



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

- **Committee for Agriculture**
- **Chemicals and Biotechnology Committee**
- **Committee on Digital Economy Policy**
- **Committee on Financial Markets**
- **Environment Policy Committee**
- **Investment Committee and Working Party on Responsible Business Conduct**
- **Public Governance Committee**
- **Regional Development Policy Committee**
- **Regulatory Policy Committee**

Focus: Environment

- **Action on climate**
- **Action on deforestation**
- **Sustainable management of natural resources**
- **Pollution prevention**
- **Access to information and public participation**
- **Regulatory capacity**
- **Access to justice and accountability**
- **Protection of environmental defenders**

TABLE OF CONTENTS

I.	INTRODUCTION AND PURPOSE OF THIS BRIEF.....	3
II.	THE ACCESSION ROADMAP.....	4
III.	ALIGNED TECHNICAL REVIEWS.....	6
IV.	ISSUES OF CONCERN TO BE ADDRESSED BY OECD COMMITTEES.....	6
	1. ACTION ON CLIMATE.....	6
	2. ACTION ON DEFORESTATION.....	9
	3. SUSTAINABLE MANAGEMENT OF NATURAL RESOURCES.....	12
	4. POLLUTION PREVENTION.....	16
	5. ACCESS TO INFORMATION AND PUBLIC PARTICIPATION.....	20
	6. REGULATORY CAPACITY.....	23
	7. ACCESS TO JUSTICE AND ACCOUNTABILITY.....	26
	8. PROTECTION OF ENVIRONMENTAL DEFENDERS.....	28
V.	CONCLUSION.....	29
	Appendix 1.....	31

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”).¹ **OECD Watch, Conectas Human Rights (Conectas), and the International Federation for Human Rights (FIDH) and its member organisations in Brazil² 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.**³ Read together with the OECD’s core values of respect for the rule of law and human rights expressed in its 60th 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 climate action, deforestation, and environmental degradation in the context of corporate activities and associated impact on human 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 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 six 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 “Human Rights” 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 environmental and human rights defenders, 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 60th Anniversary Vision Statement** and **2021 Ministerial Council Statement**.⁴ The OECD's 60th 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, and environmental sustainability.⁵

This document also contains several commitments in relation to the climate, deforestation and biodiversity crises. Members commit to "taking ambitious and effective action to align [their] recovery plans with the goals of the Paris Agreement to cope with the threat posed by climate change to [their] economies and societies", to making "this a decade of action on climate", and to "achieving global net-zero greenhouse gas emissions by 2050 through deep emissions reductions in this decade to keep a limit of 1.5°C temperature increase within reach".⁶ Members also commit to "mobilising public and private investment to reach [their] climate goals, including to halt and reverse biodiversity loss and deforestation."

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.”⁷

Legal Instruments

To become a member, Brazil must also accept “all **substantive legal instruments** of the Organisation”, subject to any agreed reservations or observations.⁸ Altogether, the OECD has more than six dozen legal instruments in force that address sustainability and the environment. Many of these instruments cut across many themes and committee focus areas, such as the Recommendations of the Council on Measures to Reduce all Man-Made Emissions of Mercury to the Environment, the Recommendation of the Council concerning the Application of the Polluter-Pays Principle to Accidental Pollution, the Recommendation of the Council on Integrated Pollution Prevention and Control, and the Recommendation of the Council on Water.

The OECD has also elaborated many legal instruments that are closely connected with environmental matters. These include, for example, 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 and the Recommendation of the Council on the OECD-FAO Guidance for Responsible Agricultural Supply Chains. The latter three instruments contain important provisions on the protection of the environment in the context of business activities and environmental due diligence.

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 the environment, 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”, “action on climate change in order to achieve the objectives of the Paris Agreement on climate change” and investing in “quality infrastructure in a transparent, accountable and inclusive way”.⁹

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, climate, deforestation and environmental degradation in the context of business activities which fall under the responsibility of all the OECD committees to whom this brief is addressed. As well as being critical for the effective protection of the environment, these Core Principles are intricately connected and necessary for the effective protection of human rights. Their realisation is therefore essential for living up to the commitment expressed in the OECD’s 60th Anniversary Statement and 2021 Council Ministerial

Statement to defend and protect 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, climate, deforestation and environmental degradation 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, the effective protection of the environment is not possible without a strong legal and regulatory framework compelling businesses to carry out sound environmental impact assessments. This is consistent with the OECD Guidelines for Multinational Enterprises, under the remit of the Investment Committee. Meanwhile, a robust environmental programme can neither be elaborated nor effectively executed without ample and safe participation and input from civil society actors and disclosure of timely and relevant information to the public, all of which fall squarely within the competence of the Public Governance Committee, and so on and so forth.

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

IV. ISSUES OF CONCERN TO BE ADDRESSED BY OECD COMMITTEES

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

1. Action on climate
2. Action on deforestation
3. Sustainable management of natural resources
4. Pollution prevention
5. Accession to information and public participation
6. Regulatory capacity
7. Access to justice and accountability
8. Protection of environmental defenders

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 larger and colored font, one color per committee. 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.

1. ACTION ON CLIMATE

- **Developing and implementing effective and ambitious environmental and climate strategies and policies aimed at achieving net-zero greenhouse gas emissions by 2050 and commensurate medium-term targets in line with this pathway, while demonstrating actual implementation through robust transparency systems and no backsliding in ambition;**
- **Investing in climate resilience and adaptation** as part of the national development agenda; mainstreaming adaptation and sustainable use and conservation of biodiversity into policy making and spatial and infrastructure planning;

COMMITTEE ON FINANCIAL MARKETS' CORE PRINCIPLES

- Ensuring good market practices and policies with respect to **sustainable finance**, including ESG, **climate transition**, and other environmental considerations;

ISSUES OF CONCERN

Brazil's lack of commitment towards the climate agenda is shown in multiple ways:

- **Brazil's "new" Nationally Determined Contribution (NDC) goes against the spirit of the Paris Agreement and violates the principle of prohibiting setbacks¹⁰**
 - In December 2020, Brazil filed a new NDC before the United Nations Framework Convention on Climate Change (UNFCCC). The document restates the country's commitment to reduce greenhouse gas emissions by 37% by 2025 and establishes the indicative goals of 43% by 2030 and climate neutrality by 2060.
 - However, while the percentages were not altered from the previous NDC, the baseline was considerably changed. That is because the Third National Notice to the UNFCCC changed the methodology of estimates of emissions from use of land, thus significantly raising emissions in the base year (2005).¹¹ In practice, the new NDC increases the amount of equivalent carbon dioxide allowed in 2030 by 400 million tonnes compared to the goal presented in 2015.¹² The new NDC also represents a setback because it does not reiterate the commitment of domestic sector based measures that had been detailed in the previous NDC, such as the goal of eliminating deforestation by 2030 and increasing the use of renewable energy by 45% in the same year.¹³ The 2020 NCD in fact contains no targets or initiative concerning land use and forest protection or restoration.¹⁴
 - The new NDC motivated the filing of a lawsuit against the Federal Government, currently Brazil's main climate litigation case.¹⁵
- **Brazil's net emissions have grown in contradiction with national commitments**
 - The country's net emissions grew by 12% since 2015.¹⁶ The government also failed to observe the climate goal of its own National Climate Change Policy (Law no. 12.187/2009), increasing emissions by over one fourth instead of reducing them in a ten years period of 2010-2020.¹⁷ The increase in deforestation is a leading cause of the increase in greenhouse gas emissions, as the main source of greenhouse gas emissions in Brazil is deforestation (please see below under **Action on Deforestation**).¹⁸ Unfortunately, in 2021 Brazil declined the OECD's invitation to adhere to the

