Bureaucratic Criminalization

political-legal strategies, neoliberalism and the procedure of civil society organizations

Abong 30 anos

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Nowadays, due to the lack of a democratic political public sphere, in which agonistic confrontation could take place, it is the legal system that is often seen as responsible for organizing human coexistence and for regulating social relations. Faced with the growing impossibility of facing society's problem in a political way, it is the law that is used to provide solutions for all types of conflict.

(MOUFFE, Chantal, 2003, p. 18)

Structure

What is desired with this work?

Since 2020, the **Associação Brasileira de Organizações Não Governamentais - Abong** develops a legal working group **(legal WQ)** for assistance, monitoring and advocacy in the face of violations of the rights of civil society organizations (CSOs). To enhance this action, a research project was created to identify the main axes of non-compliance with rights that CSOs have been facing during the three years of Bolsonaro's government (2019-2021).

Since the beginning of the current government in January 2019, its authoritarian bias has been a constant threat to historically underrepresented populations, such as women, blacks, indigenous people and LGBTQIA+. The scenario has also become increasingly hostile to the activities of civil society organizations. In addition to Law Projects, which represent a setback to historically defended fundamental rights, organizations have been the target of several measures at the administrative level that aim to make it difficult to raise funds, impose undue payments or even raise questions about partnerships.

There are several examples of bureaucratic and tax criminalization. **One of them is the collection of TTCMD (Transmission Tax Cause Mortis and Donation)** on international donations, even without complementary legislation on the subject, as provided for in the Federal Constitution itself. Or even, questioning the accountability of partnerships in disagreement with the Regulatory Framework for Civil

Society Organizations (Law 13.019/2014). In addition to Provisional Measure 870/2019 sent to Congress, which had as one of its intentions to determine to the Government Secretariat of the Presidency of the Republic the supervision, coordination, monitoring and follow-up of non-governmental organizations.

This report, as part of Abong's larger project, **takes bureaucratic criminalization as its center of analysis and investigation.** In this way, we present here a part of the activity that Abong's Legal WG develops, contributing to a global analysis of violations of rights of CSOs and activists. However, in addition to a diagnosis of the processes of non-compliance with rights, this work is also presented **as a tool for action and political advocacy.**

Understanding the plots and legal-political arrangements that take place in the neoliberal state and in financial institutions, for example, can favor the creation of more articulated strategies in the search for guaranteeing full democracy and social participation.

What is the reporting methodology?

This research combined a qualitative and a quantitative approach.

For the first one, a focus group was held (December/2021) with **organizations**[1] accompanied by Abong's legal advisors and that presented any case of bureaucratic criminalization. In addition, interviews were also carried out (December/2021 to February/2022) with 11 other organizations and social movements that integrate or are in dialogue with the Platform for a **New Regulatory Framework for Civil Society Organizations**[2] and that did not necessarily receive this support.

The Choice[3] was made based on **three factors**:

- the **multiplicity** of guidelines and incidence in guaranteeing rights;
- territorial and regional **diversity**;
- the **constitution** of the organizations themselves (with or without legal personality, affiliated and unaffiliated with Abong, financing entities and direct executors of projects).

The questions that mobilized the **focus group** and the **interviews** were divided into three blocks: presentation and sharing of the organizations' work; the relations between civil society, the State and the financial sector; and the processes of bureaucratic criminalization.

1. The following organizations participated in the focus group on December 15, 2021, via the online platform (Zoom): Grupo Mulher Maravilha, Brasil Saúde e Ação and Thydewa.

2. "The Platform for a New Regulatory Framework for Civil Society Organizations is made up of entities representing the most varied fronts and segments that bring together organizations that work, for example, in the solidarity economy, in the promotion and defense of rights, in private social investment and social responsibility and in traditional areas such as health, education and social assistance whether community-based, religious or business" (ENAP, 2019, p. 5).

3. The interviews were carried out, via the online platform (Zoom), with the following organizations and movements: [...]

9 **[...] Instituto Pólis, Movimento dos Trabalhadores e Trabalhadoras Sem Terra - MST, WWF Brasil, Criola, Instituto Socioambiental – ISA, Grupo de Institutos, Fundações e Empresas - GIFE, Ação Educativa, Coordenadoria Ecumênica de Serviço – CESE, Fundação Luterana de Diaconia/Conselho de Missão entre Povos Indígenas/Centro de Apoio e Promoção da Agroecologia – FLD-Comin-CAPA, Fundação Tide Setúbal, Pacto pela Democracia.**

4. In this research, we worked with a sample of 135 responses (n=135) to the questionnaire. We consider that entry in which at least one answer to the following questions was filled in: Q3, Q5, Q5.1, Q15, Q16, Q16.1, Q18, Q22, Q24, Q26, Q28 ou Q31.

The quantitative mode of the report was linked to the constitution of the survey on the **Profile of civil society organizations**, also prepared by Abong with a focus on its affiliated organizations during the period of **November 2021 and January 2022**[4].

Some charts, resulting from this query, will be used in the report text. The questionnaire that was made available had emphases related to tax collection, whether at the federal, state or municipal level; to some State procedure that did not follow the **Regulatory Framework for CSOs (law 13.019/2014)**; to any undue questioning in relation to accountability in the partnership with the government; defamation, slander or injury by any public or private entity; and relations with banking institutions.

With the survey carried out and in dialogue with other studies, research and theoretical frameworks, we built **(i)** a conceptual argumentation of what is bureaucratic criminalization (read within the relationship between neoliberalism and the security state); **(ii)** we organize the systematization in some features that favor the diagnosis of the mode of operation of this criminalization; and **(iii)** we indicate some provisional recommendations to face these dynamics in the public and private spheres.

Finally, it is important to point out that the legal processes analyzed, together with the decisions of the public power and the political resistance, do not intend to cover all the problems of criminalization and violation of the rights of CSOs. **The cases discussed here were selected by citations in the focus group and/or in the interviews.**

What is the definition of “bureaucratic criminalization”?

The concepts emerge as a way of understanding a certain dynamic and lived phenomenon. They are **means of reading and solving a given problem or, at least**, rehearsing responses to it. G. Deleuze & F. Guattari, for example, state that

> “there is no simple concept. Every concept has components, and is defined by them. So there's a number. It is a multiplicity [...]. The concept is [a] matter of articulation, cutting and superimposition” (DELEUZE & GUATTARI, 2010, p. 23).

The **creation** and **use** of a given concept are linked to a certain practical-theoretical decision resulting from multiple factors: methodological commitments, epistemic links, worldviews, alliances and agreements in a given knowledge production community, among others.

For example, the term **“bureaucratic criminalization”** was used by the **Platform for a New Regulatory Framework for Civil Society Organizations** in 2010. According to Laís Lopes, Paula Storto and Stella Reicher, the use of this notion happens to designate a phenomenon “that is materialized especially through the administrative-bureaucratic path and through the entanglement in countless procedures, which often drain the institutional capacities of CSOs and materialize in the form of tax or administrative liabilities” (LOPES, STORTO & REICHER, 2019, p. 72).

Criminalization, therefore, materializes

> “in the unequal, non-isonomic treatment of CSOs in relation to other types of legal entity, through the same standards that institutional prejudice manifests itself in relation to other vulnerable groups in our society” (LOPES, STORTO & REICHER, 2019, p. 72).

In the table below, the authors systematize the characteristics of this institutional violence and help us to find a certain framework for reading the problem:

Table 1 -

Main characteristics of violence and institutional prejudice.
Source: (LOPES, STORTO & REICHER, 2019, p. 73).

Table 1 — Main characteristics of violence and institutional prejudice

Practiced by institutions →	Perpetrated by the institutions that provide public services and by agents who should protect the rights of users of the services. It can also occur in private companies and other institutions.
Disregards intentionality →	One of the important elements of studies on institutional prejudice is the lack of interest in the intentionality of the act of individuals or institutions that practice it. Public institutions, as a rule, reject its conscious intentional practice, but do not deny the existence of the phenomenon. Once specific cases and situations have been identified, it is possible to subsidize proposals for changing norms, practices and procedures in the structuring of public policies and the Public Administration itself in order to remove the criminalizing norm or practice.
Reveals material inequality in the treatment of constitutionally protected subjects →	Institutional bias accentuates discrimination against constitutionally protected groups, although disadvantaged. In practice, it can be identified by situations of discriminatory, non-isonomic treatment; by pilgrimage through different agencies or services until receiving adequate care; for lack of listening; for excessive waiting time; among others. Inequality in treatment is confirmed by data that show how these subjects of law systematically do not receive the service or care in an equal way to other groups, notably those who represent the dominant forces and holders of power structures.

Identifiable in specific cases

Institutional prejudice can be embedded in management decisions, organizational norms, disciplinary measures, laws and other expedients that denote discrimination resulting from unconscious prejudice, misinformation, lack of attention, application of prejudiced stereotypes. It can be detected in the speeches of managers, State representatives, employees and servants of public and private institutions. It may be present, in a more or less veiled way, in pre-established decisions, opinions, references, attitudes and behaviors that promote or reinforce inequalities.

This delimitation understands that the gesture of institutional violence is carried out, if we think from the public's point of view, by "institutions that should protect the rights of users". A failure to fulfill your destinations and intentions.

In a process of denaturalization of uses, protocols and gestures, a highlight is **the recognition** of the intentionality of individuals and institutions in deciding to act in this way. An operation that only reinforces "the discrimination of groups that are constitutionally protected, although disadvantaged". There is not, here, a policy of reducing inequalities, but an expansion. A strategy that criminalizes individuals, organizations and social movements through bureaucratic and administrative games, which occur, for example, "due to pilgrimages to different bodies or services", "due to lack of listening", "due to excessive waiting time".

A case that summarizes this experience was mentioned in one of the speeches of the grupo focal:

Interview A Grupo Focal.

I think it may seem very subtle, but it was something that caused us pain... Once we were in a process of accountability with the Ministry of Culture and, due to a problem with the process, we left the position of

qualified for defaulters [...]. It was very sad to hear even the supposed person who was in public office saying that she recognizes that it is a mistake of her team, that soon, we will soon leave this position. But the organization spent six months with a "spot". I don't remember if there was any specific problem, if we lost any money. But it's horrible to know that it was a mistake... It's happened that I go to account for the project, there's no answer, there's no answer, and the Ministry pays me a trip to Brasília. I thought it was going to be a conversation, but no, you hear: "we lost all the documents, let's see how we solve it" (A, grupo focal).

Let's go back to a term presented in the table that favors the argument that we are building in this report: "management decisions", related to "organizational rules, disciplinary measures, laws and other expedients that denote discrimination". This intentionality can be seen in the interview excerpt below:

Interview nº3.

Another very difficult relationship was with the TARE, assistance projects, so-called "technical assistance and rural extension". During the execution of the project, the ministry simply decided to add, add down the project, reduce resources and did not reduce activities with the beneficiary public. And contracts, tax contracts, that no matter how much we question the contract, there is nothing we can do. There's nothing to do. It's a political decision. Are we going to continue with this contract, with this agreement,

or not? There, internally, we are also vulnerable. Because, finally, the public are there, they want the project to be renewed. But from the administrative-financial-political point of view, the stress and the risk are enormous, in the accountability, in the closing of the project (interview 3).

There is, therefore, a distrust in relation to civil society organizations, another trait of institutional violence that is shown in mechanisms of criminalization. This does not guarantee a favorable environment for full social participation, for transparency in the application and use of public resources, for the effectiveness in the execution of projects and for the possibility of innovation of social Technologies. (ENAP, 2019, p. 5).

Bureaucratic criminalization, according to the document of the Escola Nacional de Administração Pública (ENAP), elaborated by Laís Lopes, happens "mainly due to the absence of clear and proper rules" (ENAP, 2019, p. 14). **The Regulatory Framework for Civil Society Organizations emerges as a way of overcoming this reality**, in which its main advance was to create a "specific legal regime for partnerships between the State and civil society organizations" (ENAP, 2019, p. 14).

The scenario of "legal insecurity" also puts organizations in a context in which the "specificities of non-profit private entities" are not recognized and do not offer "mechanisms for transparency and control of the application of public resources" (ENAP, 2019, p. 15).

However, some considerations help us to broaden the discussion beyond the criminalization-legal framework binomial. The **creation** and **use** of a certain concept is not necessarily a quick mobilization and with very precise definitions. Deleuze & Guattari again indicate that concepts are:

> “vibration centers, each in itself and in relation to each other. That's why everything resonates, instead of following or corresponding” (DELEUZE & GUATTARI, 2010, p. 23).

