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- *Based on her experience as director of the Instituto Betty e Jacob Lafer, the author reflects upon the funding situation in the country.*

ABSTRACT

Since 2013, the Instituto Betty e Jacob Lafer has funded projects by civil society organisations in two priority areas: management and innovation in public policies, and reducing inequalities in the justice system. In this article, the author, who is one of the Institute's directors, discusses the social investment scene in Brazil and the reasons that led her family to concentrate their efforts in these two areas.

KEYWORDS

Social participation | Funding | Justice system

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In 2011 our family made the decision to set up a social investment initiative that honours the values and legacy of my grandparents, Betty and Jacob Lafer. In 2013 we founded an organisation that bears their name and is the vehicle for implementing the strategies that we have designed over the years. Since then, the Instituto Betty e Jacob Lafer has been funding the projects of civil society organisations in two priority areas: management and innovation in public policies, and reducing inequalities in the justice system.

The choice of these two programme areas was based on the family members' interests as well as an analysis of both the investment needs of the country and the spaces that could be occupied by a non-profit actor from the private sector. In 2011 we conducted a study to help structure our programme. It indicated that there was demand for investment on the issues we were interested in and that few funders were supporting them, especially in the area of justice. This confirmed that what we were planning was pertinent.

We also pondered the funds we had available in light of the expectations for our activities' impacts. As we did not have sufficient resources to provide assistance to reach large groups of the population directly, we searched for intervention strategies that would strengthen our investments' potential. Thus, we do not support direct assistance, as it is our understanding that the one with the resources and the responsibility to do so on a large scale is the state. Therefore, we want the projects that we support to urge public agents to improve their role in the two aforementioned programme areas.

The social investment scenario in Brazil

Non-governmental organisations as we know them today began to be formed and consolidated in the 1960s and 1970s during the years of the military dictatorship and gained strength and visibility in the two decades that followed. In 1990 the social investment movement started to grow stronger in Brazil due to the increase in investments from local actors. It was in the second half of the 1990s that corporate investment in social programmes and projects came on the scene in an organised manner, primarily via institutions and foundations.¹ In parallel, in the early 2000s, we began to see a downward trend in, or at least a reconfiguration of, international social investment in Brazil.

Due to economic growth and stability in the country and changes in the strategies of international cooperation agencies that expanded their operations to Asia, Africa and Eastern Europe,² some stopped investing here. Funds of international origin that were important for the consolidation of a series of Brazilian initiatives and NGOs – such as the MacArthur Foundation or the W. K. Kellogg Foundation – have closed their Brazilian offices in recent years. It is true, however, that in their place, others have increased their operations in the country, such as the Open Society Foundations, who chose to host their Latin America regional office in Brazil.

There is little disaggregated data available on social investment from private national funders. The most widely used data comes from the survey conducted periodically on the members of the Grupo de Institutos Fundações e Empresas - (GIFE) [Institutions, Foundations and Companies Group]. This study showed a constant increase in the amount invested,³ which was close to 2.35 billion Brazilian reais [approximately US\$ 1.15 billion] in 2012. The majority of the associates are of corporate origin (71%) and only 8% are family groups.⁴ Education appears as the priority of the programmes for 86% of the study's participants.⁵

It was noted, however, that in 2012 only 15% of the members dedicated themselves to funding projects by civil society organisations, 52% combined funding with the execution of their own projects, and one third carried out their own projects.⁶ What can be seen, then, is that even though there had been a significant influx of private resources from national sources (from families or businesses), donating exclusively to third parties' projects (grant making) is not common practice.

In a context where there has been a change in international donors' activities and straight grant making (with no prospects of financial return) is not the main strategy of social investors, ensuring the financial sustainability of the non-profit sector becomes an enormous challenge. Nonetheless, if we want to deepen democracy, broaden civil and political engagement, and improve access to and quality of public services and social participation, especially in urban environments (an enormous challenge), a strong civil society funded by independent and non-governmental private resources is needed. Such resources will ensure that opposition to certain proposals exists, public officials are monitored and controlled, ideas are formulated and new practices in a wide range of human rights and public policies are developed and tested.

