



Africa Philanthropy Network

Voice and Action for African Philanthropy



**Synthesis of the Existing
Assessments of the Legal
Environment for Civil Society
Organizations including
Philanthropic Support
Organizations in Brazil**

APN 2021.



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ABOUT US

Africa Philanthropy Network (APN) is the continent-wide network of African owned and African-led organization which promote the culture of individual and community philanthropy and acts as a space for indigenous institutions in Africa to interrogate and intervene in the power dynamics that shape how resources mobilization, distribution and spending impact the possibilities of transformation change. APN envision a strong and effective philanthropic community, striving to build equitable and just societies in Africa. Its Mission seeks to reclaim the power and elevate practices of African philanthropy. In achieving this mission, APN is working in collaboration with its members and other philanthropy support organizations to promote voice and action of African philanthropy through building of solidarity and coordinated response in African philanthropy landscape; rethinking and build the case for the potential for African (individual and community) philanthropy to drive social and systems change.

ABOUT THE REPORT

APN in collaboration with the Brazilian Network for Social Justice Philanthropy in 2021 engaged the services of Vinícius Marques de Carvalho Advogados, a Brazilian law firm to conduct a study on Synthesis of the Existing Assessments of the Legal Environment for Civil Society Organizations including Philanthropic Support Organizations in Brazil to thrive.

The report forms part of the body of work of the Giving for Change (GfC) program. This synthesis provides a 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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ONE: LIST OF ACRONYMS AND ABBREVIATIONS

ABIN	Brazilian Intelligence Agency Agencia Brasileira de Inteligencia
ANDI	News Agency for Children's Rights Agencia de Noticias dos Direitos da Infancia
ANPD	National Data Protection Authority Autoridade Nacional de Protecao de Dados
BNDES	National Development Bank O Banco Nacional do Desenvolvimento
CEBAS	Certificate of Social and Education Charity Certificacao de Entidades Beneficentes de Assistencia Social na Area de Educacao
CETIC	Center for Studies on Information and Communication Technology O Centro de Estudos sobre as Tecnologias da Informacao e da Comunicacao
CNPJ	National Registry of Legal Entities Cadastro Nacional da Pessoa Juridica
ENIMPACTO	National Investment and Impact Business Strategy Estrategia Nacional de Investimentos e Negocios de Impacto
FATF	Financial Action Trust Force (International body of which Brazil is a member)
GfC	Giving for Change (project) (International project allowing the research for this report)
GIFE	Group of Institutes, Foundations and Enterprises Grupo de Institutos, Fundacoes e Empresas
IBGE	Brazilian Institute of Geography and Statistics Instituto Brasileiro de Geografia e Estatistica
IBRAM	Brazilian Museum Institute Instituto Brasileiro de Museus
ICNL	International Center for Not-for-profit Law (International organization)

INSS	National Social Security Institute Instituto Nacional de Seguro Social
IPEA	Institute for Applied Economic Research Instituto de Pesquisa Economica Aplicada
IPTU	Urban Building and Land Tax Imposto sobre a Propriedade Predial e Territorial Urbana
IPVA	Motor vehicle Ownership Tax Imposto sobre Propriedade de Veiculos Automotores
ITCMD	Estate and Donation Tax Imposto de Transmissao Causa Mortis e Doacao
LIC	Culture Incentive Law Lei de Incentivo a Cultura
MDB	Brazilian Democratic Movement (political party) Movimento Democratico Brasileiro
MP	Provisional Measure Medida Provisoria
MP	Public Prosecutor's Office Ministerio Publico
MROSC	Regulatory Framework for Civil Society Organizations Marco Regulatorio das Organizacoes da Sociedade Civil
OGFP	Heritage Fund Management Organization Organizacao Gestora de Fundo Patrimonial
OS	Social Organization Organizacao Social
OSC	Civil Society Organization Organizacao da Sociedade Civil
OSCIPs	Civil Society Organizations of Public Interest (Law of ..) Organizacao da Sociedade Civil de Interesse Publico (Lei de ..)

PEC	Constitutional Amendment Proposal Proposta de Emenda Constitucional
PGFN	National Treasury Attorney General Office Procuradoria Geral da Fazenda Nacional
PRONAS/PCD	National Program to Support Healthcare to People with Disabilities Programa Nacional de Apoio a Atencao da Saude da Pessoa com Deficiencia
PRONON	National Program to Support Oncological Care Programa Nacional de Apoio a Atencao Oncologica
PRS	Senate Resolution Project Projeto de Resolucao do Senado
PSDB	Brazilian Social Democratic Party (Political Party) Partido da Social Democracia Brasileira
PSO	Philanthropy Support Organization Organizacao de Apoio a Filantropia
REFIS	Tax Recovery Program No Portuguese translation available
SRF	Federal Revenue Service Secretaria da Receita Federal
STF	Supreme Federal Court Supremo Tribunal Federal
UF	Federation Unit Unidade da Federacao
UNESCO	United Nations Educational Scientific and Cultural Organization
WINGS	Worldwide Initiative for Grantmaker Support

TWO: INTRODUCTION

Organized civil society in Brazil is subject to a number of national laws and regulations, which govern the way in which they are incorporated, what tax treatment will be applied, or how they can formalize partnerships with public authorities. Such rules, however, should 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 is fundamental to understand to what extent Brazil provides a favorable operating environment for organized civil society. This will also provide information whether the right to freedom of association has been ensured in the country.

The purpose of this report is to present a synthesis of the existing assessments of the legal environment in which CSOs and Philanthropy Support Organizations (PSOs) operate in Brazil. This will feed into 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 of that framework is to support advocacy actions by civil society and enhance community voices which claim rights, in order to strengthen freedom of expression and the right of association and assembly in eight different countries in the Global South. This report aims to identify and understand the issues that civil society organizations experience in the legal sphere in Brazil and to map solutions and inputs available 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 executive summary visually simplifies the main points of the study in the WINGS/ICNL table. The second part deals with the analysis itself and is subdivided into three themes: (i) donations and fundraising, (ii) formalization and management and (iii) autonomy. In each of these 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 are identified. The third and last part of this report consists of the spreadsheets by WINGS/ICNL, filled out based on the issues, solutions and strategies identified.

2.1 METHODOLOGY

The analysis for this report was carried out in two stages:

- The first entailed a literature review and evaluation of the legislation, in which information was gathered and analyzed to provide an overview of the regulatory landscape for civil society in Brazil;
- The second stage consisted of a perception analysis, in which opinions, impressions and recommendations of various civil society actors were collected about the main challenges and the potential for improving the legal and regulatory environment.

For the literature review relevant studies were systematized^[1] and analyzed related to the normative treatment to which CSOs in Brazil are exposed. The identification and systematization of studies (secondary sources) and content produced by the organizations themselves, contributed to achieve a proper evaluation of the legislation and its impact on CSOs in Brazil.

The perception analysis was carried out through semi-structured interviews with selected CSO actors to collect direct opinions, impressions and recommendations concerning the legal environment. To select organizations for the interviews the profile diversity criterion was used and the following organizations were invited: (i) an organization that is part of 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, as well as the construction of the interview script was made in partnership with the Philanthropy Network for Social Justice.

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

[1] Systematization: A methodology that encompasses the identification, documentation and transfer of experiences and key lessons extracted from a project or initiative for the purpose of advocacy, learning and replication/scaling up. The method originated in the 1960s in Latin America. It redefined the relation between theory and practice, challenging the linearity between the two and extending the importance of the role of practice (www.kstoolkit.org)