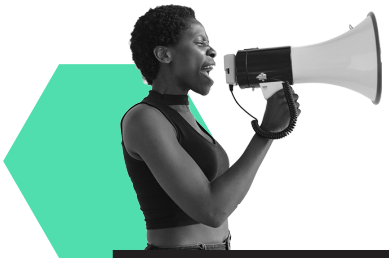
Although it is desired, it is not so simple to delimit in a “clear and distinct” way a certain notion. Sometimes, the meaning assumed in the formulation of a certain term is escaped, expanded and modified.

In one of the speeches present in the research, we indicate a problem about the definition of what “bureaucratic criminalization” is:

Interview nº1.

“from the point of view of the narratives, [bureaucratic criminalization] seems much clearer, but from the normative, legal, bureaucratic, we still have many doubts” (interview 1).

Discursiveness and operativity are linked. The difficulty in delimiting the mode of action is a result of the very object of our investigation. Legal and bureaucratic arrangements work to create processes for determining what is or is not allowed. But that's not necessarily its strength. Who and what determines an “inside” and an “outside” of normality and normativity has the possibility, even more sophisticated and nebulous, of creating a “zone of indeterminacy” between the legal norm and the exception to the norm.



It is as if the concept helped us to understand the non-compliance and violations of the rights of CSOs, but, at the same time, the institutional practice "staggered" between the inside and the outside of normality, escaping the conceptual and procedural security that is so desired.

Interview nº2.

"The point is that this always puts us in a situation of insecurity", says one of the people interviewed (interview 2).

A consideration that is not isolated, but that permeates all the interviews, the dialogues in the focus group and the process of creating the Regulatory Framework. Words such as **uncertainty, doubt, risk and distrust** mark the impressions of people and their organizations, something that makes the understanding that we want to build in this work about bureaucratic criminalization even more complex.

For this reason, an important consideration to be made is that this concept needs to be read from another notion: **the State of exception**. Giorgio Agamben indicates that "the state of exception is not, therefore, the chaos that precedes order, but the situation that results from its suspension. [...] The exception is caught out and not simply deleted" (AGAMBEN, 2004, p. 25). **The law (norm)** presupposes **the outside**.

The mode of operation is as follows:

> "it is not the exception that is subtracted from the rule, but the rule that, by suspending itself, gives rise to the exception and only in this way does it constitute itself as a rule, maintaining itself in relation to that one" (AGAMBEN, 2004, p. 26).

Thus, the legal system takes place from the exception, which is placed as the threshold between what is external and what is internal to the legal instrument. This is a possibility of reading that would not necessarily fit into the opposition between State of law versus State of exception.

In this characteristic of "deciding to act", we have the following narrative:

Interview nº4.

"how are we going to act now, because we are no longer in the democratic state of law. So as an organization, how are we going to act?" (interview 4).

One of the ways of reading this problem is the rescue or guarantee of legal frameworks. However, in the critical state of the law itself and its function in the governmental machine, read by Agamben, we can understand this speech in another way.

Through the law, the sovereign will (the decision) suspends the law to use prerogatives and decree the abandonment of the administrative framework.

For this reason, Giorgio Agamben says: the State

> "no longer appears as a threshold that guarantees the articulation between an inside and an outside, between anomie and the legal context by virtue of a law that is in force in its suspension: it is, rather, a zone of absolute indeterminacy [...], in which the sphere of creation and the legal order are dragged into the same catastrophe" (AGAMBEN, 2004, p. 87;89).

Therefore, bureaucratic criminalization is a symptom of the State's own mode of operation. It is not a mere disorder or breach of a right. The modern State is a State of exception and finds, in administrative-bureaucratic processes, a means of executing/suspending the law, creating the indeterminacy between permitted and not permitted. This strategy is related to another notion: **the security state.**

In order for the arguments constructed here to make sense, it is necessary to rescue an emblematic date: **September 11, 2001.** The same Giorgio Agamben seeks to analyze Europe based on the notion of security coined from this date. There is, from the imaginary of terrorism built at that time, another security perspective, “a security paradigm” that organizes the State and modern politics, inscribed in the history and origin of the “State of exception”. This paradigm

> “implies that each dissent, each more or less violent attempt to overthrow its order, creates an opportunity to govern it in a profitable direction. This is evident in the dialectic that links terrorism and the state in an endless vicious spiral” (AGAMBEN, 2013).

Why establish this link between the object of study of this report and this concept?

The gap for interpretation appears in a footnote to the article by Laís Lopes, Paula Storto and Stella Reicher:

> “The existence of more repressive norms for combating terrorism in the post-September 11, 2001, is pointed out as one of the factors responsible for the emergence of an institutional environment less favorable to the development of CSOs in several countries in recent years” (LOPES, STORTO & REICHER, 2019, p. 71).

5. More than 80 entities and personalities linked to social movements and civil society organizations signed a manifesto against the approval of this law. In one of the passages, it is written: "Democracy is made by the vote and the direct participation of the people. This participation is also due to militancy in social movements. Countless militants, however, were and are being, through their [...]

In 2014, we have the sanction of the Regulatory Framework for Civil Society Organizations (Law 13.019/2014), the result of a lot of advocacy and political articulation and a way of creating a parameter for partnerships between the State and civil society. But in this same period, we also have the sending of the project, by the Executive, of the **Anti-terror Law (13.260/2016)**[5], also sanctioned by President Dilma. If the first, as a narrative of the organizations themselves, is approved with the intention of facing the criminalization of CSOs, the second is based on the **antithesis** of the first, the criminalization of civil society organizations, social movements and activism.

Could it be that in both, in their particularities and distinctions, do we not have administrative arrangements to determine an **ideal type of political action and social participation?** Something that was signaled, in its own way, in the following excerpt from the interview:

Interview nº5.

[...] daily struggles, unfairly framed in criminal types such as disobedience, gang, robbery, damage, contempt, among others, in total disagreement with the democratic principle proposed by the 1988 Constitution. The proposal increases this segregationist Penal State, which works, in practice, as a mechanism to contain democratic social struggles and selective elimination of a class of [...]

Looking at access to public resources [6], this scarcity that comes from the dismantling of public policies is an even greater difficulty, because it was never easy for us to access these public notices either. We have an understanding that historically there has always been an option even to privilege civil society organizations that are not directly linked to the movements, it is an additional bureaucratic requirement that makes it very difficult. Another strong and important aspect of fundraising: [...] international fundraising, whether through agencies, NGOs , and including these international funds, in the last period we had very complex and super-demarcated situations, such as issues that are a milestone even at the beginning of the Bolsonaro government and the beginning of the problems that we have been facing (interview 5).

20 **[...] the Brazilian population. The enemy that is sought to be fought for certain Brazilian conservative sectors, which continue to influence the Executive, Legislative and Judiciary Powers, is internal, focusing, above all, on popular movements that demand profound changes in Brazilian society. Furthermore, combating terrorism itself is not a Brazilian necessity. Depredation, homicide, use of explosives, etc., are already crimes in Brazil. The creation of a specific figure does respond to external pressures, especially from the United States and other OECD countries, which take into account very different realities from ours, without any history of episodes that resemble terrorism" (DHESCA, 2015).**

6. The expression Non-Governmental Organization (NGO) does not correspond to a legal nature. The term emerged in the 1950s and was used by the United Nations (UN) to designate civil society institutions not linked to the business or state sector. In Brazil, several entities fought for its recognition and since Law 13.019/2019 (Regulatory Framework for Civil [...]

Finally, another important consideration to be made is about **bureaucratic criminalization and neoliberalism.** If social from Pier and Christian Laval to a political system is not a thinker of all relations with neoliberalism only, but is

> "economic, extending its influence to the whole world, expanding its influence and its social influence, extending its influence of social life" (DARDOT & LAVAL, 2016, p. 7).

In this approach, we find an intense articulation between the neoliberal mode and the State, not as an opposition, but as a **symbiosis.** The security state and its profitability strategies are effectively neoliberal.

And this process affects the **foundations of liberal democracy** as we know it, because, as these authors state, "the new rationality promotes its own validation criteria, which have nothing to do with the moral and legal principles of liberal democracy" (DARDOT & LAVAL, 2016, p. 382).

We see in this "undemocratic" grammar, marked by "management" and "good governance" of the public and citizenship, with the logic of deep competition, a:

> Dilution of public law in favor of private law, conformation of public action to the criteria of profitability and productivity, symbolic depreciation of the law as an act of the Legislature, strengthening of the Executive, valorization of procedures, tendency of police powers to exempt themselves from all judicial control, promotion of the "citizen-consumer" charged with arbitrating between competing "political offers", all are proven trends that show the exhaustion of liberal democracy as a political norm (DARDOT & LAVAL, 2016, p. 380).

Bureaucratic criminalization is thus presented as a feature of this neoliberal state, a "business government". In this way, the **"company state"** is subject to efficiency requirements similar to those to which private companies are subject" (DARDOT & LAVAL, 2016, p. 273).

But what interests us most is the restructuring of this State in the scenario of the ruin of a liberal democracy, namely: to the outside, we have "massive privatizations of public companies that put an end to the 'producing State'"; inside, an

> "evaluating and regulating State is presented, which mobilizes new instruments of power and, with them, structures new relations between government and social subjects" (DARDOT & LAVAL, 2016, p. 273).

Here is the process of constitution of relations between the governmental machine and civil society organizations, adjusted to the scenario of "productivity" and "effectiveness". The act of criminalizing or allowing certain political practices and actions is related to this neoliberal rationality, in its operativeness in the face of dissent and bodies, populations and territories seen as deviant from the logic.

Let's see below a consideration about "efficiency" and the processes of competition and good application between "invested" value and project "execution" time:

Interview nº6.

Today, for example, I would have the most accurate idea that, first, always the work plan of the organization that must be in force, and not a proposal that the government wants to invest in and is hiring us, and evaluating us as an employee

21 **[...] Society Organizations) the legal term Civil Society Organization (CSO) has been legitimized, which encompasses NGOs, entities, organizations and institutions. There is another important difference related to the political sense of action: there are organizations that define themselves as belonging to the so-called third sector, and there are those, belonging to the field that Abong is a part of, that "fight against all forms of discrimination, inequalities, for the construction of sustainable ways of life and for the radicalization of democracy" (https://outraspalavras.net/mercadovsdemocracia/as-ongs-e-a-multiplicidade-da-sociedade-civil/). Abong was an active party in this process, so we always use the legal term CSO. The exceptions in this report for the use of the term NGOs occur only in the transcripts of the interviews in which the expression appeared in the speeches of the organizations heard.**

who made a mistake, that did not comply. But that's the first question. The second question is the type of investment. As far as the State wants to lose resources by investing in civil society participation and organization, because organizations that will be able to develop a job very quickly, their own work is a job they want in a timely manner, fulfilling all these steps, but there are others that do not go (interview 6).

Finally, in a conceptual delimitation, we see that bureaucratic criminalization is the result of a relationship between the State (security and exception) with the “neoliberal reason” – and it happens through procedural and administrative arrangements.

This consideration shows us the complexity to face this problem, far beyond a mere constitution or readjustment of legal frameworks, although we recognize its importance and legitimacy. We are facing a symptom of a broad process of democratic deconstruction.

For this reason, the **State-enterprise** and its “management reform of public action” undermines the “democratic logic of social citizenship”, reinforces

> “social inequalities in the distribution of aid and access to resources” and produces a “growing number of ' sub-citizens' and non-citizens” (DARDOT & LAVAL, 2016, p. 381).

What do we systematize?

We organize below some features of the bureaucratic criminalization process.

a. Civil society and democratic “suffocation”

Civil society organizations are the result of the constitutional right to freedom of association (article 5, XVII of the Federal Constitution) and play a fundamental role for democracy, acting in **the defense of human rights, the rights of groups historically in the process of exclusion.**

In addition, CSOs play an important role in the formulation, monitoring and evaluation of public policies and in the defense of freedoms. For this task, it is of fundamental importance to have

Interview nº7.

“a free, autonomous, engaged civil society that actually participates in political processes, that exercises its role of social control. This is the basis of any democratic society” (Interview 7).

Since the beginning of the Jair Bolsonaro government, what has been observed is an increase in distrust in the field of organized civil society. Not that this movement did not exist before, as can be seen in the first Parliamentary Commission of Inquiry (PCI) of Non-Governmental Organizations (NGOs), which took place in 2001.

