Mandates of the Special Rapporteur on the right to education; the Special Rapporteur on the right to food; the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on extreme poverty and human rights; the Special Rapporteur on the human rights to safe drinking water and sanitation; and the Working Group on the issue of discrimination against women in law and in practice

REFERENCE:
OL BRA 4/2018

18 May 2018

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right to education; Special Rapporteur on the right to food; Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Special Rapporteur on extreme poverty and human rights; Special Rapporteur on the human rights to safe drinking water and sanitation; and Working Group on the issue of discrimination against women in law and in practice, pursuant to Human Rights Council resolutions 26/17, 32/8, 34/3, 34/9, 35/19, 33/10 and 32/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the negative impacts of budget cuts, structural adjustment and austerity measures implemented since 2014, on several human rights, notably the rights to health, education, social security, food, as well as on gender equality, and in particular the negative impacts linked to the Constitutional Amendment No 95, also known as "Expenditure Ceiling", in force for over 16 months.

Some of the issues raised in this letter, such as the Constitutional Amendment and its impact on economic, social and cultural rights, were addressed in previous communications sent to the attention of your Excellency's Government, from the Special Rapporteurs on extreme poverty, health and education (BRA 7/2016, dated 8 December 2016, and BRA 3/2017, dated 23 March 2017), and followed-up with updated information. In this context, we express our thanks for the responses received from your Excellency's Government, dated 12, 21 and 23 December 2016, and 15 February 2017.

According to the information received:

Background information:

Between 2004 and 2014, Brazil was considered to be at the forefront of poverty reduction efforts in the Latin America region. As noted in some reports, between 2000 and 2014, Brazil lifted 28 million people out of poverty, which is approximately 13.5 per cent of its population. Information showed a trend towards reduction of economic inequality in the country.[1] Some progress was being made in relation to targeted anti-discrimination and affirmative action laws and policies, as well as to institutions dedicated to the situation of women. However, due to austerity measures adopted in the third quarter of 2014, progress started to stagnate. In her visit to the country in September 2015, the Special Rapporteur on minority issues already observed that due to the "political juncture, there are a number of legal and political challenges to important laws and policies that pose a real risk of undermining the progress made in the field of minority rights." The Special Rapporteur urged that all steps be taken to avoid any regression in these areas, in accordance with due process of law.[2]

On 8 September 2016, the Congress renewed a law called 'Union Revenues Untying.'[3] The law asserts that 30 per cent of the Federal Government's revenues did not need to follow the constitutional rules that define minimum amounts to be allocated to 'mandatory' areas for investment: education, health, social assistance, and social security. It also allowed states and municipalities to detach revenue from 'mandatory' areas of investment, namely health and education.[4] These and other austerity measures put in place were justified under the argument of enhancing economic growth, with the aim of addressing Brazil's recession and budget deficit. A strong emphasis was placed on structural adjustment, and on the reduction of expenditure in social programmes and policies.

On 15 December 2016, the National Congress approved the Constitutional Amendment No. 95, also known as "*EC do Teto*", 'Expenditure Ceiling Act' or EC 95.[5] The proposal was presented by the Federal Government in order to cope with "a grave risk of financial instability, economic recession and uncontrolled inflation". At that time, in the Government's response to a communication by several Special Rapporteurs, it was noted that the amendment was essential and that "in the absence of such regime, unemployment and poverty levels would inevitably rise and social programmes would need to be curtailed. Areas such as health, education and social assistance would immediately suffer, with serious adverse consequences to the human rights of the population, in particular vulnerable groups."[6]

The aim of the amendment was to ensure a surplus in public accounts so as not to compromise the public debt service that represented approximately 45 per cent of the federal budget in 2016. To achieve this goal, the amendment established that

1 PNAD/IBGE, 2015. As measures by the Gini Index, Inequality in Brazil decreased from 0.555 in 2004 to 0.491 in 2015.

2 Independent Expert on Minority Issues, A/HRC/31/56/Add.1, para 95.

3 Desvinculaçao de Receitas da União (DRU).

4 According to EC 93/16 Art.2 I states and municipalities cannot detach revenue from Health and Education: http://www.planalto.gov.br/ccivil_03/Constituicao/Emendas/Emc/emc93.htm

5 See amendment at: http://www.planalto.gov.br/ccivil_03/constituicao/emendas/emc/emc95.htm

6 Response from the Government to AL/7/2016, dated 12 Dec 2016, paragraph 6.

the annual ceiling for growth of government spending for the next 20 years was to be equal to the inflation index of the previous year. According to Brazilian law, the constitutional rank of this amendment also renders any subsequent revisions subject to an absolute majority. In a few months, the Federal Congress had not only reduced federal spending in social policies, but had also taken steps towards reducing the spending by states and municipalities in crucial social areas.[7]

At the time of adoption of the Constitutional Amendment No 95 the Government argued that the measures contained were "temporary, necessary and non-discriminatory", and that those measures were designed in compliance with binding obligations under international human rights law.[8] The amendment was acknowledged by the International Monetary Fund, and followed swiftly from the Fund's two missions in 2016, notably in keeping with its call for the Government to commit to fiscal discipline in the mid to long term.[9]

Over three years have passed since the first austerity measures were put in place by the Federal Government, and sixteen months since the Constitutional Amendment No. 95 entered in force. According to information we have received, from 2015 to 2017, social investments were reduced by an estimated $42 billion, or 6 per cent of Brazil's total expenditures and they are expected to remain capped at this level for the next 20 years despite the many identified requirements of the most disenfranchised population in the country.

