

ECONOMIC  
SUSTAINABILITY  
OF CIVIL SOCIETY  
ORGANIZATIONS  
COLLECTION

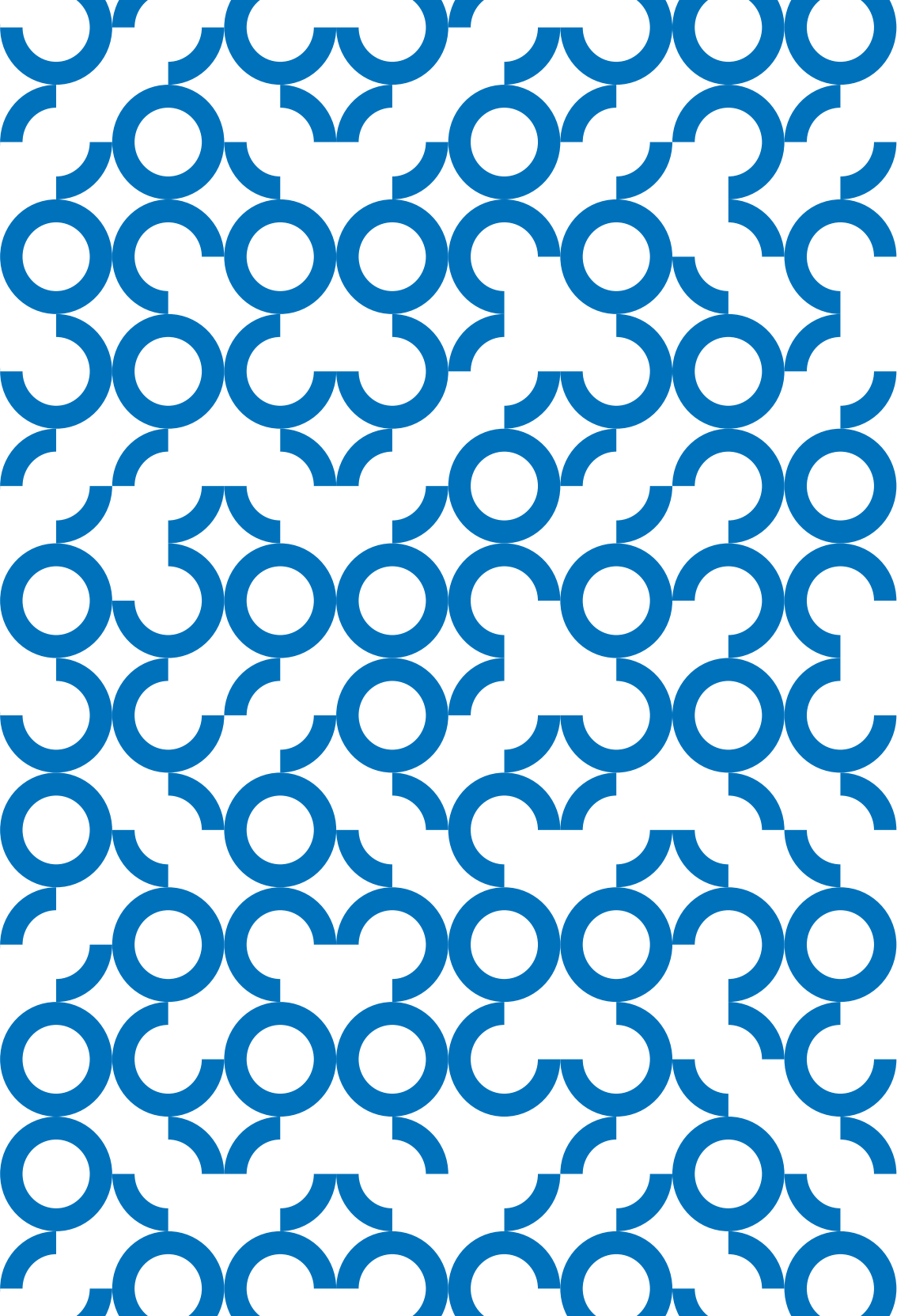


PELO IMPACTO DO INVESTIMENTO SOCIAL

 FGV DIREITO SP

# Highlights

## Economic Sustainability of Civil Society Organizations



**Highlights**  
**Economic**  
**Sustainability**  
**of Civil Society**  
**Organizations**

## REALIZATION



## PARTNERSHIP



## SPONSORING ORGANIZATIONS



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SUSTAINABILITY  
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Economic  
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### ***ECONOMIC SUSTAINABILITY OF CIVIL SOCIETY ORGANIZATIONS COLLECTION***

FORTALECIMENTO DA SOCIEDADE CIVIL:  
REDUÇÃO DE BARREIRAS TRIBUTÁRIAS ÀS DOAÇÕES

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INCENTIVOS REGULATÓRIOS À FILANTROPIA INDIVIDUAL NO BRASIL

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FUNDOS PATRIMONIAIS E ORGANIZAÇÕES DA SOCIEDADE CIVIL

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MARCO REGULATÓRIO DAS ORGANIZAÇÕES DA SOCIEDADE CIVIL:  
AVANÇOS E DESAFIOS

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# CONTENTS

Introduction.....	09
CHAPTER 1 – Tax barriers to donations to CSOs (inheritance and donation tax - ITCMD).....	13
CHAPTER 2 – Incentives for donations from individuals to CSOs in Brazil .....	25
CHAPTER 3 – Endowments.....	33
CHAPTER 4 – Regulatory framework of civil society organizations (MROSC).....	43
Resources.....	53



# Introduction

## **ABOUT THE PROJETO SUSTENTA OSC (THE ECONOMIC SUSTAINABILITY OF CIVIL SOCIETY ORGANIZATIONS PROJECT)**

The Economic Sustainability of Civil Society Organizations project aims to build a healthy legal environment for the performance of civil society organizations (CSOs). Also called as Sustenta OSC, this project aims to strengthen the institutional capacity of civil society through the production of knowledge, communication strategies, articulation and impact to generate normative and regulatory changes that expand the conditions for its political and economic sustainability. The project is carried out by GIFE and by the Coordination of Applied Legal Research (CPJA) of FGV Law School in São Paulo, in partnership with the Institute for Applied Research (IPEA). It received funding from the European Union, Lemann Foundation, Arapyaú Institute and Laudes Foundation.

## **ABOUT GIFE**

GIFE ([www.gife.org.br](http://www.gife.org.br)) is a platform for strengthening philanthropy and philanthropy in Brazil. It works by articulating an ecosystem with representatives from different sectors, promoting collaboration between organizations, producing knowledge from research, analysis, and debates, and seeking innovative references for the constant improvement and evolution of the sector. Currently the GIFE network is characterized by the diversity of its members and brings together more than 150 members.

## **FGV LAW SCHOOL SP**

Founded in 2002, the São Paulo Law School of Getulio Vargas Foundation (FGV Law School SP) was thought and planned to offer an innovative and high quality legal education, capable of training professionals prepared to face the complex legal demands of contemporary society. It is a school committed to innovative practices both in

teaching, by using participatory methods, and in research, conducting empirical and interdisciplinary studies with the aim of strengthening Brazilian institutions and improving the regulatory environment based on public interest and on the country's development.

## **ABOUT THE PUBLICATION**

This document briefly presents the main results of the research carried out within the scope of the Economic Sustainability of Civil Society Organizations project . The objective is to develop and make the systematized information transparent, sharing it with organizations and researchers interested in understanding the legal environment for civil society organizations in Brazil.

Such research, carried out between 2017 and 2020, focused on investigating four sub-themes related to the economic sustainability of civil society organizations (CSOs) in Brazil:

- (i) tax barriers to donations to CSOs (inheritance and donation tax - ITCMD)
  
- (ii) tax incentives for donations by individuals to CSOs
  
- (iii) endowments
  
- (iv) the implementation of Law No. 13,019/2014 (Regulatory Framework of CSOs - MROSC) that deals with partnerships between the Public Power and CSOs

In addition to these four themes, the project also contributed with other knowledge productions, which resulted in workings papers and articles, as will be presented.

## TO UNDERSTAND THE BRAZILIAN LEGAL CONTEXT

Three basic characteristics about the Brazilian legal system must be explained. They are:

- a. although based on civil law, there is an interpretative power granted to the judiciary of great significance, approaching the characteristics of common law;
- b. it is structured based on the Federal Constitution of 1988 which provides the principle of freedom of association. What we call CSOs are, in legal terms, associations, foundations or religious organizations;
- c. the organization of public administration and the tax system has divisions of competence at three levels: c.1) Union; c.2) 26 states and the federal district; c.3) 5,571 municipalities. That is, depending on the scope, it is possible that certain public policies or rules of tax incidence are regulated by any of these spheres exclusively or concurrently with other levels of the federation. Therefore, there is an inherent complexity in the Brazilian legal system, which is even more evident in a country that has continental dimensions.

## **CHAPTER 1**

# **Tax barriers to donations to CSOs (inheritance and donation tax - ITCMD)**

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In Brazil, donations are taxed by the same tax that is levied on the transfer of inheritance through the “Tax on Transmission of Property *Causa Mortis* and Donations” (ITCMD). It also reaches donations to prevent taxpayers from evading the tax authorities by donating the assets to their heirs while still alive. The problem is that the 1988 Constitution did not differentiate this type of donation, motivated by public interests, from that in which the donor is not in the donor’s line of success and acts in the public interest, as is the case with donations to CSOs.

Thus, in general, a donation directed to a CSO that works with causes of public interest - such as museums or animal protection CSOs - will be taxed just like the transfer of an inheritance from parents to children.