The process of defining areas of operation

To structure our programme and define strategies for action, we interviewed 12 people, including directors and employees of non-governmental organisations, national and international donors, judges and researchers involved in the public defender's office. Visits to organisations were also made and bibliographies of interest were consulted. One conversation led to another and one reading reference to another. Our challenge was to structure a funding programme with limited resources that strives to make an effective contribution to transforming the current situation in the area of justice and the public policy field.

It is worth mentioning that while the Instituto Betty e Jacob Lafer's programmes were not designed based on the human rights theoretical framework, they are very closely related to this field. We were not guided by the logic of the principles that, to me, appear to be very present in the programmes that have "human rights" in their name. Our

programmes are not structured around a convention, pact, law or specific right. On the contrary, our starting point was a situation that troubled us, or concrete problems that we wanted to minimise. Based on that, we analysed the situations, opportunities and niches in which we could operate. The result is, however, a programme that looks just like a human rights programme. The justice programme speaks the language of activism in favour of broadening access to justice and the public policies programme strongly intersects with economic, social, cultural and environmental rights – the very terrain of the obligations of the state.

The majority of our partners aim to directly or incidentally promote systemic changes, either to legislation, the direction of public policies or the way the judiciary and legal practitioners work. However, these changes will be gradual and there will surely be setbacks. We see the projects as a set of actions that will generate impacts gradually. Since 2011 we have invested nearly 3.6 million Brazilian reais [approximately US\$ 1.1 million] in 27 projects and our total budget for 2015 is 1.5 million Brazilian reais [approximately US\$ 470,000]. We hope to offer continuity and to improve our work, and that other national donors join us in our efforts.

The public policies programme

The public policies programme takes into consideration a broad array of historical and institutional challenges that permeate the current notion of the state and the way policies are elaborated and implemented in Brazil. At the Instituto, we have engaged in actions ranging from a rapid historical review of explanations on the so-called patrimonialist and clientelist culture of the Brazilian state to an analysis on how public policies in Brazil have been structured since the promulgation of the Federal Constitution of 1988. From this vast scenario, I will briefly cite some of the aspects we took into consideration while prioritising what we have supported in this programme area.

First, since the return to democracy, there is increasing demand for the expansion of the universality of and access to rights for all people, decentralisation and social participation. As a result, there is a growing need for municipalities to have the capacity to implement public policies and for social control and accountability at the local level. While institutional mechanisms for social participation do exist, such as the councils of rights or conferences with civil society, they do not necessarily function in a satisfactory manner. Therefore, there is still space for the development of new mechanisms to broaden the culture of social participation in Brazil.

Secondly, part of the challenge of truly guaranteeing the rights set out in the Brazilian Constitution of 1988, and implementing the policies it provides for, comes from the lack of training in government bureaucracy. Furthermore, the public sector lacks agility: Brazilian legislation is complex and the hiring of services and products via the law on public tenders focuses on the hiring process, not the product acquired. The same thing happens with human resources in the public sector. It would be difficult to implement a merit-based system that takes into account, for the purpose of career advancement, the results obtained due to the principle of isonomy in the public service.

Finally, in addition to all of the attention paid to the implementation of public policies by the executive branch, the population in general and in particular social groups with fewer economic resources have little access to the legislature and decision-making bodies. This often means that public policies are elaborated without taking into consideration part of the population that is affected by them. Therefore there is a need to increase the permeability and transparency of the legislative houses.

Clearly our public policies programme is not prepared to take on all of these challenges at the same time. The projects work on a small portion of them to produce some changes that together, over time, can lead to systemic change. Our programme is open to supporting projects that seek to contribute to increasing accountability, participation and social control; improving the quality of and fostering innovation in public policies; training public officials; and monitoring legislative bodies and parliamentarians. A large proportion of our projects combine research on specific policies with advocacy strategies based on the research's results.