Reportedly, some of the fiscal decisions made as a consequence of the Constitutional Amendment have already shown signs of disproportionately affecting women and various disenfranchised population groups, namely Afro-descendants, and persons living in poverty, especially in informal settlements, also known as 'favelas', or in rural areas. Impacts are numerous, and affect several economic, social and cultural rights, in relation to cuts to programmes such as, for illustration, the National School Food Programme[10] and the Family Grant Programme (*Bolsa Familia*).

The National Association of Municipalities has also claimed that the expenditure ceiling has led to reduction in their budgets, in particular for health and education.[11] The cuts have also led to cuts in salaries and jobs in the public sector, which in turn

---

7 Luis Eugenio Portela Fernandes de Souza (2017) 'The right to health in Brazil: A Constitutional guarantee threatened by fiscal austerity', *Journal of Public Health Policy,* pp.493-502

8 Brazil has ratified most core international human rights instruments. See details a*t: http://treaties.un.org*

9 International Monetary Fund, Brazil: Technical Assistance Report-Supporting Implementation of the Expenditure Rule Through Public Financial Management Reforms, October 4 2017.

10 Programa Nacional de Alimentaçao Escolar- PNAE

11 See for illustration: http://www.cnm.org.br/comunicacao/noticias/novo-teto-estudo-da-cnm-ganha-destaque-no-jornal-o-estado-de-s-paulo; http://economia.estadao.com.br/noticias/geral,para-prefeitos-pec-do-teto-corta-gastos-sociais,10000084155

create a vicious circle of reduction in spending, and increments in socio-economic inequalities.

Despite reassurances by the Federal Government that the measures would not exacerbate pre-existing inequalities, some recent studies indicate that the disparities based on specific grounds such as race, gender, and socio-economic status have grown. Worryingly, among the countries with available data, income concentration in the top 1 per cent of Brazilians is the highest in the world.[12] According to some reports, Brazil's six richest men have the same wealth as the poorest 50 per cent of the population. However, the income share of the top 1 per cent in recent years has increased at the expense of the bottom 99 per cent (Morgan 2017), which leads to 16 million Brazilians living in poverty according to the World Bank[13]

Fiscal policy

There is wide agreement among experts that the deficit in Brazil was not caused by excessive social expenditures. The International Monetary Fund noted, for instance, that the recession was largely triggered by a combination of factors, including declining trade, difficult financing conditions, political upheavals and macroeconomic imbalances.[14] Other experts and stakeholders also pointed out that revenue shortfalls, rather than a high level of public expenditure, are one of the main causes of Brazil's fiscal deficits.[15]

To that extent, questions may be raised as to whether or not a fiscal policy that solely targets expenditure without fully taking into account its redistributive impact, is a sound public policy. The International Monetary Fund has underlined the importance of redistribution in tackling income inequality within countries, and that policymakers have "many choices to achieve efficient and equitable results", including progressive taxation and public spending in education and health.[16] As referred to in the previous letter by some mandate holders of 23 March 2017, the International Monetary Fund has also earlier stressed that "…the redistributive role of fiscal policy could be reinforced by greater reliance on wealth and property taxes, more progressive income taxation, removing opportunities for tax avoidance and evasion, better targeting of social benefits while also minimizing efficiency costs, in terms of incentives to work and save".[17] In fact, research has shown that Brazil's redistributive capacity is very low, not only in comparison with OECD countries but also with other Latin American countries.

---

12 World Inequality Database, 2017.

13 Instituto de Pesquisa Economica Aplicada, 2016.

14 https://www.imf.org/en/Publications/CR/Issues/2017/07/13/Brazil-2017-Article-IV-Consultation-Press-Release-Staff-Report-and-Statement-by-the-45081

15 INESC, Fact Sheet, 2017, at 4; Plataforma DHESCA Brasil, O Impacto da Política Econômica de Austeridade nos Direitos Humanos (2017).