International Program for Action on Climate along with Indonesia and other BRICS countries.¹⁹

- **Deliberate government inaction has weakened the National Climate Change Fund (Law no. 12.114/2009), a key tool to finance the National Climate Change Policy**
 - The National Climate Change Fund should help support initiatives that promote a low carbon economy, reduce the impact of climate change on ecosystems and the most vulnerable populations, support the development of renewable energies, etc.²⁰
 - However, the government failed to hold meetings of the Fund's Managing Committee, to present the Annual Fund Investment Plan, and to use the available funding appropriately for mitigating climate emergencies.²¹ Research from the Institute of Socio-economic Studies found that only 10% of the budget for climate action was used in 2019.²²
 - Prompted by legal action,²³ the government eventually published the Annual Fund Investment Plan for the years 2020 and 2021, and made transfers to the fund.²⁴ However, these actions were severely delayed and insufficient. The plan contained less meaningful detail (eight pages compared to 30 pages of the previous plan), provided fewer funds than in the previous year, and lacked key information such as the composition of the Managing Committee, a description of ongoing projects and detail of how funds would be used.²⁵ The plan also did not cover initiatives directed at protecting forests and the rural environment, as had been the case previously.

- **Brazil's failure to protect indigenous people's rights is undermining delivery on its climate commitments***
 - Brazil is home to over 300 distinct indigenous groups encompassing about a million people. They live across the country, primarily in ancestral natural lands where they play a major role in the conservation of natural resources and, through the protection of forests, the prevention of climate change.
 - Laws and administrative acts that undermine indigenous peoples' rights (please see below under [Sustainable Management of Natural Resources](#)) will lead to greater deforestation rates and climate risks.²⁶

*For a fuller description of the state of protection of indigenous peoples' rights in Brazil, please see our separate Human Rights brief.

RECOMMENDATIONS:

- Support and approve the Constitutional Amendment Proposal on climate safety (PEC37/21²⁷);
- Enhance and strengthen environmental funds, particularly the Amazon Fund, the Climate Fund and the National Environment Fund.
- Comply with the Paris Agreement, but review the Brazilian NDC through a process inclusive of civil society, aligning it with the 1.5°C target and its progression clause, and integrate it with the Convention on Biologic Diversity (CDB).
- Review climate policy governance in order to ensure it is cross-sectoral and integrated with other policies, ensuring that the private sector, particularly the most highly emitting industries, are aligned with the country's revised, more ambitious, NDC.
- Rebuild trust with global partners and adopt public policies with demonstrable results to comply with the Paris Agreement, seizing on Brazil's comparative advantages, in addition to

resuming international leadership in environmental matters, especially in the climate agenda.

- Prohibit funding, public or private, to ventures that cause unauthorized deforestation.
- Ensure the updating and implementation of the National Plan on Climate Change, including action plans for the prevention and control of deforestation in biomes and sectoral plans for mitigation and adaptation to climate change.
- Include forest protection objectives as part of Brazil's broader climate objectives;
- Respect and protect the rights of indigenous peoples and other local communities in line with ILO Convention 169 and other relevant international human rights instruments.

Please also see recommendations below under [Action on Deforestation](#), [Sustainable Management of Natural Resources](#) and [Regulatory Capacity](#).

2. ACTION ON DEFORESTATION

ENVIRONMENT POLICY COMMITTEE'S CORE PRINCIPLES

- Implementing target-based, transparent policies to ensure long-term biodiversity conservation and its sustainable use, including **stopping and reversing biodiversity loss, deforestation and land degradation by 2030 as well as protecting other vital ecosystems**, through an efficient mix of economic and regulatory instruments and integration of biodiversity-related objectives into sectoral policies, as well as taking effective actions that are implemented on the ground, while respecting and enforcing the rights of indigenous peoples and local communities;

COMMITTEE FOR AGRICULTURE'S CORE PRINCIPLES

- Whether agriculture policies **foster sustainability**, in particular the **sustainable use of available water, land, energy, soil, biodiversity resources, forest – including with respect to deforestation – and contribute to solutions to climate change**;
- Whether policies for the food and agriculture sector are **coherent with** general macroeconomic, structural, **social, climate and other environmental policies**.

REGULATORY POLICY COMMITTEE'S CORE PRINCIPLES

- Improve and strengthen regulatory policy and governance at all levels of government to **promote regulations that respond to economic, social and environmental challenges**;

INVESTMENT COMMITTEE'S AND THE 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;

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 is failing to curve the rates of deforestation and biodiversity loss in the country:

- **Deforestation and related biodiversity loss is on the rise in Brazil**
 - Annual forest loss has increased significantly in Brazil since 2015, reaching decade highs in 2020 and 2021.²⁸ In 2022, deforestation decreased by 11%, remaining above 2020 levels.²⁹ New research quoted by the OECD suggests that up to 40% of the remaining Amazon forest is already approaching a tipping point.³⁰
 - Data from the Brazilian Spatial Survey Institute (INPE)³¹ shows that the deforestation rate in the Amazon in 2021 had increased by 19% in 12 months.³² This means that around 13,000 square kilometres of forest had been removed, equivalent to nearly nine times the area of the city of São Paulo. In the Cerrado biome, the deforestation increase was around 8% in 2021 and reached 24% in 2022.³³
 - Forest fire rates also increased in 2020. In 2019, there were over 197 thousand wildfires in Brazil and the number increased by 13% in 2020³⁴ with a 115% increase in tree cover loss due to wildfires.³⁵ The number of wildfires dropped by 17% in 2021 with a 38% decrease in tree cover loss due to wildfires. The Pantanal, Amazon, and Pampas biomes were the main ones affected.³⁶ In the case of the Pantanal biome, the increase in the number of fires was about 200% between 2019 and 2020.³⁷ In 2020, more than 30% of the Brazilian Pantanal burned. According to the Environmental Satellite Applications Laboratory of the Meteorology Department of the Federal University of Rio de Janeiro, this represents the burning of more than 4.5 million hectares or about 4.5 million football fields.³⁸ A study presented by the Public Prosecutors' Offices of Mato Grosso do Sul and Mato Grosso estimated that almost 60% of the 21,450 recorded hotspots (usually representing fires) in Pantanal in 2020 were caused by human action.³⁹ In 2021, almost half of the wildfires occurred in the Amazon rainforest biome.⁴⁰ In the first nine months of 2022, the Amazon rainforest saw an almost 23% surge in tree cover loss due to wildfires in comparison with the same period of the previous year.⁴¹

