, including the severity of theimpact, of this issue.	Thus, what can be observed when analyzing data from 2012 to 2015 is, in practice, the restriction of reach, since asmall percentage of taxpayers, among those who would have potential, make incentive donations.
How does this issue affect philanthropy organizations? Does this overlap with the interests of other CSOs?	Philanthropic organizations rarely use tax incentives from individuals. In general, their use is of tax incentivesfor legal entities.
Who might be interested or invested in addressing this issue?	Organizations that raise funds from individuals
Is this issue linked to other types of repression in the overall environment?	It is related to the general Issue of third sector legislation in Brazil, which often establishes specific rulesdepending on the area in which the organization operates.
Have there been previous efforts to address this? Ifso, What happened? Has anything changed?	A survey carried out in 2019 identified 37 proposals being processed by the National Congress that propose changes in tax incentives for donations from individuals. However, among the 37 bills, only one proposes a single regime of incentive donations, applicable to donations destined to any public interest organization regardless of the cause.
Are there particular features of the local or national environment to consider?	In the case of tax incentives for donations from individuals, there are specific laws and rules for each supportedcause. In general, the proposals in progress reinforce this segmentation logic.

PART 2 - MAPPING ISSUE PRIORITIES AND TIMELINE REQUIRED FOR POSSIBLE RESPONSES

	SHORT-TERM *May be addressed relatively quickly and with limited complications, for example through education and dialogue*	MEDIUM-TERM *May require additional time and be more complex to address, for example through changes to administrative guidance*	LONG-TERM *May require significant time and be quite complex to address, for example through changes in the legal framework*
HIGH PRIORITY *Very seriously impacting the operation of civilsociety*			Avoid approval of PEC 187/2019, whichcan terminate tax incentives for donations
MEDIUM PRIORITY *Significantly impacting the operation of civilsociety*	Build a proposal that has support and contemplates organizations		Approve a law that establishes a single incentive regime for donations from individuals, which includes all causes of public interest
LOW PRIORITY *Impacting the operation of civilsociety*			

PART 3 - MAPPING POTENTIAL CHANGEMAKERS & ALLIES

DESCRIBE THE ISSUE: The current model of tax incentives for donations from individuals imposes restrictions that limit the capacity of this instrument. The first is that incentives are restricted to supporting certain causes, such as culture, sports, health, among others. The second constraint is the need for the encouraged donation to be directed to a project previously approved by government programs or funds			
Potential Changemaker or Ally	Power to Influence	Degree of interest	Extent of Knowledge
National Congress	High	Low	General understanding of Issue, but do not know details
Ministry of Economy	High	Very Low	General understanding of Issue, but do not know details
Possible Actions to Increase Interest or Knowledge	Resources Available for Advocacy	Resources Needed for Advocacy	Strength of Opportunity
Know the positive impacts of tax incentives	Data on the use of incentives	Impact assessment data in case of expansion of incentives	7
Know the positive impacts of tax incentives	Data on the use of incentives	Impact assessment data in case of expansion of incentives	5

PART 1 - ISSUE FORM - Foreign Donations

Area: Fundraising

Describe the issue	Lack of definition of the need, or not, to collect taxes on donations from outside Brazil. The question arises from a controversy over whether states are competent to impose taxes on foreign donations in the absence of a definition by federal law.
Is the root of the issue in the text of the law or in theway the law is implemented?	Absence of a law establishing the competence to institute tax on foreign donations
Describe the impact, including the severity of the impact, of this issue.	The lack of definition of the competence of states to tax foreign donations creates legal uncertainty fororganizations, especially for those that are financed with foreign resources.
How does this issue affect philanthropy organizations? Does this overlap with the interestsof other CSOs?	The Issue also impacts philanthropic organizations that access foreign resources.
Who might be interested or invested in addressingthis issue?	Organizations that raise foreign donations, especially those that advocate for rights
Is this issue linked to other types of repression in the overall environment?	Yes, taxation of donations and tax benefits
Have there been previous efforts to address this? Ifso, What happened? Has anything changed?	Yes, the controversy was recently adjudicated by the Supreme Federal Court, which ruled that states do not have the competence to institute a tax on donations from abroad as long as there is no supplementary law governing the matter.
Are there particular features of the local or national environment to consider?	There are no restrictions in Brazilian legislation for receiving foreign donations by CSOs or governmentsupervision over CSOs that receive this type of resource.

