

**Enabling Environment National Assessment of Civil  
Society Organizations  
Brazil**

*(Translated from Portuguese)*

*Responsible entity: Abong*

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The Enabling Environment National Assessment (EENA) is part of the Civic Space Initiative (CSI) implemented by CIVICUS in partnership with the International Center for Not-for-Profit Law (ICNL), Article 19, and the World Movement for Democracy (WMD), with support from the Government of Sweden.



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## **1- Presentation**

This report was written by the lead researcher, Isabel Mattos Porto Pato<sup>1</sup>, assisted by Rafael Mignoni, research assistant, and by the Abong team. It follows the terms of reference of the EENA methodology. Abong's executive board made contributions to the final report at the EENA National Consultation.

### **1.1 General Objective**

The general objective of the EENA is to evaluate whether Brazil offers an enabling environment for civil society action and, by means of this analysis, identify the positive and negative aspects in order to create a national advocacy plan.

### **1.2 Methodology**

The EENA research guide developed by CIVICUS and the ICNL<sup>2</sup> was followed. The methodology consisted of evaluating the six mandatory dimensions – (i) formation, (ii) operation, (iii) access to resources, (iv) expression, (v) peaceful assembly and (vi) government-CSO relations. In addition, three optional dimensions were examined, as suggested by Abong and the Expert Advisory Panel (EAP)<sup>3</sup>: (i) internet freedom, (ii) CSO cooperation and coalition, and (iii) access to information. The EAP responsible for the research decided not to address the fourth optional dimension, taxation, because it was considered to be a complex theme that would demand additional in-depth analysis, and thus requiring more than the allotted time. The EAP considers the taxation issue as being a theme that requires research, debate and analysis; as it is a major subject for the operation of CSOs. Unfortunately, due to lack of material on taxation, it was not possible to include this dimension in the present study. This was a document-based and analytical

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<sup>2</sup> The Enabling Environment National Assessment (EENA) is part of the Civic Space Initiative (CSI) implemented by CIVICUS in partnership with the International Center for Not-for-Profit Law (ICNL), Article 19, and World Movement for Democracy (WMD).

<sup>3</sup> The EAP consisted of: Eleutéria Amora, state director of Abong/RJ and of the Casa da Mulher Trabalhadora – CAMTRA; Mario Aquino Alves, professor at FGV-SP; Paula Storto lawyer, researcher, holds a M.A in Human Rights from USP; and Vera Masagão executive director of Abong and of Ação Educativa.

research. Data collection included primary and secondary sources, interviews and focus group discussions with relevant stakeholders, conducted in Brasília and São Paulo.

Eight interviews with relevant local stakeholders were conducted and two focus group discussions were held. Representatives of civil society and of the academia participated in focus groups discussions, during which they addressed private sector-CSO and grassroots social movements-CSOs relationships, as well as new forms of mobilization and communication.

This report does not include direct quotations or references to the interviews or focus groups due to methodological choice.

After the main research findings of this report were presented, the next step was the development of a national advocacy plans that CSOs can defend and that ensures action towards an enabling environment of civil society in Brazil.

The National Consultation, a multi-stakeholder dialogue, took place in the city of Porto Alegre, on May 6, 2015. Participants included Abong executive board members, the EAP group of experts, CIVICUS, civil society representatives, representatives of the CSOs Legal Framework National Platform (such as Gife and Fundação Esquel), and scholars. Together, they validated the research findings and contributed to the development of the national advocacy plan.

The EENA research results and three guiding questions were the starting point for the debate at the National Consultation.

- The approval of law no. 13.019 is the first step to improve the legal environment for CSOs in Brazil. However, the agenda of the Civil Society Organizations Regulatory Framework (MROCS in Portuguese) is more comprehensive and requires advocacy and partnership from CSOs. What else must be done to obtain a substantial change in the environment for CSOs in Brazil?
- In Brazil, the legal framework protects freedom of association and is therefore not the major problem faced by CSOs. If you agree with this statement, what do you consider to be the major hindrance for CSOs' existence?
- Based on the previous questions, which are the essential aspects on which organizations must focus on to ensure their political and financial sustainability?

## 2 – Introduction<sup>4</sup>

The contributions civil society organizations (CSOs) have made to consolidate democracy in Brazil are undeniable. As human rights defenders they defend a wide variety of causes of public interest, improving the lives of vulnerable people, and also work to monitor public policies and report human rights violations. A society that ensures the right of association and assembly for a public interest causes is certainly a society with greater guarantees and a stronger and full democracy.

This study will address non-profit and private CSOs that conduct a wide and diverse variety of activities. According to data collected by the Brazilian government, there are currently 290,000 organizations categorized in the following fields of work: health, housing, culture and leisure, education and research, religion, employers' union and professional associations, social assistance, environment and animal welfare, development, and defense of rights.

This research will not address issues related to trade unions, political parties and religious organizations due to their social roles, forms of action and financial sustainability being different. The research dimensions will be examined based on organizations that defend people's rights, and will use as a reference law no. 13.019. Law no. 13.019 describes civil society organizations (CSO) as a “non-profit legal entity governed by private law, which does not distribute to its partners, members, advisors, directors, employers or donors occasional gross or net revenues, income and surpluses derived from its operations, dividends, bonuses, holdings or parts of its assets acquired from the practice of its activities, using them exclusively to achieve its mission, either immediately or creating an endowment fund or reserve fund”.

### *Brief History*

In Brazil, organized civil society played an important role in the fight against the military dictatorship in the 1960s and 70s. At that time, there were different organizations, including Catholic organizations, which gave support to social movements and human rights organizations working in near-secrecy in human rights centers and in popular education movements. When the dictatorship was over, the country witnessed the arrival

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<sup>4</sup> To write this report, the author used as a reference her MA thesis entitled “Direito à Cultura: organizações da sociedade civil” [Right to Culture: civil society organizations], from PUC-SP, in 2013, as indicated in this text's Reference section.

of the so-called “democratic opening” in the late 1970s and early 1980s. During this time, these centers were progressively institutionalized and became lay organizations with support from the international cooperations. Funded by these international institutions, these centers were consolidated as spaces of training and capacity building of social movements and the monitoring of the political opening in the fight for human rights and the consolidation of democracy.

In the 1990s, with the democratic consolidation and the end of the dictatorial regime, there was a proliferation of rapidly emerging organizations throughout Brazil in various formats, with various identities and objectives. The two presidential terms under Fernando Henrique Cardoso (FHC) two terms, from 1995 to 2003, fostered the partnership between civil society and the state.

New institutional profiles emerged during this period. In addition to organizations that grew from the political resistance during the dictatorship and were based on the defense of human rights, the country witnessed an increasing dissemination of concepts such as corporate social responsibility and corporate awareness regarding social issues, as well as the search for solutions to end inequality in the country.

Different networks and forums emerged, bringing together organizations that work on similar themes or that have the same profile. These organizations sought to strengthen themselves as a collective. The Associação Brasileira de Organizações Não Governamentais [Brazilian Association of Non-Governmental Organizations] (Abong) was created in this context, in the early 1990s. Abong aims at strengthening this array of existing organizations and to create a network of NGOs that could be identified as a single political actor whose purpose is the following: bring together organizations that work on defending human rights and to consolidate the Brazilian democratic state.

Other networks were created in that same period, focusing on theme-based actions at the national level, such as the Movimento Nacional de Direitos Humanos [National Human Rights Movement] (MNDH, 1982), Movimento Nacional de Meninas e Meninos de Rua [National Movement of Boys and Girls Living on the Streets] (1985), Coordenação de Entidades Negras [Coordination of Black People’s Entities] (Conen, 1991), Fórum Brasileiro de Organizações e Movimentos Sociais para o Meio Ambiente e Desenvolvimento [Brazilian Forum of Organizations and Social Movements for the Environment and for Development] (FBOMS, 1990), Fórum Nacional de Reforma Urbana [National Urban Reform Forum] (FNRU, 1987). Regional focused networks also emerged, such as the Articulação do Semiárido Brasileiro [Articulation of the Brazilian

Semi-Arid Region] (ASA, 1999) and the ASP-TA Agricultura familiar e agroecologia [Asp-ta Family Agriculture and Agroecology] (1983).

In 1995, the Grupo de Institutos, Fundações e Empresas (Group of Institutes, Foundations and Companies Group) (Gife) was created, gathering corporate organizations whose mission is to promote concepts and practices on effective use of private funding for the development of the common good.

