



## **Brazil's Accession to the Organisation for Economic Cooperation and Development (OECD)**

**Submission to the OECD Secretary General and Ambassadors of member states and Brazil**

**CC: Secretariat of the following OECD committees to inform their technical reviews**

- **Public Governance Committee**
- **Investment Committee and Working Party on Responsible Business Conduct**
- **Environment Policy Committee**
- **Regulatory Policy Committee**
- **Regional Development Policy Committee**
- **Health Committee Employment, Labour and Social Affairs Committee**
- **Committee on Digital Economy Policy**

### **Focus: HUMAN RIGHTS**

- **Environmental and human right defenders (EHRDs)**
- **Civic space**
- **Right to health**
- **Indigenous Peoples' rights**
- **Labour Rights**

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## I. INTRODUCTION AND PURPOSE OF THIS BRIEF

In June 2022, the Organisation for Economic Cooperation and Development (OECD) published the Roadmap for the OECD Accession Process of Brazil and other candidate countries (“Roadmap” or “Accession Roadmap”).<sup>1</sup> **OECD Watch, Conectas Human Rights (Conectas), and the International Federation for Human Rights (FIDH) and its member organisations in Brazil<sup>2</sup> welcomed the Roadmap at the time of its release as it contains positive expectations regarding climate and the environment, civic space and stakeholder participation, labour rights and respect for human rights in the context of business activity.**<sup>3</sup> Read together with the OECD’s core values of respect for the rule of law and human rights expressed in its 60<sup>th</sup> Anniversary Vision Statement, the Roadmap should provide a strong framework to guide Brazil’s accession process. In turn, if rigorous in its review of critical concerns in Brazil and inclusive of stakeholder expertise, that accession process can drive significant transformation in Brazil’s laws, policies and practices concerning the respect and protection of human rights, and an enabling environment for the effective defence of human rights.

This brief focuses on human rights concerns in Brazil; namely, the situation of environmental and human rights defenders (EHRDs), the country’s civic space, healthcare particularly for pollution-affected communities, the protection of indigenous peoples’ rights, and the protection of labour rights. Its purpose is to inform Brazil’s accession process by alerting member states and key OECD committees to the existence of gaps and issues of concern on human rights that are relevant for their technical reviews, and encouraging them to adopt strong recommendations for resolution of these gaps as conditions for Brazil’s membership.

Section II of this brief describes the Roadmap’s key requirements and expectations of Brazil to become a member of the OECD. These include Core Principles under the purview of each of the OECD committees involved in Brazil’s accession process. Section III makes a call on all relevant committees to coordinate their reviews given the interconnected and interdependent nature of most of their Core Principles. Section IV describes gaps and issues of concern under selected Core Principles and provides a list of recommendations for necessary improvements in law, policy and practice to improve the situation. Section V draws conclusions about Brazil’s level of adherence with key OECD instruments and Core Principles and lays out substantive and procedural calls on OECD committees related to the accession process. Appendix 1 contains a large number of case studies that help illustrate the issues of concern raised.

Following elections in late 2022, Brazil is now led by a new government broadly viewed by civil society as more progressive on environmental and human rights issues and more open to engagement with stakeholders, including impacted communities and civil society representatives. At time of writing, the Lula administration has not yet clarified whether it will continue to pursue membership in the OECD. If it does, we nevertheless urge the OECD to proceed with care in its analysis of Brazil’s current and prospective policies on environmental and human rights issues. First, as this and our “Environment” brief show, very many of the concerns in these areas predate the prior Bolsonaro administration and have not disappeared with the arrival of a new administration; they are long-standing challenges the country must address. Second, the effects of regressive policies set in place under the prior administration remain, and in many cases cannot speedily be resolved. Third, the new administration, like any democracy, will need to work across party lines to advance its goals and therefore may not be able to implement the necessary changes, particularly in the current state of division in Brazil. Fourth the new administration may itself under-aim in seeking

to align itself with OECD values on human rights and the environment. Finally, given the demonstrated vulnerability of Brazilian environmental and human rights policy to administrative turnover, the new administration will need to take extra steps to better insulate national commitments in these areas from political change. In short, we ask the OECD to ensure a rigorous review of these core issues, irrespective of Brazil's leadership.

OECD Watch, Conectas, and FIDH urge member governments and substantive committees involved in Brazil's accession review to consider seriously the gaps we highlight and incorporate the recommendations we make into their own requirements for Brazil. Of note, we urge that reviewers look beyond Brazil's formal adherence to principles and instruments and scrutinise implementation and actual practice, as well as the real state of human rights and civic space protection in Brazil.

We also urge the Secretary General and member states to implement a transparent and inclusive accession process for Brazil and the other candidate states. While we recognise member states' prerogative to hold private discussions and ultimately decide on candidates' membership amongst themselves, we believe a basic level of transparency is to be expected. This includes publication of dates for key reviews, debates and decisions, and timely sharing of key information such as Brazil's Initial Memorandum, the Secretariat's background report, committees' conclusions and recommendations, and follow up action plans. We also seek a basic level of inclusivity; namely, meaningful opportunity for civil society and other stakeholders to input at designated moments and spaces. We ask that, at a minimum, OECD committees hold public consultations at relevant moments throughout the accession process, such as during site visits and also in advance of the finalization of key committee reports. We believe consultations will strongly benefit the OECD's and states' own fact-finding and analysis if they include opportunity for information sharing and dialogue with all relevant stakeholders, including rightsholders, local EHRDs, and civil society organisations. We also ask for basic indication that stakeholders' views have been considered by committees, such as through brief summaries of input provided and brief explanation of how this has been taken into account.

## II. THE ACCESSION ROADMAP

### *Shared values, vision and priorities, and candidates' "like-mindedness"*

According to the Roadmap, Brazil has confirmed adherence to the **OECD's 60<sup>th</sup> Anniversary Vision Statement** and **2021 Ministerial Council Statement**.<sup>4</sup> The OECD's 60<sup>th</sup> Anniversary Vision Statement demands, among other things, respect for the rule of law and the defence of human rights. The 2021 Ministerial Council Statement, titled 'Shared Values: Building a Green and Inclusive Future', reiterates the values of respect for the rule of law and protection of human rights, and also includes government transparency and accountability, gender equality and environmental sustainability.<sup>5</sup> As stated by the Roadmap, "the accession process will serve to confirm Brazil's adherence to these values, vision and priorities in practice." This adherence serves to demonstrate what the OECD calls "**like-mindedness**", which "is a fundamental requirement for membership."<sup>6</sup>

### *Legal Instruments*

To become a member, Brazil must also accept "all **substantive legal instruments** of the Organisation", subject to any agreed reservations or observations.<sup>7</sup> Human rights are mentioned not

only in connection with core values of the OECD, but also feature in at least thirty legal instruments.<sup>8</sup> Several of these instruments are relevant for the human rights topics discussed in this brief:

**EHRDs and civic space:** The OECD's Recommendation of the Council on Open Government is particularly relevant for concerns around civic space, and so are recommendations designed to guarantee access to information and public participation in certain contexts or in relation to certain issues. These include, for example, the Recommendations of the Council on Enhancing Access to and Sharing of Data, on Principles for Internet Policy Making, on Reporting on the State of the Environment, on Environmental Information, on the Assessment of Projects, Plans and Programs with Significant Impact on the Environment, and on Enabling Civil Society in Development Co-operation and Humanitarian Assistance.

**Indigenous Peoples' rights:** Twelve OECD legal instruments mention indigenous peoples and communities.<sup>9</sup> In general, these instruments express the idea that public policies should heed indigenous peoples' particular circumstances and interests, include them in the formulation and implementation of public policy that has impacts on their way of life and respect their rights such as to self-determination and Free, Prior, and Informed Consent (FPIC). The Recommendation of the Council on the Use of Economic Instruments in Promoting the Conservation and Sustainable Use of Biodiversity directly relates effective environmental protection, the rational use of biodiversity, and the reduction of greenhouse gas emissions to the participation of indigenous peoples in the conceptualization and implementation of environmental policies.

**Labour rights:** In the area of labour, relevant instruments include the Recommendation of the Council on Integrated Mental Health, Skills and Work Policy; the Recommendation of the Council on Ageing and Employment Policies; and the Recommendation of the Council on Gender Equality in Education, Employment and Entrepreneurship.

**Human rights in the context of business activity:** Several OECD instruments focus on the nexus of human rights and business activities, such as the Declaration on International Investment and Multinational Enterprises and accompanying OECD Guidelines for Multinational Enterprises, the Recommendation of the Council on the OECD Due Diligence Guidance for Responsible Business Conduct, the Recommendation of the Council on Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector, and the Recommendation on the Role of Governments in Promoting Responsible Business Conduct.

**Critically, we urge that the OECD member governments ensure the OECD's technical reviews consider not merely alignment with existing instruments, but also, more broadly, with the OECD's "values, vision, and priorities". While more intangible, these values – which are already part of the accession standard – must form the spine of the review, particularly where instruments are lacking or piecemeal.**

#### *Key policy areas*

The Roadmap also sets out **key policy areas** for OECD committees' technical reviews. These include topics relevant to human rights, such as shaping Brazil's structural reform agenda for "strong, sustainable, green and inclusive growth", putting in place "efficient and effective social and equality of opportunity policies", strengthening public governance, ensuring "effective protection of the environment and biodiversity", advancing an "inclusive digital economy", and investing in "quality infrastructure in a transparent, accountable and inclusive way".<sup>10</sup>

## *Core Principles*

Critically, the Roadmap lays down “**Core Principles**” against which Brazil’s policies and practices will be evaluated. These include Core Principles regarding, or relevant for, the protection of EHRDs, civic space, the right to health, and indigenous peoples’ and labour rights, and fall under the responsibility of all or some of the OECD committees to whom this brief is addressed. While some Core Principles relate directly to human rights, such as those concerning labour rights, others constitute key human rights enablers, such as those concerning the rule of law, government transparency and stakeholder participation. Their realisation is therefore essential for living up to the commitments expressed in the OECD’s 60<sup>th</sup> Anniversary Statement and 2021 Council Ministerial Statement regarding the defence and protection of human rights. **The extent to which Brazil is currently adhering and living up to these Core Principles is assessed in section IV below.**

### **III. ALIGNED TECHNICAL REVIEWS**

While Core Principles regarding, or relevant for, the protection of EHRDs, civic space, the right to health, indigenous peoples’ rights, and labour rights may fall under the responsibility of different OECD committees, they are intricately connected and their effective realisation is deeply dependent on one another. For this reason, we consider it vital that all relevant OECD committees work closely together with a view to reaching conclusions and issuing recommendations that are coherent and consistent with each other, mutually reinforcing and capable of achieving the highest level of protection in all relevant areas.

For example, an enabling environment for the work of EHRDs in the context of business activities is indispensable for the effective protection of the environment and indigenous peoples’ rights, implicating the expertise of the Environment Policy Committee and Investment Committee. And while trade union rights fall squarely within the competence of the Employment, Labour and Social Affairs Committee, their effective exercise is critical for a robust civic space, which falls under the remit of the Public Governance Committee, and so on and so forth.

As part of a coordinated and integrated technical review process, we urge that all OECD committees with overlapping competencies consider, for example, undertaking joint consultations with civil society actors whose views, experience and expertise is likely to be of relevance for all their thematic areas.

### **IV. ISSUES OF CONCERN TO BE ADDRESSED BY OECD COMMITTEES**

This section is divided into five parts, each addressing the issues of concern this brief seeks to highlight, in the following order:

- A. Environmental and Human Rights Defenders (EHRDs);
- B. Civic Space;
- C. Right to health (with a focus on healthcare for pollution-impacted communities);
- D. Indigenous Peoples’ Rights;
- E. Labour Rights and Social Protections.

Each of these parts contains, first, a boxed text with the Roadmap’s relevant Core Principles. The part of the Core Principles that is most relevant for the assessment has been highlighted in different

fonts. This box is followed by an assessment of the extent of the Core Principles' realization in Brazil, under "Issues of Concern". A third section contains a list of recommendations for changes in law, policy and practice necessary to address the highlighted gaps and concerns.

#### A. ENVIRONMENTAL AND HUMAN RIGHTS DEFENDERS (EHRDS)

##### PUBLIC GOVERNANCE COMMITTEE'S CORE PRINCIPLES

- A sound structure of government, including the separation of powers and the **ability to maintain the rule of law** and continuously **strengthen trust in institutions** and democracy;
- Leadership, prioritisation, co-ordination, and foresight capacity within the Centre of Government that ensures a **whole-of-government approach to strategic decision-making** and **effective interface between the political and administrative levels in support of greater public sector effectiveness**. This includes **coherent enforcement frameworks**, as well as **robust set-ups for the governance of critical risks** and crisis management;
- An open government able to foster transparency and accountability towards citizens, communicate with the public, **promote stakeholder participation** throughout the policy cycle, and **protect and promote civic space**;
- The **coherence of the legal, institutional and administrative settings and governance tools needed to design and implement policies, programmes and services to achieve societal goals** such as gender equality, youth empowerment and intergenerational equity, **access to justice** and **relevant Sustainable Development Goals**, especially Goal 16, underpinned by a strategic vision to enhance policy coherence;
- A coherent and comprehensive public integrity system, enabling effective government accountability and building a culture of integrity, including through **sound safeguards at the intersection of the public and private sectors for lobbying and conflict of interest**;

##### INVESTMENT COMMITTEE'S AND WORKING PARTY ON RESPONSIBLE BUSINESS CONDUCT'S CORE PRINCIPLES

- Evidence of commitment and effective measures to promote **Responsible Business Conduct** in relation to disclosure; **business respect for human rights, including those of indigenous peoples**; employment and industrial relations; **environment**; anti-corruption; consumer interests; science and technology; competition; and taxation; including the **implementation of the OECD Guidelines for Multinational Enterprises** and the **use of the OECD Due Diligence Guidance by business**, as well as an **adequate legal and regulatory framework in the areas covered by the Guidelines**;

##### ENVIRONMENT POLICY COMMITTEE'S CORE PRINCIPLES

- Ensuring **effective enforcement of environmental laws by strengthening the capacity of environmental agencies** and **encouraging civil society's participation**

in such efforts, including by providing adequate access to justice, fighting impunity for violations of environmental laws and ensuring that acts of violence and intimidation against environmental defenders are rigorously investigated and prosecuted;

- Applying domestic policies and measures that hold polluters responsible for remediation of contaminated sites, and that support and directly engage communities affected by pollution;
- Implementing a requirement for environmental assessment and continuous monitoring of projects, plans and programmes with potentially significant impacts on the environment, with measures for transparency and meaningful participation, early in the decision-making process and throughout implementation, by all people, including vulnerable, indigenous and local communities;
- Improving the process and quality environmental information and reporting, providing objective, reliable, policy-relevant and accessible information on the environment and sustainable development to decision makers and the public, including in ways that make it easy for local communities to access and understand;

#### REGULATORY POLICY COMMITTEE'S CORE PRINCIPLES

- Commitment to strengthen public governance through regulatory policy leading to high quality, fit-for-purpose laws and regulations that ensure transparency, legitimacy, accountability and respect for the rule of law to continuously strengthen trust in institutions and democracy;
- Improve and strengthen regulatory policy and governance at all levels of government to promote regulations that respond to economic, social and environmental challenges;
- Regulatory performance, including the performance of its regulatory system, focussing on the organisation of the functions of its regulatory agencies and inspectorates, their public accountability and their conformance with review and appeals processes;
- Multi-level governance for regulatory coherence, including the promotion of regulatory coherence through coordination with national, sub-national and supra-national bodies and the promotion of international regulatory co-operation;

#### REGIONAL DEVELOPMENT POLICY COMMITTEE'S CORE PRINCIPLES

- Regional development strategies and policies to strengthen regional and national performance, resilience, sustainability and citizen well-being, and reduce territorial divides. This implies place-based approaches to policy design and delivery tailored to the distinct attributes of each region within a coherent national framework...
- Effective multi-level governance, including effective co-ordination within and across levels of government and policy sectors to achieve inclusive and



**sustainable development, competitiveness and well-being outcomes nationally, regionally and locally;**

- **Subnational institutional and fiscal capacity to implement subnational government policy responsibilities** as well as contribute to the **design and implementation of national policy**, while delivering relevant public investments and services for growth, competitiveness, **equity and sustainability in each region;**

## ISSUES OF CONCERN

Brazil has historically been affected by extreme levels of violence against EHRDs. However, the situation has deteriorated considerably in recent years, with attacks on the increase, high levels of impunity and self-censorship for fear of retaliation:

- **Brazil is unable to prevent and protect against violent attacks on EHRDs**
  - Brazil has been consistently one of the most dangerous places in the world for EHRDs.<sup>11</sup> Violent attacks against EHRDs go back many years, but have increased in recent years.
  - In its 2016 report on Brazil, the UN Working Group on Business and Human Rights concluded that human rights defenders in Brazil increasingly faced death threats for raising their voices when their rights were compromised by economic interests.<sup>12</sup>
  - In 2020, the UN Special Rapporteur on the Situation of Human Rights Defenders reported that 174 human rights defenders had been killed in Brazil in the period between 2015 and 2019.<sup>13</sup>
  - A study released in 2020 by the Missionary Council for Indigenous Peoples (CIMI) documented over 100 cases of murder or attacks against indigenous persons in consistently since 2016<sup>14</sup> (see the cases of Paulo Paulino Guajajara, Ari Uru-Eu-Wau-Wau, Edilson Temb  dos Santos, Isaac Temb , Fernando Ara jo, and Jose Maria Filho in Appendix 1). Other cases include the murder of chief Emyra Waj pi in July 2019, after the invasion of the Mariry settlement in Amap  by 50 prospectors;<sup>15</sup> the killing in June 2020 of two Yanomami indigenous youths near an illegal heliport built to support illegal prospecting activities;<sup>16</sup> and a violent attack against the Guarani e Kaiow , around Indigenous Reserve of Dourados, people which lasted 16 hours and left seven indigenous individuals seriously injured<sup>17</sup>.
  - Analysis and data compiled in 2021 by the Business and Human Rights Resource Centre lists Brazil among the most dangerous places for human rights defenders acting in the field of business and human rights and tracked over 150 instances of attacks against defenders in the last five years.<sup>18</sup>
  - The situation is so serious that EHRDs was the subject of 8 recommendations at the last UN Universal Periodic Review of Brazil.<sup>19</sup>
  - CSOs come under attack too. In March 2021, the headquarters of the Munduruku indigenous women’s association, which opposes illegal mining, was attacked in the state of Par . According to the association, the attackers destroyed the facade and furniture of the building and set fire to documents and other materials.<sup>20</sup> The action occurred a few days after the arrival of tractors in the Munduruku people’s territory, hired by a group of prospectors.<sup>21</sup>
  - Violence against social activists is also extremely high in urban areas (see the cases of Marielle Franco and Anderson Gomes in Appendix 1).<sup>22</sup>