However, in recent years, there has been an escalation in attempts to criminalize CSOs, with draft laws and other legal measures aimed at controlling and restricting the scope of action of these organizations. **Let us also think about the post-2016 scenario, the year of the legal-parliamentary coup against President Dilma Rousseff.**

In the interviews, we also found this date as an important marker for the processes of "suffocating" the political action of activists, civil society organizations and social movements. It is also worth mentioning, **in this same movement, the murder of councilwoman Marielle Franco**, who still does not have her voters named and held accountable.

By specifically observing the modes of social participation and democratic strengthening in the face of the current Federal Government, we have a symbolic and fundamental fact for this study. **On the first day of the Bolsonaro government, Provisional Measure 870/2019** was edited, which assigned a new organization to the Presidency of the Republic and the Ministries.

Among the changes promoted by **PM 870**, there were: assigning to the Government Secretariat of the Presidency of the Republic the competence to

> "supervise, coordinate, monitor and accompany the activities and actions of international organizations and non-governmental organizations in the national territory" (provided for in article 5, II of PM 870).

The text represented a direct affront to the Constitution, which guarantees freedom of association and prohibits state interference in its functioning, in addition to being a form of surveillance, especially for those CSOs critical of the current government's policies.

The Provisional Measure was the target of several protests and hundreds of civil society organizations mobilized pressure on the National Congress and followed the process in the legislative houses.

The Mixed Commission of the National Congress (PVL 10/2019) responded to the demands of civil society and proposed an alternative wording to the article, removing the provisions of "monitoring and supervision" and changing them to "coordination and dialogue with the government". Even with the alternative wording approved by the two Legislative Houses, **the article was vetoed by the president.** Despite the veto, there was a victory. **PM 870 was transformed into Ordinary Law No. 13,844/2019**, with **the removal of the competence** of the Government Secretariat of the Presidency to control and intervene in CSOs.

Another process that marks this relationship between government and civil society is the dissolution, alteration or **institutional weakening**[7] of the Social Participation Councils, something also very punctuated in the dialogues carried out with the organizations. Let us remember, however, that the strategy of weakening these spaces was also a way of acting in **Michel Temer's administration**[8].

Specifically regarding the current government, this strategy takes place via **Decree 9,759/2019**, which determined the extinction of all councils, committees, commissions, groups and other types of collegiate linked to public administration that were established by previous decrees or normative acts, including some mentioned in laws that did not detail the powers and composition of Organs collegiate bodies.

7. On this scenario, check the Abong Note denouncing the intervention of the federal government in the National Human Rights Council, available at: https://abong.org.br/2019/08/29/sociedade-civil-denuncia-intervencao-no-conselho-nacional-de-direitos-humanos/.

8. One example, among others, was the work carried out in relation to the National Youth Council. Information can be found here: https://www.brasildefato.com.br/2017/05/17/sociedade-civil-perde-espaco-no-governo-temer-apontam-pesquisadores.

The Decree had the objective of reducing the participation of civil society in the elaboration, evaluation and monitoring of public policies and in the guarantee of rights. Despite the lack of clarity and the non-existence of an official list of which bodies would be covered by the Decree, the survey carried out by the Attorney General's Office (AGO) indicated that about **700 collegiate bodies would be extinguished.** Civil society reacted to this Decree and the Partido dos Trabalhadores (PT) filed the Direct Action of Unconstitutionality (DAU) 6121 in the Federal Supreme Court (FSC).

At the trial, in June 2019, the ministers decided to only partially suspend the measure of President Jair Bolsonaro, so that the collegiate bodies provided for by law or created by decrees, and mentioned in a later law, could not be extinguished.

At the same time, according to the FSC, there was no impediment to the extinction of the collegiate bodies created by decrees or other infra-legal normative acts. **It is worth noting that, as a way of resisting these processes, the Joint Parliamentary Front in Defense of CSOs was created on September 10, 2019**, composed of deputies, senators and an Advisory Council with eight **civil society organizations**[9]. Since then, the Front has been defending the basic right of free association and social participation.

In the interviews, we also found other attempts to criminalize civil society, as happened with the BNDES' Amazon Fund, in which organizations that had a current contract (2019) began to receive new requirements for the release of installments:

9. The Joint Parliamentary Front in Defense of CSOs is composed of the general coordinator, Federal Deputy Afonso Florence (PT/BA), sub-coordinators Nilto Tatto and Senator Pimentel, Deputy Eduardo Barbosa, as 1st Secretary General, and Deputy Lídice da Mata, as 2nd general secretary. The Front has an Advisory Board made up of eight civil society organizations: Cáritas Brasileira, Visão Mundial, Associação Brasileira de Captadores de Recursos (ABCR), Coordenadoria Ecumênica de Serviço (Cese), Associação Brasileira de ONGs e Casa da Mulher Trabalhadora (Abong/Camtra), Grupo de Institutos Fundações e Empresas (Gife), União Nacional das Organizações Cooperativistas Solidárias (Unicopas) and Fundação Grupo Esquel do Brasil (FGEB).

Interview nº8.

[...] Among these new requirements, there was a clearance declaration, which the organization had to sign, saying that none of the members of its board of directors had participated in a political campaign or had been politically affiliated, linking this to the issue of transfer of resources (interview 8).

The criminalization strategy emphasized party affiliation and its relationship with the transfer of resources to the organization.

The declaration demanded that the directors of the executing institution of the project

> "(i) are not also statutory directors of political parties;
>
> (ii) in the last 36 months, they have not participated in the decision-making structure of a political party or in work related to the organization, structuring and carrying out of an electoral campaign; and
>
> (iii) do not cumulatively hold a position in a trade union organization" (MPF, 2020, p. 1).

Called to respond, through the Public Prosecutor's Office, BNDES informed that the measure was intended to: **"ensure more transparency, neutrality and effectiveness to operations".**

A "decide to act", as we have seen, that creates an administrative-bureaucratic process with a neoliberal grammar of efficiency, neutrality and good governance of processes. But, as well indicated by Abong in a statement to the Federal Public Ministry, the declaration proposed by the Fund

> “sets up an attack on the Brazilian State’s constitutional guarantees regarding the right of free association and organization and the exercise of political rights without censorship or government intervention” (ABONG, 2020, p. 1).

And, in addition,

> “such requirements were not informed at the time of signing the contracts and even organizations whose contracts do not have a duration of 36 months are urged to sign such a declaration” (ABONG, 2020, p. 1).

The scoring of these processes shows a scenario of distrust and criminalization of CSOs, which results in the cut of resources and, consequently, in the progressive or immediate reduction of the entities' actions, programs and projects. We have, then, the questioning of the right to participation and social control. **If in neoliberal rationality we could speak of a citizen who has been transformed into a subject-company, entrepreneur of himself**; in an analogy, we could speak of a CSO-entrepreneur in its links from competition and private law. Thus, the possibility of interaction between the State and CSO happens, in the provocation of Dardot & Laval, in this way: “no rights if there are no counterparts” (DARDOT & LAVAL, 2016, p. 380).

But a counterpart based on which political criteria?

A **central question** in the dialogues carried out in the focus group and in the interviews pointed to a **reflection on the role of CSOs in Brazil and democratic strengthening.** We realize that the clarity of functions, purposes and political desires in multiple country projects can create reflections and ways of acting in

the face of the breakdown of democracy. As we are in this reality of “de-democratization”, it is interesting and fundamental to assume another **perspective for reflection and for the way of acting in the relationship with the State**, as narrated below:

Interview nº2.

A lot of the things that we do, we literally occupy one side of the trench. I will use this expression “trench” because it is actually an interesting metaphor, because we are in a field of dispute over what our cities and territories should be in Brazil. Much of what we do is to confront public projects, to confront proposals for public-private partnerships that may exclude people in Brazilian cities, to confront proposals for master plans, means of use and occupation of land that only honor the private initiative and the profit of the sectors that speculate with land. We see the state as fundamental, we do not abdicate the role of the state, nor public policies, however, with governments, with political groups and holders of power that are occupying the state machine, it is more common for us to have a posture of presenting contestations, confrontations, counter-proposals and resistances. Thus, [we chose] to support movements in territories and communities in their resistance process, strengthening these resistances; than we see ourselves collaborating with these power groups that are in governments to make projects of power or speculative projects viable (interview 2).

Or in this excerpt from another interview:

Interview nº3.

[...] at the same time, it is very important to value the reactions of civil society itself in its ability to articulate internationally incident voices in support of the role of organizations and major social movements in the country. Abong itself, when this whole process of criminalization began, had a very important role in defense and also in spreading a greater understanding of the role of civil society organizations. I think that Brazilian society has always had a very good relationship with the work of CSOs and social movements, even though criminalizations existed (interview 3).

A challenge for CSOs is to **assume conflict, dispute and political positions** so as not to be reduced to a totalizing mode of rationality and worldview; so that, in the face of a neoliberal state, there is some way of acting outside this logic, as stated in one of the interviews:

Interview nº9.

“We work very much in line with the State, with the demands that are State. I mean, we are guided, instead of guiding the policy. We became hostage” (Interview 9).

With this problem, it is necessary to remake some questions: **Which democracy, which social participation, which State, which are the meanings of civil society organizations?** In a hegemonic way, we can say that current democracy is characterized (in a project and a purpose) as a “liberal democracy”.

In Chantau Mouffe's reading, a democratic society, from the perspective of liberalism, is shown as a

> "pacified and harmonious society where basic differences have been overcome and where a consensus imposed from a single interpretation of common values has been established" (MOUFFE, 2013, p. 11).

We have, in this brief synthesis, a **democracy of consensus**, with the **concealment of conflicts**, the **strength of rationalism** as a model of civilization, **the emptying of passion**, **the centrality of the individual and the projection of abstract universalisms** (MOUFFE, 2003, p. 12).

More precisely, when civil society organizations talk about the affirmation and defense of democracy, which democracy are we talking about? Is it in the liberal way? Is this where an answer and a "dispute" with "undemocratic" neoliberalism lie"?

Let's go to an example. Thiago Trindade, when analyzing urban occupations and the struggle for the right to the city in São Paulo, presents the limits of the "participatory consensus" and the defense logics structured by the "democratic state of law" itself". The more "disruptive" actions – **such as land and property occupations** –

> "have their legitimacy questioned and are interpreted as an affront to the pillars responsible for sustaining the democratic regime" (TRINDADE, 2016, p. 220).

In an articulation between **sovereignty and governmentality**, the State acts in an ambivalent way, on the one hand it "invites" and expects social actors to participate in the institutional mechanisms

of public policy management; on the other, “those who operate outside this gravitational field are criminalized” (TRINDADE, 2016, p. 220). The challenge, finally, is not simply to defend and seek to reorganize political processes in the democratic pacification of liberalism, but to **create paths** for an effective radicalization of democracy.

One of the statements in the interviews symbolizes this problem:

Interview nº6.

We have been since 2018, right after the victory of the current president, discussing different issues regarding us as a movement, as an organization. Because since that period, we are at risk. We were not at risk after he joined, we were already at risk and he immediately declared that we were targets of possible persecution that he could develop. The problem is not what he does, it's what he says. What he does builds a field of law, of politics, but what he says approaches violence, discrimination. So it's not for nothing that you have every day a picture of discrimination and violence on television from different sectors, whether you're a woman or a young person. This has a huge impact on our relationship, and even more so because, as we are the poorest population and the one with other needs, the entire set of actions against society's criminality, of society's living conditions, falls on any black person. It doesn't have to be from an NGO or Congress or an authority, it will also have the same distrust, the same mechanism. And it would be no different, if it were, we would even have to be surprised (interview 6).

What we see in the current government in its relationship with civil society organizations, social movements and certain bodies is an intensification of a long process for those who already live at risk, even in the so-called democracy.

It is the exception turned into a rule:

Interview nº8.

“they [the federal government] tried, so to speak, to limit the performance of people in wholesale, so, for example, limiting access to indigenous lands, creating certain types of constraints” (interview 8).

How, then, to build processes to guarantee rights and imaginations of other forms of life in the face of a violence that seems to permeate everything? It is important to point out how the trace of criminalization and persecution is constituted from different processes.

In this reading, raciality is an essential organizer. Or in the words of Denise Ferreira da Silva:

> “since the end of the 19th century, raciality has operated as an ethical arsenal together – inside, alongside, and always-already – in front of the legal-economic architectures that constitute the pair State Capital" (SILVA, 2019, p. 33).

