

Initial Observations on Brazilian President Bolsonaro's Inauguration Day Decree affecting NGOs

Immediately after he was sworn into office on January 1, 2019, Brazilian President Jair Bolsonaro imposed sweeping changes on the structure of the Executive Branch, including a new provision on government oversight of domestic and international NGOs. Provisional Measure No. 870 establishes that the Secretariat of Government has the authority to “*supervise, coordinate, monitor and accompany the activities and actions of international organizations and non-governmental organizations [NGOs] on national territory.*” (Art. 5.II) This single sentence, filled with vague terms, has raised significant concerns within Brazil’s NGO community, particularly given Bolsonaro’s [public record](#) questioning the legitimacy of the NGO sector. The Provisional Measure entered into force immediately; it will expire if not ratified by Congress within 120 days.

The Association of Brazilian NGOs (ABONG) has issued a [public statement](#) promising to challenge Article 5.II through administrative channels and calling for reforms through multi-sector dialogue. ABONG asserts that the provision is unconstitutional:

It is not the responsibility of the Federal Government or the state or municipal governments to supervise, coordinate or even monitor the actions of civil society organizations, who are guaranteed, under Article 5 of the Federal Constitution, the full freedom to act and to represent their causes and interests. It is the responsibility of governments to control public resources that may be the subject of partnerships with civil society organizations, and for this, there is specific legislation that defines [NGOs’] rights and obligations, including submission of annual accountability reports.

Aline Gonçalves de Souza, researcher with the Getulio Vargas Foundation, also [questions](#) whether the Provisional Measure’s restructured CSO oversight will pass constitutional muster. “The Federal Constitution guarantees freedom of association and prohibits state interference in the functioning of associations [referencing Articles 5.XVII – XVIII].”

In addition to these constitutional issues, Article 5.II of the Provisional Measure raises concerns under international law. As stated by the Inter-American Commission on Human Rights:

any restriction on the right to freedom of association is permissible only if prescribed by law (through an act of Parliament or an equivalent unwritten norm of common law) and is not permissible if introduced through government decrees or other similar administrative orders. (¶ 165)

Accordingly, issues would arise under international law if restrictions on the freedom of association were imposed specifically pursuant to Article 5.II because the Provisional Measure was an act of the President without legislative approval. The IACHR also reminds States to “refrain from promoting laws and policies that use vague, imprecise, and broad definitions” to restrict the freedom of association. (¶ 165) Article 5.II confers authority on the Secretariat of Government to “*supervise, coordinate, monitor and accompany the activities and actions*” of NGOs and international organizations, without detailing the scope of this authority.

As proposed by ABONG, multi-sector dialogue would be a positive approach to determining the appropriate manner to govern NGOs in a manner consistent with the Brazilian Constitution and international law on freedom of association.

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