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Federal Funding of Non-Governmental Organizations

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Table of Contents

1. Introduction..... 3

2. A Conceptual Approach..... 5

3. Federal Funding of NGOs 10

3.1. Concept of Discretionary Transfer 10

3.2 Legislation..... 11

4. Performance Measurement of the Federal Budget 17

5. Final Comments 24

6. Proposals of Measures to be Implemented in Brazil 26

7. References 28

8. Appendix 1..... 30

1. INTRODUCTION

There is consensus that there are some public services that are necessarily provided by the State, whereas there are some public services that can well be provided by civil society. In Brazil, counting on civil society has chiefly meant backing nonprofit's activities with public resources. In the last decades, the Brazilian federal government set aside a great amount of money to Non-Governmental Organizations (NGOs).

The legal framework reveals that the federal government has been counting on nonprofits' help. For that, NGOs have been accorded tax exemption in order to maintain their day-to-day activities. For specific social services, the federal government may fund them through discretionary transfers.

This paper studies only the discretionary transfer for three reasons: (i) there is a specific legal framework that regulates this kind of expenditure; (ii) there is room for discretionary actions to execute this policy, which may explain its misuse; (iii) the complexity of this topic.

These transfers are not compulsory expenditures, and they are designed to fund NGOs' social projects, which are done by settling a partnership between them and the federal government. The legal basis also addresses discretionary transfers to states and municipalities.

In the last two decades, Brazil has seen an increase in the number of NGOs.¹ Many of them render social services in poor areas of the country. Most of their activities have been supported by federal government resources.

Parallel to the growth of this partnership, the country has seen an increase on media reporting about the embezzlement of the money, which has lead to corruption and other similar misdemeanors.²

¹ According to research provided by IBGE (Instituto Brasileiro de Geografia e Estatística), IPEA (Instituto de Pesquisa Econômicas e Aplicadas), ABONG (Associação Brasileira de ONGs), and GIFE (Grupo de Institutos, Fundações e Empresas), there was an increase of 184% of nonprofit organizations in Brazil between 1996 and 2005.

² The Brazilian Parliament has conducted two CPIs (Parliamentary Inquiry Commission), in 2002 and 2007, in order to investigate the federal funds to NGOs, as well as their use.

Hence, this research paper is about the Brazilian federal expenditures set aside for NGOs, which will be compared with the money transferred to states and municipalities. It concentrates on the discretionary transfer in the past six years, from 2004 to 2009. It aims to measure the government performance in dealing with this partnership, considering the large amount of public money dedicated to this purpose, material resources, and a significant workforce in most of the federal institutions to carry out this expansive public expenditure.

Moreover, this paper intends to analyze whether the public resources would be better carried out if they were only in the hands of the public administration. On the other hand, if the public money were trusted to private institutions, what kind of control would be necessary in order to prevent embezzlement. Thus, it is necessary to assess the quality of the public expenditure, which will help to indicate the path and the means to prevent its deviation.

In short, in order to achieve efficiency of this public policy, the goal of this study is focusing on control executed through two tools: legislation and technology.

2. A CONCEPTUAL APPROACH

The nonprofit organizations are neither constituent of the State apparatus nor the private sector. Pereira (1999) calls them the non-governmental productive sector, which has public purposes, and he adds that they are also known as the third sector, non-governmental sector, or nonprofit sector.

In the same work by Pereira (1999), Morales highlights the diversity of forms and names of institutions that do not belong to the State or to the private sector yet do public social service: community associations, religious organizations, private foundations, and charities.

According to ABONG³, the universe of nonprofit organizations is wide and diverse. The NGOs work in favor of advocacy of rights; the third sector is related to the field of business philanthropy. These concepts are political, not legal, and may include other concepts. The research carried by IBGE/IPEA/ABONG/GIFE counts 601,000 nonprofit organizations in Brazil in 2005. However, the ABONG says that only some of them can be considered non-governmental organizations.

These organizations may enter into agreements with the Brazilian federal government to receive financial resources in order to develop social projects. However, they have to constitute the legal form of nonprofit and meet other conditions, which will be discussed below.

The same author quoted above says that the managerial or post-bureaucratic reform proposed creating a new type of organization as a strategy to decentralize public services while maintaining state financial and regulatory accountability. These organizations do not belong to the State or to the private sector, but rather to the nonprofit sector. Their purpose is to serve the public interest in a competitive nature, with public financing and operating methods of the private sector, subject to dual control: State and society.

He argues further that the production of social services by non-governmental organizations provides an opportunity to change the profile of the State. He criticizes a social-bureaucratic State that directly hires teachers, doctors, and social workers to perform monopolistic and inefficient social and scientific services, and a neo-liberal State

³ ABONG - Associação Brasileira de ONGs (Brazilian association of NGOs)

that is intended to be minimalist and waive its social responsibilities. He advocates a social-liberal State that protects the social rights by funding non-state organizations and acts more efficiently by introducing competition and flexibility in the provision of such services. A state that in addition to being social and liberal, is more democratic, because its activities are directly submitted to social control.

The aforementioned author points out that the problem is how to ensure state funding while reconciling social entities' autonomy and the preservation of their responsibility for the use of public resources.

Within the idea of a social-liberal State in which the public sphere increasingly transcends State boundaries, we draw attention to the work of Morales, in Pereira (1999), who says that we should not count only on the two traditional instruments of economic and social development, market and State. The market has proven to be unable to regulate the production and distribution of goods that match the achievements of social rights. The State has exhausted its capacity to expand social investment. With only the market and the State, the accomplishment of social demands would have improvements and setbacks at the mercy of political and economic tensions. Can the public non-state actors be a feasible solution to this problem? This question is recurrent. It has been made and analyzed by many scholars, government officials, and actors in civil society.

