São Paulo/ New York, November 30, 2016

<u>To:</u>

Mr. Philip Alston
UN Special Rapporteur on Extreme Poverty and Human Rights

Dear Sir,

The signatories are non-governmental organizations devoted to protecting and advancing human rights worldwide. Through this letter **we request your intervention and urgent appeal before the Brazilian government regarding the pending constitutional amendment being debated in Federal Senate (known as PEC 55**, approved in the Chamber of Deputies as PEC 241/2016), which would effectively freeze federal public spending over the next two decades, with particularly severe consequences for the human rights, especially to health and education.

In the annex to this letter we present further reflections for your consideration on how the proposed constitutional amendment bill would not only result in a serious erosion of social rights which will deepen existing socio-economic inequalities and increase poverty in the country; but it may well be in breach of Brazil's obligations under international and regional human rights law, in particular the provisions of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which oblige States to employ the maximum of their available resources to achieve progressively the full realization of these rights, without discrimination or deliberate retrogression. In compliance with this treaty, States bear the burden of proving that fiscal consolidation measures are only introduced after the most careful consideration of all other less restrictive alternatives. Furthermore, they are compelled to carry out a human rights evaluation to make sure that certain essential conditions are met before adopting any austerity measure. These conditions have not been fulfilled in the case of PEC 55.

As the Brazilian Congress proceeds with the debate over PEC 55, **we reiterate our call on your Office to urge the Brazilian authorities to subject the proposal to an independent *ex ante* assessment** of their foreseeable impact on Brazil's ability to fulfil its constitutional and international human rights obligations; and to **urge the Brazilian authorities to refrain from approving any proposed fiscal expenditure cap** which would breach human rights norms.

Sincerely,

Juana Kweitel Programs Director Conectas Human Rights	**Ignacio Saiz** Executive Director CESR	**José Antônio Moroni** **Iara Petricovsky** Collegiate Management Inesc	**Kátia Maia** Executive Director Oxfam Brasil

Annex

Human Rights Implications of Proposed Constitutional Amendment to Limit Public Spending for Two Decades

The potential social and economic impact of PEC 55

Brazil has made meaningful progress in tackling poverty and inequality over the past decade, largely as a result of public investment in health, education and social protection.[1] Not coincidentally, the country experienced great economic success in these years, buttressed by a burgeoning domestic demand-driven economy. Furthermore, in response to the 2008-2009 economic crisis Brazil set an example in responding to the decreasing economic growth with monetary and fiscal policy stimuli and increased investment in social programs which have been essential in sustaining and revitalizing investment demand in the country.[2] Yet, this progressive response and the human rights advances made are at imminent risk by the unravelling economic measures and political crisis.

In this context, instead of seriously assessing available alternatives to raise revenue equitably, the government has decided to engage in deep cuts to key social sectors. Most dramatically and worryingly, the unprecedented[3] constitutional amendment (PEC 55/2016) being debated in Congress would freeze the constitutionally-protected government expenditures in health, education and spending in other social areas through 2036, pegging these outlays to inflation rather than objective need and government revenue.[4] If approved, PEC 55 would result in a serious erosion of social rights as a result of an ever smaller per capita real expenditure, as the demand for services will increase and revenues will not, undermining progress on several social rights, especially for the most vulnerable groups, who depend exclusively on access to public services. To put this amendment in perspective, if a similar limit had been imposed since 2003, the health budget in 2015 would have been almost half of what it is now (R$55bin instead of R$100bn). If PEC 55/2016 was approved, the reduction in total health expenditure over the

[1] Lustig, Nora. 2015. "The Redistributive Impact of Government Spending on Education and Health: Evidence from 13 Developing Countries in the Commitment to Equity Project" Chapter 17 in Gupta, Sanjeev, Michael Keen, Benedict Clements and Ruud de Mooij, editors, Inequality and Fiscal Policy, Washington: International Monetary Fund.

