

DEFORESTATION AND CLIMATE CHANGE IN BRAZIL

Legal and policy gaps



COLOPHON

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OECD Watch is a global network with more than 140 members in over 50 countries. Membership consists of a diverse range of civil society organisations bound together by their commitment to ensuring that victims of corporate misconduct have access to remedy, that business activity contributes to sustainable development and poverty eradication, and that corporations are held accountable for their actions around the globe.

Conectas exists to preserve, implement and extend human rights. More than a non-governmental organisation, we are part of a lively and global movement that continues in the fight for equal rights. Connected via a broad network of partners, spread across Brazil and around the world, we are always available, and we participate in various decision-making debates that advance the path of human rights from the Global South perspective. We work to secure and extend the rights of all, especially the most vulnerable. We propose solutions, avert setbacks, and denounce violations to create transformations.



Contents

Glossary of acronyms	4
1. Introduction	5
2. Prominent cases	7
2.1 Deforestation in the Amazon	7
2.2 The record number of fires in the Pantanal	8
2.3 Lack of commitment to the climate agenda: violation of the Paris Accord and disregard of the National Climate Change Policy	9
2.4 Weakening of the Climate Fund	10
3. Legal and policy gaps	12
3.1 Dismantling of legislations and regulation on forest protection	12
3.2 Reduction of the environmental budget	14
3.3 Weakening of institutional capacities of environmental protection bodies	14
3.4 Reduction of control and consequent impunity of environmental felony perpetrators	15
3.5 Reduction of participation by and intimidation of civil society	16
3.6 Reduction of environmental information transparency	17
3.7 Climate change denial by the Bolsonaro administration	17
4. Relevant OECD committees, initiatives, and instruments	18
5. Conclusion and recommendations for Brazil and the OECD	21
Recommendations for reform in Brazil	22
Recommendations for the OECD accession process	23

GLOSSARY OF ACRONYMS

CAR	Rural Cadastral Registration
FUNAI	National Indian Foundation
IBAMA	Brazilian Institute for the Environment and Renewable Natural Resources
ICMBio	Chico Mendes (National) Institute for Biodiversity Conservation
INPE	Brazilian Spatial Survey Institute
NDC	Nationally Determined Contribution
UNFCCC	United Nations Framework Convention on Climate Change
SDGs	Sustainable Development Goals
STF	Federal Supreme Court

Introduction

On 25 January 2022, the Organisation for Economic Cooperation and Development (OECD) invited Brazil along with five other countries to begin an accession process to become an OECD member state.¹ To be allowed to accede, Brazil needs to demonstrate “willingness, preparedness and ability” to “adopt OECD practices, policies and standards.”² The accession process itself is envisaged as a “powerful transformative instrument to secure a country’s convergence with the values, standards and membership obligations of the Organisation.”³ As re-stated by the OECD Ministerial Council in October 2021, these values include: the promotion of open, free, fair and rules-based multilateral trading system; government transparency and accountability; the rule of law; gender equality; the protection of human rights; and the promotion of environmental sustainability, including with focus on addressing climate change.⁴

At present, Brazil is far from being in alignment with these values, standards and obligations. The country’s record on environmental protection, deforestation and the fight against climate change, the safeguard of its civic space and protection of the human rights of workers, environmental and human rights defenders, indigenous peoples and other traditional communities make it unfit for accession.

This paper is one of five submitted by Conectas Human Rights (Conectas), OECD Watch, and the International Federation for Human Rights (FIDH) to the OECD assessing the extent to which Brazil’s laws, policies and practices in these areas meet OECD expectations. It focuses on climate change and deforestation in the context of business activity and its impact on the environment and human rights.⁵ It is likely of particular interest to OECD committees and divisions focused on Environment Policy, Agriculture, Health, Industry, Innovation and Entrepreneurship, Investment, Corporate Governance, and Public Governance.

Extensive data show that deforestation is on the rise in Brazil, and along with it greenhouse gas emissions. Data from the Brazilian greenhouse gas emissions estimate system, SEEG (*Sistema de Estimativas de Emissões de Gases de Efeito Estufa*),⁶ connected to the Climate Observatory (OC), indicate that greenhouse gas emissions have increased 9.6% in Brazil in 2019.⁷ The main source of emission of these gases in Brazil is deforestation,⁸ which has grown at alarming rates in the last few years. Data from the Brazilian Spatial Survey Institute (INPE)⁹ referring to 2020 show that the deforestation rates in the Amazon increased 9.5% in 12 months,¹⁰ which is equivalent to the devastation of nearly eight times the area of the city of São Paulo, around 11,000 square kilometers of forest.¹¹ In the Cerrado biome, the deforestation increase was around 13%.¹² The forest fire rates also increased last year, with the *Pantanal*, *Amazon* and *Pampas* biomes being the main ones affected by fires.¹³ In the case of the Pantanal biome, the increase was about 200% between 2019 and 2020,¹⁴ which represents the burning of 26% of the entire biome between January and September of last year.¹⁵

In a recent report,¹⁶ the OECD itself noted that while Brazil had achieved by 2014 a “remarkable reduction of deforestation” – a result driven by effective policies, including the establishment of conservation units, recognition of land rights of traditional communities, and coordinated implementation of the Action Plan for Prevention and Control of Deforestation in the “Legal Amazon” – since 2015, deforestation rates have spiraled up again to decade-high peaks in 2019 and 2020. The OECD found that “deforestation rates inside protected areas have risen by more than 40% in 2019/2020 compared to 2018/2019” and that forest fires have increased in the Amazon as well as other megadiverse biomes such as the Pantanal and the Cerrado. On illegal deforestation, the OECD also reported that in 2020, Brazil’s enforcement agency issued the lowest number of infraction notices since 1995 and that offenders paid in 2019 less than one out of seven fines. The OECD report suggests “the increase in deforestation rates may be a direct consequence of the reduced compliance monitoring and enforcement since 2019.”

Civil society organizations, researchers and members of academia, social movements, and environmentalists have brought to light that the increase of these deforestation rates in Brazil is the result of a policy of reversing the environmental protection trajectory in the country,¹⁷ evidenced through both omission and permissiveness of the

2 Prominent cases

current government. This paper will address some of the governance failures related to this issue, such as the legislative and regulatory dismantling of forest protections, the reduction of the environmental budget, the weakening of the institutional capacities of environmental protection bodies, the impunity of environmental perpetrators, the reduction of civil society participation, the reduction of transparency of environmental information, and the climate change denial of President Jair Bolsonaro's administration.

These failures put into question Brazil's "willingness, preparedness and ability" to comply with OECD values and standards, all of which constitute critical aspects of the OECD's decision on whether or not to invite aspiring states to accede.