We have worked on a wide range of issues, all very different from one another: policies on drugs, public safety, children with rheumatism and the recovery of the Pinheiros River in São Paulo. The logic behind this is that our resources are to help strengthen civil society and catalyse change wherever they are being employed.

In the thirty years since the transition to a democratic regime, the country has sought alternatives to improve mechanisms for social participation and representation. The participatory councils and infinite discussions on models for the reform of the political system are some indicators of this yearning. While on one hand alternatives can come from academia or government bodies, on the other, it is important for alternatives to come from organised civil society and for there to be room for different practices.

The justice programme

Our programme in the area of justice aims to contribute to making the judiciary system less unjust – that is, to reducing inequalities in law enforcement while paying special attention to the effective implementation of current legislation, regardless of one's social class. We have done more work in the field of criminal justice, as the inequalities in this field are perhaps more evident because they involve the deprivation of liberty.

As with public policies, the challenges in the area of justice in the Brazilian context are well known. Even so, I will mention some that were important to the programme's design.

From an institutional point of view, an imbalance exists between the public institutions of defence, prosecution and trial. While the situation has changed due to salary increases and the rise in the number public defenders, this disparity can be noted, for example, in the continued existence of agreements on the provision of legal assistance by ad hoc private attorneys. These lawyers do not have an employment relationship with the state and therefore they are not governed by the civil service law. There is no orientation, quality control or assessment of their work. As they do not dedicate themselves exclusively to this function, they are unlikely to have adequate time to prepare the defence. All this compromises the quality of the legal assistance they provide. The duties of a judge or a prosecutor, on the other hand, are always performed by permanent staff, which illustrates the disparity between the parties involved in the legal process. In 2011, the year in which we set up our funding programme in the area of justice, only 20% of the budget of the State of São Paulo Public Defender's Office was spent on permanent public defenders, whereas all prosecution and trial related activities were carried out by civil servants.

To this disparity one must add unequal access to justice in economic terms. Just to give an idea, in 2013 in the city of São Paulo, for every 40,000 potential recipients of public defence, there was one public defender. This reveals that the system is still insufficient to meet the demand. In Brazil, a person who has been temporarily detained and has no access to a private lawyer may spend months in prison and have his or her first contact with the defender only a short time before the hearing.

To make the situation even worse, there is also the problem of prison overcrowding, which more than tripled in the past fifteen years. In 2013 there were 574,000 prisoners, of which nearly 40% were in pre-trial custody. According to the National Penitentiary Department (Departamento Penitenciário Nacional or DEPEN), there was a deficit of over 220,000 cell spaces in prison establishments in 2013.⁷ Prison overcrowding also adds to the inefficiency of the justice system: for example, people remain in prison even after they have served their sentence, which costs public coffers a lot of money. There is limited information and unreliable data on this, even from government sources. However, it is estimated that it costs close to 1,800 Brazilian reais [approximately US\$ 570] per month to keep one prisoner in a public state penitentiary.⁸

The structural problems of the prison system mentioned above, combined with difficulties in gaining access to public defenders, result in innocent people or ones who commit minor offences being held in prison. It is well known that prisons rarely lead to rehabilitation. On the contrary, people who have been imprisoned often end up getting involved in criminal organisations or experience major difficulties in reintegrating into society once they obtain their freedom, hence the importance of avoiding unnecessary imprisonment.

Moreover, Brazilian legislation is not able to resolve these problems in a satisfactory way either. Existing legal norms are not always enforced: there are laws that “stick” and others that do not. Legal practitioners frequently interpret laws without taking human rights duly into consideration (for example, sentencing someone to prison for theft of objects of little value). Some court rulings are incongruous with the existing legal framework and impose much harsher sentences than those foreseen by law, anchoring their decision in arguments based on popular opinion that appeal to sectors of society that are favourable towards more severe punishment. As options in this field, alternative sentencing, out-of-court conflict resolution procedures and restorative justice could be interesting tools to use in the current context of the Brazilian justice system.