The Lula administration, which lasted two terms (2003 to 2010), as well as his successor, Dilma Rousseff (2011 to present), have the same political project, which creates high expectations among CSOs regarding a possible improvement in their enabling environment and improvement as society as a whole. The economic, social, political and cultural context of Brazil is very different from that of the previous decades with substantial improvements such as the fight against poverty, for instance. However, This has led to a paradoxal situation because there were no structural changes in the concentration of power, income and land in the country.

The social improvement that Brazil has enjoyed and the country's new status on the international stage has negatively affected CSOs. Even though CSOs have an agenda full of challenges and strategies, they face difficulties to sustain themselves due to the withdrawal of financial aid from international cooperation. Additionally, CSOs have also had to deal with the mainstream media that question their legitimacy, mentioning them as spaces for the misappropriation of public funds and as corruption-enabling apparatuses.

To Armani (2008), these circumstances show that CSOs must reinvent themselves. The author indicates four factors in the current context that challenge CSOs' ability to maintain their sociopolitical and financial sustainability at the national and international levels. The first factor is the need to improve technical and management quality to verify their political and social results. Organizations must be better structured, must have mechanisms to monitor and evaluate their actions, and must know how to efficiently communicate their activities to target audiences, donors and society as a whole. In other words, they must have better communication channels, staff training, among other issues.

The second factor is related to the growth of the non-governmental sector to include a diverse groups of new actors, new spaces of action, and political participation. One may say that this is an opportunity to create collective actors to strengthen the political struggle. Spaces, such as the World Social Forum, became opportunities for collective action and for strengthening civil society because group action strengthens political intervention and the demands of society.



The largest challenge of building a solid capacity to intervene politically at the national and international levels, or the capacity to “lobby and advocate”, according to Armani (2008:27), is the third factor that affects the current climate.

The final challenge of building their own sustainability despite the current financial crisis that many CSOs are facing, is promoting themselves to the public.

Beyond the efforts that have been made and partial accomplishments that have been obtained by organizations, it is fundamental to address the structural factors that limit the local possibilities of these organizations’ political and financial support. One of the structural factors that must be addressed is the need to improve the education of Brazilian society regarding the political, material and financial support of NGOs and of social movements as actors of development. Another factor is the urgent establishment of a regulatory framework that values and legitimizes the autonomous construction of these organizations in the country, that enables the proper public funding and that ensures tax mechanisms that make easier for individuals and legal entities to give their financial support. Finally, it is important to work together with public managers and opinion leaders in order to strengthen the legitimacy of social movements and NGOs by means of a rights-based approach, for they are vital forces in the process of forging the nation, development and democracy (Armani, 2008:28).<sup>5</sup>

Armani believes that in order for NGOs to survive, they must inform the Brazilian society what they are, what they do, and their purpose. All of this must be accomplished in an adverse environment in which CSOs’ reputation is constantly under attack and there is little funding available. The analysis of the researcher allows a contextualization of the performance of CSOs today. As pointed out by the author, they face both a severe financial crisis that forces them to reinvent themselves institutionally and a complex and difficult reality that interferes in their everyday activities, as well as a permanent “resource hunt” to continue to conduct their activities.

Among other qualities, CSOs can be important actors in the consolidation of new rights. The author describes the role these organizations played in the debate and approval of the 1988 Brazilian Constitution, which included the creation of new rights such as the right to participation.

At the national level, the accumulation of the social pressure exerted by democratic civil society organizations since the

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<sup>5</sup> TN. All quotations in Portuguese have been translated into English by the translator.

dictatorial regime led to the establishment of new social, economic and political rights in the 1988 Constitution. The achievement of new rights, such as the right to participation, both enabled social movements to make new demands and brought new themes to the country's social development agenda (Armani, 2008:25).

Understanding the historical importance of CSOs as a monitor of public policy and a defender of human rights, this assessment examines the political and legal environment of civil society organizations and the relationship between CSOs, society and the state.

### 3. Mandatory dimensions

#### 3.1 – Formation

From the 1990s to present, there has been a huge increase in the number of CSOs. The collected data indicates a 157% increase in the number of CSOs between the years 1996 and 2002 (Carvalho, 2008:24). According to the Instituto Brasileiro de Geografia e Estatística [Brazilian Institute of Geography and Statistics] (IBGE) associative life in Brazil has been increasing, as seen in the amount of existing organizations, the number of people employed in the sector and the amount of resources used. IBGE has conducted the largest and most comprehensive quantitative research on the topic of non-profit private foundations and associations, named *Fasfil*. The survey was done in partnership with the Instituto de Pesquisa Econômica Aplicada [Institute of Applied Economic Research] (Ipea), Abong, and Grupo Gife.

The *Fasfil* research was based on data from the Database of Companies (Cempre) and aimed at building statistical data that could be compared internationally. To this end, it was established that entities should meet the following criteria; organizations had to be private, voluntary, does not distribute occasional revenues, have self-management capacity, and be institutionalized. The study described methodological procedures, definition, classification and identity of these organizations and provided quantitative data, such as, where they were located, for how long they existed, their size, the activity they undertook, the number of employees and their income.

In 2010, the *Fasfil* survey identified the existence of 290,700 organizations in Brazil. These were mainly religious organizations (28.5%), employers' associations and professional associations (15.5%), and development and defense of rights organizations (14.6%). Organizations in the fields of health, education, research, and social assistance (government policies) amounted to 54,100 (18.6%) (Sources: IBGE and Abong). Most of the organizations are located in the country's southeastern region (42%), while 72% does not hire staff, but depend on free-lance services and volunteers to conduct their activities.

Between 2006 and 2010, there was an 8.8% increase in the number of non-profit associations and private foundations in Brazil, a substantially smaller growth rate than the 22.6% increase recorded from 2002 to 2005. The survey also shows that the map of social assistance does not correspond to the map of poverty. More than three quarters of social assistance entities are located in the southeastern region, whereas most

organizations working in the area of the defense of rights are located in the northeastern region (37.7%).

In the *Relatório Brasileiro para projeto regional sobre entornos favoráveis para a ação das organizações da sociedade civil (OSCs)* (Brazilian Report for Regional Projects on Enabling Environments for Civil Society Organizations (CSOs)), researcher Paula Raccanello Storto (2013) addresses the legal framework that ensures associative rights in Brazil and the legislation that governs it. To discuss the legal aspects involving CSOs, this study will be based on this report and on interviews with experts on the issue.

#### *Creation of an association and/or foundation*

The Brazilian Civil Code separates individuals and legal entities, which are either governed by public or private law. Under private law, three forms of legal entities may be registered – for-profit corporations, non-profit associations, and non-profit foundations. It is important to mention that this does not mean that associations and foundations cannot obtain economic results from their activities, but that all of it must be reallocated to their own activities.

As for cooperatives, they possess a nature that is distinct from both associations and foundations. An association has as its objective to promote social assistance, education, cultural representation, political representation, defense of the interests of a group, and philanthropy, while the objective of a cooperative is strictly economic. Cooperatives aim to enable their members to increase their efficiency in the market.

#### *Creation of a non-profit association or foundation*

The process for creating an *association* or *foundation* is established in the Civil Code and in the Public Records Act. The *association* or *foundation* must be registered in the notary office and, then, registered in the Receita Federal [Brazilian Internal Revenue Service] to obtain its Cadastro Nacional de Pessoa Jurídica (CNPJ) [Corporate Taxpayer Number]. In Brazil, notary offices are private entities whose role is to offer registration services to ensure the transparency, authenticity, safety and efficiency of legal acts. Any Brazilian individual may register an association and/or foundation. The Minutes of

Incorporation and the by-laws of the new entity must be registered in the notary office. The Minutes of Incorporation must contain:

- Name, purposes, head office, duration and social fund, if applicable;
- The name of the founders and board member and other pertinent information;
- The manner in which the association or foundation is administered and represented, actively and passively, judicially and extra-judicially;
- Whether its constitutive act is subject to amendment in respect to its administration and in what manner;
- Whether or not its members are secondarily liable for its social obligations;
- The conditions of dissolution of the legal entity and the destination of its property in that event;
- The requirements for admission, dismissal and exclusion of its members;
- The rights and duties of its members;
- Sources of funding for its operation;
- Organization and functioning of its decision-making bodies;
- Conditions for statutory amendments and for dissolution; and
- The form of administrative management and of approval of accounts. (STORTO, 2013:16)