The accession process provides a critical opportunity for the OECD to identify and assess these gaps and prompt the necessary reforms to bring Brazil into line with OECD values, standards and obligations before, and as a condition for, accession.

Based on a brief description of four case studies, this paper examines existing gaps in Brazil's efforts to prevent deforestation and climate change. Based on this analysis, it makes recommendations for changes in laws, policies and practices necessary to prevent environmental degradation and associated human rights impacts in these contexts. **Conectas, OECD Watch, and FIDH urge the OECD, its member states and technical committees to make compliance with these recommendations a condition since qua non for accession. They also urge the OECD, member states and technical committees to take the views and observations of civil society organisations, and other experts into account in their decision-making process regarding Brazil's accession.**

The report is structured in five sections. After the introduction, section 2 presents prominent cases that exemplify Brazil's failure to address deforestation and its links to climate change. Section 3 analyses the gaps in Brazilian laws, policies, and practices that lead to the deforestation and climate concerns highlighted in these cases. Section 4 discusses OECD committees, initiatives, and instruments relevant to the issue of environmental protection. Finally, section 5 concludes by identifying both the reforms Brazil must adopt to close the gaps analysed, and recommendations for actions the OECD and its member states should take to ensure rigorous terms for Brazil's accession and a transparent and participatory review process.



Cattle in deforested area of the Amazon.
© Bruno Kelly, originally from Amazônia Real

2.1 Deforestation in the Amazon

As noted, deforestation rates have grown a lot in Brazil. The data for 2020, for example, show a 9,5% growth in deforestation in the Amazon.¹⁸ Around 94% of the deforestation in the region over the last two years have been carried out without the authorization of the federal and state environmental bodies, in breach of the law.¹⁹ The causes and effects of deforestation vary by region.²⁰ However, the main vectors/causes are well-known: expansion of commercial agriculture and cattle ranching, forestry, land speculation, infrastructure, logging, and mining. According to the report "Illicit harvesting, colluding goods,"²¹ between 2013 and 2019 the production of commercial agriculture was the driver of 60% of all forest area lost on the planet. It is important to note that wood products from 31% of this forest area exploited by agribusiness – legal or not – were exported to other countries, far away from the devastated tropical forest areas, such as the United States, China, the United Kingdom, and European Union countries, which shows that agricultural products produced in Latin America, Southeast Asia and Africa and exported to the whole world are related to the illegal destruction of forests.

A study led by researchers of the Brazilian Federal University of Minas Gerais and published in the Science journal concluded that 2% of rural properties in the Amazon and the Cerrado are individually responsible for over 60% of the illegal deforestation practiced in these biomes. Besides, according to the data, 20% of the soybean exports and 17% of the meat exports could be linked to illegal deforestation.²²

While global concern is growing about the monitoring of productive chains without corresponding accountability in Brazil, indigenous peoples of the Brazilian and Colombian Amazon and non-governmental organizations from Brazil, France, and the United States²³ 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.²⁴

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 lands²⁵ of the Uru Eu Wau Wau people,²⁶ 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.²⁷

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.²⁸



Fires in Pantanal. © Mayke Toscano. Secom-MT/Agência Brasil

2.2 The record number of fires in the Pantanal

In 2020, the Brazilian Pantanal had more than 30% of its area 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.²⁹

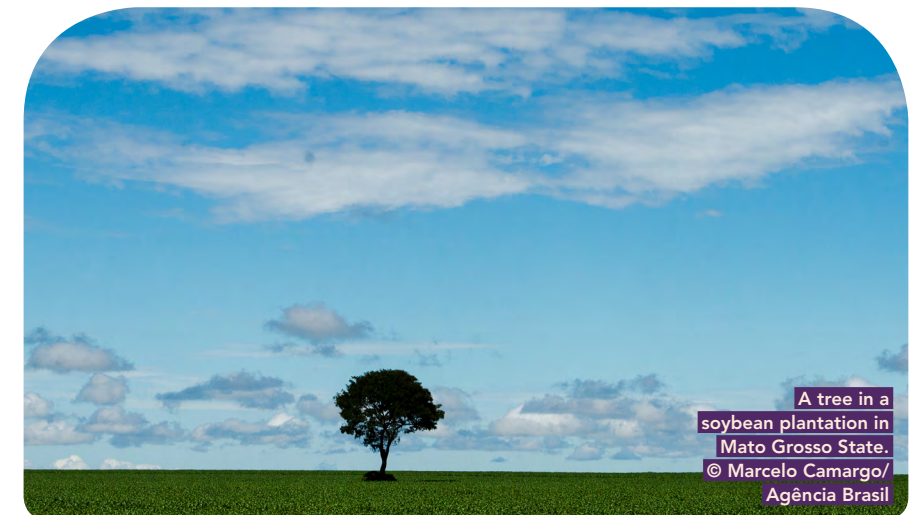
The Pantanal is a biome consisting mainly of a flooded steppe savannah in its largest portion. It is located in the centre-west region of Brazil, covering large parts of the states of Mato Grosso and Mato Grosso do Sul, as well as a portion of northern Paraguay and eastern Bolivia.

Since the end of the 1990s, when the official monitoring of INPE began, 2020 was the year with the most fires recorded in the region, with about 21,451 hotspots – which usually represent fires.

A study presented by the Public Prosecutors’ Offices of Mato Grosso do Sul and Mato Grosso identified that almost 60% of these hotspots were caused by human actions and have possible links to agropastoral activities.³⁰

Researchers say that the fires spread quickly not only because of the extreme drought recorded that year, but also delay by the public authorities in intervening to control the fires.³¹

The advance of the fires also caused countless animal losses in a biome rich in biodiversity. Many residents of traditional communities lost their homes, had crops destroyed, and their livelihoods put at risk.



A tree in a soybean plantation in Mato Grosso State. © Marcelo Camargo/Agência Brasil

2.3 Lack of commitment to the climate agenda: violation of the Paris Accord and disregard of the National Climate Change Policy

In December 2020, Brazil filed a “new” Nationally Determined Contribution (NDC) before the United Nations Framework Convention on Climate Change (UNFCCC).³² The document restates the country’s commitment to reduce greenhouse gas emissions by 37% by 2025. It also officializes the indicative goal of reducing said emissions by 43% by 2030, and establishes an “indicative goal” of achieving climate neutrality by 2060. All those commitments are conditioned on financial transfers to the tune of USD 10 billion per year starting in 2021³³ and the regulation of a carbon market mechanism.