According to the Final Report of the NGOs' CPI⁴, the last two decades were marked by the development of a so-called "third sector". This new form of social organization was distinguished by its constitution in the form of nonprofit organizations, known as Non-Governmental Organizations (NGOs). The idea that the State needs partners in order to provide services was formed in the 1990s.

In the beginning, NGOs were seen as a modern solution to fill the gaps left by the State and market. The State, regarded by many as slow and inefficient, attached to the enormity of the bureaucratic machine, would be replaced by actions of the specialists, acting not with the inefficiency of sovereign power, but with social altruism. NGOs seemed a new form of human organization, without the well known and insoluble

⁴ The last CPI (Parliamentary Inquiry Commission) was held by the Senate to investigate the federal funds to NGOs as well as its use. It took place in 2007 and was supposed to finish 180 days after its beginning. However, it was only concluded in October, 2010.

problems of the State apparatus. NGOs would have the agility to act effectively, with objectives other than maximization of individual interest.

Pereira (1999) argues that social services are best offered by non-governmental organizations because they play roles that neither the State nor the market can deliver. However, he highlights the State's responsibility for public funding of such services.

In the late 1990's, several authors laid emphasis on the idea that the State should fund the activities of these organizations, and thus defined them as: networks of solidarity, with no profit targets that are efficient and express the maximization of social rights; provide more diversification and better qualified services, and voluntary service.

The performance of NGOs has been widely questioned today. The media has played an important role in the dissemination of news that shows political influence on these organizations, and how politicians facilitate access to public resources. They also report mismanagement and diversion of these resources. Nevertheless, we must consider the contribution of organizations known and respected by Brazilian society as the actions they perform.

Some of the authors studied advocate the importance of the third sector's performance, as the State and the market proved unable to offer quality public services. Moreover, these authors argue that the public fund is the main source to finance the third sector activities. However, they do not examine in depth the problem with regard to how to control these resources.

Although the control of public resources has not received much attention from the authors studied, who wrote in the late 90s, nowadays this is a very recurrent issue. Thus, the public sector increasingly regards and encourages social control, i.e., the community benefited from the projects of NGOs can play an important role by providing feed-back to the public sector. The society can do this by denouncement of misappropriation of funds, reporting on the quality of services, requiring better services, etc. However, the federal government cannot abdicate effective control over resources. Also, this is an institutional role of two agencies: Office of the Comptroller General (CGU) and Brazilian Accounting Court (TCU).

On the issue of the control of public funds given to nonprofit organizations, Moraes, in Pereira (1999) argues that the trade-off between the need for both autonomy and accountability in the use of public resources is a common problem to any form of nonprofit organization. By spending public resources to meet social demands, these

organizations may face the same problems as the state-owned bureaucratic organizations do. How do you avoid the capture of public resources by private groups? How do you limit discretionary actions? How do you avoid outlays to the benefit of political groups or for the benefit of the organization itself? Another key issue is to establish the principles which should govern the contractual relationship between the public lender and the service providers. The contract should establish criteria from which the public lender may make assessments of performance and outcomes; rules of transparency and publicity; and an agenda of the constitutive relation.

Writing about the liability of nonprofit to render account, Di Pietro argues that accountability is not only demonstrating the final result on outcome. It must be demonstrated that the entire amount of resources transferred was used in achieving this result. The money transferred to a beneficiary (NGOs) does not change its nature; it is still public money (in the sense that it is intended for public purpose). For this reason, the beneficiary is seen as someone who manages public money, and as such, is obliged to render accounts.

According to Navarro, (Pereira 1999), the partnership between NGOs and government until the late twentieth century was marked by many attempts, failures, misunderstandings and conflicts. It turns out that some NGOs have made illegitimate or even illegal use of certain public funds. There are difficulties making NGOs show accountability in the usual way that the government requires. When the government begins to deal not only with the best-known NGOs, but with a broader spectrum of small ones, when some of them emerged or consolidated specifically because of the existence of public subsidies, there are serious doubts about the reliability, competence or integrity of these new partners of the social policy. The subject transcends the pioneering group of public servants who initiated the contacts with NGOs and reaches the highest levels of the Executive or Legislative branch, where the emergence of NGOs as recipients of public funds causes fear, because it affects vested interests or because these organizations have no background.

The same author highlights the good experiences in some Latin American countries, which have contractual arrangements with NGOs. He cites the state reform in Brazil that oversees the establishment of management contracts between the state and organizations that until now were part of the state apparatus - hospitals or universities, for instance. They now on have to be committed to performance in exchange for funding guarantees, which transforms them into non-state public entities.

It should be emphasized that the involvement of civil society in rendering public services may be a country's attempt to decentralize its services. The Brazilian State has always had a strong role in the development of the country. According to Belluzzo (1998), quoting José Serra, one of the striking features of the capitalist development in Brazil concerns the significant role of the State as a factor boosting industrialization.

Garcia (2001) argues that when the public sector seeks to evaluate their actions, one of the solutions is to hire consultants from universities, research institutes, specialists and, more recently, NGOs (many created by retired civil servants and many others publicly funded to carry out activities previously done directly by governments).

He adds that these consultancies have high costs to the government. However, considering the scarcity public universities have been facing for years, the resources provided by these agreements have played an important role for their budget, allowing additional salaries for professors/researchers, to purchase equipment, books, software programs, and even to cover the maintenance of facilities. Admittedly, some of them are foundations based on private law, which lacks transparency on administration of these public resources.