The arrangements on democracy are mediated by this game, including the construction of legal frameworks. In consensus processes, which **political habits will be allowed and which will be treated and created as violent actions?**

In the releases and constructions of protocols of administrative norms, what cannot be done – not only as a gesture of the current federal government but – from the security and racialized logic of the State itself? This is a fundamental debate for civil society organizations.

b. MROSC, reporting and accountability

The MROSC (Law 13.019/2014) is a legal framework for civil society organizations and represents an important change in the relationship between CSOs and public authorities, especially in the context of partnerships. There is recognition of the very existence of civil society organizations and the inclusion of these entities as a **fundamental part in the execution and monitoring of public policies.**

The legislation was the result of the **struggle and articulation** of the organizations, which acted to guarantee its legitimacy and its role in democracy. It is worth mentioning the significant role of the MROSC Platform in this mobilization.

In the historical process of regulating **the MROSC**, speeches of CSO control appeared several times, **however, the final text guaranteed the autonomy of civil society.**

The main changes established in the law are: the constitution of instruments, principles and guidelines for partnership relations; the mandatory public call; selection with guaranteed popular participation; the possibility of networking; the end of the requirement of financial counterparts; simplified accountability; the possibility of remunerating own staff and indirect costs; transparency; among others.

The approval of the new regulatory framework also had the objective of encouraging more partnerships between the public authorities and organizations. **However, data show that just over 30% of CSOs accessed public resources by 2016 (IBGE, 2019).** In addition to this scenario, between 2010 and 2018, only 2.7% had support from federal resources for project development (IPEA, 2018). A recurring answer to the question about whether or not to comply with the MROSC in the partnership with the public authorities was this:

Interview nº8.

"During this period, we did not have any accordance or agreement with the public authorities" (interview 8).

In the interviews carried out, this perception is very present: **access to public resources is scarce and more difficult to access in recent years. As said below:**

Interview nº4.

I think that even with the MROSC, which is a great struggle by civil society so that we have a relationship and this support, that we can form partnerships with the Brazilian state... But we can see that the business is getting stuck in its progress . What we perceive is that, there is still a lot of resistance because civil society organizations are mistakenly criminalized [...] And if criminalization is on us, that requires our position. What is required of bureaucracy, we have to present... I think our organizations are much more audited than certain companies that take government money. The level of auditing, the level of demand that is brought to our

organizations is much higher than that of companies. [...] So, I am very sorry that, even with MROSC, we have no possibility, we are not able to move forward (interview 4).

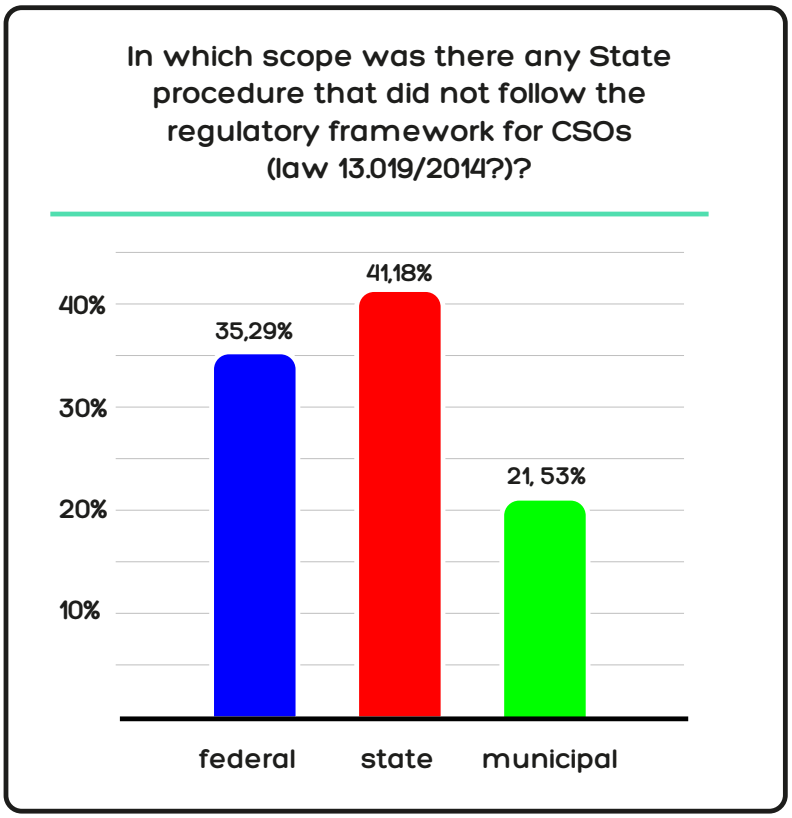
An important feature of **Law 13.019/2014** is that it is a National Law, that is, it has national scope and must be followed by the Union, States and Municipalities, without exception.

This is also an achievement. A single rule favors the definition of procedures and establishes jurisprudence. The MROSC became effective in 2016, at the federal level and, at the state level, in 2017. In 2016, Decree 8,762/2016 was also approved, which specifically regulates the rules and procedures of the legal regime of partnerships between the federal public administration and civil society organizations. The national scope does not prevent organizations from still facing problems in relation to the interpretation and applicability of Law 13.019/2014, especially at the municipal and state levels.

First, there is the widespread **complaint that the legislation is not known by public officials themselves.** Second, there are procedures for public calls, notices, celebration of partnerships and accountability that do **not follow national legislation.** Still at the municipal level, **there are laws that contradict the MROSC.** In the research carried out with the organizations affiliated to Abong, we see that the breaches of this legislation happened in the three spheres **(federal, state and municipal), but with an emphasis on violations in the states:**

Figure 1 -

In which scope was there any State procedure that did not follow the regulatory framework for CSOs (law 13.019/2014)



Although the MROSC has been in force for some years, some practices in the celebration of partnerships still refer to the previous legal context. Before Law 13.019/2014, there was no specific legislation for the relationship between the government and CSOs.

The legal basis for entering into the agreements was an interpretation of the Bidding Law (Law 8666/1993). This free interpretation given by the Brazilian legal system resulted in each entity of the federation establishing analogies in the application of the norm, generating different interpretations.

It was a situation **of legal uncertainty**, both for managers and managers of CSOs, as well as for managers and public managers, due to the absence of legal norms that guarantee which procedures would be adopted, case by case. There is still an important path to consolidate Law 13.019/2014 and guarantee its own instruments and principles, since some public entities still maintain practices of agreements and not partnerships.

About these breaches, there is a report that summarizes this scenario and that happened in the state of São Paulo in relation to the contract and the release of parliamentary amendments. In 2020, the organization presented a proposal for one of the mandates of the State Legislative Assembly, a project worth one hundred thousand reais, which was approved, entered the Budget Law and would have the year 2021 as the period of its execution..

Interview nº2.

As it was a project in the area of monuments and public memory, then this resource should be executed by the executive, through the State Department of Culture and Creative Economy. The Secretary of Culture contacted us to carry out the entire process according to the MROSC, to carry out the process of signing the collaboration agreement between the state of São Paulo and [the organization] to make it viable. We had to send the entire work plan, schedule, everything that MROSC determines, and then we were suddenly surprised by a demand from the Department of Culture that we would also have to present our accounting balance published in a newspaper, both in Official State Gazette as well as in circulation newspapers. This requirement does not exist in the legislation, in law 13.019, which is the framework of the MROSC. It was a requirement, yes, that existed in the past for you to obtain that certificate of public utility, which is something that the MROSC itself wants to extinguish. It became extinct at the federal level and it makes no sense to have this certificate of public utility in states and municipalities anymore. So we answered what was the legal support for the secretariat to make this demand, because

to make this publication, it costs more or less 5 thousand reais for you to publish this type of thing in the Official Gazette. And it's not a cost that the project will cover. The secretary wants you to take it out of your pocket to publish it; and they asked for the last two years, so we had to publish the 2019 and 2020 ones. We are talking about about 10 thousand reais of expense (interview 2).

One more important point to be mentioned in this study is that the new legal framework is not valid for agreements signed previously, so the context of legal uncertainty continues for organizations that had or still have agreements signed before Law 13.019/2014.

The main fact that draws attention **is still the approval of accountability.** In the interviews carried out and in the legal assistance provided by Abong, some organizations reported that in the last three years they received questions about the accountability of agreements entered into and ended many years ago, some of up to 15 years ago. Below, we present a report that summarizes this practice.

Interview C
Grupo Focal.

At the end of 2005, 2006, [the organization] had an agreement with the federal government to run professional training courses, a youth social consortium. In its 3rd edition here in Recife, [the organization] was going to be the anchor, umbrella entity. The project provided for 5 to 10% of counterpart, this counterpart was being obtained from the state government, which was very common, no organization could take it out of pocket, it did not have 5% or 10 of an amount of 1.5 million, 2 million. But in the course of this process there were

some complaints of non-technical criteria for the choice of some organizations at the national level, by the Ministry of Labor at the time. And then, apparently, as a way of responding to the press, Recife and another city that I don't remember, this project was discontinued quite abruptly. In the beginning the resources began to be executed. Despite the appeals, there were denials and we promptly closed the activities and made an account of what we had already started to use and return the rest. At the time we did the accounting and everything else. To our amazement, after 12 years, more or less, we received the communication of the need to return more than 150 thousand reais and the main amounts were going to be corrected, alleging that, the non-receipt and non-compliance with the rendering of accounts and all more (C, grupo focal).

This practice carried out by the government is unreasonable and can be considered illegal. **Decree 8,244/2014**, which regulates the agreements, for example, determines that the period for analyzing the rendering of accounts must be a maximum of one year, extendable for another year. Tax legislation establishes that tax documents must remain on file for five years. The legislation in force and the contracts signed in each case must also be observed. However, the questioning of accountability carried out several years after the finalization of the contracts has no legal justification and generates enormous insecurity and many constraints for civil society organizations.

Regarding the rendering of accounts of partnerships signed based on the Regulatory Framework for Civil Society Organizations, there are several guarantees

in the legislation, such as a deadline for analysis and approval. And the most important thing is that accountability must have as its main focus the achievement of goals and results and not the receipts and tax documents. Because it is new legislation, there are many organizations that are still going through the period of accountability, such as those that extended their contracts as a result of the pandemic.

Based on Abong's interviews **and legal assistance, the large number of organizations that have gone through or are experiencing difficulties at this stage are notorious.** The main fact is the lack of understanding on the part of the public authorities that the partnership relationship must be different and that accountability must be simplified, and that the regulations of Law 13.019/2014 must be followed. As stated earlier, the main objective is the analysis of compliance with the results and, only after this analysis and if the results have not been achieved, does it focus on the financial execution.

The context of the COVID-19 pandemic, in particular, generated new challenges for the whole of society and also for CSOs, which continued to act in this scenario. Many have even adapted their activities to be on the front line in combating the social and economic effects of the pandemic. Organizations that had or still have partnerships with the government faced some problems, such as the threat of suspension of contracts and transfers, lack of flexibility to adjust the work plan or extension. The excerpt below points to this reality, and deals with a project in Rio Grande do Sul, of Technical Assistance and Rural Extension (Tare), linked to the Federal Government.

The organization, in the middle of the contract, had

Interview nº3.

[a reduction] of resources in a very significant volume, and therefore we were not able to reduce the number of families served by the project. This brought internal chaos, because we had to lay off people from the team. With all this employer part, it was a very big weight for the organization. So we reduced the team, we reduced the project, but the project goals present in the contract remained the same. Then there was the whole process of the pandemic too, it was very difficult to contain, negotiate, for example, a stoppage of face-to-face activities for a while, especially there at the height of the first year of the pandemic. Natare [National Agency for Technical Assistance and Rural Extension] did not accept that the teams stop. There was a period of a certain stop, but later she told us that it was necessary to use all the protocols. We created protocols for action, but the teams were extremely vulnerable, the teams and families supported, so that was also dehumanizing. This also happened in Paraná, where there are also projects, there were Ater projects with Itaipu Nacional, the goals are also always practically inaccessible, and project structures are still very focused on goals and not on development. This is another difficult issue to build with the public sector, such as Itaipu and Natare itself (interview 3).

Based on the MROSC and the norms of the Brazilian Civil Code, the interpretation that the work plans could be adjusted or the extension of contracts is guaranteed, given the situation of public calamity.

However, this was not the interpretation given in some cases of partnerships, as seen above. It is noteworthy that the new context generated a movement of several transitional regimes designed to guarantee greater legal certainty for the different actors and activities carried out. Both this general context and the concrete situations experienced by CSOs generated the need to think about specific legislation in the period of the pandemic for partnerships signed between the public administration and CSOs.