Although the emissions cut percentage was not altered in the new NDC, the baseline was considerably changed in relation to the previous goal. That is because the Third National Notice to the UNFCCC changed the methodology³⁴ of estimates of emissions from the use of land in the country – thus significantly raising emissions in the base year (2005). In practice, according to the Climate Observatory analysis,³⁵ the new NDC increases the amount of equivalent carbon dioxide allowed in 2030 by 400 million tonnes compared to the goal presented in 2015, i.e. reducing the country’s commitment submitted to the UNFCCC. Ultimately, the Brazilian “new NDC” goes against the spirit of the Paris Accord and violates the principle of prohibiting setbacks.³⁶

The new NDC also represents a setback because it does not reiterate the commitment of domestic sector-based measures that would enable the goal in itself to be met and that had been detailed in the previous NDC, such as the goal of eliminating deforestation until 2030 and increasing the use of renewable energy by 45% in the same year.³⁷

The creation of the new NDC motivated the filing of a popular lawsuit, considered the main current climate

litigation in Brazil, against the Federal Government including the then-Minister of Foreign Affairs, Ernesto Araújo, and the then-minister of the Environment, Ricardo Salles, alleging acts harmful of administrative morality and the environment.³⁸ In support of this lawsuit, former ministers of the Environment have signed a letter lamenting the Brazilian government's "pedalada" [trick] with the accounting, commenting that Brazil "opened a precedent so that other countries would present less ambitious goals, harming all."³⁹

Brazil's lack of commitment towards the climate agenda is also shown in the 12% increase in net emissions since 2015⁴⁰ – the year in which the first goal was adopted – and Brazil's failure to observe its climate goal in the National Climate Change Policy (Law no. 12.187/2009). After all, "since the enactment of the climate law, the country increased its emissions by over one fourth instead of reducing them."⁴¹ In relation to the land use goal, one can observe a growth of 64% in emissions caused by deforestation in this period. The preliminary forecasts of gross emissions for 2020⁴² also reveal that Brazil failed its predicted goal, which was not at all ambitious in the first place.⁴³

Recently invited by the OECD to adhere to the International Program for Action on Climate along with Indonesia and other members of the BRICS, Brazil indicated that it shall not take part in the initiative at the moment⁴⁴ and questioned the indicators used.



Fire at Chapada dos Veadeiros, in the Cerrado biome, where deforestation increase in the past years. © Valter Campanato/Agência Brasil

2.4 Weakening of the Climate Fund

The National Climate Change Fund, linked to the Ministry of the Environment, was created through Law no. 12.114/2009. The Climate Fund is not a direct agent of mitigation and adaptation, but finances actions such as studies, projects, and other initiatives that promote a low carbon economy and reduce the impact of climate change on ecosystems and the most vulnerable populations. The fund is an important tool to finance the National Climate Change Policy.⁴⁵ In previous years, the fund strengthened the acquisition of machinery and equipment and technological development related to reducing greenhouse gas emissions in projects concerning urban mobility, reduction of energy consumption in cities, promotion of renewable energy, better management of solid waste, and protection of native forests, among others.

However, in recent years the fund has been weakened due to actions and omissions of the government that have led opponent political parties to file a lawsuit to question the fund's dismantling in court.⁴⁶ According to the

claimants now involved in litigation over the program, the Federal Government has actively: reduced budgets and assignments relative to the control of deforestation; curtailed support for sustainable forms of production and environmental policy; promoted the licensing of infrastructure works without proper impact assessments; broken up environmental bodies at the federal level to stymie their effectiveness; significantly reduced staff at the Ministry of the Environment; appointed people to important Environmental positions who lack affinity and training on environmental issues; and issued public instructions to interrupt the (constitutionally-required) demarcation of Indigenous Lands.⁴⁷

Regarding omissions, the Federal Government has: failed to hold meetings of the Fund's Managing Committee over the course of 2019; has failed to present the Annual Fund Investment Plan, both for 2019 and for 2020; and has failed to use appropriately the funding available for mitigating climate emergencies.⁴⁸

The filing parties request a series of injunctions⁴⁹ and, in terms of merit, recognition of the Federal Government's failure to implement the Climate Fund, adopt environmental protection measures relevant to the mitigation of climate change, and ensure the right of all Brazilians to a healthy environment.⁵⁰

In a monocratic decision, the Rapporteur Justice opened public hearings to "assess relevant facts" and highlighted: **"5. The economic and social consequences resulting from environmental policies that disregard Brazil's environmental commitments are severe. The European Union and many countries that import products linked to the Brazilian agribusiness sector threaten to denounce agreements and refrain from acquiring national products. There is a negative global perception regarding the country on this subject."**⁵¹

The preliminary ruling by the Federal Supreme Court (STF): (i) adopted an urgency procedure for the action; (ii) summoned the governmental actors involved; (iii) admitted the action as an Argument for Failure to Comply with a Fundamental Precept (ADPF, another constitutional procedure aimed at enforcing the principles and values in the Constitution); and (iv) scheduled a public hearing on September 21 and 22, 2020. Although there has been no procedural change, the court filing was itself enough to prompt the government to take some action. The government published the Annual Fund Investment Plan for the years 2020 and 2021,⁵² albeit with a delay, and made transfers on the same month in which the public hearings on the matter were scheduled with the STF.⁵³ However, these actions do not come close to addressing the concerns raised. Beyond the delay, the plan does not explain how the funds will be used, does not describe ongoing projects, nor set a cap for individual initiatives,⁵⁴ all of which are requirements presented in Decree no. 9.578/2018.⁵⁵ While the previous years' plans were around 30 pages, the current plan has only eight pages and provides an even lower budget compared to prior years. Another difference compared to previous plans is the lack of disclosure of members of the Managing Committee,⁵⁶ which should comprise representatives from both the executive branch and non-governmental sector. In terms of content, this year's plan is also now focused on the urban environment, while previously the fund's agenda was directed towards protecting forests and the rural environment, since there is an understanding that the greater issues to be faced include the change of use of the soil due to forest fires and deforestation.

Legal and policy gaps

The cases described above result from a range of legal and policy gaps in Brazil that are described in more detail below.

3.1 Dismantling of legislations and regulation on forest protection

Brazil's underlying legal framework on environmental matters should provide at least a base level of protection against deforestation. The primary governance problems lie with the government's longstanding failure to adhere to or enforce the relevant provisions of the Constitution and environmental laws and regulations – and more recently, as addressed in this section, effort by the current administration to dismantle that underlying framework using administrative and legislative acts.