Once the entity receives its CNPJ, the association or foundation will be able to open a bank account in its name and to file its annual tax returns. As Storto explains, there are differences between creating an association and a foundation because the latter must comply with the following requirements:

- (i) Assets comprised of unencumbered properties, at the moment of the incorporation
- (ii) A solemn declaration of the incorporator expressing his/her will to create a new legal entity along with its budget through public deed or testament;
- (iii) The declaration stating the main purpose of the foundation;
- (iv) By-laws regulating the activities and the form of management of the entity (or decree, when established by law), which shall be in accordance to the guidelines set by the incorporator;
- (v) An administration;
- (vi) The registration at the Cartório de Registro Civil de Pessoas Jurídicas (Registry Office of Legal Entities), with previous approval of the acts of incorporation by the Public Prosecutor's Office. (Idem)

As for associations whose incorporation depends on bringing together two or more people, the requirements are:

- (i) Minutes of the meeting that approved the incorporation of the entity, along with the name of its founding members and the purposes of the entity;
- (ii) The by-laws that will govern the legal entity;
- (iii) Record of all above-mentioned acts at the Registry Office of Legal Entities, where two copies of the necessary documents must be presented (Section 121 of the Public Records Act);
- (iv) In the case of public legal entities, a previous legislative authorization will be necessary. (ibidem)

According to the Manual do Terceiro Setor (Manual of the Third Sector) (Pro Bono, s/d, p. 12), the differences between associations and foundations are:

- Associations are characterized by the coming together of a group of people who organize themselves to achieve a goal. On the other hand, a foundation is characterized by the organization of assets (set of properties) for a specified purpose.
- Consequently, when foundations are incorporated, assets must be declared, something associations do not have to do.
- As part of the process of its formation, both foundations and associations must state their purpose. For foundations, the purpose is permanent and must follow what the founder has established. This is not the case for associations: the purpose of associations can be altered.
- The Public Prosecutor's Office monitors the activities of both foundations and associations. However, foundations are more closely monitored and have to send mandatory annual reports on their accounts and operation. For associations, this follow-up is much more fluid.

Once the entity is formed, there is no need to renew its registration. However, information such as by-laws and minutes, election of board of directors, alterations in the by-laws, creation of subsidiaries, change in registered office address, alteration of purposes, and accounting books must be registered in the notary office. Registration is usually not expensive, but fees vary according to region, city and notary office. The estimated cost is five hundred reais (approximately US\$ 165.00). Often legal aid is needed to understand the process which raises the costs with fees for legal counseling, materials, copies of documents, etc. There are law firms that offer free legal aid CSOs,

such as the Instituto Pro Bono, which offers assistance given by their own lawyers and volunteer lawyers.

Once the non-profit organization is incorporated and its legal entity, association or foundation, is chosen, the next step is to obtain titles or certificates that verify their quality as an OSCIP [Civil Society Organisation of Public Interest] (regulated by law no. 9790/99), Public Utility Entity Title (at federal scope, law no. 91 of 28/08/35; Law no. 6639, of 08/05/79; Decree no. 50517, of 02/05/61; and Decree no. 60931, of 04/07/67) and the Social Assistance Charitable Entity Certificate (law no. 8742, of 08/12/1993; Decree no. 2536, of 06/04/98; Decree no. 3504, of 13/06/00; and Resolution no. 177, of 10/08/00 of the Social Assistance National Council). These certificates enable organizations to obtain legal benefits, such as tax exemption.

#### *Dissolution of a non-profit association or foundation*

The dissolution of an association has to be decided in its general assembly, and its assets may be donated to another non-profit association with the same purposes or returned to the responsible public agencies. For foundations, their dissolution may be requested by the General Prosecutor's Office or by any interested party that does not identify material or managerial conditions for its maintenance and operation. Their assets shall also be transferred to another foundation with the same characteristics or to public authorities.

The bureaucratization of the processes of formation and dissolution of associations or foundations can be considered as a major obstacle. In Brazil, the Federal Constitution ensures the freedom of association, however, processes involved in regulating and maintaining an association and/or foundation are not always easy. For instance, it is not an easy task to obtain data, such as the number of registered associations every year or whether ongoing applications have been accepted, because notary offices do not have a unified registry.

Notary offices are technical and administrative entities that aim at ensuring the transparency, authenticity, safety and efficiency of legal acts. There is no unified registry system, which makes it difficult to monitor the processes and requirements to form or dissolve a non-profit private entity. In a city such as São Paulo, there are several notary offices, which makes it easier to register new entities; however, in smaller cities the situation can be quite different. Additionally, since it is a private entity providing a public

service, the requirements are not uniform. For example, during the National Consultation debate, the case of an entity that was not able to register because its headquarters was located on a dirt and unpaved street was brought up.

### **3.2 – Operation**

The Federal Constitution ensures civil society the freedom to organize, operate, and communicate, therefore, organizations are free to organize and express themselves without any government interference. The government does not have to be notified about meetings or elections, however, any alteration in the by-laws, assembly minutes, and election of board of directors must be registered in the notary office where the entity was first registered. CSOs must render to the governments their financial and activity reports if they have a partnership with the government and, thus, when there are public resources involved. The public manager, who is responsible for the specific partnership with the government, is also responsible for any follow up, such as requests for audits and financial reports.

Like any legal entity or individual in Brazil, non-profit entities must file their annual income tax return to the Ministério da Fazenda [Brazilian Ministry of Finance], detailing all its earning and expenses in the course of the year.

The government does not have direct control over CSOs' actions. CSOs have autonomy to define their line of action and themes they will work on. However, one may say that public authorities, especially city and municipal authorities, impose conditions to these organizations as CSOs' potential partners and donors.

Fundraising is the most difficult aspect because donors often present demands and requirements. Public agents, donors and segments of society demand more transparency from CSOs regarding their activities and financial resources. Many CSOs have already published their financial statements and activity reports on their websites, as well as having annual audits. The report will elaborate further on the transparency issue in the dimension of “access to information”.



The National Congress has also been monitoring the transfer of public funds to CSOs. In 2001, the first Parliamentary Committee of Investigation (CPI, in Portuguese) was established to investigate the transfer of public and international funds to non-profit organizations and organizations of public benefit. The CPI focused on CSOs working in the Amazon region, was presided by a Senator from Roraima State who proposed a severe control of the actions conducted by these organizations.

In 2006, a second CPI was established to investigate the use of public and international resources by NGOs and organizations of public interest between 1999 and December 2006.

In 2007, a third CPI was created to once again investigate the transfer of public funds from the Federal Government to NGOs and organizations of public interest, as well as how they used these and other international resources.

Based on interviews, documents and analyzing the period when these three CPIs took place, the research concluded that the CPIs made little contribution to building a regulatory framework and transparency mechanisms for CSOs. CPIs became spaces for “witch hunts” and electoral disputes. Therefore, the CPIs missed the opportunity to deepen the debate on organized civil society and its relationship with the Government. Additionally, CPIs contributed to the criminalization of NGOs in the eyes of the public.

The law that regulates the relationship between organizations and the Brazilian government is crucial in ensuring an enabling environment for CSOs and to promote good practices in the use of public funds by CSOs. Seeking to create a collective space to debate government-CSO relationships and to put pressure on the government and the legislative branch, a group of organizations came together in 2010 to create a national group. On its webpage, the New Regulatory Framework Platform of CSOs affirms:

The New Regulatory Framework Platform of CSOs brings together several entities to discuss and demand from the federal government the creation of a legal framework that makes a safer environment and expands the possibilities for civil society to organize itself and act. The platform points out that the role of organizations is Brazil’s social heritage and a pillar of our democracy. Its signatories call for a policy that fosters citizen participation by means of autonomous organizations, with clear

legislation and access to public funds.  
([www.plataformaosc.org.br](http://www.plataformaosc.org.br) last accessed Jan.15, 2015)

That same year during the presidential elections, the Platform organized and promoted debates on the need for a regulatory framework for CSOs. Dilma Rousseff, who was a candidate at the time, made a commitment to present a proposal to improve the legal framework that governs CSOs if she were to be elected. This commitment was crucial as in 2012 the government - through the Office of the General Secretariat of the Presidency - promoted an international seminar on the regulatory framework. Additionally, the Civil Society-Government Working Group was created to discuss the legal framework. The Working Group (WG) was an important space for debate between civil society and government. The staff of the General Secretariat of the Presidency in particular became an important ally in the construction of the regulatory framework. The WG published a final report and worked on a draft law to regulate CSO-Government relationships.

