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A CRITICAL VIEW OF THE BRAZILIAN BUDGET

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To my family that always taught to believe that my dreams were possible, my everlasting gratitude.

To my friends, at COF, for their support and incentive, besides working double, that made me possible to take this time to study.

To God, who always listen to my prays.

Introduction

The budget deficit is a current issue in many countries. There is a great stress to cut spending and, on the other hand, there is a lot pressure from some groups that defend their own interest and want to have their privileges increased. Nowadays, the legally mandate spending has increased and less than 20 percent of the budget is discretionary.

Every year, the media tells the same story, showing the fight to approve the annual budget law. It also shows the waste of public resources because of bridges, workroads, schools and hospitals, to name a few, that were paid by the government, but never delivered. There are also rumors and scandals about politics that receive bribes to incorporate in the budget amendments that would not, otherwise, be there.

This paper does not intend to analyze all the situations that surround this question. However, its target is to briefly show the Brazilian budget process, discuss its characteristics and some developments that occurred after the 1988 Federal Constitution.

Concept

The public budget is a summary or plan about the intended revenues and expenditures of a government. In other words, it is a document that sets up how much the government will receive and how much it can spend within a year. In order to the government to start spending, the

budget must be approved by the Congress. It is a process of choice among different requests of public resources, where the government must choose the priorities.

In order to achieve all that is stated in the annual budget law, there is the so-called budgetary cycle that is defined as a series of steps that happen in a certain period of time, according to which the budget is prepared, voted, executed, controlled and evaluated all the spending. Thus, the budgetary cycle is the period in which all the budgetary activities happen.

It is, indeed, a political instrument that establishes parameters to levy taxes, limits public spending and defines liabilities. It is, as well, of paramount importance to the checks and balances system.

The budget is the materialization of planning. Most important than spending the resources is to accomplish the program negotiated with the society through the Congress. The budget discussed, approved, signed and published authorizes the Government to impose taxes enough to achieve, in behalf of the people, their aspirations.

Actually, the budget is a democratic way of controlling the executive branch.

Historic

The public budget, as it is today, is so much different than what was known in antiquity. The king`s and the state`s assets were the same. Thus, the king dealt with the public resources as if they were his own property.

England was the first country to establish by law the necessity to have a budget that expressed the will of the citizens. However, we can effectively think about the real public budget with the origin of the representative regime. The Parliament starts to discuss and control the spending of public resources.

The Petition of Rights, (1628) initiated by Sir Edward Coke , was based upon earlier statutes and charters and asserted four principles and one of them was: no taxes may be levied without consent of Parliament.

Nonetheless, the great revolution in this realm happened with the end of the absolutist state. From the beginning of the liberal state on, the state responsibility and of its governors were born and so the budget, that became important as a tool to control the public spending.

In Brazil, the public budget has been a constitutional issue since 1824. However, only with the advent of the 4320 law was that the budget acquired a transparency outline.

Importance

The public budget is one of the main areas where people who want to take bad advantage of the public money act. Therefore, controlling the whole process is fundamental for planning and to fight against corruption.

On the other hand, observing the proposal, the allocation of funds and the budget itself, we realize which the government`s priorities are and we have a clear statement about its ideological character. Hence the budget is so important in the legal world today and in the life of nations. It is no longer simply a financial or accounting document, but it became the instrument of state action. The goals set up will be achieved through it. The state assumes the actual functions of intervention in the economic field as well. In short, the budget became a dynamic tool of State action to promote the welfare state.

The Brazilian Public Budget

The Federal Constitution established a legislation framework that consists in three documents, which are:

a) The Multi-Year Plan: is the program-budget. According to the Brazilian Constitution (article 165, paragraph 1) the multi-year plan outlines the course of action for a four-year period, beginning the second year of each presidential term and running through the first year of the next.

Unlike the LDO and the LOA, which have several provisions in the Federal Constitution and the LRF, regarding the PPA, the practice is still far beyond the norm. Different groups have different opinions about what the plan should include.

The plan brings general and sectorial objectives and describes investments in detail, including several continuous programs.

The obligation to elaborate the PPA for all entities of the federation, which include the states and municipalities, only became clear in 2000, after LRF was issued.

The economy has showed that the annual budget is unstable. There are the surpluses and deficits that make difficult to do exactly what was previously planned. With the government intervention in the social and economic order, the budget gained other purposes. It has been an instrument for economic planning; a tool for government planning that is consonant to the global economy of the country.

To sum up, the Multi-Year Plan defines the government activities in the medium-run.

It is important to observe that any investment which execution exceeds one fiscal year can start without prior inclusion in the Multi-Year Plan, or without law that authorizes its inclusion under penalty of criminal liability (Federal Constitution, article 167, paragraph 1).

If there are changes in the economic and social circumstances of the country, it is possible to alter the multi-year plan, as well.

b) The Budget Directives Law (“*LDO*”) – The Federal Constitution, article 165, paragraph 2 establishes that: ¹ The Budget Directives Law also comprises the goals and priorities of the federal public administration, including the capital expenditure for the forthcoming financial year, will guide the preparation of the annual budget law, as well as the changes in tax law and will establish a policy for applying the financial agencies official promotion.