- **Economic elites are able to trump protection of the environment and human rights**
  - Most violent attacks and murders of EHRDs, community leaders and other grassroots activists happen in the context of disputes over land and natural resources and involve the police, private security, and other private actors including landowners, cattle ranchers, miners and loggers.<sup>23</sup> This is due to the aggressive and state-backed advance of business projects over indigenous, traditional and small-scale farming communities, especially in recent years.
  - It is estimated that approximately 20 thousand prospectors live illegally in Yanomami lands, constantly coming into conflict with the legitimate indigenous owners.<sup>24</sup>
  - Powerful rural elites exert pressure over the national government to halt attempts to increase safeguards or undertake structural changes to protect rural communities, such as the agrarian reform contemplated in the Brazilian Constitution.<sup>25</sup>
  - The state-backed advance of business activities, together with the inability of law enforcement to protect communities' rights, result in systematic attacks and killings of EHRDs (see the cases of Paulo Paulino and the Guajajara peoples, Ari Uru-Eu-Wau-Wau, Edilson Temb  dos Santos, Fernando Ara jo, Isaac Temb , Cacique Babau, Guarani-Kaiow  peoples', and Maria Nasareth dos Santos in Appendix 1).
  - Powerful economic groups also routinely undermine efforts by public institutions to protect the environment and human rights and advance social agendas (see the investigations against the National Indian Foundation (FUNAI) and the National Institute for Colonisation and Agrarian Reform (INCRA) instigated by members of the agribusiness block of Congress, and the cases of the Quilombola community of Barra do Parateca and Pesticide Poisoning in Limoeiro do Norte, in Appendix 1).
  - In the context of extreme budgetary cuts of environmental and indigenous bodies (see more on this below) INCRA public servants have pointed out that, in the last few years, settlement policies have been replaced with work on property regularization, which "seems to be very much linked to pressures from the agribusiness sector to recover these areas to use for mining, for lumber ...".<sup>26</sup>
  
- **Brazil's EHRD protection programme is affected by limited resources and poor institutional design**
  - Brazil's National Programme for the Protection of Human Rights Defenders<sup>27</sup> is not protecting EHRDs at risk or eliminating the risks they face. This is due to a variety of reasons, including limited resources , dysfunctional articulation between relevant federal and local authorities, an absence of nation-wide standards or protocols, and lack of police training and buy-in.<sup>28</sup>
  - In 2019, the UN Special Rapporteur on the Situation of Human Rights Defenders pointed out that federal and state authorities lacked systems to coordinate the issuing of arrest warrants and the sharing of resources, as well as a uniform set of criteria for prosecuting or investigating acts of violence<sup>29</sup> (see Cacique Babau's case in Appendix 1).
  - The effectiveness of the National Programme for the Protection of Human Rights Defenders is also undermined by the exclusion of civil society from core decision-making. In 2016 Presidential Decree 8.724 excluded civil society from the Deliberative Council of the National Programme for the Protection of Human Rights Defenders. Other entities with relevant expertise were also excluded, such as INCRA, FUNAI, the Agrarian Ombudsman, the Public Ministry and Federal Public Defender's Office.<sup>30</sup>
  
- **Perpetrators of violence against EHRDs are rarely punished**

- The vast majority of cases of attack against EHRDs remain unresolved. Very few cases of violent attack result in arrests or prosecutions and even less in actual convictions (see, for example, the cases of Jose Maria Filho, Fernando Araújo, Marielle Franco and Anderson Gomes in Appendix 1).
  - In August 2016, the UN Special Rapporteur on the Situation of Human Rights Defenders observed the state's failure to undertake independent and prompt investigations into attacks perpetrated against EHRDs and to bring perpetrators to justice. He attributed this to the lack of resources as well as corruption and collusion between perpetrators. The result, he argued, was the creation of a climate of impunity and mistrust of the justice system among EHRDs.<sup>31</sup>
  - In 2019, Human Rights Watch documented 28 killings of EHRDs and over 40 cases of death threats in the context of conflicts over the use of land and resources in the Amazon since 2015. The organisation found that only two of these cases had gone to trial while none of the cases of death threats actually did. It also found that of more than 300 killings in the context of land and resource use conflicts in Amazonian states during the previous decade, only 14 had gone to trial.<sup>32</sup>
  - In 2020, the UN Special Rapporteur on Toxic Waste concluded that "Brazil [was] not doing enough to ensure that where human rights defenders [were] killed, threatened, or coerced, those responsible [were] brought to account."<sup>33</sup>
- **Institutional racism impacts on the way Brazilian law enforcement and the judiciary respond to attacks against EHRDs**
    - In 2016, the UN Special Rapporteur on Indigenous Peoples noted that the lack of access to justice for indigenous peoples in Brazil was a major issue, and explained that this was due to the many significant barriers indigenous peoples faced in accessing justice, including institutional racism on the part of the judiciary and the law enforcement forces.<sup>34</sup>
    - Also in 2016, the Special Rapporteur on Minority Rights reflected on the same pattern of racism affecting Afro-descendent, Quilombola and other traditional communities of Brazil<sup>35</sup> (see the cases of indigenous leaders Paulo Paulino Guajajara, Ari Uru-Eu-Wau-Wau, cacique Edilson Temb  dos Santos and Isaac Temb , all of whom were killed despite repeated calls for assistance from law enforcement, in Appendix 1).
    - The OECD also noted in June 2022 that structural inequality and violence, anchored in discriminatory attitudes, disproportionately affected particular groups. It listed "Afro-Brazilians, women, LGBTI persons, people defending land rights, indigenous peoples, and human rights defenders" as being particularly at risk, and noted that effective programmes and initiatives to protect them were lacking.<sup>36</sup>
  - **Brazil is failing to tackle the underlying causes of violence**
    - Brazil has not put in place and/or enforced an adequate, nation-wide normative framework for the protection of the environment and human rights that guarantees effective participation in decision-making, access to relevant information, meaningful consultation, and FPIC (see violation of FPIC cases in the context of Minas Gerais dam collapses in Appendix 1). This is creating or exacerbating the conditions for conflict and violence.<sup>37</sup>
    - The OECD confirmed in its 2022 Responsible Business Conduct (RBC) review of Brazil (2022 RBC Review) that "the right of indigenous peoples to free, prior and informed

consent is not effectively implemented” and that Brazil was not complying with relevant international standards.<sup>38</sup>

- The government’s longstanding failure to resolve underlying conflicts over land and natural resources and recognise the territorial claims of indigenous and other local communities also fuels conflict and violence (see cases involving killings of indigenous leaders as well as threats and attacks against Cacique Babau, Maria Nasareth dos Santos and the Guarani-Kaiowá peoples in Appendix 1) (see more below under **Indigenous People’s Rights**).
- **Brazil has exacerbated the underlying causes of violence through proactive legislative and administrative measures and deliberate omissions**
  - The Bolsonaro administration supported mining activities in indigenous lands and other protected areas through the former president’s public declarations and bill 191/2020 (on the regularisation of mining activities on indigenous territories, which the Executive authored)<sup>39</sup>. Bill 191/2020 remains in existence. Two other bills that risk exacerbating conflict and rendering EHRD even more vulnerable were under discussion under the Bolsonaro administration: bill 3.729/2004 on environmental licensing and bill 2.633/2020 on land regularisation (known as the “land grabbers’ law”)<sup>40</sup> (see more below under **Indigenous People’s Rights**).
  - One of the first measures adopted by the Bolsonaro administration when it came to power was to stop the National Agrarian Reform Program (PNRA). This caused the suspension of administrative processes underway related to the expropriation of rural areas for the settlement of new landless families.<sup>41</sup> This policy change had the effect of halting processes to solve long-standing disputes over land and reigniting violent conflict in rural areas (see Fernando Araujo’s case in here).
  - While Quilombola land recognition or acquisition were halted, the monitoring of agrarian conflicts and field pacification measures were reduced by 82%.<sup>42</sup>
  - The federal government under Bolsonaro also approved a large number of decrees on arms liberalisation, including Decrees 9.845/2019 and 9.846/2019, facilitating the possession of weapons by civilians, including large farmers.<sup>43</sup> This exacerbated the risk of violence in rural areas and put indigenous, peasant and other rural communities, EHRDs and social leaders at even greater risk.<sup>44</sup> On the first of 2023, the elected President Lula signed Decree 11.366/2023, which restructures the gun control policy and revokes both 2019 Decrees mentioned above<sup>45</sup>. While a positive step, these new decrees do not yet address the expansion of gun ownership and associated violence that already occurred.
  - Equally detrimental have been measures to weaken government agencies responsible for protecting human rights and the environment. Many agencies such as INCRA,<sup>46</sup> FUNAI,<sup>47</sup> the Brazilian Institute for the Environment and Renewable Natural Resources (IBAMA),<sup>48</sup> Chico Mendes Institute for Biodiversity Conservation (ICMBio), the National Environmental Council (CONAMA) and state-level Secretariats for the Environment and Natural Resources (SEMAs),<sup>49</sup> have seen their budgets cut consistently year after year, leaving EHRDs in a situation of heightened vulnerability.
  - In its 2022 RBC Review, the OECD noted FUNAI’s inability to “coordinate and implement policies to protect indigenous peoples, in particular its key role in the demarcation of indigenous land” due to “severe budget cuts, attempts to alter its mandate and changes in leadership”<sup>50</sup> \*

\*Please see our separate brief to OECD committees on Environment for a fuller explanation about the inability of environmental agencies to perform their tasks.

- **Criminalisation is being used as a means of silencing indigenous leaders**
  - The last few years have seen an increase in criminal investigations and charges against indigenous leaders and organisations.
  - In a report published in 2021, the Inter-American Human Rights Commission expressed concerns about the number of investigations and criminal charges against indigenous leaders that it had learned of.<sup>51</sup>
  - As way of example, the Federal Police opened investigations into indigenous leader Sônia Guajajara and the Association of Indigenous Peoples of Brazil (APIB) regarding alleged defamation against the Bolsonaro administration and the alleged disclosure of false data on the COVID-19 pandemic which pointed to government omissions regarding the fight against the spread of the disease among indigenous populations.<sup>52</sup>
  - In another example, an investigation was initiated against Almir Suruí in an attempt to criminalize the “Forest Peoples against COVID-19” campaign<sup>53</sup>.
  - A recent report by Indigenous Peoples’ Rights International in partnership with APIB, documents a large number of attempts at silencing indigenous peoples.<sup>54</sup>

## **RECOMMENDATIONS:**

### **Protect rights of EHRDs**

- Comply with its obligations under international and regional human rights instruments by respecting, and ensuring respect for the human rights to life, liberty, physical integrity, due process and fair trial, freedom of expression, assembly and association, information, participation and effective remedy of individuals who speak up for, and work in defence of, the environment and human rights;
- Ensure the minimum standards and conditions for human rights defenders to carry out their work freely and safely in line with the UN Declaration on Human Rights Defenders.
- Establish a nation-wide legal framework for the protection of EHRDs;
- Step up implementation of the Unified Public Security System and prioritise and centralise gathering of official up-to-date, comprehensive, standardised, and disaggregated country-wide data on groups that are particularly affected by violence, including as open data, to facilitate monitoring and impact evaluations of measures to stem such violence;<sup>55</sup>
- Actively disseminate information about the National Programme for the Protection of Human Rights Defenders, prioritising local authorities and civil society organisations (CSOs) working in remote areas of the country;
- Increase the budget of the National Programme for the Protection of Human Rights Defenders, including budget for security equipment, training of specialised police units and provision of health care and subsistence needs for EHRDs who require them;
- Prioritise implementation of the National Programme for the Protection of Human Rights Defenders, guaranteeing its effectiveness across all states;
- Conclude technical cooperation agreements and protocols between the Judiciary, Public Security, social and health assistance and the National Programme for the Protection of Human Rights Defenders;
- Establish greater dialogue between federal and state law enforcement authorities to address situations of extreme risk facing EHRDs;

- Ensure the direct participation of civil society in the National Programme for the Protection of Human Rights Defenders;
- Publicly recognise the legitimate and valuable work of EHRDs and refrain from adopting, encouraging or endorsing a discourse or language that discredits, vilifies or stigmatises EHRDs or their work;
- Conduct a sustained public campaign aimed at eliminating racism within the judiciary and law enforcement forces;
- Refrain from utilising, invoking or adopting national security, anti-terrorism or any other criminal laws to intimidate or deter EHRDs or frame their actions as criminal;
- Refrain from issuing public endorsements or manifestations in support of those responsible for land invasions, deforestation, land grabbing and illegal mining;
- Conduct robust investigations and prosecutions of those who threaten, attack or kill EHRDs to address and eliminate the existing widespread impunity among perpetrators;
- Ensure that acts of violence committed in connection with interventions by the police are routinely registered, investigated and prosecuted in an impartial manner and improve training for public security agents with a focus on human rights;<sup>56</sup>
- Revoke regressive arms liberalisation laws and decrees and desist from promoting any new laws or normative acts to further liberalise the use and transfer of arms;
- Desist from pursuing criminal investigations and laying unjustified and illegitimate charges against social leaders with the sole purpose of intimidating them and suppressing their voices;
- Encourage the Federal Prosecutor's Office to request the 'federalisation' of emblematic killings of EHRDs whose investigations are not adequately progressing at the local level, in order to increase impartiality, create a safer environment for witnesses and reduce the impunity rate.

#### **Address root causes of violence and exclusion**

- Fully comply with ILO Convention 169, the UN Declaration on the Rights of Indigenous Peoples and other international and regional instruments protecting the rights of indigenous and other traditional communities;
- Tackle the root causes of conflict and violence, including by creating within the National Programme for the Protection of Human Rights Defenders a mechanism for articulation of the various bodies responsible for tackling the underlying causes of threat and vulnerability;
- Strengthen the budget allocation and the institutional capacity of INCRA, FUNAI, ICMBio and other federal and state bodies responsible for the protection of the rights of indigenous, Quilombola, peasant and other traditional communities;
- Finalise the process of demarcation of Quilombola and indigenous territories;
- Move forward with the agrarian reform policy;
- Revoke regressive laws and decrees and withdraw regressive draft laws and other normative acts encouraging or allowing mining and other business activities in indigenous lands, regularising illegal activities in these lands and weakening environmental licensing and other environmental protections;
- Put in place a robust legal and regulatory framework to ensure businesses respect human rights in their operations, including requirements for adequate environmental and human rights due diligence in line with OECD instruments.

#### **B. CIVIC SPACE**

#### PUBLIC GOVERNANCE COMMITTEE'S CORE PRINCIPLES

- A **sound structure of government**, including the **separation of powers** and the **ability to maintain the rule of law** and continuously **strengthen trust in institutions and democracy**;
- **Strengthen the public institutions' ability to promote systemic change** as a way to respond to economic, social and environmental challenges through evidence-based and innovative policies;
- An open government able to **foster transparency and accountability** towards citizens, communicate with the public, **promote stakeholder participation** throughout the policy cycle, and **protect and promote civic space**;
- A coherent and comprehensive public integrity system, enabling effective government accountability and building a culture of integrity, **including through sound safeguards at the intersection of the public and private sectors for lobbying and conflict of interest**;
- A **fit for purpose public service** aiming to ensure that adaptive and responsive employment systems enable **skilled and effective public servants to work in values-driven culture and leadership**, integrating strategic workforce planning and management, diversity, and mechanisms to ensure **staff performance and capacity**;

#### INVESTMENT COMMITTEE'S AND WORKING PARTY ON RESPONSIBLE BUSINESS CONDUCT'S CORE PRINCIPLES

- Evidence of commitment and effective measures to promote **Responsible Business Conduct** in relation to **disclosure; business respect for human rights**, including those of indigenous peoples; employment and industrial relations; environment; anti-corruption; consumer interests; science and technology; competition; and taxation; including the **implementation of the OECD Guidelines for Multinational Enterprises** and the **use of the OECD Due Diligence Guidance by business**, as well as an **adequate legal and regulatory framework in the areas covered by the Guidelines**;

#### ENVIRONMENT POLICY COMMITTEE'S CORE PRINCIPLES

- Ensuring effective enforcement of environmental laws by **strengthening the capacity of environmental agencies** and **encouraging civil society's participation in such efforts**, including by providing adequate access to justice, fighting impunity for violations of environmental laws and ensuring that acts of violence and intimidation against environmental defenders are rigorously investigated and prosecuted;
- Implementing a requirement for environmental assessment and continuous monitoring of projects, plans and programmes with potentially significant impacts on the environment, with measures for **transparency and meaningful participation, early in the decision-making process and throughout implementation, by all people, including vulnerable, indigenous and local communities**;
- Improving the process and quality **environmental information and reporting**, providing **objective, reliable, policy-relevant and accessible information on the**

environment and sustainable development to decision makers and the public, including in ways that make it easy for local communities to access and understand;

#### REGULATORY POLICY COMMITTEE'S CORE PRINCIPLES

- Commitment to **strengthen public governance** through regulatory policy leading to high quality, fit-for-purpose laws and regulations that ensure **transparency, legitimacy, accountability** and respect for the rule of law to continuously strengthen trust in institutions and democracy;
- Improve and **strengthen regulatory policy and governance at all levels of government** to **promote regulations that respond to economic, social and environmental challenges**;
- Adherence to the **principles of transparency and public participation in the development of regulations**;
- Regulatory performance, including the **performance of its regulatory system**, focussing on the organisation of the functions of its regulatory agencies and inspectorates, their **public accountability** and their conformance with review and appeals processes;

#### COMMITTEE ON DIGITAL ECONOMY POLICY'S CORE PRINCIPLES

- Preserve digital technologies' role in stimulating innovation and advancing economic and social goals and in **giving voice to democratic aspirations**, while **promoting a safe and trusted online environment for all users, including vulnerable populations** such as children;
- **Protection of individuals' personal data and privacy** and co-operation in the enforcement of privacy laws;

#### ISSUES OF CONCERN

The last few years saw Brazil's long tradition of civil society participation in public institutions and decision-making crumble through a myriad of administrative interventions as well as deliberate government actions and omissions to suppress the civic space. The majority of concerns highlighted below arose under the Bolsonaro administration. The ease with which that administration denied stakeholders public access or otherwise persecuted civil society **shows how vulnerable civil society participation is to political change in Brazil – a vulnerability that Brazil should resolve through legally insulating stakeholder participation from political change:**

- **Proactive administrative measures eliminated or reduced civil society participation in collegiate bodies**
  - In its 2022 Open Government review of Brazil, the OECD pointed out that in recent years the federal government had taken "a reverse path aiming at dismantling certain well-established social participation practices such as the Councils, the Conferences and the National System of Social Participation."<sup>57</sup> As demonstrated below, the Lula administration has already corrected several of the efforts at dismantling social participation. But it remains to be seen if and how collegiate bodies will be able to



function, and much damage done during the period without adequate stakeholder input has not been addressed.