16 https://blogs.imf.org/2017/10/11/inequality-fiscal-policy-can-make-the-difference/

17 International Monetary Fund (IMF). 2014a. "Fiscal Policy and Income Inequality." IMF Policy Paper,Washington.

According to the information received, other fiscal options were available as alternative to the Constitutional Amendment No. 95, but these were reportedly not adequately considered. For instance, there are strong grounds to believe that alternative policies and measures, such as more progressive taxation, may have been a more appropriate solution, as it would increase revenue while contributing to reducing income inequality. It is widely acknowledged that the tax system in Brazil is highly regressive, as it is largely indirect.[18] The tax burden on consumption and work reached 76 per cent of total tax revenue in 2014 – the highest among OECD members. The reliance on indirect taxes results in the disproportionate tax burden on lower-income groups. Estimates indicated that the richest 10 per cent spend approximately 21 per cent of their income in taxes, while the poorest 10 per cent spend 32 per cent.[19]

Meanwhile, property and capital gains taxation (7.4 per cent of GDP) is far below the OECD average (13.6 per cent of GDP).[20] According to some reports, property taxes only account for 4.5 per cent of all tax revenues, compared to over 10 per cent in other OECD countries. The inheritance tax, for example, contributes some 0.6 per cent of total fiscal revenue, nation-wide, due to low rates which are often not even charged. Moreover, several kinds of property are not even taxed. For example, owners of jets, helicopters, yachts and motorboats pay no tax for their property, while land vehicles must pay the Automobile Property Tax (IPVA). Although stipulated by the 1988 Federal Constitution, the Tax on Large Fortunes (IGF) has never been implemented. Although Brazil has 300 million hectares of productive farmland, 35 per cent of the nation's entire territory, revenues from the Rural Territorial Tax (ITR) only bring in 0.06 per cent of the Brazilian state's tax revenue. On the other hand, a large volume of subsidies is paid out to land owners, in what is considered a highly concentrated fashion. Only 9 per cent of farms receive 70 per cent off all public funding earmarked for farm production.

While personal and corporate income taxes generate on average 24.9 per cent of total revenue in Latin America, in Brazil, one of the biggest economies in the region, they amount to only 16.2 per cent of revenue, or 30 per cent less that the regional average. Additionally, although the personal income tax (PIT) has a redistributive impact overall, its structure is not progressive and contributes to deepening income inequality. The redistributive effect of the PIT in Brazil is reportedly lower than other Latin American countries and considerably lower than the OECD average.[21] Furthermore, Brazil is one of the few countries in the world that does not tax the dividends paid by corporations to their shareholders. In

---

[18] The International Monetary Fund, Brazil: Selected Issues (IMF Country Report No. 17/216), July 2017, at 57.

[19] Oxfam Brasil, Inequalities in Brazil: The Divide that Unites Us (2017), at 48.

[20] INESC, Fact Sheet, 2017

[21] Sérgio Wulef Gobetti and Rodrigo Octávio Orair, Taxation and distribution of income in Brazil: new evidence from personal income tax data, Brazilian Journal of Political Economy, vol. 37, no. 2 (2017). 267-286, at 283.

addition, tax payers can deduct a fictitious expense termed “interest on own capital” from their taxable earnings. These and other measures appear to considerably reduce the taxes paid by wealthy, and especially extremely wealthy, Brazilians.[22]

Various figures appear to indicate that a comprehensive reform on taxation, addressing tax evasion and abuse, reforming corporate income tax and increasing tax on wealth, in other words various progressive taxation alternatives could offer important revenues to mobilize resources while also reducing the wealth gap and historic inequalities in Brazilian society.

Retrogression on economic, social and cultural rights

One of the pillars of the protection of economic, social and cultural rights is the obligation to progressively realize the rights set out in the International Covenant on Economic, Social and Cultural Rights, making use of the maximum of available resources. Austerity measures, fiscal consolidation and economic reform measures are therefore of special concern as they often directly affect the minimum core content of economic, social and cultural rights, and impact directly or indirectly and disproportionally on those individuals already discriminated against or living in most vulnerable situations.

In compliance with article 2.2 of the Covenant, and the provision on progressive realisation of these rights, States should not adopt impermissible retrogressive measure, unless strictly justifiable. Retrogressive measures, meaning taking steps that would reduce the enjoyment of economic, social and cultural rights, are only permissible under certain strict circumstances. Furthermore, the onus is on the Government to demonstrate that their proposed measures will meet all their human rights obligations, notably by ensuring that measures during times of acute economic distress are: a) temporary, in that they remain in place only as long as they are necessary; b) legitimate, with the ultimate aim of protecting the totality of human rights; c) necessary, in that they must be justifiable after the most careful consideration of all other less restrictive alternatives; d) reasonable, in that the means chosen are the most suitable and capable of achieving the legitimate aim; e) proportionate, in the sense that, the adoption of any other policy or failure to act would be more detrimental to the enjoyment of economic, social and cultural rights; f) not discriminatory, aimed at mitigating the inequalities that can emerge in times of crisis; and ensuring that the rights of disadvantaged and marginalized individuals and groups are not disproportionately affected; g) protective of the minimum core content of economic, social and cultural rights; are based on transparency and genuine participation of affected groups in examining the proposed measures and alternatives; h) subject to meaningful review and accountability procedures.

