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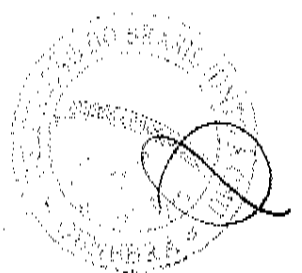
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The Permanent Mission of Brazil to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights Special Procedures Branch and, with reference to verbal note AL BRA 7/2016, dated December 8<sup>th</sup> 2016, and to further communications on the issue, has the honor to submit (see attached) a reply to a joint communication sent by the Special Rapporteur on extreme poverty and human rights, the Special Rapporteur on the right to education and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.



Geneva, January 23<sup>rd</sup>, 2017

To the Office of the High Commissioner for Human Rights

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## **Federative Republic of Brazil**

**HUMAN RIGHTS COUNCIL,  
REPLY TO A JOINT COMMUNICATION FROM  
THE SPECIAL RAPPORTEURS ON EXTREME POVERTY AND HUMAN RIGHTS,  
ON THE RIGHT TO EDUCATION AND  
ON THE RIGHT OF EVERYONE TO THE ENJOYMENT OF THE HIGHEST  
ATTAINABLE STANDARD OF PHYSICAL AND MENTAL HEALTH**

I have the honor to refer to the joint letter of allegation submitted by the Special Rapporteurs on extreme poverty and human rights, on the right to education and on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, dated December 8<sup>th</sup> 2016.

2. As a complement to the preliminary comments contained in the communications 677/2016 and 687/2016, sent to the Special Rapporteur on extreme poverty and human rights

on 12 and the 19 of December, as well as to similar letters addressed to the Special Rapporteurs on the right to education and the right to health, the Brazilian Government presents, below, additional information on the draft constitutional amendment 55/2016, also known as PEC 55/2016, promulgated by the Brazilian National Congress, on 15 December 2016, hereinafter referred to as constitutional amendment 95 (EC-95).

### **General Considerations**

3. The EC-95 aims to address the acute fiscal imbalance observed in Brazil, which is at the root of the current economic crisis. Without the necessary adjustment, the persistent fiscal imbalance could lead to a vicious cycle of low growth, high inflation and chronic unemployment, further deteriorating the capacity of the state to finance public policies that benefit the poorest segments of society, particularly in the areas of health care, education and social security. This situation would put into risk the hard won gains obtained in the last two decades in the realization of the right to an adequate standard of living, in its different manifestations.

4. The Brazilian government wishes to clarify that EC-95 will not impose a freeze on federal expenditures for the next 20 years. Rather, it provides for a New Fiscal Regime that ensures the gradual adjustment of public accounts. Under the EC-95, the totality of primary public expenditures of the Federal Government will be limited to the expenditures of the previous year, adjusted for inflation (12 months accumulated inflation until June from the previous year). There are no specific limitations on social spending. On the contrary, health and education are the only areas where there are mandatory minimum levels of spending.

5. The New Fiscal Regime will be in force for 20 years (after 10 years, the Government may propose different criteria for the annual adjustment of the public expenditure limit). This timeframe will allow for a gradual and consistent adjustment with a view to achieving a sustainable fiscal balance. Such adjustment is needed to address the negative imbalance of the public accounts without undue discontinuities in public policies and social programmes. A longer timeframe reinforces the structural nature of EC-95 inasmuch as it allows investment and spending decisions to be taken in a context of macroeconomic stability and predictability.

6. It should be noted that a shorter adjustment period would require drastic measures, such as the dismissal of civil servants, reduction of public sector salaries and wages and the immediate suspension of social programmes.

7. The IMF fully recognized the gradual and structural nature of the adjustment programme. As Managing Director Christine Lagarde stated: "I am encouraged by the focus and direction of these reforms. Approving them in a reasonable timeframe would help strengthen the credibility of the macroeconomic policy framework, bolster confidence in the

economy, and anchor a return to strong, inclusive and sustainable growth in Brazil.” According to the Global Economic Outlook published by the IMI<sup>1</sup> (4/10/2016), there is a clear need to bolster confidence and foster investment in Brazil by strengthening public policies. Medium term fiscal consolidation would send a strong signal of commitment to that end.

### **Consideration of Alternative Measures**

8. The proposal to limit the expansion of public expenditure has been under debate for more than a decade in Brazil. In 2005, the Federal Government presented an initiative to limit public spending that, if implemented, would have prevented the grave fiscal crisis that the country faces today. In 2015, a new proposal was launched in the context of draft complementary bill no. 257, which was not adopted because of technical inconsistencies.

9. The New Fiscal Regime is needed to address the unsustainable growth of public expenditure in Brazil (6% above inflation between 2008 and 2015). Over this period, there has been an expansion of the taxation level, public deficit and national debt. In order to consolidate public accounts, it would be necessary to further increase the taxation level or to control public spending. Currently, the taxation level in Brazil has reached record levels. Furthermore, society has rejected a number of initiatives to raise taxes. Without adjustments in public expenditure, therefore, there is a real risk that the fiscal deficit and the public debt would be perceived to be out of control leading to a default of the national debt.