- Presidential Decree 9.759/2019 of April 2019 sought to abolish the Public Policy Councils and impose restrictive rules for civil society participation in federal government decision-making processes. By order of the Federal Supreme Court, the decree was suspended and some collegiate bodies were reinstated. However, their structure was significantly altered and the percentage of civil society participation in them was significantly reduced or removed altogether.<sup>58</sup> On January, 1<sup>st</sup>, this Decree was revoked by the new administration.
- Environmental collegiate bodies such as CONAMA (the main environmental collegiate body, responsible for defining fundamental rules for the protection of the environment and human health in Brazil) and CONABIO (the body which promotes and monitors Brazil's implementation of commitments under the Convention on Biological Diversity) saw the percentage of civil society participation in them drop significantly as a result of government restructuring.<sup>59</sup> For example, ICMBio, the National Water Agency, the Prosecution Office, indigenous representatives, and members of the scientific community all lost their seats in the new composition of CONAMA, while participation from the federal government and business sector (and their balance of power) increased considerably.<sup>60</sup> A new Decree 11.417/2023 of February 2023 restructures CONAMA, with more participation of civil society, although the government still retains most of the seats. Stakeholder representation in this collegiate body must be equal<sup>61</sup>.
- Civil society participation was completely removed from the National Environment Fund, a government fund that supports projects on sustainable use of natural resources.<sup>62</sup> At the same time, the number of business representatives was increased from 2 to 5 by Decree 10.224/2020.<sup>63</sup> Under the Lula administration, Decree 11.372/2023 makes several changes at this deliberative council and civil society regained seats, with representatives to be selected by electoral process<sup>64</sup>.
- The composition of the Executive Commission for the Control of Illegal Deforestation and Recovery of Native Vegetation (CONAVEG), responsible for planning policies against deforestation, was changed and the two seats for CSOs were removed.<sup>65</sup>, but Decree 11.367/2023 recreated these seats<sup>66</sup>.
- Other bodies were effectively dissolved, such as the multi-stakeholder National Council for Food and Nutrition Security (Consea), which was responsible for advising on policies and defining guidelines for guaranteeing the human right to food, and integrating government actions with a view to serving the portion of the population that does not have the means to provide for their basic needs, in particular the fight against hunger<sup>67</sup>. Under the Lula administration, Provisional Measure 1.154 recreated Consea, which is expected to have its first meeting on March 2023, focusing on emergency actions due to increased hunger and overcoming the short budget.
- Decree 9.759 also revoked previous norms that had established the National Social Participation Policy and the National Social Participation System. But this decree is no longer valid due to the Decree 11.371/2023. In addition, on January 31, 2023, the Lula administration created rules establishing the Social Participation Council of the Presidency of the Republic (Decree 11.406/23) and creating the Social Participation System (Decree 11.407/23). The Council is a forum for civil society to advise the President of the Republic in dialogue and interlocution with civil society organizations and with the representation of union and popular movements; and promote dialogue

with the General Secretariat of the Presidency of the Republic regarding social participation in the execution of public policies<sup>68</sup>.

- In its 2022 RBC Review, the OECD noted the government's creation of a National Council of the Legal Amazon in 2020, with the tasks of proposing and coordinating government action related to the preservation, protection and sustainable development of the Legal Amazon, but pointed out that this body lacked stakeholder representation.<sup>69</sup> The National Council of the Legal Amazon does not exist anymore (revoked by Decree 11.367/2023), but its structure and objectives are under the Ministry of the Environment. Deforestation control policies in the biome will be the responsibility of an Interministerial Commission, formed by 17 Ministries, under the scope of the Action Plan for the Prevention and Control of Deforestation in the Legal Amazon (PPCDAm), which is back in force under the new administration<sup>70</sup>.
- **Proactive administrative measures and deliberate omissions have undermined the ability of collegiate bodies to function**
  - The Bolsonaro administration undermined the work of collegiate bodies by directly interfering with their management, obstructing their operations or bypassing civil society' input.
  - In August 2019, the Minister of Family, Women and Human Rights dismissed the Coordinator – Secretary of the National Council for Human Rights without consulting members of the Council who had appointed him.<sup>71</sup>
  - In February 2021, this same minister established a working group to reformulate the current National Human Rights Policy (PNDH) without any substantive civil society participation.<sup>72</sup> Until that point, Brazilian civil society had played a key role in the formulation of all of the nation's PNDHs.
  - In June 2019, the government dismissed all members of the Mechanism for Preventing and Combating Torture, the body that inspects prison conditions in the country (two months later, a judicial decision suspended the decree and reinstated the dismissed members).
  - The government also undermined the ability of the National Committee for Preventing and Combating Torture to operate by delaying by almost one year the confirmation of its new members.<sup>73</sup>
- **CSOs have come under intense surveillance, and have been persecuted and vilified for their work**
  - In its June 2022 Open Government assessment of Brazil, the OECD pointed at evidence suggesting a deterioration of the enabling environment for CSOs, due to “a decrease in available public funding, a reduction in opportunities to engage in policy-making and a negative discourse on CSOs from public officials.” It noted that the relationship between CSOs and the government had become conflictual and polarised.<sup>74</sup>
  - President Bolsonaro created the “Department for Relations with Non-Governmental Organisations” and introduced a number of executive measures such as Provisional Measure 870/2019 and Decree No. 9,669/2019 designed to interfere with the activities of CSOs or to create onerous bureaucratic procedures to make it more difficult for them to operate.<sup>75</sup> While many of these measures were later amended by the National Congress, they demonstrate the last government's agenda on this issue.<sup>76</sup>

- The Bolsonaro administration also mounted a surveillance regime that bore a strong resemblance with past military tactics. For example, a congressional inquiry into INCRA and FUNAI quotes reports by Brazil’s National Intelligence Agency describing in detail the actions of CSOs. These include the names of leaders, their political and family relationships as well as strategies and connections with other entities, including international organisations<sup>77</sup> (see the investigations against INCRA and FUNAI in Appendix 1).
  - The Bolsonaro administration has also sought to intimidate, and undermine the work of, social leaders and CSOs through false accusation, vilification, online attacks and other erosion practices. For example, at the start of the United Nations General Assembly meeting in September 2019, the then President Jair Bolsonaro claimed that Brazil was suffering from “radical environmentalism” and “outdated indigenism,” and criticized acclaimed chief Raoni in an attempt to delegitimize his leadership status<sup>78</sup>.
  - In 2020, Brazil’s speech at the start of the UN General Assembly meeting characterized indigenous peoples as those responsible for starting the Brazilian forest fires.<sup>79</sup>
  - The official narrative has also had the effect of encouraging or condoning violent actions by private parties both offline and online (see the cases of Sonia Guajajara and APIB, Greenpeace, FUNAI and INCRA, Larissa Mies Bombardi and the Quilombola community of Barra do Parateca in Appendix 1).
  - Online violence have included sexual violence and harassment of female internet users, and cyberattacks against CSOs (see the cases of Repórter Brasil, Patrícia Campos Mello and “United Women against Bolsonaro” in Appendix 1).
- **Attacks on media outlets and professionals have increased, undermining freedom of expression and the press**
    - While not established by law, Brazil has been living under a virtual policy of censorship.<sup>80</sup>
    - According to data from the Brazilian Association of Investigative Journalism, Brazil recorded 24 violations of press freedom from the beginning of the COVID-19 pandemic until May 2020, including direct assaults on media professionals, public vilification of journalists and media outlets and two cases of online harassment.<sup>81</sup>
    - Increasing stigmatisation and attacks on media outlets and workers has had the effect of restricting and stifling freedom of expression (see the cases of Reporter Brazil and Patrícia Campos Mello in Appendix 1).
    - In 2019, Brazil ranked among the top 10 countries in the world with the highest rates of impunity for killings of media workers.<sup>82</sup>
    - Brazil is listed 107th out of 180 countries in Reporters Without Borders’ 2020 World Press Freedom Index.<sup>83</sup>
    - In April 2021, Amnesty International reported that members of the federal government verbally attacked journalists and their work 449 times in the period between January 2019 and September 2020.<sup>84</sup>
    - President Bolsonaro has encouraged much of the rhetoric against journalists. According to a report by the National Federation of Journalists, the president made around 10 attacks against the media each month in 2019.<sup>85</sup>
    - According to this same organisation, 2020 was the most violent year for Brazilian journalists since the 1990s, with 428 cases of reported violence – covering physical as well as other forms of violence – against media outlets and journalists.<sup>86</sup>
    - In its June 2022 Open Government review of Brazil, the OECD noted that the environment for journalists and communicators had declined, resulting in journalists

practising self-censorship for fear of civil lawsuits, criminal prosecution, and professional reprisals or attacks on their reputation. It also noted that targeted violence was on the rise.<sup>87</sup>

- Threats to environmental and human rights defenders very caught international public attention again in 2022 with the murder of the Guardian journalist Dom Phillips and his Brazilian colleague Bruno Pereira, who were researching deforestation in the Amazon.
- **Anti-terrorism and national security laws have been used aggressively to undermine dissent**
  - The Bolsonaro government made repeated use of the Anti-Terrorism Law, approved during its tenure, as well as the National Security Law (dating back to the military dictatorship), to persecute and intimidate political opponents.<sup>88</sup>
  - Government officials, including members of Bolsonaro’s cabinet, have frequently raised these laws to frame and intimidate opponents and justify illegitimate investigations, essentially treating political disagreement as a crime. For example, General Augusto Heleno, accused APIB of breaching the National Security Law due to its work on indigenous peoples’ rights<sup>89</sup> (see this case, as well as similar accusations against APIB’s member Sonia Guajajara, in Appendix 1).
  - In early 2020, the São Paulo State deputy Douglas Garcia put together a dossier with the personal information, including names, photos, addresses and telephone numbers of hundreds of opponents of the federal government.<sup>90</sup> He claimed that these individuals were “terrorists” and that he would hand over their personal information to the Federal Police. A few months later, Congressman Eduardo Bolsonaro said that he had handed the dossier over to United States authorities.<sup>91</sup>
  - These actions are reminiscent of military dictatorship tactics designed to intimidate dissidents and produce a chilling effect on civil society.
  - As of February 2023, there are at least 23 bills under consideration of congress to alter the anti-terrorism law and widen the scope of the concept of terrorism in order to include social movements and civil society groups.<sup>92</sup> If passed, these bills could facilitate many human rights violations, including repression of protests, suppression of criticism and encroachments on the rights to privacy, peaceful assembly and expression.<sup>93</sup>
  - In June 2022, the OECD raised concerns about Brazil’s ongoing review of counter-terrorism legislation, warning against the introduction of “broad and imprecise terminology” which have negative repercussions on civic freedoms.<sup>94</sup>
- **Administrative measures have restricted transparency and access to information in the public administration, including on environmental matters**
  - In its 2021 environmental performance review, the OECD noted that implementation of Brazil’s Law 12.527/2011 on Access to Information was deficient and unequal between the federal, state and municipal levels.<sup>95</sup>
  - Decree 9.960 of January 2019 expanded the opportunities for lower rank civil servants to classify public information as confidential (following widespread criticism, these measures were later revoked).<sup>96</sup>
  - Other measures to undermine access to information include the lifting of restrictions on sharing personal data of people submitting access to information requests and suspending the obligation to respond to access to information requests during the COVID-19 pandemic.<sup>97</sup>
  - Access to information (and consequently meaningful participation) in relation to environmental matters has been particularly affected. A recent study has shown that

only 15% of all requests for environmental information to government agencies under Law No. 10,650/2003 were fully granted in the 2019/2020 period compared to 59% in the 2017/2018 period.<sup>98</sup>

- In the first half of 2020, the Ministry of the Environment answered only half of the requests for information received from journalists.<sup>99</sup>
  - The government has also forbidden IBAMA from responding to queries from the media and ICMBio from disclosing studies, opinions and research without prior authorisation, and it has temporarily restricted the publication of information concerning environmental crimes.<sup>100</sup>
  - Other actions to restrict access to information concerning the environment have included changes in communication protocols of environmental bodies, deletions from environmental databases, delegitimization of public bodies responsible for producing environmental data, and threats to public servants.<sup>101</sup>
  - While Brazil signed the Escazú Regional Agreement for Latin America and the Caribbean on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Affairs (Escazú Agreement), the Bolsonaro government has not sent it to Congress for approval. This has impeded its ratification.<sup>102</sup>
  - In June 2022, the OECD noted that “Brazil [was] facing challenges regarding its information ecosystem, with negative effects on trust, democracy and the open government agenda.”<sup>103</sup>
- **Businesses are not required to disclose critical information, or requirements are not properly enforced**
    - Communities and individuals living in the vicinity of high-risk industrial and infrastructure projects are systematically denied access to relevant information. This is due to a combination of corporate control over information and authorities’ inability or failure to generate, request, or check and corroborate relevant information (see the Piquiá de Baixo, Mariana and Brumadinho cases in Appendix 1).\*

\*Please see our separate brief to OECD committees on climate change, deforestation and environmental degradation for a fuller explanation of access to information concerns in relation to environmental matters.

## RECOMMENDATIONS

- Protect and ensure respect for the human rights to freedom of expression, peaceful assembly and association in line with the International Covenant on Civil and Political Rights and other international and regional instruments binding on Brazil, and refrain from passing and/or applying legislation that encroaches on these rights;
- Ensure a consistently favourable environment for assemblies, including by developing a detailed protocol, in partnership with civil society, on implementation of the right to peaceful assembly, which includes a ban on the use of indiscriminate force and is accompanied by specific and compulsory training for police on implementation;<sup>104</sup>
- Refrain from adopting legal or administrative measures that restrict or impair the work of civil society actors and reinstate civil society participation mechanisms within governmental structures, including advisory councils and committees that were eliminated through Decree 9.759/2019 and others;
- Engage in positive public communications about the important contribution of CSOs to society;<sup>105</sup>

- Ensure the protection of CSOs' right to operate without interference and ensure that any cases of arbitrary arrest, unwarranted interference or abuse of power are duly prosecuted;<sup>106</sup>
- Re-establish dialogue with civil society and ensure the participation of the scientific community and civil society in bodies that deal with the formulation and execution of public policies;
- Ratify the Escazú Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, giving full effect to the rights enshrined in it;
- Prevent the use of surveillance to monitor and intimidate civil society and explain measures taken to this end;
- Respect the principle of transparency in the public administration, guaranteeing active transparency, protecting the Freedom of Information Law and refraining from moving away from any of its provisions, including on the free and effective provision of information requested by individuals and CSOs;
- Ensure meaningful, inclusive and equitable participation and consultation of civil society actors on issues of public interest through accessible, transparent and reliable mechanisms;
- Put in place a robust legal and regulatory framework to ensure businesses respect human rights in their operations, including requirements for adequate environmental and human rights due diligence and disclosure, in line with OECD instruments.

## C. RIGHT TO HEALTH

### HEALTH COMMITTEE'S CORE PRINCIPLES

The **ability of the health system to deliver safe, people-centred and appropriate services, including access to preventive health care and medical treatment, to all social groups** and in a transparent and timely manner;

The **governance of the health system, which includes effective design, implementation and evaluation of policies; the ability to coordinate different stakeholders; the collection, monitoring and analysis of data** on health system and policy performance; and the **ability to use health data** in a privacy respectful way to advance research and care;

### REGIONAL DEVELOPMENT POLICY COMMITTEE'S CORE PRINCIPLES

- **Regional development strategies and policies to strengthen regional and national performance**, resilience, sustainability and **citizen well-being**, and reduce territorial divides. This implies **placebased approaches to policy design and delivery tailored to the distinct attributes of each region** within a coherent national framework and which should include notably:

\*Urban development frameworks;

\***Rural development frameworks;**

\*Incentives to foster urban-rural linkages.

## ISSUES OF CONCERN

Health care provision for pollution-affected communities in Brazil is poor or non-existent, especially in rural areas.\* \*\*

\*For a fuller description of right to health challenges in the context of corporate-related environmental degradation and pesticide pollution, please see our separate brief to OECD committees on Environment.

\*\* Please see below under [Indigenous Peoples' Rights](#) for shortcomings in healthcare provision to indigenous peoples in the context of the COVID-19 pandemic. For challenges facing Brazil's public universal health system (SUS) and shortcomings in protecting workers from COVID-19, please see below under [Labour Rights and Social Protections](#).

- **Pollution-affected populations in rural areas lack access to adequate health care and monitoring**
  - Lack of health monitoring and health care provision for pollution-affected people is widespread across the country, but it is particularly prevalent in rural areas<sup>107</sup> (see the Piquiá de Baixo case in Appendix 1).
  - The UN Special Rapporteur on Toxic Waste has pointed out that medical professionals and health services in rural areas of Brazil are ill-equipped to identify pesticide poisoning or fail to report incidents.<sup>108</sup>
  - Rural communities affected by pollution struggle to access health care because clinics and health centres are too far or severely underfunded.<sup>109</sup> If people receive any treatment at all, this tends to be temporary in nature, focused on providing immediate relief of symptoms without examining and tackling the underlying cause of the diseases (see the Piquiá de Baixo case in Appendix 1).
  