It is a disincentive to the transfer of private wealth to causes of public interest. This is especially problematic in Brazil, where the culture of giving is still relatively incipient.

## **INTERNATIONAL EXPERIENCE IN TAXING DONATIONS TO CSOS**

A database was developed and made available with information on the taxation of inheritances and donations from 75 countries, backed by secondary sources. Countries were selected according to the availability of data, covering all continents.

It was found that, of these 75 countries, 30 (40%) tax inheritance and donations. This taxation is usually quite costly. Regarding donations, the average minimum rate is 6.9%, while the average maximum rate reaches 28.6%, with countries where the maximum rate can reach 50% (Germany), 55% (Japan) or even 60% (France).

In this context, it is impressive to note that, in Brazil, the maximum rate of the ITCMD is only 8%, with states in which it does not exceed 2%. One of the reasons for the low taxation on patrimony transfers in Brazil is its “political cost”, as it is easily perceived by taxpayers, as Marcos Aurélio Pereira Valadão explains.

Brazil, however, does not differ from the international experience only with regard to the ITCMD rates. The research shows that, among the 30 countries that tax donations, almost all of them

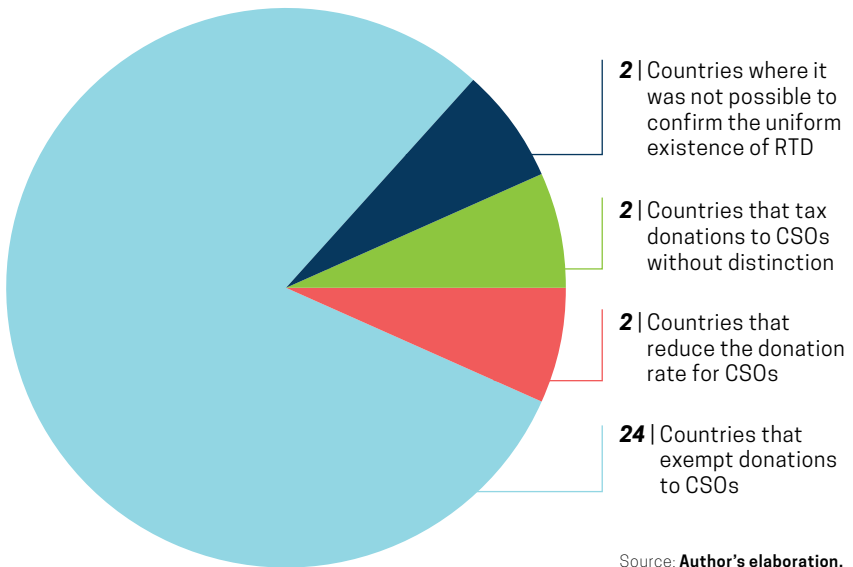


establish different treatment when it comes to donations to CSOs, either in the form of exemptions (24 countries) or in the form of rate reduction (two countries). In fact, within the scope of the sample considered, it was possible to verify that Brazil has the company of only two countries when it comes to taxing donations to CSOs: South Korea and Croatia.

Even when the analysis focuses on our South American neighbors, the result does not change. Of the nine South American countries with a population of more than 1 million, excluding Brazil, only four tax donations: Argentina, Bolivia, Chile and Venezuela. At least the last three, however, provide for exemption when donations go to CSOs.

The international experience suggests, therefore, a double mistake in the Brazilian system of taxation of inheritances and donations: we tax little who should be taxed (taxpayers with greater purchasing power, in the case of inheritances and donations of private interest) and a lot who simply should not suffer taxation (CSOs, in the case of donations).

**CHART 1 - TAX TREATMENT OF DONATIONS TO CSO'S IN 30 COUNTRIES**



Source: **Author's elaboration.**

## IMAGE 1 - ITCMD RATES IN THE STATES AND FEDERAL DISTRICT

FIXED AND PROGRESSIVE RATE

**PA** | Donation rate  
Inheritance rate: **4%**

**AP** | Donation rate: **3%**  
Inheritance rate: **4%**

**RR** | Donation rate and  
Inheritance rate: **4%**

**AM** | Donation rate and  
Inheritance rate: **2%**

**RO** | Donation rate and  
Inheritance rate:  
**2%** up to 1,250 UPFs-RO  
**3%** between 1,250 and  
6,170 UPFs-RO  
**4%** above 6,170 UPFs-RO

**AC** | Donation rate: **2%**  
Inheritance rate: **4%**

**DF** | Donation rate and Inheritance rate:  
**4%** up to R\$ 1,073,900.00  
**5%** between R\$ 1,073,900.00  
and R\$ 2,147,800.00  
**6%** above R\$ 2,147,800.00

**GO** | Donation rate and  
Inheritance rate:  
**2%** up to R\$ 25,000.00  
**4%** between R\$ 25,000.00  
and R\$ 200,000.00  
**6%** between R\$ 200,000.00  
and R\$ 600,000.00  
**8%** above R\$ 600,000.00

**TO** | Donation rate and Inheritance rate:  
**2%** between R\$ 25,000.00 and R\$ 100,000.00  
**4%** between R\$ 100,000.00 and R\$ 500,000.00  
**6%** between R\$ 500,000.00 and R\$ 2 millions  
**8%** above R\$ 2 millions

**MT** | Donation rate:  
**2%** between 500 and 1,000  
UPFs-MT  
**4%** between 1,000 and 4,000  
UPFs-MT  
**6%** between 4,000  
and 10,000 UPFs-MT  
**8%** above 10,000 UPFs-MT  
Inheritance rate:  
**2%** between 1,500 and 4,000  
UPFs-MT  
**4%** between 4,000 and 8,000  
UPFs-MT  
**6%** between 8,000  
and 16,000 UPFs-MT  
**8%** above 16,000 UPFs-MT

**MS** | Donation rate: **3%**  
Inheritance rate: **6%**

**MA** | Donation rate:  
**1%** up to R\$ 100,000.00  
**1,5%** between R\$ 100,000.00 and R\$ 300,000.00  
**2%** above R\$ 300,000.00  
Inheritance rate:  
**3%** up to R\$ 300,000.00  
**4%** between R\$ 300,000.00 and R\$ 600,000.00  
**5%** between R\$ 600,000.00 and R\$ 900,000.00  
**6%** between R\$ 900,000.00 and R\$ 1,200,000.00  
**7%** above R\$ 1,200,000.00

**CE** | Donation rate:  
**2%** up to 25,000 UFIRCEs  
**4%** between 25,000 and 150,000 UFIRCEs  
**6%** between 150,000 and 250,000 UFIRCEs  
**8%** above 250,000 UFIRCEs  
Inheritance rate:  
**2%** up to 10,000 UFIRCEs  
**4%** between 10,000 and 20,000 UFIRCEs  
**6%** between 20,000 and 40,000 UFIRCEs  
**8%** above 40,000 UFIRCEs

**RN** | Donation rate and Inheritance rate:  
**3%** up to R\$ 500,000.00  
**4%** between R\$ 500,000.00 and R\$ 1 million  
**5%** between R\$ 1 million and R\$ 3 millions  
**6%** above R\$ 3 millions

**PI** | Donation rate: **4%**  
Inheritance rate: **2%** up to 20,000 UFRs-PI  
**4%** between 20,000 and 500,000 UFRs-PI  
**6%** above 500,000 UFRs-PI

**PB** | Donation rate:  
**2%** up to R\$ 60,000.00  
**4%** between R\$ 60,000.00 and R\$ 500,000.00  
**6%** between R\$ 500,000.00 and R\$ 1 million  
**8%** above R\$ 1 million  
Inheritance rate:  
**2%** up to R\$ 60,000.00  
**4%** between R\$ 60,000.00 and R\$ 120,000.00  
**6%** between R\$ 120,000.00 and R\$ 240,000.00  
**8%** above R\$ 240,000.00

**PE** | Donation rate and Inheritance rate:  
**2%** up to R\$ 200,000.00  
**4%** between R\$ 200,000.00 and R\$ 300,000.00  
**6%** between R\$ 300,000.00 and R\$ 400,000.00  
**8%** above R\$ 400,000.00

**AL** | Donation rate: **2%**  
Inheritance rate: **4%**

**SE** | Donation rate: **4%**  
Inheritance rate:  
**2%** between 1,000 and 3,500 UPFs-SE  
**4%** between 3,500 and 7,000 UPFs-SE  
**6%** between 7,000 and 14,000 UPFs-SE  
**8%** above 14,000 UPFs-SE

**MG** | Donation rate and Inheritance rate: **5%**

**BA** | Donation rate: **3,5%**  
Inheritance rate:  
**4%** between R\$ 100,000.00 and R\$ 200,000.00  
**6%** between R\$ 200,000.00 and R\$ 300,000.00  
**8%** above R\$ 300,000.00

**ES** | Donation rate and Inheritance rate: **4%**

**RJ** | Donation rate and Inheritance rate:  
**4%** up to 70,000 UFIRs-RJ  
**4,5%** between 70,000 and 100,000 UFIRs-RJ  
**5%** between 100,000 and 200,000 UFIRs-RJ  
**6%** between 200,000 and 300,000 UFIRs-RJ  
**7%** between 300,000 and 400,000 UFIRs-RJ  
**8%** above 400,000 UFIRs-RJ

**SP** | Donation rate and Inheritance rate: **4%**

**PR** | Donation rate and Inheritance rate: **4%**

**RS** | Donation rate:  
**3%** up to 10,000 UPFs-RS  
**4%** above 10,000 UPFs-RS  
Inheritance rate:  
**3%** between 2,000 and 10,000 UPFs-RS  
**4%** between 10,000 and 30,000 UPFs-RS  
**5%** between 30,000 and 50,000 UPFs-RS  
**6%** above 50,000 UPFs-RS

**SC** | Donation rate and Inheritance rate:  
**1%** up to R\$ 20,000.00  
**3%** between R\$ 20,000.00 and R\$ 50,000.00  
**5%** between R\$ 50,000.00 and R\$ 150,000.00  
**7%** above R\$ 150,000.00  
**8%** when: a) the successor is: 1 - a collateral relative or 2 - a testamentary or legatee heir, who is not related to the person in question; b) the grantee or assignee is: 1- collateral relative or 2- is not related to the donor or the transferor.