The current Brazilian government has employed a strategy of issuing executive orders, which authorize or require action solely on the will of the President and his ministers, particularly when it comes to environmental affairs. Data from the Política por Inteiro project indicate that, between January and December of 2020, there were 593 administrative acts of the federal government related to environmental matters.⁵⁷ In February 2020, for instance, the Brazilian Institute for the Environment and Natural Renewable Resources (IBAMA) published Normative Instruction no. 7⁵⁸ to allow administrative controls on natural products to be conducted after export, which is an obstacle to proper inspections. In that same month, through an Interpretative Order,⁵⁹ IBAMA exempted logging companies from the need to obtain permits from that body to export native wood.⁶⁰

The Interpretive Order became the object of a public civil lawsuit filed by environmental associations and institutes. According to the plaintiffs, besides contradicting previous environmental rules, the Order leads to “grave and irreparable environmental damage resulting from the international commercialization of our native forest without any form of close control that enabled the assurance that the product was not extracted (...) irregularly.”⁶¹ In practice, the normative changes have made Brazilian export products unsafe for foreign trade as well, since the traceability of the origin of the products has become more difficult from the environmental and human rights perspectives.

In addition to using executive orders to push through policies harmful to forests and climate concerns, the current administration is also supporting legislation to curtail current protective laws. Researchers from the Climate Policy Initiative of Rio de Janeiro identified 56 draft bills in progress, during the year 2020, that threaten the protection of forests and the environment.⁶² If all passed together, the bills would generate synergic effects, extensively regressing social and environmental protection even more effectively than the administration has been doing via executive orders and other the administrative acts.

Draft Bills no. 2.633/2020 of the Lower House of Representatives⁶³ and no. 510/2021 of the Federal Senate⁶⁴ are of particular concern. Both draft bills, known as “land-grabbing draft bills,” seek to alter the Property Regularization Law.⁶⁵ The bills are seen as offering a sort of amnesty for land-grabbers and invaders that irregularly occupied, exploited, and deforested federal lands, even where there are traditional communities, indigenous settlements and *Quilombola* communities. The proposal tends to increase the deforestation rates and climate risk. In an alignment between the Presidents of the Legislative Houses and the President of the Republic,⁶⁶ Draft Bill no. 2,633 was processed in urgency and discussed in June 2021.

Another draft bill that threatens environmental protection, with anticipated climate consequences, is Draft Bill no. 1.426/2020.⁶⁷ Its goal is to reduce the area of the Amazon Legal Forest Reserve in the states of Amapá and Roraima from 80% to 50%.⁶⁸ The draft bill removes the need for the Ecologic-Economic Zoning rule and thus, the reduction in the percentage of protected lands becomes easier, faster and without a detailed analysis of the impacts that may be caused to nature.

At least two draft bills severely and particularly affect the rights of indigenous peoples and the protection of forest areas;⁶⁹ these are also discussed in our paper on indigenous peoples' rights. Draft Bill 490/07 addresses issues relative to the demarcation of indigenous lands. The bill seeks to, for instance, legally consolidate the “timeframe” (marco temporal) thesis,⁷⁰ which would prohibit the expansion of already demarcated lands. The text, recently approved at the Constitution, Justice and Citizenship Commission of the Lower House of Representatives, also creates the possibility of installing military bases, units, and outposts, expanding the road network, and exploiting strategic alternative energy sources in indigenous lands without the need to consult the communities involved or the federal indigenist body with jurisdiction.⁷¹

Meanwhile, Draft Bill no. 191/2020 seeks to regulate mining in indigenous lands. According to a Public Notice of the 6th Chamber of the Federal Prosecution Office, the bill did not meet the requirements of Convention no. 169 of the International Labor Organization by not promoting a prior consultation with the affected indigenous communities. Besides, “the presentation of Draft Bill 191/2020 and the manifestations of support to prospecting from some authorities explain, at least in part, the growth of this illegal activity in indigenous lands, which threatens communities near prospecting areas”⁷² and ultimately increases climate risk.⁷³

Civil society organizations have demonstrated particular concern with the new Environmental Licensing Law, proposed through Draft Bill no. 3.729/04,⁷⁴ which was recently approved at the Lower House of Representatives and shall be voted on at the Federal Senate. The approved text is expected to cause social and environmental problems and human rights violations, hindering the country's international image. The following aspects are particularly criticized:

- The draft bill dismisses the need for an environmental license for agriculture, forestry, and extensive, semi-intensive and small intensive livestock farming, and infrastructure improvement works such as road expansion, along with twelve other activities with impacts on the environment;
 - Highways into protected lands are vectors of deforestation. A study led by the organization Institute for Conservation and Sustainable Development of the Amazon estimates that if the BR 319 highway, which connects the city of Manaus to Porto Velho, is paved without the adoption of appropriate measures to mitigate and compensate impacts, there will be a deforestation of 70 thousand km² in its surroundings by 2050, which is equivalent to the area of Ireland.⁷⁵
- With the exception of works classified as having potential environmental impact, the mandatory license shall be the self-declaratory license by the developer (known as Licensing by Adherence or Commitment), without verification by environmental bodies of compliance with legislation;
- With the changes and weakening of the environmental licensing process, popular participation and social control shall be reduced;
- The draft bill could generate an environmental tax war between federative units when allowing states and municipalities to complement legal definitions and dismiss impactful activities from environmental licensing to attract companies and investors, generating legal instability;
- The draft bill would exempt public or private support institutions from the responsibility for social and environmental damage caused by developments they fund directly or indirectly;
- The draft bill would allow business activities operating without a valid environmental license when the law is enacted to be exempted from liability and permitted simply to apply for a Corrective Environmental License;
- Although it facilitates and accelerates environmental licensing processes, the Draft Bill does not mention or deal with the likely impacts of activities on climate change;
- Indigenous and traditional populations shall be more vulnerable, since the text does not include the usual requirements that the government analyze direct and indirect impacts and measures to prevent any damages towards these populations, public health, and the environment.⁷⁶

If passed, the draft bills discussed above could result in a vertiginous increase in deforestation rates in the Amazon.

3.2 Reduction of the environmental budget

The budget for actions meant to fight deforestation and protect the environment and the climate have suffered drastic reductions since the start of the Jair Bolsonaro administration. On the third month of his administration, in March 2019, the president issued Decree no. 9.741,⁷⁷ which removed a total of BRL 187 million from the Ministry of the Environment. In this budget cut, some programs lost up to 95% of their budget, including initiatives for the implementation of the National Climate Change Policy, which lost over BRL 11 million.⁷⁸ Soon after the Decree, on April 2019, the then-minister of the Environment, Ricardo Salles, cut by 24% the annual budget forecast for IBAMA, which handles environmental control and maintenance operations.⁷⁹

In 2020, there was an announcement that operations against illegal deforestation would be paralyzed due to the freezing of around BRL 60 million for IBAMA and the Chico Mendes Institute of Biodiversity Conservation (ICMBio).⁸⁰ For the year 2021, a new reduction of the amounts destined to the environment was confirmed:⁸¹ the budgetary vetoes reached a total of BRL 235.2 million, whereas BRL 26 million were cut from IBAMA and ICMBio. At IBAMA, the vetoes specifically impacted funding for actions to control and fight deforestation.⁸² In the Ministry of the Environment, in turn, the cut amounted to BRL 204 million.

