TRANSPARÊNCIA INTERNACIONAL
Brasil

COMPENSATORY FUNDS GOVERNANCE IN CORRUPTION CASES

A Best Practices Guide for Making Reparations to Society

Transparency International (TI) is a global movement with a single vision: a world in which government, business, civil society and the daily lives of people are free of corruption. However, our fight against corruption is not – and will never be – an end in itself. It is a struggle for social justice, the fulfilment of rights and peace.

We understand that corruption's roots run deep, and that it thrives on various conditioning aspects, be they legal, institutional or even behavioural. That is why we work, above all, to bring about systemic change.

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Transparency International Brazil

Coordination: Bruno Brandão
Authors: Michael Freitas Mohallem and Fabiano Angélico
Researchers: Gabriela Cavalcante Gattulli, Isabel Veloso and Marcus Repa
Consultants: Denise Dora and Pedro Strozenberg
Revision: Renata Sangeon
Translation: Vicente Melo (originally in Portuguese)
Cover: Rafael Regatieri / Transparency International - Brazil over photo by Fernando Frazão / Agência Brasil
Formatting: Andreza Moreira – Tangente Design

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EXECUTIVE SUMMARY

This best practices guide was written during an opportune moment for Brazil's debate on strengthening the fight against corruption and repairing the damage it causes. Great strides have been made by a few important initiatives, which seek to get Brazilian society – its companies, social organisations and citizens – to contribute to (and participate in) the efforts made by State institutions in the fight against corruption and to redress the social rights it violated.

On 5 June 2017, Brazil's Public Prosecutor's Office (MPF) and holding company J&F signed a leniency agreement that encompassed this logic of social reparations: one of the obligations taken up by the company pertains to the implementation and support of social projects corresponding to R$ 2.3 billion. Thus, this obligation goes beyond repairing the material damage caused to the specified entities (the State, BNDES, Caixa Econômica Federal and pension funds): it is a commitment made by the company to make reparations towards the social damage it caused, by engaging in activities focused on promoting rights and by taking part in society's role in the fight against corruption. In this sense, it takes on an "obligation to do".

Transparency International was entrusted, via a Memorandum of Understanding signed with J&F and the MPF, to devise a series of recommendations and guidelines to ensure that the financing for these social projects had a governance system that met transparency standards, was free from conflicts of interest and had anticorruption safeguards. Thus, the goal of this report is to present the results of the study conducted by Transparency International, which aimed to guide the management of this legal obligation taken on by the company, ensuring that the public interest is served and that the investments made in the projects are effective.

The first stage of the study consists of collecting experiences pertaining to social investment and philanthropy in Brazil and throughout the world, and understanding how they differ in relation to compensatory funds, which is to say, non-voluntary funds. It also broaches the range and the impact of the countless entities active in Brazil, as well as the areas on which they focus

Further along, the report presents an analysis of the formal aspects of civil society organisations. To this end, special focus is given to the main characteristics conferred to legal entities by the legal system, which are, at their core, governed by the Civil Code ("Código Civil", in Portuguese). There is also an effort to understand the forms of (and limitations on) actions undertaken by the so-called Social Organisations (SOs),

regulated by Law 9,637 of 1998[1]; Civil Society Organisations (CSOs), instituted by Law 13,019 of 2014, recently amended by Law 13,024 of 2015[2]; and Civil Society Organisations of Public Interest (known as OSCIPs in Portuguese), regulated by Law 9,790 of 1999[3].

After tackling the formal and tax-related aspects, this report will focus on best practices for governance. Chapter 3 deals with internal management and Chapter 4 discusses best practices for transparency and accountability, giving special attention to matters relative to monitoring, supervision and control. Attention is also given to the fact that managing large donations in an institution whose governance structures are not sufficiently transparent creates a vulnerable environment. That is why, in face of this potential challenge, there will be an analysis of the best practices for governance, capable of contributing to efficient management within a transparent and sound environment, based on the considerations and experiences of managers from other social investment vehicles.

Among the topics discussed in Chapter 3, there can be found: effectiveness and quality; due diligence processes focused on financial and legal compliance for the institutions receiving the investments, and protection from conflicts of interest during project selection;

Ethics Codes and legal compliance; composition of the board; human resources policies; whistleblower protection policy and complaints offices.

In Chapter 4, the best practices for transparency and accountability, which must be adopted by the institutions responsible for managing compensatory resources, are listed. Among the activities assessed, there can be found: periodic publication of activity and impact reports; publication of audited financial statements; adoption of responsive communication practices; participation and adaptive learning.

Lastly, in Chapter 5, there are some considerations on the financial sustainability of social investment resources or compensatory resources, with a focus on the endowment model. Said considerations, as well as other topics in this report, are guided by international best practices assessments and interviews conducted with ten managers of well-known, important social investment vehicles already established in Brazil.

1 BRAZIL, Law 9,367 of 15 May 1998. Brasília, DF. Available at: <http://www.planalto.gov.br/ccivil_03/leis/L9637.htm>. Accessed on: 13 March 2019.

2 BRAZIL, Law 13,019 of 31 July 2014. Brasília, DF. Available at: <http://www.planalto.gov.br/ccivil_03/_Ato2011-2014/2014/Lei/L13019.htm>. Accessed on: 7 March 2019

3 BRAZIL, Law 9,790 of 23 March 1999; Brasília, DF. Available at <http://www.planalto.gov.br/ccivil_03/leis/L9790.htm>. Accessed on: 13 March 2019.

INTRODUCTION

1 INTRODUCTION

Taking monetary resources originating from fines and using them to support social programs, as a way of compensating for damages caused, is an established practice in some areas, such as the environmental area. In this context, the most recent example is the Renova Foundation, created to repair the damage caused by the collapse of mining company Samarco's tailings dam in the Doce River Valley[4]. More recently, when it comes to anticorruption initiatives, experiences resulting in deals or fines that use compensatory resources as a means to repair the damage caused by crimes against the government or the general public have gained prominence, such as in the cases of the Siemens Fund and the Alcatel fund[5].

Transparency International (TI), a non-profit organisation that is a world leader in promoting integrity and fighting corruption, has recently commissioned two international studies to analyse the way in which this subject is being handled in different countries and different contexts[6]. In Brazil, TI has been promoting studies and debates with public and private entities on the possibilities of compensatory measures (fines and reparatory obligations) being used to boost the corruption-fighting ability of Brazil's State and society; more than that, it has been promoting the debate on the current insufficiency and inadequacy of the regulatory frameworks that pertain to the application of social damage-related reparatory obligations, as well as the allotment and management of the resources involved – mainly in corruption cases, but not limited to them.

The Leniency Agreement signed in June 2017 between the J&F Investimentos S/A holding company (J&F) and Brazil's Public Prosecutor's Office (MPF), within the purview of the Federal District Regional Attorney's Office, lent greater credence to this debate in Brazil as well. Pursuant to the agreement, the company pledged to make payments that amount to R$ 10.3 billion, over the course of 25 years. Out of this amount, the total allotment reserved for investment in social projects is that of R$ 2.3 billion[7].

4 Public Prosecutor's Office. Termo ADITIVO ao termo de ajustamento preliminar (TAP) firmado entre o MPF, a Samarco Mineração S/A, a Vale S/A e a BHP Billiton Brasil Ltda. 2017. Available at: <http://www.mpf.mp.br/mg/sala-de-imprensa/docs/aditivoTAP.pdf>.

5 The Siemens Integrity Initiative was established in 2009 via an agreement made with the World Bank. Its main goal is to create fairer market conditions and to fight corruption by funding projects in these areas, with a total amount of US$ 100 million invested over fifteen years (Siemens, 2016). The Alcatel case took place in Costa Rica, in 2006. At the time, the company was charged with having transferred US$ 15 million to a consulting firm, aiming to obtain contracts pertaining to cell phone networks (Olay, Atisso and Roth, 2010).

6 TI commissioned two international studies, concluded in 2016, that mapped the way in which this subject was handled in different countries and contexts. KELLY, K.; GRAYCAR A. Using Compensation Funds to Support Anti-corruption InterVENTIONS, Report to Transparency International. Flinders University, Adelaide, Australia, 2016.

7 Public Prosecutor's Office. Força-tarefa das Operações Greenfield, Sépsis e Cui Bono, Operação Carne Fraca. Acordo de Leniência. Available at: <http://www.mpf.mp.br/df/sala-de-imprensa/docs/acordo-leniencia>. Accessed on: 17 May 2018.

A few months after this deal, in December 2017, the MPF, J&F and TI signed a Memorandum of Understanding, through which TI takes on the commitment of giving recommendations on a governance system with the best transparency standards and anticorruption safeguards for employing the resources allotted to the funding of civil society organisations[8]. TI offered its contribution pro bono, without charging any fees or remuneration of any kind. Furthermore, in order to avoid any conflicts of interest, TI made a proposition, to which the other parties agreed: the organisation will abstain from requesting funds coming out of the social investments originating from the Leniency Agreement during the entire period in which it will be providing support to the co-signers' initiatives.

Seeing as this agreement is the first of its kind, and how important it will be for the country, this report's goal will be to present guidelines for the responsible management of these resources and for the wider debate on improving regulations pertaining to compensatory measures directed at the social damage caused by corruption and other criminal practices.

The report will tackle theoretical studies on social investment vehicles, the topic of philanthropy in Brazil and throughout the world, governance, transparency and accountability practices, investment models and examples of similar existing funds.

Lastly, it will broach the considerations made in a series of new interviews, conducted exclusively for this study, involving ten managers and directors of social investment entities already established in the Brazilian context. The interviewees were selected due to their expertise in the philanthropy, civil society and grantmaking fields, in Brazil and internationally, and due to the interest they all showed in furthering the debate and the practice of directing compensatory resources towards social investment in the country.

Therefore, the goal of this report is to present a best governance practices guide for compensatory resources originating from corruption-related penalties, as a way of repairing the damage caused to society and engaging in the fight against this type of crime. With this in mind, a few questions will recur throughout the report: considering other social investment vehicles' experiences and the lessons taken from the specialised literature, as well as the context of repairing damages caused and "adjusting conducts", what would be the best models for Brazil's scenario? What are the fundamental elements that ensure its functioning? How to ensure its sustainability? How to maximize the impact of the funding so as to repair the damage caused? How to protect the compensatory resources from the risk of being spuriously diverted, especially in the case of resources originating from an agreement in which one of the parties admits to performing acts of corruption?

8 MPF. Memorando de entendimento. The MPF, J&F Investimentos and Transparency International, 2017. Available at: <http://www.mpf.mp.br/df/sala-de- imprensa/docs/Memo%20entendimentos%20J-F.pdf>. Accessed on: 23 August 2018.

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SOCIAL INVESTMENT AND PHILANTHROPY IN BRAZIL

2 SOCIAL INVESTMENT AND PHILANTHROPY IN BRAZIL

Private Social Investment (PSI) usually consists of a voluntary transfer of resources made by an individual or legal entity in a planned, supervised and systematic manner, with the aim of supporting projects of a social, cultural and environmental nature, among others. Depending on the country's legal framework, these investments can be leveraged via tax incentives. The literature on the subject associates the growth in PSI "[...] with the State's relative inability to meet all social demands and with the need for strengthening civil society"[9].

Concerning the operational side of PSI, such investments are distinct from social welfare or philanthropic (in the original sense of the word) activities such as occasional donations, seeing as they are concerned with continuity, planning and strategies tied to results. In actuality, the concept was created in the 1990s to "[…] designate a form of social work conducted by the private sector, mainly the corporate sector, which sought to differ from the more traditional forms of philanthropy"[10].

Today, private philanthropic associations and foundations are some of the main sources of support for civil society organisations and for developing initiatives that uphold and promote rights[11]. In this sense, PSI can be considered a force for social transformation, capable of influencing relevant agendas and meeting the social needs unfulfilled by the State[12].

The Bill and Melinda Gates Foundation example illustrates the potential of the work done by philanthropy-focused foundations.

The organisation funds projects aimed at combatting malaria, tuberculosis and HIV/AIDS, and, in 2002, invested almost US$ 1.2 billion in donations, which exceeds the World Health Organisation's budget (US$ 250 million in contributions

9 Group of Institutes, Foundations and Enterprises (GIFE). Guia das melhores práticas de governança para fundações e institutos empresariais. 2. ed. São Paulo: IBGC e GIFE, 2014.

10 NOGUEIRA, F. A.; SHOMMER, P. C. Quinze anos de Investimento social privado no Brasil: conceito e práticas em construção. In: XXXIII ENCONTRO DA ANPAD, 2009, São Paulo, p. 1.

11 ANHEIER, H.; DALY, S. Philanthropic Foundations: A New Global Force? London School of Economics and Political Science, 2004, p. 158-9. Available at: <http://www.lse.ac.uk/internationalDevelopment/research/CSHS/civilSociety/yearBook/chapterPdfs/2004-05/Chapter7.pdf>. Accessed on: 27 July 2018. In this sense, Pedro Abramovay, director of the Open Society Foundations, states: "The good thing about dealing with private money is that the chief concern is more about choosing the best project than making a fair choice. [...] It's interesting to create a sector of civil society that is independent from the government [...] because it allows us to support even the proposals that seem contradictory and test them to find out what works. In other words, it's the possibility of making mistakes, which is one thing that is not afforded to the government, because it can't run the risk of making mistakes. Innovation requires getting things wrong, so that you are able to tell what works and what doesn't. For philanthropy, having this role of taking risks is important". Pedro Abramovay: interview [August 2018]. Interviewer: Michael Freitas Mohallem. Rio de Janeiro: Open Society, 2018.

12 Ibidem, p. 158-9

from the member states)[13]. In 2016, the foundation raised almost US$ 13 billion to support the Global Fund organisation, also in the effort to fight malaria, tuberculosis and HIV/AIDS[14].

It is worth noting that there is a certain ambivalence pertaining to the term "philanthropy", seeing as the idea can be interpreted as a word or a concept. Jenny Hodgson, from the Global Fund for Community Foundations, refers to philanthropy as "a critical question", loaded with meaning and fragmented in its connotations of "power, inequality and privilege"[15]. Hilary Pearson and Jean-Marc Fontan, on the other hand, say "philanthropy is no longer only about benevolence. It's about having an impact on the complex problems that face the next generation"[16].

According to Andre Degenszajn, our interviewee from the Ibirapitanga Institute, who is also a former secretary-general of Brazil's Group of Institutes, Foundations and Enterprises (GIFE), the term philanthropy "is mainly associated with charity and generally carries a negative meaning"[17].

Part of this negative meaning is related to corruption cases from the past, involving philanthropic institutions; for this reason, the term "private social investment" is generally used. Degenszajn observes another reason for this preference: in Brazil, philanthropy has been strictly associated with the corporate sector, and "the language of investment and return is closer to the mindset of these institutions"[18].

In Brazil, the idea of philanthropy is historically linked to the concept of social welfare, to performing good deeds and to helping others as a social practice. Said practice was historically associated with religious institutions, notably the Catholic Church, which has for centuries provided education, healthcare and social assistance services[19]. Today, the social perception of philanthropy has changed:

13 Ibidem, p. 158-9.

14 HELLMANN, S. Annual Report 2016: Letter from the CEO, Gates Foundation, 2016. Available at: <https://www.gatesfoundation.org/Who-We-Are/Resources-and-Media/Annual-Reports/Annual-Report-2016>. Accessed on: 29 August 2018.

15 MILNER, A. The Global Landscape of Philanthropy. WINGS, 2018, p. 8. Available at: <http://www.efc.be/news/wings-launch-global-landscape-of-philanthropy-report/>. Accessed on: 18 August 2018.

16 Ibidem, p. 7.

17 Andre Degenszajn: interview [June 2018]. Interviewers: Gabriela Gattulli and Michael Freitas Mohallem. Rio de Janeiro: Ibirapitanga Institute, 2018.

18 Ibidem.

19 PAGOTTO, L. M. et al. Entre o público e o PRIVADO: caminhos do alinhamento entre o INVESTIMENTO social PRIVADO e o negócio. São Paulo: GVces, 2016, p. 45.

> During Brazil's re-democratisation period (the 1980s), civil society was strengthened by important achievements, such as the 1988 Constitution – also known as the "Citizen Constitution" –, which recognised civil society and the private sector's role in the country's development, and enshrined the rights to education, healthcare, food, work, housing, leisure, safety, social security, maternity and childhood protection, and assistance to those in need. The "Citizen Constitution" also introduced the idea that the State is not the sole responsible entity for social and civil welfare policies, and new laws aligned with this notion, such as the Child and Youth Statute, started recognising and appreciate the role played by other actors in social policy[20]

In 1988, the subject of social assistance in its broader sense started being handled by Brazil's Constitution, which brought some new ideas, such as providing tax exemptions pertaining to social security contributions for charitable organisations, as well as prohibiting the levying of taxes on non-profit education and social assistance institutions' assets, income or services.

A decade later, in 1999, with Law 9,790, Civil Society Organisations of Public Interest (OSCIPs) were regulated, which was considered a step forward in the third sector, marking the recognition by federal-level legislation of the importance of philanthropic activities. The organising methods used by civil society for philanthropic ends will be expanded upon in a specific topic in this report.

During the 1990s, the process of opening up the Brazilian economy also resulted in the corporate sector's closer ties with initiatives and entities focused on social development. In this period, transnational companies operating in the country brought PSI experiences from their countries of origin and "a culture of corporate philanthropy"[21].

Furthermore, it could be said that, during that period, the federal government grew closer to civil society and private sector organisations.

The PSI context was also influenced by the predominant phase of capitalism in the 1990, neoliberalism, the premise of which was the idea of a minimal State and governmental deregulation. With regards to creating and conducting social programs, the Fernando Henrique Cardoso administration (1995-2003) invested on public-private partnerships, bringing the government closer to civil society and the corporate sector in the search for solutions to social issues. Through the Comunidade Solidária ("Solidary Community" in

20 Ibidem, p. 45.

21 Ibidem, p. 46.

Portuguese) program, headed by then-first lady, Ruth Cardoso, the government developed partnerships with civil societies and the private sector to discuss, fund and implement social programs such as Alfabetização Solidária and Capacitação Solidária ("Solidary Literacy Teaching" and "Solidary Skill Training" in Portuguese, respectively)[22].

Such partnerships were being established all through to the Lula administration, which expanded them, creating government offices that articulated the creation and implementation of these spaces, fostering the participation of civil society.

More recently, there has been a noticeable decrease in organisations focused on fighting poverty or dealing with basic social issues, in view of the economic advances of the last decade. Some international organisations either ceased their operations in Brazil or stopped including it among priority countries[23].

In 2014, after allegations of corruption involving non-governmental organisations, Law 13,019[24] was passed, known as the Regulatory Framework for Civil Society Organisations (known in Brazil as the MROSC). The MROSC's goal was to perfect the relationship between civil society organisations and the State by establishing a new legal regime for signing partnerships, stimulating transparency, effectiveness and monitoring. The MROSC came into force in January 2016 for the federal and state governments, as well as the Federal District, and in January 2017 for municipalities.

The term "civil society organisations", which came from this new legal framework, represented "only the most recent form of referring to entities previously known as 'non-governmental organisations' [that] constitute social and political players ever more present in modern democracies"[25].

Another relevant milestone for the area of organised civil society is Law 13,800, of January 2019, also known as the law of philanthropic endowment funds. "Also known as simply 'endowments', philanthropic endowment funds are funds created to ensure the long-term sustainability of

22 PAGOTTO, L. M. et al. Entre o público e o PRIVADO: caminhos do alinhamento entre o INVESTIMENTO social PRIVADO e o negócio. São Paulo: GVces, 2016, p. 48.

23 Ibidem, p. 48-9.

24 See Brasil fecha mais de 700 ONGs ALVO de INVESTIGAÇÃO em 2013. Available at: <https://ultimosegundo.ig.com.br/politica/2014-02-03/brasil-fecha- mais-de-700-ongs-alvo-de-investigacao-em-2013.html>. Accessed on: 22 January 2019.

25 The online platform called Mapa das Organizações da Sociedade Civil ("Map of Civil Society Organisations") presents data on CSOs from all over Brazil. Available at: <https:// mapaosc.ipea.gov.br/ajuda.html>. Accessed on: 8 April 2019. With regards to the definition of "civil society organisation", as per the new wording found in Law nº 13,204/2015, a CSO is a "non-profit private entity that does not give to its partners or associates, board members, directors, employees, donors or any third-parties any earnings, leftovers, operational surplus (whether gross or net), dividends, exemptions of any kind, asset shares or interest, obtained during its activities, applying them fully to achieving its stated social goal, either at once or by creating an endowment fund or a reserve fund". This classification also applies to cooperative societies that have been specified by law and to religious organisations dedicated to activities or projects of public interest and with social goals distinct from their exclusively religious goals. BRAZIL, Law 13,019 of 31 July 2014. Brasília, DF. Available at: <http://www.planalto.gov.br/ccivil_03/_Ato2011-2014/2014/Lei/L13019.htm>. Accessed on: 7 March 2019.

organisations, which receive donations and finance public interest causes"[26].

