

THREATS TO ENVIRONMENTAL AND HUMAN RIGHTS DEFENDERS 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.

The Observatory for the Protection of Human Rights Defenders (the Observatory) was created in 1997 by FIDH and the World Organisation Against Torture (OMCT). The objective of this programme is to intervene to prevent or remedy situations of repression against human rights defenders. FIDH and OMCT are both members of ProtectDefenders.eu, the European Union Human Rights Defenders Mechanism implemented by international civil society.



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GLOSSARY OF ACRONYMS

APIB	Articulation of Indigenous Peoples of Brazil
CDHM	Congress' Chamber of Deputies
CONAMA	National Environmental Council
EHRD	Environmental and Human Rights Defender
FUNAI	National Indian Foundation
IBAMA	Institute for the Environment and Renewable Natural Resources
ICMBio	Chico Mendes (National) Institute for Biodiversity Conservation
INCRA	National Institute for Colonisation and Agrarian Reform
SEMAs	State-level Secretariats for the Environment and Natural Resources
STF	Federal Supreme Court

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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 will need 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, the fight against climate change and deforestation, the protection of its civic space as well as the rights of workers, environmental and human rights defenders (EHRDs), indigenous peoples and other traditional communities make it unfit for accession.

This report is one of five submitted to the OECD assessing the extent to which Brazil’s laws, policies and practices in these areas meet OECD expectations. It focuses on the situation of EHRDs and the civic space in Brazil.⁵ It is likely of particular interest to the OECD Committee on Public Governance, but it is also relevant to other committees and focused on Agriculture, Corporate Governance, Development Assistance, Environment Policy, Investment, Public Governance, and Steel.

Multiple cases of attack, persecution, and intimidation of EHRDs as well as hurdles to civil society participation in public policy and decision-making reveal serious gaps in Brazil’s laws, policies and practices to ensure a vibrant, open and safe civic space and an enabling environment for EHRDs. In addition, over the last few years, the Brazilian government has embarked on a proactive campaign to undermine the work of EHRDs and the country’s civic space. These failures put into question Brazil’s “willingness, preparedness and ability” to comply with OECD values and standards, all of which are critical for the OECD’s decision on whether 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 a number of emblematic case studies and research and analysis by Brazilian and international experts, this report examines the above-mentioned gaps as well as the ability of civil society actors more broadly to participate in public policy and decision-making. The report makes recommendations for improvements in these areas. **OECD Watch, Conectas Human Rights (Conectas), and the Observatory for the Protection (FIDH-OMCT) 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 explores prominent cases that exemplify Brazil’s failure to protect EHRDs and guarantee public participation. Section 3 analyses the gaps in Brazilian laws, policies, and practices that lead to the harms occurring in these cases. Section 4 discusses OECD committees, initiatives, and instruments relevant to the issue of protection of EHRDs. Finally, section 5 concludes by identifying both the reforms Brazil must adopt to close the legal and policy 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.

2 Prominent cases

Civic space is under threat in Brazil. Environmental and human rights defenders are subject to different types of attacks and limitations of their right to public participation. This section provides a non-exhaustive list of prominent cases that exemplify the variety of attacks, including death threats, killings and beatings of EHRDs; intimidation and threats against an environmental and human rights researcher; criminalisation and arbitrary arrest of EHRDs; violence against women human rights defenders online; misinformation and smear campaigns; and violent repression of protests.

2.1 Death threats, killings and beatings of EHRDs

• Killing of indigenous leaders

In November 2019, **Paulo Paulino Guajajara**, a 26-year-old Guajajara leader, was shot dead when a group of at least five illegal loggers ambushed him and another member of the Guajajara tribe in the Araribóia Indigenous Reserve, Maranhão State. He was the fourth “Guardian of the Forest”, a group of 120 Guajajara activists fighting illegal logging in the Araribóia reserve, to be killed.⁶

On April 18, 2020, **Ari Uru-Eu-Wau-Wau** was killed in the city of Jaru, in the State of Rondônia, after he had been threatened several times in 2019.⁷ He was a member of the territory’s monitoring and surveillance group, created two years before to protect their land from illegal intruders, including illegal miners, land grabbers or *grileiros* and loggers. In September 2020, cacique⁸ **Edilson Tembê dos Santos** of the village Acará-Mirim in the municipality of Tomé-Açú, was also assassinated by unknown individuals.⁹

In February 2021, Isaac Tembê, a leader of the Tenetehara people was killed by police officers while hunting near a farm. At the time of publication of this report, prosecutors were investigating reports indicating that the police officers were acting as private security for farmers, as well as that the victim was executed, but no arrests have been made yet¹⁰.

These killings followed repeated calls for protection to the authorities. The indigenous leaders from these territories had “repeatedly reported illegal land seizures and logging to the authorities, but the authorities’ response was limited and illegal land seizures and logging continued.”¹¹ Between January and April 2019 the Federal Public Prosecutor’s Office had also repeatedly warned the Ministries of Justice, Public Security and Women, Family and Human Rights of the deterioration in the security situation in the indigenous Karipuna and Uru Eu-Wau-Wau territories and requested immediate support from the National Security Force.¹² However, the Ministries took no action. (For a fuller description of the situation of indigenous peoples in the country, see separate paper on Indigenous Peoples’ Rights).

• The murder of landless peasant Fernando Araújo dos Santos

In January 2021, **Fernando Araújo**, a landless rural worker and land rights defender from the Movimento Sem Terra was killed in his residence in Santa Lúcia farm, in the municipality of Pau D’Arco, State of Pará. Fernando was part of a group of families that occupied Santa Lúcia farm, claiming that it had been illegally established on public land which should be used for the creation of an agrarian reform settlement.¹³ He had survived the 2017 Pau D’Arco massacre, a brutal repression of rural workers while enforcing an eviction order which resulted in 10 individuals being killed by the police in Santa Lúcia farm. He was a key witness in the criminal case that followed. So far, no one has been charged or arrested for Fernando’s murder or the previous attempt on his life.¹⁴

In 2015, the National Institute for Colonisation and Agrarian Reform (INCRA) initiated an administrative process for the purchase and sale of the area. After the massacre in 2017, negotiations with the family that owned the



farm advanced significantly. By early 2019, the purchase was about to be completed. However, President Bolsonaro’s suspension of all administrative processes related to the expropriation of rural areas halted the transaction, which was never completed.¹⁵ In January 2021, the lawyer of the workers of Santa Lúcia farm was arrested by local police on frail charges relating to a murder. National human rights organisations have denounced the case as a retribution for the work of the lawyer in the defence of the victims. At the time of publication of this report, the lawyer was still on house arrest and facing trial¹⁶.