Thus, although President Bolsonaro promised to double the funds destined to environmental control in his speech at the Climate Summit in April 2021,⁸³ on the next day, he approved the federal budget of 2021 with a cut of 24% in environmental affairs, including cuts for inspection expenses.⁸⁴

In addition to reducing environmental budgets, the administration is significantly underspending on some environmental programs. A study by the Institute of Social-economic Studies found that the Ministry of the Environment refrained from using 39% of the budget forecast for the year of 2019: out of the BRL 3.27 billion available for the ministry, only BRL 2 billion were duly employed.⁸⁵ Besides, data from the same research show that only BRL 40 million were used for actions of the Climate Change program, when the total destined for that program exceeded BRL 400 million.

3.3 Weakening of institutional capacities of environmental protection bodies

The institutional capacities of the environmental protection bodies have been weakened in other ways than through budget reductions. Whether through the removal of autonomy from environmental bodies, political intervention, or pressure and persecution of public servants, agencies such as IBAMA, ICMBio, and the National Indian Foundation (FUNAI)⁸⁶ are losing their strength. If Draft Bills such as the one that changes the environmental licensing process are approved, the trend is that these and other bodies, such as the Institute of National Historic and Artistic Heritage, Ministry of Health and Ministry of Agriculture, may be further disempowered.

In 2020, this scenario of reduced power of environmental ministries was accompanied by a phenomenon of militarization of environmental protection, with the transfer of primary control responsibilities in this area to the armed forces.⁸⁷ In February alone, the National Legal Amazon Council was reactivated and handed over to Vice-President Hamilton Mourão for him to coordinate. The council was designated in April with 19 members of the military, no members of academia, state governments, the private sector, civil society, FUNAI, indigenous peoples, or even environmental bodies such as the IBAMA or ICMBio.⁸⁸

The Council is now ostensibly taking steps to appear to increase environmental protection, but in a manner that actually undermines or disregards existing strong protections. For example, the Council has proposed a “restructuring” of IBAMA and ICMBio without, however, overseeing these bodies. There is also mention of a “National Plan to Control Illegal Deforestation and Recover Native Vegetation,” disregarding the already existing Amazon Deforestation Prevention and Control Plan. While the old plan has been depleted of its relevance, the new plan was not published in the Federal Official Gazette and lacks goals, deadlines, or specific proposed activities.⁸⁹

Such unnecessary duplication also occurs in terms of data monitoring. This is because, at the end of 2020, without a tender and with a confidential agreement, the government acquired a Finnish monitoring system for BRL 175 million.⁹⁰ However, official deforestation data have already been monitored by INPE through the Prodes and Deter systems, respectively, since 1989 and 2004.⁹¹

The militarization of environmental protection also occurred through a presidential decree, issued on May 2020. This decree transferred the coordination of IBAMA's control actions in the Amazon to the Ministry of Defense,⁹² which has not led to better results, as is discussed in the following section.

3.4 Reduction of control and consequent impunity of environmental felony perpetrators

In April 2020, environmental militarization resulted in the removal of then-general coordinator of Control, Renê Luiz de Oliveira, and the Operations coordinator, Hugo Loss, both from IBAMA. The removals occurred after a major operation against illegal prospecting in indigenous lands in Pará, shown in a series of television reports.⁹³ At the same time, the general coordinator for the monitoring of the use of biodiversity and foreign trade, André Sócrates de Almeida Teixeira, was replaced after he opposed the rejection of rules that prevented the illegal exportation of wood.⁹⁴

Even more recently, in April 2021, then-Superintendent of the Federal Police in the Amazon, Alexandre Saraiva, was dismissed after he ordered a police investigation into three high-level government officials government officials (then-Minister of the Environment, Ricardo Salles, then-President of IBAMA, Eduardo Bim, and senator Telmário Mota (PROS-RR) suspected of being part of a criminal organization and inappropriately sponsoring, directly or indirectly, the interest of lumber extractors while working as government employees.⁹⁵ The accusation refers to Salles' conduct regarding the Handrocanthus-GLO Operation, the largest seizing of illegal wood in the history of the Amazon. At the time, the Minister had visited the region, met with businesspeople who were under the scope of the operation, criticized political actions and legitimized the illegal extraction.⁹⁶

The persecution of public servants⁹⁷ reveals the government's permissiveness with regard to human presence and illegal activities (wood extraction,⁹⁸ prospecting, etc.) in Conservation Units and Indigenous Lands, which also occurs due to the retraction in the control of the exercise of powers by the environmental police.

In April 2019, for instance, President Jair Bolsonaro signed Decree no. 9.760,⁹⁹ which establishes administrative punishments for environmental infractions and permits conciliation between the perpetrator and control bodies. It also determined that the payment of a fine would only occur after the conciliation hearing, under justification that this would reduce the rates of judicial contesting of administrative sanctions. In practice, the measure led to major impunity: between April 2019 and October 2020, out of the 7,205 hearings scheduled, only 5 were held.¹⁰⁰ Since the statute of limitations of the fines was not suspended, the delay in hearings may lead to the extinction of the payment obligation for thousands of violators. Known informally as the “Zero Punishment Program,” the Decree led to a legal action against the violation of a constitutional fundamental right (ADPF) 755,¹⁰¹ filed by political parties but currently without results.

Not only were administrative proceedings related to environmental infractions significantly delayed, but the number of notices itself has declined greatly in the last period, in spite of the increase in deforestation rates and forest fires. Recent data show that, in 2020, IBAMA gave out the lowest number of fines to environmental perpetrators since 1995. In relation to the previous year, this number represents a decrease of 20%. Compared to 2018, it represents a decrease of 35%.¹⁰²

In the Amazon, according to a report by the Ministry of Defense – currently responsible for IBAMA's control actions in the region – BRL 1.79 billion were obtained with environmental fines between May and November 2020. In 2019, the outcome was 18% higher, whereas there was one fifth of the control staff, considering 750 IBAMA staff members in 2019 and 3400 members of the military and 300 other agents of the Verde Brasil 2 operation in 2020¹⁰³

3.5 Reduction of participation by and intimidation of civil society

The current Brazilian government has also taken numerous steps to curtail public engagement in and scrutiny of its anti-environmental measures. Under previous administrations, civil society have been afforded a role in developing and approving environmental policies. A study by Artigo 19, Imaflora, and the Social-Environmental Institute established a timeline of actions by the current Brazilian government since early 2019 to dismantle the participative structure. The key changes are the elimination of collegiate boards that included civil society in decision-making processes, and the redefinition of representation and proportionality rules.