3. FEDERAL FUNDING OF NGOS

3.1. CONCEPT OF DISCRETIONARY TRANSFER

As was highlighted in the introduction, the federal fund to states, municipalities and NGOs has existed for many years.

This financial transference is a result of an agreement of will between partners in order to achieve a common objective. On the one side, there is the federal government financing the project; on the other side, there are the legal entities, states, municipalities and nonprofit organizations, which are in charge of running the project, and also give a small monetary contribution⁵. The funds set aside for this contract are dubbed discretionary transfers due to their dependence on the public managers' decisions, choosing the partners and also the projects to be undertaken.

The legal framework considers as discretionary transfers the resources intended for entities (states and municipalities) and for nonprofit organizations to develop projects not imposed by the Constitution or by other laws. They are based on public administrators' decision rather than on determination of the law. The discretionary transfer, in other words, is a piece of the budget that has uncertain destination. It means that the government agencies can decide both the partners (states, municipalities or NGO) and the project. If they have the same interests, the agreement can be signed with dates to begin and finish. In conclusion, the discretionary transfers, as name implies, are grants of the federal government to states, municipalities and to NGOs. These agreements differ from mandatory resources, which have a predetermined destination and do not leave discretionary decision to the administrators.

⁵ The Brazilian legislation calls 'convênio' this agreement, in which the two partners have common interests. Enforceable by law, both parties must sign a waiver of responsibility and obligations to be met. The term signed is an exchange of promises with specific legal remedies for breach. The 'convênio' is similar to a contract. However, the contract, regulated by the Procurement Law 8.666 of 1993, is the tool used by the government to buy goods and services. The Decree 93.872 of 1986 explains that in the contract the parties' interests are opposed as the public management wants goods and services, while the firms want money. Because of the difficulty of finding English word with the same meaning as the 'convênio' has to Brazilian law, this paper will use the noun contract. But it is important to remember that we are always referring to discretionary transfers.

It is important to add that the parliamentary amendments to the budget are also classified as discretionary transfers. The difference is that, in this case, the budget is approved nominating the beneficiary and the project, in accordance with the political influence of the parliamentarian.

Finally, there is a need to explain that this paper uses the two terms "NGO" and "nonprofit organizations" whenever it is necessary to refer to a non-state organization that receives discretionary transfers from the federal government.

3.2. LEGISLATION

The following section presents a brief outline about the legislation with regard to the discretionary transfers and aims to give an overview of the rules mainly concerning the nonprofit organizations' contracts with the government. It will not describe the entire legal system, but only the more relevant parts, which are shown in chronological order.

Law 91 issued in 1935 shows that the Federal Public Administration has long been counting on nonprofit organizations to implement its purposes. Then, in 1961, this Law was regulated by Decree 50.517.

The referred law ordered the rules from which the civil society, associations, and foundations would be declared of public utility. The title should be given only to the Brazilian organizations established to serve the society with no profit interest.

The organizations should meet the rules' requirements to receive the title: their activities need to be in the educational, scientific research, cultural, artistic or philanthropically field; their administration needs to be based on morality; and their managers are forbidden to be paid. The organization is also forbidden to distribute income, bonuses or benefits to managers, benefactors, sponsors or members.

Then, in 1964, Law 4.320 improved relations between the federal government and the nonprofit sector, by establishing the social grant. It was designed for essential services: social assistance, health care and education. These organizations should provide these services to the public and also prove that they were more businesslike than the public sector could be. Therefore, as the public management was interested in efficiency, the organizations would be rewarded for the work already done.

In 1986, Decree 93.872 stated that the contract between the federal public management and other public entities or nonprofit organizations would reflect their

objective to do works with common interests. Moreover, the common interest is the chief requirement to sign a contract between these partners.

It is important to highlight that article 49 restricts the use of contracts only for situations when their use is more convenient or when it is impossible for the federal public administration do the work by itself. The other feature of article 49 is that the contract may be established only to do local works. The Decree also regulates the operational, accountable, budgetary and financial aspects related to the contract.

Two years later, in 1988, the Federal Constitution was adopted. Its article 71 charges the Brazilian Accounting Court (TCU) with explicit responsibilities, which includes the fiscalization of all federal resources earmarked to discretionary transfers. This is an important role played by the Court of Account. However, considering that the discretionary transfers are used as a means of the federal government decentralizing its activities, the TCU has enormous and difficult work to do, as the partners and the services are scattered throughout the country. The federal public administration makes an average of thirty thousands contracts every year. It requires a huge amount of technical personnel, logistic and material resources to do the job. Consequently, more clear rules and better computer systems would lead to more efficiency in the Accounting Court.

The Federal Constitution forbids states and municipalities from using discretionary transfers to pay their staff. In July 2010, the Constitution was amended, which states the possibility of nonprofits to implement specific social projects: "The State will create programs of comprehensive health care earmarked to children, adolescents and youth,⁶ admitted the participation of non-governmental organizations..." (Free translation)

In a much lower level of rules, the National Treasury Secretariat issued the Normative Instruction 1 in 1997. It lasted for eleven years until it was replaced, in 2008, by the Ordinance MPOG/MF/CGU 127. During this period, the Normative Instruction regulated the administrative procedures of the discretionary transfers' contract. This rule had a great impact on public management of discretionary transfers as it gave in detail all requirements needed to sign a contract. The Normative Instruction determines that the financial and accounting data of the contracts need to be registered in SIAFI (Integrated System of Federal Government Financial Administration). Hence, the National Treasury

⁶ Constitutional Amendment 65, article 227, § 1º

improved its support to the rule's procedures and to the SIAFI's users: managers of federal government, states, municipalities and NGOs.

