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Overview

This submission to the Committee on the Elimination of Discrimination Against Women at the 79th Pre-sessional working group has been prepared as a collaboration between *Instituto Justiça Fiscal* (Brazil) and the *Tax Justice Network*. It builds on arguments (see Switzerland, Luxembourg and the United Kingdom and Northern Ireland) to recognise progressive tax policies and financial transparency laws as the most sustainable and appropriate measure by which a State Party can 'ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms' (CEDAW, Article 3).

The report focuses on a limited range of issues to illustrate this including public service provision; income and insecure labour; caring responsibilities and violence against women. All are considered in the context of the Covid-19 pandemic.

Context

The social and economic policy landscape in Brazil has seen the deepening of inequalities and the erosion of public services. Brazil was ranked 39 overall in Oxfam's 'Commitment to reducing inequality' (CRI) 2018 index.[1] In the 2020 CRI Index Brazil's overall ranking dropped dramatically to 71.

Recent analysis by the Tax Justice Network estimates that US$14,911,039,194 is lost every year by Brazil to global tax abuse. This represents 3.19% of Brazil's US$ 466 billion tax revenue and a loss of US$72 for each person in Brazil annually (Population: 207, 308,480). That corresponds to 25% of Brazil's public health expenditure per capita, according to the Federal Medicine Council (CFM, 2020).

The breakdown of tax loss shows US$ 14,630,745,768 (US$14.5 billion) lost to tax abuse by multinational companies and an estimated US$ 280,293,472 (US$ 280 million) lost due to private tax evasion by individuals. The social impact of this loss is equivalent to 20.06 percent of Brazil's health budget, or the yearly earnings of 2,059,104 nurses, or 12.48 percent of Brazil's education spending.

[1] Oxfam analysed three pillars of policy activity: labour (on labour rights, women's labour rights and minimum wage), public spending (on health, education and social protection) and tax (on progressivity of personal income tax, corporation tax, VAT, and harmful tax practices).

Questions on the gender impact of Brazil's gender equality, tax, and financial transparency standards

1 Given widespread publication of information on tax avoidance and illicit financial flows following well-publicised data leaks including the Panama Papers, Paradise Papers and most recently FinCEN leaks, does Brazil intend to undertake a rigorous and independent study of how its own financial and tax laws enable such tax abuses, and commit to steps to ensure that national budgets are adequate to fulfil its obligations to women's human and gender equality rights domestically and overseas? Specifically, what plans are in place:

a. With reference to Normative Instruction 1634/2016 to ensure that 'beneficial ownership information is publicly available for all legal entities and partnerships?

b. To ensure the registration with a public authority of residual bearer shares which, when not registered with a public authority, prevent identification of their legal and beneficial owners?

c. With reference to Normative Instruction 1.681/2016 to ensure country by country information on Brazilian controlled companies is accessible to the public?

2 What plans does the State party have to conduct thorough impact assessments of the Expenditure Ceiling Act (Constitutional Amendment 95/2016 (EC 95) on the rights of women and girls? Can the State party assure that assessments will be publicly available?

3 When can the Committee be provided with a detailed update on the status of this national action plan, completion dates, copies of all interim reports, and copies of any draft plans developed to date together with a schedule of consultations and steps to implementation?

4 Given the dramatic increase in inequalities and the additional burdens experienced by women because of the Covid-19 pandemic, has the State party established legal guidelines that accord with its CEDAW commitments for complaints relating to the gender impact of cuts to essential services and welfare programs?

5 Given the inadequacy of the tax base, the inadequacies of social protection and the continued implementation of austerity policies that profoundly impact support services and personal security for women, what steps will the State party take to ensure the tax administration has the resources and capacity to secure revenues lost to tax avoidance?

6 Given the ease with which base erosion and profit shifting can be used to ‘offshore’ wealth to secrecy jurisdictions, will the State party commit to increasing its tax audit and enforcement capacity to monitor all multinational corporate accounts?

7 Data from PIT shows that men are richer than women and that most earnings from profits and dividends accrue to them. However, profits and dividends are exempted from taxation in PIT, making it regressive and discriminatory for women. What steps will the State party take to address the discrimination embedded in the system of exemptions on profits and dividends in its proposed tax reform bill?

8 What plans does the State party have to reform personal income tax including the (IRPF) table to ensure the country’s tax base from high-income earners is increased? Also, what plans does the State party have to address the constitutional provision (1988) of implementation of tax on large fortunes and to undertake a human rights impact assessment of the proposed tax reform?