- In its 2021 evaluation of Brazil’s environmental performance, the OECD noted that since 2015 deforestation rates had spiralled up to decade-high peaks in 2019 and 2020.⁴² It also found that “deforestation rates inside protected areas have risen by more than 40% in 2019/2020 compared to 2018/2019” and that forest fires had increased in the Amazon as well as other megadiverse biomes such as the Pantanal and the Cerrado.⁴³
- **Brazil is failing to control illegal deforestation**
 - Around 94% of the deforestation in the Amazon over the 2019/2020 period and up to 98% in 2021 was illegal, i.e., carried out without the authorization of the federal and state environmental bodies (see the Casino Group case study in Appendix 1).⁴⁴
 - In 2020, the government announced that operations against illegal deforestation would be suspended because of the significant budget cuts to the Institute for the Environment and Renewable Natural Resources (IBAMA) and the National Institute for the Conservation of Biodiversity (ICMbio) (see below under **Regulatory Capacity**).⁴⁵
- **Government interventions and policy are contributing to deforestation**
 - In February 2020, an IBAMA Interpretative Order exempted logging companies from the need to obtain permits from that body to export native wood, allowing wood which may have been extracted illegally to enter the international markets.⁴⁶
 - The National Legal Amazon Council, a body handed over to the military under the Bolsonaro administration, replaced the 2004 Action Plan for the Prevention and Control of Deforestation in the Legal Amazon with a new plan which lacks goals, deadlines, and specific proposed activities.⁴⁷ The OECD recently expressed concerns about the abandonment of the 2004 plan, which was reportedly responsible for an 83% drop in deforestation between 2004 and 2012.⁴⁸
 - The OECD also noted that there had been a significant reduction in the number of environmental embargos imposed between 2018 and 2020, which fell from 2,589 to 385. Embargos prevent the marketing of products derived from areas that have undergone deforestation, and are one of the most effective measures to control deforestation in Brazil.⁴⁹
 - If passed, dangerous legislative proposals such as Bills 2.633/2020 and 510/2021, 191/2020, 3.729/2004 and 490/07, will lead to significantly greater rates of deforestation (see below under **Sustainable Management of Natural Resources**).
- **Brazil is failing to protect biodiversity through economic instruments**
 - In its 2021 assessment of Brazil’s environmental performance, the OECD noted Brazil’s misalignment with the 2004 Recommendation of the Council on the Use of Economic Instruments in Promoting the Conservation and Sustainable Use of Biodiversity regarding its economic valuation of biodiversity and ecosystem services.
 - The OECD found that the lack of information and technical guidance on how to assess the loss of biodiversity was hindering the formulation of effective policies and environmental compensation in the context of environmental licensing. As a result, payments were not proportional to ecological damage.⁵⁰
- **Brazil’s failure to protect indigenous people’s rights is putting forests at risk***
 - Laws and administrative acts that undermine indigenous peoples’ rights (see below under **Sustainable Management of Natural Resources**) will lead to greater deforestation

rates and climate risks, as preserved indigenous lands help maintain carbon reserves, regulate the climate and reduce the intensity of global warming.⁵¹

*For a fuller description of the state of protection of indigenous peoples' rights in Brazil, please see our separate brief to OECD committees on Human Rights.

RECOMMENDATIONS:

- Resume policies related to the control of deforestation – such as the Action Plan for Deforestation Prevention and Control in the Legal Amazon Region (PPCDAm), the Action Plan for the Prevention and Control of Deforestation and Fires in the Cerrado biome (PPCerrado), and the Amazon Fund – to achieve zero deforestation by 2030.
- Immediately develop and implement policy instruments to halt and reverse the trend in deforestation and biodiversity loss, with the goal of strengthen deforestation control in all biomes by strengthening monitoring and inspection bodies and environmental command and control policies, with support from the Federal Police, state police forces and other inspection bodies.
- Abandon the practice of pursuing deregulation through administrative acts that harm the environment and lead to greater deforestation and climate risks;
- Improve knowledge, guidance and effective application of economic valuation of biodiversity and ecosystem services;
- Create economic alternatives that reduce the appeal of deforestation, using mechanisms that have long term financial sustainability.
- Use economic instruments for forest conservation effectively;
- Ensure proper functioning of the Rural Cadastral Registration (Cadastro Ambiental Rural or CAR) to improve security of land tenure;
- Improve the land management and property governance system, including by publicising processes and digitalizing systems in synchronization with other systems (such as CAR, the electronic Land Management System SIGEF,⁵² the Federal Revenue service, Real Estate Registry Office systems, etc.), with the goal of enhancing control mechanisms, providing legal security, and solving property conflicts;
- Include forest protection objectives as part of Brazil's broader climate objectives;
- Respect and protect the rights of indigenous peoples and other local communities in line with ILO Convention 169 and other relevant international human rights instruments;
- 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.

Please also see recommendations below under [Sustainable Management of Natural Resources](#) and [Regulatory Capacity](#).

3. SUSTAINABLE MANAGEMENT OF NATURAL RESOURCES

ENVIRONMENT POLICY COMMITTEE'S CORE PRINCIPLES

- **Implementing water policies that are based on long-term sustainable water management plans, encourage joint and shared management of water quantity and quality, and address**

practices, trends and developments that affect water availability, water demand, and exposure and vulnerability to water risks;

- With respect to **sustainable management of resources**, implementing integrated life-cycle-oriented approaches to waste and materials (including plastics) management and establishing framework conditions for a more resource-efficient and circular economy;
- Ensuring that **generation of waste, including hazardous waste, is reduced**, export of waste for final disposal is minimised, and that **waste is managed in an environmentally sound manner**;
- 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;

COMMITTEE FOR AGRICULTURE'S CORE PRINCIPLES

- Whether agriculture policies **foster sustainability**, in particular the **sustainable use of available water, land, energy, soil, biodiversity resources, forest – including with respect to deforestation – and contribute to solutions to climate change**;
- Whether policies for the food and agriculture sector are **coherent with** general macroeconomic, structural, **social, climate and other environmental policies**.

REGULATORY POLICY COMMITTEE'S CORE PRINCIPLES

- Improve and strengthen regulatory policy and governance at all levels of government to **promote regulations that respond to economic, social and environmental challenges**;

INVESTMENT COMMITTEE'S AND THE 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 these areas**.