• The killing of Rio’s councillor and activist Marielle Franco

In March 2018, **Marielle Franco**, city councillor and defender of LGBTQ+, black and women’s rights, along with her driver Anderson Gomes, were shot dead.¹⁷ In March 2019, the police arrested two former military police officers. The prosecutor in charge of the case acknowledged that Marielle had been killed for her political activity and her militancy in favour of the rights of vulnerable people for whom she worked.¹⁸ Also in March 2019, 14 experts and rapporteurs from the United Nations (UN) and the Inter-American Commission on Human Rights acknowledged the work carried out by police investigators and prosecutors to uncover the truth. However, they stressed that more needed to be done to establish the motives for the murders and those who may have ordered, authorized or consented to them.¹⁹

While the two former military police officers have now been charged for the murders and remain detained in custody, prosecutions have been slow to advance and ongoing investigations have not yet revealed who was behind the killings. Allegations abound that public officials are hampering the investigations.²⁰ According to the executive director of Amnesty International Brazil, changes in the bodies responsible for the investigation and lack of transparency have hampered a swift and impartial process.²¹

• Death threat to Cacique Babau

On January 29, 2019, **Cacique Babau**, an indigenous leader and human rights defender from Bahia State, received information from a confidential source about a plan to assassinate him and at least four members of his family²². The plan was reportedly developed in a meeting with local farmers and representatives of civil and military police. The Bahia State government responded by including Mr. Babau in its programme for the protection of human rights defenders. However, the UN Special Rapporteur on the Situation of Human Rights Defenders reported in December 2020 that he appeared to still be facing serious threats and that no investigation had been opened into the alleged death threats.²³

Physical attack and death threats to social leader Maria Nasareth dos Santos

In March 2020, **Maria Nasareth dos Santos**, a social leader and fisherwoman living by the Sirinhaém River, in Pernambuco State, was detained and physically attacked by members of the military police. Maria works to defend the human rights of traditional communities²⁴ in her region. According to the Land Pastoral Commission that reported the attack to the National Commission for Human Rights and Minorities of the Congress' Chamber of Deputies (CDHM), eight armed policemen, three of them hooded, found Maria in the place where she usually fishes, dragged her into a tent, slapped her in the face and covered her head with a plastic bag. The attack lasted about 30 minutes and Maria Nasareth was death threatened should she report the incident. On March 19, 2020, CDHM's president asked Pernambuco authorities to rigorously investigate the facts, identify the perpetrators of the attack and bring them to justice.²⁵

2.2 Intimidation and threats against environmental and human rights researchers

Digital violence against Repórter Brasil

Repórter Brasil is an NGO founded in 2001 by journalists, social scientists and researchers. It conducts investigative journalism, advocacy and research on environmental crimes and human rights violations in Brazil.²⁶ In January 2021, Repórter Brasil was the target of a series of cyberattacks aimed at forcing the organisation to remove several reports from its website. The website was temporarily suspended and the organisation received an anonymous email stating: "As you may have noticed, you experienced some technical problems on the last days. So that this does not happen again, remove the materials in the 2003, 2004, 2005 (sic) folders". Repórter Brasil did not respond to this threat and the following day its headquarters underwent an attempted break-in, prevented by the arrival of neighbours. Two days later, the attackers sent another email requesting the removal of materials by a specific date. On that day, the site was taken down for a few hours again. The attacks were reported to the Civil Police of São Paulo and the Federal Public Ministry was asked to follow the investigation.²⁷

“After several months, we still hope that authorities can finalize the investigation about the cyberattacks and threats to Repórter Brasil, determining who is behind them. It would be a way to prevent this new kind of censorship, through digital violence, from happening again against us and other outlets.”

_____ Marcel Gomes, Executive Secretary, Repórter Brasil

Threats to researcher and academic Larissa Mies Bombardi

In May 2019, **Larissa Mies Bombardi**, lecturer in geography at Brazil's University of São Paulo, published the report "Atlas of Agrochemicals and Connections between Brazil and the EU"²⁸, where she reported that "one person dies every two and half days from direct intoxication from agricultural chemicals with alarming incidences among the [Brazilian] youth." Her work had some impacts in Europe, including the boycott of Brazilian products by Sweden's largest organic supermarket.²⁹

After the report was released, Bombardi was subjected to threats and intimidation by unknown individuals. Her house was broken into and a laptop was stolen. She was locked in the bathroom while the robbery was taking

place.³⁰ Nonetheless, she continued her work and in October 2020 she co-published two papers drawing attention to the "spatial correlation" between increasing numbers of COVID-19 infections and intensive industrial pig farming in Brazil.³¹ Following the publication of the papers, the Brazilian Association of Animal Protein Producers and the Brazilian Agricultural Research Corporation (Embrapa) sent her an email stating that she could not make such hypotheses "in an absolute tone of intimidation."³² The increase of threats forced her to leave the country at the end of March 2021.³³

2.3 Criminalisation and arbitrary arrest

In 2017, eleven members of the **Quilombola³⁴ community of Barra do Parateca**, in Carinhanha, State of Bahia, were arrested for the alleged crime of "animal theft", which was never proven. The arrests, performed through a disproportionate mobilisation of police forces to the community (large number of military and civilian police, vehicles, heavy weapons and even drones)³⁵, followed a judicial decision confirming an earlier decision taken by INCRA recognising land titles to the Quilombola community. This police mobilisation was ordered by district judge and local landowner João Batista Pereira Pinto, a known opponent to the territorial claims of the Quilombola community, who in 2010 initiated a legal action against the INCRA decision.

In June 2020, another excessive police operation resulted in the arrest of five farmers from the same community on charges of "theft" and "criminal association" for allegedly breaking into the property of Mr. Pereira Pinto. Civil society organisations working with the community point out that the police investigation that preceded the arrests had multiple deficiencies, including inconsistencies in relation to the identification of the alleged authors of the crimes. At the time of the arrests, none of the allegedly stolen objects were found in possession of those arrested and the technical evidence produced so far revealed no signs of an actual break-in. The community considers that the arrests were used as means of intimidating them and forcing its leaders to abandon their territorial demands.³⁶

2.4 Violence against women rights defenders online

Online harassment and intimidation

Journalist **Patrícia Campos Mello**, who reported on the use of misinformation and "fake news" during Jair Bolsonaro's 2018 presidential election campaign, faced an aggressive online harassment campaign after a congressional hearing on "fake news" in February 2020. In this hearing, a former employee of digital marketing company Havan, which Patrícia Campos had accused of being involved in the misinformation campaign, accused her of lying and of being willing to trade sex for information.³⁷ As a result of these statements, the journalist received hundreds of threats and online harassment on social media. Several politicians, including the President himself and the President's son and congressman Eduardo Bolsonaro, fuelled the abuse by sharing and repeating the allegations.³⁸ Folha de S.Paulo, the newspaper for which Campos works, published an article denying the allegations against the journalist and the Committee to Protect Journalists condemned the online harassment.³⁹ In May 2020, Eduardo Bolsonaro once again repeated the accusations against Campos in the YouTube channel of far-right media company Terça Livre. Patrícia Campos sued Eduardo Bolsonaro for moral damages in a civil court, and won the case in January 2021. Even then, Bolsonaro continued to repeat the accusations on their social media accounts.⁴⁰

Sexual harassment, threat of sexual violence and physical attacks

During the 2018 presidential election, feminist activists mobilised around a Facebook group called "United Women against Bolsonaro", which brought together more than 3 million women from different political and social backgrounds. Since its inception, the group was the target of offensive messages, pornographic images, name-calling and threats. Many of these were directed at prominent female public figures.⁴¹