PART 2 - MAPPING ISSUE PRIORITIES AND TIMELINE REQUIRED FOR POSSIBLE RESPONSES

	SHORT-TERM *May be addressed relatively quickly andwith limited complications, for example through education and dialogue*	**MEDIUM-TERM** *May require additional time and be more complex to address, for example through changes to administrative guidance*	**LONG-TERM** *May require significant time and be quite complex to address, for example throughchanges in the legal framework*
HIGH PRIORITY *Very seriously impacting the operation of civilsociety*	Disseminate information to CSOs on the recent STF decision regarding theprohibition of states from taxing foreign donations	Approval of a Federal Senate resolution establishing a differentiated maximum rate for foreign donations to CSOs	Monitor and focus on the supplementary law bill that must be presented in the National Congress, regulating the powers to institute taxon foreign donations
MEDIUM PRIORITY *Significantly impacting the operation of civil society*			
LOW PRIORITY *Impacting the operation of civilsociety*			

PART 3 - MAPPING POTENTIAL CHANGEMAKERS & ALLIES

DESCRIBE THE ISSUE: Lack of definition of the need, or not, to collect taxes on donations from outside Brazil. The question arises from a controversy over whetherstates are competent to impose taxes on foreign donations in the absence of a definition by federal law.			
Potential Changemakeror Ally	Power toInfluence	Degree of interest	Extent of Knowledge
Senators	High	Medium	Little knowledge
Federal Deputies	High	Medium	Little knowledge
Possible Actions to Increase Interest or Knowledge	Resources Available for Advocacy	Resources Needed for Advocacy	Strength of Opportunity
Know the impact of foreign donation taxation for CSOs	Coalition of CSOs following the subject	Impact assessment data in case of expansion of taxation of foreign donations	7
Know the impact of foreign donation taxation for CSOs	Coalition of CSOs following the subject	Impact assessment data in case of expansion of taxation of foreign donations	7

PART 1 - ISSUE FORM - Banks and access to the financial system

Area: Fundraising

Describe the issue	Organizations have struggled to open bank accounts and access credit cards. It is estimated that the implementation of FATF measures in the national territory has created barriers in the organizations' access tothe financial system.
Is the root of the issue in the text of the law or inthe way the law is implemented?	The Issue arises both from the restrictions imposed by the rules adopted by Brazil, when incorporating the FATF measures, and from the way they are implemented by financial agents
Describe the impact, including the severity of the impact, of this issue	These difficulties imply a challenge for raising funds from CSOs and maintaining philanthropy in the country as awhole. Having access to the banking system is essential for the movement of capital and for making financial transactions. It is about respecting the autonomy of CSOs to manage their own resources
How does this issue affect philanthropy organizations? Does this overlap with the interestsof other CSOs?	The tendency is that philanthropic organizations have less impact due to the volume of resources they have andthe capacity they have to hire professionals to assist them.
Who might be interested or invested in addressing this issue?	Organizations that raise donation funds, representative membership organizations
Is this issue linked to other types of repression in the overall environment?	No
Have there been previous efforts to address this? If so, What happened? Has anything changed?	There are some organizations that have followed and acted on the topic. The engagement of these organizations resulted in the presentation of the bill known as the Donations Banking Framework (PL 3.384/2019). In addition, at the end of 2020, the Coalition of CSOs was created by the FATF, which has led the wayin this area.
Are there particular features of the local or nationalenvironment to consider?	