According to the information we have received, criteria established in international standards have not been duly justified in the implementation of fiscal consolidation and austerity measures. Instead, measures appear to be discriminatory against those

22 Ibid

most vulnerable to poverty and exclusion, and are not protective of the minimum core content of several human rights. Also, reports indicate that the timeframe of 20 years established in the Constitutional Amendment 95 raises concerns about the temporary and necessary nature of the measures.

Specific impacts on women

Brazil had taken positive steps to address the situation of women, such as the creation of the Secretariat for Women's Policies and the advanced legislation on violence against women, Law 11.340 (2006, also known as Lei Maria da Penha). In 2015, Law 11.340 on feminicides was adopted, addressing the grave issues of discrimination against women, gender inequality and violence in the country. In other words, there is clear recognition in law that the situation of women in Brazil must be protected and that specific policies and practices ought to be in place to address gender inequality.

In a broader context of positive steps to address the situation of women, information received indicate the particular vulnerable situation of Afro-Brazilian women, who constitute the majority of women in the country (51.8 per cent in 2013 or approximately 59.4 millions of women). Afro-Brazilian women are often among the poorest; they reside in the regions or communities with less access to water and sanitation, which in turn exposes them and their children to higher health risks, as well as to higher tariffs to access and enjoy their rights to water and sanitation. Reports indicate that over 54 per cent of the single-headed households in Brazil are headed by Afro-Brazilian women, and over 64 per cent of these women are domestic workers. In addition, Afro-Brazilian women are regularly confronted with multiple forms of discrimination, whether on grounds of sex, gender, socio-economic status or ethnicity. Specifically, they face a higher rate than average of maternal mortality (62 per cent). As has been demonstrated, maternal mortality is directly linked with access and availability of quality health services on site, pre and post natal care, and effective procedures to assist women without discrimination.

According to research conducted by El Instituto de Estudios Socio-económicos (INESC), expenditures specifically benefitting women were reduced by 58 per cent after CA 95 came into force, while the number of specialized services offered to women suffering from violence were further reduced by 15 per cent between 2014 and 2016, and are now frozen at this low and insufficient level. This is particularly worrisome considering that Brazil has the fifth highest female homicide rate in the world.

Simultaneously, key state institutions entrusted with the promotion of gender equality has been dismantled or seriously affected by budget cuts. The status and mandate of the Secretariat for Women's Policies, for instance, was reduced in 2015; no new shelters for women escaping violence have been built in 2017; and no public campaigns to prevent violence against women have been carried out since 2014 due to budget cuts. The issues of lack of coordination among various Ministries as well as the lack of dedicated efforts and effective implementation were also raised as major obstacles to realisation of gender equality. Reportedly, less than 5 per cent of the 2016 budget was effectively executed the Rede Cegonha (a strategy on reproductive health of women, under the Ministry if Health) (5.9 R$ 5.9 million of a total of R$ 172). [23]

Impact on the right to social security

In 2016, the National Treasury Secretariat, part of the Ministry of Finance, published the study "Social Spending in the Central Government – 2002-2015", noting that spending with social assistance had a 375 per cent rise between 2002 and 2015. The increase was a much needed response to the expansion of income insurance social policies adopted between 2003 and 2010: the expansion of the Continued Cash Payment Benefit (BPC)[24] and the income transfer policies with conditions (such as the *Bolsa Familia* Programme). The BPC is an unconditional cash transfer to older persons and persons with disabilities whose household per capita income is less than one quarter of the minimum wage, whereas the Bolsa Familia Program is a conditional cash transfer generally designed for families living in extreme poverty. The Bolsa Familia Program in particular has been widely heralded as Brazil's flagship anti-poverty programme. It has been estimated that it has contributed to 58 per cent of the decline in extreme poverty between 2004 and 2014, and to 21 per cent of the decline in the Gini coefficient between 1995 and 2005.[25] According to the World Bank, the Bolsa Familia Program is a well-targeted, cost-effective and well-performing programme, which has had a significant redistributive impact while only accounting for 0.5 per cent of GDP.[26]

According to the Instituto de Pesquisa Aplicada, the Constitutional Amendment No. 95 represents a significant reduction in expenditure on social assistance in the next 20 years.[27] The study shows that the reduction in expenditure on assistance policies will result in approximately 0.70 per cent of the GDP in 2036 compared to 1.26 per cent in 2015, or in other words there would be a 54 per cent reduction over 20 years. Estimations indicate that, without the spending cap, that rate would have been approximately 1.52 per cent of the GDP in 2036.[28]

---

23 https://br.blastingnews.com/politica/2017/10/falta-de-verbas-do-crianca-feliz-e-problema-identico-em-outros-programas-002099239.html