In 2014, after social pressure and debate within civil society, the legislative branch and the government passed law no. 13.019, the Partnership and Cooperation Agreement, which regulates a new form of partnership between civil society and government.

The approval of law no. 13.019, the implementation of which is set to begin mid-2015, was an important step toward the consolidation of a more transparent relationship between civil society and the government. However, much is still to be done. The issue of regulating civil society-government relationships is an important and aggregating aspect of the enabling environment of civil society, but it is part of various demands that should not be mitigated. Issues regarding promotion of civil society and the tax regime are still fundamental to ensure an enabling environment for CSOs in Brazil. According to the New Regulatory Framework Platform of CSOs:

A New Regulatory Framework that consolidates a harmonious and constructive relation between Civil Society Organizations (CSOs) and federal, regional, and local governments and society itself. Such a demand for improved CSO-government relationships is based on the need for a state policy that includes tools and mechanisms that ensure political and financial autonomy of CSOs. This will promote citizen participation in the sense of contributing to the radicalization of democracy and the renewal of processes, including decision-making and social

control tools. Furthermore, such policy must favor CSOs' independence, autonomy and institutional sustainability and must include:

- Effective citizen participation processes and bodies that create, implement, ensure social control of and evaluate public policies;
- Tools that ensure citizen participation in different bodies;
- Encourage citizens to get involved in public causes and create an enabling environment for the autonomy and strengthening of CSOs;
- Mechanisms that enable democratic access to public funds and allow the non-bureaucratic and efficient execution of actions in the public's interest;
- A tax regime that favors CSOs, including the creation and enhancement of tax incentives for donors, both individuals and legal entities. (New Regulatory Framework Platform of CSOs, 2011)

Actually, it is not yet possible to identify how law no. 13.019 will improve the operation of CSOs. Law no. 13.019 will likely take effect in July 2015. One of the positive aspects mentioned during this study's data collection phase is that law no. 13.019 will transform CSOs-government relationships. The new law provides for two types of partnership agreements between CSOs and the government. This will change the way CSOs are perceived, which are currently often seen as entities that provide public services and not as partners of an action or policy.<sup>6</sup>

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<sup>6</sup> Until then, government-CSOs partnership relationships were governed by the three formats below.

First, it is important to establish the definitions and use of the terms "contract," "collaboration agreement," and "term of partnership."

A contract is an agreement executed between two or more people, in which rights and duties are assigned to each party. A contract is a legal instrument and is governed by the applicable law. However, it is commonly understood that the parties are free to hire at their discretion, as long as the agreement does not involve illegal purposes. However, the lawmakers understood that certain types of contracts dealt with public-interest issues and needed to be regulated in more detail. Collaboration agreements commonly refer to agreements in which the parties have similar interest and join efforts to achieve a common goal. The term "partnership agreement" may be used colloqually in the same instantances as collaboration agreements. However, when these two terms are applied to public authority acts, they have different connotations and implications. The law strictly regulates contracts executed with public authorities. Before public authorities execute contracts with non-profit entities, they must have a competitive bidding. The collaboration agreement generally refers to an agreement between legal entities governed by public law or an agreement between public authorities and non-profit entities. The partnership agreement refers

However, experts who were interviewed on the matter expressed their skepticism regarding this law, concerned about possible drawbacks, such as the criminalization of heads of CSOs in cases of irregularities.

There are no extra-legal grounds used by the government to close down or dissolve a CSO. However, there is an ongoing process of criminalizing organizations by the mainstream media and conservative sectors of society. This is also expressed in the legislative branch which promotes a negative campaign against entities, portraying public funding as wrong or even worse, attempting to diminish the value of the work of CSOs. There is a lack of knowledge by society and the government on the work of CSOs and difficulties they face in their sustainability.

### **3.3 - Access to resources**

As previously stated, legally freedom of expression and autonomy in CSOs' operation are ensured by the Federal Constitution and public agencies. However, examining the daily functioning of CSOs, the difficulty in ensuring financial support was observed. In the absence of processes and policies that foster the growth of CSOs and enable organizations to obtain financial stability, there will be no enabling environment. This is directly related to CSO autonomy and political actions.

A possible solution often discussed among CSOs is the creation of a public fund to support social initiatives through the use of bids, for example. Funding is one of the topics of the MROSC [New Regulatory Framework Platform of CSOs] agenda. Brazil already has funds dedicated to support social projects. One of them is the Fundo Nacional para a Criança e o Adolescente [National Fund for Children and Adolescents] (FNCA), which funds projects and institutions that assist children and adolescents. The donations for the fund are given from taxpayers who are encouraged to donate a part of their income tax return, which is reallocated to the fund and to projects. The National Secretariat for

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specifically to agreements executed between public authorities and non-profit entities qualified as OSCIPs. (Pro Bono, p. 57)

Human Rights has a register of state and municipal funds, so individuals can choose the recipient of their donations.

Fundraising by means of the creation funds can be a good method to mobilize society's financial resources to support social projects. Campaigns that encourage individuals and companies to donate to these funds are necessary in order to mobilize society because many are not aware that the donation option is available or do not know how to donate. One of the negative aspects that has been pointed out regarding these funds is that individuals and companies do not want to donate to a fund because they want to know which social project the donation will fund.

In Brazil, there are some experiences of non-profit, private and autonomous funds whose aim is to fund small-scale projects which vary in thematic focus. This type of funds have assisted projects such as Fundo Brasil de Direitos Humanos (Brazil Fund of Human Rights) and Fundo Elas, a fund focused on gender issues, and Fundo Baobá, a fund focused on racial equality. These funds aim to increase the access to funding for groups or collectives that, in many cases, are not institutionalized and therefore not eligible to receive public funding.

The issue of the financial sustainability of CSOs is a constant topic of debate and a concern for organizations. It is not easy to obtain funding to conduct activities because organizations must count on different donors and struggle to be eligible to receive government funding. Another aspect is that organizations must try to expand their sources of funding to ensure more autonomy in their activities.

Therefore, considering resource mobilization as a political act and the search for autonomy of action through diversity of resources, there are aspects that help us to reflect on the access to public, private and international funding.

CSOs are allowed to raise funds from public agencies, companies, individual donations, and international funding. Equally, CSOs can also raise funds from the sale of services and materials, such as for example books, publications, advisement services. Resources obtained from the sale of services and materials must be transferred back into the organization to fund the operation and activities and cannot be shared among its members. This is stated in the norm that describes the formation of a non-profit association.

*a) Government funding – public resources*

The study “*As entidades sem fins lucrativos e as políticas públicas federais: tipologia e análise de convênios e organizações (2003-2011)*” (Non-profit entities and federal public policies: typology and analysis of collaboration agreements and organizations (2003-2011)), which was conducted by Ipea, indicates that only 10,000 of the 290,000 existing CSOs have received public funding. The government transferred nearly R\$190 billion between 2003 and 2011 through collaboration agreements with local governments and non-profit entities. The latter received nearly 15% of the total of transfers, equaling R\$29 billion. The amount received by CSOs is not even 0.5% of the the budget.<sup>7</sup> It is also worth mentioning how difficult it is to access information on the theme due to the fact that most of the information is located at the Brazilian Internal Revenue Service and protected by tax confidentiality laws. As a consequence, it is difficult to complete a detailed survey on the other forms of funding, including international funding, support from companies and private foundations, individuals donors, and funds from states and municipalities.

It is important to point out that most partnerships between CSOs and the public sector involve the state and municipal level of the government. When law no. 13.019/14 becomes effective in mid-2015, the entire process will change because the law applies to all three levels of government (municipalities, states and the federal government). Therefore, it is a moment of apprehension on the part of public agencies and CSOs, which must be trained on the modalities of the new law and its applicability.

*b) International funding –international cooperation*

During the Brazilian dictatorship period, Brazil had numerous CSOs, whose presence was necessary especially in the fields of development and rights advocacy. These CSOs received resources from the international cooperation in their fight to re-democratize the country. Since the 1990s, there has been a progressive decrease in international funding to support rights advocacy organizations due to the increase of resources directed to social policies and Brazil’s status as a medium-income country.