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;**

ISSUES OF CONCERN

Brazil is not ensuring a sustainable use of water and other natural resources. This is demonstrated by a multiplicity of government interventions and failures:

- **Government failure to regulate pesticide use and monitor toxic residue is putting water at risk**
 - While pesticide use is widespread and largely unregulated in Brazil (see below), monitoring for pesticide residue in food and drinking water is extremely limited.
 - Agencies tasked with doing this monitoring do not have the capacity to test for all active ingredients or all pesticides used in the country, including glyphosate and 2,4-D.⁵³
 - Municipalities are also ill equipped to do the regular testing and reporting required of them by law.⁵⁴
 - In December 2019, the UN Special Rapporteur on Toxic wastes pointed out that the Ministry of Health's program to regulate and monitor drinking water quality (VIGIÁGUA) only monitored 27 pesticide active ingredients, even though over 2000 active ingredients were permitted for use.⁵⁵
 - In its 2021 evaluation, the OECD found that pesticide residues had been detected in rivers and drinking water nationwide, that while the federal government monitored pesticides pollution in drinking water, it did not test ambient water, and that this made it difficult to assess whether the situation in the field corresponded to the estimated risks reported by pesticide producing companies."⁵⁶
- **Brazil is failing to ensure the sustainable management of its natural resources through rigorous licensing and environmental impact assessment processes**
 - In its 2021 evaluation of Brazil's environmental performance, the OECD found procedural deficiencies related to the country's evaluation of environmental impacts, mitigation measures and alternatives, inadequate consultation and failure to ensure post-licensing monitoring.⁵⁷
 - In the aftermath of the Mariana and Brumadinho dam disasters (see both cases in Appendix 1), authorities identified around 50 tailings dams that posed immediate stability risks.⁵⁸ Despite the failures that preceded and drove those disasters, Brazil took measures to expedite licensing and failed to ensure adequate monitoring and oversight of mine operations.⁵⁹ In some cases, licences for high risk dams were actually extended.⁶⁰

- **Administrative and legislative interventions have undermined or risk further undermining Brazil’s ability to sustainably manage its natural resources**
 - Between January and December of 2020, there were 593 administrative acts of the federal government related to environmental matters. Most of this had the aim or effect of undermining environmental protections.⁶¹
 - In 2020, researchers from the Climate Policy Initiative of Rio de Janeiro identified 56 draft bills in progress during that year that threatened the protection of the environment.⁶²
 - The government (including, at time of writing, under the Lula Administration) is considering a package of legislative reforms which, if passed, will have devastating implications for the environment.* These include:
 - Bill 2.633/2020, known as “land-grabbing” bill, seek to alter the Property Regularization Law. It would provide an amnesty for land-grabbers and invaders that irregularly occupied, exploited, or deforested federal lands.⁶³
 - Bill 1.426/2020 aims to reduce the area of the Amazon Legal Forest Reserve in the states of Amapá and Roraima from 80% to 50% and make it easier to reduce the percentage of land that must remain under protection.⁶⁴
 - Bill 191/2020 which would allow mining and other large-scale exploitation of natural resources in indigenous territories with the consequent impact on both the environment and indigenous peoples’ rights.
 - Bill 3.729/2004 which would dismantle the current environmental licensing process, including environmental impact assessment requirements.⁶⁵
 - Bill 490/07 seeks to limit the land and consultation rights of indigenous peoples, in contravention of Brazil’s obligations under ILO Convention 169.
 - Bill 6.299/2002 on pesticides, termed the “poison bill” by critics, seeks to ease the requirements for approval of new pesticides and allow the use of pesticides so far prohibited.⁶⁶

*For a description of how many of these laws undermine indigenous peoples’ rights, please see our separate brief to OECD committees Human Rights.

RECOMMENDATIONS:

Environmental Protections

- Safeguard and fully implement existing legal protections of the environment;
- Abandon de-regulatory legislative proposals, including Bills 490/2007, 191/2020, 3.729/2004 and 6.299/2002 and revoke executive decrees, resolutions and ordinances that dismantle or undermine existing environmental protections as well as the rights of indigenous peoples and other traditional communities;
- Adopt regulations that: 1. ensure the suspension of any unlicensed mining and industrial activity until the relevant regulatory bodies have verified compliance with environmental legislation. 2. prohibit automatic renewal of mining and industrial activities for which compliance verification has not been conducted. 3. sanction any entity conducting or allowing unlicensed activities. 4. prevent recidivist offenders from obtaining new operating licences;
- Strengthen environmental licensing processes, including by developing methodological and procedural guidelines for the performance of strong environmental impact studies;

- Require Strategic Environmental Assessment for sector plans and programs;
- Enforce the prohibition on mining in protected indigenous territories, prioritising an immediate halt to all gold prospecting activities and removing all invaders from indigenous land;
- 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.

Tailings Dams Safety

- Strengthen the dam inspection regime to improve governmental oversight and prevent further collapses;
- Approve and implement Bill 550/2019 and 36 other bills that are pending in the National Congress to strengthen safety of tailings dams;
- Adopt immediate measures to address the imminent risk of collapse of dams as identified by the ANM;
- Subordinate the elaboration of dam projects to river basin management plans, with analysis of prevention and mitigation plans by the respective committees and in accordance with Strategic Environmental Assessments, when available;
- Order the creation of a mandatory compensation fund for high risk and impact projects;
- 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.

Please also see recommendations below under [Pollution Prevention](#) and [Regulatory Capacity](#).

4. POLLUTION PREVENTION

ENVIRONMENT POLICY COMMITTEE'S CORE PRINCIPLES

- Ensuring that generation of waste, including hazardous waste, is reduced, export of waste for final disposal is minimised, and that **waste is managed in an environmentally sound manner**;
- **Pursue policies for effective control of air pollution to achieve ambient air quality consistent with international public health standards**; implement a national air quality monitoring system;
- **Promoting the use of economic instruments** to improve allocation and efficient use of natural resources and better reflect the environmental and social costs of resource use, waste and pollution;
- **Implementing integrated approaches for pollution prevention and control**, and sustainable management of natural resources, working closely with other countries to address trans-frontier pollution;
- **Assuming a similar level of obligations** and commitments in relevant Multilateral Environmental Agreements, as those accepted by most or all OECD Member countries, e.g. the Paris Agreement on climate change and the Convention on Biological Diversity, and **setting national policy objectives in accordance with these obligations and commitments**;

CHEMICALS AND BIOTECHNOLOGY COMMITTEE'S CORE PRINCIPLES

- Ensuring the **harmonisation of their chemical safety policies with those of OECD countries** in order to (i) **ensure that the instruments used to protect man and the environment are of comparable quality** to those in Member countries; ...
- Promoting and supporting **pollution prevention, control** and as appropriate **remediation**;
- **Willingness and ability to take on the obligations consistent with OECD instruments in the fields of chemical safety**;
- Assuming obligations in Multilateral Environmental Agreements related to chemicals management **to the same extent as the ones accepted by most or all OECD Members**.

COMMITTEE FOR AGRICULTURE'S CORE PRINCIPLES

- Whether agriculture policies **foster sustainability**, in particular the **sustainable use of available water, land, energy, soil, biodiversity resources**, forest – including with respect to deforestation – and contribute to solutions to climate change;
- Whether policies for the food and agriculture sector are **coherent with** general macroeconomic, structural, **social, climate and other environmental policies**.