This Normative Instruction is still regulating the old contracts, the ones signed during its validity. This norm was a landmark in the history of public administration finance, because the money that pours every year into hundreds of townships as a means of discretionary transfers represents a high percentage of the budget for many of those municipalities.

In the year 2000, the Fiscal Responsibility Law - FRL (Complementary Law 101) was adopted. It establishes norms of public finances and addresses the responsibility in fiscal management. The law dictates actions to prevent risks and correct shunting lines, which could affect the balance of the public accounts.

In accordance to its 25th article, the concept of discretionary transfer is the delivery of financial resources to other member of the Federation by way of cooperation, aid or financial assistance that does not stem from the constitutional provision, statute or those intended for the SUS (Brazilian unified health system).

The basic premises of the law are the planning, the control, the transparency and the responsiveness in the public fiscal management. Hence, the applicants for discretionary transfers must fulfill fiscal accountability such as: specific budget forecasts in their budget guidelines law; prohibition of spending resources to pay their staff; proof of payments of tax, loans and financing, as well as the accountability of funds previously received; accomplishment of spending a fixed percentage of their income on education and health; compliance with debt ceilings, limits of loans and limits for payroll; and specific budget forecast for their monetary counterpart to the contract.

In conclusion, discretionary transfer is one of the institutional penalties for public entities that do not meet fiscal targets. It is a restraint for the applicants that contravene established rules and regulations. Although the law has not mentioned the NGOs, they are demanded by other norms to accomplish similar rules.

In 2007, the federal government issued Decree 6.170, which establishes procedures for the sub national levels of government and for NGOs to receive discretionary transfers. The resources should be transferred by contracts. This Decree had two main purposes: (i) the liability given to four organs from the Executive branch to

regulate it; (ii) the norm created a computer system called SICONV⁷ designed to register the contracts.

In 2008, the Ordinance 127 regulated the Decree 6.170, and also replaced Normative Instruction 1 of 1997. It settles administrative procedures and rules to the contract between federal government and states, municipalities and nonprofit organizations. These partners agree to sign a contract in order to implement programs, projects and activities of mutual interest.

The creation of SICONV is one of the big gains of the two norms: Decree 6.170 and Ordinance 127. There are many expectations of success, despite criticisms from this system's users due to its late and partial entry into operation. The benefit of SICONV, when finished, will be the centralized entry of all contracts' data and also the possibility to record every single transaction. The essential characteristic of this computer system is its capillarity, which allows all users scattered throughout the country to access records of documents, upload documents, maintain communication between partners, etc.

It is important to explain that, due to a lack of a managerial computer system, SIAFI had to amplify its database in order to record some key managerial information of the contracts, instead of recording only their financial and accounting data, as it was supposed to do.

Without an unified IT system in the Federal Administration, most agencies created their own systems to control the contracts' records, besides facilitating the automation of the entire procedure. Some of these systems are considered of high quality and they were an inspiration for the creation of SICONV. However, these systems are restricted to the agencies that created them, which raises difficulties collecting data for research.

SICONV intends to be broader, including all the benefits drawn from the cited computer systems, and containing all the managerial information of the contracts, such as (i) the financial and accounting records, which, although its entry is done into the SICONV, they are all immediately and automatically transferred to the SIAFI. According to the SIAFI manual available on the homepage of the National Treasury Secretariat, all the accounting acts and facts relating to discretionary transfers begin in the SICONV and have their reflexes in the SIAFI; (ii) records of prior registration, presentation of proposal

⁷ Sistema de Gestão de Convênios e Contratos de Repasse.

work and basic design, the sign of the contract, program implementation and accountability, etc. Thus, all the acts of the contract must be made in SICONV.

Another aspect that differentiates SICONV from others computer systems is that the beneficiaries (states, municipalities and nonprofits) also perform inflows in it. The other systems are performed only by federal public managers.

The Ordinance 127 prohibits contracts that are worth less than R\$ 100,000.00. This rule applies only to states and municipalities, but not to NGOs. Prior to its issue, parliamentarians could parcel out the amount allocated to each one according to his will, in order to devote resources to the greatest number of receivers. They used to do so to meet the demands of their electoral basis. After the Ordinance, the number of parliamentary amendments to the budget tends to reduce and, consequently, we expect a better planning for the discretionary resources.

The Ordinance 127 has given more benefits to ONGs than to public entities (states and municipalities). For example, the agreements signed with NGOs can be of any value; if there is consent, they may spend up to 15% of the agreement's resources on operating costs, which is forbidden to federal entities, etc. Thus, the norm has been receiving criticism.

Finally, the Budget Guidelines Law (*Lei de Diretrizes Orçamentárias – LDO*) is drawn up on an annual basis. It establishes the general rules for preparing the budget for the subsequent year.

This law has a long section that sets a set of rules that the nonprofit sector needs to fulfill. Following, there is another section that sets rules with regard to discretionary transfers. These two parts of the law have been improved every year in order to better adapt to national reality.

As soon as Decree 6.170 was issued, LDO incorporated one of its specific rules, which prohibits nonprofits receiving public fund whenever there are on their board public managers or their relatives on high position in the government. The purpose of this determination was to minimize political influence in the allocation of public funds to nonprofit organizations.

In order to implement the project, LDO requires that partners give a small monetary portion. However, the law excepts some situations where the beneficiary is not required to give such amount. Also, instead of financial resources, the law authorizes its reduction or it may be calculated in goods and services to be offered to the project.