2.5 Misinformation and Smear Campaigns

◉ Framing human rights calls as criminal acts

Sonia Guajajara, a prominent indigenous activist, and the organisation she is a member of, Association of Indigenous Peoples of Brazil (APIB), were accused in September 2019 by General Augusto Heleno, Chief of the Institutional Security Office, of allegedly committing a “crime against the homeland” because of their international campaign to protect the environment in Brazil.⁴² She had urged the European Union (EU) to boycott food commodities including soya, beef and palm oil produced in areas where those products are directly linked to deforestation.⁴³ A year later, General Augusto Heleno once again accused APIB on social media posts and in an interview on Rádio Bandeirantes of tarnishing the image of the government abroad. Heleno accused APIB of committing crimes against the State, invoking the same legislation used during the Brazilian military dictatorship used to target the opposition and accuse it of “treason”.⁴⁴

“ There is an authoritarian escalation in Brazil. The democratic environment is in danger. In no republican and democratic state, can the state apparatus be used at the discretion of its rulers. Free expression of thought and freedom of expression, sustained by constitutional, conventional and legal principles, cannot be criminalised.”

— Luiz Henrique Eloy Terena, *Articulation of Indigenous Peoples of Brazil (APIB) Legal Advisor*

◉ Spreading misinformation and wrongfully assigning blame

In September 2020, during his speech at the UN General Assembly, President Bolsonaro alleged that there Brazil suffered from a “disinformation campaign” about wildfires and deforestation led by international institutions.⁴⁵ He claimed that the fires were occurring in places where peasants and indigenous communities burn their fields, suggesting their traditional practices were the cause of the Amazon wildfires.⁴⁶ The year before, President Bolsonaro had accused civil society organisations of being responsible of the fires in the Amazon.⁴⁷

On October 25, 2019, Environment Minister Ricardo Salles insinuated, in a social media post, that the international organisation Greenpeace could be responsible for the oil spill affecting Brazilian waters and more than 2,250km of coastline in North-eastern Brazil. Commenting on the post, President Bolsonaro stated that Greenpeace’s action was a “terrorist act” and that the organisation “only hinders us”. On October 30, 2019, Greenpeace sued the Environment Minister for defamation; however, in December 2020 the Federal Supreme Court (STF) rejected the claim on grounds that the organisation had used the wrong legal basis.⁴⁸

◉ Discrediting the work of government institutions

Government institutions have also suffered attacks to their reputation and credibility. A congressional commission created in 2016 with a specific mandate, investigated in 2017 alleged irregularities in land demarcations conducted by the National Indian Foundation (FUNAI) and INCRA.⁴⁹ After examining the way the allocation of land to indigenous peoples, Afro-descendants and small-scale farmers who already inhabited it, the commission concluded that FUNAI and INCRA officials had backed fraudulent land claims and requested the indictment of 67 people. Many believe that this was simply an attempt to undermine the institutions tasked with protecting people’s right to land, criminalise the actions of certain individuals and stop the demarcations⁵⁰. The investigation was instigated by a powerful agribusiness lobby whose representatives comprised more than half of the members of the Brazilian Congress at the time. Both the rapporteur and president of the commission conducting the inquiry were members of the agribusiness block within the Congress, a known detractor of indigenous and Quilombola land demarcations.⁵¹



Brazilian indigenous leader Sonia Guajajara takes part in a protest of indigenous people of different ethnic groups demanding the demarcation of their lands and against the government of Brazilian President Jair Bolsonaro, outside the National Foundation of Indigenous People (FUNAI) in Brasilia, on June 16, 2021. © Sergio Lima/AFP

2.6 Violent repression of protests

In June 2020, the military police violently repressed a series of pro-democracy demonstrations in the city of São Paulo. Protesters sought to counter earlier protests by Bolsonaro supporters against COVID-19 isolation measures. The police response to these demonstrations drastically diverged from its approach to pro-Bolsonaro demonstrations which had been taking place for several weeks, without police intervention, despite breaching the state decree prohibiting large gatherings.⁵² President Bolsonaro himself fuelled the violent repression by publicly encouraging police repression of pro-democracy demonstrations, calling them “anti-fascist protests”, promising to “use federal security forces against those who go beyond the limits of the law in acts against their government” and asking the military police to “do their work.”⁵³

Legal and policy gaps

The cases described above demonstrate the multiple attacks on EHRDs in Brazil, in addition to the restriction of the right to freedom of expression and the limitation of civil society participation in public policies and decision-making. This depicts Brazil as one of the most dangerous and restrictive countries for environmental and human rights defenders in the world.⁵⁴ In this context, several patterns directly affecting the right to defend human rights in Brazil have been identified.



Police stand in front of a protest banner depicting the image of murdered black councilwoman and rights activist, Marielle Franco in a protest against racism and police violence during the National Day Against Racism commemorating the 133rd anniversary of the Slavery abolition in Brazil at the city centre of Rio de Janeiro, Brazil on May 13, 2021. © Carl De Souza/AFP

3.1 The connection between illegal business activities and violent attacks against EHRDs

For many years, Brazil has occupied a prominent position in the world ranking of violent countries for EHRDs as emblematic cases including the murder of **Chico Mendes** in 1988, the 1996 Eldorado dos Carajás massacre and the murder of missionary **Doroty Stang** in 2005⁵⁵ demonstrate.

Indeed, following an analysis of the figures of attacks against EHRDs for the period 2002-2013, Global Witness concluded that Brazil was the most dangerous place in the world to be a land and environmental rights defender, with 448 killings (followed by Honduras with 109 and the Philippines with 67).⁵⁶ Since that report, Brazil has remained the deadliest or one of the deadliest countries for land and environmental defenders in the world.⁵⁷ In 2020, the UN Special Rapporteur on the Situation of Human Rights Defenders reported that 174 human rights defenders had been killed in Brazil in the period between 2015 and 2019.⁵⁸

Indigenous peoples and rights defenders have been particularly targeted. A non-exhaustive study carried by the Missionary Council for Indigenous Peoples (CIMI) documented between 51 to 138 cases of murder of indigenous persons per year in Brazil over the last decade, with more than 100 cases per year since 2016.⁵⁹

Most murders happen in the context of disputes over land and natural resources and involve the police, private security or other private actors including landowners, cattle ranchers, illegal miners and loggers⁶⁰ (see separate paper on Indigenous Peoples' Rights). Quoting the Brazilian organisation Land Pastoral Commission, Global Witness explains that this situation is due to the aggressive and state-backed advance of business projects over

indigenous, traditional and small-scale farming communities. Powerful rural elites have historically exerted pressure over national government to halt any attempts to implement an agrarian reform contemplated in the Brazilian Constitution and other structural changes to protect these communities.⁶¹