The federal public administration has edited some rules regarding the extension of the validity of partnership instruments, such as **Decree 10.315/2020 and Interministerial Ordinance 134/2020.** However, these regulations were insufficient to regulate the issue in the other entities of the federation. In this way, based on the dialogue with civil society organizations, **Bill 4,113/2020 was proposed, which allows the renegotiation of goals and results and the extension of the execution and accountability calendar in the partnerships during the period of duration of the pandemic.** The text also guarantees that partnerships are extended by official letters and that non-compliance with initially proposed goals and results cannot be used as a justification for the suspension or interruption of contracts. Another highlight is the emergency and temporary partnerships between the public administration and CSOs, when the object is related to the fight against the pandemic, eliminating the need for a public call.

After its processing, with pressure and mobilization from organized civil society, PL 4,113/2020 was **approved in both Legislative Houses**, **but was vetoed by President Jair Bolsonaro**. Thus, **social mobilization continued**, the veto was overturned in the National Congress and the project was approved as Law 14.215/2021.

Still on partnerships in the context of the pandemic, one of the sectors affected was culture. Several CSOs had their activities suspended. In this context, the approval of the Aldir Blanc Law (14.017/2020) was very important, which has emergency measures for the cultural sector during the period of public calamity. With this law, funds were allocated to be used both in emergency aid for artists and for the maintenance of cultural spaces and the realization of partnerships.

c. Taxation and banks

According to the Institute of Applied Economic Research (IAER), in Brazil there are 815,616 civil society organizations that directly employ more than 2 million people and are involved in several projects across the country (IAER, 2018).

It is noteworthy that the vast **majority of these organizations are very small and have little structure.** However, there is no specific taxation regime for these entities or legislation that takes into account their specificities. This legal situation generates a direct impact for organizations regarding the tax burden, exemptions and immunities and the receipt of donations.

Regarding the tax burden, even exempt and immune entities pay an **average of 11.9%**[10] of their revenues for taxes and social security contributions, for example – and the tax burden has been increasing in recent years. While CSOs are treated without considering their legal nature, there are specific policies to benefit private companies, adapted to their formats, impacts and functions in the market, such as the Simple Regime and MEI.

10. According to data from the Internal Revenue Service (2018).

A specific regime **could fulfill the objective that the tax burden is compatible with the role that CSOs play in civil society.** As flagged in one of the interviews:

Interview nº10.

I'm not one of those people who thinks they don't have to pay taxes. I think the tax burden is important for you to maintain education, health, social assistance, social programs, security, keep the state running, maintain assistance for you to maintain people's retirement in the future. But how do you distribute this tax burden? Today we have a tax burden that is totally regressive, the tax burden falls on the consumer. When we consume, we pay everything and the poorer, the more the tax percentage falls on the person's income and the same thing on NGOs (interview 10).

There is a social context of debate on a tax reform also with some proposals in progress, such as PEC 110/2019 and the Debate Bills of Law 3,887/ Law 2020 and 2,337/2021, which are aimed at CSOs. Given the lack of specific alternatives for CSOs, the MROSC Platform and other action networks have been articulating around proposals that change the taxation of CSOs in Brazil. The **main thing is the institutional strengthening of the associations and a specific tax regime with the guarantee of differentiated treatment and favored with: simplified tax regime for small entities, incentives to act, restrictions on related measures and actions and promotion of donations and donors.**

Civil society organizations enjoy immunities and exemptions, and immunities can only be established by the Federal Constitution, while exemptions

are determined by federal, state, district or municipal legislation. **As a result of the country's redemocratization process, the Federal Constitution of 1988 established tax immunities in favor of CSOs.**

However, it determined that the requirements for immunity would be established through a supplementary law. Given this, there is a long debate about the requirements that entities must meet to enjoy this right.

Among the requirements, one of greatest relevance is the Certificate of Beneficent Entity of Social Assistance (CBESA). A condition for tax immunities from social contributions for health, education and social assistance entities. The topic generated a great deal of debate, including judgment by the **STF**[11]. The trend, including determined by the MROSC, is to overcome this restrictive imposition of certificate requirements for immunity. In addition to this question about the constitutional need for a complementary law to define requirements for the enjoyment of immunity, and what they would be, another relevant issue in relation to immunity is about its scope for taxes such as IOF, IPTU and ICMS. In the **STF**[12], there are some actions on these topics that, in general, discuss whether tax immunity is possible for activities performed, mainly due to the relationship with the essential purposes of the CSOs involved in the proceedings.

And yet, a third point that relates to immunity is the discussion about its extension to other CSOs. In relation to this, there are proposals for tax reform, as mentioned, and also actions in the STF that claim the extension of immunity for civil societies for the provision of legally regulated profession services, cooperatives and private pension entities. Regarding exemptions, different legislation in federative entities is scarce on tax exemption for CSOs, which also causes legal uncertainty and greater

11. Direct Actions of Unconstitutionality n. 2028, no. 2036, no. 2228 and no. 2,621 and Extraordinary Appeal n. 566,622.

12. Among these actions, the most prominent and the only one with general repercussion is the Extraordinary Appeal 611,510, which discusses the incidence of the IOF "on short-term financial operations carried out by political parties, unions, education and non-profit social assistance institutions". , beneficiaries of immunity from the aforementioned tax".

tax burden. In general, organizations even having the right to immunity and exemptions still go through a long process to obtain this right, and in some cases there is a need for judicial process. Therefore, an important point about bureaucratic criminalization and taxation is the understanding of the legal nature of activities carried out by CSOs. In the interviews conducted and in the legal assistance provided by Abong, there were two organizations that faced questions about partnership contracts or contracts signed with financiers understood as providing services.

In these cases, the public power understood that the contracts would be a service provision and therefore the tax would be levied on such activity. It is not that organizations do not provide services and have to pay tax when performing such activities, but, in specific cases, contracts are not services rendered, but donations or partnerships established by Law 13.019/2014. An example is found in the case below, a charge of ISS (Service Tax):

Interview nº2.

[The problem] precedes Bolsonaro's election, because it started in 2016 and continues to this day, so it's been five years, at least in this case. It was at the end of Haddad's administration that an inspection took place by the Finance Department of the Municipality of São Paulo [in the organization] and the inspector understood that all our projects should be classified as providing a service. As everyone knows, CSOs that provide services, really with this nature of service provision, they can issue invoices, collect service tax and such [...]. For example, we received a resource

from the European Union, we received a resource from the Ford Foundation, in short, from any of these international supporters. These projects do not qualify as providing services, I am not a service provider for Ford, I proposed a project and Ford decided to give me a resource to support me. So much so that I need to account for what I do, including financial accounts, if I don't spend the money I have to return the money. There is no such thing in the provision of services, you do not have to return money, unless you do not comply. So, no CSO in Brazil treats its projects as a service provision contract, but what did the city of São Paulo understand at that moment? That in [our] case, all the resources that we had received throughout 2015, all should have been issued a note and paid the municipal tax on services. This gave, in global amounts alone, more or less 500 thousand reais in tax collections. If you add fines and interest, that's up to 1 million today. And the institution obviously does not have the resources to pay and make this payment. But regardless of whether or not you have the money, it is an improper charge. Result: we appealed administratively and we were not successful, [the organization] lost the possibility of issuing municipal clearance certificates in São Paulo since 2016. This is very bad for us, because in several fundraising processes we need to present the clearance certificates (interview 2).

Donations are a topic of great relevance when dealing with Brazilian tax legislation. In the universe of CSOs, donations are a considerable source of their

funding and sustainability. There is little incentive for donations and donors, in addition to the collection of TTCMD (Transmission Tax Cause Mortis and Donation) which will be dealt with below, there are other issues such as SRF audits and declaration in the Real Profit form, which makes most of donors (individuals or companies) do not receive an incentive.

With regard to donations, they are not formally recognized in the national financial system as a form of financial transaction other than payment. As this is the case, organizations face difficulties in receiving national donations by bank slip or direct debit, as well as **foreign exchange transactions**[13].

13. Based on the experiences of the CSOs, the Banking Framework for Donations was created, idealized by the Brazilian Association of Fundraisers (BAF) and transformed into Bill No 3.384.

Regarding the collection of tax on donations, the Federal Constitution determined that the tax is the responsibility of the states and the Federal District (DF) and is levied on the transfer of ownership of any goods or rights. Thus, the constitutional text founded the Tax on Transmission Causa Mortis and Donation (TTCMD) and determined that it would be up to the complementary law to define the generating facts, calculation bases and taxpayers.

One of the forms of bureaucratic criminalization occurs through procedures of some banking institutions that impose an unequal and non-isonomic treatment for civil society organizations, compared to the treatment given to other types of legal entities. The difficulties reported by CSOs concern the delivery of documentation and powers of attorney, always with new requirements; obtaining a credit card; exchange process for donations; fee collections; among others.

In general, it is observed that there are no specific procedures for non-profit associations and foundations or adaptations to meet this legal reality.

The states and the Federal District created laws instituting the ITCMD and the donation of financial resources became taxed, with the exception of donations to social assistance or education CSOs, which have constitutional immunity.

Some states grant exemptions for CSOs, but even immune or exempt organizations face bureaucratic hurdles. This whole situation creates a disincentive to the transfer of private resources to civil society organizations. Brazil goes against the world trend of differentiated treatment of donations destined for these organizations, either in the form of exemption or rate reduction. In view of this scenario, there is the proposal of **PEC 14/2020** to amend **article 155 of the Federal Constitution**, prohibiting the institution of **ICD** on transmissions and donations to civil society organizations and research institutes.

There is still another specificity about the ITCMD in the 1988 CF. It was established that a complementary law would be in charge of defining the competence to tax, if the donor is domiciled or resident abroad. This **supplementary law was never edited.** Despite this, some states began to tax donations from abroad, which has caused great burdens for CSOs. **Some organizations, in order to gain access to donated resources, pay the tax, while others file a writ of mandamus questioning the collection**[14], as reported in some interviews.

One of the organizations interviewed reports a process in which the possibility of receiving international resources was **blocked for nine months.**

Interview nº5.

I can list nine organizations that have a political relationship with [our organization] that literally had [a blockade]. I can use the

14. "We never lost any writ of mandamus, but this delays the exchange process by an average of 2 months, until it leaves. Because we have an official procedure, [...] we have to be notified that the exchange has arrived at the bank, the manager has to make the request, they do, either from the ITCMD payment slip or from a process together to the State Treasury, exempt from the ITCMD. This process is a separate department, because it is almost impossible to obtain such an exemption; the level of documentation they require is an absurd business" (interview 5).

expression blocking because it was nine months without being able to make any exchange operations. But officially this block does not exist, it is difficult to put the whys like this, because it is not official, but it was real. At Banco do Brasil, Bradesco, Itaú, Santander, for nine months we couldn't. Banco do Brasil was the bank where we had an open account and Bradesco. At Banco do Brasil it was a real blockade: "we don't do currency exchange for you anymore". And so, in the same period, exactly in the same period, all Banco do Brasil accounts of these nine entities stopped making exchange, so it was an articulated action in fact. Now, real blocking did not exist; even the managers didn't know what to say, some, who were even sympathetic to the organizations' work. And so, it wasn't just in São Paulo, it has an organization in Brasília, an organization in Salvador, São Paulo, Rio de Janeiro and one in Porto Alegre, in Rio Grande do Sul, that was in Banco do Brasil. Bradesco requested the closing of our accounts, in four entities [...]. Accounts closed at Bradesco, compulsory returns of investments. Thus, with the right to cancel vehicle insurance, return of application free of charge for us. Itaú and Santander did not accept to open an account, we spent nine months without being able to carry out any exchange operation through the traditional banking system. Banco do Brasil did not close the accounts, but closed the possibility of making foreign exchange operations, which since the beginning of the Bolsonaro government has been the main source of funds for the movement in addition to marketing, which is an important source (interview 5).

Besides ITCMD charge.
Here comes a second moment, the second type of problem with Caixa Econômica, in São Paulo and Rio Grande do Sul. Because the compulsory collection of the ITCMD does not occur in all states. The ITCMD has states that have state decrees and others do not, so more specifically in the state of São Paulo. The only bank that exchanges currency for us today [...] is Caixa Econômica Federal. By a state law here, Caixa Econômica Federal only carries out foreign exchange operations, even if it is a donation, with the compulsory collection of the ITCMD (interview 5).