It should be stressed that the legal framework that sets rules on discretionary transfers prohibits the resources' outlay in other than the agreed purpose. They also require a specific current account to deposit and move the money. Still, this is one reason that generates many records of defaults in SIAFI.

4. PERFORMANCE MEASUREMENT IN THE FEDERAL BUDGET

The purpose of this study is to assess the federal expenditure, by a means of discretionary transfers, sent to NGOs in comparison with the amount spent with states and municipalities in the years of 2004 to 2009.

It is important to add that, in the light of Brazilian law, the well known noun ‘convênio’ is used for any kind of agreement. The federal rules use this same generic word to transfer discretionary funds to states, municipalities and nonprofit organizations. Thus, this contract is the federal government’s tool to establish a partnership with the entities mentioned above. Therefore, there are some agreements that are not deemed discretionary transfers.

All the financial and accounting data on the contracts of discretionary transfers have to be accounted on SIAFI. Besides, this system has a specific module to identify all contracts by means of further managerial data.

The research done at SIAFI Management⁸ (system module for research), selects the application mode that picks up all funds transferred to the nonprofit organizations, and also chooses the specific parameters for this kind of agreement, which results in several records that the law does not consider discretionary transfers.

Notwithstanding that the system module was designed only for discretionary transfer, there are many registers that do not account for it. The users register any kind of ‘convênio’ in this system module. Clearly, it is a misuse of the tool system.

As an example, we quote payments to CIEE⁹. It is a nonprofit organization that, basically, has the job to create a bridge between the business community and the students. Therefore, the Federal Administration has long been contracting trainees and its payment is by CIEE. Public managers also call the generic word ‘convênio’ for this partnership. However, it is not a discretionary transfer, but merely payment for services rendered by a private entity. The same goes for payments to health institutions that provide health insurance for civil servants. This kind of mistake needs to be investigated in order to find out whether it is managers’ lack of knowledge about the difference between contracts of discretionary transfer in contrast to other budget plays. Hence, the

⁸ SIAFI Gerencial

⁹ Centro de Integração Empresa Escola (Integration Center for Schools and Companies)

search result displays an amount of resources spent that is not discretionary transfer, because users mistakenly indicate them as ‘convênio’.

In addition, many services that should have the proper treatment of the Procurement Law are recorded as if they were contracts of discretionary transfer. There are examples of other records that constitute misuse of the SIAFI’s tool that were excluded from analysis in this work. For instance, financial assistance to researchers and students was excluded because the law prohibits discretionary transfer to any natural person. As explained earlier, the piece of the budget for discretionary transfer can only be aimed to legal entities: states, municipalities and nonprofit organizations.

The Final Report of NGOs’ CPI observes the difficulty of gathering the data needed to accomplish its purpose. It says: “Make such diagnosis was not an easy task, especially because, legally, there is no definition for ‘NGO’. It may be an association, a foundation (legal entities of private law) or even an international organization that is not bound to state or government.”

Because of this, meticulous manual work has been done to separate the values considered discretionary transfers from those that are not, but that appeared in the survey simply because they were payments accounted for services held by nonprofit organizations. Thus, there might be a margin rate of mistake in this work. However, the following analysis is over the data whose collection was possible.

4.1 TABLE 1

Table 1 shows the sum of the discretionary transfers to the set of municipalities, states and NGOs in the period 2004 to 2009.

DISCRETIONARY TRANSFERS

In thousands of R\$

	2004	2005	2006	2007	2008	2009	TOTAL	Percentage of the total
MUNICIPALITIES	3.164.871	3.993.604	4.811.487	4.934.989	4.808.123	5.226.327	26.939.401	45
STATES	2.860.645	3.534.040	3.799.466	4.626.349	3.474.587	3.558.767	21.853.855	37
NGOs	1.352.851	2.095.399	2.197.969	1.899.559	1.571.539	1.337.373	10.454.691	18
TOTAL	7.378.367	9.623.043	10.808.923	11.460.897	9.854.249	10.122.468	59.247.947	100

Source: Siafi Gerencial

Updated values to prices of Dec/2009 by INPC/IBGE.

INPC: National Consumer Price Index

IBGE: Brazilian Institute of Geography and Statistics

Table 1 shows that the federal government has disbursed R\$ 59.2 billion over the past six years with discretionary transfers. Of this total, NGOs have received the significant amount of about R\$ 10.4 billion, which is on average, R\$ 1.7 billion per year. This amount represents almost half (48%) of what states have received (R\$ 21.8 billion) and 39% of the total transferred to municipalities (R\$ 26.9 billion). During the period analyzed, 18% of the total of discretionary transfers benefited the nonprofit organizations.

Chart 1 provides a better visualization of the distribution of discretionary resources.

4.2 CHART 1

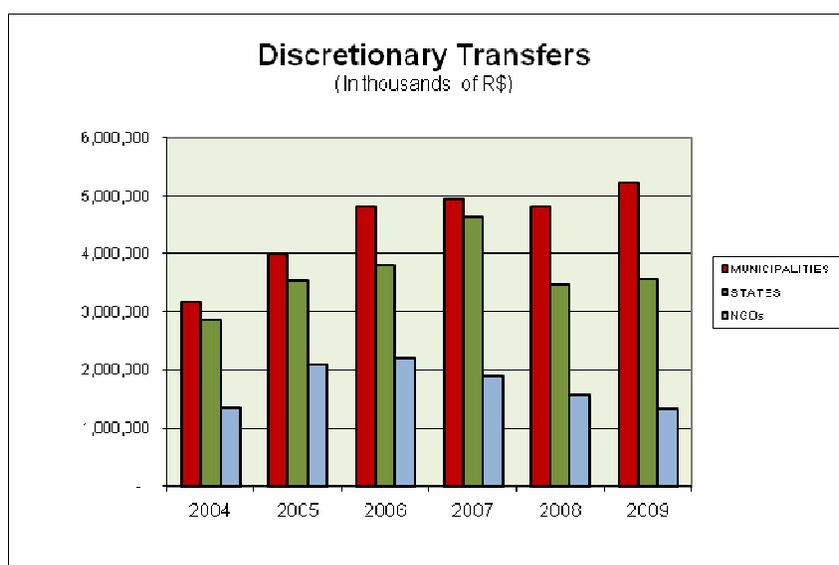


Table 2 shows the top ten federal agencies that have been funding nonprofit organizations in the period.