The advance of illegal business activities fostered by the state together with the inability of the authorities to protect communities' rights result in systematic attacks and killings of EHRDs and indigenous rights defenders. Paulo Paulino's murder in November 2019 illustrates the dangers EHRDs face when they stand up against illegal networks encroaching on their lands and resources in a context of virtual lawlessness and state absence. Between 2000 and 2018, 42 Guajajara indigenous people in Maranhão state were murdered in the ongoing conflict with illegal loggers. **As the rate of deforestation has risen and the enforcement of environmental regulations has reduced under President Bolsonaro's leadership, the threat to these indigenous communities has grown.** As of April 2020, four other Guajajara community leaders had been killed since Paulo Paulino's murder.⁶²

In its 2016 report on Brazil, the UN Working Group on Business and Human Rights concluded that human rights defenders in Brazil increasingly face death threats for raising their voices when their rights are compromised by economic interests.⁶³ Unfortunately, these threats are not empty words and they often materialise. It is important to note that violence is also extremely high in urban areas. As the killing of Marielle Franco in 2018 illustrates, human rights defenders working in urban settings are often also subject to threats, intimidation and murder.⁶⁴

3.2 Limited resources and poor institutional design to protect EHRD

While Brazil has a National Programme for the Protection of Human Rights Defenders -a federal programme that is implemented at state level-, it has proved to be deficient in fully protecting EHRDs at risk or eliminating the risks they face. The limited resources allocated to the programme results in a protection system limited to telephone calls from officers based in Brazil's capital⁶⁵ or "remote monitoring" through the use of WhatsApp and email.⁶⁶

Only a few EHRDs under the programme receive police escorts. Obtaining police protection depends on the bodies in charge of public security (i.e. state-level Public Security Secretariats and the Federal Police). However, there are no tools that articulate the relationship between these bodies and the Human Rights Defenders Programme teams at state level. The absence of nation-wide standards or protocols leaves the burden of obtaining protection measures on the Programme's team at the state level. In addition, police have a tendency to downplay the level of risk EHRDs face to avoid the deployment of resources to protect them.⁶⁷

Police officers that are assigned to protect EHRDs often lack training to understand the defenders' specific protection needs, as no budget is allocated for this type of training. Additionally, budget is also lacking for deploying other type of security measures on the ground such as the installation of cameras, boosting telephone signal in rural areas and lighting.⁶⁸ These limitations result in a lack of protection even though the person is placed under the protection programme. Indeed, many of them have moved to other regions of the country because of ongoing threats to their lives without State support.⁶⁹

In addition to budget restrictions, there is poor coordination between federal and state law enforcement bodies. The UN Special Rapporteur on the Situation of Human Rights Defenders pointed this out in 2019, underlying the fact that federal and state authorities lacked systems to coordinate the issuing of arrest warrants and the sharing of resources, as well as a uniform set of criteria for prosecuting or investigating acts of violence.⁷⁰ The execution of the protection programme is based on formal agreements between federal and state authorities as well as other public and private actors. However, in July 2019, Decree No. 9937 determined that cooperation between all these entities would be voluntary, i.e. dependent on the good will, and not an obligation of the parties.⁷¹ Moreover, the protection programme is unevenly implemented across states, with some states at times discontinuing it altogether either because of a lack of resources or the finalisation of a collaboration agreement with federal authorities.⁷²

The effectiveness of the program is undermined by the exclusion of civil society from core decision-making.

In 2016 Presidential Decree No. 8724 excluded civil society from the Deliberative Council of the National Programme for the Protection of Human Rights Defenders, as a proposal for a new model of civil society participation did not gather consensus.⁷³ In addition to civil society groups and human rights defenders, other experienced entities in the underlying causes of conflict and violence over land were also excluded, such as INCRA, FUNAI, the Agrarian Ombudsman, the Public Ministry and Federal Public Defender's Office.⁷⁴ Brazilian civil society organisations consulted by the authors of this submission revealed that they were unaware of the programme, or of the different tools they could activate to protect civic space and EHRDs at risk.⁷⁵ This lack of awareness amongst human rights advocates further undermines the programme's capacity to deliver effective protection, as well as preventing scrutiny and improvement of the programme itself.

3.3 Failure to tackle the underlying causes of violence

Brazil is failing to implement measures to address the root causes of conflict and violence against EHRDs.

Our separate papers on Environmental Degradation and Human Rights, Indigenous Peoples' Rights and Deforestation and Climate Change describe many of these failures. By failing to put in place an adequate normative framework for the protection of the environment and human rights and to enforce this framework effectively, including by ensuring remedy and accountability for infringements, the government is creating and fuelling the conditions for conflict and violence. It is in these contexts that attacks and killings of EHRDs take place. As pointed out by UN Special Rapporteur on Toxic Waste in his 2020 report on Brazil, **instead of adopting a preventive approach, Brazil limits its response to providing limited measures of protection to individual human rights defenders.**⁷⁶

In line with this view, the Human Rights Defender Protection Programme of the State of Minas Gerais stated that its capacity to achieve results was limited in a context in which the vast majority of cases under its remit were the result of conflicts over land and territory.⁷⁷ It noted that in 10 years of implementing the programme, only one case out of sixteen achieved land tenure regularisation, while no Quilombola nor indigenous territory had been recognised. It also noted that allegations of threats and attacks were not being investigated.⁷⁸ The killing of indigenous and peasant leaders described above as well as death threats to Cacique Babau and Maria Nasareth dos Santos all occurred in the context of long-standing conflicts over land and natural resources and the government's failure to enforce applicable legislation and protect human rights.

Not only has Brazil failed to tackle the root causes of conflict, but it has in fact periodically passed or attempted to pass legislation that exacerbates or would exacerbate conflict and render EHRDs even more vulnerable. The mere prospect of regularisation of mining activities on indigenous territories under bill 191/2020 has caused irregular mining to increase on these territories under a renewed sense of impunity, fuelling more conflict and violence.⁷⁹ Moreover, the current administration is pushing a number of draft laws to reduce environmental safeguards and protection of indigenous peoples' rights. For example, Draft law 191/2020 on mining and other commercial activities on indigenous lands, Draft law 3.729/2004 on environmental licensing and Draft law 2.633/2020 on land regularisation (known as the "land grabbers' law")⁸⁰ would all have the effect of depriving indigenous and other rural communities of protections in favour of big business. Despite the serious implications of these laws, they are being fast-tracked in a context in which COVID-19-related restrictions impede proper public participation and scrutiny of the legislative process.

One of the first measures adopted by the Bolsonaro administration when it came to power was to stop the National Agrarian Reform Program (PNRA). This caused the suspension of administrative processes underway related to the expropriation of rural areas for the settlement of new landless families.⁸¹ As sadly illustrated by Fernando Araujo's case, this policy change had the effect of halting processes to solve long-standing disputes over land and reigniting violent conflict in rural areas.