## **A BARRIER WITH DIFFERENT RULES**

To make it even more difficult, the ITCMD is a state tax, its rules being very different in each of the 27 federative entities - 26 states and the Federal District - with regard to percentage rates, definition of taxpayers, exemption hypotheses and procedures for their recognition.

In addition, the survey carried out by researchers at FGV Law School SP indicates that, of the 27 entities of the federation, 12 differentiate the rates applicable to donation and inheritance. When this separation occurs, in most cases it is because the donation is less taxed than the inheritance.

Another important data is related to the progressiveness of the rates. Currently, 16 states adopt a progressive rate. In 13 of them, progressivity also applies to donations. In the others (Bahia, Piauí and Sergipe), progressivity is only for successive transmissions. Among the 14 states that have a fixed rate for donations, it varies between 2% and 5%.

In ten states the maximum rate reaches 8%, always according to the progression ranges. In eight of them, the maximum rate is applicable, even, for donations.

In addition to not encouraging the transfer of assets to support initiatives of public interest, the rule creates an environment of relative complexity. For each donation received, the CSO must review state legislation to see how much, how and who should collect the tax.

If the country wants to change this reality, in order to promote the culture of donation and the engagement of society with causes of public interest, taxation of donation is one of the obstacles - if not the biggest one - that need to be removed.

## **INTERNATIONAL DONATIONS**

The issue of the incidence of ITCMD on donations from abroad is still controversial in Brazil. The Federal Constitution of 1988 provides that this topic would be dealt with by a complementary law. The Constitution also establishes that, in the case of dona-

tions of financial resources, the ITCMD is due to the state where the donor is domiciled.

Therefore, in the case of donations from abroad, it is reasonable to assume that taxation cannot occur until the complementary federal law on the matter has passed, given the express constitutional provision in this regard.

In the absence of the law, the scenario remains unevenly treated by the states and the Federal District. Some states reportedly await the publication of the complementary law on the subject; others disciplined the rule themselves, by state law; there are also those whose ITCMD legislation does not even mention the topic of foreign donations.

## **COLLECTION OF STATES WITH ITCMD ON DONATION**

The research sought to broaden the understanding of aspects that are still little explored in the strictly economic literature on the ITCMD, in particular those related to the profile and composition of the tax collection, considering its different generating facts.

As will be seen, the information gathered allows assessing the relevance of the collection specifically linked to donations to legal entities (which includes civil society organizations) in several federative units (UF), among other aspects.

The funds raised with ITCMD - considering both inheritances and donations - correspond to a very small portion of the revenue of the states: in most cases, less than 1% of the current net revenue.

Only 10 of the 27 states provided the amount of ITCMD collected from donations from legal entities in 2016 and only 6 states did the same in relation to 2017. Based on these data, it was found that the participation of this component in the ITCMD global collection is, in all cases, insignificant. Pernambuco and Rio Grande do Norte are the states in which the highest percentage is observed, but even so, it does not reach 4% of the respective state revenues with the ITCMD.

**TABLE 1 – ITCMD COLLECTION WITH INHERITANCE,  
DONATIONS AND DONATIONS TO LEGAL ENTITIES**

2016										
	1. Total ITCMD (FINBRA) (R\$)	1B. Total ITCMD (LA) (R\$)	Divergence	2. ITCMD inheritances (R\$)	3. ITCMD donations (R\$)	ITCMD donations/ ITCMD inheritances	4. ITCMD donations PJ (R\$)	ITCMD donations PJ / Total ITCMD (LA)	ITCMD donations PJ / Total ITCMD (FINBRA)	
1 Paraná	396,608,046	420,300,000	6.0%	235,700,000	184,600,000	44%	2,600,000	0.6%	0.7%	
2 Santa Catarina	248,856,151									
3 Rio Grande do Sul	420,555,524	429,000,000	2.0%	273,000,000	156,000,000	36%	2,700,000	0.6%	0.6%	
4 Espírito Santo	55,054,190									
5 Minas Gerais	760,163,956									
6 Rio de Janeiro	1,390,659,964	2,169,710,507	56.0%	1,035,420,982	1,134,289,525	52%	6,140,050	0.3%	0.4%	
7 São Paulo	2,317,488,130	2,305,800,000	-0.5%	1,090,300,000	1,215,500,000	53%	23,600,000	1.0%	1.0%	
8 Distrito Federal	109,201,183	100,538,343	-7.9%	48,551,451	51,986,892	52%	1,345,855	1.3%	1.2%	
9 Goiás	239,571,726									
10 Mato Grosso	103,192,231									
11 Mato Grosso do Sul	165,388,623	166,409,597	0.6%	112,397,365	54,012,232	32%	407,537	0.2%	0.2%	
12 Tocantins	14,992,879									
13 Alagoas	11,390,701	20,631,806	81.1%							
14 Bahia	130,326,180	134,952,680	3.5%							
15 Ceará	651,637,145									
16 Maranhão	12,204,559	11,310,306	-7.3%	8,805,137	2,505,169	28%	130,792	1.5%	1.1%	
17 Paraíba	29,995,780	30,148,774	0.5%							
18 Pernambuco	117,273,348	120,725,609	2.9%	48,181,637	72,543,971	60%	4,061,971	3.4%	3.5%	
19 Piauí	14,414,345									
20 Rio Grande do Norte	23,809,287	27,370,815	15.0%	11,872,646	15,498,169	57%	921,629	3.4%	3.9%	
21 Sergipe	29,037,625									
22 Acre	3,279,040									
23 Amapá	785,640									
24 Amazonas	8,078,701									
25 Pará	26,998,266	28,161,105	4.3%							
26 Rondônia	15,813,487	14,509,320	-8.2%	12,558,403	1,950,917	13%	25,440	0.2%	0.2%	
27 Roraima	1,696,425	1,695,690	0.0%							
2016										
total						average		average	average	
	7,298,473,133					42.8%		1.3%	1.3%	

2017

1. Total ITCMD (FINBRA) (R\$)	1B. Total ITCMD (LAI) (R\$)	Divergence	2. ITCMD inheritances (R\$)	3. ITCMD donations (R\$)	ITCMD donations/ ITCMD inheritances	4. ITCMD donations PJ (R\$)	ITCMD donations PJ / Total ITCMD (LAI)	ITCMD donations PJ/ Total ITCMD (FINBRA)
389,856,000	408,200,000	4.7%	239,800,000	168,400,000	41%	2,100,000	0.5%	0.5%
226,245,497								
381,700,556	495,000,000	29.7%	333,000,000	162,000,000	33%	1,800,000	0.4%	0.5%
63,339,354								
796,297,363								
923,740,000	1,318,057,096	42.7%	548,916,068	769,141,029	58%	7,136,009	0.5%	0.8%
2,714,275,160	2,682,200,000	-1.2%	1,403,900,000	1,278,300,000	48%			
107,499,206								
362,752,000	291,816,940	-19.6%						
91,114,511								
190,747,800	123,002,051	-35.5%	88,190,430	34,811,621	28%	358,777	0.3%	0.2%
27,162,739								
10,529,000	9,336,264	-11.3%						
100,000,000	127,942,392	27.9%						
242,336,099								
17,907,496	11,414,971	-36.3%	9,665,043	1,749,928	15%	133,982	1.2%	0.7%
28,461,535								
175,979,800	124,514,736	-29.2%	66,673,681	57,841,055	46%	4,247,086	3.4%	2.4%
17,178,125								
16,116,952								
21,000,000								
3,048,098	11,029,327	261.8%						
457,702	801,408	75.1%						
8,000,000								
23,649,641	26,761,548	13.2%						
16,315,913	9,399,416	-42.4%	7,560,666	1,838,749	20%	490,534	5.2%	3.0%
1,041,939								

2017

total	average	average	average
6,956,752,486	36.2%	1.6%	1.2%

Source: Author's elaboration, from state responses to the request by Access to Information Law

The distribution of ITCMD collection between *causa mortis* transmission and donation is not made publicly available. The same happens with the distribution of the collection resulting from inheritances or donations directed to individuals or legal entities.

There is no public information that discriminates the amount collected according to the type of beneficiary by any of the federative entities analyzed. The information about the amount collected from donations to legal entities is especially important for this research, since CSOs are precisely included in this group.

When comparing the amount of ITCMD collected with donations to legal entities to the net current revenue of the states, it is even clearer how the contribution of this specific subitem in the composition of resources available to the state government is in fact very small.

This is relevant information, which offers a first approximation to the order of magnitude of the ITCMD collected as a result of donations to CSOs. It should be stressed that this is a first approach, as it is necessary to consider that CSOs are not the only possible recipient of donations to legal entities, and it is appropriate to take into account the hypothesis that private or state-owned companies may also have been recipients of donations subject to taxation by the ITCMD. In any case, it can be affirmed, without risk of deception, that the collection of ITCMD linked to CSOs by Brazilian states in the biennium 2016-2017 is certainly minimal.

In summary, the taxation of donations to CSOs in Brazil is a challenge to international practices, creates an environment of legal uncertainty for organizations and does not generate relevant revenues in the composition of the public budget. It is, frankly, an anachronism of the Brazilian tax system.