- **Relevant institutions' lack diagnostic capacity**
  - Lack of adequate diagnosis and underreporting affect the ability of public health authorities to understand the prevalence and magnitude of pollution and pesticide-related health problems and put in place adequate responses. The Ministry of Health has expressly recognised the historical problem of underreporting pesticide poisoning cases, especially in relation to chronic intoxication, which “leads to invisibility of the problem and a low access to information by workers and exposed populations.”<sup>110</sup>
  - Mercury-related poisoning is not being detected as symptoms are generic and untrained health professionals are not capable of identifying it<sup>111</sup> (see the Yanomami and Munduruku peoples case in Appendix 1).

## RECOMMENDATIONS:

- Protect public health from the harmful effects of environmental degradation and pesticide exposure;
- Conduct a review on the health effects of acute and chronic exposure to pesticides and other toxic chemicals from mining, manufacturing and other business activities among people living in rural areas, including indigenous, Quilombola, peasant and other traditional communities (and on vulnerable individuals within these communities, such as pregnant women and children);
- Develop and implement a protocol to receive complaints about environmental pollution and pesticide spraying around sensitive sites, conduct follow-up environmental and health

- monitoring, take action to eliminate or reduce exposure and refer alleged regulatory breaches to the relevant law enforcement authorities;
- Increase training of healthcare workers in pollution and pesticide-related health conditions, including training in clinical diagnoses, notification requirements and adequate treatment; Increase technical support to state health authorities and surveillance programs on populations exposed to environmental pollution and pesticides;
  - Increase the health budget to a level sufficient to ensure the human right to health, in line with international human rights instruments and standards;
  - Promote impact mitigation plans in areas affected by the contamination, promoting food security and sovereignty guarantee to the affected peoples.

#### D. INDIGENOUS PEOPLES' RIGHTS

##### INVESTMENT COMMITTEE'S AND WORKING PARTY ON RESPONSIBLE BUSINESS CONDUCT'S CORE PRINCIPLES

- Evidence of commitment and effective measures to promote **Responsible Business Conduct** in relation to disclosure; **business respect for human rights, including those of indigenous peoples**; employment and industrial relations; environment; anti-corruption; consumer interests; science and technology; competition; and taxation; including the **implementation of the OECD Guidelines for Multinational Enterprises** and the **use of the OECD Due Diligence Guidance by business**, as well as an **adequate legal and regulatory framework in the areas covered by the Guidelines**;

##### ENVIRONMENT POLICY COMMITTEE

- Ensuring **effective enforcement of environmental laws by strengthening the capacity of environmental agencies** and encouraging civil society's participation in such efforts, including by providing **adequate access to justice, fighting impunity for violations of environmental laws** and ensuring that acts of violence and intimidation against environmental defenders are rigorously investigated and prosecuted;
- Applying domestic policies and measures that hold polluters responsible for remediation of contaminated sites, and that **support and directly engage communities affected by pollution**;
- Implementing a requirement for **environmental assessment and continuous monitoring of projects, plans and programmes with potentially significant impacts on the environment**, with measures for **transparency and meaningful participation**, early in the decision-making process and throughout implementation, **by all people, including vulnerable, indigenous and local communities**;
- Improving the process and quality **environmental information and reporting**, providing **objective, reliable, policy-relevant and accessible information on the environment and sustainable development to decision makers and the public**,



including in ways that make it easy for local communities to access and understand;

#### REGIONAL DEVELOPMENT POLICY COMMITTEE'S CORE PRINCIPLES

- **Regional development strategies and policies** to strengthen regional and national performance, resilience, **sustainability and citizen well-being**, and reduce territorial divides. This implies **place-based approaches to policy design and delivery tailored to the distinct attributes of each region** within a coherent national framework and which should include notably:
  - \*Urban development frameworks;
  - \***Rural development frameworks**;
  - \*Incentives to foster urban-rural linkages.
- Effective multi-level governance, including **effective co-ordination within and across levels of government and policy sectors to achieve inclusive and sustainable development**, competitiveness and **well-being outcomes nationally, regionally and locally**;
- **Subnational institutional and fiscal capacity to implement subnational government policy responsibilities** as well as contribute to the design and implementation of national policy, while delivering relevant public investments and services for growth, competitiveness, equity and **sustainability in each region**;

#### HEALTH COMMITTEE'S CORE PRINCIPLES

- The **ability of the health system to deliver safe, people-centred and appropriate services, including access to preventive health care and medical treatment, to all social groups** and in a transparent and timely manner;
- The governance of the health system, which includes effective design, implementation and evaluation of policies; the ability to coordinate different stakeholders; the **collection, monitoring and analysis of data** on health system and policy performance; and the **ability to use health data** in a privacy respectful way to advance research and care;

#### ISSUES OF CONCERN

The government's failure to demarcate land, hostile rhetoric and an increase in land-grabbing under the prior administration, trespassing and violence are putting the human rights of indigenous peoples and other local communities at high risk. Entrenched neglect of indigenous peoples also manifested during the COVID-19 pandemic:

- **Historical failures to demarcate indigenous lands have been exacerbated by recent government acts to halt or delay demarcation processes**
  - The Temporary Constitutional Provisions Acts of 1988 determined that the Federal Union should conclude the demarcation of indigenous lands within five years of the enactment of the 1988 Constitution. These acts also established the obligation of the

government to issue land deeds to the remaining members of Quilombola communities. Successive governments have repeatedly failed to accomplish this task. As a result, the land of hundreds of indigenous and other local communities remains unrecognised and unprotected (see the Guarani-Kaiowá peoples' case in Appendix 1).

- 2021 saw a reduction of over 90% in Quilombola land recognition and compensation actions, concession of credit to settled families, and land acquisition.<sup>112</sup>
  - The Bolsonaro government deepened the crisis by deliberately halting the demarcation processes.<sup>113</sup> In addition, in 2019 the Ministry of Justice asked FUNAI to review 27 past delimitation and demarcation cases.<sup>114</sup>
  - Data from the Indigenous Missionary Council shows that, in 2019, 829 indigenous land demarcation applications had at least one aspect of the demarcation process pending, causing delay. Out of these applications, around 536 had undergone no steps at all.<sup>115</sup>
  - On June 2021, the Constitution, Justice and Citizenship Commission of the Lower House of Representatives approved Bill 490/07 which modified indigenous land demarcation processes. The law consolidated the detrimental “timeframe thesis”<sup>116</sup> and prohibited the expansion of already demarcated lands (see the Guarani-Kaiowá peoples' case in Appendix 1).
  - This law also allows the installation of military bases and outposts, the expansion of transportation modes, and the exploration of strategic energy alternatives on indigenous lands, regardless of consultations with the relevant communities or the federal indigenist body with jurisdiction over the matter.<sup>117</sup>
  - The OECD noted in its 2022 RBC Review the negative impacts that land demarcation failures were having on indigenous and other traditional communities, and the increase in illegal exploitation of indigenous lands, particularly for mining, logging or cattle grazing.<sup>118</sup>
- **Legislative and administrative acts have undermined or attempted to undermine protections and open up indigenous lands to commercial exploitation**
    - Brazil's Federal Constitution protects indigenous lands from exploitation, which can only occur under strict conditions.<sup>119</sup> However, in February 2020, the executive branch presented to Congress Bill 191/2020 (which is still existing, but has not been discussed recently), which would permit mining, exploitation of hydrocarbons and the use of water resources to generate electric power within indigenous lands.
    - A Public Notice of the Federal Prosecution Office indicated that Bill 191/2020 did not comply with the provisions of ILO Convention 169 as it did not require the prior consent of the affected indigenous communities.<sup>120</sup>
    - Another draft Bill 2633/2020<sup>121</sup> aims to offer an “amnesty” for land grabbers and invaders who irregularly occupied and exploited federal lands even where they are used by traditional, indigenous, and Quilombola communities.
    - In April 2020, FUNAI issued Normative Instruction No. 9 to modify existing protections to indigenous lands.<sup>122</sup> This act determines that formal declarations that privately-owned rural property respect the territorial limits of recognised indigenous lands does not extend to lands undergoing recognition proceedings, federal lands under indigenous usufruct, and areas of indigenous peoples living under voluntary isolation. The new instrument also extinguishes the Administrative Certificate which formerly identified whenever third-party property boundaries overlapped with regularized indigenous lands or those in the process of demarcation to avoid restricting “the possession of private property”.

- According to the Federal Prosecution Office, the Normative Instruction contradicts the very nature of the right of ownership of ancestral lands since it gives private property precedence over indigenous lands.<sup>123</sup>
- A congressman proposal for Legislative Decree Bill 177/2021 is seeking to undermine FPIC requirements by challenging the application of ILO Convention 169.<sup>124</sup> This is justified on the basis that ILO Convention 169 impairs the country's economic growth.
- **Weakening of environmental and indigenous peoples' agencies as well as collegiate bodies has left indigenous peoples and other traditional communities at higher risk**
  - Severe weakening of environmental protection agencies such as the ICMBio and IBAMA has resulted in less inspections and measures of protection of the environment, in turn affecting protection of indigenous peoples' rights (see above under **Environmental and Human Rights Defenders (EHRDs)**).\*
  - Budget cuts, reductions in personnel, political interference, militarization, pressure and persecution of public servants have affected bodies responsible for the protection of indigenous peoples' rights, such as FUNAI, Fundação Palmares, INCRA<sup>125</sup> (see above under **Environmental and Human Rights Defenders (EHRDs)**)
  - While FUNAI's underfunding is a historical issue, its budgetary challenges have been deepened in recent years. Its total budget for 2020, for instance, represented merely 0.02% of the Federal Government budget, and has been reduced on a yearly basis. Between January and May 2020, FUNAI received the lowest amount of funding in the last ten years, despite the pandemic and number of attacks against indigenous peoples.<sup>126</sup> Further cuts were imposed for 2021.<sup>127</sup>
  - Fundação Palmares suffered a reduction of 76.13% in its budget over 10 years,<sup>128</sup> while INCRA had its budget cut by 44% over the last twenty years.<sup>129</sup>
  - The elimination of participatory bodies responsible for indigenous policies, or reduction of indigenous representation in them, has also reduced protection of indigenous peoples' rights (see analysis above under **Civic Space**).

\* Please see our separate brief to OECD committees on climate change, deforestation and environmental degradation.

- **Government action and rhetoric have fuelled land grabbing and violence against indigenous peoples**
  - A Public Notice of the Federal Prosecution Office noted that the presentation of Bill 191/2020 and statements in support of mining in indigenous lands by some authorities at least partially explained the growth of illegal activities in indigenous lands.<sup>130</sup>
  - According to the Indigenous Missionary Council, invasions, illegal resource exploration, and damage to heritage increased from 109 cases in 2018 to 256 cases in 2019, and increase of 134.9%. These events took place in at least 151 indigenous lands of 143 peoples in 23 states.<sup>131</sup>
  - 277 cases of violence against indigenous persons were recorded in 2019. A large number of these were murders, attempted murders and death threats.<sup>132</sup> See more cases of violence against indigenous leaders and organisations above, under **Environmental and Human Rights Defenders (EHRDs)**.
- **Deliberate omission to stem the spread of COVID-19 among indigenous peoples**
  - The COVID-19 pandemic took a particularly high toll on indigenous people. However, official data does not properly reflect the extent of the pandemic among this group,

- because cases have been under-reported or under-counted. For example, the Indigenous Health Secretariat (SESAI) has not counted cases affecting indigenous individuals who live in an urban setting or outside of indigenous settlements.<sup>133</sup>
- Surveys by civil society entities, such as APIB, suggest up to twice the number of deaths among indigenous people compared to government numbers.<sup>134</sup>
  - By July 2021, a platform for monitoring impacts of the COVID-19 pandemic on indigenous peoples in Brazil based on data from APIB, Brasil.io, and SESAI, indicated 57,357 indigenous individuals with confirmed cases and 748 deaths.<sup>135</sup> Despite the magnitude of the impact on indigenous populations, the federal government took few and insufficient measures to contain the disease. According to Open Knowledge Brasil, the government’s indigenous immunization plan was inadequate because it was based on severely underestimated numbers. Open Knowledge Brasil also revealed contradictory numbers in official sources regarding indigenous immunization statistics, with the Indigenous Immunization panel reporting in March 2021 85,000 doses more than the number presented in OpenDataSUS.<sup>136</sup>
  - A survey by the Institute of Social and Economic Studies pointed out that, up to early December 2020, FUNAI had spent only 52% of the funds designated to fight the coronavirus among indigenous peoples.<sup>137</sup> FUNAI also been unable to prevent trespassing by illegal miners and loggers, one of the main causes of causes of viral contamination among indigenous peoples.<sup>138</sup>
  - In July 2020 and January 2021, the Inter-American Human Rights Commission granted injunctions to the Yanomami and Ye’kwana, Munduruku, and Guajajara and Awá of the indigenous land of Araribóia peoples to guarantee effective protection from the infection and provision of adequate healthcare.<sup>139</sup> All of these groups are isolated or only recently contacted, making them very susceptible to the severe development of non-indigenous illnesses.
  - In July 2020, in response to an “action against the violation of a constitutional fundamental right” (ADPF 709), Rapporteur Justice Roberto Barroso issued a preliminary order for the development, with community-level involvement, of plans to contain invaders in reserves, erect sanitary barriers for indigenous communities in isolation or that were recently contacted, ensure broad access to the Indigenous Health Subsystem, and prepare a strategy to fight and monitor COVID-19 amongst indigenous people.<sup>140</sup> However, the death toll remained high in the months that followed, suggesting that the decision was not complied with.<sup>141</sup>

## RECOMMENDATIONS:

- Respect and protect the rights of indigenous peoples and other local communities in line with ILO Convention 169 and all other relevant international human rights instruments;
- Ensure that consultation processes for business operations on indigenous land are systematically carried out and meet FPIC standards;
- Desist from the current regressive regulatory agenda by abandoning draft bills 3.729/04 (Environment Licensing), 2.633/2020 (“Land Grabbing Draft Bill”), 490/07 (indigenous territorial rights), 191/2020 (mining in indigenous lands), FUNAI’s Normative Instruction No. 9 and any other existing or prospective laws, decrees or administrative acts that remove protections for the environment and indigenous peoples;

- Assure the ability (including financial and human resources) of administrative bodies to act independently and diligently in monitoring and enforcing norms and regulations protecting indigenous peoples' rights and applying sanctions to those who violate these rights;
- Increase inspections of illegal invasions, land grabbing and illegal extraction of natural resources from indigenous lands, and remove all invaders;
- Ensure robust investigations and prosecutions of those who threaten, attack or kill indigenous leaders or members of indigenous communities;
- Enforce the prohibition on mining in protected indigenous territories, prioritising an immediate halt to all gold prospecting activities;
- Demarcate all indigenous land, including land not inhabited by indigenous people in 1988, within a reasonable schedule;
- Improve the land management and property governance system, including by publicising processes and digitalizing systems in synchronization with other systems (such as the Rural Cadastral Registration (Cadastral Ambiental Rural or CAR), the electronic Land Management System SIGEF,<sup>142</sup> the Federal Revenue service, Real Estate Registry Office systems, etc.), with the goal of enhancing control mechanisms, providing legal security, and solving property conflicts;
- Put in place a robust legal and regulatory framework to ensure businesses respect human rights in their operations, including requirements for adequate environmental and human rights due diligence, in line with OECD instruments;
- Reinforce efforts to address the COVID-19 pandemic in relation to indigenous peoples, including by ensuring accurate statistics on the number of those affected and those immunised, halting and eliminating invasions, granting indigenous people priority for vaccination and guaranteeing them access to quality health services.

See also recommendations related to indigenous peoples, Quilombola and other traditional communities under [Environmental and Human Rights Defenders \(EHRDs\)](#).

## E. LABOUR RIGHTS AND SOCIAL PROTECTIONS

### INVESTMENT COMMITTEE'S AND WORKING PARTY ON RESPONSIBLE BUSINESS CONDUCT'S CORE PRINCIPLES

- Evidence of commitment and effective measures to promote **Responsible Business Conduct** in relation to disclosure; **business respect for human rights**, including those of indigenous peoples; **employment and industrial relations**; environment; anti-corruption; consumer interests; science and technology; competition; and taxation; including the **implementation of the OECD Guidelines for Multinational Enterprises** and the **use of the OECD Due Diligence Guidance by business**, as well as an **adequate legal and regulatory framework in the areas covered by the Guidelines**;

### EMPLOYMENT, LABOUR AND SOCIAL AFFAIRS COMMITTEE'S CORE PRINCIPLES

- Ensuring that labour market, training, social protection and migration **policies and institutions** are in place to facilitate economic adjustment and promote **inclusive and sustainable economic prosperity for all** through:

\*appropriate **inclusive labour market** and training policies and institutions as well as **industrial relations systems which are in line with the 2018 OECD Jobs Strategy**;

\*policies to improve **labour market opportunities for under-represented and vulnerable groups** (for example, the unskilled, persons with disabilities, youth and older people) as well as **policies to promote social dialogue, labour market inclusion and the transition from informal to formal employment**;

\*policies to promote **gender equality in employment and pay**, as well as in training and access to social protection;

\*policies to promote the **economic, employment and social opportunities for all groups of young people**;

\*policies to promote the social and labour market inclusion of persons with disabilities and mental health issues;

\*financially and socially sustainable policies to promote **social integration and cohesion**, including **retirement income policies, support for families with children, and measures designed to assist people without work and other vulnerable groups to combat poverty and find productive and rewarding jobs**;

\*effective **governance of the labour market and social protection systems**, including the capacity to monitor the implementation of policies and analyse and evaluate the outcomes achieved;

\*policies to ensure the **full respect of labour rights** and thorough exercise of individual and **collective labour rights**, including through **effective labour inspection**, with a particular emphasis on **fundamental labour rights, including the ILO Fundamental Principles and Rights at Work**;

\***policies to combat all forms of discrimination** in all areas of the economic and social life of the country; [...]