Equally detrimental are measures to weaken regulatory oversight. **Key government agencies responsible for**

protecting human rights and the environment have seen their budgets cut consistently year after year, leaving EHRDs in a situation of vulnerability. In 2017, the budget for INCRA, the state body responsible for land redistribution to small-scale farmers and Afro-descendants, was cut by 30%.⁸² The budget of the National Indian Foundation (FUNAI) was slashed by almost half, forcing it to close many of its regional offices with the consequent loss of presence and protection of indigenous communities in remote and isolated areas.⁸³ Rather than correcting this deficit, Bolsonaro reduced FUNAI's budget by a further 90% soon after taking office in early 2019.⁸⁴ He also slashed the budgets of many environmental agencies⁸⁵, including the Brazilian Institute for the Environment and Renewable Natural Resources (IBAMA)⁸⁶, Chico Mendes Institute for Biodiversity Conservation (ICMbio), the National Environmental Council (CONAMA) and state-level Secretariats for the Environment and Natural Resources (SEMAs).⁸⁷ In this context, it is no surprise that environmental defenders tend to represent the largest group of people falling under the National Programme for the Protection of Human Rights Defenders.⁸⁸

3.4 Rampant impunity

Only few of the cases of death threats or killings featured in this report have resulted in arrests or prosecutions and none has so far culminated in a conviction. **These cases are emblematic of the broader situation of impunity for attacks against EHRDs across the country.** In 2019, Human Rights Watch documented 28 killings of EHRDs and over 40 cases of death threats in the context of conflicts over the use of land and resources in the Amazon since 2015. The organisation stated that only two cases out of these 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.⁸⁹

The massacre of Pau D'Arco and the killing of Fernando Araújo in the state of Pará, are two examples of this situation. Although investigations of 16 police officers for their alleged involvement in the Pau D'Arco killings have advanced, no one has so far been charged. In April 2018, after instruction and trial hearings, the officers "obtained the possibility to await the trial in freedom" and "were re-established in their functions and remain active, including the right to own arms."⁹⁰ As of February 2021, nobody had been charged for Fernando Araújo's murder either nor for the earlier attempts on his life. The ongoing state of impunity in Pará, led Mr. Jan Jarab, head of the Regional Office for South America of the UN Office of the High Commissioner for Human Rights (OHCHR), in February 2021, to urge Brazil to investigate the attacks and threats against human rights defenders in the state, including especially those concerning Pau d'Arco.⁹¹

However, figures and the aforementioned examples such as the lack of investigation of the death threats against Cacique Babau in Bahia State and statements by the Human Rights Defender Programme of Minas Gerais demonstrate that **impunity is endemic across many states, even those outside the Amazon region.** The lack of progress in the investigation of the individuals behind the killing of Marielle Franco and Anderson Gomes, in turn, show that this is a problem that EHRD in "urban" settings also face.

Commenting on Brazil in August 2016, the UN Special Rapporteur on the Situation of Human Rights Defenders observed the state's failure to undertake independent and prompt investigations into attacks perpetrated against EHRD and to bring perpetrators to justice. He attributed this to the lack of resources as well as corruption and collusion between perpetrators. The result, he argued, was the creation of a climate of impunity and mistrust of the justice system among EHRDs.⁹² This same conclusion was reiterated four years later by the UN Special Rapporteur on Toxic Waste who, in September 2020, pointed out that "Brazil is not doing enough to ensure that where human rights defenders are killed, threatened, or coerced, those responsible are brought to account."⁹³

In addition to resource constraints and corruption, institutional racism also impacts on the way Brazilian law enforcement and the judiciary respond to attacks against EHRDs. In 2016, the UN Special Rapporteur on Indigenous Peoples noted that lack of access to justice for indigenous peoples in Brazil was a major issue, and explained that this was due to the many significant barriers indigenous peoples faced in accessing justice,

including institutional racism on the part of the judiciary and the law enforcement forces.⁹⁴ Also in 2016, the Special Rapporteur on Minority Rights reflected on the same patterns of racism affecting Afro-descendent, Quilombola and other traditional communities.⁹⁵

3.5 A deepening crisis under Bolsonaro's administration

The ability of EHRDs to carry out their work in safety deteriorated considerably during Bolsonaro's administration. In the words of the UN Special Rapporteur on Toxic Waste, "inflammatory rhetoric, a rejection of sustainability and failure to prosecute has flamed another epidemic, one of intimidation, attacks, and murder of human rights defenders."⁹⁶ Proactive measures to silence civil society have also resulted in a significantly reduced civic space.

• Suppressing Civil Society Participation in Collegiate Bodies

Since Brazil's return to democracy in 1988, civil society has played an important role in collegiate bodies within the federal administration to assist in the formulation of public policies on a wide variety of issues. Decree 9.759/2019 of April 2019 abolished the Public Policy Councils and imposed restrictive rules for civil society participation in federal government decision-making processes. The Federal Supreme Court, however, in the analysis of the preliminary injunction made under the direct Action of unconstitutionality No. 6121, suspended the effects of such decree for collegiate bodies that were mentioned by law. Some collegiate bodies were recreated, but their structure was altered, causing the emptying of social participation⁹⁷. The Decree also revoked previous norms that had established the National Social Participation Policy and the National Social Participation System.

In addition, Presidential Decree 9759/2019 has also dissolved the multi-stakeholder National Council for Food and Nutrition Security which was composed of two thirds of civil society representatives and one third of government representatives. It was responsible for advising governmental bodies on policies related to the control of pesticides in food and drinking water⁹⁸.

Brazilian civil society has traditionally played a key role in the formulation of the nation's National Human Rights Policy (PNDH). PNDH1 of 1996, and subsequent policies PNDH2 and PNDH3 were all enacted after extensive public debate, with proposals built on consultations with civil society organisations. In an unprecedented change of approach, on 10 February 2021, the Minister of Family, Women and Human Rights established a working group to analyse and reformulate the current PNDH without any substantive civil society participation.⁹⁹

Civil society participation in environmental monitoring and decision-making has also diminished significantly as a direct result of multiple executive decrees which either eliminated collegiate bodies (such as the National Council for Sustainable Rural Development) or severely restricted participation of civil society actors in environmental bodies.¹⁰⁰ Both CONAMA (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.¹⁰¹ For the National Environment Fund, civil society participation was completely removed.¹⁰² The reduction in the number of civil society participants in these bodies has the objective of altering the balance between civil society and government in decision-making, augmenting government control over these institutions and their decisions and making them less transparent and inclusive.¹⁰³

• Curtailing the ability of collegiate bodies to function

A few collegiate bodies that were established by law remained active in the federal administration but have faced increasing challenges in their operations. For example, in August 2019, the Minister of Family, Women and Human Rights dismissed the Coordinator – Secretary of the National Council for Human Rights who had been

appointed eight months earlier by members of the Council.¹⁰⁴ The Minister did not consult with the body, which decried the measure.¹⁰⁵

The government also undermined the ability of the National Committee for Preventing and Combating Torture to operate. It waited almost 11 months to confirm the nomination, in November 2018, of the new members of the Committee. This meant that the body was unable to function for almost one year. In addition, in June 2019, all members of the Mechanism for Preventing and Combating Torture, the body that inspects prison conditions in the country, were dismissed through a presidential decree.