**TABLE 2 - ITCMD PARTICIPATION COLLECTED WITH DONATIONS TO LEGAL ENTITIES IN UFS NET CURRENT REVENUE**

	<b>2016</b>		
	A. Net Current Revenue	B. ITCMD Donations PJ	(B/A)
Paraná	<b>R\$ 34,135,477,821.98</b>	<b>R\$ 2,600,000.00</b>	<b>0.007617%</b>
Rio Grande do Sul	<b>R\$ 34,654,897,410.30</b>	<b>R\$ 2,700,000.00</b>	<b>0.007791%</b>
Rio de Janeiro	<b>R\$ 46,228,984,464.73</b>	<b>R\$ 6,140,050.46</b>	<b>0.013282%</b>
São Paulo	<b>R\$ 140,443,287,171.02</b>	<b>R\$ 23,600,000.00</b>	<b>0.016804%</b>
Distrito Federal	<b>R\$ 19,881,229,932.90</b>	<b>R\$ 1,345,854.87</b>	<b>0.006769%</b>
Mato Grosso do Sul	<b>R\$ 9,347,981,709.90</b>	<b>R\$ 407,537.00</b>	<b>0.004360%</b>
Maranhão	<b>R\$ 12,480,062,588.49</b>	<b>R\$ 130,792.49</b>	<b>0.001048%</b>
Pernambuco	<b>R\$ 20,853,041,088.71</b>	<b>R\$ 4,061,971.31</b>	<b>0.019479%</b>
Rio Grande do Norte	<b>R\$ 8,611,240,172.02</b>	<b>R\$ 921,629.42</b>	<b>0.010703%</b>
Rondônia	<b>R\$ 6,502,106,330.05</b>	<b>R\$ 25,439.73</b>	<b>0.000391%</b>

	<b>2017</b>		
	A. Net Current Revenue	B. ITCMD Donations PJ	(B/A)
Paraná	<b>R\$ 38,651,430,205.00</b>	<b>R\$ 2,100,000.00</b>	<b>0.005433%</b>
Rio Grande do Sul	<b>R\$ 38,348,743,013.24</b>	<b>R\$ 1,800,000.00</b>	<b>0.004694%</b>
Rio de Janeiro	<b>R\$ 49,682,517,693.00</b>	<b>R\$ 7,136,009.37</b>	<b>0.014363%</b>
São Paulo	<b>R\$ 150,259,943,875.17</b>		
Distrito Federal	<b>R\$ 22,332,621,538.00</b>		
Mato Grosso do Sul	<b>R\$ 11,357,971,216.99</b>	<b>R\$ 358,777.00</b>	<b>0.003159%</b>
Maranhão	<b>R\$ 12,817,257,352.15</b>	<b>R\$ 133,982.45</b>	<b>0.001045%</b>
Pernambuco	<b>R\$ 20,651,814,416.93</b>	<b>R\$ 4,247,085.79</b>	<b>0.020565%</b>
Rio Grande do Norte	<b>R\$ 9,111,716,218.50</b>		
Rondônia	<b>R\$ 6,903,137,525.43</b>	<b>R\$ 490,533.60</b>	<b>0.007106%</b>

Source: **Author's elaboration.**



## **CHAPTER 2**

# **Regulatory incentives for individual philanthropy in Brazil**

Author (s):

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**Natasha Schmitt Caccia Salinas**

In a scenario in which international and national government and corporate investments are insufficient to meet the sustainability demands of Brazilian CSOs, less usual financing mechanisms of the third sector, such as donations of resources from individuals, for example, gain centrality. However, the sustainability of CSOs is not the only factor by which tax incentives acquire relevance. The very strengthening of civil society and the maintenance of a healthy and democratic society are also at stake when it comes to tax incentives to CSOs.

In Brazil, it can be said that the legal environment of tax incentives to individual donations is characterized by a double restriction: not only of the encouraged themes but also of the forms of use of the resources obtained by CSOs. This represents a significant limitation of the tax incentives currently in force in the country.

106First, despite the breadth of activities of interest or social impact performed by CSOs, only a few themes can access individual incentive donations, for instance: culture, sport, social assistance to children, adolescents and the elderly, health, support for people with disabilities and oncological care. Second, in addition to the restriction of themes, the use of the resource from an individual incentive donation is also limited, as it is linked to the achievement of projects under government programs or funds.

Thus, the encouraged donations on these topics can only occur within the scope of the National Program to Support Culture (PRONAC), the Sports Incentive Law (Incentivo ao Esporte), the Childhood and Adolescence Funds (FIA), the elderly protection funds (Fundo do Idoso), the National Program to Support Oncological Care (PRONON) and the National Program to Support Health Care for People with Disabilities (PRONAS/PCD). In summary, the resources resulting from individual incentive donation cannot be freely used by CSOs, and must necessarily be applied in the development of projects previously approved by the government

This design of tax incentives has received criticism, as it conditions a certain model of “projecting CSOs”, which are obliged to organize themselves around projects to obtain financing through incentive donations. An argument against the current incentive architecture in Brazil is that donations from individuals, when linked

to projects and services, do not contribute to the institutional strengthening of CSOs. In this way, the opportunity to use tax incentives as a mechanism to strengthen a plural and democratic civil society is lost.

## THE TAX INCENTIVE MODEL FOR INDIVIDUAL DONATION IN BRAZIL

The tax incentive for donations from individuals in Brazil, at the federal level, is carried out by discounting the assessed income tax of taxpayers who declare it in full form. Under current legislation, a donor who declares income tax in full form may have a discount of up to 8% on the amount payable.

To do so, it is enough that the taxpayer proves that he donated to a CSO - in the calendar year preceding the declaration - an amount of cash or goods equivalent to up to 8% of the calculated IR. The maximum value of the incentive donation is calculated as follows:

**TABLE 01 - STEPS FOR COMPUTING THE MAXIMUM FISCAL INCENTIVE VALUE FOR INDIVIDUAL DONATION**

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<b>1</b>	Taxable Incomes	-	Legal Deductions	=	<b>Calculation basis</b>
<b>2</b>	Calculation basis	x	Applicable rate	=	<b>Calculated Individual Income Tax (IRPF)</b>
<b>3</b>	Calculated Individual Income Tax (IRPF)	x	Applicable limit for donations made until the end of the fiscal year	=	<b>Maximum donation amount subject to tax incentive</b>
<b>4</b>	Calculated Individual Income Tax (IRPF)	-	Total Incentive Donation	=	<b>Due Individual Income Tax</b>

---

Source: **Author's elaboration.**

In addition to the restriction on specific themes and CSOs that develop projects with state approval, tax incentives are also subject to individual and global percentage limitations, depending on the chosen modality. For the areas of culture, sports, childhood and adolescence and the elderly, there are individual and global limits of 6% of the tax assessed.

**TABLE 02 - LIMITS OF TAX INCENTIVES BY MODALITY**

<i>Fiscal incentive mode upon discount</i>	<i>Individual limit</i>	<i>Global limit</i>
<i>National Culture Support Program (PRONAC)</i>	6% of the calculated Individual Income Tax (IRPF)	
<i>Sports Incentive</i>	6% of the calculated Individual Income Tax (IRPF)	6% of the calculated Individual Income Tax (IRPF)
<i>Childhood and Adolescence Fund (FIA)</i>	6% of the calculated Individual Income Tax (IRPF)	8% of the calculated Individual Income Tax (IRPF)
<i>Elderly Fund</i>	6% of the calculated Individual Income Tax (IRPF)	
<i>National Oncology Care Support Program (PRONON)</i>	1% of the calculated Individual Income Tax (IRPF)	1% of the calculated Individual Income Tax (IRPF)
<i>National Assistance Program for People with Disabilities (PRONAS/PCD)</i>	1% of the calculated Individual Income Tax (IRPF)	1% of the calculated Individual Income Tax (IRPF)

Source: **Author's elaboration.**

## **TAX INCENTIVES IN BRAZIL**

In order to verify whether the tax incentives are, in fact, accessed by their potential beneficiaries, the following information was collected, relating to the period from 2012 to 2016: (i) estimates of tax expenditures or tax waivers by incentive modality; (ii) estimates of tax expenditures or limits on tax waivers set by incentive modality for individuals; (iii) number of individuals who make incentive donations and amounts donated by systematic; (iv) total number of taxpayers; (v) number of taxpayers who opted for the full individual income tax return (IRPF) model; (vii) total IRPF due by such taxpayers. Below, we present the main inferences of this survey

## RESTRICTION ON THE SCOPE OF FISCAL INCENTIVE FOR INDIVIDUAL DONATIONS

As seen, people who declare income tax (IR) in full form are eligible for this resource. The absolute number of contributors who opt for this modality varies each year. In 2012, for example, out of a total of 25.8 million taxpayers, 10.8 million chose the full IRPF declaration form. In 2015, the number of taxpayers in this same situation was 11.3 million people, out of a total of 27.5 million taxpayers.

## LOW TAX WAIVER FOR DONATIONS FROM INDIVIDUALS

Another relevant point is the low tax waiver for donations from individuals. When comparing the estimate of tax waiver referring to incentives for individuals with that of legal entities, it appears that there is a clear prioritization of the allocation of incentives to legal entities over physical ones.