This is the law that guides the budget preparation process and is a peculiar characteristic of Brazil’s budgetary system.

During this stage, most important policy decisions are made and that is why a significant part of the budget debate takes place in Congress. This Law also covers formal and procedural aspects of the budget process.

The financial management responsibilities are shared by the Ministry of Planning, Budget and Management (MP) and Ministry of Finance (MF). After discussions among representatives of SOF, the Treasury and each other Ministry, SOF submits a proposal for the budget directives law (Lei de Diretrizes Orçamentárias or “*LDO*”) for the forthcoming fiscal year to the President. On the other hand, the President submits the LDO proposal to the National Congress. The LDO proposal with respect to the next year must be submitted to Congress by April 15.

Congress may revise the LDO proposed by the President and must submit to the President the LDO as revised by June 30 and may not begin its winter recess until it does so. The LDO becomes effective immediately if Congress approves the presidential proposal without any change. If Congress modifies any item of the proposal, the President may veto any provision of the revised LDO. Otherwise, the provisions that are not vetoed become effective after presidential signature. Congress may override the veto by a two-thirds majority vote. If the veto is overridden, the provision becomes effective upon the override.

The LDO is an annual law that must draw general rules for application to the multi-year plan and the annual budgets. It should say what the law must contain and should also say when there may be modifications of tax revenue in the legislation.

The LC 101/2000 added requirements to the provisions in paragraph 2 of the article 165 of the Federal Constitution. It requires the administrator that the Budget Directives Law establishes goals and priorities, and at the same time, guides the preparation of the annual budget law and establish the establish a policy for applying the financial agencies official promotion and will establish the changes in the tax legislation; Criteria and form for limitation of commitment, to be effective in some specific situations; Rules on controlling costs and the evaluation of the results to programs financed with public resources; other conditions and requirements for transfers of resources to public and private entities;

The LC 101/2000 requires, as well, that the Annex of fiscal targets, which should accompany the Budget Directives Law bill. It should refer to three fiscal years.

This annex should also contain, among other things, the evaluation in compliance with the targets for the previous year. The evaluation shall be shown by numbers, data, statistics, or other ways that can substantiate the analysis.

In the case that the President does not introduce the Budget Directives Law bill, the Congress can update the previous law, but in this case, the President can be prosecuted. Another complicated situation occurs when the annual budget bill will be voted by the National Congress. Since there are no established parameters for the budget directives law, it will be necessary legislative authorizations for each one of the expenditure.

This law is so important that, if the Congress does not vote it, in addition to preventing the parliamentary recess, it will oblige them to vote it. In other words, it will obstruct the congressional works, making that the congress vote it.

If the bill is rejected, the President can sign it, or it will be necessary a specific authorization for each expenditure. In any way, there would be an institutional crisis that only could be politically solved.

Could there be any change in the Budget Directives Law? It could hardly happen because it is a temporary law that must be signed in the first semester. Then, the annual budget law will have to be introduced and that law must be compatible with this one.

c) Annual Budget Law (LOA): It comprehends the fiscal budget (revenues and spending) of all three federal branches, its funds, agencies and entities from direct and indirect administration, inclusive foundations instituted or maintained by the Public Sector (art 165, paragraph I of the Federal Constitution). It is of paramount importance that this law is compatible with the LDO.

The Budget Process

The Brazilian budget process is complex. While the states are autonomous to manage their own finances, part of their revenues comes from the central government.

The Brazilian Government's fiscal year is the calendar of the year. The executive branch is in charge for the preparation of the federal budget, although the National Congress plays a major role in budget process, mainly because of the system of checks and balances. The representatives from the National Treasury from the Ministry of Finance, the Federal Budget Secretariat (SOF), along with the Planning and Strategic Investments Secretariat, the budget proposal is prepared. After discussions among representatives of SOF, the Treasury and each other Ministry, SOF submits a formal proposal for the budget directives law for the forthcoming fiscal year to the President of the Republic. The President, in turn, submits the LDO proposal, with any revisions, to the National Congress. The LDO proposal with respect to the succeeding year must be submitted to Congress by April 15.

After studies and discussions, Congress may revise the LDO proposed by the President. Congress is charged by law to submit to the President the LDO as revised by June 30 and may not begin its winter recess until it does so. The LDO becomes effective immediately if Congress approves the presidential proposal without revision. If Congress alters any item of the proposal, the President may veto any provision of the revised LDO. All provisions that are not vetoed become effective upon presidential signature. Congress may override the veto by a two-thirds majority vote. If the veto is overridden, the provision becomes effective upon the override, the same way it occurs in the LDO process.

The executive branch is charged with submitting to Congress a detailed budget for the succeeding fiscal year that is compatible with the approved contours set forth in the LDO. Each ministry proposes a detailed budget with respect to its activities, and SOF meets with each ministry to discuss its proposal. SOF finalizes a federal budget proposal, which is submitted to the President, who may revise it. The President is then required to submit the budget, as revised, to Congress by August 31.