Areas of concern

Public service provision failing women and girls

Recent research found that fifty nine percent of public servants in Brazil are women. On average they receive twenty four percent less income than their male counterparts in the sector (IPEA, 2019).

The impact of the Covid-19 pandemic in Brazil has been exacerbated by longer-term underinvestment in public services. This underinvestment undermines social and economic rights and the well-being of women and girls. Failure to provide an adequate and immediate budget to fight the Covid-19 pandemic has meant that health professionals, sixty five percent of whom are women, have suffered a lack of individual protection equipment. This has exposed Brazil as being one of the countries with most deaths amongst health professionals. Among nurses, 85% women, Brazil has seen more deaths than any other country (Nurses Federal Council, 2020).

Low income and insecure labour

Domestic work, mostly performed by black women, is characterized by high rates of informality, low wages, few labour rights and little union protection. Because of the coronavirus many of these domestic workers lost their employment without pay. Others were forced to remain at work and were not able to return to their homes and families due to fears they might transmit the virus to their employer households. Many were dismissed because of the economic downturn caused by the pandemic. Those women who continued to work had to take on additional ‘caring’ responsibilities. As schools and day care centres closed, the burden of care fell largely on women.

Cash transfers - "Auxílio Emergencial" - have been implemented in Brazil for informal workers and those who lost their jobs. Many of these are women domestic workers. The cash transfers apply to households 'whose monthly income per person does not exceed half the minimum wage (R$ 522.50), or whose total family income is up to three minimum wages (R$ 3135).' This does not, however, compensate for the additional household and caring responsibilities imposed on women in the absence of public childcare, education of social care services.

The Public Ministry of Labor (MPT) published Technical Note 04/2020 with guidance for companies, employers, and employers of domestic workers and care workers (MPT, 2020) on how to ensure workplace safety and minimal transmission of infection. Despite this there has been a continuing trend of increased layoffs. IMF projections of economic contraction in Brazil, of which these job redundancies are an indicator, stand at -9.1% compared to a regional estimated contraction of -9.4 % GDP for 2020. The ILO's '*Monitor on Covid-19 and the world of work'* shows the decline in employment of women for the year up to the end of Q2/2020 is -13.9%, as compared to -10.7% for men.

Consequences of home working and caring responsibilities

It is not only domestic work that has been affected by the Covid-19 crisis. During the pandemic many women had to establish 'home' offices. As they brought external work into the home they also had to continue with care duties. One survey conducted by DataFolha noted that fifty seven percent of women who started to work in a 'home office' reported that they took on the majority of the care responsibilities in the house, compared to 21% of men. This is especially significant where households are headed by women. This trend has been increasing in recent years, especially among poorer households (up to 1 minimum wage, 27.54% of families are headed by women and 25.41% by men). Therefore, public policies must be designed to ensure that income of the poorest families is underpinned by public services and social protections funded by a more progressive taxation regime.

Failures of the Brazilian model of social protection

Social protection is a constitutional right including "an integrated set of actions by public authorities and society to ensure rights relating to health, social security and social assistance" (Art. 194). These are complimented by social rights including "education, health, food, work, housing, transportation, leisure, security, social security, protection of motherhood and childhood, assistance to the homeless, in the form of this Constitution" (Art. 6).

An impact analysis of the budget allocated to social rights, conducted by the Coalizão Direitos Valem Mais (Coalition Rights Worth more) in 2020, illustrates that women have been hit harder by fiscal policy contraction, despite the State party obligation to respect the human rights principle of non-retrogression. The so-called "New Fiscal Regime" was approved in December of 2016 through Constitutional Amendment 95/2016. This policy limits the federal government's primary spending to a ceiling set by the budget of previous years adjusted only for accumulated inflation over 12 months, thereby threatening provision for women and girls' social and economic rights.