2.2 EXECUTIVE SUMMARY

Topic	Subject	Issues	Implications	Challenges	Opportunities
Donations and fundraising	Taxation of donations	Taxation of donations to CSOs	barrier to transferring private resources to CSOs	Opt for changes at the federal or state level, difficulty to change legislation in 27 federative entities, difficulty in approving PEC	engagement of organizations, recent positive changes and ongoing proposals
	Foreign donations	controversy over taxation of foreign donations	juridical insecurity; reduction of resources for CSOs due to the collection of the tax	understand the impact of the STF decision for donations previously made; focus on the new supplementary law; guide the impact on donations to CSOs in the public debate	recent STF decision established that it 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 each cause; difficulty in building a unified proposal; tax reform and emergency PECs	Sensitivity of the national congress to the theme; tax reform
	Endowment funds	uncertainty regarding the tax treatment of the managing CSO; absence of tax incentives and regulation of the use of the Culture Incentive Law	legal uncertainty	become an attractive instrument for CSOs, to attract resources	articulation of CSOs that coordinates advocacy actions on the topic (Coalition for Philanthropic Funds);
Formalization and Management	Composition	legal natures are unable to encompass the diversity of profiles of the organizations that exist	profusion of laws that try to create differentiations between CSOs; complex system	difficulty in building a common proposal among CSOs; need for efforts on the part of the public authorities	maturity of Brazilian civil society; broad legal framework of the third sector
	Register	costs and requirements made by notaries	Cost and time spent to meet requirements; CSOs in an irregular situation and groups that choose not to formalize	Low CSO engagement with the subject; absence of a broad proposal to reformulate the current model; absence of spaces for dialogue with the Notaries	Changes occurred during the Covid-19 pandemic (digitalization of the registration process, digital signatures, virtual meetings)
	Tax Treatment	unequal granting of tax benefits, requiring distinct and bureaucratic requirements; exemptions granted in different areas	few organizations have access to immunities; difficulty understanding the functioning of immunities and exemptions and cost to meet the requirements	difficulty in building a common proposal and promoting changes in the Constitution; absence of public data; economic crisis	tax reform; new definition of considerations for immunities; simplified tax regime proposal for CSOs
	Banks and access to the financial system	restrictions on opening checking accounts at banks and accessing credit cards	difficulty in raising funds; interference in resource management autonomy	ignorance of what CSOs are by the actors in the financial system; absence of spaces for dialogue	accumulation of reflection on the subject; Recommendation No. 8; articulation (Coalition of CSOs by FATF)
	Public Prosecutor's Office	there is no clear definition of	bureaucratizes management	directly impacts foundations, which represent	consolidated and active articulation of entities representing the
Autonomy	(MP)	the criteria for management of foundations required by the MP	of foundations, time spent meeting requirements, reducing innovative capacity	less than 2% of CSOs, necessary amendment to the Civil Code	foundations in several states
	Bureaucratic criminalization	creation of obstacles, through the execution of excessive requirements and procedures	too much time spent by CSOs to respond 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
	Government Supervision	attempts to control and supervise CSOs	bullying; restriction of freedom of association	Government policy guidelines; need for resources to monitor actions; restricted advocacy due to pandemic	sensitive parliamentarians; judiciary; philanthropy support
	Restriction of the operating space	termination of several collegiate bodies of the federal public administration	restrict the participation of society in the follow-up and monitoring of public policies	there is no prospect of changing the government's stance in the short term	Proposals that are being processed in the National Congress; judiciary
	Criminalization and delegitimization	accusation of the practice of crimes	criminalization, persecution of activists, de-legitimization before public opinion	there is no prospect of changing the government's stance in the short term	High credibility in the context of the pandemic; judiciary

2.3 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 are needed, especially in mechanisms and rules that facilitate and promote the financial 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 the legislation can be perceived in several ways. One example of this recognition is the possibility to enter into partnerships with the government to implement public policies or to provide services to vulnerable people. Other examples are the existence of a mechanism that allows action to protect and claim rights, the guarantee of participation in monitoring bodies and the actual monitoring of public policies. However, many positive achievements of the last thirty years are facing threats and risks of setbacks, especially after 2018.

The constitutional guarantee of freedom of association is relatively recent in Brazil. This right started to be guaranteed after the declaration of final approval of the 1988 Constitution, which marked the end of the civil-military dictatorship that governed the country since 1964. During that period, marked by 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 authorization from the government, Brazilian civil society developed and became more complex, having its own regulatory treatment.

Even though over the years there has been a significant increase in organized civil society^[2], the focus of legislation for the third sector since 1988 has been on regulating the transfer of resources from public institutions to organizations. In the 1990s, the first laws governing these partnerships were enacted. Neo-liberalism and the questioning of the role played by the State were on the rise and private entities began to assume a greater role in the implementation of public policies. In this context the Law on Social Organizations (OSs) was enacted. It creates a regime for delegation of the execution of public policies to organizations that meet certain requirements. Shortly thereafter another law was enacted, the Law of Civil Society Organizations of Public Interest (OSCIP), which established a new partnership regime, focused on the support of CSOs by public authorities.

A second round of legislation began in 2010, when, together 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 developed and implemented strategies 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 and thus to ensure greater transparency. This was to be done through a broad participatory process. The Presidency of the Republic instituted a "Platform for the New Regulatory Framework", composed of lawyers, entities from different areas, members of social movements,

[2] 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).

associations representing the third sector, ministers of state, among others. This group promoted, over the course of four years, research, studies, seminars and dialogues to present a Bill of Law that would in fact protect the rights of CSOs and represent their needs.

This was, however, interrupted a few years later by the impeachment process of the President of the Republic in 2016. Political changes in the Government and the National Congress due to the impeachment resulted in the halting of several public policies, including the civil society agenda. Since then significant changes in the Brazilian political scenario occurred. An increase in political polarization of society and the rise to power of the far right after a troubled electoral process in 2018, characterized the new status quo. Right after its inauguration, the newly elected Government caused 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 by public bodies.

The 2018 election resulted in a significant change in the composition of Congress, causing challenges for CSO advocacy. Less than half of the deputies managed to be re-elected[3], with 102 taking office for the first time. This new legislature represents the largest number of[4] parties since the re-democratization. In the States that constitute the Federation, the picture was about the same. Traditional parties lost space in State Governments,[5] while parties that were running for their first election managed to elect Governors. These significant changes of representatives in the legislative and the executive require new efforts by political mapping organizations. This implied that changes in the previous political analysis needed to be made.[6]

In addition to the above mentioned changes in political composition, the 2018 presidential campaign questioned the work carried out by CSOs. In particular the performance of organizations with an activist profile linked to environmental guidelines came under scrutiny. Since then an expansion of the de-legitimation of work carried out by organized civil society has been experienced. This was amplified by actions to restrict civic space, especially channels of social participation, and the criminalization of activities. Additionally, the Covid-19 pandemic, in which Brazil stood out for disastrous governmental management, caused a worsening status of the Brazilian economy. In 2020 GDP shrank with 4.1%[7] compared to the previous year which was the worst performance since 1996.

The results presented in this chapter aim to reflect this trajectory. The following highlights necessary regulatory improvements, which have emerged over the years of development of civil society and which have not yet been resolved. The first part deals with fundraising, with special emphasis on donations, as this is one of the main sources of financing for CSOs. The second part 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 section investigates

[3] Only 240 of the 513 federal deputies were re-elected.

[4] There are 513 federal deputies from 30 different political parties.

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

[6] 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.

[7] Source: IBGE indicator panel, available at: <https://www.ibge.gov.br/indicadores>, accessed on 04/26/2021.

autonomy and analyzes the threats of restriction of CSO autonomy, which intensified in the recent period.

THREE: DONATIONS AND FUNDRAISING

Available data and studies indicate that the financing of CSOs in Brazil is to an important degree based on own resources and private donations. A study by CETIC[8] (Center for Studies on Information and Communication Technology, under the auspices of UNESCO) found that of the surveyed total of non-profit entities, 24% had private donations as their main source of funding. For very small organizations (no formal employees) this was 30%, while 65% of religious organizations depended largely on private donations due to a historically strong culture of giving[9]. 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 sustain their activities. In addition, as pointed out by the CETIC survey, 26% of the associations have as their main source of income the associative contribution (monthly fee or annual fee paid by members).

The use of federal public resources by CSOs is not very common in Brazil. A survey by the Institute of Applied Economic Research (IPEA)[10] of 2019 indicates that, of around 780,000 Brazilian CSOs only 2.7% received federal funds between 2010 and 2018. The amounts transferred represent 0.5% of the Federal Government's annual budget. In addition, a decrease in the volume of public resources accessed by CSOs is noted in recent years.[11]

Another way of financing CSOs is through philanthropy support organizations (also called “private social investors” in Brazil). According to available data[12], the investment of resources in own projects among Brazilian philanthropy organizations still prevails over financing third party projects. In 2018, the volume invested in third-party projects was 35% (BRL 1.1 billion) of the total investment, the highest proportion ever (GIFE, 2019). Of third party resources 64% went to CSOs (GIFE, 2019). Even though CSOs are the main recipients of third party funds, there is room to expand the volume invested in CSOs by philanthropy.

Generally, issues with fundraising listed by literature and organizations interviewed are related to the mobilization of domestic resources. Two new laws may have positively contributed in this regard. The first, known as MROSC[13], aims to standardize and simplify, at the national level, the rules for partnerships between public authorities and civil society, while maintaining transparency and security in the transfer of public resources. This legislation applies to partnerships executed by the Federal Government, States and Municipalities and allows the latter two to regulate the law in order to adapt it to the specifics of each location. The second is the law[14] that creates 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 on the way to raising private and domestic resources. Most of the issues listed below are related to the mobilization of local resources by CSOs.

[8] CENTER FOR STUDIES ON INFORMATION AND COMMUNICATION TECHNOLOGIES (CETIC), 2014.

[9] General Secretariat of the Presidency of the Republic, 2014.

[10] ANDRADE; MELLO; PEREIRA, 2019.

[11] ANDRADE; MELLO; PEREIRA, 2019.

[12] 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.

[13] Federal Law No. 13.019/2014.

[14] Federal Law No. 13.800/2019.

3.1 TAXATION OF DONATIONS

3.1.1 Issues:

Fundraising by CSOs through private donations and inheritance is, in general, taxed (Pannunzio, 2019). The levels of tax on the transfer of inheritance and donations are the same for recipient CSOs and individuals, according to the Estate and Donation Tax (ITCMD). A recent study suggests, that among 75 countries analyzed, only Croatia and South Korea adopt a model for taxing donations to CSOs similar to that of Brazil (Carvalho, 2019).