[2] See: André Nassif, "Brazil and India in the Global Economic Crisis: Immediate Impacts and Economic Policy Responses," In: *The Financial and Economic Crisis of 2008-2009 and Developing Countries*, by S. Dullien, Detlef J. Kotte, Alejandro Márquez and Jan Priewe (Eds.), United Nations Conference on Trade and Development (UNCTAD) and University of Applied Sciences, Berlin, December 2010 (pp. 186,187)

[3] While many countries have formalized various types of expenditure rules, none appear to have been as sweeping and long-term as that being proposed in Brazil. See Cordes, Till; Kinda, Tidiane; Muthoora, Priscilla; Weber, Anke. 2015. Expenditure Rules: Effective Tools for Sound Fiscal Policy? IMF Working Paper. Available at https://www.imf.org/external/pubs/ft/wp/2015/wp1529.pdf

[4] Senado Federal. Proposta de enmeda a constituicao No. 55, 2016. Available at this link.

next twenty years has been estimated at some R$433 billion, a reduction of 25% in a public policy that is already seriously underfunded.[5]

The proposed constitutional reform would in essence lock in fiscal austerity in critical areas of public social spending such as health and education for two decades, preventing any future elected governments within the next twenty years from democratically deciding the proper investment needed to fulfill its human rights obligations for a changing country. The Brazilian population is set to grow 9% in the coming two decades. Estimates suggest that an increase of 37% in public health care expenditure would be necessary alone to deal with a doubling in Brazil's aging population.[6] Yet, this would be constitutionally prohibited under PEC 55. In the field of education, this amendment means that no additional resources will be made available in twenty years to build schools, preschools, kindergartens, improve public universities, basic education or teachers´ salaries. As such, PEC 55 makes the goals and strategies of the National Education Plan 2014-2024 practically unfeasible[7]. This amendment would also have the pernicious effect of deepening existing economic inequalities resulting from the country's tax and fiscal policies, which have been shown to prevent people from escaping poverty,[8] particularly for already disadvantaged groups such as black women.[9]

Alongside these social impacts, evidence is abundantly clear that fiscal consolidation in times of economic crisis is simply economically inefficient. The Brazilian government's advisors speculate that deep and decisive constraints to public spending are needed to restore confidence amongst anxious investors and international creditors, quickly pay down the deficit, lower interest rates - which for long time have been the highest in the world for structural factors other than the levels of public spending[10] - and thereby increase economic growth. Yet, in practice, evidence is overwhelmingly clear that these type of "cut to grow" approaches to fiscal policy are dangerously self-defeating when the economy is sputtering. Empirical findings from the International Monetary Fund (IMF)[11] illustrate that cutting budgets during economic recessions has a tendency to actually increase deficits while deepening and prolonging the recession, worsening unemployment levels and decelerating economic recovery. The IMF has recognized that, on average, a fiscal consolidation of 1 percent of GDP during an economic downturn increases the long-term unemployment rate by 0.6 percentage point, and raises by 1.5 percent over five

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[5]Health National Council and National Council of Health Municipalities Secretariat. Available at http://www.conass.org.br/nota-conjunta-conass-e-conasems-sobre-a-pec-241/.

[6] Camara dos Deputados "Custo da saúde vai encarecer 37% com envelhecimento da população, aponta pesquisador", see text at this link

[7] Todos pela Educação. PEC do teto dos gastos públicos e os riscos para a Educação, available here

[8]Higgins, Sean and Claudiney Pereira. 2014. "The Effects of Brazil's Taxation and Social Spending on the Distribution of Household Income." In Lustig, Nora, Carola Pessino and John Scott. 2014. Editors. *The Redistributive Impact of Taxes and Social Spending in Latin America. Special Issue. Public Finance Review*, May, Volume 42, Issue 3. (November 4, 2014)

[9]INESC. As implicações do sistema tributário brasileiro na desigualdade de renda. Brasília, 2014. Available at this link

[10] O Globo. "Brasil tem a maior taxa de juro real do mundo. Available at this link.