24 Benefício de Prestação Continuada (BPC)

25 The International Monetary Fund, Brazil: Selected Issues (IMF Country Report No. 17/216), July 2017, at 58.

26 The World Bank, A Fair Adjustment: Efficiency and Equity of Public Spending in Brazil (November 2017), at 88-89, available at: http://documents.worldbank.org/curated/en/643471520429223428/pdf/121480-WP-PUBLIC-BrazilPublicExpenditureReviewOverviewEnglishFinal.pdf

27 http://www.ipea.gov.br/portal/index.php?option=com_content&view=article&id=28588

28 Ibid.

Bolsa Familia for example, has already had its budget reduced. It went from R$ 33.3 billion in 2014 to 29 billion in 2017, a 13 per cent reduction.[29] In 2016, the Government reportedly considered the option of only targetting the poorest 5 per cent of the population and consistently expresses its intention since then to narrow the targeting of the programme. In 2017, 326,000 households have been reportedly excluded from the Bolsa Familia Program,[30] and additionally 392,000 households in April 2018,[31] although the number of beneficiaries appears to fluctuate from month to month.

It is unclear why the Bolsa Familia Program is made subject to such drastic cuts, when the relative savings from such cuts are not significant and there may be more effective measures in achieving a fiscal balance without affecting the critical social assistance that 14 million poor households rely on. As mentioned in the previous communication of 23 March 2017, raising wealth taxes, for instance, has been estimated to collect R$100 billion per year. Combatting tax evasion, for instance, could reportedly raise R$571.5 billion, while a progressive tax reform, raising a personal income tax rate to 35 per cent for very high income-earners and taxing profits and dividends, would generate R$72 billion in revenue.[32]

Against this backdrop, poverty has been on the rise since 2015. Contrary to what the Government of Brazil has implemented, an expansion of the Bolsa Familia Program has been identified as an important measure in offsetting the rising level of poverty.[33] The World Bank already estimated in January 2017 that the number of persons living below the R$140 poverty line would be increased by 3.6 million people, or from 8.7 per cent in 2015 to 10.3 per cent in 2017, without an increase in the real budget for the Bolsa Familia Program.[34] According to data released by the Brazilian Institute of Geography and Statistics (IBGE) in December 2017, more than 50 million Brazilians - nearly 25 per cent of the total population - reportedly

---

29 Siga Brasil

30 https://g1.globo.com/economia/noticia/mais-de-326-mil-domicilios-deixaram-de-receber-bolsa-familia-em-2017-aponta-ibge.ghtml

31 http://noticias.uol.com.br/politica/ultimas-noticias/2018/05/01/antes-de-reajuste-anunciado-por-temer-governo-tira-392-mil-familias-do-bolsa-familia.htm?cmpid=copiaecola

32 INESC, Fact Sheet, 2017, at 7

33 The World Bank, Safeguarding against a reversal in social gains during the economic crisis in Brazil (January 2017), available at: http://documents.worldbank.org/curated/en/567101487328295113/Safeguarding-against-a-reversal-in-social-gains-during-the-economic-crisis-in-Brazil

34 The World Bank, Safeguarding against a reversal in social gains during the economic crisis in Brazil (January 2017), available at: http://documents.worldbank.org/curated/en/567101487328295113/Safeguarding-against-a-reversal-in-social-gains-during-the-economic-crisis-in-Brazil

live below the poverty line,[35] while extreme poverty has increased by 11.2 per cent in 2017, compared to 2016.[36]

Impact on the right to food

Brazil had been recognized for its efforts to combat hunger and malnutrition, in particular among some traditionally discriminated against populations, such as afro-Brazilians, women, rural and landless populations and indigenous peoples. However, slow progress in previous decades appears to have stalled in recent years. For example, information received points to the prevalence of anaemia among women remained above the regional average at 27 per cent.[37]

Rather than addressing these deficits, in 2017 the Government reduced funding for food security programs – essential for low-income mothers in particular – by 55 per cent. The reduction of the Food Acquisition Program (PAA), which links small-scale farmers to food-insecure households and children, is an alarming example of this undercutting of food security. After a decade of increased funding, social recognition and real benefits to the poorest Brazilians, the PAA faces deep, austerity driven budget cuts. The budget authorized to the Ministry of Social Development and the Secretary of Agrarian Development in 2017 was only 31 per cent of the one authorized in 2014 – a 69 per cent cut over three years.[38] The biggest budget execution reduction happened in 2017, after the constitutional amendment was approved and as a consequence, many small-scale farmers – especially in the poorest Northern regions of the country – have been stripped of the benefits of this program.

Information also indicates that there has been a decrease in recent years in the amount of land expropriated in order to comply with the agrarian reform. According to data of Instituto Nacional de Colonização e Reforma Agrária (INCRA), in 2013 only 100 decrees of expropriation under the agrarian reform were issued, followed by 30 decrees in 2014, none in 2015 and 21 in 2016, considerably less than what would be required.