In addition, this is a tax within the jurisdiction of the States. Therefore: the rules on taxation are different in each of the 27 federal entities (26 States and 1 Federal District). While the States have autonomy to legislate on the matter, the maximum ITCMD rate is defined by the Federal Senate and is currently 8%. Each State has autonomy to define the hypotheses of exemption from the ITCMD or, in other words, in which situations it will not be necessary to collect the tax. For this study two cases of exemptions are presented: one by value cap and another because the recipient of the transfer of resources is a CSO.

In the case of tax exemptions for the transfer of the fund, 17 of the 27 federative entities provide for this hypothesis (Vilella, 2019). If the value of the donation or inheritance transferred is less than the established ceiling, it will not be necessary to collect the tax. On the other hand the remaining 10 federative entities tax the donation or inheritance regardless of its value. Even on a donation of BRL 1 the ITCMD would have to be collected in the states without provision for exemption by value.

Among the 27 federative entities, only 9 established some type of exemption from the ITCMD for donations directed to CSOs. In most cases this is restricted to CSOs active in certain areas, like culture, sport, environment, among others (Vilella, 2019). Additionally, it is common in order to have access to this exemption that CSOs must comply with a multitude of bureaucratic requirements and costly procedures (Vilella, 2019). As for the State of São Paulo described by Vilella:

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 other before the Treasury) to request the benefit of the exemption (Vilella, 2019, p. 61).

The above illustrates that CSOs in Brazil face difficulties in raising funds through donations or inheritance, whether due to the tax treatment given to this type of transfer, the complexity of the legislation or the need to comply with various requirements in order to have access to the exemption, if it exists at all.

3.1.2 Implications:

The main impact is a disincentive for donations to CSOs due to the similar taxation for donations in the public interest and private transfers of donated resources. Other countries tend to tax private donations and inheritances at higher rates and exempt or reduce taxes of transfers to CSOs, precisely to generate a stimulus for private resources to be used for causes of public interest.

If States started to allow tax exemption on donations and inheritance to CSOs, the negative impact on the State revenue collection would be minimal and correspond to less than 1% of the current net revenue (Oliva, 2019). By analyzing only the collection of ITCMD on 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 clear that the obstacle caused by the ITCMD affects donations of higher values more, since there are 17 States that establish a value ceiling beneath which donations are not taxed.[15] In the case of CSOs, the preparedness to make donations of greater value is more likely present with companies or philanthropy organizations than with individuals. Thus, it may be concluded that states that provide a ceiling for tax free donations are encouraging lower value donations that fit under the ceiling.

Another implication is that tax exemptions appear to be more accessible for CSOs which already avail of ample resources. Due to the complexity of the legislation and the need to meet several requirements, it is likely that 'richer' organizations are more able to bear with bureaucratic costs and to hire specialized professionals to guide them.

Finally, although data are not available, it is assumed that a portion of organizations will end up not paying taxes on the donations they receive, either due to ignorance of the legislation or to avoid the difficulty to obtain recognition of the exemption. This may lead to not reporting the receipt of a donation. This situation generates special concern in the current context with indications of attempts by Federal, State and Municipal Governments to emphasize compliance and restrict, or even to persecute, CSO performance.

3.1.3 Challenges:

The question that arises when thinking about changes in the taxation of donations in Brazil is which path to choose. Should the focus be to promote changes at the State, Municipal or Federal level? If at the latter, the approval of a Constitutional Amendment that guarantees tax immunity for all CSOs represents a massive challenge. This would solve not only the taxation of donations, but all issues related to the collection of taxes for the third sector. However, the approval of a Constitutional Amendment is very complex, as it requires a

[15] 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 10 federal entities that tax the donation regardless of the amount, is publicly known.

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 federal level is the approval of a Senate Resolution to end the taxation of donations. The risk in this case is that such Resolution may be considered unconstitutional because it suppresses the competence of the States to institute the tax.

Yet another front of action may be at the State level, seeking 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 27 federal entities.

3.1.4. Opportunities:

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”.

It is possible to observe activities which seek to expand the hypotheses of exemption in the States and at the Federal level, and 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 two of which established the self-declaration recognition of the ITCMD exemption in donations to CSOs.

At Federal level, although there has been no legal change, two legislative proposals have recently been forwarded to change 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 non-profit research institutes”. This proposal, according to the interviews carried out, is the result of dialogue and engagement of CSOs with the National Congress. Another proposal is the Senate Resolution Project (PRS) No. 13/20, which is presented in the context of the Covid-19 pandemic. It 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 will be approved, it will reduce the ITCMD rate only for cases relevant in the fight against the pandemic and this will have a fixed term, i.e., as long as the state of public calamity due to the pandemic continues.

3.2 FOREIGN DONATIONS

3.2.1. Issues:

The key issue is the **lack of clarity on the need, or not, to collect taxes on donations from outside Brazil**. The question arises from a controversy whether States are competent to impose taxes on foreign donations in 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 payment of tax from CSOs, which generated a debate on the subject that reached the judiciary^[16]. There are cases in which banks, due to the risk of being responsible for the non-payment of tax on foreign donations, started to charge CSOs the tax payment as condition to carry out the transfer.

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 confirmed that the decision should not retroact, which ends up legalizing taxation by the States of donations that occurred before the publication of the judgment by the STF. It also protects CSOs that questioned the collection of the tax in the judiciary.

Another potential obstacle is pointed out by organizations. The federal government may decide that foreign donations are no longer allowed. One person interviewed stated that:

“It is possible that, at any time, with arguments that it hinders, for example, the prevention of 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 increasingly been 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.”

3.2.2. Implications:

Organizations working in the defense of rights in Brazil have a history of accessing resources from outside the country. Advocacy CSOs tend to be the most impacted by the extent of the controversy over foreign donations that lasted for 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 funding for CSOs for the defense of rights may gradually be resumed (Souza, Oliveira, 2020). In this case, the STF's decision to not allow taxation by States on foreign donations may

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

become even more relevant.

Finally, we highlight the case of organizations that questioned taxation of foreign donations by the states through the judiciary. The fact that, the STF decision only takes effect when published has a caveat, which refers to cases that have been brought to the judiciary. It means that CSOs which have sued to refute the payment of the taxes will actually not have to pay the amount. Thus, CSOs that brought the matter to court will benefit and it is likely that those who had the resources and conditions to go to court are the more 'well to do' organizations.

3.2.3. Challenges:

A first challenge is to understand the impact of the STF decision. As the decision has not yet been published, there is no access to the full vote of the judges. In addition, the fact that the decision only becomes valid after publication raises doubt how cases of receipt of foreign donations before the publication of the decision will be dealt with, especially when at that time there was no judicial questioning on the collection of the tax.

In addition, one of the consequences of the STF decision is the necessity of a proposal for a supplementary bill by the National Congress regulating the competence to institute a tax on foreign donations. It will be essential for organizations to monitor and influence the processing of this proposal. In the debate the impact of taxation of foreign donations to CSOs needs to be included. The STF decision was based on the receipt of private donations by individuals. It also needs to be considered if CSOs try to include in this supplementary law the proposal to exempt CSOs from taxation on foreign donations that such proposal may be considered unconstitutional, as it terminates the competence, protected by the constitution, of the States to institute the ITCD.

3.2.4. Opportunities:

The recent decision of the STF that established the unconstitutionality of States to tax foreign donations represents a significant advance for organizations in Brazil, especially for those that defend rights. The proposal of a complementary bill further regulating the issue opens an opportunity for CSOs to focus on the process and to highlight the potential negative 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 includes foreign donations to CSOs within this limit.

3.3 TAX INCENTIVES FOR INDIVIDUALS WHO DONATE

3.3.1. Issues:

The current tax incentives for individuals who donate limit the capacity of this instrument (Salinas, Salla, Sanches, 2019). Firstly **incentives are restricted to support for 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 rules on how the incentive donations should be operationalized.

A second constraint refers to the need for the **encouraged donation to be directed to a project previously approved by government programs or funds**. Thus, individuals can deduct from their taxable income the 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). There is no encouragement for individuals to donate e.g. to institutional support of a CSO. The donation must be allocated to projects that were previously approved by the government.

3.3.2. Implications:

This limitation of tax incentives for specific themes and projects, excludes a large part of CSOs that operate in different areas (such as the environment, climate change, housing, public security, education, etc.). Additionally the donations are not allowed to contribute to institutional development of the recipient organization. Based on data from 2012-2015 it is observed that the restrictions on donations and thus on the tax incentives did result in less than 0.5% of eligible individuals actually making a donation. (Salinas, Salla, Sanches, 2019). [17] The number of effective donors under the individual tax incentive model is far from its full potential (Salinas, Salla, Sanches, 2019b).