Out of the 22 national collegiate boards related to social-environmental policies, over half were disestablished or restructured. Only nine collegiate bodies remain unchanged.

The termination of, for instance, the Fundo Amazônia Steering Committee and the Technical Committee of Fundo Amazônia¹⁰⁴ led to the prevention of transfers of around BRL 2.9 billion from donor countries.¹⁰⁵ Meanwhile, the restructuring, through Decree no. 9806/2019,¹⁰⁶ of the National Environment Council (CONAMA) led to reduction in the number of civil society representatives. CONAMA is the main consultative body of the Ministry of the Environment and is responsible for establishing criteria for environmental licensing and rules for quality control related to the environment. While, according to the previous decree,¹⁰⁷ the total number of council members was 96, 22 spots being destined to civil society, the new regulation made it so the total number is 23, with only four spots for civil society, a reduction of the number of organizations that may be involved, and the proportion of civil society (17 versus 23%). These seats began to be distributed randomly among the interested entities. The Environmental Commission of the Lower House of Representatives, ICMBio, the National Water Agency, the Prosecution Office, indigenous representatives, and members of the scientific community lost their seats in the new composition of CONAMA.

Meanwhile, the strength of the federal government increased considerably. With a total of nine members, now the government represents 41% of CONAMA, while previously it only held 29% of the seats.¹⁰⁸ Together, the government and the productive sector now have the majority of votes. As an example of the consequences of the change of proportionality of the composition at CONAMA, among other measures, the revocation of CONAMA resolutions was approved urgently in September 2020,¹⁰⁹ whereas these measures protected mangroves and sand bars, stipulated parameters to define and delimit Permanent Preservation Areas, and determined the licensing of irrigation developments.¹¹⁰

In September 2019, the controversy on the composition of the Council was taken to the STF through ADPF 623,¹¹¹ filed by the Federal Attorney's Office. The case has been suspended since March 10, 2021 due to a request for examination of the records by Justice Nunes Marques.¹¹²

More recently, in the context of the COVID-19 pandemic, there were also problems in relation to the participation by civil society in environmental licensing bodies. That is because the hearings and votes on licensing processes began to be held remotely and the affected communities often have limited access to the Internet.¹¹³ If the goal of the hearings is to provide transparency and allow for questions and concerns from the communities regarding the development to be licensed, it is important that there are conditions for this participation and effective remote engagement. If the new Environmental Licensing Law is approved, participation will be even further reduced, since most projects will be allowed to proceed simply through self-declaratory licensing.

What is equally concerning are attempts to criminalize indigenous peoples and civil society organizations,¹¹⁴ a topic further addressed in our paper on Environmental and Human Rights Defenders. Activists have been accused of setting fire to the forests with the support of international institutions in a "campaign with a hidden agenda" "seeking to harm the government and Brazil itself".¹¹⁵ Also in September 2020, in a live transmission broadcast in his social media pages, the President stated: "I can't kill this cancer [that is] the NGOs in the Amazon".¹¹⁶ The government's strategy of censoring and intimidating journalists and civil society entities is sadly recurring in the current administration.¹¹⁷

3.6 Reduction of environmental information transparency

On April 22, 2021, the Escazú Regional Agreement for Latin America and the Caribbean on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Affairs (Escazú Agreement) came into effect. Although Brazil had an important role in the instrument's negotiations and was one of the first countries to sign it during former President Michel Temer's administration, the current Federal Executive Branch has not sent it to Congress for approval. This prevents the ratification and enactment of the Agreement by Brazil.¹¹⁸

The Escazú Agreement is a hallmark in the promotion of rights to access information, participation, and justice in environmental affairs, besides establishing international protection and cooperation mechanisms for environment defenders, which is particularly important in the context of violence against these people in Latin America.¹¹⁹ Brazil's inertia when it comes to ratifying the Agreement is only another example of its violations of state duties to ensure transparency and access to environmental information.

A study by Artigo 19, Imaflora, and the Social-Environmental Institute comparing the periods of 2017-2018 and 2019-2020 when it comes to transparency and social participation in environmental policies revealed a series of setbacks. Regarding transparency, the study points to concerns on "changes of communication protocols in environmental bodies, threats to public servants, intensification of secrecy on public documents, erasures in environmental databases and delegitimizing of public bodies responsible for producing environmental data."¹²⁰ The study also finds that satisfactory answers to requests made through the Information Access Law on environmental policies to federal bodies fell by 78% in 2019 compared to the 2017-2018 period.

Similarly, the Climate Observatory revealed when it comes to society and the environment that, in the first half of 2020, the Ministry of the Environment answered only half of requests made by journalists.¹²¹ In March, the President issued a Provisional Measure suspending the deadline for answers under the Information Access Law, although this measure was later overruled by the STF.

3.7 Climate change denial by the Bolsonaro administration

Ever since the start of the Jair Bolsonaro administration, the progressive increase of deforestation and of forest fires in Brazil has been accompanied by scientific and climate-change denial by key representatives¹²² of the Federal Government,¹²³ which contradicts the scientific consensus and even official data. In September 2020, amidst the record-breaking forest fires in the Pantanal biome, for instance, Vice-President Hamilton Mourão questioned the data disclosed by INPE, accusing its employees of forging data and opposing the government. The President's discourse at the time was similar, characterizing himself as a victim of a sort of "conspiracy theory."¹²⁴

The denial discourse also appeared in the presidential speech at the start of the 75th General Assembly of the United Nations in September 2020. There, the head of the executive branch stated, "we are the victims of one of the most brutal misinformation campaigns regarding the Amazon and the Pantanal."¹²⁵

Relevant OECD committees, initiatives, and instruments

Brazil's failure to ensure effective regulation, monitoring, investigation, sanction, and remediation of deforestation and climate change-related harm causes it not to be in alignment with many OECD instruments, commitments and values concerning the protection of the environment, human health, and other human rights.