Another organization, of smaller size, also went through a similar situation:

Interview A.
Grupo Focal.

I have now received from Cultura Viva, a pool of the Ministry of Culture of Latin America, a small resource. [...] When I arrived at the bank, it had never happened to me before, they came with the story that it was inheritance or donation and they framed me in a law that had never happened to me before. I have already received about 15 or 20 times, more or less similar money from abroad and this law had never been passed on to me. [...] During 1 month I went to the bank several times, I went to Sebrae, to Sefaz, to all the organizations and there is no one who can give an answer. At the moment I needed the money [...]. I'm going to lose 5% of the money, but I need to. But it's a tax that I had never paid before, if it's a mistake, I don't know, but I thought it was

crazy that they charged me in a donation law, I think for large inheritances, because a donation of 3 thousand dollars is absolutely nothing, but it is this. [...] I don't find any right information, because if I find the right information and go, the woman at the bank tells me: "yes, it's right, but here at the bank the law, the order is such, I don't pay money outside if there is nothing else". So that's the federal law, but here at the bank... this bank isn't from Brazil, is the federal law for everyone? I get a little lost, but I've had times when I paid for something I shouldn't have paid because I got tired of fighting for what was fair (A, grupo focal).

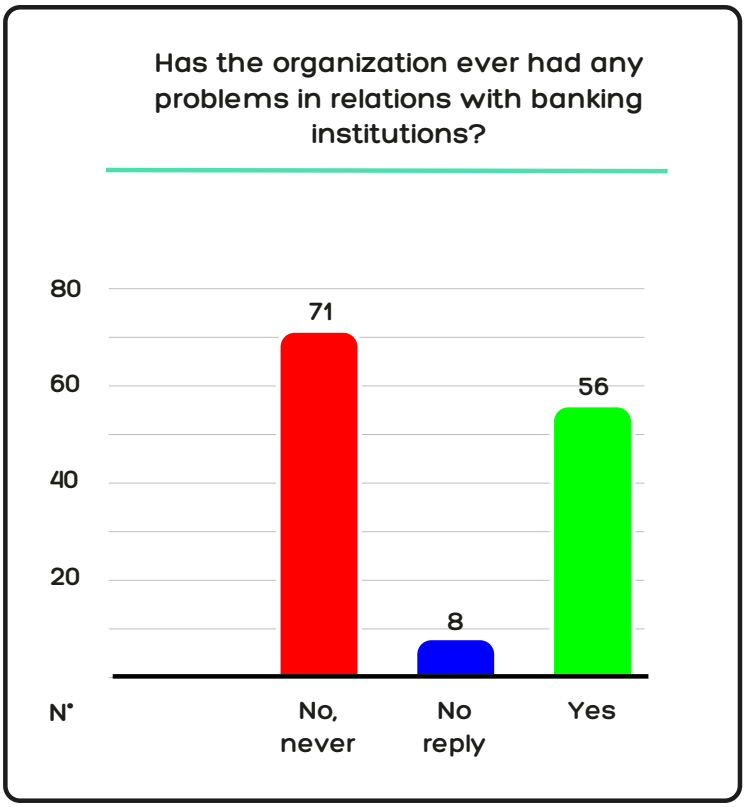
This situation has generated some lawsuits in the Federal Supreme Court, the main one being the Extraordinary Appeal (EA) 851.108 with general repercussions and which discusses whether states have full legislative competence to establish general rules to institute ITCMD of donations and inheritances from abroad. The plenary of the STF decided that this competence does not exist. The judgment took effect from April 2021, considering that the

Interview nº5.

"charge is improper [...] on international donations to non-governmental organizations" (interview 5).

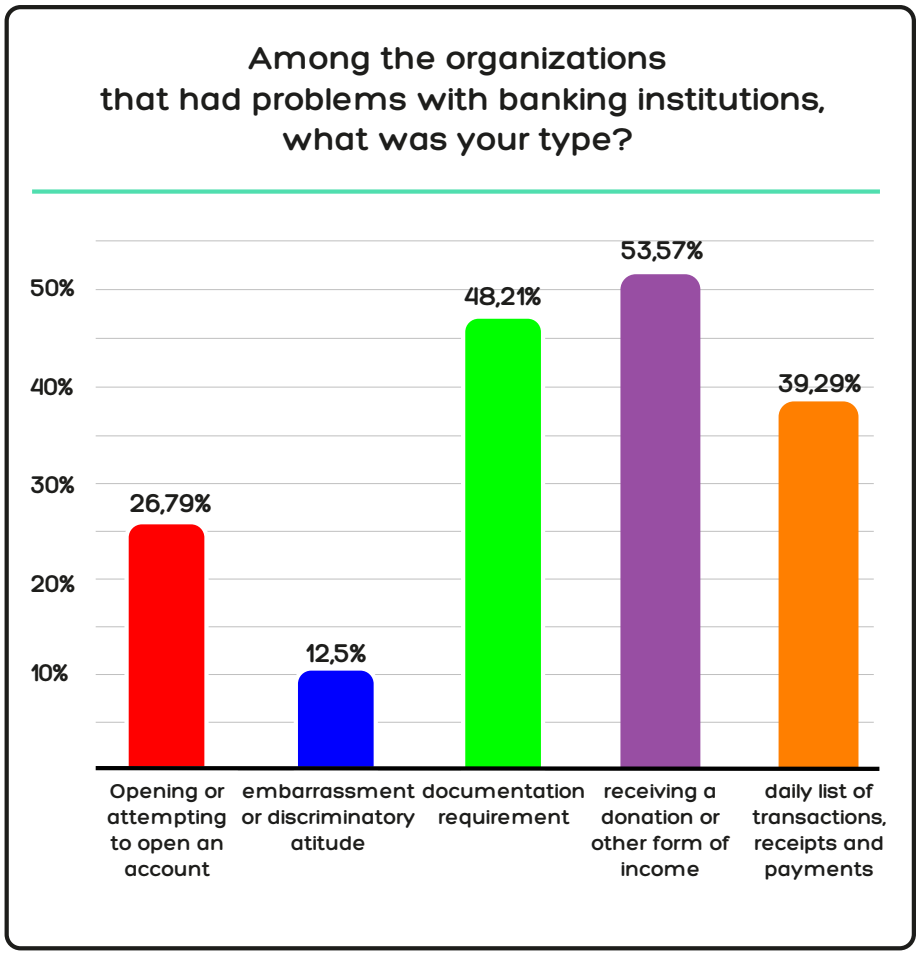
Still on this topic, in the survey carried out with Abong associates, we observed **that 56 organizations had some problem in their relationship with financial institutions.**

Figure 2 -
Has the organization ever had any problems in relations with banking institutions?



We see below that the highest prevalence of problems is precisely the discussion we have presented so far, the “receipt of a donation or other form of income”, which **represents 53.57% of the cases**, followed by the “requirement of documentation” (48.21%) and the “daily relationship of transactions, receipts and payments” (39,29%).

Figure 3 -
Among the organizations that had problems with banking institutions, what was your type?



In relation to documentation, as they are legal entities governed by private law, there is freedom to define the way in which they operate or who is legally responsible for the institution. What will determine are the bylaws of associations or foundations, which must be respected by banking institutions. About getting credit, following the same reading, despite being non-profit, there is nothing that determines that they cannot have credit cards like any other legal entity.

The organizations' reports indicate realities contrary to these rights:

Interview nº8.

“we had a change in the bank's practices. We work a lot with Banco do Brasil, which started to demand excessive documentation and access to contracts in order to make the exchanges” (interview 8).

Or still, problems in relation to the use of credit. The organization, for example,

Interview nº10.

“when it came to creating a credit card [...], [we] had to fight, fight, fight, to know why they didn't want us to have the card, given the expenses we had to pay. thinks they are important and that we could use. The card would facilitate the method of payment. Why couldn't the NGO use the card?” (interview 10).

Finally, a **recurring speech** in the interviews was the **collection of bank fees**, as in this report by the focus group:

Interview D. Grupo Focal.

“Caixa Econômica Federal gives a little trouble in the sense that they charge me a maintenance fee when they shouldn't charge me and they never worry about refund me” (D, focus group).

For accounts opened to receive funds from partnerships, the MROSC itself (Law 13.019/2014) establishes in its **article 51 that CSOs are exempt from paying bank fees** at the public financial institution determined by the public administration.

d. The gestures of surveillance and control

Another trait to be considered in this criminalization process is the **surveillance and data control strategy.** The government, as we know,

> “is understood not as an institution, but as an activity that consists of conducting the conduct of individuals and the population within a legal framework and with the instruments available to the State” (CARDOSO, 2018, p. 92).

It is in the articulation between many actors and actresses, between different agents, that the processes of government of certain bodies, populations and territories take place (especially from intersectional combinations of gender, sexuality, raciality and class). The point for us now is **to signal how this mode of action, marked by the use of technology and surveillance of data and information, constitutes a means to persecute and criminalize civil society organizations.**

Let us think, for example, of the case narrated above in which an organization and its direct partners were unable to carry out any banking activity for nine months. How can a bank, in different agencies, states and moments, cross all the information and act, by

using the information and data, to try to financially "suffocate" a movement that has a right to act? **The vulnerability of CSOs is latent.** As said in another interview:

Interview nº3.

We realize this with agreements, for example, with [a public bank], that this year, in all humanitarian aid actions, we had many difficulties from the political bureaucratic point of view. To the point, for example, of servers [...] making contacts unofficially, but we know it's official, it's just not official; of people having to remove posts from official pages, as this could make it difficult to send new installments, which boss would have made comments: "how is this organization receiving resources, if it is there publishing positions that affect the government?". So we had this great stress and in a way we felt very vulnerable in terms of reaction [...]. We need the resource, it's all very fast, often there's no way to articulate support (interview 3).

What also happens with another organization that we talk to:

Interview nº8.

We even had a message that we received from a bank manager, telling us that in this government there would be no need to break bank secrecy – which we had on account of the CPI of Funai and Incra. We had a request for breach of confidentiality, we went to court and managed to secure it and such, as a matter of principle. Because there was no evidence, no complaint to justify it, and then, perhaps because of knowing that this

had happened before, the manager came to tell us that we had to be smart because in this government there would be no need for breach of confidentiality (interview 8).

How to create, therefore, a guarantee of data and information security of civil society organizations in this scenario of broad surveillance?

A problem arising from this is presented in the transparency policies assumed by the CSOs themselves, which **disclose their actions, their reports, use of resources and many other details as a means of transparency in their management and accountability, including against the criminalization of organizations and for the good relationship with international partners.** An entity, for example, when formulating its information security policy, including related to the **Data Security Law (Law 13,709/2018)**, was concerned with expanding care.

The organization

Interview nº4.

"started to use, in 2020, and even before the pandemic, we were already adopting, more illustrations than photos of defenders of rights" (interview 4).

With this change,

"photos are now used in the statements, but we understand that identifying the territory or the movement is something that weakens, we started to use the statement without identifying that person" (interview 4).

Basically, what we have is that

“criminalization has changed our entire communication routine” (interview 4).

Including disclosure, as one of the milestones of transparency and governance of the team that coordinates the entity and at the detailed level of presentation of personal data for a partnership with the State.

Something that is, as CSOs have signaled,

Interview nº6.

“part of the control process, and in this case, it is not necessary for all state funding actions to be like this” (interview 6).

e. Defamation as a political strategy

There is an **environment of distrust** of CSOs enhanced by the Bolsonaro government that affects the **organizations reputation and credibility**. Several CSOs suffered in the last period accusations that can be classified as crimes of slander, defamation or insult, all provided for in the Penal Code.

In this aspect, there is a greater **intercurrence on the CSOs that act in the environmental defense** and that are recurrently responsible for the destruction of the Amazon or for the diversion of resources. **There is the emblematic case of the brigadies who worked in Alter do Chão**, were arrested and responded to a civil inquiry accused of being the authors of the fires in the Amazon forest that occurred in September 2019

Interview nº11.