Impacts on the right to health

Until 2014, Brazil showed progress in ensuring access to medicines for all people, regardless of income. Public spending on access to medicines by the Ministry of

---

35 More Than 50 Million Brazilians Living Below Poverty Line, The Rio Times (16 December 2017), http://riotimesonline.com/brazil-news/rio-politics/more-than-25-million-brazilians-living-below-poverty-line/

36 https://www.brasildefato.com.br/2018/04/13/brazil-extreme-poverty-is-up-by-11-in-2017-economists-blame-informal-labor/

37 Food and Agriculture Organization of the United Nations (FAO), 2017. 'The State of Food Security and Nutrition in the World´. Available at: http://www.fao.org/3/a-I7695e.pdf

38 INESC, Fact Sheet, 2017. Available from: www.inesc.org.br/news/2018/brazils-human-rights-advances-imperiled-by-austerity-measures

Health increased from R$ 1.8 billion to R$ 14.8 billion between 2003 and 2015 an increase of over 260 per cent in real value. [39] As a result, 94.3 per cent of adults who need medicines for chronic diseases obtained them. Only 0.5 per cent failed to obtain any medicine for their treatment. Among those who got full access to treatment, about half of them (47.5 per cent) got all medicines for free. Persons living in poverty, extreme poverty as well as those without a health plan (55.7 per cent) were the main beneficiaries of the policy. According to the *Tribunal de Contas da União*, in 2011, more than a third of beneficiaries could only access medicines in public pharmacies.

In 2017, the Ministry of Health decided to close 314 public pharmacies, allegedly leaving only 53 in operation. As a result, Brazilians in 305 municipalities no longer have access to public pharmacies. The northern, poorest regions, as well as many rural areas are the most affected by the discriminatory decision to dismantle the network of public pharmacies, adding to other barriers to accessing health services and medicines, in particular due to income levels.

Impact on the right to education

Budgets for education have suffered systematic cuts in recent years (since 2015). In relation to basic education, austerity policies have profoundly impacted the National Fund for the Development of Basic Education (Fundeb). Although the resources of Fundeb do not represent the totality of the resources destined to basic education, more than 90 per cent of the Brazilian municipalities are dependent on this fund for maintenance and conservation of schools and the payment of education professionals, as well as investments to expand networks.

Furthermore, the direct effect of EC 95 is that the minimum spending on education, mandated by article 212 of the Constitution to be fixed at 18 per cent of the net federal revenue, will not be fulfilled over time. As EC95 effectively freezes the level of public expenditure at the 2017 level adjusted by inflation, it has been estimated that the real minimum spending on education would be reduced to 14.4 per cent of net federal revenue in 2026 and 11.3 per cent in 2036.[40] Some commentators have also remarked that it is “mathematically impossible” to have a higher level of spending on health and education in proportion to GDP by 2036, even on a hypothesis that all other public expenditures, such as expenditures on the judiciary, legislature and military, are eliminated.[41] As pointed out in the previous letter of 23 March 2017, the significant decrease in spending on education threatens the achievement of the National Education Plan 2014-2024.

Impact on the right to adequate housing and the human rights to water and sanitation

[39] INESC, 2016 and Mengue et al, 2016

[40] Plataforma DHESCA Brasil, O Impacto da Política Econômica de Austeridade nos Direitos Humanos (2017), at 118.

[41] Ibid.

The Ministry for Cities and Transports faced a drastic reduction of budget. Its total expenditure during the period of January and April in 2018 was 76.8 percent of the expenditure during the same period in 2017.[42] A significant amount of public expenditure on urban infrastructure has been reduced.

As a result, the program "Minha Casa Minha Vida" - one of the main public housing programmes with federal stimulus - suffered drastic cuts. The budget for the program was recently slashed. While 5.2 billion R$ was originally budgeted for the programme, but only 2.26 billion R$ has been retained. In total, 293,450 units were completed in the first half of 2017, less than what was achieved in 2016. Special concerns have been raised over the disproportionate impact of the expenditure cuts on people with lowest incomes – those who are in urgent need of economic support for securing their right to housing. The Federal Government pledged to build only 23,000 houses for families earning up to 1,800 R$, the lowest income quintile. This means that it met only 13.5 per cent of the original target of 170,000 houses.[43] The Government also failed to meet the overall "My Home Goal" for other income groups, but the poorest was the most affected in this process.

Regarding the human rights to water and sanitation, 32 percent cut of the yearly budget for water and sanitation was forecasted in 2018. Eighty six government water and sanitation projects were suspended and 57 other projects were not activated.[44] This affects the prospects of expansion of the already insufficient infra-structure for water and sanitation in Brazil.

While we do not wish to prejudge the accuracy of this information, we would like to express our serious concern at the infringements to the enjoyment of several economic, social and cultural rights, in particular the rights to health, education, social security and food. We express further concern at the disproportionate impact that the measures taken have on the situation of persons living in poverty, and especially those who have faced historic discrimination and exclusion, such as women, afro-Brazilians, and people living in informal settlements or landless people in rural areas.