2.1 Formal aspects of Brazil's civil society organisations

Having highlighted the historical and conceptual elements of philanthropy in Brazil, it is worth expanding upon the formal aspects of the country's civil society organisations. In this sense, it is important at first to underscore the concept of non-governmental organisations — known as NGOs —, which are defined as private non-profit institutions with a public purpose. However, the term "non-governmental organisations" perse is not covered by Brazil's legal system; in other words, all NGOs exist under the status of either an association or a foundation[27].

Thus, it is important to distinguish associations from foundations. While associations are formed by a group of people who seek a non-profit goal — be it social, educational, social services-related, environmental, among others —, foundations are run following the stipulations established by a founder (a private individual or a legal entity), generally the donor of the funds that will support its activities[28].

In the work conducted by Osmar Araújo and Ana Carolina Carrenho, which systematises and makes comparisons between the main aspects of associations and foundations, said aspects are classified into "purposes", "assets", "disposition of property", "administration", "supervision", "member titles", "strengths" and "weaknesses"[29].

26 See Instituto para o Desenvolvimento do Investimento Social (IDIS). FUNDOS PATRIMONIAIS FILANTRÓPICOS PASSAM A TER LEI PRÓPRIA. Available at: <https://www.idis.org.br/fundos-patrimoniais-filantropicos-passam-a-ter-lei-propria/>. Accessed on: 10 February 2019.

27 InstItuto Bancorbrás. Definições de ONGs, OS, OSC, OSCIP, Instituto Bancobrás. Published on 11 October 2016. Available at: <http://www.institutobancorbras.org.br/posts/dica/336-definicoes-de-ong---os---osc---oscip>. Accessed on: 7 March 2019.

28 ARAÚJO, O.; CARRENHO, A. (orgs.) Diferença entre Associação e Fundação. IN: Instituto para o Desenvolvimento do Investimento Social (Idis), 2009, p. 5.

29 Ibidem, p. 5.

	ASSOCIATIONS	FOUNDATIONS
Purposes	• Goals of their own, as defined by the members; • Goals may be changed, following the bylaws' provisos; members may alter or adapt the purposes according to their interests; • Goals are not specified by Law.	• Goals are not their own, as they are established by the founder; • Purposes may not be changed. It is possible for some rules found in the bylaws to be changed, so long as they do not affect the purposes; • Goals are specified by the Civil Code.
Assets	• There are no requirements regarding minimal value of starting assets or funds for setting up an association; • It is a management tool developed throughout the association's life.	• It is an essential component, allocated by the founder; • The initial value of assets must be sufficient for the foundation to pursue its social objectives.
Disposition of Property	• Associations may dispose of their property, in accordance with their bylaws and pursuant to managerial deliberation.	• As a general rule, foundations are not allowed to dispose of (alienate) their fixed assets.

	ASSOCIATIONS	FOUNDATIONS
Administration	• Members may have some form of representation and deliberation powers; • Deliberations are determined by the bylaws; • Assembly (deliberation); • Board of Directors (implementation or also deliberation); representation for the organisation; may choose to be classified as an OSCIP, the Board may receive monetary compensation; • Deliberative council (representation and implementation); • Advisory board (right to speak); • Auditing board (internal auditing).	• The will of the founder takes precedence, including in how things are run; • Deliberations are defined by the founder and supervised by the Public Prosecutor's Office; • Board of trustees (deliberation and establishing of directives); • Administrative council or board of directors (management and representation); • Auditing board (internal auditing).
Supervision	• Conducted by the members themselves; • Beneficiaries, backers and other stakeholders are indicators for the association's good management and supervision; • Supervision done via external auditing, by specialised entities independent from the association, has been gaining ground; • The supervision is similar to that of a business establishment, conducted by auditors, with the checking of permits, technical reports, payment of labour taxes, social security contributions, among others.	• It is the responsibility of the Public Prosecutor's Office to look after foundations; • Beneficiaries and other stakeholders are indicators for the foundation's good management and supervision; • The supervision is similar to that of a business establishment, conducted by auditors, with the checking of permits, technical reports, payment of labour taxes, social security contributions, among others.
Member titles	• Associations may grant titles to their members, such as: emeritus members, benefactor members, honorary members, etc.	• Foundations may not grant titles to their members.

	ASSOCIATIONS	FOUNDATIONS
Advantages	• Easy to set up, procedures are simpler; • Minimal starting funds and assets are not required; • Greater flexibility to organise and, if necessary, to change the bylaws and mission statement; • Greater autonomy.	• Resources are allocated to a permanent fund; • Security in relation to the continuous upholding of the goals defined by the founder; • Presence of a board of trustees with independence to manage the funds in accordance with the founder's wishes; • The foundation's life is independent from that of the founder; • Credibility is strengthened due to external audits being mandatory.
Disadvantages	• Due to there being no requirements regarding minimal starting funds, there is no way to ensure the organisation's sustainability, even in the short term.	• The Public Prosecutor's Office, through the foundations' public trustee, must be consulted on any decisions that involve the foundations' property or changes to their mission statement. Seeing as this is an extraordinary procedure, it becomes slower and more bureaucratic; • The members of the board of trustees must be approved by the Foundations' Public Trustee.

Concerning the activities conducted by associations and foundations, it is remarkable how they have consolidated and become stronger during the thirty years since the 1988 Constitution came into effect. The Third Sector's institutions were given ample space to conduct their activities more effectively[30].

In this sense, the Group of Institutes, Foundations and Enterprises (GIFE) conducted, in 2016, a study on Brazil's social investors, which showed that social

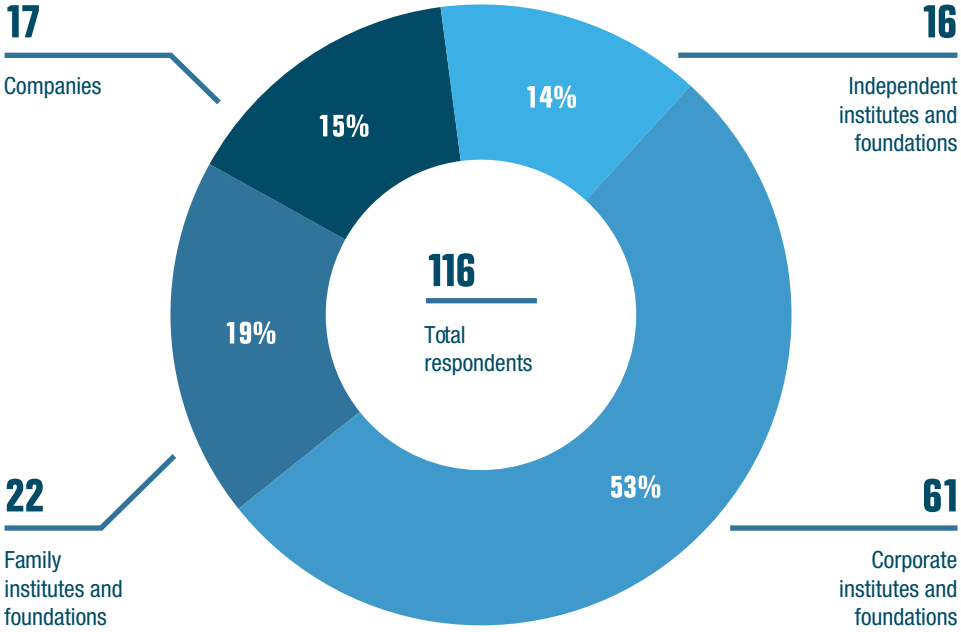
30 Observatórlo do Tercelro Setor. Legislation. Available at: <http://observatorio3setor.org.br/o-3-setor-2/legislacao/>. Accessed on: 8 August 2018

investment corresponded to a total of R$ 2.9 billion over the course of one year.

For comparison, American foundations invested R$ 219 billion in 2014. In Brazil, the study encompassed 116 organisations, 14% of which are associations and independent foundations, 15% are business associations, 19% are family institutions and organisations and 53% are corporate institutes and foundations[31].

GRAPHS 1

2016 Census Respondents



Source: Gife, 2016.

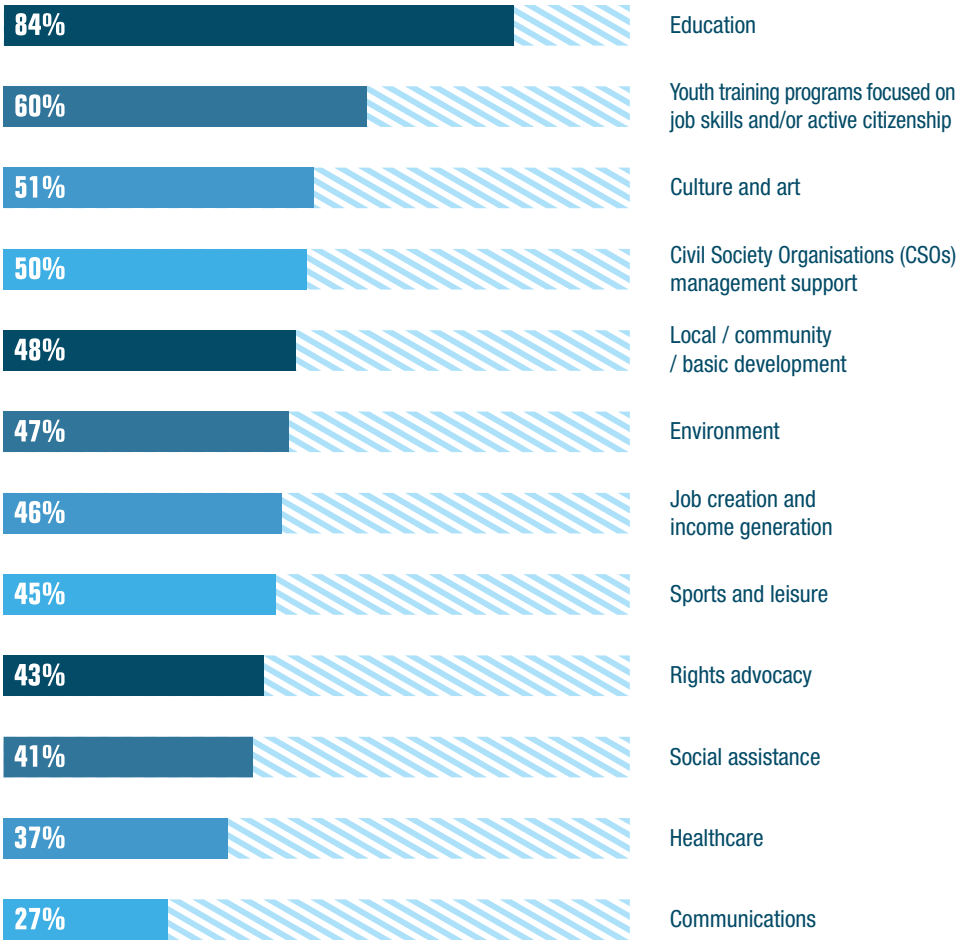
Furthermore, the data shows that the areas of activity of the respondent institutions are education (84%), followed by youth training programs focused on job skills and/or active citizenship (60%), and culture and art (51%). The areas with the smaller shares of the total are healthcare and communications (37% and 27%, respectively)[32].

31 GIFE Census. Key Facts on Brazilian Social INVESTMENT, 2016, p. 1-2. Available at: <https://gife.org.br/censo-2016-keyfacts/panorama.html>. Accessed on: 8 September 2018.

32 32 Ibidem, p. 3.

GRAPHS 2

Strategic priorities for action

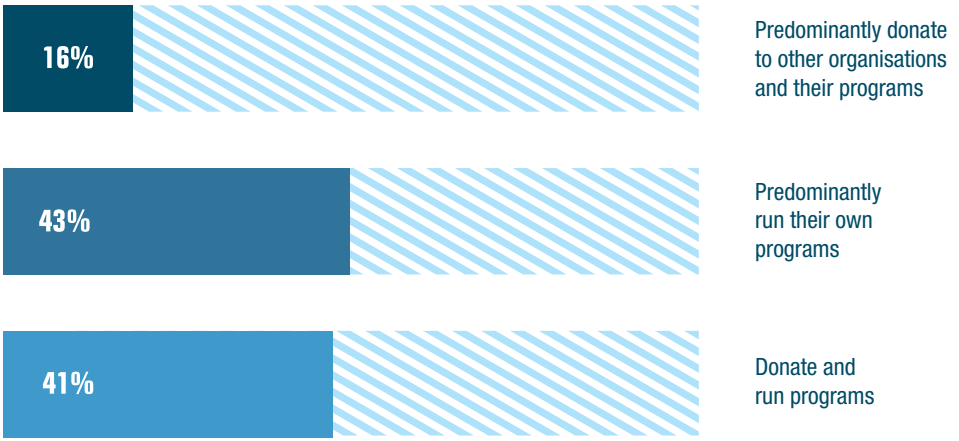


Source: Gife, 2016.

Among the respondents, only 16% are predominantly donors for other organisations and their programs, while 43% run their own programs and 41% are donors and run programs.

GRAPHS 3

Support of civil society organisations



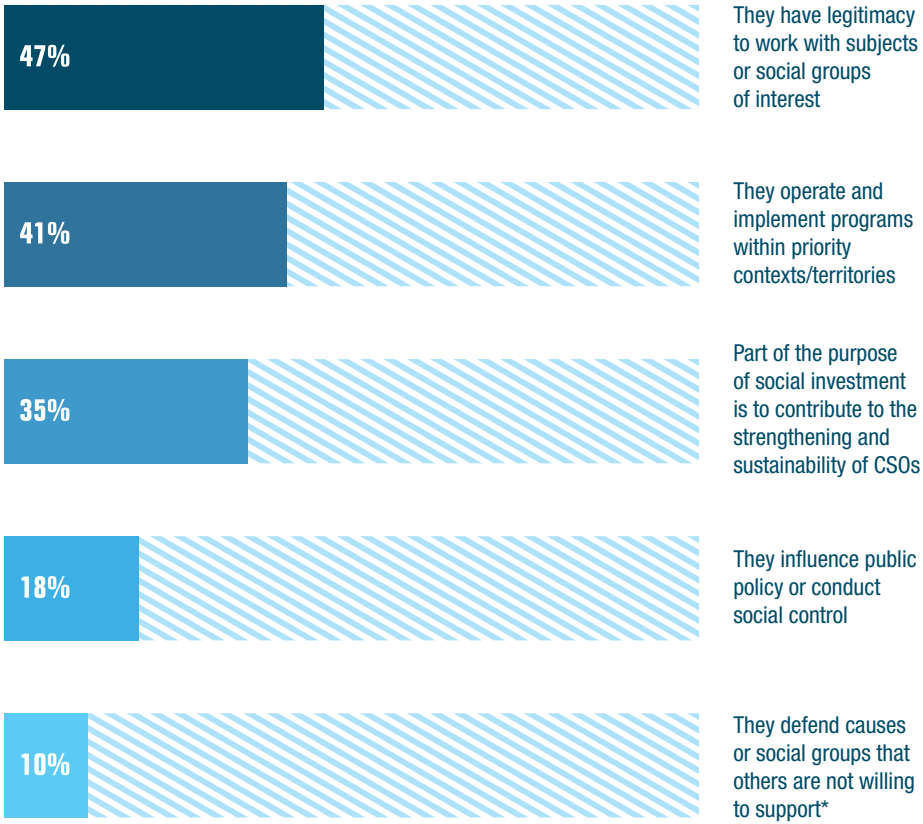
Source: Gife, 2016.

Furthermore, 47% of respondents said they supported civil society organisations because they have legitimacy to work with subjects or social groups of interest, and 10% say they support CSOs because they defend causes or social groups that other institutions are not willing to defend[33].

33 Ibidem, p. 6.

GRAPHS 4

Why support civil society organisations?



*In the 2014 Census, only one per cent of respondents stated this as a reason to support CSOs.

Source: Gife, 2016.

In this context, it is worth highlighting a recent study conducted by the Institute for Applied Economic Research (IPEA) on the articulation of the Brazilian State's structures with organised civil society. The research identified the existence of 820 thousand CSOs, out of which 709 thousand (86%) are private associations, 99 thousand (12%) are religious organisations and 12 thousand (2%) are foundations.

The most frequent areas of activity for private foundations are: development and defence of rights and interests (41.3%) and religion (25.4%). According to the same

report, the least frequent areas are: defence of the rights of groups and minorities, education and research (0.2%) and professional education (0.1%)[34].

Table 1: Number of CSOs, by activity area: Brazil, 2016[35]

PURPOSE OF THE CSOs	TOTAL	RELATIVE TO TOTAL (%)
Healthcare	6.841	0,8
Hospitals	2.646	0,3
Other healthcare services	4.195	0,5
Culture and leisure	79.917	9,7
Sports and leisure	55.246	6,7
Culture and art	24.671	3,0
Education and research	39.669	4,8
Children's education	8.381	1,0
Studies and research	1.268	0,2
Professional education	972	0,1
High school	1.941	0,2
Elementary education	9.509	1,2
Higher education (college)	3.242	0,4
Other forms of education/schooling	6.208	0,8
Activities that give support to education	8.148	1,0
Social assistance	27.383	3,0
Religion	208.325	25,4

34 LOPEZ, F. G. (org.) Perfil das organizações da sociedade CIVIL no Brasil. Brasília: IPEA, 2018, p. 52. Available at: <http://www.ipea.gov.br/portal/ images/stories/PDFs/livros/livros/180607_livro_perfil_das_organizacoes_da_sociedade_civil_no_brasil.pdf>. Accessed on: 19 August 2018.

35 Ibidem, p. 38-9

PURPOSE OF THE CSOs	TOTAL	RELATIVE TO TOTAL (%)
Employers' associations and professional associations	22.261	2,7
Professional associations	14.276	1,7
Business associations and employers' associations	7.985	1,0
Development and defence of rights and interests	339.104	41,3
Defence of rights and interests – multiple areas	41.611	5,1
Parents, teacher and students associations (among other of the kind)	40.697	5,0
Residents' associations	33.460	4,1
Employers' associations and professional associations	29.882	3,6
Community centres and associations	20.630	2,5
Culture and leisure	14.091	1,7
Healthcare, social assistance and education	13.837	1,7
Religion	5.448	0,7
Environment and animal protection	3.268	0,4
Rural development	2.288	0,3
Defence of the rights of groups and minorities	1.406	0,2
Other forms of development	132.486	16,2
Other associative activities	77.550	9,5
Other civil societies organisations	19.136	2,3
TOTAL	**820.186**	**100**

2.2 Tax-related characteristics

Concerning tax obligations, third sector entities can be considered immune and exempt. These immunities are guaranteed by article 150 of the Constitution, which establishes limits on the power to tax across all spheres of action, forbidding, among other practices, the levying of taxes on non-profit education and social assistance institutions. This prohibition pertains only to taxing property, income and services associated with the core activities performed by each of these non-profit institutions[36].

The National Tax Code, in its article 14, lists the requirements that must be fulfilled by the entities that wish to receive tax immunity. To wit, they are not allowed to distribute any portion of its property or income. Furthermore, they must employ the entirety of their resources towards achieving and maintaining their institutional goals and, lastly, keep records of their income and expenses in ledgers of their own[37].

Law 9,532/1997 provided further details on tax immunity for social and educational entities, highlighting that, as per the goals laid out in the Constitution, tax immunity is granted to non-profit educational or social assistance institutions that provide the services for which they were created, making them available to the general population, in a way that complements the State's activities[38].

Entities that do not fit into the constitutional scope for tax immunity must resort to tax exemptions, which are regulated by ordinary law and vary according to the nature of the activity performed and the location on which the entity is based[39].

This way, Brazil provides tax immunity and exemption to some types of non-profit private legal entities: associations, foundations and religious organisations. When it comes to deciding who is granted tax immunity, the nature of their activities is the defining factor.

- The Federal Government may confer one of the following five designations to a non-profit organisation:
- Civil Society Organisations of Public Interest (OSCIP);
- Social organisation (SO);
- Public utility entity;
- Charitable social assistance entity registered with the National Council for Social Assistance ("Conselho Nacional de Assistência Social" in Portuguese);

36 BRAZIL. Constitution (1988). Constitution of the Federative Republic of Brazil. Brasília, DF: Senate: Centro Gráfico, 1988. Available at: <http:// www2.camara.leg.br/legin/fed/consti/1988/constituicao-1988-5-outubro-1988-322142-publicacaooriginal-1-pl.html>. Accessed on: 20 August 2018.