[In this] episode of Alter do Chão, where within the story they invented to be able to arrest the brigadiers, [the organization] appeared. The story that the police made

up there, press conference and all, was that the brigadiers were deliberately setting fire to the forest, to gain a resource to put out the fire. You create a problem to sell the solution and that who would be financing them would be [our organization], which would be collecting, in turn, outside Brazil, with Leonardo DiCaprio and all this gang. There was a gigantic fake news that involved [us] as a part of this supposed mechanism to create a false problem here. This is within the bolsonaristic narrative, the narrative also of agribusiness, which is a conspiracy theory, which says that there is no real problem of deforestation. "None of that, this is all normal. In fact, there is no problem, it is all normal." So they keep making up stories that what is happening is normal. Or the little problem it has, the NGOs themselves create it, within an international mechanism in which NGOs are sometimes [...] external competitors, sometimes they have a commercial interest. In this case, it's in the commercial line, that [our organization] would profit from the fire in the forest, so it would pay the guys to set it on fire. That was the narrative that had there, so we got involved in that and, once again, then it comes back into the far-right hate networks. (interview 11).

After a long process, the investigation resulting from this case was closed. However, there is an important point made in this same interview that is linked to the discussion about the security state and neoliberalism. **The Amazon Council, under the leadership of Vice President Mourão**, was building an action plan and one of the items present in this material leaked to the press was: **"controlling civil society" (interview 11).**

The same strategy used with MP 870. A desire that unites several wings of the current government:

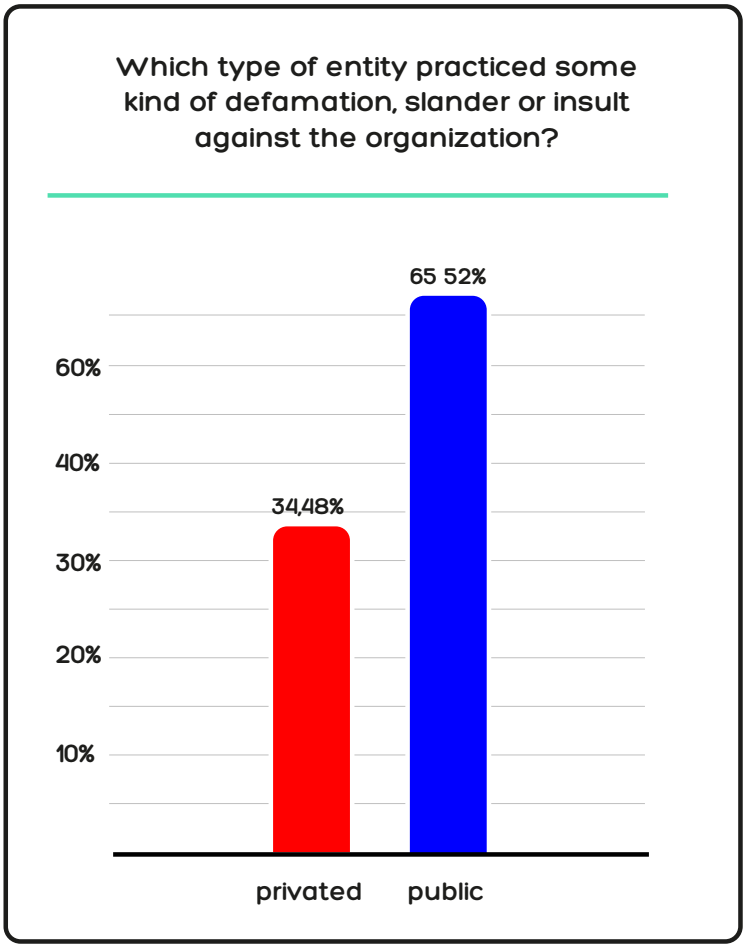
Interview nº11.

"it is in the minds of both the military, I think the military is an important factor in this, as well as the ideological wing. Everyone, I would say, this is something that unites everyone, the ruralists, the military and the ideological" (interview 11).

15. Of the 135 organizations that responded to the questionnaire, 18 of them indicate having suffered, at least once, some type of defamation, slander or insult.

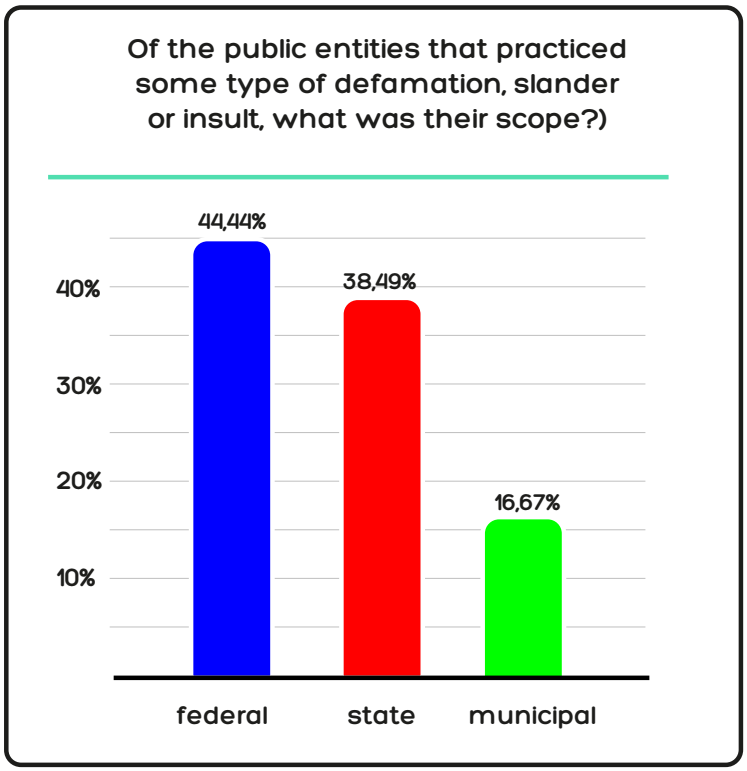
There is, **therefore, a plot that involves the militarization of life, the propagation of defamation and fake news, linked to administrative-bureaucratic and surveillance processes for the cover-up and persecution of political projects dissonant to the one led and represented by Bolsonaro.** Most organizations **associated with Abong**[15] who have suffered any type of slander, defamation or injury have the public entity as their agent.

Figure 4 - Which type of entity practiced some kind of defamation, slander or insult against the organization?)



And within the spectrum of public entities, **the Federal Government is the one that most performs this practice**, especially in this period of analysis of the study (2019-2021).

Figure 5 -
Of the public entities that practiced some type of defamation, slander or insult, what was their scope?)



Persecutory narratives and rare cases of misuse of resources have already generated **CPIs aimed at non-governmental organizations, such as the CPI of 2003-2005 and 2007-2010.** In 2021, there was a new CPI request presented by Senator Plínio Valério (PSDB/BA) based on generic arguments and with the absence of data or concrete complaint.

It states that "complaints have been heard", that there are "growing doubts about the role played by non-governmental organizations", that organizations have "proliferated" and that they have been "receiving exorbitant amounts of public resources". The main focus of the request is the organizations that work in the Amazon. Despite the senator's request, the CPI was not instituted.

When frivolous, generic and materially unsubstantiated complaints are raised against the field of CSOs, the

intention is to criminalize the actions of organized civil society and rights defenders. In addition, **the attack on the credibility and reputation of CSOs harms their performance, as it hampers funding, day-to-day activities with the public and generates great wear and tear with judicial proceedings.**

In addition to the narrated case involving environmental organizations, **defamation as a political strategy** is also strongly aimed at CSOs active in **gender and sexuality projects**. At least two episodes were presented during the interviews and the focus group:

Interview nº3.

There is a lot of fake news in relation to projects that we carry out with Petrobras. During this period of the Lula government, we carried out projects with waste pickers, with funds from Petrobras. There, our entire compliance process on social networks, not on social networks, on the website in relation to documents made public, were then used to create fake news [...] by extreme right-wing groups that were formed in 2016 [...]. Fake news was produced with images of the accounts, the rendering of accounts of the project linked to the Lula government, talking about deviation, that we were then using corruption resources, so we were also a corrupt organization [...]. It is a political and bureaucratic criminalization at the same time, because it involves the government, a government of the left and which is always used to attack an organization that works with issues of the so-called moral agenda, which is gender and LGBTQIA+ rights, so there are contents there and subterfuges to try to disqualify the organization and the leaders (interview 3).

Interview nº10.

Now there is also the issue of gender violence, which was material that was censored, that was never published. We called it Cadernos de Gênero, which said that you have different types of family, man with woman, woman with woman, man with man, alone and such. The variations were explained, and that was also a cause for scandal. So these are ways that the [organization] ended up being censored, so to speak (interview 10).

f. Financing and the havings

There are more **than 800,000 civil society organizations formalized in Brazil that directly employ more than 3 million Brazilians directly and more than 5 million professionals indirectly**, moving, with national and international solidarity resources, about 5% of Brazilian GDP (IPEA, 2018). By data from the **Map of Civil Society Organizations**[16] , prepared by IPEA, **about 80% of Brazilian NGOs do not access public resources.**

16. <https://mapaosc.ipea.gov.br/>.

Between 2016 and 2020, however, there was a drastic decrease in the transfer of public resources to NGOs, both at the federal, state and municipal levels, a consequence, among other factors, of **Constitutional Amendment 95, created in the Temer Government**, which **froze the resources for social areas for 20 years (IPEA, 2018).**

Let us consider some specific cases of funding for CSOs and their links with bureaucratic criminalization movements. In relation to resources financed by the National Bank for Economic and Social Development (BNDES), for example, funds related to combating climate emergencies were paralyzed.

Since the beginning of the Bolsonaro government, there have been several disputes **over funds.**[17] The Ministry of the Environment (MMA) even suspended agreements and partnerships with CSOs for 90 days and determined the lifting of all transfers from the Climate Fund and the Amazon Fund.

The narrative for this decision was related to the propagation of defamation and fake news, to administrative-bureaucratic processes, to surveillance and to the persecution of projects that were inconsistent with the one defended by the current federal government.

Interview nº11.

What he [Bolsonaro] managed to advance in that first moment, which is as far as I have news and I know, as far as I know, he managed to advance in what he thought he was... would already be a very important factor in reducing the performance of the NGOs, which was to cut the funds that depended in some way on the Brazilian state to continue functioning. So the Amazon Fund, right at the beginning of the mandate, the environment minister, Salles, went there, ordered everything to stop, said that the NGOs were diverting resources. He didn't present any evidence, he created chaos, the thing stopped. We had I don't know how many billions there, it's standing still. So they understood in their heads, I don't know if out of ignorance, I don't know what it is, if in fact it's what they could do alone, but making the sources cease, like the Amazon Fund, the Climate Fund, everything that depended on it, all the international cooperation that depended on the Brazilian government to move forward and reach the hands of civil society, they stopped everything possible (interview 11)[18]

17. As can be seen in the "Chronology dossier of an announced disaster: actions by the Bolsonaro government to dismantle environmental policies in Brazil", produced by Ascema Nacional. A document available here: https://static.poder360.com.br/2020/09/Dossie_Meio-Ambiente_Governo-Bolsonaro_revisado_02-set-2020-1.pdf.

18. The article by Barbara Unmüßig, published on 24/05/2016 on the website of the [...]

This strategy, accentuated in the Bolsonaro government, is not unique to Brazil. The process of restricting funding for civil society took place in other parts of the world.

Interview nº11.

"This is the pattern that we saw in several countries, in India, in Hungary, in several countries. [...] As I make the life of dependent organizations difficult, progressively difficult, until they close" (interview 11).

[...] Heinrich Böl Foundation, addresses this reality. Titled "Civil Society Organizations Under Pressure," she writes: "Around the world – and on a scale not seen in the last 25 years – governments are increasingly confronting civil society actors. The topic urgently needs to be included in the agenda of debates on foreign affairs and development issues in democratic governments" (UNMUBIG, 2016).

Therefore, a global process, not necessarily articulated, but within a logic of "de-democratization", an important feature of neoliberal rationality and the security state, as seen above.

The publication of **Decree no 9.759/2019**, already mentioned in this text and related to the problem of erosion of democracy, had a direct effect on the projects of the Amazon Fund and the Climate Fund, since it extinguished the basic committees of the funds, which guaranteed their daily functioning: Conselho Nacional do Meio Ambiente **(Conama)**, Comitê Gestor do Fundo Nacional sobre Mudanças do Clima **(FNMC)**, Comitê Orientador do Fundo Amazônia **(Cofa)**, Comitê Técnico do Fundo Amazônia **(CTFA)**, among others.

The Fundo Nacional sobre Mudanças do Clima was created in 2009 by Law No. 12,114/2009, with the objective of supporting projects aimed at reducing greenhouse gases and mitigating the impacts of climate change. **The fund was paralyzed between 2019 and 2020**, which led to the mobilization of civil society and an action in the Federal Supreme Court.