[11] Guajardo, Jaime; Leigh, Daniel and Pescatori, Andrea (2011). Expansionary Austerity: New International Evidence. IMF Working Paper, available here

years the Gini measure of income inequality.[12] This, in turn, can significantly lower both the level and the durability of economic growth.[13]

PEC 55 – A retrogressive measure in potential violation of international human rights law

The proposed constitutional amend (PEC 55/2016), if approved as proposed, may well be in breach of Brazil's obligations under international and regional human rights law contained in the treaties ratified by Brazil, in particular the International Covenant on Economic, Social and Cultural Rights (ICESCR), the American Convention on Human Rights (ACHR) and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador).

While states have a margin of discretion to adopt policies and other measures to counter-act the effects of economic crisis or face other situations of exceptional nature, such margin of discretion is not absolute and does not escape the scrutiny of human rights norms.[14] The UN Committee on Economic, Social and Cultural Rights has issued specific directives to be observed by states party to the ICESCR when these adopt policies or other measures in response to economic downturns. In order to act in compliance with the ICESCR fiscal consolidation measures must: be **temporary**, strictly **necessary** and **proportionate**; **non-discriminatory**; take into account all possible **alternatives**, including tax measures; identify and protect the **minimum core** content of human rights; and be adopted after the most carefully consideration with genuine **participation** of affected groups and individuals in decision-making processes.[15]

At present, the Brazilian government appears to have failed to take into account any of these criteria in its haste to constitutionally restrict spending over two decades. First, PEC 55 is hardly temporary, but will extend far into future economic recoveries that may occur over the next two decades. Second, this mechanism to control public spending in areas such as health and education will disproportionately affect already vulnerable groups, such as children of low-income families, Afro-Brazilian women and people living in poverty, who rely more on public services. Furthermore, education and health are not only essential rights in themselves but are also critical determinants of the enjoyment of other civil, political,

[12] Ball, Laurence, Davide Furceri, Daniel Leigh, and Prakash Loungani, 2013, "The Distributional Effects of Fiscal Austerity," UN-DESA Working Paper 129 (New York: United Nations).

[13] Ostry, Jonathan; Loungani, Prakash; Furceri, Davide. "Neoliberalism: Oversold?". IMF Finance & Development. June 2016, Volume 53, No. 2. Available here

[14] See CESCR, General Comment (GC) 3, para.12; GC 12, para. 28 and GC 14, para. 18; CESCR Statement. "An Evaluation of the Obligation to Take Steps to the "Maximum of Available Resources" under an Optional Protocol to the Covenant, E/C.12/2007/1 10 May 2007, paras. 4 and 6; and, Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Maastricht, 22-26 January 1997, paragraphs 8 and 10.

[15] See CESCR, (2012), Letter to State Parties on the issue of human rights obligations in the context of austerity, available at this link; CESCR (2016), Statement: Public debt, austerity measures and the International Covenant on Economic, Social and Cultural Rights, see here. See also Committee on the Rights of the Child (2016), "General Comment 19 on public spending and the rights of the child"; UN Human Rights High Commissioner Office. Report on Austerity Measures and Economic and Social Rights, par. 15, at this link.

economic, social and cultural rights. The results of the freezing of public expenditure in these areas could drive people deeper into poverty, with discriminatory effects that reinforce disparities across society. Third, the Brazilian government has provided no evidence that PEC 55 is necessary, proportionate and a last-resort measure, nor that less restrictive alternative measures have been explored and analyzed, especially to boost revenue in equitable ways.

For example, combatting tax evasion could raise $80 billion according to experts,[16] much more than the projected fiscal deficit for 2016 of $50 billion. Improving the contributions of high-income earners could likewise offset the need for such drastic cuts to public spending.[17] Indeed, evidence shows that the current predicament is not caused by profligate public expenditure, as proponents of the amendment allege, but is instead a revenue crisis. Last year, spending fell more than 2 percent in real terms, but revenue fell 6 percent. This year, expenses are expected to increase by 2 percent and revenue to fall by 4.8 percent.[18] If approved, PEC 55 would only aggravate this revenue-raising emergency, at the expense of basic economic and social rights obligations. Lastly, these fiscal consolidation measures have not benefitted from public participation and accountability. The constitutional and budget changes are taking place in the midst of narrowing opportunities for public scrutiny, as the interim government has allowed very little room for accountability, transparency, and access to information. The government has not conducted any assessments of the impact of its fiscal austerity measures on poverty, inequality and human rights. In the face of policy reforms which would severely undermine the capacity of the Brazilian state to honor the economic and social rights guarantees enshrined in the country's constitution, affected communities and Brazilian civil society has been denied opportunities for constructive engagement and oversight in the design and implementation of these constitutional reforms.