REGULATORY POLICY COMMITTEE'S CORE PRINCIPLES

- Improve and strengthen regulatory policy and governance at all levels of government to **promote regulations that respond to economic, social and environmental challenges**;

INVESTMENT COMMITTEE'S AND THE 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 these areas**.

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.

- **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 is failing to prevent and control environmental pollution and associated adverse impacts on human health through a multiplicity of failures and harmful interventions:

- **Brazil is failing to monitor and control highly polluting activities, both legal and illegal**
 - Highly polluting factories and plants are allowed to be located or remain in close proximity to communities without the necessary levels of governmental control and oversight, exposing residents to serious risks to their health.⁶⁷
 - Hazardous waste materials are often disposed of inadequately, especially in rural areas where control is weak (see the Piquiá de Baixo case in Appendix 1).
 - The Bolsonaro administration passed a number of executive decrees to amend or revoke existing pollution control measures. For example, Resolution 499/2020 now allows the incineration in furnaces of toxic waste, including pesticides, even though this increases air contamination.⁶⁸
 - Many indigenous communities are suffering the effects of mercury poisoning resulting from illegal gold mining in their territories. This is contrary to many OECD legal instruments, and to the Minamata Convention on Mercury (see the Yanomami and Munduruku peoples case in Appendix 1).
- **Brazil's inadequate regulation and control of pesticide use is leading to pollution of soil, water and air**
 - Inadequately regulated and controlled pesticide use is resulting in widespread environmental degradation and serious impacts on people's health.⁶⁹
 - Despite many studies confirming the serious health impacts of pesticide use in the country⁷⁰, pesticides use has increased significantly in the last two decades.
 - Many of the pesticides approved for use in Brazil have been prohibited in OECD countries because of their risks to the environment and health.⁷¹
 - Widespread and largely unregulated pesticide use is affecting air quality. Because of the danger of "pesticide drift", the EU has generally banned aerial spraying.⁷² However, aerial spraying of pesticides is both legal and widely used in much of Brazil. While the applicable law establishes a buffer zone of 500 meters, this is often not enforced in practice (see the Limoeiro do Norte pesticide case in Appendix 1).
 - National law does not prescribe buffer zones for ground pesticide spraying. Some states have established buffer zones, but oversight and enforcement is poor in practice.⁷³
 - Efforts by some municipalities to ban or restrict the use of some pesticides are often undermined by corporate lobby, including from powerful associations such as the

Confederation of Agriculture and Livestock of Brazil⁷⁴ (see the Limoeiro do Norte pesticide case in Appendix 1).

- To boost agricultural production, the Bolsonaro administration promoted greater pesticide use. In 2019, Brazil permitted the introduction of 474 new pesticide products.⁷⁵ In 2020, the number increased to 493, the highest number of approvals in the country's history.⁷⁶
- **Brazil is failing to use economic instruments to drive better environmental practices**
 - The OECD noted in 2021, that Brazil was failing to impose taxes on polluting activities and products like pesticides.⁷⁷

RECOMMENDATIONS:

Mercury

- Approve and sanction bill no. 5,490, of 2020, which creates the National Plan for the Eradication of Contamination by Mercury;
- Recreate the working group that monitored the implementation of the Minamata Convention;
- Implement the Minamata Convention on Mercury, prioritising provisions designed to protect populations at risk;
- Phase out the use of mercury in artisanal and small-scale gold mining throughout the country, following recommendations of the Minamata Convention on Mercury;
- Combat mercury smuggling within the country;
- Implement DNPM Ordinance No. 361, of September 10, 2014, to verify the origin of gold;
- Strengthen the controlling body (the National Mining Agency) for the approval, monitoring and control of the permission to mining activity (called Permissão de Lavra Garimpeira - PLG);
- Foster transition models in small-scale production with the adoption of technological assistance and training by Brazilian research institutions.

Pesticides

- Conduct a review of the environmental and human health risks and impacts of current pesticide policies;
- Establish an immediate moratorium on aerial spraying with a view to banning the practice and/or significantly restricting it in line with international best practice;
- Establish and enforce nation-wide buffer zone rules for sensitive sites, including human habitation and schools, for all forms of ground spraying;
- Install mandatory monitoring devices around schools and residences and on spraying vehicles;
- Phase out the use of highly hazardous pesticides, including glyphosate and atrazine, prioritizing those already banned or restricted in OECD countries;
- Phase out the import of hazardous substances forbidden from use in OECD countries;
- Abandon de-regulatory legislative proposals including Bill 6.299/2002 and embed a hazard-based approach to pesticides in law;
- Align the regulatory framework on pesticides with OECD standards and best practices, including on maximum acceptable levels of pesticide residue in food and water;⁷⁸
- Expand and strengthen the evaluation, monitoring and inspection of pesticides;
- Ensure sufficient resources and expertise in federal, state and municipal bodies to monitor and control pesticide residue in food and water;

- Improve data and knowledge of the pesticide market and end public support for pesticide production and Consumption;⁷⁹
- Introduce taxes on polluting activities other than wastewater discharges (air emissions, waste and resource use);⁸⁰
- 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 protection from chemical hazards, in line with OECD instruments.

Please also see recommendations above, under [Sustainable Management of Natural Resources](#).

5. ACCESS TO INFORMATION AND PUBLIC PARTICIPATION

ENVIRONMENT POLICY COMMITTEE'S CORE PRINCIPLES

- 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**;
- **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;

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;
- Adherence to the **principles of transparency and public participation in the development of regulations**;

PUBLIC GOVERNANCE COMMITTEE'S CORE PRINCIPLES

- 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;

INVESTMENT COMMITTEE'S AND THE 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 these areas.

ISSUES OF CONCERN

Brazil is failing to provide the public with information on the environment and to ensure civil society's effective participation in environmental protection:*

- **The government is failing to provide objective, reliable, and understandable information on the environment**
 - 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).
 - IBAMA's Federal Technical Register of Potentially Polluting or Natural Resource Consuming Activities holds important information regarding companies' use, and potential pollution of, natural resources (e.g. energy and raw material use, air emissions, waste generation and wastewater effluents, etc.). However, this register is only partially open to the public.⁸¹
 - The Bolsonaro administration took a large number of measures to restrict access to environmental information. A study showed 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.⁸²
 - Other reforms with severe impacts on access to information have included lifting restrictions on the sharing of personal data of people submitting access to information requests, suspending the obligation to respond to access to information requests during the COVID-19 pandemic, forbidding Brazil's federal environmental agency IBAMA from responding to queries from the media and the ICMBio from disclosing studies, opinions and research without prior authorisation, and temporarily restricting the publication of information concerning environmental crimes.⁸³
 - After visiting Brazil in December 2019, the UN Special Rapporteur on Toxic Waste concluded that "unavailability of information [was] a recurrent concern".⁸⁴
 - In its 2021 evaluation, the OECD noted Brazil's insufficient and fragmented collection, analysis and disclosure of information on the environment.⁸⁵ As a result, the OECD recommended a large number of measures to improve the collection of information, monitoring and evaluation of environmental performance, and publication of environmental information.⁸⁶