The decree also determined that new members would take up their positions on an unpaid basis, a measure which would lead to the end of the mechanism in practice.¹⁰⁶ However, two months later, a judicial decision suspended the decree and reinstated the dismissed members.¹⁰⁷

• Surveillance, persecution and vilification of civil society organisations

President Bolsonaro created the "Department for Relations with Non-Governmental Organisations" and introduced a number of executive measures such as Provisional Measure 870/2019 and Decree No. 9,669/2019 designed to interfere in the activities of civil society organisations operating in Brazil or create onerous bureaucratic procedures to make it more difficult for them to operate.¹⁰⁸ While these measures were ultimately amended by the National Congress in the wake of mobilizations by civil society organisations, they demonstrate the government's agenda on this issue.¹⁰⁹ Attempts of this nature have continued throughout Bolsonaro's administration.

Government surveillance bears a strong resemblance with past military regime tactics. The congressional inquiry into INCRA and FUNAI described above quotes reports by Brazil's National Intelligence Agency describing in detail the actions of civil society organisations. They include the names of leaders, their political and family relationships as well as strategies and connections with other entities, including international organisations. These reports demonstrate the alarming level of surveillance that Brazilian civil society actors are under.¹¹⁰

The federal government went as far as sending disguised agents of its National Intelligence Agency to the UN Climate Change Conference of December 2019 in Madrid, to monitor criticism of the Bolsonaro administration by activists, defenders and civil society groups.¹¹¹ Far from denying the accusations, General Augusto Heleno defended this action stating that the agents were there to "tackle sordid and lying international campaigns supported by bad Brazilians, with the objective of harming Brazil."¹¹²

The false accusation and vilification cases against various social leaders and civil society organisations featured in this report are illustrative of the government's agenda of erosion of civil society organisations and Brazil's long-fought for civil space. As demonstrated by the online attacks and harassment endured by Reporter Brazil, Larissa Bombardi and women and women's groups described above, the official narrative has also had the effect of encouraging and/or condoning violent actions by private parties.

• Attacks on media outlets and professionals

According to data from the Brazilian Association of Investigative Journalism, Brazil recorded 24 violations of press freedom since the beginning of the COVID-19 pandemic, including direct assaults on media professionals, public vilification of journalists and media outlets and two cases of online harassment.¹¹³ The cases of Reporter Brazil and Patrícia Campos Mello demonstrate this well. Increasing stigmatisation and attacks on media outlets and workers has had the effect of restricting and stifling freedom of expression.

In 2019, Brazil ranked among the top 10 countries in the world with the highest rates of impunity for killings of media workers.¹¹⁴ Brazil is listed 107th out of 180 countries in Reporters Without Borders' 2020 World Press Freedom Index.¹¹⁵ In April 2021, Amnesty International reported that members of the federal government

verbally attacked journalists and their work 449 times in the period between January 2019 and September 2020.¹¹⁶ President Bolsonaro has encouraged much of the rhetoric against journalists. According to a report by the National Federation of Journalists, the president made around 10 attacks against the media each month in 2019.¹¹⁷ While not established by law, Brazil is currently living under a virtual policy of censorship.¹¹⁸

• Use of anti-terrorism laws to intimidate and stifle criticism

The government has increasingly used the recently approved Anti-Terrorism Law, as well as the National Security Law which dates back to the military dictatorship and is highly problematic for its vague concepts and harsh penalties, for purposes of political persecution.¹¹⁹

In 2020, the São Paulo State deputy Douglas Garcia, with the help of his followers on social media, put together a dossier with the personal information, including names, photos, addresses and telephone numbers of hundreds of opponents of the federal government.¹²⁰ He claimed that these individuals were “terrorists” and that he would hand over their personal information to the Federal Police. A few months later, the press reported that, in a statement to the police about the dossier, Congressman Eduardo Bolsonaro said that he had handed the dossier over to United States (US) authorities.¹²¹

Members of Bolsonaro’s cabinet have often raised the National Security Law to frame and intimidate opponents and justify illegitimate investigations, essentially treating political disagreement as a crime. As described above, General Augusto Heleno accused APIB of breaching the National Security Law due to its work on indigenous peoples’ rights.¹²²

There are currently at least 23 bills under consideration at both the House of Representatives and the Senate to alter the anti-terrorism law and widen the scope of the concept of terrorism in order to include social movements and civil society groups.¹²³ Some of the proposed bills include mechanisms that would permit the abusive use of surveillance and propose to create a general ‘duty to cooperate’ according to which all citizens would be obliged to collaborate with the authorities by reporting ‘suspicious activities’. Similarly to the environmental bills mentioned above, these bills are being quickly pushed through Congress with the aim of limiting access to comprehensive information, prior reflection and open debate. **If passed, these bills could facilitate many human rights violations, including repression of protests, suppression of criticism and encroachments on the rights to privacy, peaceful assembly and expression.** Civil society organisations believe that the main objective of these bills is to criminalise human rights defenders and silence dissent.¹²⁴

While pushing bills which would increase risks to EHRDs, the federal government has approved a large number of decrees on arms liberalisation, including Decrees 9.845/2019 and 9.846/2019 in early 2019, facilitating the possession of weapons by civilians, including large farmers.¹²⁵ This will lead to an increase in violence in rural areas and can put indigenous, peasant and other rural communities, human rights defenders and leaders at even greater risk.¹²⁶

• Less Transparency and Access to Information in the Public Administration

Law 12 527/2011 regulates broad access to public information and requires that all public documents be publicly disclosed and that data confidentiality be exceptional. The implementation of this law is, however, deficient and unequal between federal, state and municipal level.¹²⁷ Under Brazil’s National Open Data Policy (instituted in 2016 by Federal Decree No. 8,777), federal agencies are obliged to develop Open Data Plans (PDAs), which must be updated every two years¹²⁸. However, the number of federal agencies developing PDAs has consistently decreased over the period from 2018 to 2020.¹²⁹ Moreover, some of the available public environmental information remains fragmented and unclear.¹³⁰

Many proactive reforms have been pursued with the aim or effect of severely curtailing access to information and participation. Of note is Decree 9.960 of January 2019, which expanded the opportunities for lower rank civil

servants to classify public information as confidential (following widespread criticism, this measure was later revoked).¹³¹ Other measures include the lifting of restrictions on sharing personal data of people submitting access to information requests and suspending the obligation to respond to access to information requests during the COVID-19 pandemic.¹³²

Access to environmental information has been particularly affected. **A recent study has shown that only 15% of all requests to government agencies under Law No. 10,650/2003 on Access to Environmental Information were fully granted in the 2019/2020 period compared to 59% in the 2017/2018 period.**¹³³ The government has also forbidden IBAMA from responding to queries from the media and ICMBio from disclosing studies, opinions and research without prior authorisation and it has temporarily restricted the publication of information concerning environmental crimes.¹³⁴

Taken together, all these measures have seriously undermined public administration transparency and civil society’s ability to participate in, monitor and scrutinise government action in many areas of public interest such as the environment, public health and human rights.