There is yet another institutional problem affecting the Brazilian justice system. Similar to the problem mentioned above, we have noted that the institutions of the justice system are not very open to popular participation and accountability is limited. Civil society has made advances in relation to the executive branches at various levels of the federal system and, to a lesser extent, the legislature, where they have found some space for pressuring and gaining access to politicians. However, this has not been the case in regard to the judiciary and the Public Prosecutor’s Offices, which are less open to social participation. Despite the existence of specially-designated Public Prosecutor’s Offices with the mandate to safeguard public and collective interests, as well as the establishment of the National Council of Justice and the National Council of the Public Ministry, which were created to exercise external control over these bodies, and do so with some professionals who are not civil servants, there is still considerable space for increasing the participation of society in the institutions of the justice system.

Again it is worth noting that none of the projects we support addresses all of these challenges together. The same logic applies here: we create a wide array of possibilities and understand that it is the actions of various projects over the years that will generate impact. We have sought, then, to fund actions that contribute to improving the quality and efficiency of the justice system; bringing defenders, prosecutors and judges closer to applying human rights principles to criminal cases; and building a more informed public opinion that defends policies to eliminate injustices in the area of criminal justice. Several projects include information gathering and dissemination and draw on research data for their advocacy work with members of Congress, legal practitioners or the population in general.

The projects use advocacy strategies, media work and communication materials that translate data, statistics and human rights arguments into everyday language as a way of influencing legislators, governments, judges, prosecutors and public opinion to take on a more favourable approach to the human rights legal framework and the implementation of a more just and rational justice system.

Even though there is a limited amount of resources for this programme, the organisations we support have pointed out the importance of our funding on the national scene, given that the bulk of the funding for this issue comes from international donors. This enables us to grasp the dimension of the responsibility of our operations and of the already mentioned need for a growing amount of resources to fund an independent civil society.

Conclusion

Family-based social investment initiatives can play a fundamental role in the scenario we have presented here. Often these initiatives are no longer linked to one specific industry and therefore they have more freedom to contribute to sensitive issues, such as the justice system, or others that lack investments and are a matter of concern and of interest to the family’s members.

It appears to us that the choice we made on the focus of our operations and strategies for action as a funder was the best option, given our past and our interests. It is aligned with the understanding that providing resources to non-governmental organisations so they can develop their projects in the areas of justice or public policies strengthens a democratic society. While it is clear to us that our support alone is not enough, we hope to make our contribution.

NOTES

1. BNDES, *Terceiro setor e desenvolvimento social – Relatório setorial N-3* (Rio de Janeiro: BNDES, Jul. 2001), accessed May 18, 2015, http://www.bndes.gov.br/SiteBNDES/export/sites/default/bndes_pt/Galerias/Arquivos/conhecimento/relato/tsetor.pdf.
2. Associação Brasileira de ONGs (ABONG), *Sustentabilidade das ONGs no Brasil: acesso a recursos privados* (Rio de Janeiro: Associação Brasileira de ONGs, 2010).
3. 2009 was the exception: that year, there was a 5.03% decline due to the impacts of the 2008 economic crisis.
4. Grupo de Institutos Fundações e Empresas (GIFE), *Censo GIFE 2011-2012* (São Paulo, GIFE, 2013), 16, accessed May 18, 2015, <http://www.gife.org.br/arquivos/publicacoes/28/Censo%20GIFE%202011-2012.pdf>.
5. GIFE, *Censo*, 36.
6. *Ibid.*, 35.
7. This data was cited from: *Anuário Brasileiro de Segurança Pública 2014: Fórum Brasileiro de Segurança Pública, Anuário Brasileiro de Segurança Pública 2014, Year 8* (São Paulo: Fórum Brasileiro de Segurança Pública, 2014).
8. João Mendes, “A política de drogas no Brasil e as novas ameaças,” *Le Monde Diplomatique Brasil*, September 2, 2013, accessed May 18, 2015, <https://www.diplomatique.org.br/print.php?tipo=ar&id=1498>. The estimates of the costs of keeping someone in custody in prisons in Brazil vary and there is no official figure.

**INÊS MINDLIN LAFER - Brazil**

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