

Law, Government and Third Sector in Brazil: improving deficient regulation to promote a better accountability

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This paper aims to analyze the deficiencies and challenges in the normative system that regulates the activities of third sector organizations in Brazil. Its background is a set of legal reforms conducted by the federal government that took place in the 1990s, and when at the same time, denouncements of public money misappropriation involving these organizations became more frequent.

The Brazilian third sector has grown up in size and visibility since the country reinstated its democracy in the mid 80s. Governmental research data (Brasil, 2004) shows that in 2002 at least 276,000 private foundations and associations were legally registered in the country, working in several fields.

The Brazilian third sector organizations have also been occupying important political spaces, like public policy monitoring in local councils, citizen-based control over governments and public service delivery in social areas, where governmental performance is not enough. Because of that, they count on several institutionalized channels to access public funding.

As an important part of this process, laws that regulate these organizations are diffuse and complex, going from the first republican 1916 Civil code (only recent revoked), which brought the requisites to register not only private foundations and associations, but also the first “Public Utility Titles” in the 1930s, until the fiscal laws with tax exemptions until others that regulate public funding in areas such social welfare, health, culture and education.

The awareness and compliance with all legislation are not easy, neither for the organizations - which usually don't have experienced staff - nor for the government, whose programs involving partnerships with third sector demand a wide monitoring capacity.

Complexity and lack of clearness in the legislation have also been used as a tool to promote corruption schemes, public funding deviation and tax evasion. The abuse on the utilization of the “non-profit” and the various scandals brought out by the media show the effects of this scenario and undermine the credibility and the legitimacy which the good organizations sought to obtain. It also undermines the strengthening of accountable

practices, capable of showing the achieved results and the correct use of public money adequately.

At the same time, data from the federal auditor agency showed that between 1999 and 2006, federal government transferred about US\$ 25 billion to third sector organization projects and programs, through an average of 30,000 grants per year. The auditor agency also pointed that there were several problems as to how all this sum of public money was spent and which results were actually achieved.

Therefore, confusing regulation and difficulty in the government's monitoring and supervising contribute to a lower accountability of the third sector organizations in Brazil.

The literature shows the importance of analyzing the impacts of the legal framework in influencing third sector action, whose evolution can be directly affected by its "favorability" or "unfavorability" (Salamon and Toefler, 2002). For instance, requirements to establish legal personality, to enjoy tax exemptions and public funding and in what extent, can determine the paths by which third sector will develop and what relations will be built with the State, the Market and the citizens.

Governmental data will be analyzed in the federal area showing the amount of funding to the third sector, important administrative decisions from federal audit court and reports of legislative branch commissions which investigated activities developed by third sector organization under governmental programs. News and media debates about political scandals involving public money misappropriation through third sector organizations and data from other empirical studies and case studies will also be used.

By analyzing the evolution of the Brazilian federal legislation, it will be possible to identify important issues, which can contribute to improving the third sector accountability and related governmental regulations.

References

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