• EHRDs and COVID-19

Landowners, loggers, militiamen and other actors have taken advantage of COVID-19-related restrictions as well as the ongoing official rhetoric against human rights advocates to perpetrate further attacks against human rights defenders and civil society organisations. In May 2020, the FIDH-OMCT and Justiça Global documented a worrying number of attacks against human rights defenders in Brazil in the context of COVID-19. The pandemic has also affected many social leaders from groups that are particularly vulnerable to COVID-19, such as indigenous peoples, many of whom have died from the disease.¹³⁵ The official approach to the pandemic has also exacerbated attacks against health care professionals and journalists. Article 19 recorded at least 82 attacks on journalists reporting on the health crisis or World Health Organisation advice. A full 72% of these were perpetrated by members of the federal government, including the president himself.¹³⁶ In addition to suppressing press freedom in the country, these actions encroached on the population’s right to information on a matter of high public concern.

Relevant OECD committees, initiatives, and instruments

Brazil's failure to protect the rights of environmental and human rights defenders is causing it to fall short of OECD expectations and best practice standards in the area of civic space.

While the OECD's objectives are primarily economic and political, as expressed in its founding text,¹³⁷ the organization espouses a broad set of values shared by its members that are relevant to the protection of human rights defenders, including individual freedom,¹³⁸ democracy, human rights,¹³⁹ multilateralism, cooperation between peoples.

Human rights are reflected in numerous of the Organization's legal instruments. About thirty legal instruments mention human rights in multiple contexts,¹⁴⁰ deriving from various technical bodies of the Organization including the Committee for Scientific and Technological Policy,¹⁴¹ the Investment Committee,¹⁴² the Corporate Governance Committee,¹⁴³ the Working Party on Export Credits and Credit Guarantees¹⁴⁴, the Development Assistance Committee,¹⁴⁵ the Committee on Digital Economy Policy,¹⁴⁶ the Public Governance Committee,¹⁴⁷ the Environment Policy Committee,¹⁴⁸ the Committee of Senior Budget Officials,¹⁴⁹ and the Consumer Policy Committee.¹⁵⁰

Of relevance in the context of environmental and human rights defenders, the Committee for Scientific and Technological Policy and the Committee on Digital Economy Policy have produced instruments that address the impacts of digital transformation on people's way of life, particularly in regards to fundamental rights and guarantees. Examples of legal instruments addressing these issues include the Recommendation of the Council on Enhancing Access to and Sharing of Data¹⁵¹ and the Recommendation of the Council on Principles for Internet Policy Making.¹⁵²

As highlighted throughout the text, the institutional space for the manifestations by civil society has noticeably deteriorated in Brazil. With regard specifically to persecution by virtual means, despite the recent approval of a few laws,¹⁵³ the digital environment in Brazil is still unruly and vulnerable to multiple illicit acts. Many of these acts are not even investigated and most of them remain unpunished. The country's legislative and institutional deficiencies in the management of its digital policy distance it from the recommendations contained in the OECD instruments.¹⁵⁴ Personal data violations, intimate information misuse, and the use of fake accounts on social networks and mechanisms for promoting and replicating fake news in order to attack the honor and memory of human rights defenders and their family members and friends are in direct contradiction of the essence of the OECD's standards on respect for fundamental freedoms in the digital sphere.¹⁵⁵

The Investment and Corporate Governance Committees have also issued important guidance or recommendations relevant to human rights defenders, particularly as related to the conduct of multinational enterprises. This is important, given the acknowledgement link between business activity and the violation of rights of environmental and human rights defenders in protesting harmful business activity.

Several OECD instruments promote corporate respect for human rights, including the Declaration on International Investment and Multinational Enterprises,¹⁵⁶ Recommendation of the Council on Principles of Corporate Governance,¹⁵⁷ Recommendation of the Council on Guidelines on Corporate Governance of State-Owned Enterprises,¹⁵⁸ Recommendation of the Council on the OECD Due Diligence Guidance for Responsible Business Conduct (RBC),¹⁵⁹ and the Recommendation of the Council on Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises.¹⁶⁰ Furthermore, there are instruments aimed at certain economic sectors, such as the Recommendation of the Council on the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector,¹⁶¹ Recommendation of the Council on Due Diligence Guidance for Responsible

Supply Chains of Minerals from Conflict-Affected and High-Risk Areas,¹⁶² and the Recommendation of the Council on the Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector.¹⁶³

The Declaration on International Investment and Multinational Enterprises is one of the most important documents of the OECD relating to human rights. The instrument sets out the OECD Guidelines for Multinational Enterprises (Guidelines), a set of recommendations for businesses on how to conduct business responsibly vis-à-vis human rights, the environment, labour rights, consumer protection, disclosure, and a number of other topics. The Guidelines are implemented by "National Contact Points," offices of or affiliated with the governments that adhere to the Guidelines. National Contact Points are tasked with both promoting the Guidelines to multinational enterprises and hearing disputes between corporations and those who allege the corporations have failed to meet the Guidelines' recommendations.

The Guidelines acknowledge that the State is primarily responsible for the protection of human rights. The Guidelines state, however, that enterprises have an independent responsibility to respect human rights by avoiding infringing the human rights of others, and to address adverse impacts to human rights that relate to their business actions. Additionally, enterprises must avoid causing or contributing to adverse human rights impacts and address such impacts when they occur, in addition to seeking ways to prevent or mitigate adverse human rights impacts that are directly linked to their operations. The recommendation also urges enterprises to make a political commitment to respect human rights and to provide or cooperate through legitimate processes in remedying adverse human rights impacts when said enterprises find that they have caused or contributed to those impacts.

Although the OECD Guidelines do not directly mention respect for the rights of individuals who protect rights, it is assumed that enterprises should, through respecting human rights generally, refrain from any kind of persecution of people, including union leaders and environmentalists, who exercise their rights to speak out against harmful business activity or the government policies or actions enabling that harmful activity. The Guidelines also note that during the National Contact Point-led mediation of disputes between covered corporations and victims, parties are expected to avoid threatening or taking reprisals against other parties involved in the procedure. In 2020, the OECD Working Party for Responsible Business Conduct, a working party of the Investment Committee, published a statement expressing "deep concern at alleged incidents of undue pressure on [individuals] submitting cases to National Contact Points" and declaring that such undue pressure to submitters is "unacceptable" and will be carefully monitored by the Working Party.¹⁶⁴

The Recommendations on specific sectors (clothing, footwear, and extractive economy), in turn, address problems in the supply chain of these products and offer enterprises a guide to improving the inspection by enterprises of activities in these sectors. Regarding the clothing and footwear sector, based on global experience, the organization identifies persistent practices that violate human rights: child labor, forced labor, violations of workers' right to establish or join a union and to collective bargaining, as well as non-compliance with minimum wage laws.¹⁶⁵

The OECD's Investment Committee has recently been undertaking a review of Responsible Business Conduct in Brazil. The review, not yet published, is expected to critically evaluate the condition of RBC-related policy and law in Brazil and offer specific recommendations for reform steps for Brazil to implement to improve its performance on the issue.