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<sup>7</sup> For further information on the theme, see the special article by the Civil Society Observatory “*O Dinheiro das ONGs – Como as Organizações da Sociedade Civil sustentam suas atividades – e porque isso é fundamental para o Brasil*” [The Money of NGOs – How Civil Society Organizations Maintain their Activities and why this is Fundamental for Brazil] published by Abong.

The amount of resources Brazil has received from international development cooperation and has transferred in recent years makes evident that the country's role in the international sphere has changed. According to a study conducted by Articulação D3 in partnership with Centro de Estudos em Administração Pública e Governo (Center of Studies in Public Administration and Government) of the Foundation Getúlio Vargas entitled "*Arquitetura Institucional de Apoio às Organizações da Sociedade Civil no Brasil*" (Institutional Architecture to Support Civil Society Organizations in Brazil), Brazil received US\$ 1.48 billion and donated US\$ 1.88 billion between 2005 and 2009. The same change is evident in data on multilateral technical cooperation, another partner in the international sphere. (Abong, 2014:10)

The change in international funding has affected the financial sustainability of CSOs. These organizations have always depended on the support of international actors. As those resources began to dissipate, CSOs have begun the search for new funding sources, such as private and public resources. Mainly, these resources only support projects.

From a bureaucratic point of view, in order to have access to these resources, CSOs need qualified staff to make the transition. There are high bank fees involved, and language skills are needed to access international bids as well as to follow the agendas of multilateral agencies funds, such as the UN.

*c) Private social investment –individual and corporate donations*

Donations from companies and corporate foundations are still a very limited source of funding. From the thematic point of view, companies and corporate foundations tend to prioritize donations to projects addressing "more accepted" issues, such as education, culture and youth issues, rather than more controversial issues, such as the fight against racism, the defense of women rights and LGBTI rights. From the financial point of view, this type of funding is also limited; corporate foundations tend to transfer little resource to third parties and mainly focus on the management of their own projects. This was indicated in 2013 data from the Gife (Grupo de Institutos Fundações e Empresas) Census. According to the study, the members of the Gife network invested R\$2.2 billion in 2011. Of this total, nearly 30% was donated to other organizations, while the remaining 70% was dedicated to funding their own projects. According to Gife, three factors contribute to the current situation. Firstly, there is a lack of trust of businesses in the technical

capacity of CSOs to accomplish their mission. Secondly, companies tend to connect their social investment to their company's business. Finally, the project evaluation process incentivize companies to fund their own projects, rather than donating to CSOs. Companies request project evaluations from organizations in order to justify the social investment.

In one of the focus group discussions conducted for this study, the relationship between CSOs and private social investment were discussed. The two hour focus group included participation from institutions associated with Gife, CSOs associated with Abong's, and academics. The debate pointed out the negative and positive aspects of the relationship CSOs- private social investment. Some of the positive aspects include mutual learning experiences, autonomy in the use of resources, and long-lasting partnerships. In the case presented during the focus group, the present CSOs had partnerships that lasted years with two institutes. Some of the negative aspects mentioned during the focus group include restrictions in thematic choice and the institutes' support of their own projects. Private social investment often invest in more "accepted" and less controversial issues, such as education, culture, children and adolescents issues; whereas CSOs and/or groups working on controversial issues, such as racism and women's rights, receive little support. Another aspect that was mentioned was a possible "instrumentalized" relationship, where the donor treats the CSO as a mere service provider, rather than a partner in a joint effort.

When the relationship is examined from a business perspective, participants of the focus group discussions agreed that networks, such as Abong and Gife, are political partners and that this positive relationship must be maintained. The experience of the Regulatory Framework Platform of CSOs was mentioned as an example of this partnership.

#### *Donations in Brazil*

The study "*Philanthropic Freedom: a pilot study*", published by the Hudson Institute, contains interesting data on the donations in several countries that must be understood and compared. The Hudson Institute focused on three aspects in each scrutinized country: barriers to the registration of a CSO, domestic tax policies, and barriers to sending and receiving cross-border donations. Thirteen countries are compared based on its definition of philanthropy - the voluntary use of private assets to support public causes. . The study ranks Brazil as a country with a medium or low donation



capacity because the country lacks concrete incentives for donations. Brazil's tax incentives for people and companies are minimum or nonexistent (approximately 2% to 6% income tax deduction for those who donate).

Although tax deductions are available in Brazil, they are very limited. Corporations can deduct up to 2% of their profit. Generally, individuals are not eligible for tax deductions. However, if individuals and corporations donate to CSOs with specific activities, they may qualify for tax deductions. Depending on the activity of the CSO, individuals and companies can deduct up to 6% of their income. (p. 16)

The majority of CSOs are tax-exempt. However, CSOs that engage in the sale of services must pay additional taxes. Educational or social assistance CSOs are exempt of taxes and fees at all federal levels.

One may say that society is an important source of income for the work of CSOs, or at least it should be, as private and public funding is still limited and often come with imposed conditions, which can be thematic, political or organizational. A fundraising campaign aimed at individuals who are interested in supporting social projects and causes must be created. International experiences, such as Greenpeace, Save the Children, have demonstrated that society does have potential to support CSOs financially. In Brazil, Idec and Instituto Brasileiro de Defesa do Consumidor [Brazilian Institute for Consumer Protection] have successfully raised funds from their members for activities. However, it is important to create moral and financial incentives to facilitate donating in Brazil. The country still offers little tax incentives to individuals and companies that wish to support social causes.

Despite the conducive civil society regulations in these countries, the socio-cultural narrative portion of the India, Brazil, and Mexico reports all mention that the general population either distrusts civil society or does not have a good understanding of its role. This demonstrates that, while the policies are not overly restrictive, because the civil society sector is relatively new and underdeveloped, positive social perception has yet to develop. (Hudson, p. 10)

### **3.4 Expression**

The Federal Constitution guarantees that CSOs are free to express and operate. There is no forbiddance or repression regarding this aspect, since the law guarantees it. As for individuals, section 19 of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) ensures the right to freedom of speech.

Freedom of expression of thought (Section 5, IV) and freedom of expression (intellectual, artistic, scientific and communication activities – Section 5, IX) were recognized as fundamental rights in the 1988 Constitution.

However, in Brazil the rights of communication professionals and human rights defenders have been violated. In a study published in 2015 by the CSO Article 19 (2015:14) 88 possible cases of violations related to freedom of expression were identified. Of which 55 were considered as violations after a detailed examination. In 2014, the identified violations against communication professionals and human rights defenders included 28 death threats, 15 murders, 11 attempted murders and 1 case of torture. Although these violations were not committed against organization but against individuals that exert their freedom of expression, in many cases denouncing possible violations by the state or individuals, they cannot be tolerated and demonstrates Brazil's lack of a safety network for the protection of free communication and information.

### **3.5 Peaceful Assembly**

The Federal Constitution ensures the right to association and to associational autonomy as part of the fundamental rights of every citizen. The “creation of associations and the creation of cooperatives, in conformity with the law, is not dependent on the authorization (of the government) and the government is prohibited from interfering in its functioning”<sup>8</sup> are individual and collective duties and rights. To this end, the existence of CSOs and organizations ensures a functioning democracy in which individuals are free to organize themselves and increase their participation in the public sphere and in the national political debate. CSOs are part of the Brazilian social heritage and their

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<sup>8</sup> Chapter 1, Section 5, XVIII

relationship with the government and society must always be of high quality and transparent.

According to Storto (2013) the Federal Constitution not only ensures the freedom of association and self-organization, but also protects their right to be private institutions that are separate of the government, and are autonomous and free to conduct their operation.

The Constitution also established constitutional immunity on the assets, income or services for some organizations, such as trade unions, political parties and social assistance entities, provided that they comply with the requirements described in tax laws.

The Federal Constitution recognizes in Section 5 (XVI and XVII) the freedom of peaceful assembly and freedom of association (paramilitary groups are prohibited) Freedom of expression of thought (Section 5, IV) and freedom of expression (intellectual, artistic, scientific and communication activities – Section 5, IX) were recognized as fundamental rights in the 1988 Brazilian Constitution. Trade union freedoms are also ensured by the Constitution, as well as the ability to strike. The rights to direct and indirect political participation are also ensured.