- **Lack of access to information and formalistic approach to impact assessments are undermining civil society's ability to meaningfully participate in environmental protection**
 - As a result of information deficits, affected or potentially affected rightsholders as well as the public at large are unable to participate in environmental decision making meaningfully.
 - While required in environmental legislation, public hearings associated with projects with high environmental impact are often suppressed or carried out only in a formal manner, without enabling the effective and informed participation of civil society.⁸⁷

- **Government restructure has severely curtailed civil society’s ability to participate in environmental decision making**
 - Civil society participation in environmental monitoring and decision-making has diminished significantly as a result of multiple executive decrees which have either eliminated collegiate bodies (such as the National Council for Sustainable Rural Development) or severely restricted participation of civil society actors in environmental bodies.⁸⁸
 - Both the National Environmental Council or CONAMA (the federal agency responsible for establishing environmental licensing criteria and standards for environmental quality control), and CONABIO (the body which promotes and monitors Brazil’s implementation of commitments under the Convention on Biological Diversity), have seen the percentage of civil society participation drop significantly as a result of government restructuring.⁸⁹ Referring to CONAMA, the OECD noted in its 2022 Responsible Business Conduct (RBC) Review of Brazil (2022 RBC Review), that these changes "may result in a reduced ability of the Council to be composed of qualified and representative membership."⁹⁰
 - Presidential Decree 9759/2019 dissolved the multi-stakeholder National Council for Food and Nutrition Security. Two thirds of this body’s members were civil society representatives while one third represented the government.⁹¹

- **Lack of information is affecting regulatory agencies’ ability to protect the public**
 - Brazilian regulatory agencies are unable to generate or access relevant information, and this affects their capacity to take effective preventive action to avert or minimise environmental disasters and associated human rights harms or to respond appropriately when disasters occur (see the Piquiá de Baixo, Mariana and Brumadinho cases in Appendix 1).

*For a fuller description of the situation concerning access to information, public participation and the civic space, please see our separate brief to OECD committees on Human Rights.

RECOMMENDATIONS:

- Ensure mechanisms for civil society participation in the formulation of environmental and climate policies.
- Restructure regulation and ensure access to spaces for social participation and governance of the fund for the defence of diffuse rights.
- Rebuild and reinforce accountability and transparency mechanisms in socio-environmental and climate policies.
- Submit the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement) for approval by the National Congress to give full effect to the rights enshrined in it;
- Ensure regular publication of reports on the state of the environment, at both federal and state levels;
- Ensure meaningful, inclusive and equitable public participation in environmental policy and decision-making, including in relation to any proposed new laws and regulations or changes to existing laws and regulations relating to the environment;
- Ensure all environmental agencies facilitate access to information relating to environmental licencing processes and guarantee active transparency by proactively disclosing key

information such as licence and licence renewal requests, government responses to these requests, conditions placed on environmental licences granted and the results of environmental monitoring and inspection reports;

- Make health and safety information concerning hazardous activities and products publicly available and accessible and share it proactively with those at greater risk of harm;
- Recover and improve the operation of collegiate bodies in environmental matters (especially Conama), ensuring broad and democratic participation in policymaking and preserving the competences of multistakeholder bodies.
- Incorporate the perspectives of civil society in the deliberations carried out by the Working Group on mining, which excludes civil society participation, and which has the potential to promote consistent changes in the value chain;
- 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.

6. REGULATORY CAPACITY

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;

REGULATORY POLICY COMMITTEE'S CORE PRINCIPLES

- **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;

PUBLIC GOVERNANCE COMMITTEE'S CORE PRINCIPLES

- 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;
- 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**;

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 is unable to systematically oversee and enforce compliance with environmental regulations due to lack of resources, skills and independence:

- **Regulatory agencies lack resources to protect the environment in the context of business activities**
 - Performance of environmental agencies, particularly at state level, have historically been undermined by a lack of resources and capacity (see the Piquiá de Baixo and Limoeiro do Norte pesticide cases in Appendix 1). However, this problem affects environmental bodies at all levels of government.
 - In 2016, the UN Working Group on Business and Human Rights noted that the federal government's Growth Acceleration Programme had not been accompanied by a boost in the state capacity to regulate these projects' environmental and human rights impacts. It added that regulatory agencies such as IBAMA needed strengthening to be able to independently monitor the adverse environmental and human rights impacts of large-scale development projects.⁹²
 - The budget of many environmental agencies has been cut significantly in the last few years, severely impairing the ability of environmental agencies to do their work. This has affected IBAMA, ICMBio, CONAMA and SEMAs (environmental agencies at the state level) among others.⁹³
 - In early 2019, the government brought the number of IBAMA inspectors from 780 to 667.⁹⁴ In August 2020, the government reduced ICMBio's staff from eleven to five (though the body is responsible for supervising 335 conservation units).⁹⁵
 - In April 2019, the then Minister of the Environment, Ricardo Salles, cut by 24% the annual budget forecast for IBAMA.⁹⁶ Significant cuts to environmental agencies and activities followed in 2021.⁹⁷
 - After his visit in 2019, the Special Rapporteur on Toxic Waste concluded that instead of building capacity, the Brazilian Government was defunding environmental institutions.⁹⁸
 - In 2021, the OECD noted that IBAMA lacked sufficient financial and human resources to adequately execute its mandate, that cuts in its budget risked decreasing its enforcement capacity even further, and that co-ordination between levels of government on environmental management remained weak. It also pointed out that

enforcement action had fallen sharply in 2019 and 2020, a decline that coincided with increasing deforestation rates in the Amazon.”⁹⁹

- In its 2022 RBC Review, the OECD noted that Brazil’s regulatory enforcement capacity was below the global average, and had decreased year on year since 2020.¹⁰⁰
- **Regulatory agencies’ staff lack independence, skills and relevant expertise to perform their functions effectively**
 - Qualified staff in high level posts have been substituted with political appointees without the required technical qualifications.¹⁰¹
 - In February 2019, the Minister for the Environment removed most of IBAMA’s regional directors and replaced them with new appointees, many of whom did not meet the minimum requirements for their new positions.¹⁰²
 - In 2020, the same Minister dismissed two IBAMA heads of inspection who were responsible for operations against illegal mining in indigenous lands in the state of Pará.¹⁰³ He also ordered the restructuring of ICMBio, appointing several military police officers to top positions.¹⁰⁴
 - The decrease in civil society participation in environmental agencies is also undermining their access to relevant expertise (see above under [Access to Information and Public Participation](#)).
- **Lack of capacity and independence of environmental agencies is driving human rights abuses**
 - Lack of state capacity and willingness to monitor and enforce environmental standards is fuelling illegal exploitation of natural resources and leaving isolated communities such as the Yanomami and Munduruku peoples vulnerable to unscrupulous corporate actors¹⁰⁵ (see the Yanomami and Munduruku peoples case in Appendix 1).*

*For a fuller description of the state of protection of indigenous peoples’ rights in Brazil, please see our separate brief to OECD committees on Human Rights.