37 BRAZIL, National Tax Code of 25 October 1966. Brasília, DF. Available at: <http://www.planalto.gov.br/ccivil_03/LEIS/L5172.htm>. Accessed on: 2 September 2017.

38 Entities considered to be "non-profit" are those that do not have a budget surplus, or those that fully apply said surplus to maintaining and developing their social goals. BRAZIL, Law 9,532 of 10 December 1997, Brasília, DF. Available at: <http://www.planalto.gov. br/ccivil_03/Leis/L9532.htm>. Accessed on: 1 August 2018.

39 Ibidem.

• Charitable social assistance entity that holds a Charitable Social Assistance Certificate ("Certificação Beneficente de Assistência Social" in Portuguese), also known as CEBAS.

The status of Social Organisation, regulated by Law 9,637 of 1998, is granted by the executive branch to non-profit private entities that work with education, scientific research, technological development, environmental protection and preservation, culture or healthcare[40].

OSCIPs are introduced by Law 9,790, of 1999, and are defined in its article one as[41]:

> Art. 1 The designation of Civil Society Organisations of Public Interest may be granted to non-profit legal entities under private law that have been created and have been functioning regularly for at least 3 (three) years, as long as their respective social goals and statutory rules meet the requirements instated by this Law.

With that in mind, in order to be classified as OSCIPs, institutions must have one or more of the following purposes, described in article 3 of the same law: social assistance, culture, education, healthcare, food and nutritional security, volunteer work, economic and social development, poverty reduction, job creation, promotion of ethics, of peace, of active citizenship, of human rights, of democracy and of other universal rights[42].

An organisation with the OSCIP status must produce yearly reports for accountability purposes, showing how they have implemented their activities, as well as yearly income statements, their balance, a report on their funding sources and how said funds are used, and an equity statement.

There are tax incentives to stimulate philanthropy, such as deductions for companies and individuals that contribute to projects approved by the Ministry of Culture and those relative to the estate and gift tax (ITCMD)[43], applicable on the transmission of property, which is why it is eligible for the tax immunities and exemptions provided for by the Federal Constitution[44].

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40 BRASIL, Law 9,367 of 15 May 1998. Brasília, DF. Available at: <http://www.planalto.gov.br/ccivil_03/leis/L9637.htm>. Accessed on: 7 March 2019.

41 BRASIL, Law 9,790 of 23 March 1999; Brasília, DF. Available at: <http://www.planalto.gov.br/ccivil_03/leis/L9790.htm>. Accessed on: 7 March 2019.

42 BancorBrás Institute. Definições de ONGs, OS, OSC, OSCIP, Bancobrás Institute, published on 11 October 2016. Available at: <http://www.institutobancorbras.org.br/posts/dica/336-definicoes-de-ong---os---osc---oscip>. Accessed on: 7 March 2019.

43 It is a tax on assets donations of any kind, including company shares, money and duties (applicable to the recipient), also levied on the transmission of property after the owner's death (estate tax). The ITCMD tax rate can go up to 8%, changing with each state.

44 UICK, E; KRUSE, T. Ann; PICKERING, A. Rules to GIVE By– A Global Philanthropy Legal ENVIRONMENT. NEXUS, McDermott Will & Emery, CAF, 2014, p. 90-1. Especially in the study conducted on Brazil, with questions regarding tax legislation, tax exemption, benefits for non-profit entities, among others.

Photo by Thaís Lima on Unsplash

BEST PRACTICES FOR GOVERNANCE

3 BEST PRACTICES FOR GOVERNANCE

The Brazilian Institute of Corporate Governance (IBGC) defines a system of governance as a "set of processes, customs, policies, regulations and organs that regulate the way in which organisations are run, monitored and incentivised"[45]. GIFE, in turn, has developed a Governance Best Practices Guide for Foundations and Corporate Institutes, which has become an important tool for guiding civil society organisations[46]. The organisation draws attention to the fact that, with the increase in the number of foundations and private associations investing in civil society organisations, there has also been an increase in the concerns regarding these organisations' monitoring, transparency, management and accountability. In this report, GIFE focuses on a challenge posed by the following question: how can one conciliate the principles of governance with the organisations' existing practices?

With that in mind, this chapter will mainly tackle the aspects of administration – which is to say, of internal management –, as well as the aspects of incentives and disincentives, while the following chapter will examine more closely questions pertaining to monitoring, supervision and control.

Foundations and associations differ in size and scope, and are subject to variations in local laws. The definition and understanding of foundations also differ globally. A foundation in the United States is a creation of tax law, which basically considers a foundation to be a type of organisation controlled by donors — usually with an endowment —, and is thus characterised by the predominance of a single source of funds, provided by the founding donor[47].

Europe has "public utilities foundations"[48], which are not as limited as their American counterparts. Typically, foundations conduct their work by running their own programs, such as cultural institutions, or by donating to associations, charitable institutions, educational institutions and to individuals. In most European countries, public utilities foundations operate their own programs[49].

45 See. Glossário de Boas Práticas para Secretaria de GOVERNANÇA. Available at: <http://www.ibgc.org.br/userfiles/files/2014/files/Cad.SeGov-Glossario.pdf>. Accessed on: 10 February 2019

46 Group of Institutes, Foundations and Enterprises (GIFE). Guia das melhores práticas de GOVERNANÇA para fundações e institutos empresariais. 2. ed. São Paulo: IBGC and GIFE, 2014.

47 TOEPLER, S. Foundations in Germany and the USA: COMPARATIVE ObserVATIONS. German Philanthropy in Transatlantic Perspective, Nonprofit and Civil Society Studies, Springer, Cham, 2016, p. 26.

48 Public utilities foundations are mainly defined by the purposes to which they allocate their financial resources. To qualify as a "public utilities foundation", which is a legal status with tax implications in many European countries, an organisation must spend its funds on educational, cultural, religious or social goals, among others. In some countries, the most common way for foundations to spend their funds is to donate to associations, charitable or educational institutions, and to individuals. In other countries, it is more likely that foundations will contribute by operating their own programs, such as through cultural and educational organisations. MCGILL, L. Number of Registered Public Benefit Foundations in Europe Exceeds 147,000. Dafne, 2016, p. 1-8. Available at: <https:// dafne-online.eu/wp-content/uploads/2016/10/PBF-Report-2016-9-30-16.pdf>. Accessed on: 1 August 2018.

49 Ibidem.

Despite the variations in the types of foundations, these organisations face challenges that transcend their legal characteristics and geographical limitations. A key issue for many foundations is the question of democratic deficit[50]. Foundations are among the institutions that are most dependent on modern society, because they are not subject to market forces or to consumer preference, nor do they have a body of members, or a constituency to monitor their decisions and their performance.

The second challenge that foundations and associations face pertains to corruption. In theory, they are as vulnerable as any other company or institution with exclusively private purposes, and may fall prey to corruption and embezzlement, for instance, as well as to other illegal practices. Managing large donations in institutions whose governance structures are not sufficiently transparent creates a vulnerable environment.

Foundations need to have a strong anticorruption policy and a code of ethics in order to continue being a transparent and accountable institution[51].

In this sense, considering the potential challenges that foundations may face, we will now analyse the best practices for governance, which can contribute to a more effective and efficient management, in a transparent and upright environment[52].

3.1 Effectiveness and quality

The effectiveness of a given foundation must be assessed from its dual role: on one side, there is its management, with its processes, procedures and internal norms; on the other, there is the goal of making an impact via the actions of the other organisations with which it interacts, or to which it transfer resources.

The effectiveness of a foundation in terms of its management must be understood as "mission effectiveness", whereas "programs effectiveness" pertains to the fieldwork done by the organisations that receive the foundation's funding[53]53. Mission effectiveness must be developed from its strategy and its level of execution.

In this sense, in order to assess quality and effectiveness, one must first examine the foundation's internal processes and its strategic positioning, as well as how much it transformed (or impacted) a given social issue. In this case, the object of analysis for assessing quality are not the

50 RAHMAN, K. Anti-corruption Helpdesk. Good Practices in GOVERNANCE, transparency and accountability for foundations. Transparency International, 2018, p. 1-3.

51 Ibidem, p. 2-3.

52 GIFE's governance indicators, as well as other publications and manuals that can be accessed through them, are a useful reference. Available at: <https://gife.org.br/indicadores-gife-de-governanca/>. Accessed on: 10 February 2019.

53 RAHMAN, K. Anti-corruption Helpdesk. Good Practices in GOVERNANCE, transparency and accountability for foundations. Transparency International, 2018, p. 5.

organisations that conduct the fieldwork, but the foundation's own management and its relationship to society and stakeholders.

Programs effectiveness, in turn, must focus on the actual fieldwork, conducted by the organisations funded by the foundation. In this sense, it is important to consider evaluation criteria that go beyond the traditional quantitative indicators, which enable a more qualitative analysis of the human, social, political or cultural development of a given community.

3.1.1 Quality control

Quality control is, in a certain way, a basic activity for any type of project or institution, be it private, public, philanthropic or for-profit. It ensures that the desired level of quality will be achieved and, therefore, lead to the accomplishment of the proposed goals. Thus, employing a system capable of measuring the impacts caused by the institutions' activities can help in the quest for efficiency.

Based on quality indicators, the board of directors will be able to plan accordingly, make strategic decisions and favour the best use for the invested resources.

Measuring quality, as with any other subjective reference, may come with its own challenges, especially in funding organisations geared towards various diverse subjects and implementation methods. With that in mind, the European Venture Philanthropy Association — a community of organisations whose goal is to have a positive impact on society through venture philanthropy — recommends that all venture philanthropy organisations measure their impact via a five-step method[54].

The first step is to define objectives. To create a system for measuring impact, it is necessary for organisations to start off by having a clear definition of their objectives and goals. The system will always stem from each organisation's objectives.

The second step is to get stakeholders to participate, by giving their feedback on the work done by the institution, on whether it met expectations, as well as on the institution's efficacy. This step may include suggestions for improving the organisation's activities and management[55].

The third step is defined in the result assessment. The objectives set during the first step are transformed into measurable results, by defining products, results, social impacts and indicators. It is important to note that collecting new primary data or redefining the criteria used is not always the best strategy to measure the impact of a new activity. It is possible to use a base of data already available to define indicators, as in the case of IRIS[56] or Global

54 BOIARDI, P.; HEHENBERGER, L.; GIANONCELLI, A. Impact Measurement in Practice– In-depth Case Studies. EVPA, 2016, p. 7. Available at: <https://evpa.eu.com/knowledge-centre/publications/impact-measurement-in-practice-in-depth-case-studies>. Accessed on: 20 June 2018.

55 Ibidem, p. 8-9.

56 IRIS is an initiative by the Global Impact Investing Network (GIIN) that measures the social, environmental and financial performance of a given investment. In the institution's website, it is possible to filter the data based on investment priority and focus areas. Available at: <https://iris.thegiin.org/users>. Accessed on: 27 August 2018.

Value Exchange[57]. Whenever possible, it is important to combine quantitative and qualitative data, and to ensure that the information collected leads to lessons that are useful for the institution's development. Should the need arise for acquiring new data, the process of collecting the investors or recipients' information can be simplified by using questionnaires available in the market, without any need for hiring a specialised company[58].

The fourth step consists of verifying and assessing the results organised in the previous step, so as to ascertain whether the intended impact was achieved or not. To complete this step, it is advisable to use an external independent evaluator.

The recipients can be involved in several ways, such as in interviews and focal groups, for example.

The fifth step pertains to monitoring the data collected and analysed via the creation of reports. The final step is monitoring: tracking the progress towards (or deviation from) the objectives defined in the first step and made concrete by way of the indicators defined in the third step. The reports generated at the end make the data presentable for the main interested parties[59].

Going back to the initial discussion on mission effectiveness and programs effectiveness, it is worth noting that the five-step model proposed above must be adapted to the activities that are going to be assessed. In the case of checking the effectiveness of the donor institution, the measurement must focus on the subject area and the assessment on the transformations expected by the foundation when it created the mission. Programs effectiveness, in turn, must focus on the work conducted by the organisations responsible for implementing the activities.

Another relevant question that concerns a foundation's governance, as well as the quality and effectiveness of its work, especially when it comes to incentives and disincentives, is that of accountability. If a foundation does not consistently render its accounts, it will have few incentives for having a "quality program", which is why it is imperative to vigorously discuss transparency and accountability at the moment when parameters are set and good practices are presented for the creation of funds and foundations – especially in the case of compensatory resources.

3.2 Due diligence

One strategy for increasing the efficacy of a foundation or a fund's mission is to promote values, norms and procedures, focusing on the public interest, as well as human and social development. Due diligence mechanisms can help with this strategy.

Traditionally, in the world of philanthropy,

57 The Global Value Exchange is a database for values, outcomes and indicators that provides a free platform to share information, allowing for greater consistency and transparency when measuring social and environmental values. BEN, About GVE, Global Value Exchange, 2016. Available at: <http://www.globalvaluexchange.org/news/b07bcb501c>. Accessed on: 27 August 2018.

58 BOIARDI, P.; HEHENBERGER, L.; GIANONCELLI, A. Impact Measurement in Practice– In-depth Case Studies. EVPA, 2016, p. 9. Available at: <https://evpa.eu.com/knowledge-centre/publications/impact-measurement-in-practice-in-depth-case-studies>. Accessed on: 20 June 2018.

59 Ibidem, p. 10-1.

due diligence refers to the procedure through which a donor checks if the institution in question can be considered eligible to receive their resources. To make these assessments, the usual practice is to verify the recipients' compliance with national laws, the probity of their legal representatives, the quality of their management and accounting systems, their performance and their capacity for financial management, as well as their efforts to prevent corruption.

Due diligence, however, does not necessarily refer exclusively to the legal and financial compliance of the foundation being analysed: the assessment may indicate opportunities for improvement, which can be addressed by the foundations, promoting the betterment of procedures in social organisations, especially in relation to improving integrity, accountability and transparency standards.

Due to their scale, a robust fund or a large foundation are strong enough to act as a vector for this cultural transformation and betterment of practices and standards. Therefore, they should take on this task, not only as an internal procedural requirement, but also as a strategy for social transformation, and as part of civil society's approach for institutional development.

In this sense, GuideStar — a non-profit organisation that incentivises philanthropy — provides a few principles for how a foundation can develop its due diligence process:

1. Keep it simple: a grantmaker must consider the information it already has on the grantseeker before asking for more. In addition, the grantmaker must check what information can be collected from external sources. During the due diligence process, there are three fundamental areas that require closer attention: the legal status of a given candidate, their potential for accomplishing the grantmaker's task and their financial health.

2. Avoid a one-size-fits-all approach: instead of applying the same due diligence process to organisations of all types and sizes, it is necessary to adjust one's approach, varying with each organisation. It is not very sensible for a small organisation that is asking for a relatively small amount of funds to go through the same requirements as a large organisation that is requesting a substantial amount.

3 Do not create obstacles: meeting and complying with the due diligence requirements can be expensive and difficult for certain organisations. Imposing all these demands without assessing the need for each individual institution to fulfil them will only prevent said institutions, as well as the grantmakers, from accomplishing their missions.

4 Feedback from the beneficiary: one very important aspect in the grantmaking process, and perhaps the best way for foundations to know how they can improve, is to incentivise the beneficiaries to send in their feedback.

3.3 Code of Ethics and legal compliance

Voluntary codes of conduct contribute to the process of defining a vision, values and guiding principles, creating an accountability structure that outlines the roles, responsibilities and decision-making processes, in addition to defining what kinds of professional behaviour are acceptable. This way, they can bring benefits in the sense that they promote integrity in the sector and legitimacy with regards to the general public[60].

Codes of conduct and codes of ethics are the most common types of self-regulatory initiative, both for private companies and for philanthropic institutions.

These codes usually present a set of standards defined as a guide for behaviours and practices, which may consist of general rules or even further-detailed regulations for the foundations' specific matters[61].

In order to have efficient governance, foundations must pay special attention to internal politics and to ethical issues, including problems such as conflicts of interest. An institution's most valuable asset is its reputation, which in turn depends on a culture that values high standards of ethics. The best type of supervision is that which comes from the association or foundation, not from regulatory bodies[62].

The specialised literature identifies four main groups of stakeholders pertaining to legal compliance:

a) internal stakeholders (the staff, board of directors, supporters, subsidiaries, local partners); b) donors; c) beneficiaries (fund recipients); and d) those affected

60 CHENE, M. DEVELOPING a Code of Conduct for NGO. Transparency International, 2009, p. 3-4. Available at: <https://www.u4.no/publications/developing-a-code-of-conduct-for-ngos/>. Accessed on: 4 June 2018.

61 HARTAY, E.; ROSENZWEIGOVÁ, I. The Regulatory Framework for Fundraising in Europe, European Centre for Not-for-profit Law (ECNL), 2017, p. 56-7. Available at: <http://ecnl.org/wp-content/uploads/2017/11/The-Regulatory-Framework-for-Fundraising-in-Europe_ECNL-research.pdf>. Accessed on: 18 August 2018.

62 GRISWOLD, J.; JARVIS, W. GOVERNANCE and Compliance Issues for Foundation Financial Management. Commonfund Institute, Council of Foundations, 2015, p. 8-9. Available at: <https://www.cof.org/sites/default/files/documents/files/COF_WP_GOV.pdf>. Accessed on: 18 August 2018.

by the activities (private sector, the government, international organisations, etc.), or civil society in general[63].

Establishing and adhering to a code of conduct signals credibility, reliability and professionalism to external auditors and employees alike:

- **Legitimacy:** the adoption of a code of ethics may contribute to an increase in an organisation's reliability and credibility, and raise the level of trust and commitment their stakeholders have towards the legitimacy of their operations.
- **Transparency and clarity in internal processes:** codes of conduct can also contribute towards clarifying internal processes, and towards introducing greater transparency in management and in running the organisation, addressing criticism regarding nebulous and antidemocratic decision-making processes.
- **Accountability and representation:** by establishing an express set of values, principles, performance standards and internal processes, codes of conduct provide a structure that serves as a basis for organisations to become more accountable.
- **Professional standards and performance:** by promoting rigorous practices standards, a code of conduct can also contribute to raising the organisation's professional standards and improve its performance.
- **Internal cohesion:** codes of conduct can strengthen the sense of community and belonging between an organisation's team, its members and the stakeholders, who commit to a set of fundamental values and share a common mission.
- **Potential financial benefits:** addressing the responsibility issues in a code of conduct may not only contribute to attracting more funds, but also to ensuring a better use of the resources.

The code must also establish procedures for filing complaints, to be used by both the internal and external public, so as to make it easier to report irregularities or actions deemed contrary to the code's standards. In some cases, the organisation may designate an ombudsman that can address the stakeholders' concerns and keep the organisation's operations focused on their mandate, mission, values and principles[64].

The effective implementation of the code also depends on the supervision mechanisms to monitor compliance, and to detect and investigate its violations. The decision-making process for determining whether an employee violated the code must be open, fair and transparent. Good codes of conduct not only identify

63 Instituto Brasileiro de Governança Corporativa. Código das melhores práticas de GOVERNANÇA CORPORATIVA. 5. ed. São Paulo: IBGC, 2015, p. 24. Available at: <http://www.ibgc.org.br/userfiles/files/Publicacoes/Publicacao-IBGCCodigo-CodigodasMelhoresPraticasdeGC-5aEdicao.pdf>. Accessed on: 21 August 2018.

64 CHENE, M. DEVELOPING a Code of Conduct for NGO. Transparency International, 2009, p. 6. Available at: <https://www.u4.no/publications/developing-a-code-of-conduct-for-ngos/>. Accessed on: 4 June 2018.

behavioural patterns, they also explain the consequences applicable to cases of violation, which demonstrates the organisation's willingness to act whenever the code's clauses are not being observed. In addition to penalties, a system of positive incentives can be introduced to reward the members who adhere to the code of conduct in an exemplary manner. Regularly assessing the code's impacts is crucial to the implementation regime, with regular mechanisms for presenting reports, analyses of the complaints filed, reviews, etc.[65].

In this sense, these codes strengthen the sense of community and belonging between an organisation's team, its members and the stakeholders, who all commit to a set of values and share a common mission. The creation of these regulations helps with directing responsibility, seeing as the donors or the people with a stake in the investment tend to question the institution's responsibilities, as well as their operational practices.

Codes of conduct can be structured in the following way: a) the organisation's mission and vision, including its strategic goals; b) essential values, including a general declaration of intentions and internal culture; c) the organisation's responsibilities and practices, including responsibilities pertaining to stakeholders;d) standards and rules for managers and employees, indicating what behaviours are acceptable, including rules on gifts, the use of company assets and confidentiality, among other elements that influence the employees' conduct[66].

Thus, these codes must be documents incorporated to the organisation's policy, so that they may be disseminated via the systematic transmission of their content during training programs for the entire organisation, in order to establish a supervision method that seeks to detect violations[67].