From the workers' point of view, Storto (p. 4) says:

**Trade union freedom** is also a constitutionally ensured right. The **formation of trade unions** does not depend on the authorization of the government, and public authorities cannot interfere or intervene in their organization. Accordingly, all workers, including those who work in rural areas and/or in fishermen colonies, have the right to decide whether they wish to participate in the body that represent their class (Section 8, V and sole paragraph).

Based on the evaluation of the legal framework, there are not restrictions regarding freedom of assembly in Brazil. In the article 5 of the Federal Constitution of 1988:

Everyone may assemble peacefully, with no guns, in places that are open to the public, irrespective of authorization, and provided that a meeting previously convened in the place is not hindered, the only requirement is to give prior notice to the competent body.

The largest problem is often the shortage of financial resources for CSOs to mobilize and promote meetings, actions, and protests. Additionally, there has been an increase in police violence during protests. In April 2015, over 200 people were injured, eight of which were seriously injured, as a result of excessive violence by the police faced by a protest of a group of teachers in the city of Curitiba, in Paraná State. The teachers were protesting against changes in the social security law that would affect Paraná State civil servants. The use of violence was excessive and unnecessary because the protest was peaceful. Other cases of police brutality have occurred quite frequent.

### **3.6 Government-Civil Society Relations**

From the point of view of the Federal Constitution, the participation of civil society is well regulated and is of citizen and participatory nature. This analysis is made by Storto, who includes in her report several laws and articles in the Constitution that safeguard the autonomy and independence of CSOs and citizens.

Storto (2013, p. 31) states that the Constitution ensures to associations the ability to fully exercise their fundamental right to be heard and to adversary proceedings (Section 5, LV); establishing that an occasional dissolution or compulsory suspension of activities would depend on an unappealable judgment (Section 5, XIX). The Constitution also recognizes the legitimacy of associative entities to represent its members in court or out of court, including by means of action for a writ of mandamus for the purpose of defending the interests of its members or associates (Section 5, XXI and LXX).

Regarding initiatives that come from society, all citizens are able to “*propose a people’s action to nullify offences against public property or entity in which the state participates, against administrative morality, against the environment and against cultural and historical heritage.*” (Section 5, LXXIII). The same is applicable to associations, which are able to file a Public Civil Action, a legal instrument described in the Constitution and in a specific law.

The Federal Constitution also creates legal mechanisms that protect established rights and freedom.

An example is the **writ of injunction**, which shall be granted when the “*absence of regulatory norms make it not viable to exercise constitutional rights and freedoms, and the prerogatives inherent in nationality, sovereignty, and citizenship.*” (Section 5, LXXI)

Since the Federal Constitution is the supreme norm of the legal system, and all laws must comply with its principles and provisions, one may say that an unconstitutional law, a law that violates any constitutional precept, is null and void. So, the Constitution establishes actions that ensure the constitutionality of Brazilian laws: the *Ação direta de inconstitucionalidade (ADI)* [*Direct action for the declaration of unconstitutionality*], can be proposed by political authorities, political parties with representatives in the National Congress, trade-union confederations or CSOs representing national professional associations. *Arguição de descumprimento de preceito fundamental (APDF)* [*Action against the violation of a constitutional fundamental right*], created in law no. 9882/99, aims to avoid or remedy violations of fundamental principles. Acts of public authorities, private acts, normative acts, administrative acts, and legal acts may be subject matter to such requests if made by the same entities considered legitimate to propose an ADI. (Storto, 2013:32, italics and bold added)

Based on an analysis of the legal framework, civil society-government relations are properly conducted. The largest issue CSOs face is consistent civil society participation, and participation mechanisms regarding social control and monitoring of public policies.

Social participation has been a long-standing demand and was granted in the 1988 Constitution. Groups and CSOs asserted that representative democracy was not enough to ensure full democracy in the country. So, society came together to demand the creation of social control/ accountability mechanisms regarding public policies as well as the participation of society in their drafting, decision-making process, monitoring, evaluation and funding. In a paper published in 2005, Moroni and Cicconelo described the history of the fight for social participation.

In Brazil, resistance movements against domination and appropriation of the public space and of the government by private interests have always existed. Recently, especially as of the late 1970s and early 1980s, social movements resumed, with more focus on the issue of the democratization of the state, with the debate based on the following question: what are the necessary mechanisms to democratize the state so that it will become truly public? This would mean to create strategies and proposals beyond ensuring the achievement of civil, political, social, economic and cultural rights, allowing and ensuring the true participation of the people in public policies and in all public-interest decision-making processes (Cicconelo and Moroni, 2005:32).

The 1988 Constitution made progress on some of society's demands and established guidelines to structure institutionalized public spaces for democratization and social control. The creation of public policy councils and the organization of conferences are some examples of participatory democracy mechanisms. It is a decentralized participatory system for political spaces of representation. Cicconelo and Moroni add that they must not be confused with representative democracy, but must be understood as a complement to ensure a fully democratic society.

They are political spaces established by representatives of government and non-governmental entities, which are responsible for drafting, deliberating, and monitoring the implementation of policies; they are presented at the local (municipalities), state, and national levels. As such, they bring about a new concept of public space or even of democracy. The legitimacy of participatory democracy, in its turn, is based on recognizing how important it is to build a public space for conflict/negotiation. Therefore, it expands democratic processes and does not replace nor is opposed to representative democracy (Cicconelo and Moroni, 2005: 33).

CSOs have played an important role in the approval of laws and in the drafting of the 1988 Constitution. Social participation in spaces where decisions on policies were taken and implemented is an example of civil society mobilization.

For example, organizations played a prominent role in the approval of the Estatuto da Criança e do Adolescente (Child and Adolescent Statute) (ECA) through mobilization and participation in the Fórum Nacional de Entidades Não- Governamentais de Defesa

dos Direitos da Criança e do Adolescente (National Forum of Non-Governmental Entities for the Rights of Children and Adolescents) (Fórum DCA), which collected more than six million signatures to ensure the inclusion of a section establishing human rights for boys and girls in the 1988 Federal Constitution. Additionally, it later played a role in the enactment of law no. 8069/90 of the Statute. On 13 July 1990, based on law no. 8069/90, the ECA was enacted, establishing the rights of and protection systems for children and adolescents, as well as the duties of the state, of families, and of society to ensure the Statute's enforcement.

Today, CSOs have been calling for a more effective participatory democracy. The Federal Constitution provides for social participation spaces, such as Councils<sup>9</sup>, public hearings, referendums and draft laws derived from the initiative of the population. However, the existing mechanisms for participation in the public sphere still have little effectivity. Civil society's right to be heard is guaranteed, but the mechanisms for both the inclusion of the participation of society in decision-making processes and to ensure that these processes are transparent, needs to be ensured.

In 2014, decree no. 8243/14 of President Dilma Rousseff, established the Política Nacional de Participação Social (PNPS) (Social Participation National Policy) and the Sistema Nacional de Participação (SNPS) (National System of Participation) that regulate the follow up, drafting, implementation, monitoring, and evaluation of public policies and programs, as well as the improvement of public management. The decree intends to improve the mechanisms, the democratic spaces of dialogue, as well as the joint actions between the federal government and civil society. To some specialists, the decree itself did not bring about radical changes in the participatory process in Brazil, but aimed at organizing it better. However, due to the heated presidential elections in which Dilma Rousseff was re-elected, the Congress has not approved the decree and the PNPS did not take effect. The PNPS would improve the regulation of social participation, which is ensured by the Federal Constitution.

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<sup>9</sup> Some relevant examples of constitutional provisions for social participation and social control by civil society organizations representatives in the process of drafting, implementation, and evaluation of public policies are: city planning (Section 29, XII), public service users (Section 37, paragraph 3); social security (Section 194, sole paragraph, VII); health (Section 198, III – CF); education, (Section 205); Brazilian cultural heritage protection (Section 216, paragraph 1); and the environment (Section 225); social assistance (Section 204), children and adolescents (Section 227, paragraph 7), among others. (In Storto, 2013:32).

## *Reform of the Political System*

The approval of law no. 12.846/13, known as the Lei Anticorrupção (Anti-corruption Law), holds legal entities administratively and civilly liable for acts against the public administration, whether national or foreign. It became a landmark of the country's fight against corruption.