**TABLE 03 - PERCENTAGE REPRESENTATIVENESS OF THE TAX WAIVER OF INDIVIDUAL DONATIONS BY MODALITY (2012-2016)**

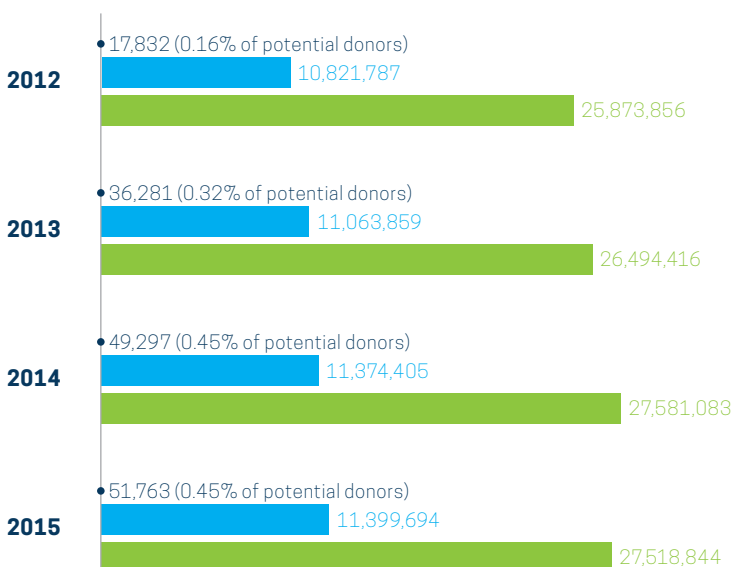
Modality	Percentage representativeness of the tax waiver of individual donations within the scope of the global waiver by modality				
	2016	2015	2014	2013	2012
PRONAC	<b>2%</b>	<b>2%</b>	<b>1.5%</b>	<b>1.8%</b>	<b>1.7%</b>
FIA	<b>30%</b>	<b>29%</b>	<b>26%</b>	<b>24%</b>	<b>25%</b>
Elderly Fund	<b>5%</b>	<b>2.9%</b>	<b>5%</b>	<b>4.5%</b>	<b>15%</b>
Sports Incentive	<b>2.4%</b>	<b>2.7%</b>	<b>2.6%</b>	<b>2.5%</b>	<b>2%</b>
PRONAS/PCD	<b>3.8%</b>	<b>3.4%</b>	<b>27%</b>	<b>24%</b>	<b>N/A</b>
PRONON	<b>4.9%</b>	<b>3.4%</b>	<b>6.7%</b>	<b>10%</b>	<b>N/A</b>

Source: **Author's elaboration.**

## UNDER-IMPLEMENTATION OF INCENTIVES

In the chart below, it is possible to assess how far the number of effective donors using the tax incentive model is from its full potential

**CHART 5 - FISCAL INCENTIVE FOR INDIVIDUALS: ACTUAL DONORS X POTENTIAL DONORS** (IN ABSOLUTE NUMBERS AND PERCENTAGE)



- Total effective donors
- Potential donors (opting contributors to the full model)
- Total contributors

Source: **Author's elaboration.**

## LOW INDEX OF OSCS BENEFICIARY FROM DONATIONS INCENTIVES

The number of CSOs benefited by the current incentive modalities is insignificant if we compare the volume of projects contemplated by incentive resources with the number of approximately 820 thousand CSOs currently existing in the country.



**TABLE 04 - PROJECTS BENEFITED BY TAX INCENTIVES SEPARATED BY MODALITY (2012-2015)**

Incentive mode	Projects benefited by fiscal incentive				
	2012	2013	2014	2015	Total
PRONAC	<b>8,394</b>				<b>8,394</b>
FIA (National)	<b>32</b>	<b>70</b>	<b>10</b>	<b>21</b>	<b>133</b>
Elderly Fund (National)	<b>0</b>	<b>4</b>	<b>3</b>	<b>5</b>	<b>12</b>
Sports Incentive	<b>377</b>	<b>422</b>	<b>336</b>	<b>301</b>	<b>1,436</b>
PRONAS/PCD	<b>N/A</b>	<b>164</b>		<b>0</b>	<b>164</b>
PRONON	<b>N/A</b>	<b>130</b>		<b>0</b>	<b>164</b>
<b>TOTAL NUMBER OF PROJECTS</b>					<b>10,303</b>

Source: **Author's elaboration.**

In summary, the diagnosis presented here reveals that the system of tax incentives for individual donations currently in force in the country has a very modest role in the sustainability of CSOs. This is because: (i) it mobilizes few resources; (ii) benefits a limited number of entities; (iii) it does not seem to strengthen the donation culture in the country.



## **CHAPTER 3**

# **Endowments and civil society organizations**

Author (s):

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The scenarios of the global economic crisis that originated in the United States in 2008, the fiscal crisis of the Brazilian State and the current coronavirus pandemic, make up a negative scenario for raising public and private resources by CSOs. The drastic reduction in fundraising has been causing harmful effects on entities and projects that depend on financing, sometimes making its continuity unfeasible. The resulting social impact is difficult to measure, but the loss is certain and relevant. After all, no long-term project, like that of CSOs, can be adequately developed with intermittent funding.

CSOs can access various sources of funds, such as their own revenue from services, public financing, direct donation funding, among others, in addition to equity funds. However, considering the prism of stability, patrimonial funds would be the best financing alternative in terms of security and certainty, since they are independent of the will of third parties, the fiscal situation of the State or even the economic situation, despite the general situation of the economy impacting the income of other funds.

A key element for successful fundraising is donor confidence in the proper application of donated resources. Thus, the increase in legal certainty is essential to encourage new funding.

The regulation of endowments has been on the agenda of CSOs for years, and it is even possible to identify five legislative proposals related to the theme in progress at the National Congress since 2012. Although each intended to give its own legal treatment to heritage funds, some aimed at specific thematic segments, such as education and culture, there was evidence of common perception regarding the need to regulate equity funds.

Even so, it was necessary to investigate whether the legal system depended on specific regulation for the topic and, more than that, what would be the best parameters in light of the experience of other countries.

It is in this broader context that the research was initially conceived. However, right at the beginning of its development, the MPV 851/2018 was published, which finally regulates the equity funds in Brazil. It was an abrupt response by the Federal Government to the fire that occurred at the National Museum, based in the state

of Rio de Janeiro. The theme revealed the need to mobilize public and private resources for causes of public interest.

Thus, the development of research work had to be adapted to accompany the process of MPV, to contribute with preliminary analyzes throughout the process of presenting amendments in the National Congress. In the end, the analysis was updated to consider the text of Law no. 13,800, resulting from the conversion of MPV sanctioned by the President of the Republic in 2019, quite different from the text of MPV and incorporating suggestions from the research, as well as the Coalition for Philanthropic Funds, which was the meeting of several entities around the theme.

In this sense, an attempt was made to contribute to a critical analysis of the topic, through data collection and production of analyzes that could assist in the public debate around the creation, implementation and maintenance of endowments.

## **LEGAL NATURE OF ENDOWMENTS**

In order to address legal aspects of endowments, a bibliographic review was first carried out. The objective was to identify a theoretical framework that could guide the understanding of the premises and concepts used throughout the research. Themes such as governance, rescue policy and legal type of foundation gained prominence in the analysis

Specifically regarding these themes, it is worth saying that the study of governance was motivated by the perception that improving management and governance of endowments was a problem to be solved - possibly by regulation - as pointed out, for example, by Ricardo Levisky (2017). The perception is confirmed by the original text of MPV 851/2018, which was mainly dedicated to the regulation of governance of equity funds. The redemption policy is an important element because the fund's ability to perpetuate depends on its efficient functioning.

Due to the absence of more accurate data on Brazilian funds, the 2015 National Association of College and University Business Officers (NACUBO) Commonfund Study of Endowments (NCSE) was used, a survey conducted since 2009 with main endowments coming from

North American educational institutions, answered by 812 institutions with a total equity of US\$ 529 billion in 2015. And yet: in the study of the central elements of the heritage funds, their similarity with foundations was identified.

## **NATIONAL AND INTERNATIONAL EXPERIENCES**

The Brazilian situation regarding equity funds was investigated in depth, to then bring an international perspective on the subject.

These analyzes aimed to collect concrete subsidies for the evaluation of the legislation. In view of the limited resources and information - since they are private institutions - for the national analysis, a set of 22 entities was chosen in view of two criteria: the availability of published data and the relevance in the universe of heritage funds. For the analysis of comparative law, three foreign legal orders were evaluated in which the experience with endowments is more developed: United States, United Kingdom and France. The first two have a tradition of using heritage funds in various fields of social interest, with an emphasis on education. France, for its part, was chosen by the recent law to modernize the economy that expressly disciplined equity funds in the country. In addition, in comparison with the previous ones, France has a legal system of Roman-German origin, with a structure more similar to the Brazilian system.

## **STANDARD STRUCTURE AND SCOPE OF INCIDENCE**

Law No. 13,800/2019 describes the purposes of public interest in equity funds, disciplines the governance of its management entities, lists the sources of funds that can be exploited in its operation, characterizes the legal relationships to be established with the supported institutions - public or private - and, furthermore, it defines the general criteria for the application of resources and the eligibility of expenses to be performed. In summary, the structure of this standard is as shown in the table below

**TABLE 3 - MAIN TOPICS COVERED BY LAW 13,800/2019**

<i>Subject</i>	<i>Devices</i>	<i>Summary</i>
<i>Purpose of endowment funds</i>	Article 1	It attributes to the funds the objective of collecting, managing and allocating donations for programs, projects and other purposes of public interest related by law.
<i>"Ecosystem" of heritage funds</i>	Articles 2 to 5, 10, 19 and 20	They present definitions and general attributes of the institutions that make up the system of operation of the funds: the "patrimonial fund", the "patrimonial fund management organization", the "supported institution" and the "executing organization". They also indicate bodies whose regulatory performance must be observed - Securities Commission, National Monetary Council and Central Bank.
<i>Equity fund management organization</i>	Articles 5 to 8, 12, 17 e 26	They define essential attributes of the constitutive act of the management organization; establish general duties related to bookkeeping, transparency and integrity; define the governance structure.
<i>Endowment fund income</i>	Articles 13 to 17	List the legal sources of funds; classify the modalities of donation for funds and related rights and obligations; define the system of donations of non-monetary goods; authorize donations encouraged under Law 8,313; define limits for the application of resources and prohibit the donation of public resources to funds.
<i>Partnership instrument and term of execution of programs, projects and other public interest purposes</i>	Articles 2, 18 to 21, 24, 26 and 27	They characterize the two types of partnership; define essential clauses for each of the instruments; admit arbitration of disputes before the Federal Attorney General's Chamber.
<i>Hedge fund resources and expenditure execution</i>	Articles 20 to 23	They define guidelines on the financial application of resources and criteria for the eligibility of expenditures.