In the period from 2012-2015 a total of 10,303 projects[18] received incentive donations. There are no data on the number of CSOs which benefited from encouraged donations. But it is possible to say that a very small percentage of the approximately 780,000 organizations currently existing in Brazil[19] have received an incentive donation.

[17] 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).

[18] 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.

[19] IPEA, 2021. Available on: <https://mapaosc.ipea.gov.br/resultado-consulta.html>, accessed on: 04/25/2021.

3.3.3. Challenges:

The previous emphasizes the need to improve this instrument, but despite the fact that several proposals have been submitted to the National Congress for the expansion of tax incentives for individuals to new areas, no significant regulatory changes took place. A survey carried out in 2019 identified 37 proposals 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 destined to any public interest organization regardless of the cause.

The absence of broad support for a single proposal indicates the difficulty in finding common ground to elaborate improvements and to overcome 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 addressed 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 in Brazil. The current incentive model is based on deduction of the donation from the taxable income and thus it eats up public resources. Therefore, it is difficult for the government to agree to expand the possibilities of encouraged donations. The greater risk is that the current model of encouraged donations will be reduced, or even eradicated (PEC 187/2019).

3.3.4. Opportunities:

Expanding existing and creating new incentive models for individuals would be a way of boosting the growth in the number of donors in the country. This would strengthen the link between society and organizations that defend and address causes of public interest. 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 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 specific cause, organizations could take advantage of the apparent parliamentary sensitivity to advance a broader 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."

3.4 ENDOWMENT FUNDS

3.4.1. Issues:

A specific law (Law 13.800/19) on endowment funds in Brazil has recently been enacted, but legal obstacles to expand the use of this instrument still remain. Issues already identified above, such as tax treatment, taxation of donations and tax incentives also impact the funds' ability to attract private resources.

The first issue is related to the tax treatment granted to Heritage Fund Management Organizations (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 CSOs (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 a demand for creation of new tax incentives for donations directed to funds, since the law provides only for 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).

3.4.2. Implications:

From the start, the main objective of Law No. 13.800/2019 has been to create 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, and in particular to enable the reconstruction of the Museum itself (Hirata, Grazioli, 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 is 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 extra cost for organizations to create their endowment funds in the model of Law No. 13.800/19. CSOs that are formally incorporated and who 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.

3.4.3. 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 advantages for those who choose the model. Another challenge is the ability to attract resources for the formation of endowment funds, which is more difficult in the context of the economic crisis. Available resources appear to become scarce with a decreasing preparedness to donate to causes of public interest.

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

A risk for endowment funds is to reproduce the logic of the legislation for the third sector in Brazil and to have specific 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 in the National Congress to regulate emergency funds.

3.4.4. Opportunities:

Among the factors that contributed to the enactment of the law that regulates patrimonial funds are the activities undertaken by the concerned organizations. Since 2018, these joined forces in the Coalition for Philanthropic Funds, which has acted to coordinate the advocacy actions aimed at improving this instrument. Not only the engagement promoted by the Coalition, but also the accumulation of reflections, events, publications and booklets produced by CSOs in recent years has been instrumental.

As noted earlier, the endowment funds of Law No. 13.800/19 represent 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 approach 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 public entities in the subject can be of advantage to CSOs. An example is an ordinance^[20] 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^[21] webinars to discuss the topic. Also the Ministry of Economy has dealt with the issue through the National Investment and Impact Business Strategy (ENIMPACTO).

A number of civil society initiatives have emerged to combat the effects of the pandemic. Some of them

[20]Ordinance No. 5.918, dated 10/30/2019.

[21]https://antigo.mctic.gov.br/mctic/opencms/salaImprensa/noticias/arquivos/2020/08/MCTI_PROMOVE_SERIE_DE_WEBINARIOS_SOBRE_FUNDOS_IMOBILIARIOS.html

focused on the creation of funds, not necessarily the model of Law No. 13.800, to attract donations for actions to confront Covid-19. 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.

FOUR: FORMALIZATION AND MANAGEMENT

Freedom of association, provided 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*”[22].

The legal personalities that non-profit organizations can accept are established by the Civil Code. The main one is the association, a legal personality that represents more than 82%[23] of existing organizations in Brazil. The association is characterized by being a group of people organized for non-profit purposes and 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 is the foundation. This is made up of assets intended for purposes of public interest[24] and thus, initial equity is required for constitution. This is one of the reasons why the vast majority of CSOs in Brazil are associations. Finally, a third legal personality provided in the Civil Code is the religious organization, which is defined and constituted for a specific purpose: religion. 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 is that the processes are more bureaucratic and costly for CSOs than originally assumed. In the case of foundations, there is a peculiarity that makes the process even more complex, which is the inspection by the Public Prosecutor. This will be addressed later, in the item on supervision.

Associations are free to operate without legal personality, which implies that registration is not mandatory. However, Brazil has adopted the Civil Law model and this makes having legal personality essential to establish legal relationships (contracts etc.) and own assets. CSOs incorporated in another country that

[22] *Res Judicata*: if a matter between parties has been decided by a competent court, it cannot be brought by the same parties to another court.

[23] 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.

[24] 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:

I – social assistance;

II - culture, defense and conservation of historical and artistic heritage;

III - education,

IV - health;

V – food and nutritional security;

VI – defense, preservation and conservation of the environment and promotion of sustainable development;

VII - scientific research, development of alternative technologies, modernization of management systems, production and dissemination of technical and scientific information and knowledge;

VIII - promotion of ethics, citizenship, democracy and human rights;

IX - religious activities; and

X - (VETOED).

wish to operate in Brazil in accordance with their constitutive acts and that will 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 tax benefits in Brazil depends on the nature of the activity carried out by the organization. The legislation determines that in order to access these, 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 requirements necessary to obtain tax immunity or exemption. There is no transparency on the immunities and exemptions granted, and information on organizations that access the tax benefits is not systematically disseminated.

4.1 CONSTITUTION

4.1.1. Issue:

Each legal personality that private and non-profit entities can assume is based on different criteria. In the case of the association, it is a group of people gathered for a common purpose, without defining what that purpose could 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 only mark of the religious organization is the religious purpose.

These legal personalities are unable to cover the diversity of profiles of organizations that exist in Brazil. The association is the predominant personality, but the type of entity that adopts this personality varies a lot. Associations may include professional and class associations[25], pension funds, credit guarantee funds, public consortia under private law, among others[26]. This exemplifies how associations can be formed for the most diverse purposes, both linked to public interest and to specific interests of the group that formed it (class or professional entities). Another distinction that the legal personality does not offer is that between philanthropy support entities, which transfer resources to other organizations, and organizations with a grassroots or community profile.

4.1.2. Implications:

The consequence of the impossibility to differentiate entities based on their legal personality is a multitude of rules that try to create this distinction. For this reason, a number of titles, records and certifications are provided in Brazilian legislation at Federal, State and Municipal levels. One of the objectives of these instruments is to function as a "differentiation mechanism" for CSOs, which allows access or not 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, who live with many different rules and requirements.

The elaboration of public policies and regulations becomes even more complex since very different profiled entities take the form of association. There are some efforts that try to better understand this universe and establish criteria for differentiation. IPEA, for example, classifies existing CSOs in the country according to their purpose. According to the Map of CSOs, a platform managed by IPEA, 47.4% of Brazilian associations 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.

Although some terms are used to differentiate or classify CSOs, the concepts are not legally defined and there is a wide variety of interpretations. An example is precisely “philanthropic organizations”, which is

[25] A group of people who organize to address a common interest.

[26] 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.

interpreted differently depending on who interprets it.

4.1.3. Challenges:

Arguably the main challenge at this point is the formulation of a common proposal to address this issue. There is 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 which don't need recognition by public authorities. There is (too) little reflection on the problem itself, and the promotion of changes has not been the focus of articulations of organizations. As a consequence, there are no proposals placed in the public debate which are defended by CSOs.

In addition, any proposal for legal change aimed to create a positive distinction between CSOs with the purpose to strengthen them, demands work from public officials to collect data, analyze and dialogue with civil society. Unfortunately, the federal government's efforts in recent years have signaled a lack of preparedness to engage for this purpose.

4.1.4. Opportunities:

The creation of a broad legal framework for the third sector, which is not only concerned with regulating the transfer of public resources to CSOs and which is elaborated based on a thorough process of dialogue and reflection with the sector, would be a way to address this problem. The following 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."

4.2 REGISTRATION

4.2.1. Issue:

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

"The vast majority of organizations, collective or group [...] do not want to know about institutionalization [...] The point of view of the legislation is that that the vast majority of organizations must have minutes, a meeting, make a minute and register it at the registry office. The vast majority do not have the money to do this. [...] And

many organizations are currently experiencing this issue: they did not hold an assembly, they do 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 legal establishment of CSOs. It is sufficient for entities to register the basic documents that attest to its creation in the National (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 registration, which is necessary to open bank accounts, issue invoices, hire employees, among others. In addition, CSOs may also need other licenses and authorizations for their regular operations, issued by different public bodies.