CSOs have also had an important role in monitoring the integrity of public resources. The Movimento de Combate a Corrupção Eleitoral (Movement against Electoral Corruption) (MCCE) was a decisive actor and brought together 50 national entities of various fields forming a network of social movements, religious organizations, and civil society organizations. It conducted campaigns mobilizing society for the approval of two anti-corruption laws derived from people's initiatives in Brazil - law no. 9840/99, known as Lei da Compra de Votos (Vote Buying Law), which provides for the annulment of electoral records and diplomas in case of vote buying or electoral use of the administrative apparatus, and the complementary law no. 135/10, known as Lei da Ficha Limpa (Clean Record Act).

Another important people's initiative is the Plataforma dos Movimentos Sociais pela Reforma Política (Platform of Social Movements for the Political Reform), which has motivated the debate on political reform in Brazil by creating campaigns to inform and mobilize people regarding the theme.

The Platform defends that a political reform should be based on five main points: strengthening direct and participatory democracy, improvement of representative democracy, democratization of information and of communication, and democratization of the justice system. Currently, the Platform is dedicated to collecting signatures for the Projeto de Lei de Iniciativa Popular (Draft Law on People's Initiative). The political reform proposed by civil society:

Aims at radicalizing democracy to fight inequalities and exclusion, to promote diversity, and foster citizen participation. This means a reform that expands the possibilities and opportunities for political participation, that includes and processes social transformation projects focusing on segments that have been historically excluded from spaces of power, such as women, afro-descendants, homosexuals, indigenous people, youth, people with disabilities, the elderly, and those whose rights have been denied. This is why we insist that political reform must not be mistaken as electoral reform.



We do not want “inclusion” in the current order. We want to change this order. So, we thought of the debate on Reform of the Political System as a key-element to criticize the relations that structure this same system. We understand that patrimonialism and patriarchy are attached to it; clientelism and nepotism always comes with it; the relation between populism and personalism, which eliminate the ethical and democratic principles of politics; oligarchies, which are protected by corruption and maintained in multiple forms of exclusion (by means of racism, ethnocentrism, *machismo*, homophobia and other forms of discrimination) are elements that structure the current Brazilian political system we want to transform.

However, as previously stated, social participation mechanisms are still more geared towards hearing than to actual action. Relationships often depend more on the public manager and the specific sphere - municipality state and federal - which may or may not give more space to CSOs. One example is the debate on the MROSC (Legal Framework of CSOs) and the articulation of civil society on political reform. CSOs have played an important role of exerting pressure and establishing partnerships with the federal government, and the General Secretariat of the Presidency (SGP), in particular. A common agenda on the theme was being built, and law no. 13.019/14 was approved in 2014.

The director of a CSO who has been actively participating in this debate evaluated that there have been improvements and openness to dialogue. However, he highlights that one must not forget the 500 years of institutionalized authoritarianism, which has generated a culture of mistrust between citizens and CSOs. People, both from the left and the right of the political spectrum, view CSOs as mere semi-governmental instruments and policy transmission channels that must be controlled. Only a small group within Brazilian society actually understands CSOs’ role in democracy and in the implementation of policies or social initiatives.

## 4. Optional Dimensions

### 4.1 Freedom to use the Internet

In 2010, 24% of urban homes had access to both fixed and mobile broadband. In the same year, 6.8 out of 100 inhabitants were subscribers to broadband services. Other countries on the continent, such as Mexico and Argentina, had higher subscriber rates, at 9.98% and 9.56% respectively. (Intervozes, 2012). The data indicates that digital exclusion is a persisting issue in Brazil, and not only in terms of access to broadband, but also in terms of general internet usage.

A consensus has been reached that digital exclusion is a gap that goes beyond the material access; merely providing infrastructure for access cannot solve the problem. It is necessary to give tools to ensure the development of the capacity of communication, of the construction of logical arguments, of critical thinking, and finding solutions to problems related to the possibilities enabled by Information and Communication Technologies (ICT) (Hinostroza and Labbé, 2011, IN Intervozes, 2012: 199)

To end digital exclusion, digital inclusion must be promoted as expanding social development in the region, which is Brazil in this case.

Digital inclusion has been recognized as a new indicator that adds to the notion of social development. It is not about statistics on who has or does not have access to the internet; digital inclusion means to encourage and enable both material and non-material conditions so that each social group is able to produce its own view of reality, through interpreting, creating, accessing, and disseminating information that will qualify their intervention in the world and, at the higher level, provide tools to defend their rights (Ferraz and Lemos, 2011). (idem)

Brazil has created certain strategies<sup>10</sup> to increase the number of users and improve infrastructure for internet access. There are national programs, such as the Programa Nacional de Banda Larga (National Broadband Program), the implementation of telecenters in the federal, state, and municipal levels, and actions conducted by CSOs and state-owned companies. In 2011, the Secretaria de Inclusão Digital (Digital Inclusion Secretariat) was created within the Ministry of Communications and, in 2012, the program Cidades Digitais (Digital Cities) was launched.

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<sup>10</sup> For a more detailed analysis of these strategies, read Intervozes, 2012, chapter 7.

### *Civil Rights Framework for the Internet*

Draft law no. 2126/2011, known as the Civil Rights Framework for the Internet, was approved by the House of Representatives in March, then, by the Federal Senate, and sanctioned by President Dilma Rousseff in April 2014. The most relevant principles established by the Civil Rights Framework are related to privacy, internet surveillance, free internet, personal data, end of targeted advertising, freedom of speech, illegal content, and data storage.

One of the most important topics of the draft law was to keep the internet a neutral space. Ensuring its neutrality prevents companies from creating internet services similar to cable television services. In other words, this prevents companies from charging different prices according to the websites the user wishes to access. The Civil Rights Framework for the Internet ensures the internet is a territory in which information circulates freely. This was considered a huge victory by all those who advocated for the approval of the Civil Rights Framework because the legislation protects users from being subjected to market regulation.

It is worth pointing out the pressure that was exerted by some CSOs throughout the entire process of mobilization for and approval of the draft law. Forums were created, such as “Marco Civil, Já”, organized protests took place and information on the Civil Rights Framework (<http://marcocivil.org.br/>) was disseminated.

The law became effective in June 2014; however, there are still important challenges to overcome, enforcement as the main challenge.

### *Democratization of communication*

In Brazil, communication is still seen as a consumer good, and not as a right. Nowadays, a small group of people and companies are the true active interlocutors in communication, whereas most citizens are mere consumers. Internet is less restricted than other mediums of mass communication, such as radio and television; however, digital exclusion and the control over the internet do not allow it to be a truly free space.

Companies that provide internet services control the flow of information, creating niches, and runs the risk of always talking to the same group of people.

In the focus group discussions, participants expressed the important role of the internet as a potential powerful tool for highlighting issues put forward by CSOs. The internet cannot be seen as an important mobilization tool. CSOs must use communication as a tool for mobilization. Despite the regulations over traditional means of communication, such as radio and television, communication is less restricted on the internet; CSOs and the public should utilize the internet more. The internet allows for the debate on issues the mainstream media does not cover, and promotes the principle that all people are equal and social movements must be heard. Despite the low internet access rates in Brazil, the use of digital mediums may be useful to influence the policy debate and to advocate for rights.

## **4.2 CSO Cooperation and Coalition**

CSOs in Brazil have worked together to promote political and institutional actions and mobilization on certain themes. There are many networks that work to defend women's rights, the environment, and advocacy, such as the MROSC Platform. There are no laws against these networks and actions and organizations can come together institutionally or as a network without having to become an institution.

Abong is non-profit association that gathers organizations. Gife is a non-profit organization that brings together corporate, family, independent, and community organizations and foundations to invest in social projects. There are also non-institutional collective forms of action, but they are limited to a single purpose, to mobilize or advocate on a single theme. Some examples of networks were already mentioned in the introduction section.

At the international level, Brazilian organizations also seek partners and collective fora for communication – for example NGO international platforms, such as the International Forum of Platforms (IFP), ([www.ifp-fip.org](http://www.ifp-fip.org)), international women's rights platforms, such as the World March of Women (<https://marchamulheres.wordpress.com>), and the World Social Forum (WSF) whose first edition took place in Porto Alegre, in 2001. The WSF is a space for local CSOs from different countries to communicate with global entities, and has become an important platform for global CSO to share

experiences. The WSF and other international spaces bring to CSOs a new perspective of activism and global action.