RECOMMENDATIONS:

- Increase the resources and technical capacity of IBAMA, ICMBio, CONAMA, state-level SEMAs and other federal and state environmental protection bodies to regulate, monitor and control the activities of mining, manufacturing and all other business activities that carry risks to the environment as well as pesticide use by the agricultural sector and ensure sustained protection for potentially affected individuals and communities;
- Hold competitive examinations for vacancies within environmental agencies, particularly for posts requiring technical expertise;
- Replace any political appointees who lack the technical expertise to occupy their current positions within these agencies with specialized personnel;
- Demilitarise environmental protection bodies;
- Re-establish civil society representation and participation in environmental and other relevant regulatory agencies.*

*For a fuller explanation of problems regarding public participation in deliberative bodies and decision-making more broadly, please see our separate brief to OECD committees on Human Rights.

7. ACCESS TO JUSTICE AND ACCOUNTABILITY

ENVIRONMENT POLICY COMMITTEE'S CORE PRINCIPLES

- **Applying the Polluter-Pays Principle so that costs of pollution prevention and control measures, are borne by polluters** and not generally subsidised by others, including governments;
- **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;

PUBLIC GOVERNANCE COMMITTEE'S CORE PRINCIPLES

- 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 decision to enhance policy coherence;

INVESTMENT COMMITTEE'S AND THE 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 these areas**.

ISSUES OF CONCERN

Brazil's implementation of the "polluter pays" principle is poor. As a result, access to reparations for environmental harm and legal accountability of corporate actors for environmental degradation is rare:

- **Judicial proceedings are protracted and do not always lead to comprehensive reparation for victims of environmental harm**
 - Protracted judicial proceedings undermine the ability of affected rightsholders to obtain remedy for environmental pollution. Even when they obtain a favourable court ruling, they may need to wait years for its enforcement (see the Piquiá de Baixo, Mariana and Brumadinho cases in Appendix 1).

- Access to justice for people affected by pesticide poisoning is particularly difficult. This is because showing a link between exposure and ill health is extremely challenging. This is compounded by the lack of official data (see [Pollution Prevention](#) above).¹⁰⁶
 - Assessing the Mariana remediation programme, the OECD pointed out that cost recovery had suffered from frequent delays and recourse to court appeals. It identified severe delays in the execution of environmental clean-up and noted that by 2019, recovery programmes were still poorly defined, lacking clearly defined actions with pertinent goals, indicators and deadlines. It also noted that there had been no systematic monitoring of progress in the implementation of these programmes.”¹⁰⁷ (see the Mariana case in Appendix 1).
 - Another challenge to effective environmental reparation is the frequent suspension of injunctions against the government based on economic or public order justifications.¹⁰⁸
- **The “polluter pays” principle is not systematically upheld**
 - Multiple cases such as those quoted above illustrate Brazil’s inability to enforce the “polluter pays” principle.
 - Brazil’s lax approach to this principle means that businesses do not internalise the cost of pollution prevention, control and remediation. The cost is being born by pollution-impacted communities up and down the country.
- **Low prospects of punishment provide little incentive for private actors to comply with environmental regulations**
 - IBAMA’s enforcement record is extremely low. A study in 2015 found that only 3.33% of the fines applied on companies for environmental infractions since 1980 had been effectively paid.¹⁰⁹
 - In 2019, IBAMA applied fewer fines to environmental offenders than in the previous 24 years.¹¹⁰ In 2020, the record got even worse, with a 20% decrease in fines compared to 2019.¹¹¹
 - In its September 2021 report, the OECD suggested that “the increase in deforestation rates may be a direct consequence of the reduced compliance monitoring and enforcement since 2019.”¹¹²
- **New “conciliation hearings” are leading to impunity**
 - In 2019, the Bolsonaro administration introduced new procedures to review environmental fines at “conciliation hearings”. In these hearings, a commission can offer discounts or eliminate fines altogether. At the same time, the Environment Ministry suspended all deadlines to pay outstanding fines until such hearings could be held. Between October 2019 and November 2020, only five such hearings were held.¹¹³
 - In a December 2020 assessment, the OECD expressed concern at the government’s failure to impose or enforce dissuasive sanctions for environmental crimes.¹¹⁴
 - The delay in holding “conciliation hearings” and the very purpose of these hearings represent a virtual guarantee of impunity.

RECOMMENDATIONS:

- Provide effective mechanisms to remedy human rights abuses resulting from corporate infringements of environmental law and regulations;

- Ensure the courts act diligently and expeditiously in the conduction and conclusion of legal proceedings for environmental damage, damage to health and other harms derived from environmental degradation and exposure to pesticides;
- Strengthen the capacity and resources allocated to environmental bodies responsible for environmental licensing, such as IBAMA and the SEMAs, to enable them to pursue administrative procedures, within reasonable timeframes, to investigate, sanction and correct environmental breaches;
- Ensure that, where disasters like the two dam collapses referred to in this submission occur, adequate reparation measures are provided to all those affected, based on consultation and following an inclusive and participatory process, and that adequate environmental rehabilitation is carried out;
- Ensure prompt investigations, prosecutions and punishment of environmental crimes, including those related to illegal spraying of pesticides;
- Identify and implement necessary reforms to ensure corporate executives are held accountable for environmental crimes and other serious human rights abuses;
- 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 remediation, in line with OECD instruments.

8. PROTECTION OF ENVIRONMENTAL DEFENDERS

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;**

PUBLIC GOVERNANCE COMMITTEE'S CORE PRINCIPLES

- **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;**

Brazil's justice system is failing to protect environmental and human rights defenders against violence and intimidation. This is undermining civic space, as people are afraid to talk and participate:

- **Violent attacks remain unresolved***
 - Violent attacks, threats, intimidation, and murder of environmental and human rights defenders are rampant in Brazil, but the vast majority of these cases remain unresolved. Very few result in arrests or prosecutions and even less in actual convictions.
 - For example, thirteen years after the murder of environmental activist Jose Maria Filho, nobody has been brought to justice (see the Limoeiro do Norte pesticide case in Appendix 1).
 - In 2019, Human Rights Watch documented 28 killings of environmental and human rights defenders 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 stated that only two of these cases had gone to trial while none of the cases of death threats actually did. The organisation also quoted data indicating that more than 300 people had been killed over the use of land and resources in Amazonian states during the previous decade; however, only 14 of these killings had gone to trial.¹¹⁵

*Please see our separate brief to OECD committees on Human Rights for a more extensive description of the problems affecting environmental and human rights defenders in Brazil, and more extensive list of recommendations.

RECOMMENDATIONS:

- Ensure prompt investigations, prosecutions and punishment of criminal acts perpetrated against residents or community leaders who denounce or raise concerns about the environmental or health effects of mining, manufacturing and other business activities and of pesticide use.