#### REGIONAL DEVELOPMENT POLICY COMMITTEE'S CORE PRINCIPLES

- **Regional development strategies and policies** to strengthen regional and national performance, resilience, **sustainability and citizen well-being**, and reduce territorial divides. This implies **place-based approaches to policy design and delivery tailored to the distinct attributes of each region** within a coherent national framework ...
- Effective multi-level governance, including **effective co-ordination within and across levels of government and policy sectors to achieve inclusive and sustainable development**, competitiveness and **well-being outcomes nationally, regionally and locally**;
- **Subnational institutional and fiscal capacity to implement subnational government policy responsibilities** as well as contribute to the design and

implementation of national policy, while delivering relevant public investments and services for growth, competitiveness, equity and **sustainability in each region**;

## ISSUES OF CONCERN

Labour rights and social protections are under threat in Brazil as a result of sweeping reforms introduced by Labour Reform Law No. 3,467/2017, and more recent legislative and administrative interventions that have had the aim or effect of undermining these rights even further:

- **Removal and deterioration of labour rights and protections through Labour Reform Law No. 3,467/2017**
  - The labour reforms introduced by Law No. 13,467 in 2017 changed approximately 200 articles of the Consolidation of Labour Laws, with the objective of dismantling labour protections and creating a more flexible labour market.
  - The reform reversed protections developed by the Superior Labor Court (SLC) over decades. For example, the SLC had established the principle that collective dismissals would only be valid following prior negotiation with the relevant trade union. The reform undid this principle and allowed all dismissals (individual or collective) to go ahead without prior authorization from a trade union or the entering of a prior agreement<sup>143</sup> (see the Embraer and Fogo de Chão cases in Appendix 1).
  - Hiring rules became more flexible, creating atypical labour contract types, such as the intermittent labour contract. Previously highly restricted temporary contracts became widely available<sup>144</sup>.
  - The reform encouraged fraudulent practices that mask labour relations through the so-called “pejotization”. This is the contracting of services by individuals in a subordinate, non-occasional manner, carried out by means of a legal entity, in an attempt to circumvent any employment relationships.<sup>145</sup>
  - By normalizing short-term contracts that should be exceptions to the norm, the reform transferred to workers the risks and costs of economic inactivity and rendered them increasingly more vulnerable to exploitation.
  - SLC jurisprudence had established that outsourcing, or subcontracting were allowed only in relation to functions that were not part of the core activities of the company (precedent 331 TST). The 2017 reform eliminated the distinction between core and ancillary activity, authorising up to 100% outsourcing of a company’s activities.<sup>146</sup>
  - Rules relative to business liability in subcontracting cases were also changed, hindering the payment and recovery of labour and social security debts by outsourced workers<sup>147</sup>.
  - The labour reform significantly altered the ways in which unions fund their activities. For example, the reform eliminated the “union tax” (collected by the government and distributed to unions to support their activities).<sup>148</sup> These changes produced an immediate, drastic reduction in union funding.<sup>149</sup> It forced unions to re-organise their limited resources to seek funding and re-negotiate processes with employers who gained leverage.
  - The reform also removed the need for union participation in negotiations, prioritising individual over collective bargaining and weakening workers’ negotiating power. It also gave negotiated agreements prevalence over legal protections, allowing individual workers to negotiate away, to their own disadvantage, legislated rights. The ILO

Committee of Experts on the Application of Conventions and Recommendations considered that this was in breach of ILO Convention No. 98.<sup>150</sup>

- The changes significantly weakened union representation and led to a worsening in labour conditions: less stable jobs, lack of remuneration for periods of inactivity for those in temporary or intermittent contracts, lower wages (payments over 20% lower than they were prior to the passage of the reform), more accidents, high employment turnover, and longer working hours<sup>151</sup> (see the tropical fruit and coffee sector cases in Appendix 1).
  - Because of the severe deterioration in labour rights protection, in 2018 the ILO included Brazil in the ‘short list’ of countries whose labour regime most severely violates international labour law.<sup>152</sup> Since then, the ILO Committee of Experts on the Application of Conventions and Recommendations has been making observations to Brazil in relation to the changes brought about by the reform.<sup>153</sup>
  - While weakening labour protections and increasing precarious and informal work, the reform did not lead to the expected increase in jobs.<sup>154</sup> According to data from the Brazilian Institute of Geography and Statistics, in 2016 there were 10.1 million unregistered employees in the private sector and 22.4 million self-employed workers. By 2020, these numbers had gone up to 11.6 million and 24.2 million, respectively.<sup>155</sup>
  - The OECD recently noted the high prevalence of informal work in the country, which, according to the organisation, is higher than in peer countries.<sup>156</sup> It indicated that informality reached 41.6% of workers in 2019, and that there was a strong correlation between informal employment and slave-like and child labour.<sup>157</sup> Agriculture is one of the sectors most affected (see the tropical fruit and coffee cases in Appendix 1).
  - In 2021, the Brazilian unemployment index reached 14.7% (over double the global average), the fourth largest unemployment rate in the world and the worst for G20 members.<sup>158</sup>
  - Parallel to harmful legal reforms, institutional arrangements have also undermined labour rights protection. Labour inspections have deteriorated by ever lower number of trained labour inspectors, which have gone from 2,935 in 2010 to 2,050 in 2020.<sup>159</sup> This number was not enough to reach all country regions, and made it difficult for the government to monitor and enforce labour standards. In 2021, the number was increased to 2,997.<sup>160</sup>
- **Recent administrative and legislative interventions have undermined or attempted to undermine labour protections further**
    - The Bolsonaro administration also introduced legislative proposals that, if passed, would lead to an even greater deterioration of the country’s legal and institutional framework for the protection of labour and social rights. Two concerning examples include Senate Bill 432/2013, which restricts slave labour only to cases where there is restriction of freedom, and Constitutional Amendment No. 18/2011, which would reduce the minimum age for work to 14, under the understanding that child labour is a valid solution to poverty and unemployment.
  - **Recent institutional and budgetary decisions have also severely undermined labour rights protections**
    - The Bolsonaro administration took the decision as soon as it took office to eliminate the Ministry of Labor and Social Security, turning it into a secretariat under the Ministry of Economy.<sup>161</sup> With this reform, most of the Ministry of Labour’s tasks were lost.<sup>162</sup> While the government reinstated the Ministry of Labor and Social Security in July 2021, the



reform meant that for nearly two years the country had no central entity responsible for preparing, overseeing and driving forward a nation-wide employment and social security policy.<sup>163</sup>

- In its first annual budget, the Bolsonaro administration cut funds for labour inspections by 49% compared to the previous year.<sup>164</sup> Additional budget cuts for the Ministry of Labour and Social Security were yet again proposed for the 2022 budget.<sup>165</sup>
- The Bolsonaro administration also consistently reduced trade union participation in previously strong social dialogue spaces. For example, it launched the Mobilisation for Employment and Productivity initiative with the purpose of modernising the Brazilian economy by, among other measures, diminishing regulatory burdens on businesses. While the programme was developed in close partnership with business and local governments, it did not (and does not) involve trade unions (or any other CSO representative).<sup>166</sup>

Please see similar institutional and budgetary interventions to undermine protection of the environment, indigenous peoples' rights and other social protections under [Environmental and Human Rights Defenders \(EHRDs\)](#) and [Civic Space](#) above.

- **Access to justice and reparations for labour offences is difficult and expensive**
  - Slow and complicated judicial proceedings undermine the ability of individual workers affected by labour breaches to obtain reparations. Delays often push claims beyond applicable statutes of limitation, leading to impunity.<sup>167</sup>
  - Given the precarious and insecure employment conditions, many workers accept poor working conditions and only claim their rights in court after they have been dismissed. However, the 2017 labour law reform removed the existing workers' waiver of court fees, rendering legal claims expensive and highly risky, and making workers fearful of filing labour claims.<sup>168</sup> The OECD pointed out that the number of new cases filed before labour courts in the first year following the reform had dropped by a third.<sup>169</sup>
  - In 2016, the Inter-American Human Rights Court (IACtHR) found that Brazil had violated the rights to access justice and to a legal process of reasonable duration, of 128 workers enslaved in the Fazenda Brasil Verde farm, in the State of Pará. This was the first time the IACtHR convicted a state in a slave labour and human trafficking case.<sup>170</sup>
- **Domestic chores and pay gap hinders women's job and financial security**
  - A gender-based wage gap persists: even if they are more qualified than male counterparts, Brazilian women workers receive 77.7% of men's salary.<sup>171</sup>
  - Brazilian women take the bulk of unpaid homecare responsibilities and workload. Studies show women dedicate 21.4 hours per week to unpaid homecare activities, almost twice as much as men, who spend around 11 hours.<sup>172</sup> The uneven divide of homecare responsibilities hinders women's permanence in the job market and pushes them toward lower paid and less dependable work (see the tropical fruit case in Appendix 1).
  - Lower-paying sectors such as agriculture and domestic services have a higher proportion of women workers, along with non-whites.<sup>173</sup>
  - The OECD confirmed in its 2022 RBC Review that inequality and poverty disproportionately affect women, along with non-white Brazilians.<sup>174</sup> Women were also disproportionately affected by the COVID-19 pandemic.<sup>175</sup>
- **Poor health and safety standards expose thousands of workers to ill-health, injury and death**

- Workers in the agricultural sector face a high risk of poisoning by agrochemicals, often lacking adequate protective gear.<sup>176</sup> Brazil actively uses many agrochemicals banned in many other OECD member states, and Brazil's fruit exports lead in the ranking of foods grown with excessive (often illegally excessive) use of such chemicals<sup>177</sup> (see the tropical fruit case in Appendix 1).\*
- The Mariana and Brumadinho dam disasters revealed serious deficits in implementation and enforcement of health and safety standards in the sector. After these disasters, Brazilian authorities identified around 50 tailings dams that posed immediate stability risks.<sup>178</sup> Despite these findings, Brazil took measures to expedite licensing and did not ensure adequate monitoring and oversight of mine operations, putting thousands of workers at risk.<sup>179</sup> The health and safety failures preceding the Mariana and Brumadinho dam collapses led to the death of hundreds of workers (see both cases in Appendix 1).\*
- From 1980 to 2010, Brazil registered over 4,000 deaths by mesothelioma, caused by exposure to asbestos.<sup>180</sup> Over 70 countries have created legislation to ban asbestos from their territories, including many OECD member states.<sup>181</sup> Brazil has allowed asbestos mining and other asbestos-related operations to continue to this day, putting the lives of thousands of workers at risk (see the Eternit asbestos case in Appendix 1).
- Systemic health and safety deficits came to the fore and were most evident during the COVID-19 pandemic. Thousands of workers were made to continue working throughout the pandemic without adequate protective equipment and other measures to limit the spread of the disease, and were forced to continue working even when showing symptoms or in the context of workplace outbreaks (see the Brazil coffee and meat industry cases in Appendix 1).

\*Please see our separate brief to OECD committees on climate change, deforestation and environmental degradation.

- **Brazil is not preventing and punishing slavery and human trafficking offences**

- From 1995 to 2021, 57,644 workers were rescued from slavery in Brazil.<sup>182</sup>
- Complaints involving the use of slave labour in the country are frequent. While these often involve major brands and modern infrastructure projects,<sup>183</sup> most cases concentrate in rural areas.<sup>184</sup> In 2021 alone, 1,551 workers were rescued from slave-like conditions in rural areas.<sup>185</sup> Almost 60% of rural workers in Brazil are employed informally, which exacerbates their vulnerability<sup>186</sup> (see the Brazilian coffee sector case in Appendix 1).
- Slave-like working conditions correlate closely with poverty and entrenched patterns of discrimination: 77% of workers rescued from slave labour in Brazil between 2013 and 2018 were non-white, and 97% did not have a high school education. The vast majority were young, between 18 and 24 years of age.<sup>187</sup>
- Out of 3,450 slave labour inspection operations between 2008 and 2019, only 2,679 defendants were accused of the crime and, out of this, only 112 were convicted with a final and unappealable decision. This amounts to 4.2% of all those accused and 6.3% of the number of people taken to court.
- The STF suspended Brazil's practice of publicly listing employers found to have submitted workers to slave-like conditions (the "dirty list") from 2014 to 2016. In April 2016, the United Nations found many governance gaps related to modern slavery in Brazil and recommended the country, among other things, to reactivate this "dirty list".<sup>188</sup>

- The Brazilian government attempted to subject publication of this list to a prior political decision of the federal government,<sup>189</sup> but this order was overturned by the STF.<sup>190</sup>
- **The 2016 constitutional cap on public spending has led to a severe deterioration of living standards for millions**
  - Since mid-2019, more than 5 million Brazilian citizens have been deprived of access to social programs and social security benefits.<sup>191</sup>
  - In 2016, the Brazilian Congress passed the Constitutional Amendment Bill No. 95/2016, establishing a new fiscal regime that imposed a constitutional cap on public spending and froze public investment.<sup>192</sup>
  - The new fiscal regime adversely impacted food security as well as access to health care and education, while exacerbating gender, racial, and class inequalities.<sup>193</sup> By 2018, 85 million Brazilians faced some degree of food insecurity.<sup>194</sup>
  - In August 2018, seven UN Special Procedures issued a joint statement urging Brazil to reconsider its austerity measures, including Constitutional Amendment 95/2016, and to put its population's human rights at the centre of its economic policies.<sup>195</sup>
  - In spite of this context, one of the first measures of the Bolsonaro administration in January 2019, was to end the National Food and Nutritional Security Policy.<sup>196</sup> By 2021, the number of households experiencing food insecurity had risen to 116.8 million, meaning 55.2% of Brazilian homes lacked full and permanent access to food.<sup>197</sup>
  - The Brazilian National Health Council estimates that Brazil's public universal health system (SUS) lost about \$4 billion in 2019 alone because of the cut in investments due to Constitutional Amendment 95/2016.<sup>198</sup>
  - The spending ceiling proved even more harmful during the COVID-19 pandemic, when it became urgent for the state to devote resources to fight the disease. Cuts in SUS's funds seriously hindered its ability to respond effectively to the health crisis.<sup>199</sup>
  - Budget cuts have also affected pension agencies and public education, among others.<sup>200</sup> In 2019, the government passed a public pension reform that imposed stricter rules for access to retirement pensions. The rules disproportionately affect informal and lower-income workers.<sup>201</sup>
  - In August 2021, the Bolsonaro Administration also terminated the Bolsa Família, responsible over its 18 years of existence for having contributed to the reduction of poverty (over 3.4 million raised over the extreme poverty line), child mortality (reduction by more than 16%), regional inequality (reduction of 14.8%), food security (over 80% of the beneficiary families used the benefit to purchase food), and girl-child participation in schools (8% increase).<sup>202</sup>
  - While Bolsonaro replaced Bolsa Família with the new "Auxílio Brasil", the new model sets no mandates or threshold for government spending, instead allowing the government to decide annually how much it will pay as a benefit, and to whom. The program also imposes conditions for access to benefits, such as children's successful outcomes in sports or access to day-care vouchers solely to families who prove that they perform paid activities or employment.<sup>203</sup>
  - The OECD noted Brazil's large income distribution inequality in its 2022 RBC Review, indicating that the country ranks as the seventh most unequal economy globally, and that inequality and poverty disproportionately affect women and non-white Brazilians.<sup>204</sup> It also pointed out gross regional disparities, with the north-eastern states characterised by lower income, higher poverty, labour informality and illiteracy compared to the southeast of the country.<sup>205</sup> These disparities were made even worse

by the COVID-19 pandemic, with most job losses among informal workers, and the risk of poverty increasing for informal workers, women and indigenous people.<sup>206</sup>

## RECOMMENDATIONS

- Repeal the Labour Reform Law No. 13,467/2017;
- Ensure full compliance with international and regional labour rights instruments, restore full protection of labour and social rights in line with these instruments, and safeguard and effectively implementing existing protections;
- Ensure appropriate protections and freedom for labour unions, ensuring collective bargaining processes and dialogue between workers and companies.
- Prioritise the formalisation of the economy as a way of ensuring effective enjoyment of labour rights;
- Initiate a broad debate with tripartite participation in order to rebuild social rights and promote modalities of work that allow full respect of all labour rights;
- Abandon de-regulatory legislative proposals and revoke executive decrees, resolutions and ordinances that dismantle or undermine existing labour and social protections;
- Elaborate and implement an effective, inclusive, rights-compatible and nation-wide employment and social security policy;
- Ensure that the Labour Ministry has an equal footing in government hierarchy to the Economy Ministry;
- Restore civil society and other stakeholder representation in collegiate bodies and other public advisory bodies involved in labour and social policy;
- Ensure appropriate budget for all ministries, state agencies and bodies engaged with labour and social rights protections, including the Labour Ministry, the judiciary and prosecutorial offices;
- Maintain a high number of labour inspectors sufficient to cover the full extent of the country and all areas of the economy;
- Ensure sufficient levels of training, financial resources and support to all labour inspectors to maximise their ability to detect violations such as trafficking, slavery, and health and safety breaches;
- Investigate and adequately sanction, where warranted, violations of labour rights;
- Increase the capacity of prosecutors and judges to pursue and conclude claims against violators of labour and social protection laws;
- Approve bills imposing more severe penalties for slave labour and other labour violations;
- Prohibit the granting of subsidies, tax incentives, and public financing to labour offenders;
- Reinstate full use of the “dirty list”;
- Remove obstacles to workers’ access to justice, including by providing free legal aid to workers who are unable to bear the costs of litigation and waiving court fees and other procedural costs;
- Create incentives for hiring women and non-white workers in secure, long-term jobs to promote job equality between genders and races;
- Promote gender equity in the undertaking of care work through policy changes and public information campaigns;
- Establish urgent measures to reduce food insecurity;
- Reinstate and guarantee the continuity of the Bolsa Família and the National Policy on Food and Nutrition Security;

- Condemn child labour, and refrain from advancing rights-incompatible measures such as the lowering of the minimum working age based on the need to reduce poverty and unemployment;
- Take practical measures to prevent child labour, such as guaranteeing access to education and qualification opportunities for all children and young people, and ensure their adequate social protection;
- Put in place a robust legal and regulatory framework to ensure businesses respect human rights in their operations, including requirements for adequate human rights due diligence, in line with OECD instruments;
- Establish in a clear and effective framework for the liability of companies that cause, contribute to, or benefit from labour violations in their operations and supply chains.