PART 2 - MAPPING ISSUE PRIORITIES AND TIMELINE REQUIRED FOR POSSIBLE RESPONSES

	SHORT-TERM *May be addressed relatively quickly andwith limited complications, for example through education and dialogue*	**MEDIUM-TERM** *May require additional time and be more complex to address, for example through changes to administrative guidance*	**LONG-TERM** *May require significant time and be quite complex to address, for example through changes in the legal framework*
HIGH PRIORITY *Very seriously impacting the operation of civilsociety*	Establish dialogue between CSOs and actors that compose the Financial System		Approval of the bill known as the Donations Banking Framework (PL 3.384/2019), which proposes changes to the law that provides on the Brazilian Payment System
MEDIUM PRIORITY *Significantly impacting the operation of civilsociety*			
LOW PRIORITY *Impacting the operation of civilsociety*			

PART 3 - MAPPING POTENTIAL CHANGEMAKERS & ALLIES

DESCRIBE THE ISSUE: Organizations have struggled to open bank accounts and access credit cards. It is estimated that the implementation of FATF measures in thenational territory has created barriers to the organizations in the financial system.			
Potential Change-makeror Ally	Power toInfluence	Degree of interest	Extent of Knowledge
Central Bank	High	Very Low	No knowledge
FEBRABAN	High	Very Low	No knowledge
Possible Actions to Increase Interest or Knowledge	Resources Available for Advocacy	Resources Needed for Advocacy	Strength of Opportunity
Getting to know the work done byCSOs	Coalition of CSOs following the subject	Production of data and knowledge about the impact ofthe Issue on CSOs	6
Getting to know the work done byCSOs	Coalition of CSOs following the subject	Production of data and knowledge about the impact ofthe Issue on CSOs	6

PART 1 - ISSUE FORM - Control by the Public Prosecutor's Office

Area: Oversight

Describe the issue	Inspection exercised by the Public Prosecution Office (MP). As the foundations are constituted by an equity destined to a determined public purpose, it is up to the Public Prosecution to ensure that the resources are used according to the public interest, but there is no definition of what this inspection would be. In addition, althoughthis inspection is foreseen in the Civil Code for the case of foundations, some Public Prosecution Offices have exercised this same control over associations.
Is the root of the issue in the text of the law or inthe way the law is implemented?	Both, the absence of a legal definition and the way it is interpreted by the State Public Prosecution Offices
Describe the impact, including the severity of the impact, of this issue.	This follow-up by the Public Prosecution Office bureaucratizes the management of foundations. Monitoring alsorestricts the innovative capacity of these entities, in order to avoid questioning.
How does this issue affect philanthropy organizations?	Directly affect philanthropic organizations incorporated as foundations
Who might be interested or invested in addressing this issue?	Judiciary, representative associations of the third sector
Is this issue linked to other types of repression in the overall environment?	
Have there been previous efforts to address this? If so, What happened? Has anything changed?	There are occasional attempts at dialogue with the Public Prosecution
Are there particular features of the local or national environment to consider?	The Civil Code provides for the monitoring of foundations by the Public Prosecution

PART 2 - MAPPING ISSUE PRIORITIES AND TIMELINE REQUIRED FOR POSSIBLE RESPONSES

	SHORT-TERM *May be addressed relatively quickly andwith limited complications, for example through education and dialogue*	**MEDIUM-TERM** *May require additional time and be more complex to address, for example through changes to administrative guidance*	**LONG-TERM** *May require significant time and be quite complex to address, for example through changes in the legal framework*
HIGH PRIORITY *Very seriously impacting the operation of civil society*	Establish dialogue with the Public Ministry to discuss impacts for CSOsand build understandings		
MEDIUM PRIORITY Significantly impacting the operation of civil society			Promote changes in the Civil Code that remove the inspection of foundations by the Public Prosecution
LOW PRIORITY *Impacting the operation of civilsociety*			