Source: **Author's elaboration.**

## **ENDOWMENTS PROVIDED FOR IN LAW NO. 13,800 APPLIED TO CSOS**

Despite the probable non-adherence and inapplication of Law no. 13,800/2019 to CSOs, items on various aspects of the norm were analyzed, considering the hypothetical application of equity funds for the financing of CSOs.

The non-adherence is likely in the sense that there is a low incentive to follow the rule, either due to the resulting transaction costs or the absence of sanctions in case of non-compliance. The non-application refers to the ambiguity regarding the necessary impact of the norm on all funds or only those intended for the financing of public entities.

### **FORM OF CONSTITUTION**

Under the new law no. 13,800/2019, endowment fund is defined as a set of assets and rights managed by a fund manager in favor of a supported institution. The same law adopts “management organization” as a synonym for the entity that exclusively manages an equity fund, and “supported institution” is referred to as the entity that benefits from the resources.

Law No. 13,800/2019 provides for the creation of management organizations as a foundation or association. It is insisted, however, that Law no. 13,800/2019 missed the opportunity to simplify the use of foundations - the most appropriate legal model in the current system for the constitution of “funds” before the law existed - or to create its own legal type, as did the French law which, according to French government, sought to combine the best of the association and foundation models, without the drawbacks of the foundation.

### **MINIMUM GOVERNANCE STRUCTURE**

Great emphasis was given to the discussion of the governance structure precisely because governance is seen as the main response to increase legal certainty to encourage equity funds. The certainty



of preserving the donor's will in the act of donation is, in fact, important for the success of the fundraising. However, the requirement for a peculiar structure is not always the most appropriate measure to achieve this goal. In addition, the legal uncertainty surrounding heritage funds in the regime prior to Law no. 13,800/2019 has a major contribution to the uncertainty regarding the tax impact.

Law No. 13,800/2019 establishes some rules on the minimum governance structure to create a management organization. Three bodies are foreseen, in addition to the body responsible for executive management: Board of Directors, Investment Committee and Fiscal Council.

In general, it is believed that the creation of the investment committee and the fiscal council for funds of any size could be waived, as well as structural regulations regarding the qualification and number of members. Although these specialized structures can contribute to the better management of the organization, it is possible to count on other equally efficient structures, depending on the characteristics of the fund. For example, instead of an investment committee, the management organization could hire specialized external advisors and, in place of a fiscal council, the external audit could offer the necessary subsidies to verify the regularity of the fund. In other words, the fund will not be well (or poorly) managed by the simple existence of an investment committee or fiscal council. The governance structure needs to work in a fully integrated manner, carrying out investment, control and accountability activities, among others, always having as a filter the purpose of mitigating agency conflicts between the board of directors and the entity's objectives.

## **REDEMPTION POLICY**

The redemption policy provided for in Law no. 13,800/2019 seeks to preserve the will of the donor, who must be informed about the allocation of resources at the time of the donation. There are two restrictions on the use of resources based on the time they can be spent (permanent or non-permanent) and purpose. As expected, the donation without time and purpose restriction is not foreseen, by law,

as an alternative to raise funds for the equity fund. With the authorization to spend the resources freely, this contribution is not added to the fund's equity. For better visualization, the donation species according to the combination of temporal and finalistic criteria can be identified in the table below:

**TABLE 4 - SPECIES OF DONATION ACCORDING TO THE COMBINATION OF TEMPORAL AND FINALISTIC CRITERIA**

<i>Perenniality/specificity</i>	<i>Specific purpose</i>	<i>Free (not restricted)</i>
<i>Permanent</i>	Restricted permanent donation of specific purpose	Unrestricted permanent donation
<i>Employable according to donation restrictions</i>	Specific purpose donation	Donation not regulated by law (unrelated to the endowment)

Source: **Author's elaboration.**

In view of the excessive rigidity and the election of an inefficient rule, the regulation of the rescue policy of Law no. 13,800/2019 should be detrimental to the objective of preserving heritage for all heritage funds, including those dedicated to the financing of CSOs. The positive contribution is in the classification of donations as a tool for the conservation of the donor's will.

### **RELATIONSHIP BETWEEN SUPPORTED INSTITUTION AND MANAGEMENT ORGANIZATION**

Law No. 13,800/2019 provides for the signing of the partnership instrument between the supported institution and the management organization for funds earmarked for the financing of private entities.

However, fortunately, regulation about the content of the partnership instrument is limited to cases of funds that support public institutions. The law also provides that the partnership between the management organization and the supported institution is “formation of a cooperative bond”. This, in principle, would remove the incidence of ITCMD, qualifying the transfer of assets between them not as a donation, but as the application of resources in a common objective. Although subject to controversies, it is necessary to consider that the object of the management organization goes beyond the preservation of the patrimony, being equivalent to that of the supported institutions regarding the execution of the activity of social interest.

## **INVESTMENT POLICY**

The regulation of the investment policy in Law no. 13,800/2019 boils down to article 20, which deals with restrictions on the use of funds from heritage funds for the financing of public entities, although the wording allows for some ambiguity.

Article 20. The financial investment of the resources of the patrimonial fund will obey the guidelines and prudential limits established by the National Monetary Council, for the particular case of the patrimonial funds of a management organization that has signed a partnership instrument with an exclusivity clause with a supported public institution, or, in its absence, for one of the types of investment funds regulated by the CVM, as applicable.

## **TAX TREATMENT**

Regarding tax treatment, Law no. 13,800/2019 did not bring relevant contributions. With the exception of the possibility of investing funds from the Rouanet Law (Law No. 8,313/1991) in cultural heritage funds, there is no fiscal incentive to raise funds or create heritage funds.

## CONCLUSIONS

Despite the improvement of the text of Law no. 13,800/2019 arising from changes along the MPV process - relaxing requirements for a minimum governance structure, application of resources and redemption policy, among others -, the Law still has low potential to act as an incentive for the constitution of new funds for the financing of CSOs. Part of the problem is that, on the one hand, Law no. 13,800/2019 imposes new transaction costs, making it costlier to create an endowment under the required terms, and, on the other hand, there are no relevant tax incentives, nor a simplified structure capable of facilitating the organization of new endowments. And yet, Law no. 13,800/2019 does not work perfectly as a guide to direct those interested in setting up new funds, as it brings some relevant rules, such as the need for a large minimum governance structure and the adoption of an inefficient ordinary redemption rule.

The central utility of Law no. 13,800/2019 is in the authorization to contract with public entities. Even though the transaction costs are higher when compared to the endowment institution for financing CSOs, it can work as an interesting alternative for raising private funds for public institutions.

For the financing of CSOs, the main potential positive effect expected from Law No. 13,800/2019 is the widespread disclosure of the topic after its approval. The creation of awareness on the topic, debates and even the simple circulation of information will certainly encourage the creation of new funds.

It is possible that the model of Law no. 13,800/2019 is not adopted by the endowment funds for the financing of CSOs, existing and to be created, mainly because of the additional costs without equivalent advantages to justify its adoption. As a regulatory suggestion for the future, it would be desirable to make the veiling of the Public Prosecutor's Office optional for foundations and to resolve or mitigate uncertainties regarding the tax incidence. Law No. 13,800/2019 could be better used by funds earmarked to finance CSOs as an oriented guide if the discipline were more dispositive and less imposing. In addition, self-regulation by existing entities can contribute to the creation of a guide of good practices for structuring equity funds.

## **CHAPTER 4**

# **Regulatory framework of civil society organizations: progress and challenges**

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The research used two methodological steps. First, a data survey was carried out, which included: the normative production, specifically of the subnational regulation acts of Law No. 13,019/2014, proposals to change the federal law, other rules and decisions that affected the interpretation/application of the law, as well budgetary information on public transfers to CSOs. In addition, an analysis of the perception of CSO managers and public administrators was carried out on aspects of the law that directly concern the topic of economic sustainability. Whenever possible, issues sensitive to the perspective of CSOs that are active in defending the rights of groups and minorities were emphasized.

From this, then, it was sought to identify and evaluate issues that represented some type of undue obstacle to public funding through partnerships with CSOs.