Furthermore, we express grave concern at the disproportionate impact caused by austerity measures without prior human rights impact assessment. Our concern stems from the crucial and useful role that conducting human rights impact assessments should have in relation to economic reform policies. In fact, these ex-ante assessments should prompt States to consider and analyse alternatives that would increase the likelihood of realizing human rights as part of their broader aim of achieving macroeconomic stability and growth. Placing human rights obligations at the center of the analysis could suggest social investments that can serve as countercyclical tools to address economic downturns.

42 http://www.agenciacontasabertas.com.br/noticia/investimento-do-governo-federal-e-o-menor-em-10-anos

43 https://exame.abril.com.br/brasil/governo-cumpre-so-135-da-meta-do-minha-casa-para-os-mais-pobres/

44 https://www.correiobraziliense.com.br/app/noticia/economia/2017/09/25/internas_economia, 628677/investimento-em-saneamento-basico.shtml

Importantly, they would require a departure from policies that focus solely on achieving short-term macroeconomic targets regardless of the human rights impacts, or which only try to mitigate the most extreme social impacts.

We also express concern that it is equally unclear how these measures are consistent with implementing Sustainable Development Goals, and in particular Goals 1, 2, 3, 4, 5, 6 and 11 (target 11.1).

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned issues.

2. Please provide information and details of impact assessments undertaken prior to the adoption of the aforementioned series of reforms. In this regard, please also clarify if human-rights impact assessments are carried out regularly and systematically in order to adapt measures already taken and/or to mitigate their negative impacts?

3. What legal framework(s) are used when carrying out human rights impact assessments?

4. What alternative economic policy choices were considered or are under consideration to cope with the reduction of fiscal deficit?

5. What reforms are under consideration with regard to taxation, in particular with a view to putting in place more progressive taxation schemes?

6. What specific measures have been considered and taken to address the retrogressive impact of austerity measures on the rights to social security, work, health, education and food as outlined in this letter?

7. Please provide information about the Government’s plans to adequately recognize and address the detrimental impact on women in all of the critical areas referred to in this letter.

8. Please provide information about the Government’s plans to adjust and redesign the measures currently in place to account for the discriminatory impact on women and the heightened risks faced by them to increased poverty, violence and fatalities.

9. Please provide details on the measures taken to ensure that people living in the 305 municipalities affected by the closure of more than 314 public pharmacies will continue to have access to medicines for free, notably persons living in situation of poverty and rural areas.

10. Please provide details on how, in the face of the austerity policies being implemented, the Government intends to maintain progress towards the achievement of the SDGs. In particular, please explain measures to ensure inclusive and equitable quality education for all in the spirit of SDG Objective 4. Please provide in particular details on specific steps taken to protect the rights of vulnerable and disenfranchised groups to access quality education.

11. Please also provide details on concrete steps taken to ensure achievement of SDGs 6.1 and 6.2 on universal and equitable access to safe and affordable drinking water and sanitation and hygiene as well as SDG 11.1 on access to adequate, safe and affordable housing and basic services and upgrade slums.

12. What specific measures have been taken to address and/or mitigate the regressive impact of austerity measures in the health sector, with respect to the right to health of women and core-obligations which encompass maternal health care.

13. Please provide details about the Government's plans to ensure the realization of women's right to health, in particular with regard to their sexual and reproductive rights, in compliance with the State's international obligations.

14. Please explain the rationale behind the reduction in the budget for the Bolsa Familia Programme and how the Programme will be affected by the budget reduction. Please also indicate what alternative measures may have been implemented to mitigate the negative impact on persons and families who may no longer receive assistance or have their assistance reduced by the budget cuts.

15. Please explain the reasons behind the reductions of the Food Acquisition Program (PAA)? What programs and policies have been put in place in order to protect in vulnerable small-holder farmers and their families?

16. Please provide details on measures and mechanisms to ensure access to justice for people whose rights are negatively affected by austerity measures.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate public attention. The press release would indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please accept, Excellency, the assurances of our highest consideration.

Koumbou Boly Barry
Special Rapporteur on the right to education

Hilal Elver
Special Rapporteur on the right to food

Juan Pablo Bohoslavsky
Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights

Leilani Farha
Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Philip Alston
Special Rapporteur on extreme poverty and human rights

Léo Heller
Special Rapporteur on the human rights to safe drinking water and sanitation

Alda Facio
Chair-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to the human rights standards set forth below.

Brazil acceded to the International Covenant on Economic, Social and Cultural Rights on 24 June 1992. Although several additional core human rights instruments that have been ratified are of relevance, we note in particular that Brazil has ratified the International Convention on the Elimination of All Forms of Racial Discrimination, in March 1968, and the International Convention against all forms of discrimination against Women in February 1984. Under these instruments, States parties undertake to guarantee the right of everyone to a number of economic, social and cultural rights, without discrimination. These rights include the rights to just and favourable conditions of work, health and medical care, social security, education, and protection against unemployment.