PART 3 - MAPPING POTENTIAL CHANGEMAKERS & ALLIES

DESCRIBE THE ISSUE: Inspection exercised by the Public Prosecution Office (MP) on organizations.			
Potential Change-makeror Ally	Power toInfluence	Degree of interest	Extent of Knowledge
Public Prosecution Office	Very High	Low	Medium extent of knowledge
National Congress	High	Low	No knowledge
Judiciary	High	Low	No knowledge
Possible Actions to Increase Interest or Knowledge	Resources Available for Advocacy	Resources Needed for Advocacy	Strength of Opportunity
Know better the existing mechanism of control, transparency and accountability	Transparency and accountability already adopted by CSOs	Production of data and knowledge about the impact of the Issue on CSOs	7
Know better the existing mechanism of control, transparency and accountability	Transparency and accountability already adopted by CSOs	Production of data and knowledge about the impact of the Issue on CSOs	6
Know better the existing mechanism of control, transparency and accountability	Transparency and accountability already adopted by CSOs	Production of data and knowledge about the impact of the Issue on CSOs	6

PART 1 - ISSUE FORM - Bureaucratic criminalization

Area: Oversight

Describe the issue	Creation of obstacles, on the part of the public administration, in demanding the execution of excessive requirements and procedures by the CSOs.
Is the root of the issue in the text of the law or inthe way the law is implemented?	The Issue is the implementation of the law.
Describe the impact, including the severity of the impact, of this issue.	Excessive time spent by CSOs to respond to demands negatively impacts the institutional capacity of CSOs. Due to the bureaucracy and demands made, CSOs are discouraged from accessing public resources and end up looking for other sources of funds.
How does this issue affect philanthropy organizations?	The Issue has less impact on philanthropic organizations that, in general, have better financial conditions to hire specialists to assist them, in addition to not accessing public resources.
Who might be interested or invested in addressingthis issue?	Grassroots organizations, organizations that access public resources, organizations that work in the defense ofrights
Is this issue linked to other types of repression in the overall environment?	
Have there been previous efforts to address this? If so, What happened? Has anything changed?	In 2014, a new law was approved to regulate partnerships between CSOs and public authorities, which establishes that the evaluation of partnerships is done primarily through the control of results rather than focusing on accountability. Subsequently, some organizations made efforts to promote the training of CSOs andpublic managers on the new legislation. However, there is a lot of resistance from the public authorities to change the prevailing logic of accountability in a bureaucratic way.
Are there particular features of the local or national environment to consider?	The 2014 law applies to the Federal Government, States and Municipalities and allows the latter - States and Municipalities - to regulate the law in order to adapt it to the specificities of each location.

PART 2 - MAPPING ISSUE PRIORITIES AND TIMELINE REQUIRED FOR POSSIBLE RESPONSES

	SHORT-TERM *May be addressed relatively quickly andwith limited complications, for example through education and dialogue*	**MEDIUM-TERM** *May require additional time and be more complex to address, for example through changes to administrative guidance*	**LONG-TERM** *May require significant time and be quite complex to address, for example through changes in the legal framework*
HIGH PRIORITY *Very seriously impacting the operation of civil society*	Training of public managers on the MROSC (Law 13.019/14)		
MEDIUM PRIORITY *Significantly impacting the operation of civilsociety*	Identify and map the cases in which the public administration commits excesses and assess the impact for CSOs	Creation of State or Municipal Councils for Promotion and Collaboration with the purpose of disseminating good practices and proposing and supporting policies and actions aimed at strengthening partnership relations between civil society organizations and the public administration	
LOW PRIORITY *Impacting the operation of civilsociety*			

PART 3 - MAPPING POTENTIAL CHANGEMAKERS & ALLIES

DESCRIBE THE ISSUE: Creation of obstacles, on the part of the public administration, in demanding the execution of excessive requirements and procedures by theCSOs.			
Potential Changemaker or Ally	Power toInfluence	Degree of interest	Extent of Knowledge
State and Municipal Governments (Executive)	High	Low	Little knowledge
Public managers	High	Low	Little knowledge
Possible Actions to Increase Interest or Knowledge	Resources Available for Advocacy	Resources Needed for Advocacy	Strength of Opportunity
		Production of dataand knowledge about the impact of the Issue on CSOs	
		Production of data and knowledge about the impact of the Issue on CSOs	