3.4 Composition of the Board

Selecting qualified members to form a foundation or association's board is fundamental for an institution's governance. The board members must be engaged with the foundation's mission and work as a team. A culture of engaged leadership includes having the right people in the board: responsible people who are distinctly aware of what their roles are[68].

65 Ibidem, p. 6-7.

66 MARTINI, M. Codes of Ethics for Companies: Good Practices and Resources. Transparency International, December 2014, p. 2-3.

67 Codes of conduct may also be applied to investors, as the Baobá Fund has been doing. Selma Moreira: interview [July 2018]. Interviewers: Marcus Repa and Michael Freitas Mohallem, via Skype.

68 GRISWOLD, J.; JARVIS, W. GOVERNANCE and Compliance Issues for Foundation Financial Management. Commonfund Institute, Council of Foundations, 2015, p. 7. Available at: <https://www.cof.org/sites/default/files/documents/files/COF_WP_GOV.pdf>. Accessed on: 18 August 2018.

THE RENOVA CASE

The Renova Foundation was created in August 2016 to develop actions geared towards repairing the damages caused by the collapse of the Fundão dam in Minas Gerais state, which took place in the previous year. In June 2018 — which is to say, 22 months after its creation—, the foundation pledged to make changes to its governance and to improve the mechanisms put in place that allowed for the participation of the people affected by the collapse[69].

With 116 clauses, the lengthy 2018 conduct adjustment agreement, which was signed by the companies that maintain the foundation (BHP Billiton, Samarco and Vale), by the public organs involved (autarchies pertaining to the Union and to the states of Minas Gerais and Espírito Santo, as well as public prosecutors and public defenders' offices) and by the Renova Foundation's own management, provides a few diagnostics:

- "the need for improving the governance system provided for in the TTAC agreement [the original conduct adjustment agreement from March 2016], bringing a greater degree of participation, quality and complexity to the decision-making process, as well as the need to avoid negative impacts on the deadlines for implementing the PROGRAMS" (item 9).
- "the need for increasing the level of participation of the people affected by the collapse, in whatever way they deem appropriate, in all of the phases of this AGREEMENT, be it in the planning phase or in the actual execution and monitoring of PROGRAMS and activities provided for in the TTAC agreement and in this AGREEMENT" (item 14).
- "the need for strengthening the transparency mechanisms when communicating information pertaining to the activities geared towards fully repairing the damage caused by the FUNDÃO DAM COLLAPSE, as well as the need to adequately broaden the access to information, by establishing dialogue channels between the GOVERNMENT, the COMPANIES, the FOUNDATION, society and the people affected" (item 16).
- "the access to clear and transparent information, which according to national law is a pre-condition for legitimacy and for the democratic supervision of the decisions made in the context of the FUNDÃO DAM COLLAPSE" (item 18).
- "the need for improving the participatory governance system, so that it respects the centrality of the people affected by the collapse as the guiding principle for the activities that are to be conducted in order to fully repair the damage caused" (item 21).

69 See the Conduct adjustment agreement; organs will be created to include the general public's participation into the decision-making structures of reparatory and compensatory programs. Available at: <https://www.fundacaorenova.org/sobre-o-termo/>. Accessed on: 22

One of the concrete changes made to the Renova Foundation's governance was the increase in the number of people forming the Board of Trustees69, the Foundation's highest decision-making authority.

The original 2016 conduct adjustment agreement established that this Board would consist of seven individuals, six of which being appointees from the foundation's parent companies (Samarco, Vale and BHP) – each company appointed two individuals, and the Inter-federative Committee, a body composed of all the public organs involved, appointed the seventh member. Seeing as the diagnostic stated that it was necessary to increase the level of participation of the people affected, the number of members composing the Board of Trustees grew to nine. According to clause forty-six of the conduct adjustment agreement, the two additional members are appointed by the Regional City Councils Coordination Office, chosen from the people affected by the dam collapse, or technicians selected by them (during the process of repairing the damage caused, the same conduct adjustment agreement created six Regional City Councils for the participation of the people affected — Clause Twenty-Nine).

The foundation must first align the culture it seeks to create with its ethical point of view; then, it must select individuals aligned with the characteristics that the entity wishes to incorporate[70].

Governance specialists concur that diversity among the board members is important. With that in mind, an alarming piece of data from GIFE (2016) showed that, in Brazil, only 24% of board members are women. In the United States, women correspond to 41% of board members. For a few specific positions, such as in supervisory or investment-related functions, board members are required to have specialised knowledge. Otherwise, in order to form a respected and efficient board, it is generally important for it to consist of members that are diverse in terms of backgrounds, experiences, gender and points of view[71].

In this sense, Andre Degenszajn, from the Ibirapitanga Institute, says:

> [...] these boards very often do not work properly, when they are too large or represent several institutions with different interests. The ideal scenario would be for such a board to be functional and be able to make decisions, but this means it can't have more than 30 members, the GIFE guide states eleven to be a good amount of members [...]. It must have people who are free from conflicts of interest, legitimised people, who can provide guidance and add value when it comes to programs and policies. It must have people who understand the role of an institution like this, it doesn't need to be a council of the foundation's operators, but there needs to be people who understand this, with various characteristics.

He also adds that:

> In an administrative board, creating a rule for membership rotation is imperative. A fund cannot have people that become embedded into the board. The board needs to have a perspective for renewal. An institution needs to protect itself, so that the people making the rules do not perpetually continue on the board. Another dangerous rule is one that says, "there needs to be a representative from X, and another from Y". I think that tacking too much onto the structure can hinder the board[72].

70 HAWTHORNE, R. The First Steps to Building a Foundation of Nonprofit Culture. Bloomerang. 2015. Available at: <https://bloomerang.co/blog/the- first-steps-to-building-a-foundation-of-nonprofit-culture/>. Accessed on: 18 August 2018.

71 GRISWOLD, J.; JARVIS, W. GOVERNANCE and Compliance Issues for Foundation Financial Management. Commonfund Institute, Council of Foundations, 2015, p. 7. Available at: <https://www.cof.org/sites/default/files/documents/files/COF_WP_GOV.pdf>. Accessed on: 18 August 2018.

72 Ibidem.

In turn, Amalia Fischer Pfaeffle, founder and executive director of the Angela Borba Fund (the ELAS fund), highlights that:

> A fund must be run by ethical people who are not affiliated with any political parties, that come from a background of defending rights and who believe in democracy and the rule of law. People who are familiar with philanthropy, with developing social movements, with human rights. It's an area that has gone through a lot, especially in the last years, I'm talking about the entire team, not just an individual figure [...], in conclusion, there needs to be a strong and sensitive board, with a good programs area, and a team that has both technical knowledge and this sensitivity[73].

Ana Toni, executive coordinator for the Instituto Clima e Sociedade ("Climate and Society Institute"), suggests a governance model in which the boards have "their own rules, handbooks and transparency systems, in which they are taken seriously, and are composed of between seven and nine good and dedicated people. There is no need for an advisory board. Boards need to make decisions, creating another body just to bring in well-known people is not necessary"[74].

According to Pedro Abramovay, Latin America director for Open Society, "the most important thing is to think about which governance roles should be in the hands of government and to separate management from these board functions. If everything is left to the board, then the board needs to be larger, between ten to twelve people; if it's a smaller board, then it's better to divide the roles[75].

José Marcelo Zacchi, GIFE's secretary-general, says that:

> It's important for the arrangements to be as clear as possible, which is to say, to communicate the fund's activities clearly. It's important to have a governance environment that involves several players from society, who bring outside views and who share the decision-making process, valuing the public character of the institution in question. […] I would think of a board that could be responsible for the governance pertaining to funds allocation, bringing in the most of society's diversity[76].

73 Amalia Eugenia Fischer Pfaeffle: interview [July 2018]. Interviewers: Michael Freitas Mohallem, Denise Dora, Pedro Strozenberg and Fabiano Angélico. Rio de Janeiro: Getúlio Vargas Foundation, 2018.

74 Ana Toni: interview [August, 2018]. Interviewer: Michael Freitas Mohallem. Rio de Janeiro: Instituto Clima e Sociedade, 2018.

75 Pedro Abramovay: interview [August 2018]. Interviewer: Michael Freitas Mohallem. Rio de Janeiro: Open Society, 2018.

76 José Marcelo Zacchi: interview [August 2018]. Interviewer: Michael Freitas Mohallem. Rio de Janeiro: Getúlio Vargas Foundation, 2018. Via Skype.

3.5 Human resources policies

Having a good human resources (HR) policy is a way of ensuring that foundations and associations will stay compliant with ethical standards and able to help with the institutions' good governance and transparency policies. For example, the HR sector is capable of controlling the foundation's policy of remuneration and benefits, which must be aligned with the organisation's standards, which in turn must be defined in levels that can attract and keep skilled professionals. Thus, an efficient human resources policy is able to avoid the misuse and misappropriation of resources, and even conflicts of interest. It can also decrease the risk of corruption by adopting the following practices[77]:

- Hiring based on qualifications and professional history.
- Transparent promotions practices, salary structure and benefits.
- Transparent systems for reviewing performance.
- Transparent disciplinary measures and procedures.
- Rules against nepotism and against hiring people whose personal relationships represent a conflict of interests.

Another purpose of human resources policies is to allow organisations to fully comply with the national regulations to which they are subject, as well as ensuring that domestic and international labour laws are observed.

In this sense, it is important to establish a starting training program, that is to be applied as soon as the new hires enter the company, as well as a continuous training program, with content updates that stem from the adaptive learning processes addressed in Chapter 4 of this report.

In general terms, the content of the training programs can be itemised as follows:

- **Basics content:** overview on damage compensation (case studies and best practices); overview on best practices pertaining to governance, transparency and accountability for foundations. Overview on best practices concerning effectiveness, quality, supervision and evaluation, resource application, relative to both mission effectiveness and programs effectiveness. Overview on endowment funds and other methods for achieving financial sustainability.

- **Specific content:** a) for members of the auditing board and employees with supervisory roles: focus on supervision, transparency and accountability in foundations; b) for board members and executives: focus on management, supervision and evaluation, as well as on endowment funds and other methods for achieving financial sustainability.

77 KUKUTSCHKA, R. Income and Asset Declarations for NGOs. Transparency International, 2017, p. 12. Available at: <https://www.transparency.org/ files/content/corruptionqas/Income_and_asset_declarations_for_NGOs_2017.pdf>. Accessed on: 18 August 2018.

3.6 Policies regarding conflicts of interest

Conflicts of interest occur when an individual – a board member, director or staff member – realises that their obligation to promote the organisation's goals clashes with their financial or personal interests[78].

Some foundations have a disclosure policy, which requires members of the staff, the board of directors, the committee or even volunteer workers to present the executive director with a list containing their main business ventures and activities, indicating their involvement with other organisations, suppliers or any other associations that may cause a conflict of interest, even before they start working.

This way, each member has an obligation to inform the foundation, their colleagues, volunteers and the community about any positions, business ventures or activities that may result in a potential conflict of interest or bias[79].

Another policy capable of mitigating the risk of conflict of interest is that of recusal. This measure takes place when the board of trustees decides that one of its members has an inevitable conflict of interest, which leads to them being formally and physically absent in the moment of making this deliberation. Said member must provide information and answer the questions posed by board's chairperson, so that the best decision can be reached regarding their continuation in the project, or even as a member of the foundation[80]80.

3.7 Whistleblower protection policy

Protecting whistleblowers is crucial to fighting corruption, and the board needs to ensure that no employee will be punished or discriminated against for reporting improper behaviour[81]. A whistleblowing policy can constitute a great breakthroughin the fight against corruption within the organisation[82].

A whistleblower is an individual who, upon observing the occurrence of illicit acts within an organisation — even if they are not linked to it —, willingly reports what they know to the relevant authorities. They are those who, even without having any part in the illicit act or without receiving any personal benefit, will provide the authorities or any other relevant person with information pertaining to said illicit or criminal activities[83].

78 PATHWAY, L. GOVERNANCE & Compliance. 2017. Available at: <http://pathwaylaw.com/nonprofit-law/governance-compliance/>. Accessed on: 18 August 2018.

79 Council of Foundations. Sample Conflict of Interest Policies from the Council, p. 3. Available at: <http://www.cof.org/sites/default/files/documents/ files/Sample-Conflict-of-Interest-Policies-From-the-Council.pdf>. Accessed on: 20 August 2018.

80 Ibidem, p. 2.

81 Boardsource. Recommended GOVERNANCE Practices. 2016. Available at: <https://boardsource.org/wp-content/uploads/2016/10/Recommended-Gov-Practices.pdf>. Accessed on: 18 August 2018.

82 Council of Foundations. Record Retention for Foundations. 2018. Available at: <https://www.cof.org/content/record-retention-foundations>. Accessed on: 18 August 2018.

83 ENCCLA. O que é o whistleblower? Available at: <http://enccla.camara.leg.br/noticias/o-que-e-o-whistleblower>. Accessed on: 15 January 2018.

Whistleblowers are an important element in corporate governance. Many companies, both in developed and emerging economies, have adopted systems for whistleblowing, including hotlines. In order for them to work properly, dedicated policies and systems need to be put in place, many of which are provided for by international conventions or domestic laws. In Brazil, there is no specific legislation regarding the subject, which does not preclude associations and foundations from adopting such measures.

Even though creating protection regulations is an important and difficult step, in countries with a high rate of corruption, the biggest difficulties are related to ensuring that the system is accessible to all employees and suppliers, and that the reports produced by whistleblowers are treated with confidentiality and efficiency[84].

With regards to the importance of whistleblowers, the New Measures Against Corruption project says that:

> Whistleblowers play an essential role in exposing acts of corruption, fraud, poor management and other irregularities that affect crucial areas such as public healthcare, financial integrity, human rights and the environment. Whistleblowers have been helping countries all over the world to save millions of lives and public funds, and they help prevent environmental disasters as well. Whistleblowers put their lives in danger, risking being fired, sued, blackmailed, threatened or even, in more extreme cases, killed. Protecting them from such retaliation is essential and not only helps with exposing corruption, but also in promoting a more open and more transparent work and governmental environment[85].

84 MARTINI, M. Best Practices and Challenges for Whistleblowing Systems in Multinational Companies. Transparency International, 2014, p. 1. Available at: <https://www.transparency.org/whatwedo/answer/best_practice_and_challenges_for_whistleblowing_systems_in_multinational_co>. Accessed on: 20 August 2018.

85 MOHALLEM, M. F.; BRANDÃO, B. et al. NOVAS medidas contra a corrupção. Rio de Janeiro: Getúlio Vargas Foundation Rio de Janeiro Law School, 2018, p. 122.

With that in mind, the most basic challenge for a whistleblowing system is to provide easy access to those who wish to make reports. Associations and foundations must offer channels for such reports, as well as an ethics committee, online forms, phone (or e-mail) hotlines at no charge and available 24 hours a day. Furthermore, whistleblowing systems must be open to relevant third-parties, such as suppliers, contractors, consultants[86] and especially the fund's beneficiaries.

Whistleblowing systems need to be well known within the organisation. A good policy must help with clarifying the existing rules, reduce any fears whistleblowers might have and produce useful reports. Therefore, such policies must integrate the institution's general compliance policy and provide guidelines for the different types of complaints for follow-up[87].

One of the main problems that affect the effectiveness of whistleblowing systems is that they can produce large amounts of trivial reports, or reports with no factual basis. In order to deal with the large number of cases, companies need to adopt efficient triage and case management methodologies. This means defining different levels and degrees of formality for the investigations, including criteria on whether any additional action is actually required, as well as access to forwarding reports to top management and external organs[88].

The main obstacle for reporting a suspected irregularity is the fear that employees might suffer retaliation and reprisals. Therefore, creating avenues for making anonymous reports may be necessary, especially in countries with high levels of corruption and little external protection. However, anonymity can incentivise the misuse of the system and may handicap the follow-up process[89]. Thus, implementing an efficient whistleblowing system requires an investment in personnel, training, information management systems and technology to provide different communication channels[90].

In the case of associations and foundations, there is also a specific public that must be given special attention as potential users of the reporting channels: the donation beneficiaries. The representatives for the beneficiary entities or even the end beneficiaries are players who often become exposed to malfeasance performed by social investors and staff members.

For example, an employee that holds decision-making powers on the approval of projects and donations in a given foundation might be colluding with

86 MARTINI, M. Best Practices and Challenges for Whistleblowing Systems in Multinational Companies. Transparency International, 2014, p. 8. Available at: <https://www.transparency.org/whatwedo/answer/best_practice_and_challenges_for_whistleblowing_systems_in_multinational_co>. Accessed on: 20 August 2018.

87 Ibidem, p. 5-6.

88 Ibidem, p. 5-6.

89 Ibidem, p. 6.

90 Ibidem, p. 6-7.

the beneficiary entity's representative. Another example, in which female beneficiaries are especially at risk, is coercion via the exchanging of favours — including sexual favours — in order for them to receive any kind of assistance funded by the donation.

Therefore, it is particularly important that the policies and reporting channels take into account the potential whistleblowers that can be found among the funds' recipients and beneficiaries. It is also essential that these mechanisms offer safeguards against potential retaliations to these groups, such as withholding approval for funding or benefits, as well as reducing or eliminating access to them.

3.8 Complaints Office

Complaints offices have been a democratising element when it comes to accessing information. In the public sector, these offices have been consolidating as a channel through which the users of State-provided services can participate. A 2017 federal law[91]91 establishes that complaints offices have the following attributions:

- to promote user participation, in cooperation with other entities;
- to monitor the services provided, with the aim of ensuring effectiveness;
- to propose improvements to the provision of services;
- to help in preventing and rectifying the activities and procedures that are incompatible with the principles of law (the principle of regularity and the going concern principle, as well as the principles of effectiveness, legal certainty, textuality, generality, transparency and comity)[92];
- to propose measures for defending users' rights;
- to receive, analyse and forward complaints;
- to promote mediation and conciliation measures.

Therefore, the aforementioned law seeks to build an institutional space that will simultaneously be: a) a spot for hearing the complaints from service users; b) a player that proposes continuous improvements in consultation with those that devise and implement the systems; and c) a mediator and conciliator between service providers and users.

The potential legitimacy and efficiency gains brought about by complaints offices are also available to the private sector or private organisations geared towards the public interest. Seeing as complaints offices primarily aim to make sure stakeholders are satisfied with the services provided, their work can lead to improvements to processes and procedures, based on the complaints received and inquiries conducted[93]. Furthermore, complaints offices serve

91 Law 13,460 of 26 June 2017; the attributions of complaints offices are found in article 13 (http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2017/lei/l13460.htm).

92 Ibidem, article 4.

93 CENTURIÃO, A. Ombudsman: a face da empresa cidadã. São Paulo: Educator, 2003.

as an investment into consolidating the company or organisation's image, due to the greater satisfaction of the customers[94]. Additionally, complaints offices also work as a repository for different kinds of information, bringing attention to issues the organisation would normally not notice[95].

When it comes to managing compensatory resources, in which the opinion of external stakeholders is essential to bringing legitimacy to the process, implementing a complaints office becomes indispensable. In order to guarantee the office's autonomy and independence from management, it is important that guarantees and safeguards be put in place, such as keeping channels for reporting directly to the top decision-making authority and prohibiting the removal of the complaints office (or its members) by the organisation's managers.

94 AMARAL FILHO, Marcos, J. T. Ombudsman e o Controle da Administração. São Paulo: Edusp Cone, 1993.

95 BRAZ, A.; VARÃO, R. OUVIDORIA mídia organizacional: o papel das OUVIDORIAS na comunicação organizacional. Porto Alegre: Sulina, 2012.

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BEST PRACTICES FOR TRANSPARENCY AND ACCOUNTABILTY

4 BEST PRACTICES FOR TRANSPARENCY AND ACCOUNTABILITY

The foundations or associations responsible for managing compensatory funds must promote transparency and continuously improve their supervision over the investment. They must also adopt measures for effective and transparent accountability as a way to increase their legitimacy, as well as to facilitate collaboration, to avoid work being done twice in the same area and to reduce the risk of misuse of funds. A few examples are: periodically releasing activities and impact reports, and publishing audited financial statements, among other instruments deemed relevant.

It is common for civil society organisations and research institutions that implement social projects to compete for the resources distributed by public or private funds. With that in mind, it is necessary to develop efficient controls that allow for transparency and accountability when it comes to choosing grantseekers and allocating these resources, to avoid any concerns about there being favouritism or personal motivations[96].

Apart from boosting credibility and public trust, transparency can reduce the overlap in the work done by foundations that tackle the same problem areas. It can also amplify inter-institutional collaboration, favour collective problem solving and cultivate a community for learning and sharing best practices between foundations and associations[97].