Currently, CSOs are required to register not only the constitutive documents with the Registry, but also information that has effects on the relation with third parties. 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' or member meetings, must be registered with a Notary. In order to carry out these registrations, associations must pay fees for services provided by Notaries. The fee amounts are all listed, i.e., the price for the service will be the same regardless of the registry office. These costs were pointed out in the interviews as a barrier for organizations to sustain themselves, especially in the current context in which many suffer the economic impacts of the Covid-19 pandemic.

Demands made by Notaries for the registration of documents represent another problem. The rules for document registration are unclear, especially on important issues for CSOs (what information and which documents are required, which signatures must appear on the documents etc.) and the rules are not even followed by Notaries' own officers, who often establish their own rules. The opinion of interviewees about 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 be subjected to repeated requests from the Registry Office.

4.2.2. Implications:

During the interviews, it was pointed out that many associations, mainly smaller ones that operate in peripheral regions with a target population of socially vulnerable people, have little knowledge about the rules of registration and sustainability 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 at the cost of their regular activity. Sometimes CSOs are unable to keep up with their obligations due to the difficulty of bearing the costs of an accounting or legal advisory service, while they have insufficient 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 number and that are actually operational. 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 organizations. 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.”

4.2.3. Challenges:

There is little interest from CSOs to engage for changes in the registration process. Indicative for this is the absence of a public debate and concrete proposals for improvements. The absence of dialogue between CSOs and the main actors that implement these measures, the Notaries, signifies the same.

4.2.4. Opportunities:

The Covid-19 pandemic opened the possibility for several procedures and requirements to be reviewed and simplified. There is no more need for face-to-face attendance at Notaries and physical signature of documents. The digitizing of registration requests has been accelerated and the validity of digital signatures on documents has been legally recognized. Legal authorization^[27] to hold virtual meetings is another example of the positive changes that this 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”.

4.3 TAX TREATMENT

4.3.1. Issue:

In Brazil, the Federal, State and Municipality levels all have the authority to institute taxes. Thus, it is possible that tax benefits will be granted to or withheld from CSOs at each of these levels. The issue most frequently pointed out by interviewed CSOs is the granting of unequal tax benefits to organizations, requiring different bureaucratic requirements. Tax benefits generally are granted based on the area of activity, such as education, health, human rights, environment, among others. There is no link between the legal personality of an organization and the tax treatment it is gets.

[27] Law 14.010/20, Article 5.

The main tax benefit that can be granted to CSOs is tax immunity. This prevents taxation at all 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 or Municipalities. By ensuring the non-taxation in a wide manner (revenue, equity and services) and because of the safeguard of the Constitution, tax immunity is the most sought after tax benefit by organizations. This benefit, however, is restricted to entities that work in education, social assistance and health and cannot be accessed by CSOs that work in other areas.

In addition, CSOs need recognition from public authorities that they comply with certain legal requirements to access tax immunity. The National Tax Code presents the basic requirements for obtaining immunity by CSOs as: not to distribute profits among members, keep accounting records, present periodic financial reports, limit the use of resources to the national territory and commit its resources solely to its social purposes[28]. There are also other legal requirements, provided for in other laws. One such example is the rule on the remuneration of directors of immune CSOs[29]. The requirements are: (a) the remuneration of statutory officers must be less than 70% of the salary limit for 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 the moment we make the minutes, register and we are a non-profit organization. [...] Then it says 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.”

In addition to the tax immunity restricted to organizations involved in certain activities, there is a tax benefit that is more widely granted to CSOs. This is the tax exemption on income tax and social contribution on profit[30]. 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. It is common that organizations 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.

One of the factors that explains the prevalence of this model, that to obtain access to immunity and tax

[28] Federal Law no. 5.172/66, article 14.

[29] 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 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).

[30] Law No. 9.532/97, Article 15.

exemption, it is necessary to have a certification, is the fact that the legal personality of CSOs does not differentiate between different types 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, associations 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 CSO data 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).

4.3.2. Implications:

The main consequence is that few organizations have access to tax immunity in Brazil, which corresponds to the non-taxation of CSO'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. Actions in the defense of (human) rights or the environment or climate change are not included in the tax immunity as provided in the Constitution. There are cases of advocacy CSOs that have been able to access this tax benefit, but this may mean they had 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 department, 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 those 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 which we answer for our exemptions.”

Thus, entities that obtain tax immunity or exemption have to live with limitations imposed by interpretations of the law and with a constant fear of losing their benefit. Due to the lack of available data, it is not possible to know which organizations have tax immunity in Brazil. It could be assumed that philanthropic organizations will have more access to this benefit for two reasons: because a large proportion of them 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^[31] education certification that guarantees tax immunity (GIFE, 2019). Adding the percentages of other GIFE members who have some of the

[31] Certificate of Education Charity - CEBAS Educação.

certificates that guarantee tax immunity, only 12% is reached^[32] (GIFE, 2019). Even among philanthropic organizations associated with GIFE only a minority enjoys tax immunity.

An indication of the complexity of the rules for tax immunity, is the number of lawsuits on the subject at the Supreme Court. 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.**

4.3.3. Challenges:

The unequal tax treatment between CSOs makes it difficult to find common ground for policy change. There is a divide between those who are entitled to tax immunity and who are afraid to propose changes and those who cannot access immunity and would like to be included. Consensus among CSOs is, however necessary since to increase access to tax immunity, it is necessary to change the Federal Constitution. This requires a qualified voting quorum, three-fifths (60%) of state deputies and senators.

There is a possibility to expand exemptions from State and Municipal taxes for CSOs, but this would require changes in the legislation of 27 Federal Entities (UFs) 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 revenue, an impact study is legally required. The resistance of governments to accept an increase in possibilities of non-taxation tends to be even greater in a context of economic crisis.

4.3.4. 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 be paid to the proposal for a new regulation of the criteria for CSOs to access tax immunity. A recent STF decision^[33] defined that the considerations^[34] 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, to create a simplified taxation model for

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

[33] "Direct Action for Declaration of Unconstitutionality No. 4.480

[34] The counterparts are provided in Law No. 12.101/09.

non-profit entities, similar to the “simples nacional”.[35] Finally, organizations could take advantage of proposals that are presented in the National Congress on debt installments[36], 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 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.”

4.4 BANKS AND ACCESS TO THE FINANCIAL SYSTEM

4.4.1.Issue:

Another point in reports of CSOs refers to the difficulties they face in opening current accounts and accessing a credit card. The implementation of FATF measures in the national territory has created barriers for organizations to access the financial system. The interviews indicated 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 for dealing with NGOs, so many banks refuse to open accounts”.

According to interviewed organizations there is a lack of knowledge in the financial system about what CSOs are and what they do. Some measures and rules published recently, for example the change in relation to the issuance of bank slips, which now has stricter rules of identification and deadline,[37] ended up affecting donations made to CSOs. This had a negative impact on organizations. The need to go to the bank in person to confirm the recurring donation through direct debit can also be cited. These measures are taken to combat money laundering, so they are important and necessary, but they do not take into account the negative impact on philanthropy as a whole. Another problem is the fact that donations are not recognized by the rules of the financial system, which results in them being classified as “payments”.

4.4.2.Implications:

The above represents a challenge for fundraising and sustaining philanthropy in the country. Having access to the banking system is essential for the movement of capital and for making financial transactions.

[35] ‘Simples Nacional’ is an optional simplified taxation system designed for mini or small Brazilian business entities.

[36] 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.

[37] 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>

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 and they make donations to non-profit organizations more difficult.

4.4.3.Challenges:

The main challenge is the way in which FATF measures are implemented in Brazil. According to Recommendation no. 8 [38] of the FATF, CSOs “are particularly vulnerable” and can be used as a means of financing terrorism. The FATF states in its recommendations that financial institutions should have policies, controls and procedures to manage and mitigate the negative effects of adopting measures to combat money laundering and terrorist financing. Until now the policies adopted by the Brazilian public administration have not been concerned with assessing the impact for CSOs. The absence of spaces for interaction between actors in the financial system and CSOs complicates the creation of a substantive dialogue between them.

4.4.4.Opportunities

One answer, defended by CSOs is the creation of a specific regulation for donations, which recognizes this form of transfer and differentiates it from payments. The engagement of organizations on 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 regulates the Brazilian Payment System:

“We proposed the donation banking framework bill, which is a way of including donations in the financial order as a financial transaction that differs from a payment. This will promote that the financial system creates instruments and identifies a donation as different from a payment and still avoids fraud as well as builds instruments that meet the needs of the sector.”

An 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 a restriction of their actions is avoided, has been forwarded through the Global NPO Coalition on FATF [39]. The work carried out by this group did lead to the creation of local articulations, aimed at carrying out closer monitoring of FATF recommendations on effects for CSOs. In Brazil, at the end of 2020, the Coalition of CSOs on FATF has been created, which has led the debate on the topic.

[38] 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.