PART 1 - ISSUE FORM - Government Supervision

Area: Oversight

Describe the issue	In recent years, it has been possible to observe the emergence of direct threats to restrict freedom of association through attempts to control and supervise CSOs. An example was the edition of Provisional Measure (MP) No. 870 in early 2019. Appointment of an agent of the Brazilian Intelligence Agency (ABIN) as General Coordinator of Articulation with Organizations.
Is the root of the issue in the text of the law or inthe way the law is implemented?	
Describe the impact, including the severity of the impact, of this issue	Intimidation of CSOs that have adopted safety measures and protocols about their activities, information andteam members. They also have their autonomy (and freedom of association) in check. Risk that other institutions or public bodies are mobilized to carry out this monitoring closer to the activities of CSOs
How does this issue affect philanthropy organizations? Does this overlap with the interests of other CSOs?	So far the threats have been focused on grassroots organizations, but the control proposal (MP 870) impactedorganizations as a whole, including philanthropic organizations
Who might be interested or invested in addressing this issue?	Potentially all organizations since freedom of association is threatened, especially organizations that work in thedefense of rights and on environmental and gender issues
Is this issue linked to other types of repression in the overall environment?	
Have there been previous efforts to address this? Ifso, What happened? Has anything changed?	The organizations mobilized in the National Congress to revert the authorization of supervision by the FederalGovernment, which resulted in the revision of the text of MP No. 870. The appointment of ABIN's agenda was questioned in court and ended up being annulled by a Federal Court decision.
Are there particular features of the local or national environment to consider?	

PART 2 - MAPPING ISSUE PRIORITIES AND TIMELINE REQUIRED FOR POSSIBLE RESPONSES

	SHORT-TERM *May be addressed relatively quickly andwith limited complications, for example through education and dialogue*	**MEDIUM-TERM** *May require additional time and be more complex to address, for example throughchanges to administrative guidance*	**LONG-TERM** *May require significant time and be quite complex to address, for example throughchanges in the legal framework*
HIGH PRIORITY *Very seriously impacting the operation of civilsociety*	Campaign to defend organized civil society		
MEDIUM PRIORITY *Significantly impacting the operation of civilsociety*			
LOW PRIORITY *Impacting the operation of civilsociety*			

PART 3 - MAPPING POTENTIAL CHANGEMAKERS & ALLIES

DESCRIBE THE ISSUE: In recent years, it has been possible to observe the emergence of direct threats to restrict freedom of association through attempts to controland supervise CSOs.			
Potential Change-makeror Ally	Power toInfluence	Degree of interest	Extent of Knowledge
Philanthropy organi-zations	Low	Medium	General understan-ding of Issue, but do not know details
Possible Actions to Increase Interest or Knowledge	Resources Available for Advocacy	Resources Needed for Advocacy	Strength of Opportunity
Understand the relevance of the topic to CSOs		General resources (legal defense and advocacy funding)	8

PART 1 - ISSUE FORM - Delegation and criminalization

Describe the issue	Organizations have been accused of committing crimes, especially by the Federal Government. At the beginning of the administration, in 2019, the Minister of the Environment suspended all partnerships between the Ministry and CSOs. Attempt to establish a "Parliamentary Inquiry Commission (CPI) of NGOs", focused on investigating the release of public funds for organizations working in the Amazon and the use of the Amazon Fund.
Is the root of the issue in the text of the law or in the way the law is implemented?	There are attempts to change the legislation, as well as to implement the law in order to curtail organizations
Describe the impact, including the severity of the impact, of this issue.	The episodes reported above imply the criminalization of organizations, the persecution of activists and the restriction of freedom of association. They cause even greater damage, which is difficult to measure: the delegitimization of CSOs before society.
How does this issue affect philanthropy organizations? Does this overlap with the interests of other CSOs?	The target of the accusations has been the grassroots organizations (or NGOs), but these cases end up negatively impacting all organizations, regardless of the profile
Who might be interested or invested in addressing this issue?	Organizations working for the defense of rights
Is this issue linked to other types of repression in the overall environment?	Yes, restrictions in the operating space
Have there been previous efforts to address this? If so, What happened? Has anything changed?	
Are there particular features of the local or national environment to consider?	