The first fundamental characteristic of these organisations' accountability systems is risk analysis pertaining to internal corruption. Organisations operating in countries affected by endemic corruption are more likely to face corruption-related challenges. Similarly, the risk of corruption may vary, depending on the nature of the activities. A risk-based approach allows an organisation to adjust its level of control to the specific reality in which it is operating.

By conducting due diligence on partners or recipients, it is possible to limit the opportunities for corruption. To perform these assessments,foundations and associations can employ a combination of the initial internal evaluation and more detailed evaluations of financial management practices and capabilities. This includes observing policies pertaining to integrity and human resources management, as well as codes of

96 With regards to the recipient projects' transparency, Ana Toni emphasises the importance of an "extremely robust internal system for organising public call notices and for grantmaking, so that the projects and the assessments can be sent online and in a transparent manner. The meetings would also be made available online. Everything needs to be transparent". Ana Toni: interview [August 2018]. Interviewer: Michael Freitas Mohallem. Rio de Janeiro: Instituto Clima e Sociedade, 2018.

97 Guidestar. A Guide to Good Practices in Foundation Operations. 2017. Available at: <https://learn.guidestar.org/hubfs/Docs/foundation-good- practices.pdff>. Accessed on: 18 August 2018.

conducts, transparency standards, financial management standards and accountability measures[98].

The risk of corruption is also linked to the nature of the operations, to the sector and to the type of activities, which come with different corruption- related challenges, such as humanitarian aid, infrastructure projects, service provision or activities related to rights advocacy. A comprehensive system for managing corruption risks in associations and foundations also involves adopting the appropriate measures for detecting, investigating and punishing corruption cases. All measures for mitigating the risk of corruption must be agreed upon by the partners and specified in the contract[99].

It is also important to define the entities' accountability targets, such as internal stakeholders (the staff, board of directors, backers, subsidiaries, local partners, volunteer workers, members); donors and external partners (governmental or otherwise); regulatory organs; organisations that will be influenced by the foundations or associations' activities; beneficiaries and parties affected by the NGOs' operations; the media, civil society and the general public[100].

Glasspockets, an organisation that promotes transparency in the world of philanthropy, provides a list of the main benefits of transparency[101]:

- boost in the credibility of a foundation or association;
- increase in public trust;
- reduction in the overlapping work done by foundations and associations;
- problem solving becomes easier;
- cultivation of a community for shared learning.

Next, we will focus on the best practices for management reports, as well as on compliance with established rules, self-regulation, responsive communication, participation and adaptive learning. Lastly, a proposal of principles for investing in civil society organisations will be presented.

98 Ibidem.

99 Ibidem.

100 Ibidem.

101 Ibidem.

4.1 Management reports, compliance and self-regulation

One way for foundations and associations to increase their level of transparency is to write standardised, regular, satisfactory reports, all in compliance with accounting requirements and governance standards, based on national law and global best practices. Said reports represent an important aspect of an organisation's transparency, with the purpose of making basic data and relevant information available to the public[102].

Compliance with legal requirements and minimal accounting requisites are the ground level from which a foundation should begin striving to implement the best practices for publicising relevant information and more complete databases. Advancements in information technology allow organisations to publicise data, as well as relevant information and analyses, in real time, by employing their own transparency and accountability strategy, with protocols and fluxes pertaining to producing, storing and sharing data.

Although organisations must always seek maximum transparency, they should withhold any information – such as personal data – that may put the safety of their stakeholders, their employees and the people receiving their services at risk. This transparency strategy must be informed by an analysis on the best practices for achieving maximum transparency vis-à-vis global best practices and recent laws for data protection.

These reports become even more important as the institution's donors, recipients and partners are briefed via the periodic publication of the activities. This way, the organisation can use the sharing of information as a practice that will legitimise its activities, leading to a good evaluation in future fundraising activities and the application of civil society investments.

Thus, the question of transparency degrees arises, seeing as some pieces of information do not strictly need to be shared with the public. However, in order to avoid any suspicion concerning activity plans and the use of resources, some mediation needs to be adopted. That is why there is a significant trend in certain foundations, wherein they create guidelines for their activities, communicating their mission and grant-related guidelines in their own webpages.

Ebrahim[103] argues that, together with the use of reports, disclosure statements are among the most frequently used accountability tools, and are frequently required by the laws of several countries. Said statements allow for a greater degree of accountability towards donors, clients and members, and they serve as a way to fulfil supervisory responsibilities

102 KUKTSCHKA, R. Income and Asset Declarations for NGOs. Transparency International, 2017, p. 9. Available at: <https://knowledgehub.transparency.org/assets/uploads/helpdesk/Income-and-asset-declarations-for-NGOs-2017.pdf>. Accessed on: 18 August 2018.

103 EBRAHIM, A. The Many Faces of Non-profit Accountability. Harvard Business School, 2010, p. 12. Available at: <https://www.hbs.edu/faculty/Publication%20Files/10-069.pdf>. Accessed on: 18 August 2018.

in relation to the board of trustees.

Self-regulation systems include auditing, compliance and systems for receiving complaints, making reparations or applying penalties. In practice, such systems are often created following the organisations' bylaws[104]104. Self-regulation also includes monitoring and evaluating the foundations' actions, involving stakeholders and beneficiaries in the process as a fundamental part of the cycle of devising future strategies and priorities[105].

4.2 Responsive communication, participation and adaptive learning

Internal communications affect how the board perceives the foundation or association's staff and operations and, in turn, how the staff perceives the board.

Furthermore, communications also affect how external players, including past, present and future donors, as well as beneficiaries, critics, suppliers and the press perceive the foundation or association[106].

Participation refers to action being taken after the information is made available to the public, which may include public meetings or hearings, research or formal dialogue concerning the project options. Participation may involve, for instance, consulting with leaders and members of the community, but the decision-making process is still a prerogative of the foundation or association's board of directors or council. A second level of participation includes the public's involvement in concrete activities related to the projects, which may consist of community contributions, support or even maintenance of the services or installations, as well as funds meant for helping with the implementation of the projects[107].

Accountability mechanisms and adaptive learning are ways for foundations to create regular opportunities for critical observation and analysis, in order to make the necessary progress and achieve their goals[108].

104 DUFTON, R. Shining a Light on Foundations: Accountability, Transparency and Self-Regulation. Philanthropy Impact, 2014. Available at: <http://www.philanthropy-impact.org/article/shining-light-foundations-accountability-transparency-and-self-regulation>. Accessed on: 18 August 2018.

105 European Foundation Centre. Principles of Good Practice: A Self-Regulatory Tool for Foundations. EFC, 2013. Available at: <http://www.efc.be/wp-content/uploads/2015/04/Principles_to_AGA.pdf>. Accessed on: 18 August 2018.

106 GuideStar. A Guide to Good Practices in Foundation Operations. 2017. Available at: <https://learn.guidestar.org/hubfs/Docs/foundation-good- practices.pdf>. Accessed on: 18 August 2018.

107 EBRAHIM, A. The Many Faces of Non-profit Accountability. Harvard Business School, 2010, p. 18-9. Available at: <https://www.hbs.edu/faculty/Publication%20Files/10-069.pdf>. Accessed on: 18 August 2018.

108 Ibidem, p. 20-1.

4.3 Principles for conducting support operations for civil society organisations

Private philanthropic associations and foundations dedicated to helping civil society organisations can be as susceptible to corruption as any other company in cases where, for example, the volume of the funds donated is large but the governance structure is inefficient, among many other unfavourable scenarios. Therefore, foundations or associations need to have a consistent anticorruption policy and an ethics code to maintain a transparent and lawful environment.

The Business Principles for Countering Corruption[109] were originally written via a multi-stakeholder process, which involved companies, non-governmental organisations and trade unions, as a tool to help companies develop efficient approaches to fighting corruption in all their activities. Companies need to develop and implement an anticorruption program as a way of demonstrating ethical values and corporate responsibility.

Exposure to the risk of corruption may vary between industries and companies, but none of them can be sure that they will be free from it. An effective anticorruption program not only helps mitigate this risk, but also can strengthen a company's reputation, seeing as it builds up the employees' respect, increases credibility with the main stakeholders and helps with said company's commitment to upright and responsible behaviour[110].

The aforementioned Business Principles seek to provide a structure than can help companies in devising, benchmarking or strengthening their anticorruption programs. Said principles reflect a high – but achievable – standard for this practice. They are applicable to corruption cases involving government employees, and to financial transactions in private institutions. Apart from broaching the subject of corruption, they also include clauses and revised language on topics such as risk assessment, conflicts of interest, cooperation with authorities, facilitation reports and facilitating payments, lobbyists and communication, to expound on the importance these questions have in modern anticorruption praxis, and to

109 Although the original title uses the term "bribery" (The Business Principles for Countering Bribery), this report opted to use the term "corruption" instead. This is due to the fact that the former term is more semantically comprehensive than the latter: "bribery" has a broader meaning than "corruption".

110 Transparency International.. Business Principles for Countering Bribery: a Multi-stakeholder INITIATIVE. Transparency International, 2013, p. 4.

better align with other importantlegal codes and instruments, such as the United Nations Convention against Corruption[111].

Below, we will present an adaptation of the Business Principles for Countering Corruption[112] to the context of foundations and associations dedicated to funding civil society organisations. This adaptation can be called the Principles for Funding Civil Society Organisations.

PRINCIPLES FOR FUNDING CIVIL SOCIETY ORGANISATIONS

- The foundation or association must ban corruption in all forms, directly or indirectly.
- The foundation or association must implement an anticorruption policy, which will demonstrate the institution's commitment to fighting corruption, taking into account its code of conduct, risk management, internal and external communication, training and orientation, internal controls, supervision and monitoring.

COOPERATION WITH AUTHORITIES

- A fundação ou associação deve cooperar adequadamente com as autoridades competentes em investigações e processos de corrupção.

Independent inspection

- When appropriate, the foundation or association must submit to a voluntary independent inspection of the Program's drafting, implementation and efficacy.
- When this independent inspection is conducted, the foundation or association must consider publicly announcing that an external review took place, and disclose what findings were made.

111 The United Nations Convention against Corruption is geared towards prevention, penalisation, assets recovery and international cooperation, and it reinforces the demand for States to ensure that victims of corruption have access to compensation. In it, corruption is defined by the misuse of a public or private position for personal gains, including corruption, nepotism, fraud, manipulating proposals or money laundering, the outcome of which is reduced efficiency and greater inequality. The treaty seeks to articulate joint action between the signatories by providing guidelines, definitions, applications, preventive measures, codes of conduct for government employees and public entities, among other approaches found in the text. Furthermore, article 35 of the Convention establishes the possibility of paying indemnity for damage and losses, stating that "each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation". BRAZIL, Decree-Law 5,687 of 31 January 2006, Brasília, DF. Available at: <http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2006/decreto/d5687.htm>. Accessed on: 28 April 2018.

112 Transparency International. Business Principles for Countering Bribery: a Multi-stakeholder INITIATIVE. 2013.

DEVELOPING AN ANTICORRUPTION PROGRAM

- The foundation or association must develop a Program that articulates values, policies and procedures in a clear and reasonably detailed manner, the purpose of which will be to prevent corruption from occurring within the entity, in all activities under its effective control.
- The foundation or association must devise and improve its Program based on continuous risk assessment.
- The foundation or association must develop the Program in consultation with its employees, trade unions or other organs that represent the workers and other relevant stakeholders. Special attention must be given to the inclusion of the beneficiaries and recipients' representatives in these consultations.
- The foundation or association must keep itself abreast of all internal and external matters in order to develop and implement the program effectively, and especially of any new and improved practices that may emerge, including the involvement of the relevant stakeholders.

Risk assessment

- The Program must be adapted to reflect the specific risks to which the foundation or association are exposed.
- The foundation or association must assign internal responsibilities regarding implementing, supervising and assessing risks for the anticorruption program.

SCOPE OF THE PROGRAM

- The Program must address the main risks of corruption pertaining to the foundation or association, but it must also at least cover the following areas:

Conflitos de interesse

- The foundation or association must implement policies and procedures for identifying, monitoring and managing conflicts of interest that may lead to any actual, potential or perceived risks of corruption. These policies and procedures must be applied to board members, directors, employees and contractors, such as agents, consultants and other intermediary parties.

Bribery and illegal payments

- The foundation or association must ban all forms of bribery, whether they are done directly or through third parties.
- The foundation or association must also forbid its employees from requesting, organising or accepting payments that benefit either themselves or their families, friends, associates or acquaintances.

Political contributions

- The foundation or association and all employees, agents, consultants or other intermediary parties must not make any direct or indirect contributions towards political parties, organisations or individuals engaged in politics, as a way to obtain unfair advantages in their day-to-day activities.
- The foundation or association must publicly disclose all previous interactions with political parties and individuals in official positions.

Donations and investments in civil society organisations

- The foundation or association must ensure that donations and investments made towards civil society organisations are not used as a cover for corruption.
- The foundation or association must publicly disclose all its donations and investments pertaining to civil society projects and organisations, following the highest standards of transparency.

Payments made in exchange for obtaining advantages

- Seeing as using money in order to obtain any kind of advantage constitutes a private corruption practice, the foundation or association must forbid it.

Gifts and hospitality expenses

- The foundation or association must develop policies and procedures that ensure all gifts and hospitality expenses are offered in good faith, in addition to imposing a strict limit on receiving and offering said items. The foundation or association must prohibit the receiving of gifts, hospitality expenses or other expenses whenever they may exert any undue influence on the results of the foundation or association's actions, or be perceived as such.

IMPLEMENTATION OF THE PROGRAM: REQUIREMENTS

Organisation and responsibilities

- The board of trustees (or the equivalent organ) must show its commitment to implementing the foundation or association's Program.
- The executive director (or the equivalent position) is responsible for ensuring that the Program is conducted in a consistent manner, with clearly defined lines of responsibilities and authority.

Relationship with partners and other stakeholders

- The foundation or association must implement its Program in all organisational structures over which it has effective control.
- In the cases where it does not have effective control, the foundation or association must use its influence to foster an equivalent program within the entities that receive significant investments from it, or with which it has any legal relationship.
- The foundation or association must avoid dealing with entities that are under reasonable suspicion of paying or receiving bribes.
- The foundation or association must monitor its more significant professional relationships, in a reasonable and proportionate manner.
- The foundation or association must document the relevant aspects of the implementation of its Program (or equivalent) by the associated entities.
- If the associated entities' policies and practices are in conflict with its own Program, the foundation or association must take appropriate action. This may include the need for rectifying the shortcomings of an entity's Program and applying the corresponding penalty.

Agents, representatives and other intermediary parties

- The foundation or association must not make improper payments by using agents, representatives or other intermediary parties.
- The foundation or association must do its due diligence, proportionate in how it encompasses the relevance of the contract and properly documented, before appointing agents, representatives or other intermediary parties.
- The compensation paid to agents, representatives or other intermediary parties must be adequate and justifiable by the lawful services provided.
- Agents, representatives or other intermediary parties must contractually agree to comply with the foundation or association's Program and receive proper counselling and documentation explaining this obligation.

Contractors and suppliers

- The foundation or association must conduct its contracting practices in a fair and transparent manner.
- The foundation or association must take measures to identify its contractors and suppliers.
- The foundation or association must assess the risk of corruption pertaining to its contractors and suppliers, and monitor it regularly.
- The foundation or association must tell its contractors and suppliers about its anticorruption program.

HUMAN RESOURCES

- Human resources practices, including recruitment, promotions, training, performance reviews, compensation and recognition, must reflect the foundation or association's commitment to the Program.
- The human resources policies and practices that are relevant to the Program must be developed and conducted in consultation with the employees, trade unions and the beneficiaries themselves, as deemed appropriate.
- The foundation or association must make it clear that no employees will be subject to demotions, penalties or other negative consequences for refusing to pay bribes.
- The foundation or association must make the employees and directors' compliance with the Program mandatory, and apply the appropriate penalties in cases of infraction.

Training

- Directors, managers, employees and agents must receive adequate training concerning the Program.
- When appropriate, contractors and suppliers must receive training pertaining to the Program.

Reporting concerns and orientation

- In order to be efficient, the Program must have employees that are able to report on concerns and violations as soon as possible. Thus, the foundation or association must provide safe and accessible channels, through which the employees and others will feel free to bring up concerns and report violations (also known as whistleblowing) in a confidential manner, free from reprisals.
- This or other channels must be available for employees to seek guidance on the application of the Program.

COMMUNICATIONS AND REPORTS

- The foundation or association must establish efficient internal and external communications for the Program.
- The foundation or association must publicly disclose information about its Program, including the management systems used to ensure its implementation.
- The foundation or association must be open to receiving communications and act jointly with the stakeholders in relation to the Program.
- The foundation or association must consider also disclosing publicly any payments made to public organs.

Internal controls and record keeping

- The foundation or association must establish and maintain an effective internal controls system for combatting corruption, which includes controls, as well as financial and organisational balance sheets.
- The foundation or association must keep record books and ledgers that accurately and properly document all financial transactions and make them available for inspection. The foundation or association must not have off-the-book accounts.
- The foundation or association must subject its internal controls systems, especially accounting and bookkeeping practices, to regular reviews and audits that will assess their drafting, implementation and efficacy.

Supervision and reviews

- The foundation or association must establish mechanisms for receiving feedback and obtaining other types of information as processes that help in continuously improving the Program. The foundation or association's senior management must supervise the Program and review it periodically in an adequate and efficient manner, making improvements as they seem fit.
- Management must periodically report the Program's results to the board of trustees or an equivalent organ.
- The board of trustees (or an equivalent organ) must commission independent evaluations, and it is advisable that the results be divulged.

Photo by sergio souza on Unsplash

FINANCIAL SUSTAINABILITY

5 FINANCIAL SUSTAINABILITY

The 2016 GIFE Census, one of the main studies on private social investment in Brazil, shows that the total amount invested in the country during the year in question was R$ 2.9 billion. With regards to the origin of these funds, 46% of this total came from the founding companies themselves and 28% came from returns on endowment funds. Put together, the other sources of funding (product sales, partnerships, donations from family groups, fundraising activities involving legal entities, monthly fees or membership fees, as well as fundraising activities involving international cooperation/philanthropy and private citizens) correspond to 26% of the total.

With this scenario in mind, it is possible to see the difficulties that foundations in Brazil face when it comes to diversifying their source of funding. On its own, this information should already lead to reflections on the viability of committing efforts and resources towards searching for alternative sources of income. Additionally, in the case of funds or foundations created from the application of fines and penalties, there is a specific link between the organisation or individual being punished and the groups, territories or agendas for which they need to make reparations.

In other words, funds that stem from penalties and fines are, in a certain way, “marked”, because they have a clearly defined origin (the individual or organisation being punished) and their destination has already been more or less identified. Thus, if other funds are being received, some uncertainty may arise, namely from two sources: a) ambiguity pertaining to the punished party’s responsibility with regards to the use and the allotment of these other funds; and b) ambiguity pertaining to how these funds will be allocated, which may or may not constitute compensation (offsetting).

In this sense, in the case of compensatory resources, especially those involving large amounts, it seems advisable for there to be only a single fund, and for its financial sustainability to stem from the creation of an endowment fund – a mechanism that, according to the GIFE Census, already makes up more than a fourth of the resources used by foundations every year. With the Endowment Funds Law (13,800/2019) coming into force, which regulates the creation of philanthropic endowment funds, it is possible that this instrument may gain even more traction, offering security and reliability

With regards to funds originating from compensatory resources of more moderate sizes, and considering the relationship between the resources’ origins and the punished party in view of a subject area/territory/group that needs reparations, it is possible to say that creating an endowment fund is not viable, which prevents the source of the

funding from achieving longevity. Thus, in these cases, it is more interesting to apply said resources to one or more predetermined public bidding processes, which will be able to adequately spend the funds in question. The creation of ad hoc governance bodies and said public bidding processes may be enough.

5.1 Investment of the endowment as a tool for social transformation

When it comes to organisations with enough resources to ensure the financial stability of long-term operations – generally foundations –, there is usually a discussion on how to preserve the endowment and how to manage it in such a way that it will increase its impact. Generally, a foundation or organisation's resources are invested with the aim of maximising the financial return and, thus, sustain the foundation's continual existence indefinitely, or at least to extend its lifetime.

However, although managing endowments with a strictly financial focus is still a rather common practice, in recent years there has been a rising trend of large foundations committing to making financial investments that simultaneously fulfil their own statutory purposes and develop funding initiatives that are directed to civil society organisations. Similarly, they adopt the strategy of blacklisting and divesting from entire industries, which has been concurrent with the adoption of such measures as, for instance, the Rockefeller Brothers Fund's decision to abandon fossil fuels and the California Endowment foundation's decision to divest itself of assets linked to private for-profit prisons in the United States.