#### **4.3 Access to Information**

Access to information is an important issue examined in this study. Access to public information is an important tool obtained after the Access to Information Act, law no. 12527 of 2011, was approved. It established that federal government bodies, autonomous government agencies, state-owned foundations, state-owned companies, government-controlled private companies, and other entities that are directly or indirectly controlled by the federal government must ensure access to information to individuals and legal entities. To CSOs, this became a tool to monitor policies and actions of government agencies to ensure the rights of citizens and to defend and protect democracy. It also indicated that CSOs must look into their own transparency mechanisms to better contextualize and conceptualize the debate on access to information.

##### *Transparency and Self-Regulation*

A number of reference publications on good practices exist to assist CSOs to implement accountability and self-regulation mechanisms. However, it has been observed that CSOs need to implement concepts of transparency and accountability to improve their effectiveness and to improve conceptualization the issues. Based on an analysis of existing literature on best practices in this area, Fabiano (2011:14) points out:

In this brief description of some initiatives seen as international and national references, it is evident that organizations are still looking for understanding the discourse and practices of transparency and accountability in these initiatives – not only those described here, but others, such as CIVICUS (<http://csi.civicus.org/>) and Transparentemos (<http://www.transparentemos.cl/>) – that are actually an outline, a first effort to build spaces for debate and exchange of views on the theme. Generally speaking, when these materials address practical measures, they do not tackle what specialists described as “upward and external accountability”, even though some initiatives have already expressed certain concern about peer-to-peer accountability (aimed at partners). Apart from the Action Aid International initiative, none of the analyzed tools are directed at other stakeholders, such as the target audience, collaborators, and employees. We didn’t find clear references to places – either virtual (on the Internet) or

physical (offices, for instance) – where additional information could be found.

The issue pointed out by Angelico (2014) – accountability directed at all the important partners of CSOs – is the fundamental aspect CSOs must discuss and improve. The publication of financial reports and essential information on projects on their webpages does not ensure more concrete feedback from partners and the social base. They must create mechanisms that include CSOs' members, partners and target audiences with respect to decision-making and accountability.

Aiming at having an in-depth debate on transparency among member organizations and other organizations working in their political field, Abong has published the study “Estudo analítico sobre transparência e legitimidade das organizações da sociedade civil brasileira” (Analytical study on Brazilian civil society organizations' transparency and legitimacy). The study is based on a desktop research on the theme of transparency and accountability and a survey completed by Abong's member organizations. The report sought to expand the understanding on transparency and accountability concepts and practices among CSOs, as well as to add elements to the debate on the theme.

Among the various discussions presented in the study report, Angélico (2011) indicated that even though law no. 12527/2011 does give priority to governmental transparency, it also indicates a demand for CSOs transparency:

Although the law prioritizes governmental transparency, it also affects civil society organizations. Below, Section 2 of law no. 12527/2011: The provisions of this law applies to non-profit private entities that receive public funding either directly or by means of subsidies, management contracts, partnership agreement, collaboration agreement, or other similar instruments to conduct public-interest actions. In theory, the Brazilian scenario indicates that government bodies are more transparent than CSOs, which can lead to the governments' feeling entitled to call for more transparency from the private sector and from civil society organizations (Fabiano, 2011:16)

Interviews conducted for this study indicate that organizations are already seeing an increased demand for this aspect. It was also observed that there is no consensus on

the CSO transparency issue. There are concerns regarding the protection of some data (i.e. organizations working on rights issues in a space under threat). Additionally, as these organizations are private entities, access to information should be taken into consideration only for activities that are funded by public resources. Finally, there is the issue of competition; when sources of funding are directly published, important information on how and where funds are raised would be disclosed.

The study selected samples from the database of Abong members to examine their transparency mechanisms. The websites of 226 organizations were identified and analyzed:

Results showed that most NGOs make available on their websites information on the following aspects: legal, history, contact, staff and board, programs and projects, and sources of funding. As to the other five indicators – taxes, annual activity reports, accounting balance sheet, social balance sheet, and awards - not one out of five members put this kind of information on their website. (Angélico, 2011: 15)

The conclusion is that CSOs have to improve the framing of this debate and seek to create transparency mechanisms that respect their characteristics and formats. It is unrealistic to demand CSOs to achieve the same level of transparency as government agencies, since they do not have the necessary institutional structure. However, the theme is out there and it cannot be ignored; it must be debated and implemented.

## **5 - Final Considerations**

Brazil is a large and densely populated country with numerous CSOs that are characterized by a diversity of themes, actions, and institutional developments. Most CSOs are located in the northeastern and southeastern regions, and are less present in the northern region.

Dedicated to their daily activities, few CSOs are able to actively participate in the debate on the framework for CSO regulation, nor do they feel represented by networks and platforms.

Based on the analysis of the collected data during desktop research, interviews, and focus group discussions, one can conclude Brazil does not as yet have an enabling environment for civil society. CSOs face many institutional hurdles, as well as challenges related to their financial and political sustainability. Brazilian society is not open to CSOs because most people are not aware of the work that CSOs do, or do not trust CSOs. As a result of a heavy criminalization campaign, and after facing three CPIs, organizations still deal with all sorts of obstacles.

Important progress has been made, such as the approval of law no. 13.019/14 and the establishment of a political debate between government and local actors on various themes. However, the regulatory framework cannot be the only point of focus. The political agenda is extensive and CSOs must seek ways of connecting with society in order to improve public support and donations.

With the social transformations that have taken place, some objectives and agendas have undergone profound changes, some of which are disappearing either due to other institutionalized actors with more structural capacity to address these issues (ex. governments, parties and companies) or reasons of a economic or financial nature many (ex. keeping an administrative apparatus in the association, legal aid, bureaucratization, increasing costs, among others). The growing divide between political agendas and CSOs' daily activities has caused organizations to lose political space, mobilization capacity, and capacity to mobilize financial resources.

This study intends to be a resource for creating a space of continuity and mobilization, to discuss and reflect on the environment of CSOs in Brazil and to inspire joint actions that can be carried out in the near future.



It will be impossible to ensure an enabling environment for CSOs if a new model of democracy is not attained. The new model must recognize organized civil society as an actor and ensure space and participation for CSOs on different themes. Society needs to understand that CSOs are an asset that society must value, preserve, and respect.

Legally, CSOs are protected by the framework; however, various issues, such as the repeated attempts to criminalize CSOS, the decreasing interest of donors and the public, have created a difficult environment for CSOs in Brazil, especially for CSOs working on equality and the defense of rights. Political reform will be necessary to improve the country's ability to implement the current laws and rules as established. The effectiveness of said laws and rules are still to be determined. In the viewpoint of CSOs, its role of monitoring and following up on government actions is necessary.

The approval of some important laws, such as law no. 13.019/14, the Clean Record Act, the Access to Information Act and the Civil Rights Framework for CSOs, was essential to ensure a less corrupt and safer system in Brazil. However, we continue to fight on a daily basis to ensure they are applied and respected. The CSOs' role of monitoring and following up on the actions of the state is essential and must be vigorous implemented.

<b>ASSESSMENT MATRIX</b>		
<b>Mandatory Dimensions</b>	<b>Situation</b>	<b>Comment</b>
<b>Formation</b>	<b>Yellow flag</b>	Various legal instruments are used in the formation of an organization; law no.13019 was approved, but still needs to be implemented.
<b>Operation</b>	<b>Yellow flag</b>	The bureaucratization of the process makes it very difficult to operate.
<b>Access to resources</b>	<b>Yellow/red flag</b>	CSOs are free to access the government, society and international resources. However, resources are few and often attached to conditions. There is low donation capacity in Brazil.
<b>Expression</b>	<b>Green flag</b>	Very few restrictions on CSOs freedom of expression.
<b>Peaceful Assembly</b>	<b>Green flag</b>	In Brazil, the Federal Constitution ensures freedom of peaceful assembly.
<b>Government-CSOs Relations</b>	<b>Green flag</b>	The Federal Constitution regulates the relationship between CSOs and the government.
<b>Optional Dimensions</b>	<b>Situation</b>	<b>Comment</b>
<b>Freedom to use the Internet</b>	<b>Yellow/red flag</b>	The Civil Rights Framework for the Internet has been approved, but we do not know yet how it will be implemented. In Brazil, access to internet is very low.
<b>Cooperation and alliances with CSOs</b>	<b>Green flag</b>	Freedom to come together in coalitions and networks. International partnership is not prohibited.
<b>Access to Information</b>	<b>Yellow/red flag</b>	The Access to Information Act has been approved and implemented. The Act has proved to be a useful tool, but access still needs to be expanded and data legibility needs to be improved.

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