[39] Information about this Coalition is available at: <https://fatfplatform.org/>

FIVE: AUTONOMY

As mentioned previously, 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. Equally, 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 participation in the political debate, with no limitations on the organizing of campaigns, activities of political influencing, participation in public hearings, meetings with representatives of the public sector, support or rejection of legislative proposals and support for political candidacies. However, it is possible that CSOs propose (some) restrictions in their own 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 for 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 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 organization is prohibited to participate in "campaigns of political party or electoral interest, under any means or forms" (Article 84-C, sole paragraph Law 13.019/14).

Although constitutionally guaranteed, there is a recent increase in disrespect for the autonomy of CSOs and increased threats of control. In the case of partnerships signed with CSOs, to exercise specific control, as occurs with the inspection of the Public Prosecution over foundations, the public authority apparently neglects the constitutional protection. There are also concrete cases of restriction of the scope of activities for civil society, attempts to control and monitor, as well as criminalization of the activities of organizations, especially for those that work with the environment.

In this scenario, monitoring and advocacy actions by civil society are important and necessary. This engagement of CSOs requires human, technological and, especially, financial resources. It is thus essential to promote and support Brazilian philanthropy support to CSOs specifically for their institutional strengthening in order to ensure CSO resilience. The deterioration of the operating environment of CSOs is also perceived by philanthropy. According to the GIFE Census among PSOs, 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). This provides an opening to expand the engagement of philanthropy. The task of defending Brazilian civil society and democracy must be shared by the entire ecosystem.

5.1 PUBLIC PROSECUTION CONTROL

5.1.1. Issue

One example of State supervision is the inspection that the Public Prosecution exercises over foundations. The Civil Code requires that foundations are inspected by the Public Prosecutor's Office of the State in which they are located (Article 66, CC). As foundations are established by a patrimony with a specific public purpose it is up to the Public Ministry to ensure that the will of the donor is respected and resources are used

according to the indicated public interest.

The problem is that there is no definition of criteria related to the formalization and management of foundations, e.g. there is no 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 the supervisory bodies, in this case the Public Prosecutor's Office, which acts as an inspector, does what it wants."

Although the provision for this supervision and control is in the legislation, representatives of foundations point out that the Public Prosecution insufficiently understands the reality of foundations. The documents that the foundations must present to the MP, such as accountability, work plan, annual budget, as well as their governance model, are not open for discussion and the criteria for acceptance of these documents are extremely high. This makes it difficult for entities to function and sustain operations. 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 day-to-day activities is one of the factors that explain 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 avoided the foundation form and adopted the association model.

5.1.2.Implications

The monitoring by the Public Prosecutor's Office bureaucratizes the management of foundations and makes their employees spend part of their time trying to cope with the demands made. Monitoring also restricts the innovative capacity of these entities. To avoid questioning, foundations may choose to adopt a more conventional, safe path instead of opting for an innovative approach. An interviewee describes the impacts of this monitoring:

"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 capacity of foundations to propose innovations and to assess the impact of such activities decreases, because they need to devote time and resources to account for the ancillary activities, which are a precondition for their operation.

Additionally, as recently reported, the MP has 'understood' that its monitoring role extends to all organizations receiving public resources. In some cases State Prosecutors, previously only targeting foundations, now require from any CSOs, including associations, to submit accountability directly to the MP.

So far, two cases are known, the Pará State and Federal District MPs[40][41]. These requests from the MP impose a new requirement and cost to CSOs which partner with public authorities. In addition to reporting to the government partner, they also have to report to the Public Prosecutor's Office.

5.1.3.Challenges

The main challenge of monitoring by the Public Prosecutor's Office is that this is legally only provided for foundations. A small portion of CSOs are actually impacted. According to IPEA data, in 2021, less than 2% of existing CSOs in Brazil are foundations. It is therefore difficult to mobilize a broad CSO platform including associations and others to promote change. In addition, this monitoring of foundations is established in the Civil Code, which would require changes in this law.

5.1.4.Opportunities:

Foundations have a history of articulation and engagement on relevant subjects. 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.

5.2 BEURACRATIC CRIMINALIZATION[42]

5.2.1.Issue:

A recent trend mentioned in the interviews is the creation of obstacles by the public administration by demanding excessive requirements and procedures. This especially occurs when legislation allows the public administration to require compliance of CSOs, e.g. in formal partnerships. The correct and transparent use of public resources needs to be guaranteed of course, but sometimes excessive charges are imposed on organizations receiving these resources. Currently, the legislation provides for different regimes of partnerships between the government and CSOs[43]. All of these have in common that they require organizations who receive public resources through partnership, to deliver reports and accountability[44].

[40] Joint Provision 005/2020-MP/PGJ/CG-MP

[41] Ordinance No. 1 dated February 23, 2021. Available at:

https://www.mpdf.mp.br/portal/pdf/portarias/PJFEIS/2021/Portaria_2021_01_PJFEIS.pdf Accessed on: 05/04/2021.

[42]"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).

[43] 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.

[44] 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.

The issue identified here is that the demands often go beyond what is legally required. The government in several cases takes advantage of its prerogative to demand more detailed information beyond what is provided by law, or to demand that a certain process is repeatedly conducted, in order to consume time and dedication of organizations to meet the demands made.

5.2.2. Implications:

Excessive time spent by CSOs to respond to public sector demands negatively impacts the institutional capacity of CSOs. It goes at the cost of time spent on core activities. As a result CSOs get discouraged to access public resources and end up spending time to look for other fund sources. In addition, the government may impose sanctions on CSOs if it considers that there has been non-compliance and may even prevent the execution of partnerships with public authorities for a specified period.

5.2.3. Challenges:

To identify and map cases in which the government poses excessive bureaucratic demands and to evaluate the impact on CSOs is the first obstacle to better understand this issue. Although such overcharging may discourage the search for public funding, the difficulty of finding alternative funding maintains quite a few entities as dependent on public resources.

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 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 doing."

5.2.4. Opportunities:

The MROSC contains the legal basis for the evaluation of partnerships which is to be done primarily through the control of results rather than by focusing on accountability. This does not mean that accountability should be disregarded, but it emphasizes that bureaucratic control should not lead to the detriment of goals and results to be 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 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.

5.3 GOVERNMENT SUPERVISION

5.3.1. Issue

In recent years the emergence of threats to restrict freedom of association through attempts to control and supervise has been observed. A good example is the edition of Provisional Measure (MP) No. 870 in early 2019, that provided for supervision of CSOs by the Federal Executive Branch. This raised doubts in

organizations about the legality of government control and of reducing their autonomy. The measure had its constitutionality questioned both in the National Congress and in the Supreme Federal Court.[45] 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.

In an emblematic example 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"**. The appointment did not contain the name of the agent appointed to the post in the 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 leave the country. This criminalization, this terror of 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 even more complicated, 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.

5.3.2.Implications:

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

As with ABIN, the risk exists that other institutions will be mobilized to carry out close monitoring on the activities of CSOs. The institution of the National Data Protection Authority (ANPD) may represent such risk. This is 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"[46]. As the law recently came into force, the ANPD implementation process is still ongoing. Caution must be applied to avoid misappropriations in actions performed by the new agency.

5.3.3.Challenges:

The concerns brought forward are the result of the political vision on the role of CSOs that prevails today in the Federal Government and that has no prospect of change in the short term. This far-right authoritarian

[45] ADI 6.076

[46] Law 13.709/2018, Article 5, XIX.

government has in a short timespan undermined an important part of the democratic policies and processes achieved in the country in recent decades and it represents a permanent risk for what is left. It is essential that CSOs closely follow and monitor the government's actions by producing data and information or to provide evidence for grants for advocacy. This is only possible if financial resources are available. To sensitize Brazilian philanthropy is therefore crucially important to support and fund activities aimed at preserving freedom of association since this is the pillar that sustains the entire third sector.

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

5.3.4.Opportunities:

To contain setbacks in the autonomy of CSOs, dialogue with parliamentarians sensitive to the work of CSOs should be strengthened. CSOs need allies to approve positive propositions and to contain the processing of negative propositions. There certainly is a portion of parliamentarians that is sympathetic to the needs of the third sector. In the last legislatures several parliamentary fronts have been created in which civil society participates. The Judiciary can also play a key role in preserving constitutional guarantees. Some Brazilian organizations already have a tradition in conducting strategic litigation and have used this expertise to mobilize the judiciary and avoid setbacks. The perception of the deterioration of the operating environment held by philanthropy organizations 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, the articulation 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) have been instrumental and need further support.

5.4 OPERATING SPACE RESTRICTIONS

5.4.1.Issue:

An example directly related to the restriction of the operational space of CSOs was the extinction of several collegiate organs of the federal public administration through Federal Decree No. 9.759/2019. These collegiate entities had the purpose of guaranteeing civil society participation in the monitoring and management of public policies. The estimate of the Ministry of Government Administration is 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 part of the validity of the decree and only authorized the termination by decree of those collegiate bodies that were not instituted by law.

5.4.2. Implications:

By excluding the participation of CSOs from the above mentioned spaces, the elaboration, follow-up and monitoring of public policies will suffer. Public policies may lose quality, because they are less connected with the needs and demands of the population. The overseeing of government activities is reduced, since these collegiate agencies allow close and direct monitoring by civil society.