The Development Assistance Committee is responsible for formulating and proposing policies and actions on the subject of development, emphasizing the respect and promotion of human rights. The human rights dimension of cooperation is predominant and observable in the following legal instruments: Recommendation on Enabling Civil Society in Development Co-operation and Humanitarian Assistance;¹⁶⁶ Recommendation on Ending Sexual Exploitation, Abuse, and Harassment in Development Cooperation and Humanitarian Assistance: Key Pillars of Prevention and Response;¹⁶⁷ and Recommendation on the Humanitarian-Development-Peace Nexus.¹⁶⁸

Other instruments from other bodies have relevance respect of human rights, such as the Recommendation of the Council on Public Integrity.¹⁶⁹

Conclusion and recommendations for Brazil and the OECD

Some of the OECD's legal instruments treat human rights as an assumption for the performance of actions determined in the organization's rules. It is often assumed that respect towards human rights is a necessity for the complete execution of the actions or public policies recommended in the instrument. International human rights documents are often referred to in the preambles of these instruments, confirming the relevance of these norms to the subject matter of the instrument.

The most relevant and concrete work by the OECD on the subject of protection of human rights defenders, however, resulted from the recent accession particularly of Colombia, which had a history of failing to ensure accountability, including through criminal prosecution, of those involved in criminal acts against active union members. In Colombia's accession process, the issue of persecution of unionist labour rights defenders was highlighted at different times.¹⁷⁰ The subject was once again discussed in the first post-accession report.¹⁷¹

In Brazil, the Jair Bolsonaro administration has exacerbated the problems related to the protection of human rights defenders. While under previous governments, the Brazilian State was often considered negligent in its protection of these individuals and the penalization of their offenders, under the Bolsonaro administration, defenders have become the direct target of attacks by state or government-related institutions. The government's flawed commitment to the protection and promotion of human rights contradicts, for instance, the contents enshrined in the OECD's Recommendation on Public Integrity,¹⁷² which recognizes human rights and respect towards the rule of law as prerequisites for an upstanding and democratic government.

From the broad spectrum of legal instruments of the OECD that mention human rights, it is clear that the Organization is concerned with the development of policies that corroborate the commitments of its members towards human rights. Furthermore, by recommending that these policies be constructed and implemented with the broad participation of civil society, the OECD indicates that there must be full guarantees for manifestations by civil society as essential players in policymaking. The absence of legal and material guarantees to protect defenders in Brazil greatly compromises the participation of civil society in the formulation and execution of public policies, which are essential characteristics in order to meet the standards recommended by the OECD and formalized in most of the Organization's legal instruments.

The gaps and failures described above have not occurred only under the current Bolsonaro administration; many of them go back many years. **These gaps and failures are not only contrary to OECD instruments, standards and commitments, but an affront to the organisation's foundational values of respect for human rights, democracy and the rule of law.**¹⁷³ Crucially, commitment to upholding these values demonstrate what the OECD calls "like-mindedness" of candidate countries, an important consideration during accession.¹⁷⁴

The failures highlighted in this paper are also significant in the context of efforts to fight global warming. Almost 90% of the EHRDs the organisation Global Witness reported to have been killed in 2017 and 2019 died trying to protect the Amazon. The Amazon is an area of crucial significance not only for its inhabitants but for humanity as a whole, given its capacity to absorb carbon emissions.¹⁷⁵ Protecting environmental and Amazon defenders is critical for curbing deforestation and tackling the climate crisis, two areas in which Brazil is failing catastrophically (see separate paper on Deforestation and Climate Change).

Recommendations for reform in Brazil

To address the gaps and failures on EHRDs and civic space described above, and bring its laws, policies and practices into line with OECD legal instruments, value and obligations, 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.

Expanding Civic Space and Protection for Environmental and Human Rights Defenders

- Comply with its obligations under international and regional human rights instruments by respecting, and ensuring respect for the human rights to life, liberty, physical integrity, due process and fair trial, freedom of expression, assembly and association, information, participation and effective remedy of individuals who speak up and work in defence of the environment and human rights.
- Ensure the minimum standards and conditions for human rights defenders to carry out their work freely and safely in line with the UN Declaration on Human Rights Defenders.
- Establish a nation-wide legal framework for the protection of EHRDs.
- Actively disseminate information about the National Programme for the Protection of Human Rights Defenders, prioritising local authorities and civil society organisations working in remote areas of the country.
- Increase the budget of the National Programme for the Protection of Human Rights Defenders, including budget for security equipment, training of specialised police units and provision of health care and subsistence needs for EHRDs who require them.
- Prioritise implementation of the National Programme for the Protection of Human Rights Defenders, guaranteeing its effectiveness across all states.
- Conclude technical cooperation agreements and protocols between the Judiciary, Public Security, social and health assistance and the National Programme for the Protection of Human Rights Defenders.
- Establish greater dialogue between federal and state law enforcement authorities to address situations of extreme risk facing EHRDs.
- Ensure the direct participation of civil society in the National Programme for the Protection of Human Rights Defenders.
- Publicly recognise the legitimate and valuable work of EHRDs and refrain from adopting, encouraging or endorsing a discourse or language that discredits, vilifies or stigmatises EHRDs or their work.
- Conduct a sustained public campaign aimed at eliminating racism within the judiciary and law enforcement forces.
- Refrain from utilising, invoking or adopting national security, anti-terrorism or any other criminal laws to intimidate or deter EHRDs or frame their actions as criminal.
- Refrain from issuing public demonstrations in support of those responsible for land invasions, deforestation, land grabbing and illegal mining.
- Conduct robust investigations and prosecutions of those who threaten, attack or kill EHRDs to address and eliminate the existing widespread impunity among perpetrators.
- Revoke regressive arms liberalisation laws and decrees and desist from promoting any new laws or normative acts to further liberalise the use and transfer of arms.
- Encourage the Federal Prosecutor's Office to request the 'federalisation' of emblematic killings of EHRDs whose investigations are not adequately progressing at the local level, in order to increase impartiality, create a safer environment for witnesses and reduce the impunity rate.

Root causes¹⁷⁶

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

Civic space

- Respect and ensure respect for the human rights to freedom of expression, peaceful assembly and association in line with the International Covenant on Civil and Political Rights and other international and regional instruments binding on Brazil, and refrain from passing and/or applying legislation that encroaches on these rights.
- Refrain from adopting legal or administrative measures that restrict or impair the work of civil society actors and reinstate civil society participation mechanisms within governmental structures, including advisory councils and committees that were eliminated through Decree 9.759/2019 and others.
- Re-establish dialogue with civil society and ensure the participation of the scientific community and civil society in bodies that deal with the formulation and execution of public policies.
- Ratify the Escazú Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, giving full effect to the rights enshrined in it.
- Prevent the use of surveillance to monitor and intimidate civil society and explain measures taken to this end.
- Respect the principle of transparency in the public administration, guaranteeing active transparency, protecting the Freedom of Information Law and refraining from moving away from any of its provisions, including on the free and effective provision of information requested by individuals and civil society organisations.
- Increase opportunities for participation and consultation for civil society actors through accessible, transparent and reliable mechanisms.

Recommendations for the OECD accession process

Taken together, the gaps and failures described 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-OMCT 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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