In regards to the environment and sustainability, the priorities at OECD relate to the achievement of the Sustainable Development Goals (SDGs) of the 2030 Agenda. The Organization is committed to ensuring the success of the Agenda by offering its expertise in formulating and monitoring public policies. The Organization's proposals to achieve the SDGs include: improving political coherence in the achievement of the SDGs; promoting investments in sustainable development; supporting inclusive growth and well-being; promoting partnerships to strengthen availability and data management capabilities; facilitating policy monitoring and review.¹²⁶

Intertwined with the achievement of the SDGs, the OECD has adopted the concept of green growth, which guides the preparation and implementation of the Organization's work on environmental matters. Green growth, which consists of the economic perspective on sustainability, implies an economic growth combined with the assurance that natural assets will provide the environmental resources and services that are required for well-being.¹²⁷

All told, the OECD has over sixty legal instruments in effect on sustainability and the environment. Most of them result from proposals by the Environmental Policy Committee and the Chemicals Committee, but one may find legal instruments that address the environment and sustainability in other committees as well, such as the Public Governance Committee. Out of all of these instruments, three of them specifically mention forest management: the Declaration on Integrating Climate Change Adaptation into Development Co-operation, OECD/Legal/0343¹²⁸, the Recommendation of the Council on Environmental Assessment of Development Assistance Projects and Programmes, OECD/Legal/0458¹²⁹ and the Recommendation of the Council on the Use of Economic Instruments in Promoting the Conservation and Sustainable Use of Biodiversity, OECD/Legal/0343¹³⁰. The first two mention forest protection in the context of international cooperation, another major focus for the OECD. In turn, the Recommendation on Biodiversity is directly related to national efforts to prevent deforestation and to protect forests.

There are also other instruments applicable to deforestation and climate change containment policies. These are instruments that express the OECD's perspective on the relationship between economy, public governance, and sustainable development, including the Recommendation of the Council on the Use of Economic Instruments in Environmental Policy, OECD/Legal/0258¹³¹, the Recommendation of the Council on Reporting on the State of the Environment, OECD/Legal/0170¹³², and the Recommendation of the Council on the Assessment of Projects, Plans and Programmes with Significant Impact on the Environment, OECD/Legal/0172.¹³³

Among the instruments mentioned above, the Recommendation of the Council on the Use of Economic Instruments in Promoting the Conservation and Sustainable Use of Biodiversity is the most important instrument applicable to the subject of forest conservation and fighting deforestation. Adopted in 2004, the instrument asks those who adhere to it to establish a political structure to assure, in the long term, the efficient conservation of resources and the sustainable use of biodiversity. The OECD recommends a more consistent use of economic instruments in applying biodiversity policies by integrating biodiversity resources to industry policies and a fair distribution of benefits from the conservation and use of biodiversity.

The monitoring of the Brazilian situation regarding this OECD instrument is present in a report published in 2020¹³⁴. evaluating the alignment of Brazil's environmental legislation, policies and practices with 23 OECD legal

instruments on the environment, and Brazil's progress in implementing 13 recommendations from the 2015 OECD Environmental Performance Review of Brazil.¹³⁵ The report identifies numerous gaps in Brazil's regulatory regime and implementation on subjects ranging from environmental information management, to waste disposal, to enforcement of polluter pays schemes. The report presents a set of findings and recommendations regarding biodiversity in Brazil, directly correlating the subject to the fight against deforestation.

This 2020 report finds that in Brazil, the economic valuation of biodiversity and ecosystem services, a central aspect of the 2004 Recommendation, has progressed very slowly. The report notes that lack of information and technical guidance on how to assess the loss of biodiversity hinders not only the formulation of effective policies, but also the definition of environmental compensation payments for projects that damage biodiversity.¹³⁶ As a result, environmental compensation payments are not usually proportional to the ecologic damages.

In order to increase its alignment with the OECD Recommendation on the protection of biodiversity, the report calls on Brazil to undertake the following¹³⁷:

- Careful analysis of the growing deforestation rates and development of policy instruments meant to reverse the trend;
- Development of an effective monitoring system to implement policies and results, assuring that environmental control agencies are equipped with sufficient human and financial resources;
- Continuity in efforts to prepare and assure the proper functioning of the CAR to improve security in land possession and allow for the effective use of economic instruments for forest conservation;
- Improvement of knowledge on the economic value of biodiversity and ecosystem services;

Along with the 2004 Recommendation, the 2020 report also evaluates Brazil's alignment to three other Recommendations on general aspects of environmental policies with indirect relation to containing deforestation. On the alignment with the Recommendation of the Council on the Use of Economic Instruments in Environmental Policy, published in 1996, the report shows that Brazil has made insufficient use of economic instruments with environmental purposes. The document specifically highlights Brazil's erratic use of tax instruments with environmental goals.¹³⁸ In fact, the Brazilian tax scheme does not favor sustainable activities and, in some cases, it stimulates environmentally harmful practices. When analyzing Brazil's performance in the observance of the two other Recommendations, the report emphatically notices the absence of precise and regular information on the country's environmental situation, a characteristic that also compromises assessments of the environmental impact of public and private projects and plans.¹³⁹ In the subject of transparency around the country's environmental situation, the report recommends that Brazil ensure:¹⁴⁰

- Regular publication of reports on the state of the environment, both at a federal and at a state level;
- An increase of efforts to develop indicators on the implementation of environmental measures and sustainable development policies;
- Improvement of consistency between regional and national data;
- Provision of public access to performance information;
- The requirement of a Strategic Environmental Assessment for space plans at all administrative levels, as well as for industrial development plans and programs;
- Development of methodological and procedural guidelines for the performance of the Environmental Impact Assessment of projects and provision of programs and qualification to the competent authorities through the assessment.

The OECD's most important legal instruments on the environment are those destined to the formulation of

efficient public policies in economic and environmental terms, based on accurate and updated data and with scientific backing. The Organization also values mechanisms to monitor policy results, as well as policy enhancement channels, with the participation of social stakeholders. In the specific case of deforestation and climate change, the work at OECD proposes economically feasible ways of achieving emission reduction and fauna and flora protection goals. These paths of action depend on the creation and redesign of institutional forest status information and monitoring mechanisms. The criticism addressed at Brazil emphasizes the persistent lack of instruments for the analysis, monitoring, measuring, and correction of environmental policies in the country. The recommendations suggest improving existing instruments and using mechanisms with proven efficacy (such as taxation) to mitigate greenhouse gas emissions.

The OECD's report, published in 2020, already contained serious concerns and strong recommendations about the poor state of Brazil's environmental governance. In the years since that report's publication, the situation has become substantially more severe. During Brazil's accession process, we therefore recommend special attention towards the contemporary context of institutional dismantling and financial compromise of environmental policy mechanisms and instruments.