Congress may revise some items in the President's proposed budget. Congress may not, however, alter the items regarding payments on any external debt that the Republic has incurred neither anyone of the legally mandated spending. By December 15, Congress must submit to the President the budget, as revised, for the succeeding year.

The President is granted fifteen days to review and sign the budget. If the President signs the budget or a veto is overridden prior to the end of the year, the provisions that are not vetoed or for which the veto has been overridden become effective as of January 1 of the next year. After presidential signature, implementing decrees authorizing expenditures are generally issued within five to ten days, but certain expenditures are permitted to be made immediately.

Another important issue that needs attention is the delay in voting the budgets. It is common that the deadlines are not followed and the annual budget law, have not been finally approved prior to January 1 of the year. In order to avoid a shutdown of administrative machine, the LDO generally authorizes the Government to use each month an amount equivalent to one-twelfth of the proposed annual expenditure included in the Government's proposed budget that should had been voted. Constitutional Amendment No. 32, prevents, among other things, the issuance of provisional measures for, among other things, the implementation of multi-year plans and budgets.

Fiscal Responsibility Law

Approved in 2000, the Fiscal Responsibility Law brought new responsibilities to the public agent (mayor, governors and the President) regarding to the budget. It highlighted the importance of planning to the public administration and also strengthened the budgetary institutions outlined in the Constitution.

Issuing this Law, the Government introduced a modern financial-oriented approach designed to replace the inflationary financing and debt accumulation that had prevailed in the past. The law sets forth fundamental principles and directives of public finances and establishes a comprehensive framework intended to eliminate fiscal imbalances. This legislation applies to each level of government, as well as to government-controlled funds, semi-autonomous entities and public sector companies.

The Fiscal Responsibility Law provides for, among other things:

- a) Limitations on personnel expenditures as a percentage of net current revenues to 50% for the federal Government, 60% for the States, and 60% for municipalities. Total personnel expenditures include expenditures for active and retired civil servants and military personnel, pensioners, elected officials, appointed members, commissioned or employed staff, administration members receiving any remuneration, such as a salary, fixed and variable supplemental payments, subsidies, retirement, reform and pension payments, including additional gratuities, overtime payments and personal supplemental payments of any kind, social security contributions and contributions to pension entities.

- b) Ceilings for public sector debt for the federal Government, States and municipalities, which are to be verified every four months. The law requires the President to submit to the National Congress, within 90 days of the law's enactment, proposals for global limits for the consolidated debt at each level of government. The proposals are required to

include (a) an explanation demonstrating that the global limits and conditions comply with provisions of the Fiscal Responsibility Law and with fiscal policy objectives, (b) estimates of the impact of the limits on the three levels of government, (c) the reasons for any proposal of different ceilings for each level of government and (d) the methodologies for calculating primary and nominal fiscal results. Payments in respect of judicial awards (*precatórios*) not made during the budget execution are required to be included as consolidated debt.

c) Regulation of the “*golden rule*”, which establishes that the volume of credit operations cannot exceed capital expenditures. Tax concessions have to be accompanied by estimates of their budget and financial impact in the budget year and in the two following years and included in the budget directives law (“*LDO*”). The proposing entity must also indicate that compensatory revenues exist. Increases in expenditures have to be accompanied by estimates of their budgetary and financial impact in the year in which they are first incurred and in the two following years, and by a declaration from the proposing entity stating that such increases are in compliance with multi-year plan (“*PPA*”), *LDO* and annual budget.

d) Strengthening of the budgetary process as a planning instrument, with bi-monthly evaluations of fiscal targets for five key variables: revenues, expenditures, nominal and primary fiscal results and public sector debt. Non-compliance with bi-monthly targets for nominal and primary results will trigger automatic cuts in expenditure authorizations and

in financial transactions separately at each level of government.

- e) Imposes strict rules for controlling revenue anticipation loans; concession of guarantees; and remnant payments. New loan operations will not be authorized if ceilings on public sector debt are exceeded, except for refinancings of existing debt. Ceilings on personnel expenditures are to be verified every four months and, if exceeded, expenditure reduction measures will be triggered automatically. If such ceilings are exceeded by 95% or more, pay raises, new hiring and personnel related expenditures will be suspended. Courts specialized in the review of public accounts are to advise administrations of actual and potential noncompliance with the Fiscal Responsibility Law.

- f) A requirement that periodic evaluations reported in the fiscal risks annex contain information on financial and actuarial status of social security and Workers Support Fund (“*FAT*”), other public funds and programs of an actuarial nature, and overall contingent liabilities and other risks associated to public finances. The federal Government is also required to present projections for key economic variables and the targets for inflation.

- g) The tightening of compliance requirements for outgoing officeholders. Debt renegotiations and rollovers are strictly forbidden during an incumbent’s final year in office.

h) A prohibition against the Central Bank issuing its own securities. The Central Bank's debt securities are also included in the limits for federal Government debt. The Fiscal Responsibility Law contains provisions that are intended to make Central Bank's operations more transparent, which include the obligation to present detailed reports. Sanctions for irresponsible behavior and mismanagement are to be established along with civil and criminal penalties in the Fiscal Crime Law.