4.3 TABLE 2

DISCRETIONARY TRANSFERS TO NON-GOVERNMENTAL ORGANIZATIONS

In thousands of R\$

AGENCIES	2004	2005	2006	2007	2008	2009	TOTAL	Percentage of the total
Ministry of Science and Technology	99.041	415.910	469.346	549.542	546.424	449.161	2.529.425	24
Ministry of Health	413.121	418.986	322.161	256.099	290.976	138.973	1.840.317	18
Ministry of Tourism	62.998	121.765	467.580	125.163	81.684	104.480	963.671	9
Ministry of Agrarian Development	103.695	239.328	191.253	140.187	96.500	63.367	834.330	8
Ministry of Education	147.609	200.617	153.682	139.937	64.608	63.386	769.839	7
Presidency of the Republic	69.656	101.655	119.168	140.818	122.494	114.071	667.861	6
Ministry of Sports	63.688	53.288	89.559	229.692	89.924	38.108	564.259	5
Ministry of Labor and Employment	78.311	132.301	55.305	69.826	65.838	34.078	435.659	4
Ministry of Social Development	60.617	134.378	86.767	7.035	68.731	68.845	426.373	4
Ministry of Culture	26.901	46.879	56.300	39.112	39.558	106.583	315.333	3
Total (1)	1.125.637	1.865.108	2.011.121	1.697.411	1.466.739	1.181.052	9.347.067	89
20 Other Agencies	227.214	230.291	186.848	202.149	104.801	156.322	1.107.624	11
Grand Total	1.352.851	2.095.399	2.197.969	1.899.559	1.571.539	1.337.373	10.454.691	100

Source: Siafi Gerencial

Updated values to prices of Dec/2009 by INPC/IBGE.

INPC: National Consumer Price Index

IBGE: Brazilian Institute of Geography and Statistics

The agencies shown in Table 2 spent together 89% of total in this kind of budget execution. The Ministry of Science and Technology and the Ministry of Health have spent, respectively, 24% and 18% of total expenditure, which represents 42% of total.

In 2009, the two biggest funders highlighted above spent together R\$ 588 million through 274 contracts with NGOs, which means that each contract is worth about R\$ 2 million on average. In contrast, the Ministry of Education spent R\$ 63 million through a huge number of 1840 contracts with NGOs, which means that each contract was only R\$ 34,000.00 on average. I could not find any official assessment that could explain the discrepancy of this type of expenditure or the reason why only two agencies out of 30 spent 42% of the total.

Appendix 1 shows 21 contracts with NGOs that are worth over R\$ 10 million in 2009.

Among the entities that appear in a number of contracts signed, we highlight the APAEs¹⁰. They exist in virtually all municipalities and are recognized for their work. The well known Pastoral da Criança¹¹ deserves attention for the volume of funds it receives, recording the amount of R\$ 11.3 million in 2004 to R\$ 17 million in 2009, out of a total of R\$ 127 million in six years.

Table 3 shows a percentage comparison between discretionary transfers and the fiscal budget.

4.4 TABLE 3

DISCRETIONARY TRANSFERS' EXPENDITURE IN COMPARISON WITH THE TOTAL FISCAL BUDGET							
	In thousands of R\$						
	2004	2005	2006	2007	2008	2009	TOTAL
Fiscal Budget (Nominal)	396.724.446	421.081.522	542.006.441	558.325.791	615.427.752	669.734.232	3.203.300.183
1 - Fiscal Budget	409.863.184	504.697.338	631.858.008	618.970.390	640.745.127	669.734.232	3.475.868.278
2 - States and Municipalities	6.025.516	7.527.644	8.610.953	9.561.338	8.282.709	8.785.095	48.793.256
3 - NGOs	1.352.851	2.095.399	2.197.969	1.899.559	1.571.539	1.337.373	10.454.691
% (2) / (1)	1,47	1,49	1,36	1,54	1,29	1,31	1,40
% (3) / (1)	0,33	0,42	0,35	0,31	0,25	0,20	0,30

Source: Siafi Gerencial and the Budget Law (LOA¹²)

Updated values to prices of Dec/2009 by INPC/IBGE.

INPC: National Consumer Price Index

IBGE: Brazilian Institute of Geography and Statistics

The federal fiscal budget addressed to discretionary transfers reached only 1.7% of the total in the period. Despite the apparent low amount of funding (in percentage terms) compared with the total fiscal budget, in fact, it is a lot of money compared to other sources of investment. For example, the Inter-American Development Bank (IDB) invested US\$ 2.6 billion in projects of development in Brazil in 2009, which represents 45% of the R\$ 10.1 billion (US\$ 5.8 billion¹³) disbursed as a means of discretionary transfers in the same period.