In April this year the UN Independent Expert on Human Rights and External Debt, Juan Pablo Bohoslavsky, and the UN Special Rapporteur on Extreme Poverty, Philip Alston, stated that Brazil should immediately abandon austerity policies. They explained that these policies put lives at risk and that public spending needed to be increased to combat inequality and poverty. The rapporteurs were unequivocal in explaining Brazil's failure to meet its human rights obligations:

> *"the weakened health system is overloaded and the rights to life and health of millions of Brazilians at risk. It is time to revoke the Constitutional Amendment 95 and other austerity measures contrary to international law human rights" (United Nations, 2020).*

The incorporation of this fiscal rule (Amendment 95) within the Brazilian Constitution is a deliberate act to change the dynamics of health and education spending and to remove the earmarking of budget allocations for these rights (Dweck & Rossi, 2016). CEDAW Article 2 states categorically that the State Party needs to take steps including legislative measures to progressively realise women's rights. The International Covenant on Economic, Social and Cultural Rights 1976 (ICESCR) Article 2.1 specifies the State has a range of options through which to generate 'the maximum of its available resources'. Furthermore, the Committee on Economic, Social and Cultural Rights (CESCR, 1990) states in General Comment 3, paragraph 9 that actions by the State Party which cause the 'deterioration in the enjoyment of economic and social rights are not permitted' (Balakrishnan, Heintz and Elson, 2016).

Violence against women

From 2014 to 2019, the budget committed to policies for women reduced from R$ 150 million to R$ 57 million, a reduction of 62%. In 2019, a third of the budget committed was investment expenditure, reducing even more the budget to promote independence and prevent violence against women (data from SIOP organized by authors).

In the first six months of 2020, 1,890 women lost their lives to violence, a 2% increase over the same period in 2019. According to the survey "Violence Monitor", the main victims are black women. Of the total 631 (33%) were victims of "femicide" (Núcleo de estudos de violência da USP et al., 2020).

From moral and sexual harassment to femicide, different dimensions of violence mark the experience of women of all ages in the country.

Isolation at home because of Covid19 has exacerbated gender-based violence. Brazilian women are not only obliged to stay at home with their aggressors, but also face even greater barriers in accessing protection networks and reporting channels.[2] Women who are victims of violence may also have to manage insecurity of income and unemployment, which often prevents them escaping their aggressors. There is a pressing need to implement more effective protective measures, including a proposal to transfer income, such as social rent for women who are victims of violence.

Income tax

Personal Income Tax

Brazil's tax system is chronically regressive. Almost half of its total volume is based on indirect taxes. For example, in 2018 indirect taxes (on goods and services) accounted for 44.7% of the tax burden, while direct taxes (on income and property) represented only 26.2% of the tax burden (Federal Income, 2020a). "The poorest 10% of the Brazilian population contribute 32.8% tax on their income, while the richest 10% are estimated to contribute 22.7%" (Silveira, 2008). As black women make up the poorest quartile of Brazilian society, they are paying proportionately more taxes (Salvador, 2014).

Another correction needed to increase the progressivity of income tax is to modify the personal income (IRPF) table. In 1988 there were seven tax rates for different levels of income. In 1989 there were two, and today there are four, the highest of which is just 27.5% for top income earners. If the ranges were reformed to tax the highest incomes less than 360,000 declarants (1,31% of 25,518,844) would be at the rate of 40%, according to tax data (RFB, 2015). On the other hand, increasing the exemption limit to four minimum wages (R$ 4,000.00) would exempt more than 10 million people.

Exemptions

Since the 1980s/90s, the tax regime has increasingly relied on consumption taxes. In 1995 the exemption on profits and dividends of individuals with high incomes was established, and a further exemption was applied to an "Interest on Equity" or "Juros sobre capital Próprio (JCP)" (See also 'Wealth Taxes' below).

The inevitable consequence of exemptions on individuals' profits and dividends is that women are discriminated against. Their lower incomes are taxed more because they are less likely to receive income from profits and dividends. Men represent 68% of those who have these kinds of earnings, and therefore become the beneficiaries of these tax privileges (Federal Income, 2020b).

[2] Brazilian Public Security Forum (FBSP) show that intentional homicides with female victims increased 7.1% in May, from 127 in 2019 to 136 in 2020. The most significant increases were that of Ceará (208.3%), Acre (100%) and Rio Grande do Norte (75%). In the period between March and May, there was an increase in records, which went from 382 victims in 2019 to 386 in 2020.
Paradoxically, the occurrence records related to violence were reduced. According to the FBSP, it may be related to the difficulty of victims in recording occurrences, since sexual violence, due to the severity and requirement of immediate examination of the body of crime, necessarily require the presence of the victim in the police station, which is the hypothesis to explain the reduction of this crime.

These exemptions should be reviewed since, as an indirect government expenditure, they contribute to increased inequality for women and girls.