Exceptions under the Fiscal Responsibility Law are highly limited. Limits on public sector debt and on credit operations will be revised upon request by the President in the case of economic instability and monetary and foreign exchange shocks. Deadlines to reestablish equilibrium will be extended in the case of lackluster economic growth. In case of an officially recognized state of emergency, the limits will be temporarily suspended.

Fiscal target annexes will be required to account for sources, and funds obtained from sale of public assets will be prohibited from being used to finance current expenditures, except expenditures related to social security.

In December 2001, in accordance with the Fiscal Responsibility Law, Senate Resolution No. 40 dated December 20, 2001 defined the global limits for the consolidated net indebtedness of States and municipalities. Under Senate Resolution No. 40, a State's debt cannot be higher than 200% of its net current revenue and a municipality's debt cannot exceed 120% of its net current

revenue. Senate Resolution No. 40 also establishes mechanisms for annual reductions of indebtedness exceeding such limits.

On October 11, 2000, the Brazilian Senate approved legislation known as the Fiscal Crime Law. The legislation amends Brazil's Penal Code (Decree Law No. 2,848 of December 7, 1940) and certain other laws to provide penalties for, among other things, the execution of credit operations in excess of authorized limits, the ordering of expenditures not authorized by law and administrative infractions of public finance laws. The legislation, which was approved by the Chamber of Deputies on May 17, 2000, was enacted on October 19, 2000. The Fiscal Crime Law is a complement to the Fiscal Responsibility Law.

Participatory Budgeting

Participatory Budget is an innovation of the Brazilian System that brought a new kind of decentralization through an innovative way of deliberating the budget. It is also a process of democratic decision-making, in which ordinary city residents decide how to allocate part of a municipal or public budget. It is usually characterized by several basic design features: identification of spending priorities by community members, election of budget delegates to represent different communities, facilitation and technical assistance by public employees, local and higher level assemblies to deliberate and vote on spending priorities, and the implementation of local direct-impact community projects.

The popular participation in the decision-making process is based on article 29, XII of the Federal Constitution,¹ which predicts the teamwork of the associations in the municipalities planning. Besides, these municipalities are empowered to legislate about their own interests (art 30, I)² and take care of their interests as they wish (art. 30,VIII)³, since it is a subject that is not reserved to the Federal Constitution or Federal Law to regulate.

Many studies and surveys have suggested that participatory budgeting results in more equitable public spending, higher quality of life, increased satisfaction of basic needs, greater government transparency and accountability, increased levels of public participation (especially by marginalized residents), and democratic and citizenship learning.

The first full participatory budgeting process developed in the city of Porto Alegre, Brazil, starting in 1989. Participatory budgeting is an annual process of deliberation and decision-making, in which thousands of city residents decide how to allocate part of the municipal budget. In a series of neighborhood, regional, and citywide assemblies, residents and elected budget delegates identify spending priorities and vote on which priorities to implement.

Many scholars have studied the impact of participatory budgeting both on government spending, allocation of resources and target areas. They have found a trend towards spending more in less

¹ Art. 29. O Município reger-se-á por lei orgânica, votada em dois turnos, com o interstício mínimo de dez dias, e aprovada por dois terços dos membros da Câmara Municipal, que a promulgará, atendidos os princípios estabelecidos nesta Constituição, na Constituição do respectivo Estado e os seguintes preceitos: ...XII - cooperação das associações representativas no planejamento municipal;

² Art. 30. Compete aos Municípios: I - legislar sobre assuntos de interesse local;

³ VIII - promover, no que couber, adequado ordenamento territorial, mediante planejamento e controle do uso, do parcelamento e da ocupação do solo urbano;

avored neighborhoods, inhabited by lower income families. Nevertheless, most if not all of these studies have based themselves on government collected data, and no independent studies have been performed so far to check the validity of those results.

Participatory budgeting, as it is has been practiced in Brazil, does not oblige the government to follow what has been decided by the municipal assemblies, does not state how much of the actual budget should be used, or how the assemblies should be composed.

Some people criticize the system, saying that it is common that the government publishes the budget according to what has been decided by the participatory budgeting process, but does not implement it later. The government files, which are the source of all academic research done so far, would then provide a false picture of success to a system that would in practice not be different from the normal running of a liberal democratic system.

Since this practice started in Porto Alegre, participatory budgeting has spread to hundreds of Latin American cities, and other cities in Europe, Asia, Africa, and North America. More than 200 municipalities are estimated to have initiated participatory budgeting. In some places, participatory budgeting has been applied for school, university, and public housing budgets. These international approaches differ significantly, and they are shaped and adapted by each one of them, creating their own model.

In Europe, towns and cities in France, the United Kingdom, Germany, Spain and Italy, have initiated participatory budgeting. Similar budget processes have been used in communities in India and Africa.

Brazilian Federal Budget Is not Mandatory

One characteristic of the Brazilian budget is that it is only authorizative, not mandatory. It means that, after the approval of the annual budget law, even if the Presidents signs it, the National Congress approves just a ceiling amount and the Executive is not obliged to spend all resources available in the annual budget law. The agencies can spend just what is authorized. Besides this, it is necessary another authorization.