Andre Degenszajn notes that institutions that use their endowment as an instrument for action "usually have criteria that prevent them from investing in weapons, tobacco and alcohol companies". Apart from vetoing certain sectors, it is possible to "run an institution in such a way that its resources will work in accordance to its mission, which means that, apart from not funding certain sectors that conflict with said mission, every asset will work towards it, and resources will be invested into companies whose mission is compatible with that of the institution".

With that in mind, Ana Toni, member of the Baobá Fund's advisory board, emphasises that one of the concerns pertains precisely to using part of the endowment to help achieve the foundation's goals.

> Within the Ford Foundation, which has a substantive endowment, there is an investments area, and half of the investments were done with these people, while the other half went to an investment bank. Always following a few guidelines, such as not investing in tobacco, weapons. [...] In the Ford institution, investments were given free-reign, while in ICS and in the Baobá Fund we thought of investments that were more directed towards companies and causes in which we believe and have something to do with our mission. This type of investment takes more work, but it's far from impossible to do, and there already are investment funds that focus on different areas. In the Baobá Fund, for example, there is an investment committee comprised of three people and, seeing as it's a specialised area, it's necessary to find people who follow the organisation's mission directives and have distinct knowledge of the subject. There needs to be a balance between long-term investing and actually spending the money, between rates of return and the mission.

Amalia Fischer Pfaeffle, general-coordinator of the Elas Fund, explains that sometimes donors influence where the funds will be directed: "There are donors that demand that resources be applied to projects, others that give more leeway". However, in her view, a good way to handle resources is to share them between "institutional strengthening, program execution and endowment".

José Marcelo Zacchi, in turn, thinks that "it's important for this culture of building lasting and uninterrupted endowments to gain more ground. It's a resource that has the potential for that. It's possible that a part of the resources be immediately directed towards society and another to become a long-term investment. [...] It all depends on the nature of the fund, whether it's bound closer to the company or if it's public".

Nadine Gasman, the UN Women's representative in Brazil, highlights the strategies used by the institution to support funds that focus on relevant issues:

> The Women's Issues agenda in Brazil has been important in the last years, but now it has become especially important, in light of what it has been going through in society. For instance, the subject of Human Rights advocacy is very important [...] the UN has many ways of organising, but the most important one consists of agenda partnership, of institutional support, partnerships with organisations, which often have no funding [...] Our funds are always geared towards empowering women, funds that focus on equality, which seek to put women on a different level [...] Our strategy is to seek funds that provide financing for women in their area of expertise.

5.2 Opinions from fund managers on compensatory resources

Andre Degenszajn

Andre Degenszajn, director of the Ibirapitanga Institute, is of the view that the institution in question can be a direct backer:

> I believe in funds focusing on specific subject areas, because they have better knowledge of their fields of work, have greater legitimacy and efficiency, due to not having to create the structure needed by the institution. Investment can be done without restriction or via a public call notice geared towards 'backing fund Y or initiative X'.
>
> It's also possible to have a call notice for direct funding, but in this case it's better to have larger backers that use the structure created, so as to cover more ground. Having different levels of grantmakers makes sense. A layer of funding for intermediary funds, layers of large backers with bigger funding. Because it's a more complex structure, it's interesting to have an intermediary, it may seem to be driving costs up, but it's not, because the fund you're backing has a simpler structure.

Amalia Fischer Pfaeffle

Amalia Fischer Pfaeffle, general coordinator of the Elas Fund, says that:

> There's no need to reinvent the wheel. Seeing as it's a fund with a lot of money, it has to support funds and organisations. With regards to women, it's important that the fund supports organisations run by women, whether they have a lot of experience or not. This foundation needs to support organisations so as to strengthen them in their areas, and the funds that have already been established are a way to support these organisations, both the large and the small ones. [...]
>
> It's important to build a relationship of trust with the organisations, especially because, in this case, it's an institution that came from a company and, because of how it came to be, the organisations may be suspicious of it [...] It's better to have the resources reach the organisations via the other fund, not directly from the institution in question.

Nadine Gasman

Nadine Gasman, representative for UN Women in Brazil, states:

> There needs to be a dual mechanism, creating opportunities to make transformations. As tempting as it is to donate to an organisation that will distribute resources like a fund, it's better to have a good governance system that will determine priorities, subject areas and allocate part of the funds to large institutions and leave the other part for more innovative things, more room for creativity, for more inventiveness.

Sérgio Haddad

On the same note, Sérgio Haddad, one of the founders of Ação Educativa, adds that:

> We need to consider that there already is a structure in place when it comes to donating to an already functioning fund. There's no extra cost in the selection, and so on. From a cost-benefit point-of-view, it's interesting. It would be nice to be able to add resources to projects that are already taking place, as this money would be cleared more neatly and at a lower cost, and it uses the work already done by these institutions at a small cost.

5.3 Opinions from fund managers on the criteria and mechanisms for distributing the resources from compensatory funds

Sérgio Haddad

Sérgio Haddad, founder of Ação Educativa, suggests that

> Project selection should come with a recommendation from a different institution. The project would go through the board, which would ask questions, make comments and suggestions, then it would go through various levels of evaluation. [...] With that in mind, fifteen institutions would be selected, chosen based on the donation model they present and on their transparency, their accountability, the projects' objectives, their values, their monitoring methods. The

commission would only concern itself with saying what donation models would be taken into consideration. This can be done with a three-person board [...] Other possible criteria involve requiring networks to have a minimum amount of presence, with X number of entities, with X number of people. With this specific type of funds, it's good to use a criterion for supplementing donations. It's also good to establish a maximum amount for managing donations.

Ana Toni

Ana Toni suggests three distinct methods for selecting projects:

The first one is when the institution posts a public call notice and creates a committee for selecting projects, formed by experts in the area, who will give their opinion on each project. Normally, there is a pre-selection process, which will eliminate what is not encompassed by the call notice, seeing as it's very common to receive proposals for things not found in the notice. The reviewers that compose the committee may or may not be volunteers, depending on the model. The regular procedure is to create a base of expert reviewers and a temporary committee, depending on the call notice's goals. [...]

In the second model, there is a team of experts from within the organisation, not external reviewers. This group makes the selections and evaluations, it's a less transparent process, and it requires a team that is prepared to read several different proposals. Many corporate foundations work like this.

The third model is when institutions do not post any call notices; instead, people send them projects, according to each institution's area of interest. For example, the Instituto Clima e Sociedade, which works with renewable energy. Those that don't align with this goal are excluded, the other projects go through an internal selection process and two or three people review them and decide. It's an internal process, simple and quick. [...]

The most transparent and healthy thing is to have a call notice but, when you have resources to fund institutions that do good work, it's interesting to be able to talk to them in a transparent manner, instead of forcing them to go through the process when you already

> know they will be the one to receive the funding. [...] Seeing as it is a public fund, it would be very hard to do a selection like in strategic philanthropy, in which the fund chooses what institution to back.
>
> It's not a lack of transparency, but it's difficult to justify how and why a given institution is selected. With these types of funds, the best way is to make a public call notice, but in such a way that there is no "unfair" competition, which is to say, the call notices have to encompass different players, competing amongst themselves, because the larger institutions will always have an advantage. It's hard to draft good call notices, it's usually a lot of red tape. The call notices need to be more focused, and not too generalised. It's also possible to write an invitation letter when you already know that only a few organisations tackle the subject area in question.
>
> The important thing is making more than one type of call notice, to always think of the target audience and of who is drafting the project. It's about doing a selection process in a way that qualifies and improves the institutions applying for it. It would also be interesting to have people in the team that know how to draft projects and who can help the chosen institutions to improve their projects.

Nadine Gasman

Nadine Gasman says that "the fund not only needs a policy of blacklisting for financial investment, but also a policy of investing in places in which there is gender equality. You can't invest in a company that is destroying what you intend to build. You need to be involved in the medium and long term as well".

Pedro Abramovay

On the mechanism for selecting projects, Pedro Abramovay highlights that the Open Society Foundations rarely uses public call notices, and the focus turns to having:

> A good team of programs officers located at various places in Latin America, whose missions is to choose which organisations and projects will receive funding, meaning their active function is to look for organisations. We have a global council that assesses all strategies and a council in Latin America that defines the local strategy [...] Based on that, we create the portfolios with the indicators pertaining to what we intend to deliver in four years.

The programs officer is responsible for the goals established and, in four years, they must present to the councils what worked and what didn't work with regards to how those strategies were implemented. This model is interesting in various ways: firstly, it means that what we do is look for other organisations, not do the actual work. On one side, it's interesting because it creates a sector in civil society that is independent from the government, with the capacity to interact with others and with the necessary strength to work with this autonomous civil society. On the other, it enables us to support proposals that seem contradictory, and to test them until we find out what is going to work. In other words, it affords us the possibility of making mistakes – something that the government doesn't have, seeing as it can't run the risk of making mistakes. [...]

What are public call notices good for, in our view? They serve to map and reach places that the programs officer isn't reaching. When you put up a call notice, you discover new things and leave the old things behind, but, on the other hand, the selection process is a lot of work, and it doesn't always award the best projects with funding, only those that better fit into what is written in the notice.

[Concerning the funds in question] I think there should be a combination of both methods. Goals and strategies need to be public [...] there needs to be more clarity upon the delivery of the services, but with less restrictions. The second way to be more flexible is to consider supporting organisations, not projects. The organisation's financial strength, governance, capacity for action and legitimacy are necessary to succeed. It's necessary to have a political view of organisations. A solid organisation is capable of making transformations, of having good ideas [...]

We will assess the work done by the organisations and evaluate the last years, their institutional solidity, whether they have a capacity for innovation, and bet on the ones that seem to have it. We will also offer the money for them to use as they please, because they know how to use it better than any call notice can try to specify. We will place greater trust in these organisations, and then they will report on the work they've done and, if they don't do a good job, we won't renew their funding. We will have a certain degree of rigour in the public assessment of what was done with the money, but still, being able to trust in civil society is the key to this.

Foto por Fernando Frazão/Agência Brasil

GENERAL DESIGN SUGGESTIONS AND GOVERNANCE PROPOSALS FOR J&F's SOCIAL REPARATION ACTIVITIES

ADDITIONAL REPORT

1 PRESENTATION AND CONTEXT

For years, Transparency International has been promoting discussions on the social damage caused by corruption and the need to allocate resources towards making reparations and preventing new cases of corruption. In Brazil, TI brought international studies conducted on this subject to the attention of supervisory organs, through institutional dialogue and official press releases. Said studies mapped rules and practices pertaining to compensatory resources and social damage reparations in various parts of the world. The international experience shows a growing and increasingly successful trend of taking the monetary resources that result from legal sentences and judicial settlements (made in court or otherwise) and allocating them to the reparation of rights and towards engaging companies and citizens in the fight against corruption.

The growing international consensus on this matter comes with a concern for providing the best possible management for these resources. In this sense, TI underscores just how important proper governance is for ensuring the effectiveness of such social reparations, as well as for averting risks pertaining to conflicts of interest and corruption.

On 5 June 2017, the Public Prosecutor's Office and holding company J&F signed a leniency agreement encompassing these social reparations: one of the obligations taken on by the company concerns implementing and supporting social projects with an amount corresponding to R$ 2.3 billion. This is, therefore, an obligation that goes beyond making reparations for the material damage caused to the specified entities (the Union, BNDES, Caixa Econômica Federal and pension funds): it is a commitment made by the company to repair the social damage it caused, by engaging in activities geared towards promoting rights and participating in society's fight against corruption. Thus, it becomes an "obligation to do".

The leniency agreement, together with the Supplementary Court Order accompanying it[1] and a public announcement[2] made by the company, indicates a few directives, to which the parties agreed upon, for carrying out this "obligation to do":

- Good governance, being impactful, and widespread publicity;
- A duty to repair the social damage;
- Social participation.

1 As per the Supplementary Court Order found in civil investigation number 1.16.000.000393/2016-10, available at <http://www.mpf.mp.br/df/sala-de-imprensa/docs/ leniencia-despacho-complementar>. Last accessed on: 14 February 2019.

2 J&F announces that "the MPF, J&F and TI are preparing a governance system for compensatory social investments, amounting to R$ 2.3billion", Available at: <http:// jfinvest.com.br/mpf-jf-e-ti-preparam-sistema-de-governanca-para-investimentos-sociais-compensatorios-de-r-23-bilhoes/>. Last accessed on 14 February 2019.

1.1 Governance, impact and publicity

The leniency agreement determined that the social projects' implementation "will be subject to specific independent auditing, the goal of which will be to ensure the proper use of the resources, as well as to evaluate the projects' social impacts, consolidating the results [...] via yearly reports that are to be sent to [...] the Public Prosecutor's Office, which will in turn widely publicise them" (Leniency Agreement, Clause 16, item VII, paragraph 12; emphasis added).

This publicity is also required of the company: "THE COLLABORATOR will duly publicise the social projects [...], and will include in said publicity the existence of this Agreement with the Public Prosecutor's Office" (Leniency Agreement, Clause 16, item VII, paragraph 13; emphasis added).

1.2 The obligation to do as a mechanism for social reparations

EIn a supplementary court order, signed by Federal Attorney Anselmo Henrique Cordeiro Lopes on 2 August 2017, it is established that the obligation to carry out social projects "stems from the collaborator's duty to repair the social damage caused to the Brazilian people. Herein, the main idea is that such obligation is actually an 'obligation to do', not an 'obligation to give', which is to say, more than just paying for social projects, the collaborator must help in conceiving (or selecting) and conducting said projects"[3].

1.3 Social participation

The explanatory court order also presents directives pertaining to civil society's welcome participation in drafting and selecting the projects: "[...] more than just paying for social projects, the collaborator must help in conceiving (or selecting) and conducting said projects, and possibly using civil society partners to provide maximum benefit for the public" (Explanatory Court Order, p. 19; emphasis added).

1.4 Memorandum of Understanding

Starting in the second half of 2017, the Leniency Agreement parties consulted Transparency International on the governance of the funds allocated to projects, resulting in the signing of a Memorandum of Understanding on 12 December 2017.

This document was annexed to the Leniency Agreement and, in it, the parties formalised TI's contribution in making recommendations pertaining to social investment governance

3 As per the Supplementary Court Order found in civil investigation number 1.16.000.000393/2016-10. Available at: <http://www.mpf.mp.br/df/sala-de-imprensa/docs/ leniencia-despacho-complementar>. Accessed on: 14 February 2019.

design and to a strategy for investing in anticorruption subject areas, apart from its independent supervision over the spending of the funds in the first two years (and renewable for two more).

Throughout 2018, over the course of eight physical meetings between J&F, the Public Prosecutor's Office and the Independent Supervisory Committee (which consists of three independent lawyers that monitor compliance with the leniency agreement), a common vision for fulfilling the agreement's obligations was achieved. Combining this new understanding with the directives described in the previous paragraphs, and after conducting interviews and document research, Transparency International will hereafter present its governance proposals.

1.5 Governance proposals

This document presents the proposals put forward by Transparency International (TI) regarding general models and initial activities for managing the social reparations funds established in the Leniency Agreement signed between the MPF and J&F on 5 June 2017, following the highest governance standards[4].

These proposals accompany the full "Compensatory Resources Governance in Corruption Cases: a Best Practices Guide for Making Reparations to Society" report, and they correspond to the commitments undertaken in the Memorandum of Understanding (MoU) signed between TI, the MPF and J&F on 12 December 2017[5]. TI's support involves developing the following topics[6]:

a) creation of a governance system for the funds, including the highest transparency standards, as well as protocols for conflicts of interest, mechanisms for receiving complaints and anticorruption provisos;

b) development of an investment plan and grantmaking strategies;

c) independent supervision of the investment process in the first two years, open for renewal[7];

4 Public Prosecutor's Office. Força-tarefa das Operações Greenfield, Sépsis e Cui Bono, Operação Carne Fraca. Acordo de Leniência. Available at: <http://www.mpf.mp.br/df/sala-de-imprensa/docs/acordo-leniencia>. Accessed on: 17 May 2018.

5 Public Prosecutor's Office. Memorando de entendimento. MPF, J&F INVESTIMENTOS e Transparency International. 2017. Available at: <http://www.mpf.mp.br/df/sala-de-imprensa/docs/Memo%20entendimentos%20J-F.pdf>. Accessed on: 23 August 2018.

6 Transparency International. Cooperation Plan TI-S & TI- Brazil: Compensation Funds, 2018, p. 2-3.

7 TI opted to abstain from requesting funds from the Leniency Agreement's social investment for the entirety of the period during which it will be helping the initiative set up by the signatories. The MoU signed between TI, the MPF and J&F is valid for 2 (two) years, and can be renewed for another two (Clause 5 of the memorandum). Public Prosecutor's Office. Memorando de entendimento MPF, J&F Investimentos e Transparency International, 2017. Available at: <http://www.mpf.mp.br/df/sala-de-imprensa/docs/Memo%20entendimentos%20J-F.pdf>. Accessed on: 27 August 2018.

d) criteria suggestions for assessing the quality of the social investment[8];

e) table of contents for the training given to the entity's future staff, especially those responsible for the investment, board members and managers, divided into stages;

f) identification of the necessary steps for qualifying the actions and procedures conducted by the social investment's management, such as: selecting organisations and social projects, posting public calls for proposals, tenders or prizes, and creating mechanisms for developing the social organisations that will receive the investments;

g) identification of the actions necessary for the technical and financial monitoring of the social organisations' implementation of the programs and projects;

h) considerations on how to structure other fundraising mechanisms, apart from those found in the agreement, such as opening the institute up to receiving private donations (domestic or otherwise), among other sustainability methods that have already been adopted by distinguished civil society organisations, with the aim of ensuring the investment's longevity;

i) identification of the actions necessary for ensuring efficacy, transparency and accountability, such as periodically releasing activities and impact reports, audited financial statements, among others deemed advisable.

With regards to when the actions or recommendations should be conducted, each item can be classified thusly:

- **Pre-founding recommendations:** these include guidelines for best practices and governance, recommendations made by specialists via interviews, and recommendations for the institutional design, all presented in this report, as a way to guide and help the process of formalising the legal entity that will be responsible for managing and allocating the funds received. Items "a", "d", "f", "g", "h" and "i".
- **Post-founding recommendations and actions :** these include actions whose implementation depends on the institution being formally established, whether it is because their execution depend on there being an operating staff – as is the case of developing the investment plan and grantmaking strategies, or of more obvious things, such as staff training –, or because they involve monitoring the institution's operation. Items "b", "c" and "e".

8 Although the cooperation agreement signed between the MPF and TI refers to investments originating from compensatory funds as "social investments", it is important to clarify that private social investment is usually defined as the voluntary allotment of resources, made by an individual or a legal entity, in a planned, supervised and systematic manner, which seeks to support projects of a social, cultural and environmental nature, among others. Therefore, even though the concept of "social investment" used is broad and also encompasses the context of compensatory funds, it is our understanding that, in the absence of the voluntary allotment aspect in cases resulting from legal penalties, some differentiation is required: in this case, being called "Compensatory Funds".

With that in mind, the following guidelines pertain to the pre-founding recommendations that are specific to the agreement made between the MPF and J&F, accompanied by the general recommendations from the "Compensatory Resources Governance" report. Both are based on references and experiences taken from social reparations agreements that resulted from legal sentences and plea bargains in international corruption cases, as well as from the relevant international treaties of which Brazil is a signatory.

The directives presented here are also based on external studies conducted by TI's staff and hired consultants (including specialised literature studies and interviews with specialists[9]9 conducted throughout 2017 and 2018). Lastly, they are also based on discussions and understandings reached between the signatories of the Memorandum of Understanding (MoU), represented in what was called the "Roundtable" (TI, the MPF, J&F and the Independent Supervisory Committee).

Among the main understandings reached by the Roundtable are the principles and general objectives recommended for guiding the social investment's governance and implementation.

9 The following people were interviewed for this study: Amalia Fischer Pfaeffle (general coordinator for the ELAS Fund), Ana Valéria Araújo (executive coordinator for the Brazil Human Rights Fund), Ana Toni (executive director for the Climate and Society Institute – iCS), Andre Degenszajn (chief executive officer for the Ibirapitanga Institute), José Marcelo Zacchi (GIFE's secretary-general), Maria Amália Souza (executive director for the Casa Socio-Environmental Fund), Nadine Gasman (representative for UN Women's Office in Brazil), Pedro Abramovay (Open Society Foundations' director for Latin America), Selma Moreira (executive director for the Baobá Fund) and Sérgio Haddad (training unit coordinator for Ação Educativa).

2 PRINCIPLES

2.1 Integrity, accountability and transparency

The social investment must follow the highest standards for integrity, accountability and transparency, with the dual purpose of securing the transformative potential of these funds and ensuring that the legitimacy of this instrument (as well as of its management and implementation processes) receives widespread social recognition.