5.4.3. Challenges:

There is no indication that the Federal Government will change its approach and policy to restrict space for civil society participation. Representatives of organizations have a 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."

A definite risk is that State and Municipal governments will take the Federal policy of restricting or even terminating spaces for civil society participation as a model. The Covid-19 pandemic may make positive changes more difficult. The need for social distancing can be used as an argument for not holding meetings, although in fact it is not an obstacle, due to the possibility to use electronic means.

5.4.3. 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 permanently is through the approval of a law. Some proposals to this effect have been made in the National Congress, such as PL 128/2019 and PL 8048/2014, which aim to create the "National Policy of Social Participation". It is also worth mentioning that monitoring of attacks on civic space that some organizations undertake contributes to organize evidence based advocacy in a systematized way[47].

5.5 DE-LEGITIMIZATION AND CRIMINALIZATION

5.5.1. Issue:

In recent years CSOs suffered from the prosecution of crimes they were assumed to have committed. This is not a novelty, but it is observed that this governmental approach recently intensified. One of the risks is the framing of CSOs' actions as terrorist practices. Specific legislation on the subject, the Anti-Terrorism Act[48], exists since 2016. It was presented as a bill on the eve of the 2014 World Cup Football in Brazil and sanctioned in the year of the Olympics in Rio de Janeiro. Driven by pressure to adapt to international safety recommendations, such as those provided by FATF, the legislation contains overly broad and ambiguous 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,

[47] 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/>

[48] 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 recrudescence criminalization process of social movements that are popular in the country."

This perspective does not seem too distant if we analyze the actions of the current Federal Government. In the first months of the administration, in 2019, the Minister of Environment suspended all partnerships of the Ministry with CSOs. In 2020, a new rule^[49] was issued, which excluded the participation of CSOs in the management of the National Environment Fund.

Another example is the persecution of organizations operating in the Amazon region. The President and the Minister of Environment, Ricardo Salles, accused fire 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 arrested fire brigadists was ruled out by the Federal Police. In early 2021, the investigation was dismissed, although the Federal Prosecutor's Office indicated that actions of deed forgers might have been 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". The Commission was to focus on investigating the utilization of public resources released to 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 proposal came shortly after the President, Jair Bolsonaro, held NGOs responsible for expanding deforestation in the area (without any evidence). This froze around 2.2 billion Brazilian Real (around 400 million U.S. Dollars) from the Amazon Fund.

To establish CPIs to investigate organizations in Brazil is not a novelty. Previously, two CPIs focused on NGOs were created by the Federal Senate. The first functioned from 2001 to 2002 and the second from 2007 to 2010. The main conclusion reached was that it was needed to review the rules governing partnerships between organizations and public authorities. The bills produced by the CPIs, were ultimately converted into Law 13.019/14, the MROSC (Pannunzio, Souza, 2019).

5.5.2. Implications:

The episodes reported above encompass 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."

The damage caused is the de-legitimization of CSOs before society, but this is difficult to measure. An effort to

[49] Federal Decree No. 10.224/20.

understand some of this impact was a few years ago undertaken by ANDI which analyzed media coverage of issues related to CSOS. The result of negative publicity (e.g. corruption of public resources) that refers to a specific CSO or CSOs, is that this is picked up by a portion of the media that translates this in generalizations about the sector as a whole[50]. The effects of such media exposure, especially when reinforced by public authorities, may last for years and deteriorate society's confidence in the work done by CSOs.

5.5.3. Challenges:

There appears to be no prospect of changing the government's position in the short term. On the contrary, one can predict a continuation or possibly an exacerbation of the threats and persecution applied to organizations.

5.5.4. Opportunities:

The social mobilization of organizations to combat the effects of the Covid 19 pandemic demonstrates the importance of Brazilian civil society. Several 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 to finance responses to Covid in Brazil [51]. In such a difficult and challenging context, the work of organizations acquires an even greater centrality. Using this positive momentum to carry out a national campaign, which reinforces the credibility of CSOs with society as a whole, 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."

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

[51] Available at: <https://www.monitordasdoacoes.org.br/pt> . Accessed on: 04/25/2021.

SIX: CONCLUSION

The operating environment of civil society in Brazil has gone through 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 by and is also a consequence of the increasing complexities CSOs in Brazil presented for society as well as the Government. CSOs immensely grew in absolute numbers and diversified their legal and operational forms and causes. Generally the assessment is that, even if improvements are needed, a legal environment favorable for the formation and performance of CSOs was built, which guarantees autonomy, does not restrict political action, provides for mechanisms for fundraising, allows partnership with 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 organizations themselves. Another point to highlight is the articulation of CSOs, which formed several coalitions and fronts to monitor and focus on public policies, human rights concerns, environmental threats etc. There are many instances in which civil society engagement did result in positive changes, improved legislation and its implementation.

Undoubtedly, it is necessary to advance mechanisms of fundraising and the tax treatment provided to CSOs. In addition, data and information needs to be collected and explored, such as on 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 including the control, surveillance and criminalization of CSOs threaten the main pillar, which underpins the entire non-profit sector: 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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EIGHT: ANNEXES- WINGS/ICNL TABLES

1. 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 in the 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 the notaries themselves.
Describe the impact, including the severity of the impact, of this issue.	Cost and time spent to meet requirements. Some organizations prefer not to register as they consider the process and maintenance of an official association complex.
How does this issue affect philanthropy organizations? Does this overlap with the interests of other CSOs?	The absence of registration, and consequently of CNPJ, is an impeding, or very difficult, factor for donations and the financing of philanthropic activities.
Who might be interested or invested in addressing this 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? If so, What happened? Has anything changed?	Yes, on certain specific points. There is pressure from organizations to approve a project that authorizes CSOs to hold assemblies, meetings and votes by electronic means.
Are there particular features of the local or national environment 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 civil society			
MEDIUM PRIORITY Significantly impacting the operation of civil society	Produce and disseminate information materials on bureaucratic procedures for grassroots associations.	Conduct training with agents who work at notary publics	Improve or facilitate the rules for submitting documents; Change the values of fees for registration of CSOs, especially small ones.
LOW PRIORITY Impacting the operation of civil society	Build dialogue channels with notary offices.		

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	Possible Actions to Increase Interest or Knowledge	Resources Available for Advocacy	Resources Needed for Advocacy	Strength of Opportunity
Judiciary	High	Low	General understanding of issue, but do not know details	Provide data about the impact of the issue	Is responsible for the rules of the notary service		
Representative associations of the 3rd sector	High	High	Good extent of knowledge		Access to information and data	Relationship with the judicial power	

1. 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 that exist in Brazil.
Is the root of the issue in the text of the law or in the 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 are provided 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 addressing this issue?	
Is this issue linked to other types of repression in the overall environment?	Yes, with the Issue related to immunities and tax exemptions.
Have there been previous efforts to address this? If so, 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 national environment 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 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			
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 framework for the third sector
LOW PRIORITY Impacting the operation of civil society			

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 Changemaker or Ally	Power to Influence	Degree of interest	Extent of Knowledge	Possible Actions to Increase Interest or Knowledge	Resources Available for Advocacy	Resources Needed for Advocacy	Strength of Opportunity
National Congress	High	Low	Little knowledge		Data on Brazilian organizations (OSC Map - IPEA)	Data on the impact of possible changes	
Representative associations of the 3rd sector	Medium	Medium	Good extent of knowledge				

1. 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 the tax immunity	Constitutional amendment that extends tax 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 civil society	Campaign to work public opinion, building a positive view on the third sector 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 to Influence	Degree of interest	Extent of Knowledge	Possible Actions to Increase Interest or Knowledge	Resources Available for Advocacy	Resources Needed for Advocacy	Strength of Opportunity
Parliament	High	Low	General understanding of issue, but do not know details	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
Financer's and Representative's Associations	Medium	High	Good extent of knowledge	Coordinate studies on the issue	Access to information and data	Relationship with legislators	9
Press	Medium	Low	Very few knowledge	Create relationship with CSOs	Capacity to impact and influence citizens and legislators	Knowledge of the issue	7

4. 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 in the way the law is implemented?	The Issue is the legislation.
Describe the impact, including the severity of the impact, of this issue.	Taxation of donations to organizations is a barrier to the transfer of private resources to organizations. 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.
How does this issue affect philanthropy organizations? Does this overlap with the interests of other CSOs?	Philanthropic organizations are also affected, especially those that donate resources, because they are also legally responsible for paying the tax.
Who might be interested or invested in addressing this issue?	Organizations that are funded by donations; philanthropic organizations donating resources
Is this issue linked to other types of repression in the overall environment?	Yes, taxation of donations is directly connected with tax immunities and exemptions
Have there been previous efforts to address this? If so, 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 national environment to consider?	The competence to institute a tax on donations to organizations belongs to the federative entities, with Brazil having 27 federative entities.