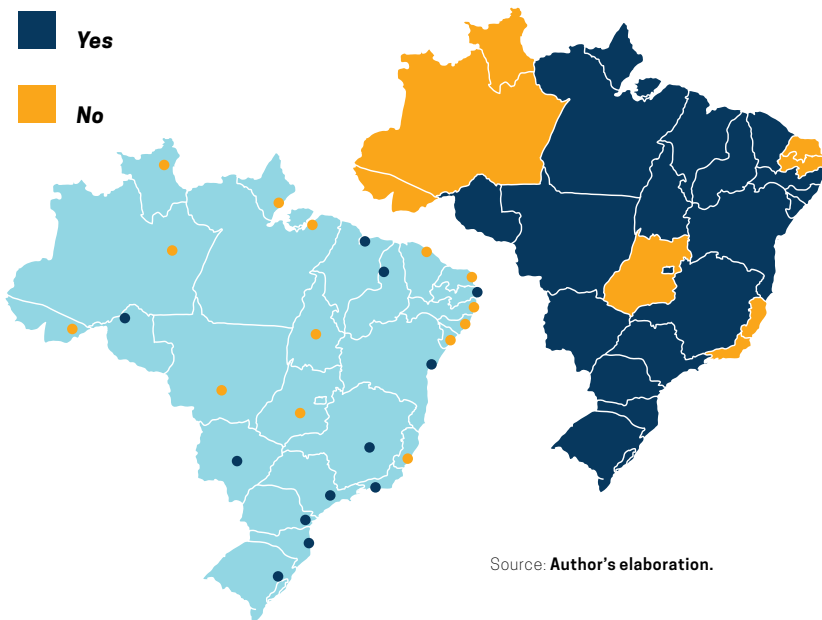
## **SUBNATIONAL REGULATION: ANALYSIS OF DECREES ISSUED BY STATES, FEDERAL DISTRICT AND CAPITALS FOR LAW ENFORCEMENT**

31 decrees issued by states, capitals and the Federal District (DF) were evaluated. This is because subnational regulatory decrees represent a first step towards law enforcement in states, municipalities and the Federal District. In this sense, it was sought to verify whether the regulations optimize the main innovations of the law or whether, in a different way, they reveal misalignment with the new legal regime and reinvention of parameters already surpassed by the legislation and the administrative practice of the agreements.

The research reveals that MROSC's subnational regulations face major challenges to the effective implementation of the law.

Of the 31 decrees analyzed, 16 indicate that they will implement training programs. In general, as to the scope of the programs - intended not only for public servants -, the decrees seem to be in line with the guidelines of the law. However, they vary in terms of the level of accountability for their offer. Not all decrees assign specific roles and responsibilities to bodies and entities. In this sense, it will be necessary to assess, from now on, whether the training is, in fact, being offered.

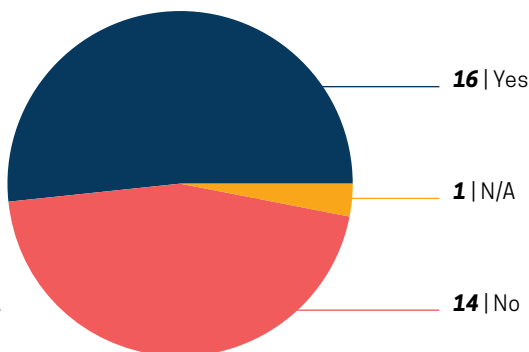
**FIGURE 1 - SUBNATIONAL REGULATION OF MROSC BY STATES AND CAPITAL**



Source: Author's elaboration.

Based on the decrees, it was not possible to assess how many entities have joined or intend to join the federal partnership platform - currently called "Plataforma Mais Brasil" - whose use is open to states and municipalities by Law No. 13,019/2014. It is worth mentioning that the previous existence of platforms programmed under the rules of previous laws - in particular the legislation of agreements - represents a risk to the effectiveness of MROSC. This is because it is possible that partnerships will be processed through systems incompatible with the definitions of Law No. 13,019/2014, an issue that deserves attention.

**CHART 1 - REGULATION OF TRAINING PROGRAMS**



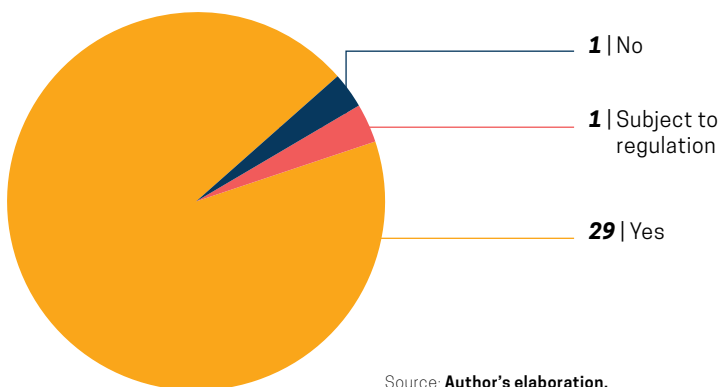
Source: Author's elaboration.

The analysis also showed that the function of monitoring and improving collaboration and fostering relationships, in most cases, will remain diffuse and fragmented between administrative bodies and entities. Although councils are foreseen, along the lines of the Promotion and Collaboration Council (CONFOCO, institutional locus for coordinating adaptation actions in different instances of local public administration), in six of the subnational decrees evaluated, until the date of conclusion of the research only councils of the state of Bahia and the municipality of Belo Horizonte had been effectively constituted and were in operation.

In the field of systematization of information and transparency of partnerships, only two states (Maranhão and Pernambuco) determine, in their decrees, the mandatory sending of information to the MAP of CSOs, a platform managed by IPEA.

If we consider the analyzed regulation, the PMI Social may be an important instrument of participation and social innovation for the public administration of states and capitals, in the coming years. Among the 31 decrees evaluated, only one state (Tocantins) failed to regulate it.

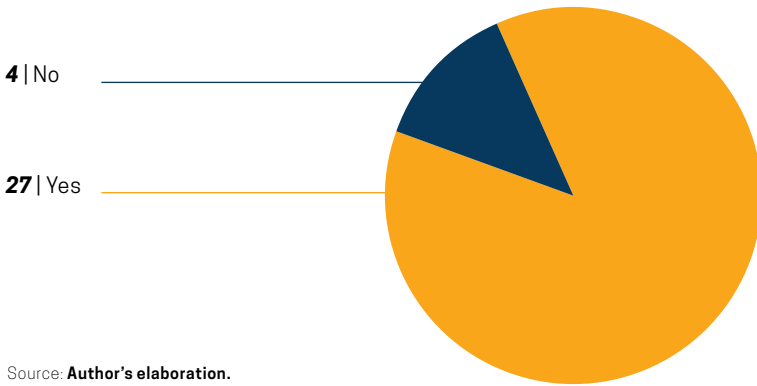
## CHART 2 - SOCIAL PMI REGULATION



“Networking”, in turn, is regulated in 27 decrees. It is also an innovative instrument, especially as it allows the financing of smaller or newly constituted CSOs, including those active in the defense of minorities. The regulation raises several doubts regarding the potential of network operations - considering the comprehensive definition that Law 13.019/2014 gave it.



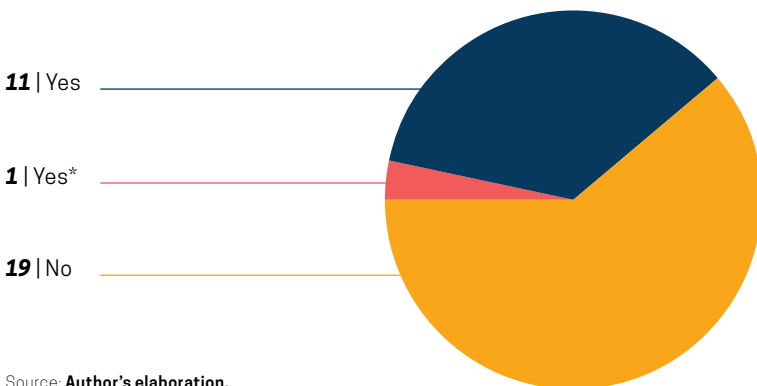
### CHART 3 - NETWORKING REGULATION



Source: **Author's elaboration.**

The definition of preferential treatment or favored conditions for projects or activities for the defense of vulnerable minorities by CSOs is a most exciting topic when assessed from a geographical point of view. Among 12 decrees of states and capitals that provide for these mechanisms, eight are from the Northeast. The Southeast Region has three decrees with this type of forecast, out of a total of 6 decrees. The Northern Region has only one out of four. The decrees of the South and Midwest regions do not adopt this type of rule. However, such criteria may be included due to sectorial rules - that is, that are not necessarily provided for in the decrees. Therefore, it is necessary to evaluate this hypothesis in each case.

### CHART 4 - MINORITY DEFENSE

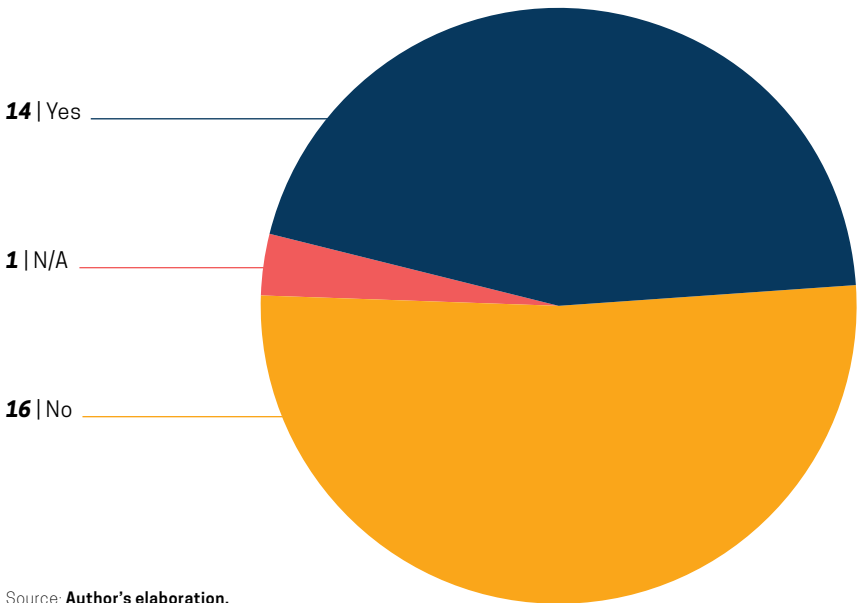


Source: **Author's elaboration.**

The regime of contracting by CSOs with suppliers is one of the most problematic aspects of subnational regulation. It is undoubtedly an attempt to reinvigorate rules that have already been revoked through regulation. Out of 31 decrees, 14 promote this type of undue interference in the internal management of the CSO, establishing how the entity should relate to suppliers, including through mandatory purchasing regulations.