If the taxes collected are less than what had been previously estimated, the spending may have been overestimated and it won't be authorized. They may be considered non viable or inconvenient. The executive branch, which detains the "key of the safe", may not liberate the money without even noticing the House of Representatives, neither the Senate. In this case, the approved budgetary law would become a simple declaration of intentions. In fact, this situation gives to the Executive the power to freely decide about the execution of the spending approved in the annual budget law.

In a narrow view, the annual budget law does not create legislation about revenues and spending, but just authorizes the government to accomplish them under certain conditions. In a wider view,

the annual budget law is an ordinary law. For this reason, it is able to modify the financial legislation.

The issue should be regulated by the complementary law mentioned in paragraph 9, article 169 of the Federal Constitution. Hence there is not such rule; the Law 4320/64 is still effective, which is not totally clear about the subject.

Each four months, the Executive is enforced by the Complementary Law 101/2000 to demonstrate and evaluate the targets accomplishment. If it is above the expected level, the executive does not authorize the spending until the restoration of revenue forecasted.

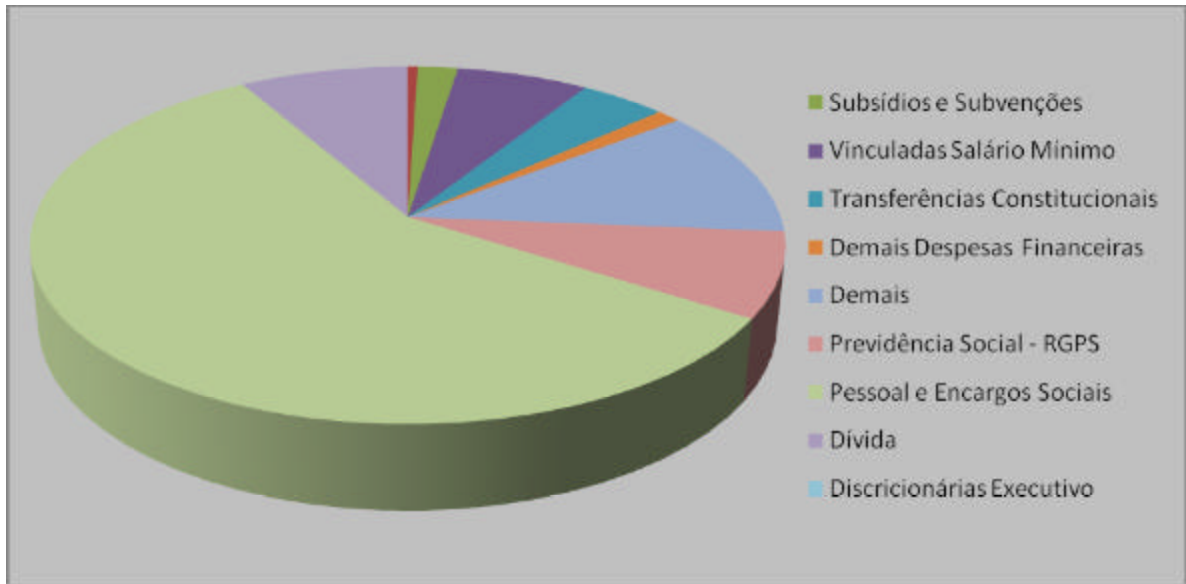
Furthermore, the Legislative Branch, directly or through the Court of Accounts and the Public Prosecutors, will monitor the achievement of the targets established in the Budget Directives Law as well.

It is important to say that in the budget, there are the legally mandated spending, that are the ones that the government cannot cut or choose whether to pay or not. He is forced by the Constitution or another law to accomplish them all, like payroll, interest rates and overall debts. There are also others that depend on the willing of the government, that can decide whether the spending is viable or convenient, the so-called discretionary (current spending, investment and financial reversion). This last group depends in a wide range if there are resources available and they translate which are the priorities of each government. Among them there are, as well, the ones that are considered essential and the ones that are not.

Legally mandated spending has increased rapidly, and without significant reform, it is projected to become explosive. An important part of the legally mandated spending is tied to the 1988 Constitution. Less than 20 percent of the budget is discretionary. The graphic below shows this and especially the discretionary spending related to the executive, where it is 8,40% of the whole federal budget. It is not considered here the discretionary spending of the judiciary and legislative:

ORÇAMENTO FISCAL E DA SEGURIDADE SOCIAL DESPESA TOTAL - DOTAÇÃO 2007

Subsídios e Subvenções	0,50%
Vinculadas Salário Mínimo	2,00%
Transferências Constitucionais	6,60%
Demais Despesas Financeiras	4,30%
Demais	1,20%
Previdência Social – RGPS	11,70%
Pessoal e Encargos Sociais	7,70%
Dívida	57,60%
Discricionárias Executivo (discretionary spending)	8,40%



Although this seems to be just a little part of the whole big cake that is the budget, these are the resources that make the state machine keep on moving. This money is used to buy the office materials that are used by the public servants, the rents, the vehicles and so on. Besides the public servants' wages and the social security, almost all the rest is paid by this part of the budget that is considered discretionary spending. Nonetheless, as the budget has so much to do with planning and, most of all, considering that, according to the Brazilian procurement law⁴ there are some requirements that the public administrator needs to accomplish so that the purchase process can be completed. In fact, it takes a little while to happen and, many times, when the money is released, there is not time enough to spend it at that fiscal year. When it happens, the money that is not used goes back to the treasury safe and the public needs are not satisfied.