10. EC-95 is part of the necessary fiscal reforms that the Government intends to enact to balance public spending, in accordance with the level of income and fiscal capacity of the country. It follows a basic principle in democratic societies. Given the availability of resources that the public sector can effectively dispose, the National Congress will freely and openly discuss national priorities and allocate resources accordingly. In this context, any possible inefficient and regressive proposals will increasingly come under scrutiny.

11. EC-95 is based on a number of academic studies that attest that the previous fiscal regime in Brazil contributed to the concentration of income.

12. An expansion of public expenditure at the levels observed in past years will not ensure social progress in Brazil. On the contrary, the structure of public expenditure in Brazil tends to reproduce a pattern of high income concentration. In this sense, the establishment of a transparent and clear limit to public expenditure, in the context of a democratic debate, will highlight social policies with a greater impact on poverty eradication and contribute to increase the progress of public spending. By controlling and rationalizing public expenditure, the New Fiscal Regime will have a positive impact on income distribution in Brazil. With EC-95, it will be possible to maintain and expand social programmes with the greatest redistributive impacts, while controlling spending that contributes to the concentration of income.

### **The Impact of the New Fiscal Regime**

13. The New Fiscal Regime does not have a discriminatory impact. Rather, it will tend to benefit disproportionately poor and vulnerable groups. Firstly, it will foster sustainable growth and promote full employment, thus benefitting the poorest segments of society which are the main victims of unemployment.

14. By reducing inflation, the New Fiscal Regime will also significantly support the poor and underprivileged, since this segment of society has only limited access to the financial instruments that protect the public against the negative effects of inflation. The Brazilian experience with the abrupt reduction of inflation in 1994 clearly demonstrates that price stabilization has a profound positive impact on the income of the poor.

15. Likewise, the increased transparency in the budget process arising from EC-95 will allow for greater scrutiny in public spending, limiting expenditures that today disproportionately favour the most privileged segments of society. Under the New Fiscal Regime, it will be politically unfeasible to approve spending cuts in areas of high social interest, such as health and education.

16. Finally, the New Fiscal Regime will result in the reduction in interest rates, contributing to the redistribution of income and the reduction in inequality. It will foster investment in infrastructure and the improvement of public services that directly benefit low income groups, such as water, sanitation, health and transport services.

### **Access to Health**

17. EC-95 guarantees a minimum floor for health care, which is significantly higher than the budgeted outlay for previous years. It is worth recalling that health care, alone, will benefit from an increase in expenditure in 2017 of approximately R\$ 10 billion, as compared to 2016. According to the previous constitutional rules, the minimum expenditures on health care should correspond to 13.7% of the net federal revenue, or R\$ 104 billion, in 2016. In the current year, the minimum expenditure on health care will rise to R\$ 114 billion, the equivalent of 15% of the net revenue.

18. There is no specific cap for expenditures on health care. In the following years, the minimum floor will be adjusted according to inflation. But actual health expenditures can be higher provided spending in other areas is adjusted. The Government may submit a draft budget to Congress proposing a level of spending for health above and beyond the minimum cap, within the overall budget limit.

19. The new rule contained in EC-95 will, in fact, prevent a decrease in the health care spending floor, which has occurred under the previous system in situations of economic contraction and declining revenues. It should be noted that the health care spending floor under the previous system was defined as a percentage of tax revenues – thus, health spending increased during economic expansions, as public revenues expanded, and decreased in recessions, together with the corresponding decline of public income. Furthermore, the previous fiscal regime allowed for deferment of public spending, including on health, at the discretion of the Government, which is no longer possible under the new rules.

20. According to estimates provided by the Brazilian Bureau for Geography and Statistics (IBGE), per capita health spending will increase by 5.3% in 2017 under the New Fiscal Regime. Given projected population growth for the country, this measure alone will ensure real spending growth until at least 2025, as compared to 2016, if no additional initiatives are taken. After 10 years of the New Fiscal Regime (2026), provided the public accounts and national debt are duly stabilized, the Government may propose different criteria for public sector expenditure expansion at higher levels than envisaged in the initial period.

21. Furthermore, EC-95 will only apply to public expenditures at the federal level. Thus, there will be no modification or restriction in relation to health care expenditures from state and local governments, which account for 66% of all public expenditure on health care in Brazil. It should be noted, also, that the private sector is responsible for 54% of total spending on health in Brazil and will not be affected by the renewed fiscal discipline.