PART 2 - MAPPING ISSUE PRIORITIES AND TIMELINE REQUIRED FOR POSSIBLE RESPONSES

	SHORT-TERM *May be addressed relatively quickly and with limited complications, for example through education and dialogue*	**MEDIUM-TERM** *May require additional time and be more complex to address, for example through changes to administrative guidance*	**LONG-TERM** *May require significant time and be quite complex to address, for example through changes in the legal framework*
HIGH PRIORITY *Very seriously impacting the operation of civilsociety*	Campaign on the importance of organizations		
MEDIUM PRIORITY *Significantly impacting the operation of civilsociety*			
LOW PRIORITY *Impacting the operation of civilsociety*			

PART 3 - MAPPING POTENTIAL CHANGEMAKERS & ALLIES

DESCRIBE THE ISSUE: Organizations have been accused of committing crimes, especially by the Federal Government			
Potential Changemakeror Ally	Power toInfluence	Degree of interest	Extent of Knowledge
Philanthropy organizations	Low	Medium	General understanding of Issue, but do notknow details
Possible Actions to Increase Interest or Knowledge	Resources Available for Advocacy	Resources Needed for Advocacy	Strength of Opportunity
Understand the relevance of the topic to CSOs		General resources (legal defense and advocacy funding)	8

PART 1 – ISSUE FORM – Restriction of the area of practice

Area: Policy Engagement

Describe the issue	Termination of several collegiate bodies of the federal public administration through Federal Decree No. 9.759/2019. These collegiate entities relied on the participation of CSO representatives and had the purpose of guaranteeing the participation of civil society in the monitoring and management of public policies.
Is the root of the issue in the text of the law or inthe way the law is implemented?	The Issue is in both, in the rule that extinguished the councils but also in the government that does not gatherthe councils that are provided by law
Describe the impact, including the severity of the impact, of this issue.	Restriction of the participation of society itself in the elaboration, follow--up and monitoring of public policies.The tendency is that with the end of these spaces for dialogue, public policies lose quality, as they are less connected with the direct demands of the population, and that the inspection of government activities is reduced.
How does this issue affect philanthropy organizations? Does this overlap with the interests of other CSOs?	
Who might be interested or invested in addressingthis issue?	Organizations that had a seat and participated in the councils
Is this issue linked to other types of repression inthe overall environment?	It is connected with attempts to supervise organizations and criminalize
Have there been previous efforts to address this? Ifso, What happened? Has anything changed?	The constitutionality of the act was questioned in the Supreme Federal Court by the organizations, whichdecided to suspend only part of the decree's validity.
Are there particular features of the local or national environment to consider?	

PART 2 - MAPPING ISSUE PRIORITIES AND TIMELINE REQUIRED FOR POSSIBLE RESPONSES

	SHORT-TERM *May be addressed relatively quickly and with limited complications, for example through education and dialogue*	**MEDIUM-TERM** *May require additional time and be more complex to address, for example through changes to administrative guidance*	**LONG-TERM** *May require significant time and be quite complex to address, for example through changes in the legal framework*
HIGH PRIORITY *Very seriously impacting the operation of civilsociety*	Campaign on the importance of guaranteeing the participation of civil society in the process of formulating and monitoring public policies		
MEDIUM PRIORITY *Significantly impacting the operation of civilsociety*			Approval of a law that creates the "National Social Participation Policy"
LOW PRIORITY *Impacting the operation of civilsociety*			

PART 3 - MAPPING POTENTIAL CHANGEMAKERS & ALLIES

DESCRIBE THE ISSUE: Termination of several collegiate bodies of the federal public administration through Federal Decree No. 9.759/2019.			
Potential Change-makeror Ally	Power toInfluence	Degree of interest	Extent of Knowledge
National Congress	High	Low	Medium extent of knowledge
Philanthropy organizations	Low	High	General understanding of Issue, but do notknow details
State and Municipal Governments (Executive)	High	Low	Little knowledge
Possible Actions to Increase Interest or Knowledge	Resources Available for Advocacy	Resources Needed for Advocacy	Strength of Opportunity
Understand the relevance of the topic to CSOs		General resources (research and advocacy funding)	