¹⁰ APAE - Associação de Pais e Amigos dos Excepcionais (Association of Parents and Friends of Disabled Children)

¹¹ The Pastoral da Criança is an organization of the National Conference of Bishops of Brazil – CNBB (Catholic Church), which aims integral development of children between 0 and 6 years of age in their families and communities. Its performance is ecumenical, serving people of all faiths and ethnicities.

¹² Lei Orçamentária Anual

¹³ US\$ 1.00 = R\$ 1.729 (Source of Brazilian Central Bank on November 26th, 2010.)

The discretionary transfers' projects require a large number of technical personnel, logistic and material resources to carry them. It means that the federal managers have to monitor, assess and audit the contracts. As already said, the federal government signs about 30,000 contracts every year.

Therefore, projects of low financial value might not offset the operating costs. Because of that, the Brazilian Accounting Court (TCU) demanded change on the rules in order to establish a minimum value for each contract. The Court evaluated that below a certain financial value of the project is not worth making control. The TCU's demand was partially accomplished by Decree 6.170 in 2007 and also by Ordinance 127 in 2008. These rules prohibit contracts with states and municipalities that are worth less than R\$ 100,000.00. However these rules do not reach NGOs. In other words, the federal agencies are allowed to make contracts at any value with NGOs.

This form of spending is a critic issue because the allocation of money is easier to go from hand to hand, which contributes for losses on the way. These losses can be caused by inefficiency, corruption, misuse, etc. The problem is that the federal government does not have the necessary administrative structure to control this expenditure. The benefit of tracing the money may not be worth the costs of doing so.

The TCU's report on the accounts of the federal government in fiscal year 2009 draws attention to the huge number of lawsuits of rendering of accounts that were not analyzed by the organs of the Executive branch. In December 2009, there were over 50,000 pending processes, whose resources count R\$ 19.6 billion of federal funds. After the audit, the Court concludes that this problem is the result of two factors: lack of staff and appropriate IT system.

Thus, the federal government must not only improve its procedures to ensure the partners comply with accountability, but also should improve its administrative structure in order to enable adequate monitoring of the contracts. According to the TCU's Report, the government is failing to even examine the lawsuits of rendering of accounts. So, the next step in the evaluation of results is markedly impaired.

The result of the search done at SIAFI Management also did not meet the expectation in terms of revealing the quantity of contracts that, at any given time of their lifetime, could possibly be default (breach of term signed). This could be used as a standard measure of efficiency in the use of public resources for each group of partners. Thus, if it had been possible to collect the data, it would show which partner, NGOs or public entities, have comparative advantage on dealing with discretionary transfer.

Moreover, if there were any contract's default, the reason needs to be identified. This is an important issue from the view point of the discretionary transfer's rules. It is because, depending on what the default's reasons are, there may have civil, penal or administrative implications for the defaulting party. Also, these reasons reveal that if they were generated by formal issues (technical problems), it may mean only administrative problems. On the other hand, there is no doubt that a default caused by embezzlement, fraud, or any other misapplication would be financial losses. Therefore, the computer system must be improved in order to assess the impact of the default on discretionary transfer's policy.

In short, most analysis that was intended to be done could only be possible through detailed and consistent data. For this, you need a good IT system. Otherwise, the analyses and conclusions on the proposed issue cannot be done.

All the problems mentioned emphasize the expectation with regard to the new portal, SICONV, as the Federal Administration urgently needs a system that is also a reliable database. It is expected that in future SICONV stores diversified information. In this way, studies on this subject may be possible.

It is seen from the above, it is important for SICONV to succeed, because it is a specific system of the federal government to track discretionary transfers.

5. FINAL COMMENTS

The initial purpose of this study was to examine the quality of the part of public expenditures administered by nonprofit organizations as opposed to managed by states and municipalities. It tried to measure the government performance on dealing with this partnership, considering all the resources involved. However, there are not many studies in this area. Only in the past few years the issue has aroused the interest of civil society, given the advantage taken by NGOs linked to political parties and the broadly published misappropriation of public funds.

The study focused on two tools: legislation and technology.

Given the impossibility to obtain the data in the format needed to perform the desired analysis, this study could not be conclusive. The data obtained in the my survey were not sufficient to determine the quality of this public expenditure: discretionary transfers. As the saying goes "Information is the lifeblood of business", in discretionary transfers, the stored information is very precarious, because there are only financial and accounting records available on SIAFI. Further detailed information (managerial data), necessary to carry on the analysis, exists only in the papers or documents of the administrative agreement, which can only be find in the agency that signed the contract. Until the implementation of SICONV in 2008, some agencies used to have computer systems, which were restricted to their private use. Therefore, this information is not disclosed, making it difficult to do better research.

Also, the research could not meet the expectation in respect of which partner, private or public, is a better manager of public resources. The IT systems currently available do not provide data needed to determine whether public managers from states and municipalities are better in dealing with discretionary transfers, at least enough for the federal government to dispense with the collaboration of nonprofits. So, it is not possible to verify whether the decentralized activities to NGOs are the best choice or if the federal government could perform these services directly.

However, it is possible to conclude that companies and governments cannot meet all expectations of the society. Therefore, it may be good to have other entities interested in providing quality public service. The bad behavior of some NGOs is no justification for simply rejecting all others. What may be missing is a better government

action in order to maintain a tighter control over the partners who use public resources. These agents can be both public (state and local governments) and nonprofits.

The conclusion of the Final Report of ONG's CPI, 2010, says that the State recognizes NGOs as potential partner for the development of social projects, with the input of public resources. However, there must be supervision of the society and of the answerable government agencies in order to ensure fairness in the application of resources and technical adequacy of the initiatives. It is undoubtedly of great value that NGOs should continue to exercise its role as a complement to state action. Whilst maintaining transparency.

