Brazil's Constitutional Austerity Amendment: A leap into the darkness

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With no prior human rights impact assessment, public expenditure cap proposal condemns Brazil to backsliding

The Brazilian government's Constitutional Amendment Proposal 55 (PEC 55), which sets a cap on public spending for the next 20 years, is unprecedented as a fiscal austerity measure. It would enjoy constitutional status, an unusually long time frame and impose exceptional rigidity on the government's capacity to manage fiscal policy. It is therefore imperative to analyze its potential effects from a human rights perspective, especially with regard to the rights protected by the Constitution and by international instruments, such as the rights to education, health, decent housing and culture, along with children's and labor rights, and many others.

To begin with, we should point out that no government has *carte blanche* to impose collective sacrifices without first submitting its measures to appropriate tests to determine their compatibility with the international human rights obligations voluntarily assumed by the country. According to international human rights monitoring bodies, such as the UN Committee on Economic, Social and Cultural Rights, any fiscal consolidation measure must meet the following criteria:

1. be temporary, strictly necessary and proportional;
2. take into consideration all possible alternatives;
3. not discriminate against vulnerable groups;
4. be adopted only after a decision-making process with the genuine participation of affected groups and individuals.

PEC 55 does not pass muster with any of these four requirements. First of all, whichever way you look at it, twenty years is an excessive length of time. It is not unlikely that a global crisis like the one that struck the financial markets in 2008 could happen again. On that occasion, Brazil earned international recognition for its adoption of successful counter-cyclical policies to stimulate the economy. Thanks to these policies, the country recovered quickly from the crisis and even saw several years of economic growth. Since the proposed new ‘fiscal regime’ has no exit clause, the Brazilian government would be severely limited in its capacity to maintain and expand the social safety net, which demonstrates the disproportionality of the spending ceiling.

On the second standard, the government has not made – or at least it has not publicly released – any assessment of the impact that the proposal will have on poverty levels, on inequality and on human rights. Brazil’s population of older persons will double over the next 20 years and it will also be necessary to increase health spending by at least 37%. How would the government respond to this challenge with the new fiscal regime in place? No one knows.

Nor has there been any analysis of the costs and benefits of the measure as compared to alternative measures, such as tax reforms, much less any participatory process to assess the options. It is well-known that, in Brazil, tax revenue consists predominantly of indirect and regressive taxes, while in developed countries it is levied more on capital and income. There has not even been a serious debate on the need to abolish certain tax rules that exist almost uniquely in Brazil, such as the tax exemptions on profits and dividends. According to a study by the United Nations Development Program, reinstating tax contributions from this type of income at a rate of 15% would bring in more than R$190 billion (approximately US$ 56 billion) per year to public coffers. The Brazilian Ministry of Finance itself acknowledged in a recent report that the top effective rate of personal income tax (discounting exemptions and other privileges enjoyed by the richest part of the population who earn more than 160 times the minimum wage per year) fell 0.5% between 2007 and 2013. Meanwhile, the poorest bracket who earn up to 20 times the minimum wage per year paid 1.6% more.

Regarding the unequal distribution of the burden imposed by PEC 55, comparative experiences provide clear evidence that cutting spending on basic rights while maintaining privileges is a recipe for increasing inequality. According to a report by the NGO Oxfam, two of the main factors explaining the recent growth of inequality in Europe are the austerity measures, which cut public spending, and the regressivity of the tax system. This is precisely the situation that the Brazilian government seeks to reproduce.

The International Monetary Fund (IMF), when comparing fiscal consolidation programs primarily focused on the spending side and on the revenue side, concluded that the former, such as the one to be implemented under PEC 55, lead to significant and persistent increases in inequality, declines in wage income and in the wage share of income, and increases in long-term unemployment – all without producing any positive economic impact.

The government bears the burden of demonstrating that all less restrictive alternatives have been assessed before recurring to such an extreme measure as PEC 55. It is more than clear that it has failed this key obligation to Brazilian society.

If approved, PEC 55 will certainly result in a serious erosion of social rights due to lower real spending per capita, since the demand for services will increase while revenues will not, undermining the progress of various social rights, especially for the most vulnerable groups who depend more on the provision of public services.

Finally, this constitutional amendment represents a direct threat to fundamental rights and a rupture with the social contract established in the Federal Constitution of 1988. As such, it could be challenged in the Supreme Court and will expose Brazil to condemnation by international human rights protection mechanisms. We therefore call for the immediate suspension of PEC 55 and for it to be submitted to an independent assessment of its impact on Brazil's capacity to meet its constitutional and international human rights obligations.

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