In addition, of the 31 decrees, 17 adopt accountability systems that are flagrantly incompatible with the law. They also align themselves with what established rules already repealed (specifically, the original wording of article 66 of Law No. 13,019/2014), imposing the financial control of partnerships, regardless of the results, in contradiction to what is established by the legal text in force.

#### **CHART 5 - PRIORITIZATION OF RESULTS CONTROL IN REGULATORY DECREE**



If, on the one hand, it is possible to highlight positive aspects, such as the reasonably uniform internalization of mechanisms that can favor the strengthening of CSOs, such as the expression

of social interest and networking. On the other hand, there are significant incompatibilities between the subnational regulations and the general rules of Law No. 13,019/2014. In this sense, undue state interference in the internal management of CSOs and the preference for financial control of partnerships stand out, in contrast to the requirement of priority control of results. Equally worrying is the failure, by most subnational regulations, to define criteria for the defense of minorities through financed actions.

### **PERCEPTION SURVEY WITH CSOS REPRESENTATIVES WORKING TO DEFEND RIGHTS OVER THE IMPACTS OF THE LAW**

Representatives of 23 CSOs of different sizes, budget volumes, locations, profiles of interlocution with the State and areas of activity within the concept of “defending the rights of groups and minorities”, employed by the Institute for Applied Economic Research (IPEA), were interviewed.

The objective was to interview CSOs that work with the defense and promotion of rights to gather perceptions about the use of specific instruments brought by Law No. 13,019/2014 (cooperation term, fostering term and cooperation agreement). The research was carried out through a parallel and complementary effort to the perception research with representatives of the public power, exploring, in the same historical period, the political and economic influences on the interviewees’ statements.

It was identified that representatives of CSOs working on the defense of rights agenda praise the various advances of the MROSC, but already warn of the risks of setbacks or unevenness in law enforcement. They report that under the MROSC, they already observe, for example, documentary requirements incompatible with the new legal regime, dysfunctionalities of electronic platforms (conceived under the previous legislation and, therefore, not properly adapted to the law), and, also, undue interference in hiring made by CSOs (from suppliers or personnel). The training of CSOs on the law is understood as a fundamental condition for the effectiveness of the innovations introduced.

## **PERCEPTION SURVEY OF PUBLIC MANAGERS ON THE PROCESS OF IMPLEMENTING THE LAW IN SUBNATIONAL CONTEXTS**

Through the application of surveys, it was promoted the listening of 303 public managers, from 241 municipalities distributed over 25 federal units, on the implementation of the legislation.

The survey reveals that, by the perception of subnational public managers, the law is also promisingly received. It is observed that the focus of subnational managers falls on the complementary role of CSOs in the field of public policies, which refers to the prevalent use of partnerships as a means of implementing public social policies (education, health, social assistance, etc.). Although there is a recognition that the MROSC rules are more complex, requiring the development of new administrative and institutional capacities - both by governments and by CSOs -, their potential is exalted, particularly on the transparency promoted for partnerships. Even so, the priority control of the results of the partnerships - central innovation of the new legal regime - still seems far from being assimilated by the respondents.

## **BUDGET CLASSIFICATION AND SYSTEMATIZATION OF DATA ON PUBLIC FUNDING OF CIVIL SOCIETY ORGANIZATIONS IN THE SUBNATIONAL ENVIRONMENT**

The research evaluated the budgetary classification of public resources destined to partnerships with CSOs and also presents a survey on the transfers made at the subnational level in the years preceding and succeeding the edition of Law No. 13,019/2014.

Problems with the budgetary classification of public expenditures carried out in partnerships at the subnational level were highlighted. It appears that the main source of national data on the subject - the Consolidation of Public Accounts, in charge of the National Treasury Secretariat - is an instrument that could be improved with relative ease so that the information on expenses incurred through partnerships with CSOs was systematized in a more coherent and transparent way. Even so, with the available data, it was possible to conjecture about the impacts of Law No. 13,019/ 2014 in states, muni-

icipalities and DF, evaluating the movement of resources in the period before and after the entry into force (from 2013 to 2016). It is observed, therefore, that the first year of the law in force for states and DF (2016) and municipalities (2017) recorded a decrease in transfers to CSOs. Therefore, it is not possible to dissociate the movement of resources, however, from the fiscal crisis that subnational entities were already going through during the period.

## **FEDERAL PUBLIC FUNDING FOR CSO PROJECTS IN DEFENSE OF VULNERABLE GROUPS AND MINORITIES**

The allocation of federal funds for CSO projects active in the field of defense of vulnerable minorities was also analyzed in 2017, the second year in which Law No. 13,019/2014 was in force.

Based on the indicators produced by IPEA, federal resources directed to CSO projects in the defense of minorities was evaluated. It appears that in the 2017 financial year - in which, according to IPEA, there were no transfers of resources destined to CSOs institutionally linked to the defense of minorities - partnerships contemplating this theme were implemented. Thus, the hypothesis of discrimination against the agenda of defense of minorities by CSOs at that time was ruled out, pointing out, on the other hand, the insufficiency of mechanisms provided for in the federal regulations of the MROSC and which, in theory, could ensure preferential treatment to this type of initiative.



# Resources





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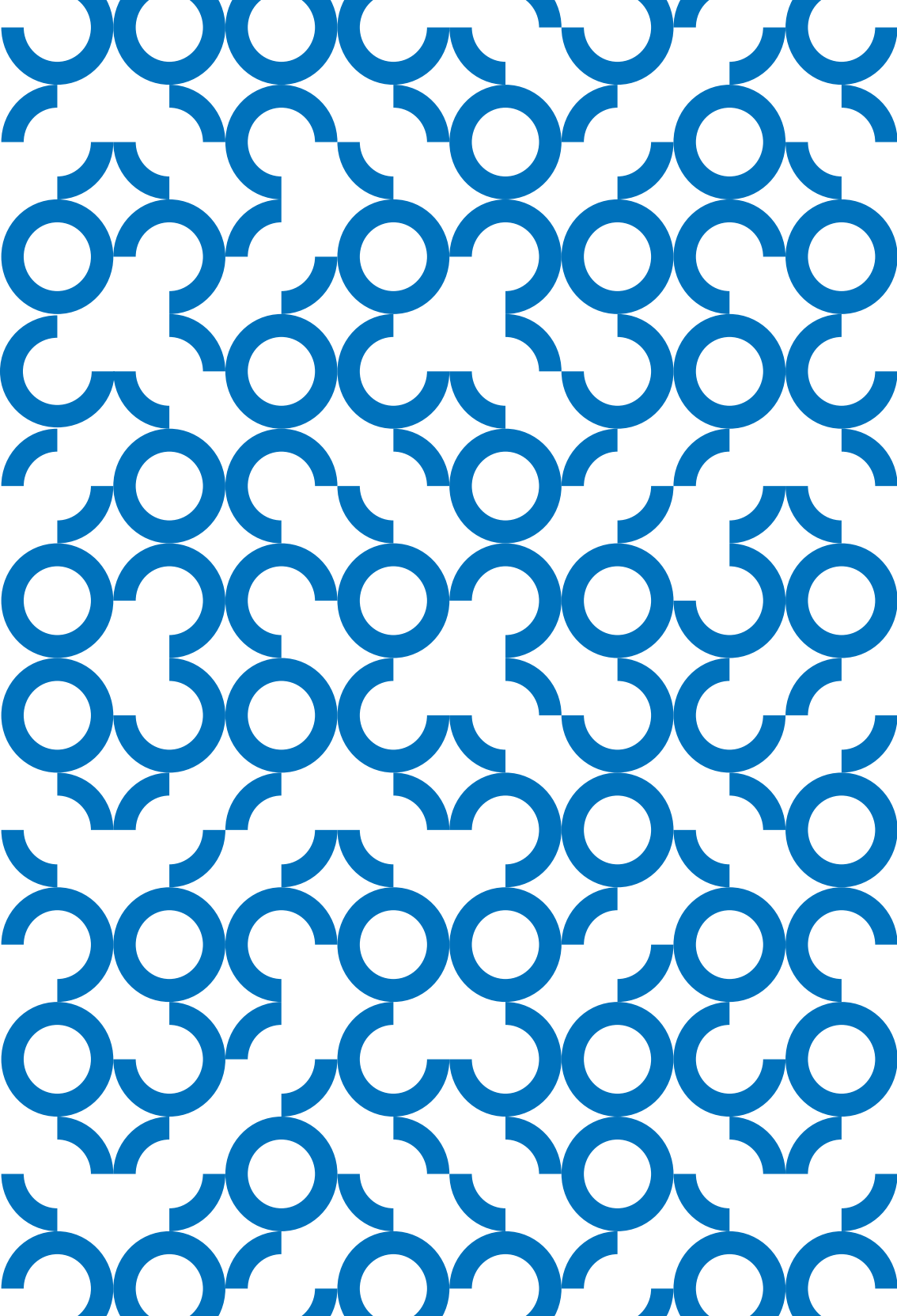
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