2.2 Co-participation

The co-participation between J&F and civil society in the governance and implementation of the social investment stems from the acknowledgement of the rights and prerogatives of both parties. On one hand, there is the acknowledgement of J&F's right to seek full rehabilitation and redeem itself in the eyes of Brazilian society, and the understanding that these social reparations can legitimately serve this purpose. This guarantees the company's participation in the governance of the funds and in the social communication for the projects and their results.

On the other hand, there is the acknowledgement of Brazilian society's unequivocal right to restitution for the damage caused by corruption, which guarantees its central role in selecting projects and general guidelines for the funds' allocation. Also, the members of the Roundtable agreed that the MPF will not participate directly in the fund's management, but it will perform the specific function of supervising the agreement, as well as the general function of monitoring the activities' compliance with the law.

2.3 Longevity

The principle of longevity pertains to the goal that says that J&F, while complying with its reparatory obligations, must build an enduring legacy for Brazilian society, with the aim of creating a lasting endowment fund. This will be made possible via the planned application of the resources over the course of 25 years, as established in the leniency agreement. At the end of the company's contractual obligation, the fund must be placed under society's complete control.

2.4 Efficiency and economy

In order to achieve the social investment's full transformative potential, its allocation and management must follow the principles of maximum efficiency and economy. The allocation of the funds must always prioritise the most impactful strategies and projects, whereas the investment's management must avoid excessive spending and waste, all the while ensuring the necessary conditions for a high standard of governance.

2.5 Legality

The social investment and the relationship between the parties involved must be conducted under full compliance with the law in all their activities and spheres. In addition, seeing as this instrument and this experience are the first of their kind, the resulting innovations must check and confirm their compliance with the law, whenever necessary.

2.6 Accessibility, diversity and inclusiveness

The principles of accessibility, diversity and inclusiveness must permeate the social investment's management and implementation in all their stages and dimensions. From drafting public call notices to selecting projects, from the subject areas to the territorial scope, from forming management teams to the consultation and participation processes, the social investment must affirmatively acknowledge and welcome the diversity of Brazilian society.

2.7 Social legitimacy

The social investment must ensure that Brazil's society will acknowledge the legitimacy of this instrument and process as effective tools for making reparations. Likewise, the co-participation between company and civil society must be kept harmonious and in balance, which will help with building and maintaining this social legitimacy.

3 OBJECTIVES AND GENERAL APPROACH

In the leniency agreement and in the meetings held throughout 2017 and 2018, the parties have agreed that the funds resulting from the agreement are an opportunity to simultaneously: a) compensate and mitigate the harmful effects that J&F's old practices had on society; b) engage the company in Brazilian society's efforts to fight corruption; and c) contribute to its own process of transformation and rehabilitation in the eyes of Brazilian society.

Corruption's most harmful consequence is the obstruction of the access to (and fulfilment of) rights. Thus, Transparency International recommends, as a central objective for this social investment, two main fronts. The first one has a compensatory nature, as it promotes the restoring of all rights, regardless of type (because the effects of corruption are never isolated, but widespread). The second one has a preventive nature, as it follows the logic of strengthening society's participation in the defence and expansion of their rights – either directly in the fight against corruption, or through other legitimate methods for defending their rights.

Therefore, it is recommended that J&F and civil society, through co-participation, be able to jointly direct the social investment towards two main objectives, described up next.

3.1 Mitigating and repairing the effects of corruption on society and democratic institutions

The mitigating/reparatory approach to the harmful effects of corruption expands the scope of interventions pertaining to social reparations. This approach allows for other subject areas to be encompassed, without necessarily being linked to anticorruption strategies, but justifying the interventions as responses to the damage caused by corruption. It is recommended that these interventions be directed towards two essential, compensatory dimensions:

- Giving support to projects and entities linked to the defence and promotion of social rights.
- Giving support to initiatives geared towards strengthening democratic institutions (for example, access to justice, political participation, open government, etc.).

3.2 Preventing corruption by stimulating participative citizenship and social control

The preventive approach, which pertains to the second objective, must be achieved by employing a greater focus on strengthening Brazil's civil society and the active exercise of citizenship as fundamental factors for long-term anticorruption efforts. From the possible intervention methods available, we recommend the following:

- giving direct support to existing entities that work with social supervision of corruption;
- incentivising the creation of new entities and networks to expand social control of corruption in the country;
- incentivising the intersectionality of corruption-fighting efforts in other sectors and subject areas, such as the environment, education, security, human rights, etc.;
- giving support to initiatives that provide ethical and participative citizenship education to children, teenagers and new leaderships.

4 THE "INITIATIVE FOR INTEGRITY AND THE EXERCISE OF CITIZENSHIP" AND ITS MEANING

Transparency International proposes that the social reparation activities conducted by J&F should occur under a general framework called the "Initiative for Integrity and the Exercise of Citizenship"[10]10. The name expresses the central role played by the concepts of "integrity" and of the "exercise of citizenship" among the objectives, the engagement method and even the inception of this reparatory instrument.

The promotion of integrity, in opposition to corruption, mainly results from strengthening the exercise of citizenship. The simplest and most widely accepted meaning of "the exercise of citizenship" refers to a set of rights and obligations that pertain to living in society. This concept will permeate the more significant aspects of creating and operating this general initiative:

- The main outcome of corruption is the violation of rights and, therefore, the deterioration of the exercise of citizenship.
- The social investment in question, an obligation undertaken J&F within the context of the Leniency Agreement, is fundamentally a process for restoring rights.
- The company chooses to do it in consultation and cooperation with society, which is to say, the holder of these rights. This choice signals the company's transformation process and its effort to be acknowledged by society as a "citizen" company.
- The best way to tackle the social issue of corruption is to engage in the conscious and active exercise of citizenship.
- Apart from restoring and expanding rights, the initiative's goal will be to prevent corruption by strengthening the exercise of citizenship in Brazil.

10 The naming took inspiration from the Siemens Integrity Initiative, established on 2 July 2009, in the form of an agreement signed between the World Bank and the company in question, after an investigation conducted by the World Bank's Integrity Vice Presidency into the fraudulent and corrupt practices carried out by the Liability Company Siemens – Siemens' Russian subsidiary – in the project funded by the Moscow Urban Transport Project bank. This initiative has been analysed in Transparency International's "Compensatory Resources Governance in Corruption Cases: a Best Practices Guide for Making Reparations to Society" report.

5 GRADUAL IMPLEMENTATION OF THE "INITIATIVE FOR INTEGRITY AND THE EXERCISE OF CITIZENSHIP" GOVERNANCE MODEL

Considering the large amounts of money being invested into social reparations, the fact that this initiative is the first of its kind, and the commitment made by all the parties involved to make this experience into a best practices model to inspire similar experiences in Brazil and over the world, we propose a gradual implementation process for the "Initiative for Integrity and the Exercise of Citizenship".

Even though there already is a suitable organisational structure responsible for this initiative's management and governance, we expect this structure to evolve gradually as the grantmaking operations become more complex and the funds involved increase in size. This does not mean that, in the early stages, the functions intended to ensure high standards of governance will not be carried out, though they may be conducted by smaller teams, and some duties may be shared between employees.

We propose that the implementation be divided into two phases, aiming to help with the learning process of the parties involved, as well as their entry into the world of social investment. This will also help to make Brazil's civil society more familiar with the initiative and to acknowledge its legitimacy, and it will help the initiative absorb a significant amount of new resources, with new standards for transparency and integrity – which will also be required of the beneficiaries.

The recommended organisational structure satisfies the highest domestic and international standards for management and governance, the requirements posed by these social reparation actions that result from the Leniency Agreement, and the principles that guide the collaboration established in the Memorandum of Understanding signed by J&F, the MPF and TI, chiefly the principle of co-participation between the company and Brazil's society.

It is worth noting that the structure recommended herein must also be endorsed by a Trustee Committee that will be set up during the initial "Mediated Open Tender" phase, which will be explained shortly.

Lastly, all the details of this organisational structure (especially with regards to statutory specifications on the distribution of competencies, composition of the organs, mandates and regulations) must be formally recorded by a specialised legal consultant (either a firm or an individual) hired by the company, under the Trustee Committee's supervision, without the MPF's direct participation, as the organ will not take part in the process of founding or managing the initiative.

PHASE 1 (2019): MEDIATED OPEN TENDER

Model

In this initial phase, taking place in 2019, a Trustee Committee will be established as the preliminary organ for independent curation, which will make a starting, exploratory public call for projects. This "mediated open tender" – thus called because it does not involve investing in projects directly, but rather indirectly, via intermediary social investment vehicles – will be underpinned by executive bodies with specific and well-defined, though still incipient, attributions.

Governance Structure

In this preliminary "mediated open tender" stage, it is advisable for the initiative to already have three governance bodies. Although their structures will be rudimentary, said bodies will ensure an adequate level of efficiency, transparency and legitimacy. These structures will sow the seeds for governance bodies of the next stage, which means they will not be recreated, but rather expanded and consolidated for their more permanent format.

- **Trustee Committee (TC)** – The TC shall be the deliberative body, comprised of five members. Said members must have an unblemished reputation and a well-known record of working with civil society organisations, social investment and/or subject areas similar to the initiative's goals. The committee's composition must favour diversity with regards to gender, as well as to social and geographical background. Its members must be selected in consultation with civil society, based on objective criteria, using a predefined and transparent methodology. Participation in the TC will not be remunerated, and will have an honorary nature.
- **Independent Social Reparations Supervisor (ISRS)** – The ISRS will be an employee working closely with the three current members of the Leniency Agreement's Independent Supervisory Committee (ISC).
  This specialist will monitor the process of drafting and publishing call notices, as well as organising, selecting and signing the social projects. Together with the ISC, this employee will be accountable to the **MPF** and to **J&F**, as needed, as an institutional/legal guarantee for the social projects linked to the Leniency Agreement's obligations. Selection of the **Supervisor** will be done via consultations with civil society, based on objective criteria, using a predefined and transparent methodology.
  Similar to the other members of the **ISC**, the **Independent Social Reparations Supervisor** will receive monetary compensation; however, in this case, the amount paid will be taken from the social investment funds.
- **Core executive team** – The core executive team will be comprised of at least one senior consultant and one junior consultant, both with executive experience in the third sector, preferably with grantmaking/

social investment activities. These employees will be responsible for the entire operationalisation of public call notices. They must also be selected using objective meritocratic criteria and by using a predefined and transparent methodology. Remuneration will be deducted from the social investment funds.

Resource application

With the aim of securing a preparatory learning stage for the following phase of direct applications, Transparency International recommends that the first public call notice use pre-existing intermediary social investment vehicles, with experience in giving support to projects conducted in different regions in Brazil. In other words, for the first stage, we recommend a re-grant model, also known as a "fund of funds".

There are several funds in Brazil that have, for many years, financed projects spread throughout the country. For example, between 2000 and 2017, the funds that comprise the Rede de Filantropia para a Justiça Social ("Philanthropic Network for Social Justice" in Portuguese) have supported over 10.6 thousand projects all over Brazil, donating almost R$ 147 million during the period[11]11.

Using these pre-existing funds as intermediary agents will help with:

- facilitating and bolstering the founding company's learning, as well as that of the individuals comprising this stage's three governance bodies, getting to know the process of giving support to social projects better, and creating opportunities for observing risks, challenges and successes. With this process of internalising the knowledge gained from established and experienced social investment vehicles, this preparatory stage will ensure that direct investments will begin at an already advanced level of expertise and skill;
- accelerating, in a safe manner, the start of social reparations activities, allowing the funds to be distributed even before the operational structures have taken full shape. The intermediary vehicles' experience and executive structure will allow for this first public call notice to already start funding projects with greater reach, coverage and impact, without compromising the investment's efficiency and good governance;
- bringing J&F closer to the country's main social investors, their teams and networks of beneficiaries, amplifying the acknowledgement of the company's commitment to adopt the highest standards for its social reparations activities, as well as its efforts to transform its own practices;

11 The Rede de Filantropia para a Justiça Social is a space that gathers funds and community foundations, donor organisations (grantmakers) that support various initiatives in the fields of social justice, human rights and the exercise of citizenship. For more information: <http://www.rededefundos.org.br/>. Accessed on: 10 February 2019.

With regards to the learning process, we recommended using the following measures: a) the hiring of intermediary funds must include a clause that explicitly expresses the obligation to share the methodologies used and to release a final report on the experience with the call notice; and b) to hire an external party to assess and monitor Phase 1, as well as to write a report with recommendations at the end of the period.

We recommend that, concurrently with running Phase 1, J&F hire specialised legal counselling to prepare for the structuring of Phase 2.

PHASE 2: CALL NOTICES FOR DIRECT INVESTMENT (STARTING IN 2020)

Model

While the recommendation for Phase 1 is to have a public call for projects via a "mediated open tender", in Phase 2 this call for projects must be done by the Initiative for Integrity and the Exercise of Citizenship, with direct application of the funds, and not just through intermediary vehicles (application via other funds).

The principle of co-participation between company and civil society must be observed by the initiative's organs for the duration of the allotments timetable (25 years), which is governed by the Leniency Agreement. In 2042, when this period ends, the initiative will be placed under society's independent control, as a legacy left by J&F and the Leniency Agreement, fulfilling the dual purpose of repairing the damage caused to Brazilian society and of rehabilitating the company.

It is worth noting that the initiative, being J&F's legacy to Brazilian society, is aligned with the precepts of social reparation and of the "obligation to do". This obligation was explicitly established by the Leniency Agreement as an obligation to execute, not just to pay, and will end in 25 years, when the last instalment allotted for this goal is paid out in 2041[12]

Phase 2 may develop in three stages:

- **Inception stage (2020-2022):** In this period, strategies are developed, structures and protocols are set up, and the first funds are directly allocated by the initiative.
  - Estimated average annual budget for projects and expenses: R$ 15 million.
  - Estimated final balance for the endowment fund: R$ 325 million.
- **Expansion stage (2023-2027):** In this period, the governance structure is more advanced, know-how is acquired and social reparation activities gradually increase in size.

12 As per Clause 16, item VII, paragraph one, the 2 billion and 300 million reais will be paid via the implementation of social projects, and payments will be made via five semi-annual instalments, amounting to 50 million reais each, payable from 1 December 2017 on, followed by 22 (twenty-two) yearly instalments that will cover the rest of the total amount due, starting on 1 December 2020. Public Prosecutor's Office. Força-tarefa das Operações Greenfield, Sépsis e Cui Bono, Operação Carne Fraca. Acordo de Leniência. Available at: <http://www.mpf.mp.br/df/sala-de-imprensa/docs/acordo-leniencia>. Accessed on: 17 May 2018.

- Estimated budget for projects and expenses: R$ 25 million in 2023, increasing R$ 5 million each year, reaching R$ 45 million in 2027.
- Estimated final balance for the endowment fund: R$ 734 million.

- **Consolidation stage (2028-2041):** In this period, the initiative completes its structuring phase and operates at full capacity.
  - Estimated budget for projects and expenses: R$ 50 million.
  - Estimated balance for the endowment fund: R$ 963 million by the end of 2030; R$ 1.392 billion by the end of 2035; and R$ 1.998 billion in December 2041, when the last instalment under the purview of the Leniency Agreement is made.

Starting in 2042, when the 25-year funds allocation period ends, the initiative will have full autonomy, vis-à-vis the Leniency Agreement parties, to conduct the social investments and maintain the endowment fund ad infinitum.

Governance Structure

This investment into social reparations activities exists as a form of compensation for the damage caused by previous wrongdoings and thus differs from regular philanthropy. It comes with a few specifications, as well as certain goals, such as contributing to J&F's full rehabilitation towards Brazilian society. In order to conform to them all, not only will the initiative's legal independence be important, but also its internal governance structure. This structure will have to host harmonious and long-term co-participation between the company and representatives from civil society.

The governance and administrative structures must use the structures from the previous stage (Phase 1 – mediated open tender), especially the Trustee Committee, which will keep its member composition, ensuring its role of conducting the transition. The TC must, therefore, serve as a repository for the lessons learned during Phase 1, as well as supervisor for the initiative's institution, ensuring compliance with any potential new agreements that may result from said lessons.

The recommended governance and administrative structure is detailed as follows:

- **Board of Trustees** – Will be the initiative's highest authority, with the specific role of closely monitoring management and ensuring adequate correspondence with the Leniency Agreement. The Complaints Office and the Internal Compliance and Integrity area report directly to the Board of Trustees, which may be comprised of eight members in its initial form, four of which being appointed by J&F and the other four by civil society, in a process that will be defined by the Trustee Committee (an organ from the previous stage). The head of the Board of Trustees must be picked from one of the four civil society appointees, and will have the casting vote. During the expansion stage, the Board of Trustees will be comprised of ten members, six of which will be appointed by civil

society, and four by the company. Lastly, in the consolidation stage, the Board of Trustees will have twelve members, eight of which will be appointed by society and four by the company. At the end of the Leniency Agreement's duration period, the company will no longer have the prerogative of appointing members to the Initiative's Board of Trustees. Its members must have unblemished reputations and a well-known record of working with civil society organisations, social investment and/or subject areas covered by the initiative's goals. During the period of funds allocation established by the Leniency Agreement, all member appointments must be done in consultation with civil society, based on objective criteria, with a predefined and transparent methodology, supervised by the MPF or the State Prosecution Office. The duration of the mandates and other resolutions, as well as the appointment process after the 25-year period, must be specified in the bylaws[13].

- **Auditing Board** – Will be comprised of three people with corporate governance and/or finance expertise. In its first form, the Auditing Board must be comprised of an appointee from the Trustee Committee (an organ from the previous stage), another from the **Independent Supervisory Committee**, and a third one from **J&F**[14]. Upon recomposing the Auditing Board and during the funds allocation period established by the Leniency Agreement, **J&F** will have the right to appoint one board member, and the Board of Trustees will appoint two. The duration of the mandates and other resolutions, as well as the appointment process after the 25-year period, must be specified in the bylaws.
- **Complaints Office** – This mechanism will bring greater transparency, involvement and legitimacy to the initiative's operations, as it will have the power to meet with partners, funds recipients, board members and teams, improving the initiative's efficiency and reach. The Complaints Office will be responsible for the transparency, accountability and external relations policies, and for a) implementing data sharing policies, as well as public information access protocols; b) writing public reports pertaining to management, compliance and self-regulation; c) responsive communications policies; d) participation, note-taking and feedback protocols; e) adaptive learning policies (reassessing its own practices via inputs from various stakeholders); f) whistleblowing policies (the Complaints Office will receive reports and, after verifying them, give its answer, but the internal inquiry is conducted by the

13 After this period, the initiative will have full independence from the company and will have no special obligations regarding the MPF and the Justice System within the Leniency Agreement's scope, only ordinary ones established by the legislation concerning entities of this kind.

14 According to the Guidelines for Auditing Boards, written by the IBGC (Brazilian Institute of Corporate Governance), "the auditing board is a supervisory organ that is independent from the board of directors and the administrative board, which seeks to contribute to the organisation's better performance, by following the principles of transparency, fairness and accountability". In this sense, the delimitation of roles and the harmony between the auditing board and the Board of Trustees, especially when it comes to the strategic executive role played by the Complaints Office and the Internal Compliance and Integrity area, must be taken into account when structuring these bodies, but always looking to preserve their independence.

Internal Compliance and Integrity area; see below). In the Inception Stage, this can be done by a single employee.

- **Internal Compliance and Integrity** This team will be responsible for creating, implementing and monitoring internal safeguard mechanisms, controls and internal assessments, autonomously from management (but still reporting to the Board of Trustees). Their aim will be to protect management and the social
- investments from any potential damage caused by the misuse of the funds or donations, and/or by the risks inherent to the activities being backed. Such mechanisms include: a) protocols for producing and safeguarding documentation, as well as for transparency and accountability; b) due diligence protocols for suppliers, partners and recipients; c) creation of codes of conduct and supervision mechanisms, including evaluation of reports made through whistleblowing channels; d) conflict of interest policies; e) guidelines for board composition; and f) human resources policy focused on compliance and integrity (remuneration policy, benefits, alignment with the general conflict of interest policy). In addition, other mechanisms can be adopted: a) inclusion of specific clauses in donation contracts pertaining to corruption fighting, as well as to donor and recipient responsibility; b) risks and safeguards protocols for unexpected situations that may cause damage to the social investments; c) protocols for reviewing expenditure and expenses incurred by recipients; and d) protocols for evaluating an activity's impact relative to the expenses incurred. These procedures will bring greater safety and control over the process, producing reports on its implementation and monitoring its management, in view of J&F's responsibilities to correctly execute the Leniency Agreement, as per Clause 16, paragraphs 12 and 13.
- **Independent Financial Committee** – Will be comprised of three people with financial expertise, preferably involving investment funds. It will play an advisory role with regards to financial management, aiming to guide and monitor the endowment fund's investments, so as to ensure their sustainability and ethical application. Its composition will be approved by the Board of Trustees, and will be valid for two or three years. The members will be compensated for their work. During the Inception Stage, this role can be performed by an external consultant.
- **Independent Rotating Committee for Project Selection** – This Committee will be comprised of people with expertise in social investment and subject areas that are relevant to the public call notices and project selection processes. At the start of every cycle, its members will be chosen based on the profile and size of the public call notice in question. The committee will give direct support to the programs coordination organ, but it must be ratified by the Board of Trustees.