Please see also recommendations under **Right to Health** above. For additional recommendations regarding pesticide poisoning and health and safety hazards in the context of dam operations, see our separate brief to OECD committees on climate change, deforestation and environmental degradation.

## V. CONCLUSIONS

**At present, Brazil is not upholding Core Principles listed in the Accession Roadmap related to human rights and the rule of law, trust in institutions and democracy, ability of public institutions to deliver societal goals, stakeholder participation, access to justice, civic space, health, indigenous peoples' rights, labour rights, and responsible business conduct. Brazil's current policies and practices in these areas do not align with OECD values, principles and instruments.**

Brazil's record is particularly concerning in relation to the protection of EHRDs, as well as the rights to freedom of expression, assembly and association, access to information, and to participate meaningfully in public life. According to Article 19's Global Expression Report 2021, Brazil has fallen from an "open" to a "restricted" environment in the last ten years, with restrictions on freedom of expression affecting a wide range of groups such as CSOs, trade unions, communicators, indigenous persons, academics, artists, politicians, and public figures.<sup>207</sup> The OECD itself noted in June 2022 that recent years had seen "a shrinking civic space" in the country, as well as "diminishing levels of commitment to the open government agenda."<sup>208</sup> While many of these declines occurred under the Bolsonaro administration, it is not yet clear whether and how reversals will be accomplished under the new government.

Brazil's performance in relation to the rights of indigenous peoples and other local communities is also concerning, with a marked deterioration in recent years. The slowness of the land demarcation processes, the advance of economic activities on indigenous lands, the cuts to the budget of specialized government bodies and the mismanagement of the COVID-19 pandemic's impacts on indigenous people show Brazil is falling significantly short of international standards and OECD expectations on indigenous peoples' rights.

On labour and social protections, Brazil underperforms vis-à-vis OECD members. Unlike Brazil, OECD countries protect workers against arbitrary dismissals.<sup>209</sup> Brazil's unemployment rates are much higher than those of many OECD member countries.<sup>210</sup> The recent changes to labour protection rules have undermined, rather than advanced, decent and inclusive working conditions, protection of internationally recognized worker rights, and preparation of the new generations for the challenges

of the future, all priorities of the OECD and member states, as reflected in the 2018 OECD Jobs Strategy and other documents.<sup>211</sup>

**Brazil's policies and practices put it at odds with the core values of respect for the rule of law and defence of human rights. They are also contrary to many key legal instruments** such as the OECD Recommendation of the Council on Open Government, the Recommendations of the Council on Reporting on the State of the Environment, on Environmental Information, on Gender Equality in Education, Employment and Entrepreneurship and on Due Diligence Guidance for Responsible Business Conduct, to name just a few. **It remains to be seen whether Brazil will seek to pursue membership in the OECD, and if it does, whether it is "willing" and "able" to implement Core Principles and relevant legal instruments and demonstrate the "like-mindedness" required for accession.**<sup>212</sup>

**First, FIDH, Conectas and OECD Watch urge all member states and OECD committees participating in Brazil's accession process to carefully consider the analysis and cases described in this brief and adopt, as conditions for accession, the listed recommendations** for changes to Brazil's laws, policies and practices. These recommendations are in keeping with, and in fact help advance key policy areas set out for the Roadmap, such as the "strengthening of public governance", putting in place "efficient and effective social and equality of opportunity policies", advancing an "inclusive digital economy", and investing in "quality infrastructure in a transparent, accountable and inclusive way". In addition to analysing Brazil's formal adoption of laws and policies of relevance to OECD instruments, **we also urge all OECD committees involved in Brazil's accession process to look beyond formal commitments and examine progress on actual implementation on the ground.**

Second, to be able to judge actual implementation accurately, we believe it is vital that member governments and OECD committees seek the views of all relevant stakeholders, particularly rightsholders and other civil society actors in Brazil who are more closely involved with these issues and aware of the real state of implementation. To this end, **we ask that member states ensure the accession process is reasonably and appropriately transparent and inclusive.** This can be accomplished by ensuring committees make public the general stages of review to be undertaken and proactively and meaningfully engage with stakeholders at designated moments during the process.

OECD states must ensure the accession process does not become an instrument to sanitise Brazil's human rights record. The process must lead, instead, to the "long-lasting reforms" that "align with OECD standards, best policies and best practices" sought by the Roadmap.<sup>213</sup> To this end, they must ensure Brazil addresses the shortcomings listed in this brief and refrain from recommending accession before they are satisfied that the government has put in place the highest levels of human rights protection as impervious as possible to political change, as backed up by robust and concrete evidence and informed by discussions with all relevant stakeholders. If this is accomplished, we believe that the Accession Roadmap can achieve true transformation in Brazil.

## Appendix 1

Please see these cases with sources in our reports [here](#).

### **1. Case of Paulo Paulino Guajajara (2019)**

In November 2019, Paulo Paulino Guajajara, a 26-year-old Guajajara leader, was shot dead when a group of at least five illegal loggers ambushed him and another member of the Guajajara tribe in the Araribóia Indigenous Reserve, Maranhão State. He was the fourth “Guardian of the Forest”, a group of 120 Guajajara activists fighting illegal logging in the Araribóia reserve, to be killed.

### **2. Case of Ari Uru-Eu-Wau-Wau (2020)**

On April 18, 2020, Ari Uru-Eu-Wau-Wau was killed in the city of Jaru, in the State of Rondônia, after he had been threatened several times in 2019. He was a member of the territory’s monitoring and surveillance group, created two years before to protect their land from illegal intruders, including illegal miners, land grabbers or grileiros and loggers.

### **3. Case of Edilson Tembé dos Santos (2020)**

In September 2020, cacique Edilson Tembé dos Santos of the village Acará-Mirim in the municipality of Tomé-Açú, was assassinated by unknown individuals.

### **4. Case of Isaac Tembé (2021)**

In February 2021, Isaac Tembé, a leader of the Tenetehara people was killed by police officers while hunting near a farm.

### **5. Case of Fernando Araújo (2021)**

In January 2021, Fernando Araújo, a landless rural worker and land rights defender from the Movimento Sem Terra was killed in his residence in Santa Lúcia farm, in the municipality of Pau D’Arco, State of Pará. Fernando was part of a group of families that occupied Santa Lúcia farm, claiming that it had been illegally established on public land which should be used for the creation of an agrarian reform settlement. He had survived the 2017 Pau D’Arco massacre, a brutal repression of rural workers while enforcing an eviction order which resulted in 10 individuals being killed by the police in Santa Lúcia farm. He was a key witness in the criminal case that followed. So far, no one has been charged or arrested for Fernando’s murder or the previous attempt on his life.

In 2015, the National Institute for Colonisation and Agrarian Reform (INCRA) initiated an administrative process for the purchase and sale of the area. After the massacre in 2017, negotiations with the family that owned the farm advanced significantly. By early 2019, the purchase was about to be completed. However, President Bolsonaro’s suspension of all administrative processes related to the expropriation of rural areas halted the transaction, which was never completed. In January 2021, the lawyer of the workers of Santa Lúcia farm was arrested by local police on frail charges relating to a murder. National human rights organisations have denounced the case as a retribution for the work of the lawyer in the defence of the victims.

### **6. Case of Marielle Franco and Anderson Gomes (2018)**

In March 2018, Marielle Franco, city councillor and defender of LGBTIQ+, black and women's rights, along with her driver Anderson Gomes, were shot dead. In March 2019, the police arrested two former military police officers. The prosecutor in charge of the case acknowledged that Marielle had been killed for her political activity and her militancy in favour of the rights of vulnerable people for whom she worked. Also in March 2019, experts and rapporteurs from the United Nations (UN) and the Inter-American Commission on Human Rights acknowledged the work carried out by police investigators and prosecutors to uncover the truth.

However, they stressed that more needed to be done to establish the motives for the murders and those who may have ordered, authorized or consented to them. While the two former military police officers have now been charged for the murders and remain detained in custody, prosecutions have been slow to advance and ongoing investigations have not yet revealed who was behind the killings. Allegations abound that public officials are hampering the investigations. According to the executive director of Amnesty International Brazil, changes in the bodies responsible for the investigation and lack of transparency have hampered a swift and impartial process.

### **7. Case of Cacique Babau (2019)**

On January 29, 2019, Cacique Babau, an indigenous leader and human rights defender from Bahia State, received information from a confidential source about a plan to assassinate him and at least four members of his family. The plan was reportedly developed in a meeting with local farmers and representatives of civil and military police. The Bahia State government responded by including Mr. Babau in its programme for the protection of human rights defenders. However, the UN Special Rapporteur on the Situation of Human Rights Defenders reported in December 2020 that he appeared to still be facing serious threats, and that no investigation had been opened into the alleged death threats.

### **8. Case of Guarani-Kaiowá peoples (since 2001)**

The unjustified delay in administrative proceedings for indigenous land demarcation and the advent of legal obstacles, such as the "timeframe" (marco temporal) thesis, constitute acts perpetrated by the Brazilian government that promote violations to the rights of these populations. The case of the Guarani Kaiowá people clearly illustrates how the lack of effective land ownership and demarcation policies can result in ongoing violation of indigenous people's right to land and self-determination – and lead to or intensify severe conflicts between indigenous peoples, owners of rural properties, and unauthorized third parties (miners, lumberjacks, etc.).

The struggle of the Guarani Kaiowá for the demarcation of the Indigenous Land of Guyraroká has taken place since at least 2001, when anthropologic reports were first produced at the National Indian Foundation (FUNAI) demonstrating the ancestral territorial bond of that indigenous people with the land. The delay, in itself, is a violation by the Brazilian government of article 67 of the Interim Constitutional Provisions Act, which establishes that "the Federal Union will conclude the demarcation of indigenous lands within five years after the Constitution is enacted." In 2009, the Minister of Justice signed Declaratory Ordinance no. 3,219, determining the demarcation of the Guyraroká indigenous people's lands. The issuance of an ordinance by the Ministry of Justice is normally the penultimate stage in the process of demarcation and concession of a deed to an Indigenous Land, prior only to ratification by the President of the Republic and registration with a notary office on behalf of the Federal Union for usufruct by the indigenous community.

However, a farmer owning land within the Guyraroká Indigenous region filed a writ (MS 29,087) against said ordinance. In 2014, in the context of the aforementioned writ, the 2nd Panel of the



Federal Supreme Court (STF) annulled the ordinance in question, basing said decision on the so-called “timeframe” thesis. According to this thesis, only indigenous land that had been occupied by the indigenous people at the time of the enactment of the 1988 Constitution could undergo demarcation. This understanding disregards the compulsory displacements to which indigenous peoples have historically been subjected in Brazil, rendering the possibility that they occupied their ancestral lands on October 5, 1988 as highly unlikely or even impossible. This timeframe ignores the ties that traditional communities have with their territories, their ways of life, and their cosmogony, violating their rights of property and self-determination.

#### **9. Case of Maria Nasareth dos Santos (2020)**

In March 2020, Maria Nasareth dos Santos, a social leader and fisherwoman living by the Sirinhaém River, in Pernambuco State, was detained and physically attacked by members of the military police. Maria works to defend the human rights of traditional communities in her region. According to the Land Pastoral Commission that reported the attack to the National Commission for Human Rights and Minorities of the Congress’ Chamber of Deputies (CDHM), eight armed policemen, three of them hooded, found Maria in the place where she usually fishes, dragged her into a tent, slapped her in the face and covered her head with a plastic bag. The attack lasted about 30 minutes and Maria Nasareth was threatened with death should she report the incident.

#### **10. Case of the Quilombola community of Barra do Parateca (2017)**

In 2017, eleven members of the Quilombola community of Barra do Parateca, in Carinhanha, State of Bahia, were arrested for the alleged crime of “animal theft”, which was never proven. The arrests, performed through a disproportionate mobilisation of police forces to the community (large number of military and civilian police, vehicles, heavy weapons and even drones), followed a judicial decision confirming an earlier decision taken by INCRA recognising land titles to the Quilombola community. This police mobilisation was ordered by district judge and local landowner João Batista Pereira Pinto, a known opponent to the territorial claims of the Quilombola community, who in 2010 initiated a legal action against the INCRA decision.

#### **11. Case of Pesticide Poisoning of José Maria Filho in Limoeiro do Norte (2010)**

In January 2019, the Legislative Assembly of the Brazilian State of Ceará passed Law 16,820/2019, also called the “Zé Maria do Tomé Law”, banning aerial spraying of pesticides. This law is a tribute to the community leader and environmental and human rights defender, José Maria Filho (also known as Zé Maria do Tomé), who was killed in 2010 as a result of his fight against aerial spraying of pesticides in his city, Limoeiro do Norte, in Ceará.

José Maria Filho was a family farmer who, in 2008, began complaining about large fruit-exporting companies (Del Monte, BANESA, Nólem and Frutacor) overusing aerial spraying of pesticides. A key problem of aerial spraying is the pollution caused by “pesticide drift”, which can affect the environment and people surrounding the crops area. José Maria noticed problems on his daughter’s skin which he feared were caused by contaminated water. He commissioned a study to a group of scientists from the Federal University of Ceará on the quality of water on the plateau where he lived and worked. The results of one of the group’s studies showed residues of at least three of the pesticides tested, and up to 12 in certain cases, in the water of the local canals and household faucets.

The scientists also documented serious health impacts resulting from pesticide exposure: “in addition to acute intoxications, there are also long-term effects, such as abortion, and others that are still being studied, such as cancers, congenital malformations, endocrine diseases, immunological diseases (...)

with a 38% higher incidence of cancer than in other regions where there are no agribusiness companies.” Despite nation-wide regulation prohibiting aerial spraying within a buffer zone of 500 meters from cities, communities, neighbourhoods and water sources, Ceará State was failing to monitor and enforce the buffer zone. As a result of continuing pressure from José Maria Filho, community organizations, researchers and other supporters, the City Council passed in November 2009 Law 1,278/2009 prohibiting aerial spraying in the municipality. Five months later, in April 2010, José Maria was shot 25 times a few meters from his home. A month after his death, Law 1,278/2009 was repealed.

While an investigation was launched right after the murder, lawyers acting for José Maria’s family denounced many irregularities, including non-preservation of the crime scene, delays in carrying out the ballistics exam and in bringing forward prosecutions. Thanks to social pressure as well as the involvement of the National Commission for Combating Violence in the Countryside (CNCVC), the National Council for Human Rights (CNDH) and the Secretariat for Human Rights of the Presidency of the Republic, the investigations moved forward. In June 2012, charges were laid against Frutacor’s owner, a Frutacor manager and other individuals. However, in 2017, the 2nd Criminal Chamber of the Ceará Court of Justice dismissed all charges, including those against the two Frutacor individuals, maintaining the process only against one suspect.

Meanwhile, José Maria’s daughter continues to complain of health impacts derived from pesticides exposure. She also alleges that her own daughter has been suffering from precocious puberty since she was a baby. Research has established a link between precocious puberty and exposure of parents to toxic pesticides. In addition, the Water Resources Management Company, the state entity responsible for managing water resources, has confirmed the contamination of water in Ceará State derived from pesticide spraying. The case mentioned above is not an isolated one. Aerial spraying of pesticides was used in April 2020 as a “weapon of war” by a company against farming communities living between the municipalities of Jaqueira and Maraial, in the State of Pernambuco. The use of pesticides as a weapon to expel residents is not an isolated episode in Pernambuco. In April 2021, residents of the rural community of Araçá, municipality of Buriti, State of Maranhão, reported symptoms of intoxication, such as itching, fever and stains on the body after an agricultural aircraft overflight. The same poisoning occurs in the municipality of Pau D’Arco in State of Pará, to expel families who occupy the Santa Lúcia farm.

## **12. Violation of FPIC cases in the context of Minas Gerais dam collapses (2015)**

On 5 November 2015, Brazil experienced the world’s biggest mining dam disaster when the “Fundão” structure broke, dumping some 63 million cubic meters of ore tailings into the Doce River Basin. The collapse of the dam, the responsibility of Samarco Mineração S/A (a joint venture of companies Vale and BHP) caused the death of 19 people, destroyed more than 300 homes, and devastated the ecosystem along more than 600 kilometers to the Atlantic Ocean, affecting more than 40 municipalities in the states of Minas Gerais and Espírito Santo. Inhabiting the margin of the Doce river, 137 Krenak families experienced the death of the river, which became inundated with the residue-laden mud. The Doce river was considered sacred for the Krenak and was the site of rituals and intergenerational cultural shared values, besides serving as a source of water and food. A similar fate was suffered by around 1,342 families of the Tupiniquim and Guarani peoples, inhabiting indigenous land in the shoreline of the state of Espírito Santo along the right margin of the Doce river estuary.

## **13. Case of Sonia Guajajara and APIB (2019)**

Sonia Guajajara, a prominent indigenous activist and a member of the organisation ‘Association of Indigenous Peoples of Brazil’ (APIB), were accused in September 2019 by General Augusto Heleno,

Chief of the Institutional Security Office, of allegedly committing a “crime against the homeland” because of their international campaign to protect the environment in Brazil. She had urged the European Union (EU) to boycott food commodities including soya, beef and palm oil produced in areas where those products are directly linked to deforestation. A year later, General Augusto Heleno once again accused APIB on social media posts and in an interview on Rádio Bandeirantes of tarnishing the image of the government abroad. Heleno accused APIB of committing crimes against the State, invoking the same legislation used during the Brazilian military dictatorship used to target the opposition and accuse it of “treason”.

#### **14. Case of Greenpeace (2019)**

On October 25, 2019, Environment Minister Ricardo Salles insinuated, in a social media post, that the international organisation Greenpeace could be responsible for the oil spill affecting Brazilian waters and more than 2,250km of coastline in North-eastern Brazil. Commenting on the post, President Bolsonaro stated that Greenpeace’s action was a “terrorist act” and that the organisation “only hinders us”. On October 30, 2019, Greenpeace sued the Environment Minister for defamation; however, in December 2020 the Federal Supreme Court (STF) rejected the claim on grounds that the organisation had used the wrong legal basis.