This has caused a lot of trouble to the public administrator that has his hands tied up by the executive. It happens that during the year there is no money to purchase all that the

⁴ Lei 8666/1993

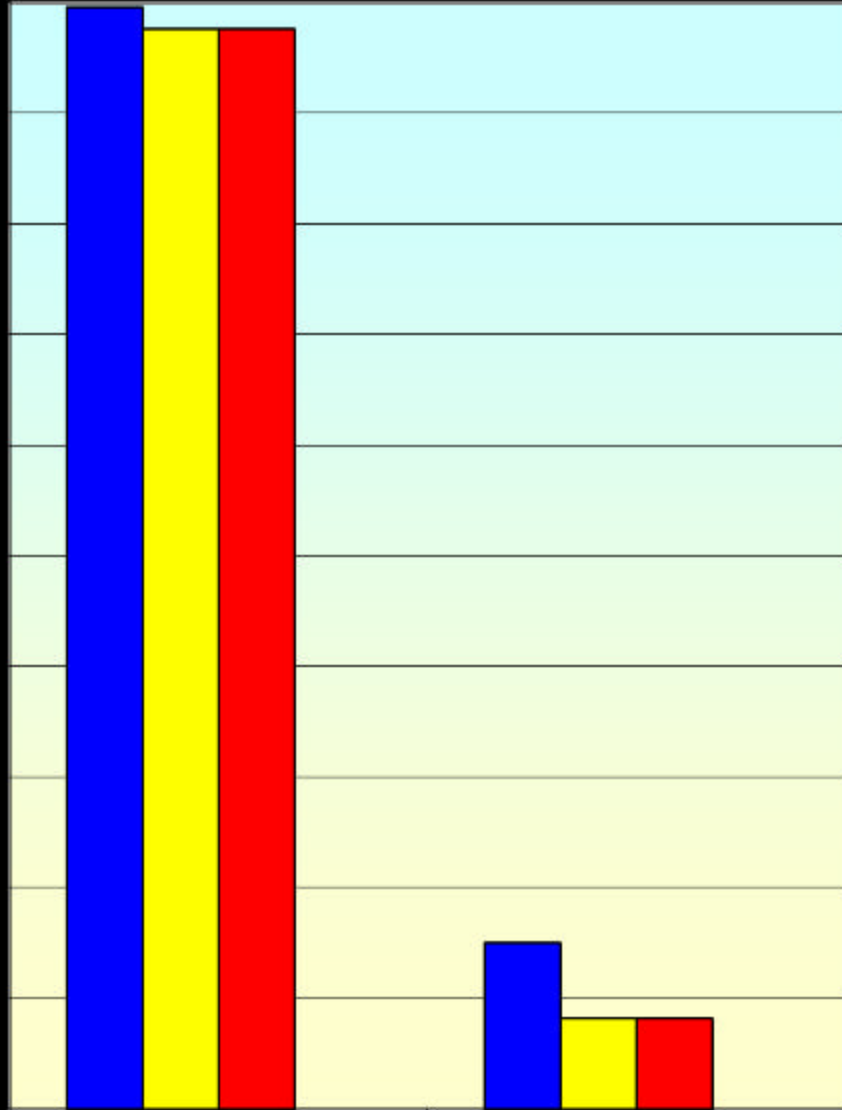
administration needs and at the end of the year as the government collected all that he had forecasted and could save some money to pay interest debts, the money is now liberated. However, as there is no enough time to spend it the way was previously wanted, it will be spent in another way so that it will not go back to the Treasury.

The critics say that this money, the so-called primary surplus, has been used to pay the interest debt. At first glance, it could seem a good choice, but the point is that the government pays his debt, but sacrifices the investments.

The graphic below shows how the money that was supposed to be used up in investment could not be spent timely by the Office of the Attorney-General of the National Treasury (Procuradoria-Geral da Fazenda Nacional – PGFN), in this particular case. This happens because in this category demands more time and planning to be executed:

Atualizado até 16/01/2007

■ LOA/2006 + CRED.ADIC. ■ Limite SOF + CRED. ADIC.
■ Exec. (OGU + CRED.ADIC.) ■ Empenhos a Liquidar



Many congressmen have advocated the idea that the execution of the annual budget law should be mandatory. Otherwise the hard work done by the legislative would be lost. In 2000 there were made many proposals to amend the Budget Law and make it impositive.

Some say that because it is a law itself, it has an imperative characteristic and is impositive, but this is not the strongest mainstream and that is not what has been going on.