Social control is a concept that is increasingly gaining ground. Society needs to control its money, because financially it may not be worth spending the necessary amount of resources to oversee this part of the execution that is so decentralized.

Furthermore, it is essential to invest in good IT systems with the objective to manage the contracts and also to store the data related to them. Without them, proactive actions of public administrators - proposals to change the legislation, proposals aimed to correct the mistakes, the analysis of data, studies, inspections and audits – would be harmed.

Finally, one cannot deny the importance of nonprofit organizations in rendering social services, because the public sphere increasingly transcends State boundaries. However, as the economic crisis has shaken the foundations of neo-liberalism, the attention turns to a discussion of what should be the size of the State. Maybe not so minimalist - which means that governments transfer responsibility to the private sector - but not so concentrator, enough to dispense the nonprofits in the production of public services. In any event, close monitoring of the discretionary transfers is required, so that the society may benefit from a proper application of public money.

6. PROPOSALS OF MEASURES TO BE IMPLEMENTED IN BRAZIL

This study was successful in identifying the problems with regard to federal government's discretionary transfers. Based on this, and in order to make better use of this public policy, I offer the following suggestions, which are in line with some conclusions presented in the Final Report of the NGOs' CPI 2010:

1) Review and improvement of legislation. In order to correct flaws that facilitate the uncontrolled use of public resources, it takes a closer scrutiny of legislation, such as: previous control mechanisms; clearer criteria for selection of partners; detailed rules to make work plan; means of monitoring the implementation of the agreed object; penalties for managers who make bad use of public resources; effective means for the recovery of misused funds.

2) Improvement of the State apparatus' structure aiming the outcome tracking. The federal Public Administration lacks the appropriate structure and mechanisms to track, monitor and control the contracts, as well as to evaluate the effectiveness of the public policies implemented by partnerships with nonprofits. This requires: (i) computerized systems (software) to facilitate the work of public managers, and also to store data for research and evaluation; (ii) solving the structural problems of administrative organization, such as, staff shortages, little training of managers dealing with the subject, and lack of material resources.

3) Better identification of partners. As noted in this study, the universe of nonprofit organizations is broad and diverse. So it is not possible to differentiate these entities for purposes of enforcement of existing legislation for discretionary transfers. The budget and financial data stored in SIAFI reveal a patchwork of records, which complicates the analysis. Therefore, it is required to study the eligible entities to receive discretionary transfers. Besides the legal issue, you need mechanisms to select the entities that have technical and administrative capacity, fiscal responsibility, qualified staff, etc. The study should include: the identification of the number of people employed by NGOs;

survey the capital of NGOs; and how much their labor, output, income, and capital means to the country's economy. In other words, you need to know your partners.

4) Integrated action of the organs of control. It should have a combined action of the organs of control, in order to optimize the resources, and to extinguish the cases of misuse of public funds.

5) Social control. The Public Administration must have mechanisms to encourage the participation of society in the control of public spending. For this, it is necessary publicity of all data related to projects run by NGOs.

6) Assessment of all types of public funding of NGOs. It urges to study all resources given to NGOs: tax-exemption, social contribution, discretionary transfers, etc. in order to assess the outcome of these public policies. The study should find out the amount of money spent in each type of expenditure, which one is most effective, encourage their strengths and reduce its weaknesses.

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8. APPENDIX 1

DISCRETIONARY TRANSFER

2009

AGENCIES	ONGs	NOMINAL VALUES
Ministry of Social Development	Associação Programa um milhão de Cisternas para o Semi-Árido	68.297.878,91
Ministry of Science and Technology	Associação Brasileira de Tecnologia de Luz SINCROTRON	66.538.880,00
Ministry of Science and Technology	Associação Instituto Nacional de Matemática Pura e Aplicada	43.737.000,00
Presidency of the Republic	Associação de Comunicação Educativa Roquete Pinto	39.600.000,00
Ministry of Culture	Sociedade Amigos da Cinemateca - SAC	37.862.984,00
Ministry of Science and Technology	Rede Nacional de Ensino e Pesquisa - RNP	28.531.938,63
Ministry of Defense	Fundação Ricardo Franco	23.959.560,00
Ministry of Health	Missão Evangélica Caiuá	23.308.794,91
Ministry of Science and Technology	Centro de Gestão e Estudos Estratégicos	20.330.000,01
Ministry of Science and Technology	Fundação de Desenvolvimento da Pesquisa	20.154.340,67
Ministry of Science and Technology	Fundação de Ciência Aplicações e Tecnologia Espaciais	18.860.781,30
Ministry of Development, Industry and Foreign Trade	Agência de Promoção de Exportações do Brasil - APEX-BRASIL	18.236.339,88
Ministry of Health	Pastoral da Criança	17.068.719,00
Ministry of Health	Associação Rondon Brasil	16.615.764,95
Ministry of Environment	Consórcio Intermunicipal das Bacias Hidrográficas dos Rios	15.610.106,66
Ministry of Science and Technology	Fundação Ricardo Franco	15.607.949,43
Ministry of Education	Fundação Médica do Rio Grande do Sul	12.438.939,53
Ministry of Education	Fundação de Apoio da Universidade Federal do RGS	11.703.002,62
Presidency of the Republic	Fundação Darcy Ribeiro	11.000.000,00
Ministry of Science and Technology	Centro de Excelência em Tecnologia Eletrônica Avançada	10.458.202,64
Ministry of Science and Technology	Fundação Universitária José Bonifácio	10.281.096,80
TOTAL		530.202.279,94