#### **15. Case of FUNAI and INCRA (2017)**

Government institutions have also suffered attacks to their reputation and credibility. A congressional commission created in 2016 with a specific mandate, investigated in 2017 alleged irregularities in land demarcations conducted by the National Indian Foundation (FUNAI) and INCRA. After examining the allocation of land to indigenous peoples, Afro-descendants and small-scale farmers who already inhabited it, the commission concluded that FUNAI and INCRA officials had backed fraudulent land claims and requested the indictment of 67 people. Many believe that this was simply an attempt to undermine the institutions tasked with protecting people’s right to land, criminalise the actions of certain individuals and stop the demarcations. The investigation was instigated by a powerful agribusiness lobby whose representatives comprised more than half of the members of the Brazilian Congress at the time. Both the rapporteur and president of the commission conducting the inquiry were members of the agribusiness block within the Congress, a known detractor of indigenous and Quilombola land demarcations.

#### **16. Case of Larissa Mies Bombardi (2019)**

In May 2019, Larissa Mies Bombardi, lecturer in geography at Brazil’s University of São Paulo, published the report “Atlas of Agrochemicals and Connections between Brazil and the EU”, where she reported that “one person dies every two and half days from direct intoxication from agricultural chemicals with alarming incidences among the [Brazilian] youth.” Her work had some impacts in Europe, including the boycott of Brazilian products by Sweden’s largest organic supermarket.

After the report was released, Bombardi was subjected to threats and intimidation by unknown individuals. Her house was broken into and a laptop was stolen. She was locked in the bathroom while the robbery was taking place. Nonetheless, she continued her work and in October 2020 she co-published two papers drawing attention to the “spatial correlation” between increasing numbers of COVID-19 infections and intensive industrial pig farming in Brazil.” Following the publication of the papers, the Brazilian Association of Animal Protein Producers and the Brazilian Agricultural Research Corporation (Embrapa) sent her an email stating that she could not make such hypotheses “in an absolute tone of intimidation.” The increase of threats forced her to leave the country at the end of March 2021.

### **17. Case of Reporter Brazil (2021)**

Repórter Brasil is an NGO founded in 2001 by journalists, social scientists and researchers. It conducts investigative journalism, advocacy and research on environmental crimes and human rights violations in Brazil. In January 2021, Repórter Brasil was the target of a series of cyberattacks aimed at forcing the organisation to remove several reports from its website. The website was temporarily suspended and the organisation received an anonymous email stating: “As you may have noticed, you experienced some technical problems on the last days. So that this does not happen again, remove the materials in the 2003, 2004, 2005 (sic) folders”. Repórter Brasil did not respond to this threat and the following day its headquarters underwent an attempted break-in, prevented by the arrival of neighbours. Two days later, the attackers sent another email requesting the removal of materials by a specific date. On that day, the site was taken down for a few hours again. The attacks were reported to the Civil Police of São Paulo and the Federal Public Ministry was asked to follow the investigation.

### **18. Case of Patricia Campos Mello (2020)**

Journalist Patrícia Campos Mello, who reported on the use of misinformation and “fake news” during Jair Bolsonaro’s 2018 presidential election campaign, faced an aggressive online harassment campaign after a congressional hearing on “fake news” in February 2020. In this hearing, a former employee of digital marketing company Havan, which Patrícia Campos had accused of being involved in the misinformation campaign, accused her of lying and of being willing to trade sex for information. As a result of these statements, the journalist received hundreds of threats and online harassment on social media.

Several politicians, including the President himself and the President’s son and congressman Eduardo Bolsonaro, fuelled the abuse by sharing and repeating the allegations. Folha de S.Paulo, the newspaper for which Campos works, published an article denying the allegations against the journalist and the Committee to Protect Journalists condemned the online harassment. In May 2020, Eduardo Bolsonaro once again repeated the accusations against Campos in the YouTube channel of far-right media company Terça Livre. Patrícia Campos sued Eduardo Bolsonaro for moral damages in a civil court, and won the case in January 2021. Even then, Bolsonaro continued to repeat the accusations on their social media accounts.

### **19. Case of United Women against Bolsonaro (since 2019)**

During the 2018 presidential election, feminist activists mobilised around a Facebook group called “United Women against Bolsonaro”, which brought together more than 3 million women from different political and social backgrounds. Since its inception, the group was the target of offensive messages, pornographic images, name-calling and threats. Many of these were directed at prominent female public figures.

### **20. Case of Piquia de Baixo (since 2011)**

For decades, the communities of Piquia de Baixo and the California settlement in Açailândia, in the Brazilian State of Maranhão, have suffered from the environmental pollution caused by solid waste emanating from the activities of pig iron plants operating in their vicinity. These plants transform into pig iron (an intermediary product to steel), part of the iron mineral which is extracted in Brazil’s Carajas pole and transported to the State of Maranhão by Vale S.A. In 2011, five pig iron companies operated in Açailândia. Due to a fall in export prices of pig iron, three of them ceased to function, leaving behind deteriorating structures that are posing risks to the surrounding environment and communities. Two other companies (Siderurgica Viena S.A. and Gusa Nordeste S.A.) continue to operate. The solid

residue resulting from the plants' operations contaminated the environment over a prolonged period of time, seriously damaging not only the surrounding soil, air, water, animals and vegetation but also people's health.

As highlighted by the UN Special Rapporteur on Toxic Waste, "Studies reveal multiple cases of health problems including coughs, shortness of breath and wheezing and headaches. Sixty five percent of community members reported respiratory problems, with others suffering from ophthalmological diseases, and various skin conditions, aggravated by the pollution. Community members have been burnt from the slag and residues from pig iron, where the waste area was not properly fenced off, and no proper signalling of danger and the risks associated with contact with the pig iron". Despite the serious health complaints of the local population, the Municipal Government of Açailândia has failed to develop a strategy designed to address the specific health problems facing the community. This situation has deteriorated further with the current COVID-19 emergency, since the community is at greater risk of severe infection due to the prevalence of chronic respiratory diseases.

Health care provision in the municipality has been historically limited and underfunded. People affected by the pollution have received, at best, temporary relief to their symptoms, but this has been ineffective at solving their health conditions since they have continued to go back to the source of pollution. In addition, the lack of technical capacity locally to diagnose pollution-related diseases and the fact that these diseases were historically not subject to mandatory reporting have kept the health problems of the Piquiá de Baixo and California communities under the radar, concealing the need for a long-term strategy. The steel companies have been able to operate largely unsupervised by public authorities.

In 2011, competence to grant environmental licenses and inspect pig iron and steel activities was decentralized and transferred from the Brazilian Institute for the Environment and Renewable Natural Resources (IBAMA) to state-level authorities. In the State of Maranhão, the Secretariat for the Environment and Natural Resources (SEMA) became the authority in charge of supervising the pig iron and steel industry. However, SEMA's resources to regulate the industry were not boosted alongside the changes in the law and its ability to perform its new functions effectively has been hampered by limited equipment and insufficient staff. In the period between 2010 and 2017, for example, the agency was unable to produce one single technical study on the quality of air, water and soil in the area surrounding the steel plants. So severe has been SEMA's incapacity to regulate the industry that the steel companies were able to operate without a valid environmental licence for years. When their licenses expired in 2012, SEMA did not renew them because it found that the companies were not complying with environmental regulations.

However, it took no action to ensure the companies brought their operations into compliance. As a result of an automatic renewal instrument which allows companies to continue to operate despite findings of irregularities, the steel companies continued their operations without a valid license. SEMA claimed that it applied the pertinent sanctions but, as of 2019, no information was published regarding the types of sanctions, when they were applied and whether the companies had complied with them. These failures also expose the omissions of the Public Prosecutor of Maranhão who is also responsible for ensuring compliance with environmental legislation. Capacity constraints have made SEMA reliant on the steel companies' self-monitoring and self-generated data. Worryingly, data submitted by the companies (if any) or information concerning compliance with the environmental licenses more broadly, is not made public or available to community members or other interested parties.

SEMA has failed to allow access to this information even to the Public Defender and Public Prosecutor's Office of the State of Maranhão. The public authorities' inaction pushed the community to find redress through the courts. In 2005, Piquiá de Baixo residents filed lawsuits claiming moral and

material damages against Gusa Nordeste S.A. for the health problems caused by the pollution. It took eight years for the first instance judge to decide in favour of the claimants. In 2015, these decisions were upheld unanimously by an appeal court. As of 2019, 13 of the 21 judicial rulings in favour of the residents became final and were awaiting implementation. While the outcome of many of the legal claims has been favourable, the judicial path has not been easy for communities who have had to go through a lengthy and costly legal process while continuing to live in the vicinity of the pollution. In addition, community leaders have faced legal suits and harassment from Vale S.A. Thanks to the constant community mobilisation, Vale S.A, the Vale Foundation and the Federal government agreed to contribute to the financing of a resettlement process.

In 2016 they signed a construction contract with the community for the relocation of over 300 families. While this came as a huge relief at the time, five years later the construction process is still underway. In May 2021, the community signed an agreement with the State governor to re-start construction of the new homes, scheduled to be completed by June 2022. 16 years after they launched their legal actions, 8 years since the court's favourable decision and 5 years after signing the relocation contract, the community is still living in the contaminated area and awaiting relocation to a safe place. To this day, neither the government nor the companies have acknowledged their responsibility for the harm caused to communities.

## **21. Case of Mariana dam (2015)**

On 5 November 2015, the Fundão tailings dam in Mariana, Minas Gerais, owned by Samarco (a joint venture between the mining companies Vale S.A. and BHP Billiton) collapsed, sending over 48 million cubic metres of mud and waste into the Doce River. On its path, the mud killed 19 individuals, destroyed several villages, left thousands of people displaced and contaminated the river's aquatic life, soil, banks and water. The disaster decimated the livelihoods of over 3 million people who live along the 800km Doce River, including indigenous peoples who depend on its watershed ecosystem. Two weeks later, Samarco announced that two other structures it owed were also unsafe and admitted that its contingency plan had failed to alert people about the disaster, even those living 10 hours away from the ruptured dam. The collapse alerted the country to an impending risk of much wider dimensions, with multiple communities living near dams across the country and limited capacity of government authorities to conduct safety inspections.

Ever since the disaster, affected communities struggled to access reliable information about the nature and extent of contamination in the river and its implications for the environment and human health. The mining companies dominated safety information before, during and after the disaster. Control over information allowed the companies to manipulate data, alleging for example that the waste that poured into the river was not toxic. When health impacts from dust and heavy metals in waste piles in the Municipality of Barra Longa begun to emerge, the foundation created to manage the remediation process (the Renova Foundation) sought to exert ownership of epidemiological and toxicological studies to suppress disclosure. This made communities mistrust available information. For example, despite assurances from the companies that, after treatment, the water was now safe for drinking, communities did not feel confident to use it.

Thousands of individual and collective legal actions were filed against the companies in the aftermath of the disaster. One of the legal claims against the three companies was filed by the Federal Union and a large number of public authorities who, in March 2016, settled the claim with the companies. Under the settlement, the parties agreed to develop remedy programs and create two entities responsible for the implementation and monitoring of these programs (these entities later become, respectively, the Renova Foundation and the Interfederative Committee or CIF). Affected communities did not participate in the negotiation of the settlement agreement and had no representation in any of the

decision-making bodies within Renova and CIF. The lack of community participation in these two critical bodies resulted in both the remedial mechanism as well as its proposed remedy programs being ineffective at addressing the needs of the affected communities. Over the next few years, time had to be spent negotiating new agreements to fix some of the initial defects in the design of the remedial mechanism, leading to delays in implementation of remediation and community frustration. Even then, each new agreement was negotiated without community participation. Four years after the disaster, none of the proposed remedy projects were on track.

## **22. Case of Brumadinho dam (2019)**

On 25 January 2019, another tailings dam owned by Vale S.A. in the municipality of Brumadinho, once again in the State of Minas Gerais, collapsed. Approximately 12 million cubic meters of toxic waste poured into the Ferro-Carvão River, a tributary of the Paraopeba River. While still dealing with the devastating aftermath of the Mariana collapse, Brazil's inability to prevent another dam disaster shocked the world. The dam's waste sludge killed 272 people on its path, injured many others and totally buried the Ferro-Carvão River along with more than 130 hectares of vegetation, buildings, plantations and animals. Water sources were severely contaminated, threatening the water supply of 5.5 million residents of several municipalities, destroying livelihoods and putting the health of people living along the Paraopeba River basin at great risk.

A Parliamentary Committee of Enquiry (PCI) of Minas Gerais' Parliament, established to investigate the causes of the disaster, found a multiplicity of administrative irregularities concerning the dam's licensing history. These included oversight failures by many regulatory bodies, including the State's Secretary for the Environment and Sustainable Development (SEMAD) and the State Council for Environmental Policy (COPAM). The PCI also pointed to severe budget and staff shortages affecting the capacity of many regulatory bodies to do their job effectively as part of the problem. It mentioned as examples Brazil's National Mining Agency (ANM), which is responsible for monitoring dam safety in the country, and the State System for the Environment and Water Resources, which is responsible for controlling, monitoring and inspecting mining activities, including dam operations. Despite knowing that the dam did not meet a minimum safety threshold, in June 2018 (seven months before the collapse) the private auditing company Tüv-Süd Bureau de Projetos e Consultoria Ltda had issued a "Declaration of Stability Condition", paving the way for the mine to remain in operation.

Since then, Tüv-Süd also recommended a number of mitigation measures to deal with safety concerns which were quicker and cheaper than other safer, but more costly, options. Tüv-Süd, was contracted by Vale as an external technical advisor, yet it was at the same time also working for Vale as an internal consultant. Similarly, to the Mariana disaster, affected communities and public authorities were deprived of critical information before, during and after the disaster. Before the collapse, Vale withheld vital information concerning the safety of the dam from public authorities. The company also failed to disclose safety information to its employees and contractors. The lack of capacity of administrative bodies to conduct inspections and generate their own information also meant that authorities were reliant on company information based on self-monitoring. Even then, the same resource constraints meant that regulatory bodies could not verify corporate information.

Once again, Vale is believed to have kept health and safety studies concerning the toxicity of the waste mud secret. While significant improvements were made in relation to participation of affected communities in the remediation process relative to Mariana, communities were still excluded from important decisions. For example, the PCI noted that community representatives were not consulted in relation to an agreement reached in July 2019 between the Minas Gerais' Public Defender and Vale. In February 2020 a Brazilian court charged a number of corporate managers and employees, including Vale's former CEO, with wilful homicide and environmental crimes. However, proceedings came to an

end in February 2021 when Vale struck a deal with prosecutors and the state of Minas Gerais that settled the matter. Once again, affected communities were left out of the negotiation and are now petitioning the Federal Supreme Court to overturn the agreement. Efforts are now underway to re-examine the terms of the agreement, reproducing the same unnecessary delays, additional costs and community frustration described in the Mariana case. In agreeing to end the criminal prosecutions, public authorities crushed affected communities' hopes for criminal convictions and full knowledge of the truth.

In November 2018, the environmental agency granted the authorisation to Vale for the expansion and adaptation of their extractive activities in the Jangada iron ore mine. Nevertheless, these permits were cancelled after the 25th January 2019 the dam close to the Corrego do Feijao burst killing more than 300 people. While the mine suspended its operations after the Corrego do Feijao burst, the activity was reinstated afterwards soon after, as a result of a decision of Minister João Otávio de Noronha. However, in April 2021, the activities were suspended again, after a decision of the Special Court of the Superior Court of Justice (STJ), due to the existing risks related to the operation of the dam, especially in relation to the stability of the structure and the danger of collapse.

### **23. Case of Yanomami and Munduruku peoples (2018)**

Brazil's indigenous Yanomami reserve is in the heart of the Amazonian rainforest, and it is being increasingly affected by illegal gold mining. Illegal gold miners use mercury, which is highly toxic, to explore for gold. Liquid mercury mixed with gold-rich sediments dredged from river bottoms and streamside hills binds to the gold, making it easy to identify and separate from the waste material. The alloy is then heated, and the mercury evaporates, leaving gold nuggets. The vaporized mercury then condenses back into its solid form, falling to earth and washing into streams. The mercury pollutes the water in rivers and streams and enters the food chain by contaminating the fish. Indigenous communities who live alongside these rivers and streams intake the mercury when drinking the water or eating the contaminated fish. Since gold mining in their land is illegal, these activities fall totally outside the radar of environmental, health and other regulatory agencies and are not subject to any environmental requirements or oversight. In these circumstances, environmental degradation is much more likely and many indigenous communities are suffering the consequences.

The Yanomami reserve currently concentrates more than 15 thousand illegal gold miners. Many studies have found dangerous concentrations of mercury in large proportions of Yanomami people, including up to ninety percent. Exposure to mercury can cause damage to the nervous, digestive and immune systems, as well as problems with the heart, lungs and kidneys. The impacts of illegal mining on Yanomami villages goes further. In addition to polluting the rivers and damaging fish stocks, illegal miners also cut down the forest and scare away the animals that the Yanomami hunt. The Yanomami peoples are also frequently subject to violent attacks from armed goldminers, with little action from the authorities to stop or investigate the perpetrators. (For risks to indigenous leaders in the country, see our separate submission on "Threats to Environmental and Human Rights Defenders (EHRD) and the increasing erosion of Brazil's civic space." For a fuller description of the situation of indigenous peoples in general, see "Brazil: Threats to Indigenous Peoples rights.")

Mining in indigenous reserves is currently prohibited under Brazilian Law. However, Brazilian authorities are not enforcing the law in practice and are failing to curtail illegal mining on indigenous Yanomami lands. To protect the Yanomami territory from illegal mining, the government established four army monitoring bases in the 1990s, but by the end of 2018, three had been closed due to budget constraints. The closures resulted in renewed influxes of illegal miners. Although the National Indian Foundation (FUNAI) announced in May 2019 that the bases would be reopened in 2020, it is unclear whether they have been re-established. FUNAI's capacity to protect indigenous territories is being



severely curtailed by the current administration, which has drastically cut its budget and filled in managerial positions with people with little or no knowledge of indigenous peoples. The Munduruku Indigenous Reserve in the Brazilian Amazon state of Pará has also been heavily affected by pollution from illegal gold mining. A recent study by Fiocruz and WWF-Brazil found that six out of every 10 indigenous Munduruku participants to a study presented mercury levels above the maximum safety threshold established by health agencies.” The study also showed adverse impacts on the environment, the forests and the rivers, pointing out, for example, that mercury levels in fish “were 4 to 18 times higher than the safe limits recommended by the North American Environmental Protection Agency (EPA).”