There is a proposal to amend the Federal Constitution, introduced by the Senator Antonio Carlos Magalhães⁵ that intends to make the federal budget impositive. The proposal is to alter the Federal Constitution, becoming mandatory the programming of the annual budget. It would take away the discretionary power that the executive has to decide if he liberates or not the public resources and gives back to the Joint Budget Commission its importance and responsibility. It will also make the annual budget law a real and strong document that is able to enforce for itself. In this case, the amendments would have to follow the priorities set forth in the investment multi-year plan and would be restricted to the revenues previously established.

This proposal to amend the federal constitution was introduced in June, 06 of 2000 and has been filed since March, 28 of 2007, despite its many supporters.

Likewise, the mandatory budget would facilitate the resources regionalization, stimulating its decentralization, diminishing the “umbrella projects”. In other words, the impositive budget will have to be realistic, evaluate correctly the revenues and classify the public expenditures in compulsory, the ones that will be executed with known resources and the non-compulsory, that

⁵ PEC 22 de 2000

are the ones that will be executed with over-collection resources. This type of budget should also reject the conditioned revenues that are the ones that depend on laws that must be still approved by the Congress.

Additionally, the Brazilian constitutional system includes a notion known as the separation of power. In this system, the three branches of government are created and the power is shared between them. At the same time that one branch is different; they have an effect on the other. So, looking through this point of view, the Executive could not just ignore the annual budget law.

This impositiveness will make the application of resources more transparent and will become the planning activity more effective, as well.

It is worth saying that the concerns with putting the budget in a cast are not true, since the bill establishes that there would be an amount between 10 and 20% available, so that the government could allocate as necessary. It would also guarantee flexibility to the President to distribute the resources. Moreover, it is foreseen that the President can request resources that will be urgently voted. Otherwise, it will be considered approved, if it won't be voted within 30 days.

In fact, so that the country can keep on growing sustainably, the budgetary priorities must be accomplished. Unless all the budgetary process will be treated seriously, all the work done by the agencies when they first state their needs, which ends with the hard work performed by the National Congress will be in vain. All the endurance and planning job can be wasted.

Delinking of Central Government Revenues (“DRU”)

The excess of legally mandate spending, in the Federal Budget, has increased in the last few years, which diminish the government capacity to administrate his resources, without amplifying his debts. Its only goal is to become the resource allocation more flexible, but never to increase the total amount of spending.

Under Constitutional Amendment No. 27 of March 21, 2000, which became effective on March 22, 2000, the Government is permitted to reallocate through 2003 20% of certain tax revenues that the Government would otherwise be required to devote to specific program areas under the Constitution. The amendment created the Delinking of Central Government Revenues (“DRU”), which applies to social security contributions made by employees in the private sector. Constitutional Amendment No. 42 dated December 19, 2003 extended the DRU until 2007. On December 20, 2007, it was issued the Constitutional Amendment No. 56 that extends the DRU until 2011⁶.

Through these changes in the constitution, the Legislative Branch gave up saying the last word about 20% of the public spending, deciding just about 80%. It is a blank check that the Legislative gives to the executive to spend the money the way it prefers.

⁶ Art. 1º O caput do art. 76 do Ato das Disposições Constitucionais Transitórias passa a vigorar com a seguinte redação:

"Art. 76. É desvinculado de órgão, fundo ou despesa, até 31 de dezembro de 2011, 20% (vinte por cento) da arrecadação da União de impostos, contribuições sociais e de intervenção no domínio econômico, já instituídos ou que vierem a ser criados até a referida data, seus adicionais e respectivos acréscimos legais."

The Budget in the United States

The budget process adopted in the United States is somewhat different from Brazil's one. Congress does not vote on the overall proposal of the annual budget law. Instead, it approves fund allocations called appropriations, usually in a group of 13 laws, which are discussed by the 13 subcommittees of each chamber of Congress.

Budget preparation begins in April, 18 months before the start of the fiscal year, which is in October. This time is spent in internal discussions and negotiations between the executive and the legislative.

The president establishes general policy and budget guidelines. Based on this, the OMB (Office of Management and Budget) exchanges information with all federal agencies and discuss their needs and priorities. The conclusion will depend on the budget evaluations and policy measures, as well as the projections prepared by the Council of Economic Advisors, the Treasury and the OMB itself.

The President must submit the budget until first Monday in February of each year, unless unexpected circumstances occur. The outgoing President is not obliged to do so, neither the newcomer President. However, the President's proposal is not mandatory for the Legislative. It is only a recommendation to Congress.

Congress can approve, refuse, modify or add new programs to the executive's proposal. After both committees in the House and Senate prepare legislation related to their field of expertise, in order to develop estimates and propose the legislation that they deem necessary. The budget committee of each chamber receives the proposals from the specialized committees and, based on this information prepares an aggregate budget. The two budget committees decide the general amount and appropriate funds in accordance with each functional classification.

After discussions, the Congress passes a budget resolution, which is an overall plan and sets the spending levels and divide the total spending among the members in Congress that have jurisdiction over various Government programs. However, as it is not a law, it does not need the Presidential approval.

Congress does not pass one budget law, instead, approves 13 spending authorizations. The budget appropriations bill begins in the House of Representatives and, after it is approved, goes to the Senate.