This report on deforestation and climate change in Brazil has exposed the very legal and policy gaps that, if left unaddressed, will continue to prevent Brazil from diagnosing environmental problems and implementing the environmental policies explicitly emphasized in OECD rules. Important bodies like IBAMA, INPE, and ICMBio are examples of the environmental institutions in Brazil that have suffered shortages of resources, suppression of jurisdiction, and arbitrary changes to the board of directors, preventing their independent and effective activity in environmental protection. As emphasized in the OECD reports, Brazil's deficiency in this dimension of applied environmental policy is historically problematic. Against that reality, recent setbacks further compromise the Brazilian environmental situation, considerably increasing its misalignment with the policies recommended by the OECD.

5

Conclusion and recommendations for Brazil and the OECD

Civil society, academics, and the OECD itself have brought to light that deforestation is rapidly expanding in Brazil, including as the result of policies reversing the environmental protection trajectory in the country.¹⁴¹ This paper has discussed several of the governance failures related to this issue, including the legislative and regulatory dismantling of forest protections, the reduction of the environmental budget, the weakening of the institutional capacities of environmental protection bodies, the impunity of environmental perpetrators, the reduction of civil society participation, the reduction of transparency of environmental information, and the climate change denial of the Bolsonaro administration.

As has been explained, **these gaps and failures are causing Brazil to fail to act in line with many OECD instruments on environmental protection, open government, access to information, sustainable development, rural development and inclusive growth, responsible business conduct and stakeholder engagement, among many others.** These gaps are not only contrary to OECD instruments, standards and commitments, but they constitute a direct affront to the organisation's foundational values of respect for environment, human rights, and rule of law.¹⁴²

Recommendations for reform in Brazil

To address the gaps and failures on deforestation and climate change prevention described above, Brazil should as a matter of priority adopt a number of immediate reforms as well as abandon detrimental measures. The following is a non-exhaustive list of recommendations on reforms actions Brazil should take.

Legal and regulatory regime

- Analyze the growing deforestation rates and develop policy instruments to reverse the trend;
- Reinforce environmental protection and climate rules, particularly strengthening environmental licensing processes, ensuring independence to environmental impact studies, and requiring integrated and strategic impact assessments;
- Require Strategic Environmental Assessment for sector plans and programs as a legal obligation;
- Abandon the trend of deregulating through draft bills or administrative acts that harm the environment and climate, such as draft bills 3.729/04 (Environmental Licensing), 2.633/2020 and 510/2021 (both “Land-grabbing Draft Bill”), 1.426/2020 (Legal Reserve), 490/07 (indigenous land rights), 191/2020 (mining in indigenous lands), Decree no. 9.760/2019 and Normative Instruction no. 7 by IBAMA;
- Respect and guarantee of the rights of indigenous and traditional peoples, especially when it comes to observing the principle of free, prior, and informed consent in good faith, pursuant to Convention no. 169 of the ILO, and territory rights;
- Create economic alternatives that reduce the appeal of deforestation, including the removal of tax incentives to activities that degrade the environment;
- Support and approve the Constitutional Amendment Proposal on climate safety;
- Require Strategic Environmental Assessments for space plans at all administrative levels, as well as for industrial development plans and programs; and
- Develop of methodological and procedural guidelines for the performance of Environmental Impact Assessments of projects and provision of programs and qualification to the competent authorities through the assessments.

Budgeting, staffing, and resources

- Strengthen the institutional capacity and resources of environmental protection bodies such as IBAMA, ICMBio, FUNAI, environmental secretariats within states and municipalities, as well as environmental protection councils and funds on the subject, such as Climate Fund and the Amazon Fund;
- Observe technical criteria for the credentials of leaders in environmental agencies of the government; and
- Demilitarize environmental protection bodies.

Enforcement

- Develop indicators on the implementation of environmental measures and sustainable development policies;
- Strengthen and ensure independence of control actions, particularly on deforestation, and ensure the investigation and sanction of those responsible for environmental infractions;
- Ensure proper functioning of the Rural Cadastral Registration (CAR, Cadastro Ambiental Rural) to improve security in land possession and allow for the effective use of economic instruments for forest conservation;
- Improve the land management and property governance system, including by publicising processes and digitalizing systems in synchronization with other systems (such as CAR, the the electronic Land Management System SIGEF¹⁴³, the Federal Revenue service, Real Estate Registry Office systems, etc.), with the goal of enhancing control mechanisms, providing legal security, and solving property conflicts;

- Ensure that the judicial branch can act independently and diligently in conducting and concluding judicial proceedings on deforestation and climate affairs; and
- Increase the strictness of penalties for environmental crimes.

Access to information and public participation

- Ratify the Escazú Agreement;
- Assure transparency and independence of environmental information, with investment in science and facilitated access to information that is adequate, sufficient, and in an accessible language, preferably with database integration;
- Assure regular publication of reports on the state of the environment, at both federal and state levels;
- Improve the consistency between regional and national data;
- Improve knowledge on the economic value of biodiversity and ecosystem services;
- Assure participation by civil society and scientists in environmental protection councils and social control mechanisms; and
- Revise, through a process inclusive of civil society, the Brazilian NDC to ensure its compatibility with the country’s obligations under the Paris Accord.

Trade agreements

- Ensure binding mechanisms and monitoring bodies in the European Union-Mercosur Agreement to require corporate supply chain due diligence and management of potential and actual social and environmental impacts;
- Adopt safeguards in the European Union-Mercosur Agreement for “forest risk commodities” such as soy, meat, and iron ore.

Recommendations for the OECD accession process

Taken together, the gaps and failures referenced in this submission demonstrate that Brazil is far from being in alignment with OECD practices, policies and standards and that at this moment in time, it is unfit for accession. The accession process provides a unique opportunity to achieve alignment, provided accession is unreservedly conditioned on Brazil addressing the legal and policy failures identified in this paper.

The authors of this paper Conectas, OECD Watch, and FIDH make the following asks:

Of the OECD and each of the relevant technical committees:

- To carefully consider the research and reform recommendations presented in this paper during Brazil's technical review;
- To ensure the technical review process is transparent and participatory, actively seeking engagement of civil society, particularly in Brazil, to ensure its views are heard and reflected in the ultimate terms for Brazil's potential accession; and
- To require Brazil to adopt the reforms recommended in this paper as a condition of accession.

Of current OECD member states:

- To ensure the OECD upholds its values on rule of law, human rights, and the environment by:
 - Ensuring the technical reviews of the relevant OECD committees are transparent and participatory;
 - Ensuring the relevant OECD committees require Brazil to adopt the reforms this paper recommends during its accession process; and
 - Granting Brazil membership only if it has implemented the domestic reforms necessary to meeting the OECD's values and standards.

ENDNOTES

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