Its activities will aim to offer greater transparency and plurality in the choice of projects applying for the initiative's backing. Members may or may not receive compensation, depending on the Board of Trustees' decision on how much work needs to be done and the degree of complexity and specialisation involved, in turn based on an assessment made by the Board of Directors. During the Inception Stage, this role can be performed by hiring an external consultant.

- **Superior Administrative Body** – Will be comprised of: a) Executive Board; b) Programs Coordination; c) Administrative Coordination; and d) Financial Coordination. The specifications for each area must be established by external specialised consultancy hired and monitored by the Trustee Committee (an organ from the previous stage). The definition and description for each of these roles will be written and discussed by legal counselling hired to draft the initiative's bylaws. However, our recommendation is for the Programs Coordination to be responsible for drafting the public call notices and organising recruitment processes, while the Administrative and Financial Coordination organs manage the initiative and conduct its investments.
  During the Inception Stage, the administrative and financial coordination organs can be run by a single employee, and then be divided into two different areas from the Expansion Stage on.

Compensation for the employees must follow market standards.

Resource application

The resources will be applied directly to projects, initiatives and the institutional development of civil society entities and entities networks. Part of these resources will be applied via intermediary vehicles (social investment funds, such as in the previous "Mediated Open Tender" phase).

We recommend that the annual investment budgets follow a spending projection that ensures the longevity of the endowment fund. In item 6 of this Annex 2, there is an exercise simulating a timetable for the allotments' payment, aiming to ensure the durability of the fund.

Summary table for the stages

	PHASE 1 (2019)	PHASE 2 INCEPTION STAGE (2020-2022)	PHASE 3 EXPANSION STAGE (2023-2027)	PHASE 4 CONSOLIDATION STAGE (2028-2041)	J&F'S OBLIGATIONS CONCLUDED / INDEPENDENT OPERATIONS BY THE INITIATIVE (2041+)
Model	Mediated Open Tender	Initiative's own call notices	Initiative's own call notices	Initiative's own call notices	Initiative's own call notices
Higher administrative bodies	Trustee Committee (5 members)*	Board of Trustees (8 members total, 4 civil society representatives and 4 from J&F)*	*Board of Trustees (10 members total, 6 civil society representatives and 4 from J&F)**	Board of Trustees (12 members total, 8 civil society representatives and 4 from J&F)*	Board of Trustees (12 members total, all civil society representatives)*
Executive management	**Core executive body** • Specialised consultancy • Legal counselling	**Executive team** • Executive board • Two coordinators (for programs, finances and management) • Operational body	**Executive team** • Executive board • Three coordinating organs (for programs, finances and management) • Operational body	**Executive team** • Boards • Managerial bodies • Operational body	**Executive team** • Boards • Managerial bodies • Operational body
Supervision	• Independent supervisor for the social reparations** • Independent supervision by Transparency International	• Auditing Board • Ombudsman • Compliance (Integrity Program and Complaints Office)	• Auditing Board • Ombudsman • Compliance (Integrity Program and Complaints Office)	• Auditing Board • Ombudsman • Compliance (Integrity Program and Complaints Office)	• Auditing Board • Ombudsman • Compliance (Integrity Program and Complaints Office)
Resource application	• Re-grants (using pre-existing social investment funds as intermediary vehicles	• Direct application • Re-grants (optional)	• Direct application • Re-grants (optional)	• Direct application • Re-grants (optional)	• Direct application • Re-grants (optional)

	PHASE 1 (2019)	PHASE 2 INCEPTION STAGE (2020-2022)	PHASE 3 EXPANSION STAGE (2023-2027)	PHASE 4 CONSOLIDATION STAGE (2028-2041)	J&F'S OBLIGATIONS CONCLUDED / INDEPENDENT OPERATIONS BY THE INITIATIVE (2041+)
Projection and longevity***	• Total budget for expenses and (mediated) investment into projects: R$ 5.5 million • Balance at the end of the period: R$ 51 million	• Average yearly budget for expenses and investment into projects: R$ 15 million • Balance at the end of the period: R$ 325 million	• Budget for expenses and investment into projects increases R$ 5 million every year: R$ 25 million in 2023; R$ 45 million in 2027 • Balance at the end of the period: R$ 374 million	• Average yearly budget for expenses and investment into projects: R$ 50 million • Balance: R$ 963 million by the end of 2030; R$ 1.392 billion by the end of 2035; R$ 1.988 billion by the end of 2041(after the final instalment)	To be defined

* Members must have expertise in subject areas relevant to the social investment, unblemished reputations and be representative of the diversity of Brazilian society.

** This employee must have expertise in subject areas relevant to the social investment and an unblemished reputation and will work closely with the Independent Supervisory Committee.

*** The Leniency Agreement, Clause 16, item VII, paragraph 1, establishes a two-stage allotments timetable, wherein, initially, there will be five semi-annual payments, amounting to R$ 50 million each, starting in December 2017 and finishing in December 2019, and starting in December 2019, 22 yearly instalments covering the rest of the total amount due, the first being due on 1st December 2020, totalling R$ 10.3 billion; out of this total amount, R$ 2.3 billion will be directed towards social projects, which corresponds to approximately R$ 11 million every semester from December 2017 until December 2019, after which there will be 22 yearly instalments covering the rest of the total amount due, paid from December 2020 on, totalling approximately R$ 102 million yearly.

6 ALLOTMENTS PROJECTION AND LONGEVITY

In this section, we propose an exercise for projecting the investment over the 25-year period during which J&F will be regularly making payments. The Leniency Agreement established a timetable for the allotments, divided into two stages:

a) five semi-annual R$ 11 million payments, starting in December 2017 and finishing in December 2019;

b) twenty-two yearly instalments covering the rest of the total amount due, from December 2020 until 2041.

Table 1 gives the projection of the allotments up until 2041. In a conservative projection of the interest income originating from the deposits, there is a 3% average yield estimate, not accounting for inflation. The projection for the application of resources and social investments takes into account the initiative's implementation period, as well as the need for creating a fund that will, in the future, ensure its sustainability. The last line of the table gives an estimate for the final total amount held by the endowment fund.

Table 2 extends the projection to the period following the company's last allotment payment, at which point the initiative must be maintained by its own resources.

As can be seen in Table 1, among the countless possibilities for allocating the resources, there is a suggestion to progressively increase the investment into social projects over the course of the first ten years (2019-2028), starting with R$ 5 million in 2019 and reaching R$ 50 million in 2028.

During this period, the increase can be of R$ 5 million per year, so as to enable the initiative to take root and expand its operations, thus avoiding the undesirable scenario of not having enough operational capabilities to allocate all its planned resources.

Table 1: Company allotments period (2017-2041), in millions of reais

Year	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041
Allotments/ company deposits	11,0	22,0	22,0	102,0	102,0	102,0	102,0	102,0	102,0	102,0	102,0	102,0	102,0	102,0	102,0	102,0	102,0	102,0	102,0	102,0	102,0	102,0	102,0	102,0	102,0
Yield/ interest	0,00	0,33	0,98	1,52	4,33	7,07	9,74	12,34	14,87	17,33	19,71	22,01	24,23	26,52	28,88	31,30	33,80	36,37	39,03	41,76	44,57	47,47	50,45	53,52	56,69
Project financing	0,0	0,5	5,0	10,0	15,0	20,0	25,0	30,0	35,0	40,0	45,0	50,0	50,0	50,0	50,0	50,0	50,0	50,0	50,0	50,0	50,0	50,0	50,0	50,0	50,0
Endowment fund	11	33	51	144	236	325	411	496	578	657	734	808	884	963	1.043	1.127	1.212	1.301	1.392	1.486	1.582	1.682	1.784	1.890	1.998

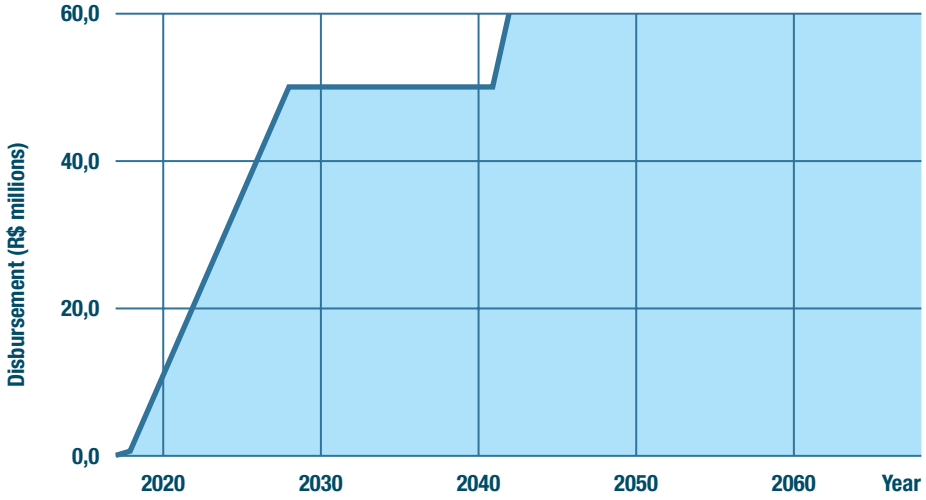
Table 2: Period following the last allotment paid by the company (2042-), in millions of reais

Year	2042	2043	2044	2045	2046	2047	2048	2049	2050	2051	2052	2053	2054	2055	2056	2057	2058	2059	2060	2061	2062	2063	2064	2065	2066	2067	2068
Allotments/ company deposits	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0
Yield/ interest	59,95	59,95	59,95	59,95	59,94	59,94	59,94	59,94	59,94	59,94	59,93	59,93	59,93	59,93	59,92	59,92	59,92	59,92	59,92	59,91	59,91	59,91	59,90	59,90	59,90	59,90	59,89
Project financing	60,0	60,0	60,0	60,0	60,0	60,0	60,0	60,0	60,0	60,0	60,0	60,0	60,0	60,0	60,0	60,0	60,0	60,0	60,0	60,0	60,0	60,0	60,0	60,0	60,0	60,0	60,0
Endowment fund	1.998	1.998	1.998	1.998	1.998	1.998	1.998	1.998	1.998	1.998	1.998	1.998	1.998	1.997	1.997	1.997	1.997	1.997	1.997	1.997	1.997	1.997	1.997	1.997	1.997	1.996	1.996

From 2029 until 2041, the projection shows that the application of compensatory resources into projects will stabilise at a yearly total of R$ 50 million. From 2042 on, as shown in Table 2, there will no longer be any allotments paid by the company. However, the estimation shows that the institution's endowment fund will have reached the total amount of approximately R$ 2 billion, which would yield R$ 60 million per year, if the Brazilian Central Bank's current interest rate policy remains unchanged.

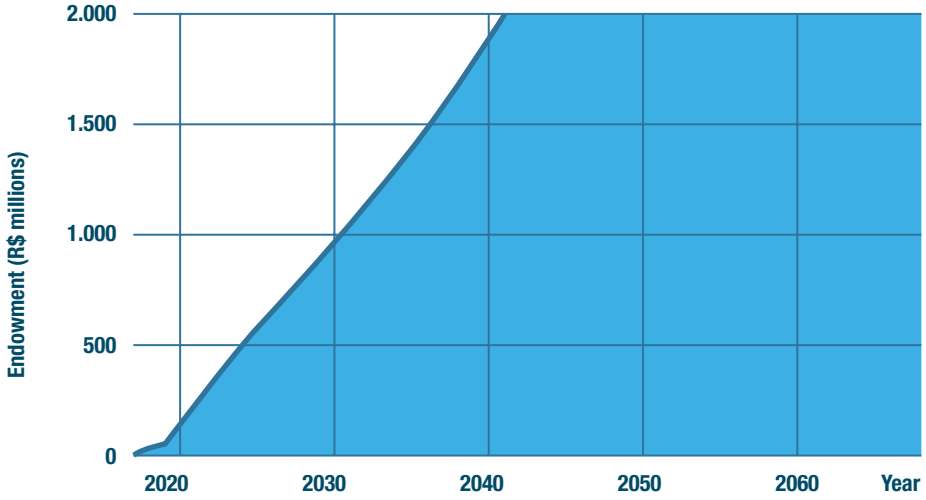
GRAPHS 1

Progression of the yearly amount allocated to project financing (in millions of reais)



GRAPHS 2

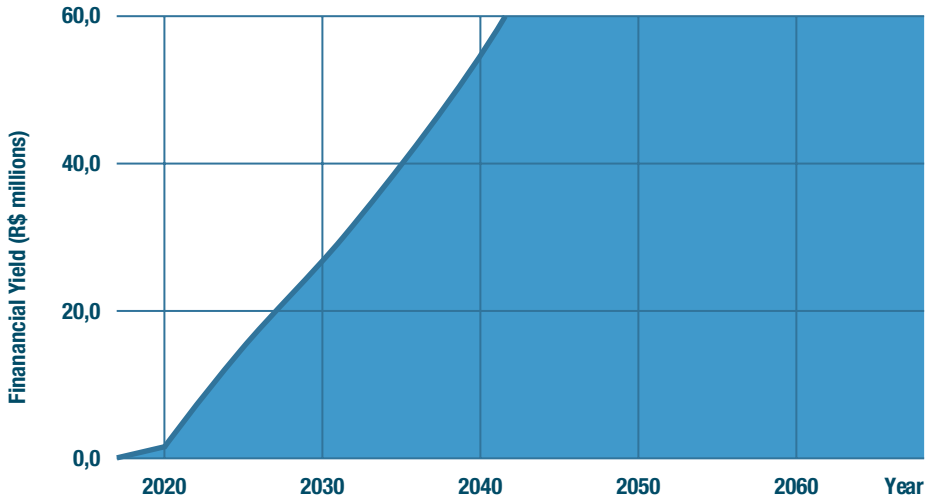
Progression of the accumulated amount allocated to the endowment fund (in millions of reais)



This seems to be the Independent Supervisory Committee's position, which states that: "in the future, the income, or even part of the main total amount, would be allocated to projects chosen through a study, following the best practices, in order to ensure the preservation of the main amount and the availability of the resources allocated towards achieving the leniency agreement's social purpose"[15].

GRAPHS 3

Progression of the financial yield amount (SELIC rate) for the endowment fund (in millions of reais)



The projection shows that the Initiative for Integrity and the Exercise of Citizenship will be fully sustainable and have a high capacity for investment – R$ 60 million, between social project investments and maintenance costs.

15 Independent Supervisory Committee. Primeiros passos para a realização do INVESTIMENTO social: sugestão de encaminhamento oferecida pelo CSI às partes do Acordo de Leniência. Independent Supervisory Committee, J&F Investimentos S.A's leniency agreement, 2017, p. 4.

7 INTERVIEWEES' PROFILES

Amalia Fischer Pfaeffle holds a PhD in Communications and Culture from UFRJ. She was a donor to the Semillas fund in Mexico and worked as a consultant for the Mexican Centre for Philanthropy (CEMEFI) for two years. She is the general coordinator for the ELAS fund, the goal of which is to promote and strengthen women's protagonism, mobilising and investing resources into their initiatives. She was interviewed on 27 July 2018, at the Getúlio Vargas Foundation's main building by Michael Freitas Mohallem, Denise Dora, Pedro Strozenberg and Fabiano Angélico.

Ana Valéria Araújo is a lawyer, graduated from UERJ, with a master's degree in International Law from the American University, specialised in indigenous rights and the defence of socio-environmental rights. She was executive director for the Rainforest Foundation US, in New York, and she is a founding partner of ISA (Socio-Environmental Institute). She has worked as executive coordinator for the Brazil Human Rights Fund since 2006. She was interviewed on 4 July 2018 via Skype by Michael Freitas Mohallem.

Ana Toni graduated in Economics and Social Studies from Swansea University, has a master's degree in World Economy Policies from the London School of Economics and Political Science (LSE) and a PhD in Political Science from UERJ. She was director of the Ford Foundation in Brazil for nearly ten years, managing the human rights, sustainable development, media democratisation and racial and ethnical discrimination areas. In Greenpeace, she initially worked as director for Greenpeace International's policy unit and later as senior advisor to Greenpeace Germany. She is executive director for the Climate and Society Institute (iCS) and founding partner of Gestão de Interesse Público ("Public Interest Management", also known as GIP). She is currently a member of Rede de Mulheres Brasileiras Líderes pela Sustentabilidade ("Brazilian Female Leaders' Network for Sustainability") and is a board member in Agência Pública, WINGS (Worldwide Initiatives for Grantmaker Support), Gold Standard Foundation, ITS, the Baobá Fund for Racial Equality and the Wikimedia Foundation. She was interviewed on 2 August 2018 at the iCS headquarters by Michael Freitas Mohallem

Andre Degenszajn has a master's degree in International Relations. He was secretary-general for Brazil's Group of Institutes, Foundations and Enterprises (GIFE) between 2013 and 2017. He founded the board of directors for Conectas Direitos Humanos and is currently a board member.

He is a member of the board of directors for WINGS and Oxfam Brazil. He is chief executive officer for the Ibirapitanga Institute, created in 2017 by filmmaker

Walter Salles, which aims to support initiatives geared towards racial justice and food systems. He was interviewed on 25 June 2018 at the Ibirapitanga Institute headquarters by Gabriela Gattulli and Michael Freitas Mohallem.

José Marcelo Zacchi graduated in Law from USP and holds a master's degree in Public Administration from Harvard University. He is currently a member of the Casa Fluminense Association's security council, associate researcher at the Instituto de Estudos do Trabalho e Sociedade ("Institute for the Study of Labour and Society", also known as IETS) and secretary-general at GIFE. He was interviewed on 7 August 2018 via Skype by Michael Freitas Mohallem.

Maria Amália Souza graduated in International Development and Environmental Studies from World College West. She was one of the founders of the Philanthropic Network for Social Justice (where she is a member of the directive committee), she represents the Casa Fund in several global coalitions, such as GAGGA (Global Alliance for Green and Gender Action) and the Global Alliance of Socio-Environmental Funds. She is a member of the advisory board for the Ocean Foundation and head of the board for the Nupef Institute (Centre for Research, Studies and Training). She is the founder and executive director of the Casa Socio-Environmental Fund. She was interviewed on 30 July 2018 via Skype by Michael Freitas Mohallem.

Nadine Gasman is a doctor, with a master's degree in Public Health from Harvard University and a PhD in Healthcare Management and Policy from Johns Hopkins University. She has worked in several other positions with the governments of Mexico and Nicaragua, and she was the founder and general director for the Latin American Health Group (an independent consulting firm). She worked as director of Ipas México, an international NGO dedicated to defending sexual and reproductive rights. She was the director of the UN's UNA-SE Campaign for the End of Violence against Women in Latin America and the Caribbean. Currently, she is a representative for UN Women's Office in Brazil. She was interviewed on 9 October 2018 via Skype by Michael Freitas Mohallem.

Pedro Abramovay is a lawyer, graduated from USP and with a master's degree in Law from UNB. He was a legal advisor for the government's leadership in Brazil's Senate, special advisor to the Minister of Justice, secretary for legislative matters and national Justice secretary (2010), a professor at FGV Rio Law School and campaign director for Avaaz. Currently, he is Open Society Foundations' director for Latin America. He was interviewed on 6 August 2018 at the Open Society Foundations headquarters by Michael Freitas Mohallem.

Selma Moreira has a degree in Business Management, specialised in the social responsibility, sustainability and institution management areas. She has worked for several years in private institutions, consulted for popular cooperatives and managed ReDes' development project. She has been the executive director for the Baobá Fund for four years, an institution whose goal is to mobilise people and resources, in Brazil and abroad, to support projects that are pro-racial equality conducted by Afro-Brazilian civil society organisations. She was interviewed on 4 July 2018 via Skype by Marcus Repa and Michael Freitas Mohallem.

Sérgio Haddad is an educator and economist, with a PhD in Education Sociology from USP. He has experience in the education area, specialising in youth and adult education, popular education and public policy. He is a training unit coordinator for Ação Educativa, a non-profit civil association working in the culture and youth education fields, with a human rights-based approach. He was interviewed on 3 July 2018 at Ação Educativa headquarters by Marcus Repa and Denise Dora.

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Transparência Internacional Brasil
Associação Transparência e Integridade
Rua Dr. Virgílio de Carvalho Pinto, 445
São Paulo, SP

brasil@br.transparency.org
www.transparenciainternacional.org.br