### **Access to Education**

22. Similarly, in the area of education, EC-95 does not impose a spending cap. In 2017, the minimum expenditure floor will be calculated according to the current rules, which determine that at least 18% of the federal tax revenues will be allotted to education. The national budget for 2017 approved R\$ 83.8 billion for spending in education, compared to R\$ 63.7 billion in 2016. It is worth noting that under the previous fiscal regime (prior to the promulgation of EC-95) it was not always possible to guarantee high levels of expenditure on education, due to the fluctuation in tax revenues. In 2013, for example, the federal expenditure with education fell to R\$ 53.9 billion compared to R\$ 56 billion the previous year.

23. Beginning in 2018, the minimum expenditure on education will correspond to the amount spent in 2017, adjusted according to inflation. The Federal Government can propose to the National Congress, as part of its draft annual budget, that resources dedicated to education should be above the minimum spending floor. The National Congress also has the prerogative, on its own accord, to raise education spending above the spending floor, provided that public expenditures in other areas of the federal annual budget are adjusted accordingly.

24. Public expenditures on education in 2015 totaled R\$ 315.5 billion, or approximately 5,3% of the gross national product. The expenditure of the Federal Government dedicated to “maintaining and developing education” amounted to R\$ 59.4 billion, corresponding to 18.8% of the total sum invested in education by the public sector as a whole. Therefore, more than 80% of all public expenditure on education will not be subjected to the limitations imposed by EC-95.

25. It is important to highlight that the spending cap will not have an impact on basic education. Firstly, because public basic education falls under the responsibility of state and local governments. Secondly, because the main source of funds from the Federal Government for basic education is not covered by the spending cap. Those funds are provided by the Federal Government to the “National Fund for Maintaining and Developing Basic Education and for Praising Professional Educators” (FUNDEB). In higher education, the national program entitled “University for All” (PROUNI) will also fall outside of the scope of EC-95.

26. It is important to highlight that the number of school age children and youth in Brazil (4-24 years old) is projected to fall by 1.1% annually over the next 20 years. The projected fall is higher in the 4-17 years old category. Therefore, if total public expenditure in education remains constant in real terms over this period, annual per capita spending will grow 1.1% per year, on average. During the period of the New Fiscal Regime, per capita federal spending on education would increase by real 24.5%.

27. Finally, articles 198 and 212 of the Federal Constitution, which establish rules for the minimum expenditure floor for both health care and education, will be neither altered nor repealed by EC-95. On the contrary, EC-95 will guarantee a minimum spending floor on health care and education, in full respect to Article 60, paragraph 4, of the Federal Constitution, which states that “no proposal of amendment shall be considered if aimed at abolishing: I – the federative form of State; II – the direct, secret, universal and periodic vote; III – the separation of the Government Powers; IV – individual rights and guarantees”.

### **Public Consultations and Popular Participation**

28. PEC 55/2016 strictly followed national legal procedures for the adoption of constitutional amendments in Brazil. It was discussed and approved in two rounds of voting by both the Senate and the House of Deputies with majorities above the required 3/5 in each chamber of Congress. During the period of discussion of the draft amendment, there were 6 public hearings with the participation of civil society and independent experts. A dedicated technical team from the Ministry of Finance briefed political parties and members of Congress and participated in the discussions in the thematic commissions of parliament which oversaw the debate of the draft amendment.



29. The Senate and House of Deputies commissions that examined the draft amendment called on independent experts to debate the issue. There was ample room to present diverging views during the six months that the PEC 55/2016 was under discussion in Congress, including during the public hearings, which were transmitted live on television and over the internet. During this period, the debate over PEC 55/2016 mobilized the full attention of Brazilian society. It was the subject of several television programmes, news articles and academic discussions. The Minister of Finance made a public statement on national television on October 2016, in order to present the draft amendment and raise awareness of the issue. The technical staff of the Ministries of Finance and Planning participated in a number of debates with civil society organizations over the course of discussion of PEC 55/2016.

30. The draft amendment was subjected to wide public consultation and popular participation, in accordance with national democratic rules, in a country that fully respects freedom of the press, open debate and dissenting views.

### **Conclusions**

31. The implementation of EC-95 will pave the way for sustainable economic growth and the consequent reduction on unemployment and inflation, benefitting, particularly, the poorest segments of society. As fiscal balance is realized, the New Fiscal Regime will allow the Brazilian Government to maintain and expand programs with greater social impact, while controlling other expenditures. The fiscal adjustment will reduce, over the medium and the long run, the amount of primary tax revenue currently required to keep public debt under control, which should, in turn, free additional resources to finance social policies.

32. Brazil is fully committed to the International Covenant on Economic, Social and Cultural Rights. In addressing the current economic crisis, the Brazilian Government duly considered alternative measures to EC-95 and demonstrated to society that the New Fiscal Regime was not only necessary, but also proportional to the fiscal challenges that the country currently faces. Additional measures are being implemented, jointly with the EC-95, which will allow the Government to fulfill its obligations.

33. On behalf of the Brazilian government, I take this opportunity to convey to you the assurances of our consideration and willingness to cooperate with the Special Procedures in the discharge of your respective mandates.

Geneva, February 15<sup>th</sup> 2017