Corporate Income Tax (CIT) is divided into three groups in Brazil: real profit, presumed profit and simple national. Only 3% of corporations, mostly multinationals, in Brazil are taxed at the 'real profit' rate, yet they make 77% of profitable income (NECCT, 2014). Reducing real profit is an important technique of tax abuse in Brazil. Weak regulatory oversight allows the effective corporate tax rate to be significantly reduced.

A key method used by multinational companies to reduce their real profits is through "interest on self-capital" (JCP, by its acronym in Portuguese). This allows a legal entity to deduct a fictitious financial expense related to a remuneration (interest) paid to partners and shareholders for the capital they invested in the company itself, and thus reduces taxable profit.

It is important for CIT to be progressive in tax rates levied. Shifting the burden of taxes from indirect, consumption taxes and low-income earners to direct tax is an important hallmark of a progressive and equitable tax regime. At the same time, it is critical that tax authorities have the power, resources and capacity to enforce progressive tax laws and ensure that corporations pay their fair share.

Wealth Taxes

A wealth tax has been part of the Brazilian Constitution since 1988. International experience indicates that a wealth tax (IGF) could collect up to 0.5% of the country's GDP. However, it is not regulated.

The most important fiscal effect of a wealth tax is to redistribute wealth and reduce inequality. Since white men represent most of the billionaires in Brazil, a wealth tax has the potential to reduce social, gender and racial inequality.

The economic crisis experienced since 2015 has prompted much discussion about the regulation of item VII of Art. 153; that is, the establishment by Complementary Law of the Tax on Large Fortunes (IGF). Several Complementary Bills have already been presented in Congress for IGF regulation. Only two have been considered and both were eventually rejected.

Financial Secrecy & Illicit Financial Flows

The ICESCR states that the State Party should take steps through 'international assistance and cooperation, especially economic and technical, to maximise its available resources' (Part II Art.2.1). Research by the Tax Justice Network (TJN) has examined Brazil's financial secrecy laws and policies against three criteria:

- The automatic exchange of financial information (AIE) between countries on tax paid

- The establishment of a public register of beneficial and legal owners of companies, partnerships and trusts (BO)

- Publicly available information on 'country by country reporting' (CBCR) by multinational companies to enable regulatory authorities including tax administrations, to assess where their 'real' economic activity occurs and accordingly where they should be taxed.

TJN's ranking of secrecy jurisdictions assessed Brazil as needing 'improvement' in matters of financial transparency concerning Beneficial Ownership and Country-by-Country Reporting. While recognising important steps towards transparency, TJN researchers point out that when the 'Brazilian tax authority enacted Normative Instruction 1634/2016' significant loop holes remained which allow owners of companies, partnerships and trusts to continue to 'hide' wealth that might otherwise be redirected for public expenditure. Similarly, normative instruction n 1.681/2016 of the Brazilian tax authority requires multinational companies with a Brazilian 'controller' to file country by country information, and yet, crucially, the information is not accessible to the public, nor does it ensure 'Brazilian authorities' own access to country by country reporting of foreign multinational enterprises with domestic operations' (TJN, 2020)

A study by Tax Justice Network (2015) points out that Brazil's super rich held the equivalent to more than R$ 1 trillion in tax havens, the fourth highest total in a ranking of countries. This flow of money from a country to a tax haven results from illicit practices known as illicit financial flows (IFFs).

Between 2003 and 2012, the illicit financial flows that left Brazil represented US$ 217 billion, an annual average of U$ 21 billion. This flow covers money from corruption, drug and human trafficking, among other crimes; but most of it - about 80% or $172 billion - comes from procedures adopted by companies to pay less taxes and disguise foreign exchange evasion. (Global Financial Integrity, 2014).

Conclusion

The Covid-19 crisis in Brazil has highlighted deep injustices for women and girls. Women especially have experienced precarious work, loss of income, weak and inadequate social protection, increased physical and sexual violence, and additional care responsibilities. These threaten the well-being of women and girls, they put at risk opportunities for human development and the realisation of human rights. Too little focus is given by the State party to pre-existing, harmful or discriminatory constitutional and systemic social and economic conditions. Progressive tax policy reform could address the subordinate the existing status and 'rights' of women and girls. Direct tax rates and tax exemptions favour both men and the wealthy.

Meanwhile, financial transparency laws including public registries of 'Beneficial Ownership' and for 'country by country reporting' by multinational companies continue to lack the rigour to fully meet global standards. This financial opacity continues to put at risk the human rights of women and girls both in Brazil and in other countries.

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