The PT, PSB, PSOL e Rede, based on dialogue with some CSOs, they filed the Action for Noncompliance with a Fundamental Precept (ADPF) 708, asking the STF to determine precautionary measures for the immediate resumption of transfers. The main arguments presented were: lack of technical analysis; lack of publication of public notice for selection of projects; non-compliance with Federal Law No. 4320/1964 and Decree No. 93,872/1986.

The STF held public hearings in which government representatives, authorities, experts were heard and also counted on popular participation.

After pressure with this action from the STF, Minister Ricardo Salles recalled the Management Committee in July 2019 and returned to make contributions of the resources authorized in the budget laws of 2019 and 2020. some irregularities, and ADPF 708 is still against the Union for not having taken administrative measures related to the operation of this Fund.

The Amazon Fund was conceived in 2006 at the 12th Conference of the Parties (COP) of the United Nations Framework Convention on Climate Change, held in Nairobi, Kenya. The fund, in turn, was created in 2008 by **Decree nº 6.527/2008**, from a donation from Norway and Germany to finance **projects by governments, civil society organizations and research institutions to combat deforestation, environmental conservation and promotion of sustainable economic activities.** It is, therefore, a financing mechanism for raising national and international resources.

This fund was questioned several times by the Bolsonaro government and the subject of disputes regarding its functioning. This situation generated discomfort, including from donor countries that disagreed with the measures taken. Despite

accusations about irregularities in the projects, the Federal Audit Court (TCU), the body responsible for auditing the Fund, approved the accounts in 2018, when the last audit was carried out.

In **response to the paralysis of the Amazon Fund, the opposition parties** PSB, PSOL, PT and Rede Sustentabilidade, in dialogue with civil society organizations, filed the Direct Action of Unconstitutionality by Omission (ADO) 59 in the STF.

The argument was as follows: there is a **constitutional omission** on the part of the federal government in the face of the increase in fires and deforestation in the Amazon region; and there is a retraction of projects for inspection, monitoring and implementation of public policies financed by the Amazon Fund. The objective was to retake the fund immediately. Hearings were held at the STF with the participation of authorities, government representatives, experts and civil society. The action is in progress, while the Amazon Fund remains paralyzed. There is a bill (415/2020) that intends to officially create the Amazon Fund, transforming the decree into law, in addition to other projects and intentions to create a fund that replaces the existing one.

The paralysis of resources destined to the culture sector was a theme that also appeared in the qualitative research of listening to CSOs, with emphasis on the Rouanet Law (Federal Law nº 8.313/1991). This issue is related to the dismantling of the culture sector, with the extinction of the ministry itself. There are a series of decrees for the Rouanet Law, which also had changes in its technical and directive boards. There is a decrease in approved projects, despite the various proposals that are pending analysis without releasing the funds.

In addition, there is a spread of fake news about the use of the Law and, linked to this, the realization of accountability review processes after many years.

Interview nº9.

When Bolsonaro enters, he is slow, in 2019 that Rouanet law thing. All of a sudden they did a due diligence [in the organization] looking, asking for documents from us at the 2009 Book Festival. Like, 10 years ago. It was never very clear to us, because they didn't ask for any other year, they asked specifically for 2009. We went to the [organization's] dead file to look for this document, because not everything was digitized, invoice. So it took some work, but it was never very clear to us, we sent it. But it was the only experience we had in that sense and in the end it was kind of opaque, there was really nothing. They never told us why they asked for it, which caught their attention. One very clear thing is: they were reviewing, I don't know if they chose specific organizations, I don't know if they were reviewing everybody (interview 9).

As a gesture to face this reality, the Brazilian Bar Association (OAB) filed a lawsuit in the Federal Court in 2021 asking the government to: finalize the analysis of the 1,566 proposals and 848 projects that are dammed up; stop limiting the number of proposals analyzed; do not prioritize projects as a result of the linked cultural segment; extend deadlines as a result of the pandemic; among other requests.

It is also worth noting that the guiding principles of MROSC are characterized by a paradigm shift in the relationship between public authorities and civil

society organizations. The idea of public power as a partner of CSOs is part of an international trend that gives importance to the construction of spaces for citizenship. Therefore, the posture of a government that tries to control and supervise international donations goes against the constitutional principles and the advances established by the MROSC. Although there is worldwide concern about money laundering, these cases must be dealt with on the basis of concrete situations. International companies also have control mechanisms and counterparts for CSOs, and there is extensive national legislation that obliges organizations to account for their funding, without harming their autonomy.

A concrete example of an attempt to monitor and inspect international resources destined for CSO projects is PL 4,953/2016, which aims to make it mandatory for organizations to declare to the Ministry of Defense, annually, the resources received from abroad or from entities or foreign governments, even if in national currency[19].

19. Technical Note from the MROSC Platform on the Bill No. 4.853/2016, which can be accessed at the link: http://plataformaosc.org.br/nota-tecnica-sobre-o-projeto-de-lei-no-4-953-2016/. <http://plataformaosc.org.br/nota-tecnica-sobre-o-projeto-de-lei-no-4-953-2016/>.

g. Subjectivity and the criminalization of organizations

One of the important points in understanding organizations is to observe how the relationships between life paths/projects and the constructions of subjectivities happen through the connections with the workspace. Here an important dilemma appears, a consequence of the bureaucratic criminalization process. Different people, either in the in-depth interviews or in the focus group, pointed out how the strategies narrated above result in the wear of the teams, in the distrust of the work itself or in the fear of being in a certain action and political influence to guarantee some right.

When we point out the modes of government and the techniques of surveillance and control, it is also this movement of “internalization” of norms and disciplinary modes that we speak. **This is the desired mode in neoliberalism.** But here is the dilemma. Political action, even if in the desire to resist this way of life, runs the risk of continuing to be guided by the same logic of neoliberal efficiency and productivity.

In this way,

> “the company is promoted to a model of subjectivation: each individual is a company that must be managed and a capital that must bear fruit” (DARDOT & LAVAL, 2016, p. 378).

A performance regime that is also a reaction to the bureaucratic criminalization processes themselves, in which each individual must be permanently on alert and in the surveillance of himself, of others, of the partnership ties to maintain himself and the entity itself.

Interview nº2.

These persecution processes could have resulted in the closure of the institution, even an old institution, even a consolidated institution, even an institution that has a budget size considered large by Brazil's standards. Because our annual budget is higher than that of many Brazilian NGOs, I have no doubt about that. But it is a budget that is linked to projects, I cannot take 1 million reais to pay tax to the municipality [ISS collection]. These are earmarked resources, so they would result in the institution closing or at least the sale of our building so that we can remain active (interview 2).

This scenario favors “an emotional, psychological and financial wear within the institution” (interview 2). When talking about organizations, it is necessary to observe the subjects. This was a very common narrative in the interviews and in the focus group, especially in cases of accountability that needed to be revised, as we indicated before, after 8, 10, 15 years.

Interview nº9.

“I spent two days inside a warehouse, a big warehouse that had chairs. Everything that is old, that belongs to the [organization] and that you cannot throw away is there. Imagine all the dust in those boxes” (Interview 9).

Or even the very processes of violence against institutions that also unfold as violence felt in the body itself.

Interview A. Grupo Focal.

I would tell you that it seems like there are so many things in the universe influencing these decisions. So, when I take the news from Brazil every day, when my colleagues here next door are brutally abused by the government in the physical body, I wonder if I'm going to go out on the street and take a bullet or not. My job is not just an office, so it's as if we take some bombs in the bank, other bombs in the legislature, other bombs are really on the skin. So we keep thinking that being more exposed may be more targeted to be the target, it's complex (A, focus group).

Another way in which this link between bureaucratic criminalization and subjectivity occurs is with the

“unfeasibility of the lives of several militants”. With the closure of organizations or administrative persecution in its various gestures, “the legal representatives of these institutions have assets blocked.

[...] The absolute majority of the processes, the vast majority, we have already won the case that there was no illicit enrichment of the leaders, there was nothing related to corruption, but these processes drag on in a way that makes this unfeasible” (interview 5).

An example of this practice happened in Tocantins. The workers made a public act and the door of a bank was broken. A judge assigned this responsibility to the organization, and with a jurisprudence from a previous decision, from 2001. Consequently, the **entity was criminalized and one of its directors had his assets blocked and was also criminally responsible.** We return here to the discussions on what was constructed as what was allowed and what was acceptable in a democracy based on consensus and the ordering of social life. In the cases above, the organization

Interview nº5.

“has won all these lawsuits, unlocked the assets. But this takes work, costs money, public and political embarrassment and everything else [...]. And this is very common, it is recurrent, it is regular, not a month goes by without us having situations of this nature” (interview 5).

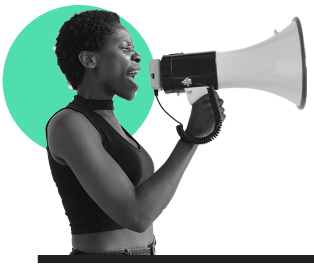
As seen in this episode, in some interviews we found the implementation of internal policies for the care and preservation of organizations' teams, especially in

surveillance contexts. Either by removing the photos and some information on the organizations' websites, or by not disclosing the names and information (movement, territory, among other details) of the people who participate in the meetings during the period of their realization.

Interview nº5.

“We take a lot of courses with the leaders of favelas on the periphery so that they are more careful with their equipment, that they can keep it, not put all those passwords in the notebook [...] be careful with the recording, be careful with what he says” (interview 6).

The importance of these movements of care for the self, for others and for the organization is also due to a reason: the processes of bureaucratic criminalization and of activists can be related and feed back. That's why, says one of the people interviewed:



Interview nº6.

“we can't so much dissociate the organization from its militancy, or from its team [...]. Increasingly, having to combine this action together, [...] the security of the organization is in their hands and vice-versa” (interview 6).

What do we recommend?

After systematizing the features of bureaucratic criminalization, we present some specific recommendations for the continuity of research and for political incidence.:

a. The **sending** of this report to the Federal Public Ministry, with the denunciation of the processes of bureaucratic criminalization related to the performance of the Federal Government, so that attention is paid and measures are taken to guarantee the rights of civil society organizations;

b. The **deepening** of debates and proposals for action, in the field of civil society organizations, for democratic radicalization and not only the defense and guarantee of a “democracy of consensus”;

c. The need for **networking**, from a transversal and intersectional perspective, for action and political articulation in the face of bureaucratic criminalization and for the creation or adaptation of a tax reform proposal from civil society organizations;

d. The **holding of** dialogue groups and training meetings, with multiple agents, on bureaucratic criminalization and the Regulatory Framework for Civil Society Organizations (MROSC);

e. The **strengthening**, by funding organizations, of "emerging political experiences", with the construction and/or maintenance of funds to combat political violence. Along with this, the creation of awareness-raising mechanisms for organizations to invest in civil society, reduce bureaucracy processes, favor institutional support funding and improve the instruments for monitoring and monitoring projects;

f. The **creation and/or strengthening** of information security policies in CSOs;

g. **Support** for MROSC amendment initiatives, in order to strengthen the defense of historically subordinated groups **(LEICHSENRING, 2020)**[20] and to adapt this framework to the work of associations and cooperatives;

h. The **formulation and/or support** of initiatives that propose the revision of state, district and municipal decrees that are incompatible with the MROSC (LEICHSENRING, 2020);

i. The **improvement** of budget transparency rules on partnerships with CSOs, which recognize the singularities and particularities of these organizations;

j. **Defending** the installation of Confoco – Conselho de Fomento e Colaboração (LEICHSENRING, 2020).

20. "Among the current bills that intend to amend Law nº 13.019/2014, there is an important initiative aimed at strengthening and defending minorities. The Bill (PL) no 4701/2019 proposes 'the adoption of affirmative actions, aimed at repairing ethnic distortions and inequalities, within the scope of partnerships between public administration and civil society organizations'. The proposition establishes a general requirement for partnership work plans that involve transfers of financial resources: Art. 1st. The heading of art. 22 of Law No. 13.019, of July 31, 2014, becomes effective plus the following item XI: Art. 22. (...) XI. adoption of affirmative actions aimed at repairing ethnic distortions and inequalities, by guaranteeing that at least 10% (ten percent) of the people benefiting from the activities or projects carried out belong to the black population. Remember that, in the city of Rio de Janeiro, [...] there is already a rule with the same purpose, in the local regulation of the MROSC" (LEICHSENRING, 2020, p. 218-219).

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Bureaucratic Criminalization

political-legal strategies, neoliberalism and the procedure of civil society organizations

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