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		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 civil society		Promote changes in the procedures for recognizing the exemption, making it self-declaratory	Promote changes in state laws that guarantee exemption from ITCMD in donations to organizations
LOW PRIORITY Impacting the operation of civil society			

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 the anticipation of inheritance - the Estate and Donation Tax (ITCMD).

Potential Changemaker or Ally	Power to Influence	Degree of interest	Extent of Knowledge	Possible Actions to Increase Interest or Knowledge	Resources Available for Advocacy	Resources Needed for Advocacy	Strength of Opportunity
State Executive Branch	High	Low	Very few knowledge	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
State Deputies	High	Medium	Very few knowledge	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
Senators and Federal Deputies	High	Medium	Very few knowledge	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
Philanthropic organizations	Medium	High	Good extent of knowledge	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

5. 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, legal obstacles remain to expand the use of this instrument as if equity fund management organizations can also enjoy immunities and tax exemptions, absence of tax incentives for donations directed to funds 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 law is implemented?	The Issue is the lack of regulation
Describe the impact, including the severity of the impact, of this issue.	The structure required by the law implies an extra cost for organizations to create their equity 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.
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 overall environment?	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 already made 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 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	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 civil society			Approve a law that expands tax incentives for donations to equity funds
LOW PRIORITY Impacting the operation of civil society			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 this instrument still remain.							
Potential Changemaker or Ally	Power to Influence	Degree of interest	Extent of Knowledge	Possible Actions to Increase Interest or Knowledge	Resources Available for Advocacy	Resources Needed for Advocacy	Strength of Opportunity
Ministry of Economy	High	Low	General understanding of Issue, but do not know details	Know the positive impacts of tax regulation	Existence of space for articulation between Ministry and civil society (Enimpató), Existence of CSO Coalition		6
Special Secretariat for Culture	High	Low	No knowledge	Know the positive impacts of regulation on the use of the Culture Incentive Law for donations directed to cultural funds	Existence of CSO Coalition		5

6. 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 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
Is the root of the issue in the text of the law or in the way the law is implemented?	The Issue is the restrictions imposed by current legislation
Describe the impact, including the severity of the impact, of this issue.	Thus, what can be observed when analyzing data from 2012 to 2015 is, in practice, the restriction of reach, since a small 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 incentives for 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 rules depending on the area in which the organization operates.
Have there been previous efforts to address this? If so, 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 supported cause. 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 civil society			Avoid approval of PEC 187/2019, which can terminate tax incentives for donations
MEDIUM PRIORITY Significantly impacting the operation of civil society	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 civil society			

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	Possible Actions to Increase Interest or Knowledge	Resources Available for Advocacy	Resources Needed for Advocacy	Strength of Opportunity
National Congress	High	Low	General understanding of Issue, but do not know details	Know the positive impacts of tax incentives	Data on the use of incentives	Impact assessment data in case of expansion of incentives	7
Ministry of Economy	High	Very Low	General understanding of Issue, but do not know details	Know the positive impacts of tax incentives	Data on the use of incentives	Impact assessment data in case of expansion of incentives	5

7. 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 the way 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 for organizations, especially for those that are financed with foreign resources.
How does this issue affect philanthropy organizations? Does this overlap with the interests of other CSOs?	The Issue also impacts philanthropic organizations that access foreign resources.
Who might be interested or invested in addressing this 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? If so, 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 government supervision 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 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	Disseminate information to CSOs on the recent STF decision regarding the prohibition 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 tax on foreign donations
MEDIUM PRIORITY Significantly impacting the operation of civil society			
LOW PRIORITY Impacting the operation of civil society			

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 whether states are competent to impose taxes on foreign donations in the absence of a definition by federal law.							
Potential Changemaker or Ally	Power to Influence	Degree of interest	Extent of Knowledge	Possible Actions to Increase Interest or Knowledge	Resources Available for Advocacy	Resources Needed for Advocacy	Strength of Opportunity
Senators	High	Medium	Little knowledge	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
Federal Deputies	High	Medium	Little knowledge	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

8. 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 to the financial system.
Is the root of the issue in the text of the law or in the 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 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
How does this issue affect philanthropy organizations? Does this overlap with the interests of other CSOs?	The tendency is that philanthropic organizations have less impact due to the volume of resources they have and the 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 way in this area.
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 civil society	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 civil society			
LOW PRIORITY Impacting the operation of civil society			

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 the national territory has created barriers to the organizations in the financial system.

Potential Changemaker or Ally	Power to Influence	Degree of interest	Extent of Knowledge	Possible Actions to Increase Interest or Knowledge	Resources Available for Advocacy	Resources Needed for Advocacy	Strength of Opportunity
Central Bank	High	Very Low	No knowledge	Getting to know the work done by CSOs	Coalition of CSOs following the subject	Production of data and knowledge about the impact of the Issue on CSOs	6
FEBRABAN	High	Very Low	No knowledge	Getting to know the work done by CSOs	Coalition of CSOs following the subject	Production of data and knowledge about the impact of the Issue on CSOs	6

9. 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, although this 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 in the 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 also restricts 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 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	Establish dialogue with the Public Ministry to discuss impacts for CSOs and 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 civil society			

PART 3 - MAPPING POTENTIAL CHANGEMAKERS & ALLIES

DESCRIBE THE ISSUE: Inspection exercised by the Public Prosecution Office (MP) on organizations.

Potential Changemaker or Ally	Power to influence	Degree of interest	Extent of Knowledge	Possible Actions to increase Interest or Knowledge	Resources Available for Advocacy	Resources Needed for Advocacy	Strength of Opportunity
Public Prosecution Office	Very High	Low	Medium extent of knowledge	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
National Congress	High	Low	No knowledge	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
Judiciary	High	Low	No knowledge	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

10. 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 in the 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 addressing this issue?	Grassroots organizations, organizations that access public resources, organizations that work in the defense of rights
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 and public 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 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	Training of public managers on the MROSC (Law 13.019/14)		
MEDIUM PRIORITY Significantly impacting the operation of civil society	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 civil society			

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 the CSOs.							
Potential Changemaker or Ally	Power to Influence	Degree of interest	Extent of Knowledge	Possible Actions to Increase Interest or Knowledge	Resources Available for Advocacy	Resources Needed for Advocacy	Strength of Opportunity
State and Municipal Governments (Executive)	High	Low	Little knowledge			Production of data and knowledge about the impact of the Issue on CSOs	
Public managers	High	Low	Little knowledge			Production of data and knowledge about the impact of the Issue on CSOs	

11. 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 in the 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 and team 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) impacted organizations 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 the defense 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? If so, What happened? Has anything changed?	The organizations mobilized in the National Congress to revert the authorization of supervision by the Federal Government, 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 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	Campaign to defend organized civil society		
MEDIUM PRIORITY Significantly impacting the operation of civil society			
LOW PRIORITY Impacting the operation of civil society			

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 control and supervise CSOs.

Potential Changemaker or Ally	Power to Influence	Degree of interest	Extent of Knowledge	Possible Actions to Increase Interest or Knowledge	Resources Available for Advocacy	Resources Needed for Advocacy	Strength of Opportunity
Philanthropy organizations	Low	Medium	General understanding of issue, but do not know details	Understand the relevance of the topic to CSOs		General resources (legal defense and advocacy funding)	8

12. 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 civil society	Campaign on the importance of organizations		
MEDIUM PRIORITY Significantly impacting the operation of civil society			
LOW PRIORITY Impacting the operation of civil society			

PART 3 - MAPPING POTENTIAL CHANGEMAKERS & ALLIES

DESCRIBE THE ISSUE: Organizations have been accused of committing crimes, especially by the Federal Government							
Potential Changemaker or Ally	Power to Influence	Degree of interest	Extent of Knowledge	Possible Actions to Increase Interest or Knowledge	Resources Available for Advocacy	Resources Needed for Advocacy	Strength of Opportunity
Philanthropy organizations	Low	Medium	General understanding of issue, but do not know details	Understand the relevance of the topic to CSOs		General resources (legal defense and advocacy funding)	8

13. 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 in the 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 gather the 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 addressing this issue?	Organizations that had a seat and participated in the councils
Is this issue linked to other types of repression in the overall environment?	It is connected with attempts to supervise organizations and criminalize
Have there been previous efforts to address this? If so, What happened? Has anything changed?	The constitutionality of the act was questioned in the Supreme Federal Court by the organizations, which decided 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 civil society	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 civil society			Approval of a law that creates the "National Social Participation Policy"
LOW PRIORITY Impacting the operation of civil society			

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 Changemaker or Ally	Power to Influence	Degree of interest	Extent of Knowledge	Possible Actions to Increase Interest or Knowledge	Resources Available for Advocacy	Resources Needed for Advocacy	Strength of Opportunity
National Congress	High	Low	Medium extent of knowledge				
Philanthropy organizations	Low	High	General understanding of Issue, but do not know details	Understand the relevance of the topic to CSOs		General resources (research and advocacy funding)	
State and Municipal Governments (Executive)	High	Low	Little knowledge				