Various international and regional human rights protection mechanisms of late have expressed their views that fiscal consolidation packages, if not designed in compliance with key human rights norms and principles, could amount to a violation of these rights. The Additional Protocol to the American Convention on Human Rights (the San Salvador Protocol) contains normative provisions similar to those of the ICESCR and other international human rights treaties on the obligation of states to use the maximum of their available resources to ensure the full and progressive realization of economic, social and cultural rights.[19] Responding to the proposed fiscal consolidation measures, the Inter-American Commission on Human Rights recently called on the Brazilian authorities "to mind the principles of progressiveness and non-regression in the area of economic, social, and cultural rights. By virtue of the obligation to adopt progressive measures, established in the Protocol of San Salvador—which was ratified by Brazil in 1996—the State, in principle, is forbidden from adopting policies, measures, and laws that, without proper justification, worsen the situation of economic, social, and cultural rights

[16] Plus 55. "Brazil loses a fortune to tax evasion", at this link.
[17] Personal Income tax in Brazil, which highly benefits capital income over wage income, accounts for only 2.7% of GDP, while the average in OECD countries is 8.5%. See INESC, 'Civil society calls for changes in the tax system for fairer taxation, available here.
[18] Carvalho, Laura. 2016. Quadro Fiscal Brasileiro e PEC 241. Available at this link
[19] ICESCR, Article 2.1; Convention on the Rights of the Child, Art. 4; Convention on the Rights of Persons with Disabilities, Art. 4.2. Additional Protocol on Economic, Social and Cultural Rights (San Salvador Protocol), Art. 1.

enjoyed by the population. The undermining or worsening by the State of those factors without just cause would constitute an unauthorized regression under the Protocol."[20]

In its concluding observations on Brazil in 2015, the UN Committee on the Rights of the Child also expressed its concerns about "recent budget cuts, which among other things have affected the budgets for the social sectors and for human rights and have had a negative impact on the implementation of programs for the protection of children's rights." This UN body recommended Brazil to conduct "a comprehensive assessment of the budget needs of children and increase the budget allocated to social sectors, and address disparities through the application of indicators related to children's rights."[21] There is no evidence that the new government has conducted such an evaluation before proposing PEC 55.

Brazil is at a historical cross-roads – one which will determine whether it remains a country constitutionally committed to protecting needed investments in human rights, or instead places a cap on their realization. As the government enters into debate over PEC 55, we urge the Government authorities and members of the Senate to avoid acting in breach of its international human rights obligations. As a first immediate step, **we call** on the Senate:

- Not to approve PEC 55 or any proposed fiscal expenditure cap or austerity measure which would breach Brazil's human rights obligations to devote the maximum of its available resources to progressively achieve the full realization of economic, social and cultural rights, without discrimination or deliberate retrogression. In order to determine whether such proposed fiscal reforms are human rights compliant, they must be subjected to an independent *ex ante* assessment of their foreseeable impact on Brazil's ability to fulfil its constitutional and international human rights obligations. States bear the burden of proving that fiscal consolidation measures are only introduced after the most careful consideration of all other less restrictive alternatives. A robust human rights evaluation would determine to what degree such measures are: **necessary** and **proportionate**; **non-discriminatory**; take into account all possible **alternatives**, including tax measures; identify and protect the **minimum core** content of human rights; and are adopted after the most carefully consideration with genuine **participation** of affected groups and individuals.

[20] Inter American Commission on Human Rights, Press release 67/16 of May 18, 2016, "IACHR expresses deep concern over regression in human rights in Brazil"
[21] See Concluding observations on the combined second to fourth periodic reports of Brazil, available at [this link.](#)