Appropriations are made on the basis of spending authorizations for each program. Some of them require annual reauthorization and others may continue indefinitely.

Government officials must spend what has been appropriated. The U.S. legislation predicts the so-called "rescission". According to the U.S. Senate glossary, it is "the cancellation of budget authority previously provided by Congress. The Impoundment Control Act of 1974 specifies that the President may propose to Congress that funds be rescinded. If both Houses have not

approved a rescission proposal (by passing legislation) within 45 days of continuous session, any funds being withheld must be made available for obligation.”

Recently, the debate on the budget deficit has caused difficulties in the budget process. In addition, entitlement expenditures have increased for more than the 60% of annual expenditures. This event, joined with the goal of deficit reduction, puts enormous pressure on the discretionary spending in the budget.

It is important to notice that differently from Brazil, State and local budget are separate from the U.S. Budget. Moreover, there is no money transfer.

The Use of Public Resources

The public resources should be used to benefit the society`s fundamental targets and the poorest people, as well. Nevertheless, it is also important that these resource is correctly used that can have effective control over the spending.

Vinod Thomas, former director of the World Bank, in a recent book entitled: “From Inside Brazil: Development in a Land of Contrasts” states that one of the goals that Brazil should pursue is to make that the investments in the social area be effective. He also clarifies that, comparatively, there is more investment in education and health than South Korea and China. Although, the numbers presented by that countries are higher than Brazil`s, which means that

there is a bad investment. For instance, the spending with higher education is bigger than with elementary school.

The same can be said relatively to the social security, where the resources invested are used to help old people and that do not have the desired outcome. Moreover, 60% of the Brazilian population is part of the informal economy and is not covered by the social security, which means that only a few people have been assisted.

All of this spending must be controlled. The control of the efficiency, as an administrative principle, compels the Public Administration to make a quality control. It isn't just to spend the resources what matters, but do it in an adequate way, according to the public interests involved. The principle of the efficiency leads to the application of the resources in what they are essential and important to the population.

The State should demonstrate that it made a good use of the public resources and show the desirable outcome.

Conclusion

Making a public budget is always a process where there is never enough resources to be distributed. It is, as well, a rearrangement practice where some wins because others lose. There are two worlds in the budgetary process: the political, where there are lots of conflicts and the

procedural-technical, where the order prevails. Thus, to reach the expected outcome, both worlds must be taken into consideration and harmonized.

Brazil has been making great progress through the years, paving the way to a democratic and transparent procedure, trying to get each time nearer the needs of the society. After the 1988 Constitution, it was given to the Congress a greater role in the budget process and the budget instruments were modernized.

The novel Constitution approved a multi-year planning that aims to reduce regional inequalities and also requires establishing an organic budget law. The legal framework entails the need of the Budgetary Guidelines Law. It also requires that the annual budget law takes into account all revenues and expenditures, including investment by state-owned enterprises and social security expenditures.

The Fiscal Responsibility Law (FRL) gave more clearness to the budget process and fiscal management, requiring transparent procedures must be used in the preparation, approval, and implementation of Budget Guidelines Law and Annual Budget Law, as well as in the preparation of the annual accounts, public debt reports, summarized budget execution reports and fiscal administration.

Despite this advancement, the authorizative characteristic that carries the annual budget law has avoided the legal framework evolution to represent a greater improvement. After almost endless discussions among the legislative, executive and others social representatives the work ends up

being unproductive. Because of this, Brazilians has been experiencing some difficulties. Just to give a brief idea, Congressmen can make individual amendments to the budget, reserving resources, but after this effort, it requires another work from them in order to get the money effectively released. It creates a network of dependence, involving lobbyists, businesses, projects, technocrats, and that often ends up in traffic of influence. Another point is that the administrative activity cannot be totally planned, since it is unknown if the money will be released or not. Mainly for procedures that demand more time, like a construction, it cannot start if the resource is uncertain.

This lack of enforcement also brings others difficulties to the public administration. I agree with Roberto Piscitelli that, in an article called “Orçamento Autorizativo X Orçamento Impositivo” sponsors the idea that we should implement the “rescission” in Brazil as well. This is what the system of checks and balances is all about.

Thus, the proposal to amend the constitution introduced by Senator Antonio Carlos Magalhães should be unfiled, in order to be discussed and voted in the Congress. The mandatory budget would bring more transparency to the budgetary cycle.

The Delinking of Central Government Revenues (DRU), that was created to make the budget more flexible, takes 20% from the social security contribution. It gives more power to the executive and likewise may increase the social security deficit.

Last, but not least, I should also mention the participatory budgeting which is an important democratic tool. Although it does not expressly oblige the authority to adopt all that was decided, there is no law that does not produce an effect at all. It will promote discussions and that will make the citizens be aware of what is happening in the municipality. Furthermore, democracy is popular participation.

The participatory budgeting also helps the control of the efficiency. If the society knows where the money was supposed to be spent, it will be easier to make a quality control.

Considering everything mentioned above, although Brazil has fallen short of the ideal budgetary system, it nevertheless has made progress in this area.