V. CONCLUSIONS

At present, Brazil is not upholding Core Principles listed in the Accession Roadmap related to climate change, deforestation, sustainable management of natural resources, including sound environmental impact assessments and the management of hazardous substances and waste, access to environmental information and public participation in environmental matters, regulatory and enforcement capacity, access to justice, implementation of the “polluter pays” principle, and the protection of environmental defenders. Brazil is also falling short of obligations assumed by most OECD member countries in certain key areas, such as chemical safety. The country’s current environmental policies and practices are in fact abysmally far from anything that resembles alignment.

The country is also failing to adhere to Core Principles that are intricately connected to environmental protection, such as on climate finance, sustainability in the context of agriculture, sound regulatory policy on environmental matters, chemical safety, government transparency and accountability, civic space and adequate legal and regulatory frameworks that promote responsible business conduct in relation to the environment and human rights. These failures are having significant impacts on human rights, including in particular those of indigenous peoples and other local communities, the right to a clean, healthy and sustainable environment and the rights of environmental and human rights defenders.

Not only is Brazil failing to implement Core Principles, but its policies and practices, especially in recent years, 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 OECD legal instruments such as the OECD Recommendations of the Council 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, on Integrated Pollution Prevention and Control, on Due Diligence Guidance for Responsible Business Conduct, and on the Use of Economic Instruments in Promoting the Conservation and Sustainable Use of Biodiversity, to name just a few. **So far, Brazil has not demonstrated itself either “willing” or “able” to implement Core Principles and relevant legal instruments, as required by the Accession Roadmap, nor has it shown the “like-mindedness” required for accession.**¹¹⁶

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”, the “effective protection of the environment and biodiversity” and action on climate change. 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 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 environmental and 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.¹¹⁷ 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 environmental and human rights protection, 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

1. Case of the Casino Group (2021)

Indigenous peoples of the Brazilian and Colombian Amazon and non-governmental organizations from Brazil, France, and the United States filed a lawsuit at the Saint-Etienne courts in France against the Casino Group. The lawsuit was filed on March 3rd, 2021, accusing the Casino Group of selling meat produced through illegal deforestation and land-grabbing. The Casino Group is the largest supermarket chain in Brazil and Colombia through its subsidiaries Pão de Açúcar and the Éxito group, respectively. The group's operations in South America provide around 47% of the global earnings for Casino. The case is an example that reveals the association between meat and soybean farming in the Amazon and the Cerrado and illegal deforestation and exports to the European Union, which is not an isolated fact.

According to the evidence compiled and analyzed by the Center for Climate Crime Analysis for the case, the Casino Group regularly purchased meat from three slaughterhouses owned by JBS, a multinational food corporation. In turn, the slaughterhouses acquired cattle from 592 suppliers responsible for at least 50,000 hectares of deforestation between 2008 and 2020, an area five times the size of Paris. Evidence also points to violations of indigenous peoples' rights, such as the invasion of traditional lands of the Uru Eu Wau Wau people, in the state of Rondônia, for the cultivation of livestock supplied to the Pão de Açúcar/Casino group.

As such, the complaint argues the company failed its duty of vigilance commitments, which required it to ensure that there were no violations of human and environmental rights in its supply chain. This is the first time a claim has been filed against a supermarket chain under the French duty of vigilance law under claims of deforestation and violations of human rights. Based on the evidence, the claimant groups request compensation of 3.25 million Euros for environmental damages and 10,000 Euros for pain and suffering to each of the organizations. The law, approved in 2017, requires major French companies to take proper and effective measures to prevent severe violations of human and environmental rights throughout their supply chain, under penalty of being held responsible in court.

2. 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.

3. 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 Tuv-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.

4. 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.

5. 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-Brasil 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.

6. 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, begun 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.

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

² Justiça Global and Movimento Nacional de Direitos Humanos.

³ FIDH, "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 \(fidh.org\)](#)

⁴ 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](#)

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

⁶ Meeting of the OECD Council at Ministerial Level Paris, 5-6 October 2021, para. 2, 5, [2021 MINISTERIAL COUNCIL STATEMENT \(oecd.org\)](#)

⁷ 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](#)

⁸ 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](#)

⁹ 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](#)

¹⁰ Borges, C., Prolo, C. D., La Rovere, E. L., 'Análise Científica e Jurídica da nova Contribuição Nacionalmente Determinada (NDC) Brasileira ao Acordo de Paris', Instituto Clima e Sociedade, 2021, https://59de6b5d-88bf-463a-bc1c-d07bfd5afa7e.filesusr.com/ugd/d19c5c_9bc29d5e06a14fd0af3d38c042ac0cb7.pdf

¹¹ It is not unusual to change the methodology of national inventories for emission estimates at the UNFC, but Brazil should adjust the indicated percentage so it could maintain the absolute level of emissions indicated in 2015.

¹² Observatório do Clima, 'NDC e a "pedalada" de carbono: como o Brasil reduziu a ambição de suas metas no Acordo de Paris', 2020, <https://www.oc.eco.br/wp-content/uploads/2020/12/ANA%CC%81LISE-NDC-1012FINAL.pdf>

¹³ Borges, C., Prolo, C. D, La Rovere, E. L., 'Análise Científica e Jurídica da nova Contribuição Nacionalmente Determinada (NDC) Brasileira ao Acordo de Paris', Instituto Clima e Sociedade, 2021, https://59de6b5d-88bf-463a-bc1c-d07bfd5afa7e.filesusr.com/ugd/d19c5c_9bc29d5e06a14fd0af3d38c042ac0cb7.pdf

¹⁴ OECD, OECD Responsible Business Conduct Policy Reviews: Brazil, 2022, OECD Publishing, Paris, p. 71, [OECD Responsible Business Conduct Policy Reviews: Brazil](https://www.oecd.org/responsible-business-conduct-policy-reviews/brazil/)

¹⁵ Justiça Federal da 3ª Região. Inicial de Ação Popular em trâmite perante à 14ª Vara Cível Federal de São Paulo. Processo nº 5008035- 37.2021.4.03.6100, <https://www.oc.eco.br/wp-content/uploads/2021/04/protocolo-e-documentos-inicial.pdf>

¹⁶ Observatório do Clima, 'Análise das emissões brasileiras de gases de efeito estufa e suas implicações para as metas de clima do Brasil 1970- 2019', 2020, https://energiaambiente.org.br/wp-content/uploads/2021/10/OC_03_relatorio_2021_FINAL.pdf

¹⁷ Talanoa, 'A Política Nacional de Mudança do Clima em 2020: estado de metas, mercados e governança assumidos na Lei 12.187/2009', 2020, <https://www.oc.eco.br/wp-content/uploads/2020/12/Politica-Nacional-de-Mudanc%CC%A7a-de-Clima.pdf>

¹⁸ Escobar, Herton, 'Desmatamento da Amazônia dispara de novo em 2020', Jornal da USP, Ciências, August 2020, <https://jornal.usp.br/ciencias/desmatamento-da-amazonia-dispara-de-novo-em-2020/>

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