The allegations concerning the negative impact of retrogressive policies and reduction of budget allocations to a number of key social areas appear to engage the obligations of Brazil under several articles of the International Covenant on Economic, Social and Cultural Rights, the International Covenant on the Elimination of All Forms of Racial Discrimination, as explained below.

Article 2 (1) of the Covenant obligates each member State to ensure the immediate satisfaction of, the very least, minimum essential levels of all economic, social and cultural rights for all members of society (General Comment 3, para. 10

Right to an adequate standard of living, including food, housing and water and sanitation.

Article 11 (1) of the Covenant recognizes “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.” In interpreting this provision, the Committee on Economic, Social and Cultural Rights stressed in its General Comment No. 12 that the core content of the right to adequate food implies, inter alia, both economic and physical accessibility of food (para. 7). The human rights to water and sanitation were explicitly recognized by the General Assembly and the Human Rights Council as a component of the right to an adequate standard of living.

Right to health

Under article 12 of the Covenant, States parties are bound to recognize the right of everyone to the enjoyment of the “highest attainable standard of physical and mental health.” In its General Comment No. 14, the Committee explains that the “right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health.”

Right to education

Article 13 of the Covenant protects the right of everyone to education. This right includes free and available primary education for all. In its General Comment No. 13, the Committee explains that education must be accessible to all, and that accessibility includes physical and economic components as well as non-discriminatory application.

Right to social security

Article 9 of the Covenant provides that States parties “recognize the right of everyone to social security.” The Committee’s General Comment No. 6 states that the term “social security” “implicitly covers all the risks involved in the loss of means of subsistence for reasons beyond a person's control” (para. 26.)

Under the International Labor Organization Social Protection Floors Recommendation (2012, No. 202), States should ensure basic income security for all older persons, at least at a nationally-defined minimum level.

Right to work

Under article 6 of the Covenant, States parties recognize the right to work, “which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts.” This provision requires States parties to take appropriate steps to safeguard this right.

Under article 7 (a) of the Covenant, State parties recognize the right of everyone to just and favorable conditions of work, and in particular to “remuneration which provides all workers at a minimum, with fair wages and equal remuneration for work of equal value without distinction of any kind. The remuneration shall further ensure “a decent living for themselves and their families in accordance with the provisions of the Covenant.”

Right to participate in decision-making

Under article 25 (a) of the International Covenant on Civil and Political Rights, to which Brazil is a party, every citizen shall have the right and opportunity, without unreasonable restrictions, to take part in the conduct of public affairs, directly or through freely chosen representatives.

Fiscal measures and human rights

We would also like to draw your attention to the Guiding principles on foreign debt and human rights (U.N. Document A/HRC/20/23), endorsed in June 2012 by the Human Rights Council through its resolution 20/10. Under these principles, States, international financial institutions and private companies are obligated to respect human rights. The Guiding principles state, inter alia, that:

- States must design and implement policies and programs to further the delivery of basic services essential for the enjoyment of all human rights, particularly economic, social and cultural rights, in an equal and non-discriminatory manner. (Principle 11)

- States should analyze policies and programs, including those relating to external debt, macroeconomic stability, structural reform and investment, with respect to their impact on poverty and inequality, social development and the enjoyment of human rights, as well as their gender implications, and adjust them as appropriate, to promote a more equitable and non-discriminatory distribution of the benefits of growth and services. (Principle 12.)

In addition we recall the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights recent thematic report (A/HRC/37/54) outlining the importance of carrying out a Human Rights Impact Assessment of economic reform policies, including legal and economic arguments for their need and outlining the scope and content of such assessment based on lessons learnt and documented on the topic.

We recall the Statement of the Committee on Economic, Social and Cultural Rights on public debt, austerity measures and the International Covenant on Economic, Social and Cultural Rights (E/C.12/2016/1) outlines the human rights obligation of States and other actors when considering structural adjustment and fiscal consolidation measures.

Women and austerity measures

In its report A/HRC/26/39, the Working Group on discrimination against women demonstrated that vulnerability and economic disadvantage for women are exacerbated by macroeconomic policies that increase inequalities and reduce social protection floors. This is clearly visible in periods of economic crisis, particularly where governments adopt austerity measures. Although the specific effects of the crisis differ by context, the overall picture is one of disparate impact on women, with deepening economic insecurity, an increase in precarious employment and a heavier burden of unpaid care work. Nonetheless, economic crisis merely accentuates existing structural economic disadvantages for women. Therefore, addressing the crisis provides an opportunity to tackle patterns of gender inequality and discrimination entrenched in the economic status quo and shape new gender equality policy responses. The Group recommended States to recognize the disparate impact of austerity measures on women in response to economic crisis and adopt gender-sensitive strategies that avoid labour market exclusion, loss of social protection floors and reduction of social services