Illegal gold mining has increased since Bolsonaro came to power, especially since he promised to legalise their activities (see below). As of February 2020, “nearly 3,800 requests had been submitted to the Brazilian government for mining-related activities inside indigenous territories or protected areas”. Thus, there are some circumstances that worsen the picture of environmental degradation, putting the health and lives of the affected populations at risk, which are better developed below, such as: (i) the difficulty in combating organized crime and corruption; (ii) the lack of studies on the status of implementation of the Minamata Convention in Brazil; (iii) the inefficiency in the control of the origin of gold inserted in the market; (iv) the lack of control over the effects of extraction on affected populations and the environment; and (v) the absence of care protocols in the unified health system for the diagnosis and treatment of mercury contamination.

#### **24. Case of Embraer (2009)**

Unlike other OECD member and member-candidate states including France, Portugal, Mexico, and Argentina, Brazil does not have legislation establishing limits for collective dismissals. In collective dismissal cases, Brazil’s legal regime offers no worker protections, such as a requirement of previous dialogue with unions, authorization from relevant authorities, organization of dismissals into tiers taking into account factors such as seniority, age, or family-related expenses, etc., or even a requirement of benefit packages that allow workers to face unemployment with a higher level of security. Recent collective dismissals by Brazilian commercial jet manufacturer Embraer are illustrative of the problem. Embraer is the third largest plane manufacturer in the world. With revenue exceeding \$1 billion, it is the main exporter of high added-value products in Brazil.

In February 2009, Embraer, without prior negotiation with the workers’ union, fired 4,273 employees, or 20% of the company’s entire workforce. The justification for the dismissal was the global economic crisis. The workers received the news with surprise, for in the previous year, the company had broken its sales record and delivered over 200 jets worldwide. The validity of the dismissal was questioned in court by the workers’ union representation (Collective Labour Dispute No. 309-2009-000-15-00), claiming that Embraer, even though it was aware that the dismissal of a significant number of workers would lead to severe social and economic impacts in the region, undertook no prior collective negotiations with the unions to attempt to mitigate said impacts.

Although Brazilian case law offered a few minimum requirements for mass dismissal cases, the issue was the source of intense debate in Brazilian courts, and the case still lacks a final decision over 12 years later. The 2017 labour reform in Brazil undermined these minimal protections under case law by establishing that no dismissal, even if it were collective, would require prior authorization from union entities or collective pacts or agreements in order to become effective. Since Embraer’s salient collective dismissal in 2009, collective dismissals without prior collective negotiations have become increasingly frequent, leaving a trail of socio-economic impacts at an individual, family, and social level wherever they occur.

## **25. Case of Fogo de Chão (2020)**

A recent example involved Fogo de Chão, a Brazilian barbecue chain with over 60 restaurants worldwide and over \$300 million in revenue. In 2020, claiming the effects of the COVID-19 pandemic as justification, the barbecue chain dismissed 690 workers without any prior negotiation and without duly paying its employees' severance packages. That same year, Embraer once again entered the spotlight by firing 2,500 workers from its facilities without prior collective negotiations and amidst claims employees were harassed to join voluntary dismissal plans. A court complaint was filed by the workers' unions, but the Labour Courts rejected the action.

## **26. The case of poor health conditions in the tropical fruit industry**

Brazil is among the five largest exporters in the world, in terms of value, of nearly thirty agricultural products. From among these products, tropical fruit exports are especially significant: Brazil is the third largest producer of tropical fruits in the world, with annual revenues exceeding \$1 billion. Unfortunately, Brazilian production chains for tropical fruits are permeated with poor labour conditions. A large portion of the men and women who work in these productive chains live in intensely vulnerable conditions, without employment agreements lasting more than six months and without adequate pay to provide them and their families a decent living. Fruit workers are among the 20% poorest workers in Brazil. In addition to inadequate contracts and pay, these workers face inadequate working conditions. For example, workers are given inadequate allowance for rest and sanitary services unsuitable for adequate personal hygiene.

Workers also face a high risk of poisoning by agrochemicals, often lacking adequate protective gear. Brazil actively uses many agrochemicals banned in many other OECD states, and Brazil's fruit exports lead in rankings of foods grown with excessive (often illegally excessive) use of such chemicals. Gender discrimination also features heavily in the fruit industry. Women in these value chains are usually hired for activities such as fruit cleaning and packing that are only in demand during specific seasons of the year. For this reason, women, more so than men, are hired for short periods of time and dismissed multiple times over the year, causing them to live in conditions of constant insecurity. This is evident in Oxfam Brasil's report, "Frutas Doces, Vidas Amargas" (Sweet Fruit, Bitter Lives), which analysed labour conditions in the industry.

Testimony from women fruit workers demonstrate "that the needs and particular characteristics of women workers, who are often mothers, are not taken into consideration in a predominantly male environment." For example, in addition to having fewer work opportunities and earning less than men, women workers in the industry are not given work conditions that meet their caregiving needs, such as to breastfeed babies throughout the day, or take leave to care for sick family members. Structural sexism in Brazil is still an unfortunate reality. A gender-based wage gap persists: even if they are more qualified than male counterparts, Brazilian women workers receive 77.7% of men's salary. Brazilian women also suffer with an unpaid workload, taking care of children, other family members, and the home. Studies show women dedicate 21.4 hours per week to unpaid homecare activities, almost twice as much as men, who spend around 11 hours. The uneven divide of homecare responsibilities hinders women's permanence in the job market and pushes them toward lower paid and less dependable work.

## **27. Case of Dom Phillips and Bruno Pereira (2022)**

In June 2022, British journalist from The Guardian Dom Phillips and his Brazilian friend Bruno Pereira were shot dead in an ambush when they were sailing in the Itaquai River through the Amazon rainforest. Dom Phillips was visiting the Amazon to work on his book "How to save the Amazon" and

Bruno Pereira was his local friend and guide. The murderers were reportedly angry at Pereira as he was trying to expose their fishing operations which were illegal. Phillips' and Pereira's bodies were dragged into the forest and buried. The initial response from the Brazilian police towards the investigation was slow and the then-President Bolsonaro laid the blame on the deceased for travelling in such a dangerous region.<sup>214</sup>

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<sup>1</sup> OECD, Roadmap for the OECD Accession Process of Brazil, 9-10 June 2022, [ROADMAP FOR THE OECD ACCESSION PROCESS OF BRAZIL](#)

<sup>2</sup> Justiça Global and Movimento Nacional de Direitos Humanos.

<sup>3</sup> OECD Watch, "OECD's accession roadmap may push Brazil to enact crucial reforms on environment and human rights", 10 June 2022, [OECD's accession roadmap may push Brazil to enact crucial reforms on environment and human rights \(oecdwatch.org\)](#)

<sup>4</sup> OECD, Roadmap for the OECD Accession Process of Brazil, 9-10 June 2022, Section I, para 4, [ROADMAP FOR THE OECD ACCESSION PROCESS OF BRAZIL](#)

<sup>5</sup> Meeting of the OECD Council at Ministerial Level Paris, 5-6 October 2021, para. 1, [2021 MINISTERIAL COUNCIL STATEMENT \(oecd.org\)](#)

<sup>6</sup> OECD, Roadmap for the OECD Accession Process of Brazil, 9-10 June 2022, Section I, para 4, [ROADMAP FOR THE OECD ACCESSION PROCESS OF BRAZIL](#)

<sup>7</sup> OECD, Roadmap for the OECD Accession Process of Brazil, 9-10 June 2022, Section I, para 4, [ROADMAP FOR THE OECD ACCESSION PROCESS OF BRAZIL](#)

<sup>8</sup> All OECD instruments can be found at <https://legalinstruments.oecd.org/en/>

<sup>9</sup> These include, the Decision of the Council establishing the OECD Scheme for the Certification of Forest Reproductive Material Moving in International Trade, the Recommendation of the Council concerning Access to Research Data from Public Funding, the Recommendation of the Council on Integrated Coastal Zone Management, DAC Recommendation on Enabling Civil Society in Development Co-operation and Humanitarian Assistance, Recommendation of the Council on Financial Literacy, and Recommendation of the Council on the Use of Economic Instruments in Promoting the Conservation and Sustainable Use of Biodiversity.

<sup>10</sup> OECD, Roadmap for the OECD Accession Process of Brazil, 9-10 June 2022, Section III, para (a) 11, [ROADMAP FOR THE OECD ACCESSION PROCESS OF BRAZIL](#)

<sup>11</sup> Global Witness, 'Deadly Environment', 15 April, 2014, p.7, <https://cdn2.globalwitness.org/archive/files/library/deadly%20environment.pdf>. Global Witness ranked Brazil at the top of the world in number of killings until 2017 and in 4th, 3rd and 2nd place for the years 2018, 2019 and 2020 respectively. Global Witness, 'Land and environmental defenders: annual report archive', <https://www.globalwitness.org/en/campaigns/environmental-activists/land-and-environmental-defenders-annual-report-archive/>

<sup>12</sup> Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its mission to Brazil, 12 May 2016, A/HRC/32/45/Add.1, para 49, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/096/43/PDF/G1609643.pdf?OpenElement>

<sup>13</sup> Final warning: death threats and killings of human rights defenders - Report of the Special Rapporteur on the situation of human rights defenders, Mary Lawlor, 24 December 2020, A/HRC/46/35, para 41, <https://undocs.org/en/A/HRC/46/35>

<sup>14</sup> Conselho Indigenista Missionário (Cimi), 'Report on Violence Against Indigenous Peoples in Brazil – 2019 data', [https://cimi.org.br/wp-content/uploads/2021/01/Report-Violence-against-the-Indigenous-Peoples-in-Brazil\\_2019-Cimi.pdf](https://cimi.org.br/wp-content/uploads/2021/01/Report-Violence-against-the-Indigenous-Peoples-in-Brazil_2019-Cimi.pdf)

<sup>15</sup> Betim, Felipe. Assassinato de liderança Wajãpi expõe acirramento da violência na floresta sob Bolsonaro. El País, 28 July 2019, [https://brasil.elpais.com/brasil/2019/07/28/politica/1564324247\\_225765.html](https://brasil.elpais.com/brasil/2019/07/28/politica/1564324247_225765.html)

<sup>16</sup> Oliveira, Valéria. Jovens indígenas são mortos por garimpeiros em conflito na Terra Yanomami em Roraima. G1, 26 June 2020, <https://g1.globo.com/rr/roraima/noticia/2020/06/26/jovens-indigenas-sao-mortos-por-garimpeiros-em-conflito-na-terra-yanomami-em-roraima.ghtml>

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- <sup>19</sup> OECD, OECD Responsible Business Conduct Policy Reviews: Brazil, 2022, OECD Publishing, Paris, p. 46, [OECD Responsible Business Conduct Policy Reviews: Brazil](#)
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- <sup>22</sup> Comitê Brasileiro de Defensoras e Defensores de Direitos Humanos, 'Vidas em luta: criminalização e violência contra defensoras e defensores de direitos humanos no Brasil – Período 2018-2020/1', p. 68-69, <https://terradedireitos.org.br/uploads/arquivos/Dossie-Vidas-em-Luta.pdf>
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<sup>50</sup> OECD, OECD Responsible Business Conduct Policy Reviews: Brazil, 2022, OECD Publishing, Paris, p. 46, [OECD Responsible Business Conduct Policy Reviews: Brazil](#)

<sup>51</sup> Comissão Interamericana de Direitos Humanos, Situação dos Direitos Humanos no Brasil, 2021, p. 37, <http://www.oas.org/pt/cidh/relatorios/pdfs/Brasil2021-pt.pdf>

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<sup>53</sup> Note from Almir Suruí, released to Brazilian press, available at: <https://revistaforum.com.br/politica/2021/5/3/apib-entra-com-habeas-corpus-para-barrar-perseguido-da-funai-snia-guajajara-almir-surui-96346.html>

<sup>54</sup> Indigenous Peoples Rights International, 'Uma anatomia das práticas de silenciamento indígena', April 2021, <https://apiboficial.org/files/2021/05/UMA-ANATOMIA-DAS-PRA%CC%81TICAS-DE-SILENCIAMENTO-INDI%CC%81GENA-1.pdf>

<sup>55</sup> As per OECD, Open Government Review of Brazil - Towards an Integrated Open Government Agenda, 21 June 2022, [Open Government Review of Brazil : Towards an Integrated Open Government Agenda | OECD Public Governance Reviews | OECD iLibrary \(oecd-ilibrary.org\)](#)

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<sup>60</sup> 'Bolsonaro reduz presença da sociedade civil em Conselho do Meio Ambiente', Gazeta do Povo, 29 May 2019, <https://www.gazetadopovo.com.br/republica/bolsonaro-conama-reduz-conselho-meio-ambiente/>

<sup>61</sup> Kaz, Roberto, 'Conama está de volta, mas ainda sem paridade', 17 February 2023, <https://www.oc.eco.br/conama-esta-de-volta-mas-ainda-sem-paridade/?swcfpc=1>

<sup>62</sup> Suzana Camargo, 'Prosecutors target Brazil's environment minister over dismantling of protections', Mongabay, 8 July 2020, <https://news.mongabay.com/2020/07/prosecutors-target-brazils-environment-minister-over-dismantling-of-protections/>

<sup>63</sup> OECD, OECD Responsible Business Conduct Policy Reviews: Brazil, 2022, OECD Publishing, Paris, p. 66, [OECD Responsible Business Conduct Policy Reviews: Brazil](#)

<sup>64</sup> Decreto nº 11.372, de 1º de janeiro de 2023, [https://www.planalto.gov.br/ccivil\\_03/\\_Ato2023-2026/2023/Decreto/D11372.htm#art1](https://www.planalto.gov.br/ccivil_03/_Ato2023-2026/2023/Decreto/D11372.htm#art1)

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<sup>73</sup> Bruno Fonseca, ‘Jair Bolsonaro exonera todos os peritos do Mecanismo de Combate à Tortura’, Publica, 11 June 2019, <https://apublica.org/2019/06/jair-bolsonaro-exonera-todos-os-peritos-do-mecanismo-de-combate-a-tortura/> ; Also, <https://mpf.jusbrasil.com.br/noticias/742729594/justica-suspende-decreto-que-extinguiu-cargos-do-mecanismo-nacional-de-combate-a-tortura>

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<sup>75</sup> Article 5, Clause II of Provisional Measure 870/2019 (later removed) granted jurisdiction for the Secretariat of Government to “supervise, coordinate, monitor and keep track of activities and actions by international organs and non-governmental organisations within national territory”.

<sup>76</sup> Civicus, ‘Jair Bolsonaro’s first 100 days in office demonstrate Brazilian president’s disregard for pluralism’, 13 May 2019, <https://monitor.civicus.org/updates/2019/05/13/jair-bolsonaros-first-100-days-office/>

<sup>77</sup> Comitê Brasileiro de Defensoras e Defensores de Direitos Humanos, ‘Vidas em luta: criminalização e violência contra defensoras e defensores de direitos humanos no Brasil – Período 2018-2020/1’, p. 107-108, <https://terradedireitos.org.br/uploads/arquivos/Dossie-Vidas-em-Luta.pdf>

<sup>78</sup> President’s speech at 75th UM Assembly. Gov, 22 September 2020, Planalto, <https://www.gov.br/planalto/pt-br/acompanhe-o-planalto/discursos/2020/discurso-do-presidente-da-republica-jair-bolsonaro-na-abertura-da-75a-assembleia-geral-da-organizacao-das-nacoes-unidas-onu>.

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<sup>92</sup> Brazil's anti-terrorism law (Law 13.260/2016), approved by Brazil's Congress in February 2016, is already problematic in many respects. Its description of offences is often vague and overly broad, many sentences are disproportionate and the criminalisation of so-called 'preparatory acts' paves the way for arbitrary enforcement.

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<sup>211</sup> See [Jobs Strategy - OECD Jobs Strategy](#) ; OECD Work on Employment, Social Protection and International Migration, 2017-18, <https://www.oecd.org/els/ELS-Brochure.pdf> ; 'OECD Employment Outlook 2020: Worker Security and the Covid-19 Crises', [www.oecd-ilibrary.org/sites/1686c758-en/1/3/3/index.html?itemId=/content/publication/1686c758-en&\\_csp\\_ =fc80786ea6a3a7b4628d3f05b1e2e5d7&itemIGO=oecd&itemContentType=book#](http://www.oecd-ilibrary.org/sites/1686c758-en/1/3/3/index.html?itemId=/content/publication/1686c758-en&_csp_ =fc80786ea6a3a7b4628d3f05b1e2e5d7&itemIGO=oecd&itemContentType=book#) ; 'Job quality', [www.oecd.org/employment/job-quality.htm](http://www.oecd.org/employment/job-quality.htm)

<sup>212</sup> OECD, Roadmap for the OECD Accession Process of Brazil, 9-10 June 2022, Section III, para (c) 14, [ROADMAP FOR THE OECD ACCESSION PROCESS OF BRAZIL2021 MINISTERIAL COUNCIL STATEMENT \(oecd.org\)](#)

<sup>213</sup> OECD, Roadmap for the OECD Accession Process of Brazil, 9-10 June 2022, para 3, [ROADMAP FOR THE OECD ACCESSION PROCESS OF BRAZIL2021 MINISTERIAL COUNCIL STATEMENT \(oecd.org\)](#)

<sup>214</sup> The Guardian, 'Amazonia, you beauty!' How the murders of Dom Phillips and Bruno Pereira renewed the fight for Brazil's forests', 25 December 2022,

<https://www.theguardian.com/lifeandstyle/2022/dec/25/murders-dom-phillips-bruno-pereira-brazil-amazon>