

# BRIDGING BRAZILIAN GOVERNANCE GAPS:

Leveraging environmental and  
human rights reform  
via the OECD accession process



Summary of  
analysis on legal  
and policy gaps  
in Brazil

## COLOPHON

**TITLE** Bridging Brazilian governance gaps: Leveraging environmental and human rights reform via the OECD accession process

*Summary of five-part research paper series on environmental and human rights legal and policy gaps in Brazil.*

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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.

**FIDH** (International Federation for Human Rights) is an international human rights NGO federating 192 organisations from 117 countries. Since 1922, FIDH has been defending all civil, political, economic, social and cultural rights as set out in the Universal Declaration of Human Rights. FIDH acts at national, regional and international levels in support of its member and partner organisations to address human rights abuses, including ensuring corporate accountability and improve victims' access to justice through documentation, advocacy and litigation.



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## Executive summary

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. Full membership would bring Brazil powerful economic and political advantages, including improved standing among donors and increased access to trade and foreign direct investment. But as this paper series argues, at present, Brazil is far from being aligned with OECD standards, nor has it demonstrated commitment to the OECD's values on the rule of law, protection of human rights, and promotion of environmental sustainability.

This paper provides an introduction and summary to a series of five lengthier research papers that use case examples as a launch point to explore the leading causes of governance gaps in Brazil across five critical areas:

- Climate change and deforestation,
- Environmental degradation,
- Indigenous peoples rights,
- Civic space for environmental and human rights defenders, and
- Labour rights.

As the underlying research papers demonstrate, governance failures in Brazil – ranging from bad laws or regulations, to underfunding of key ministries or policies, to failures of enforcement and accountability, to avoidance of transparency and public engagement, to repression of civic criticism – are causing serious harm to the rule of law, human rights and the environment. Each paper highlights the poor state of affairs and leading causes of governance gaps for that issue in Brazil, then proposes the domestic reforms Brazil should undertake to close the gaps. The papers also identify the OECD committees, initiatives, and instruments relevant to these issues. The papers then make a simple ask of the OECD: that it use its powerful leverage during the accession process to help realise reform on rule of law, human rights, and environmental protection in Brazil, by requiring Brazil to adopt the reforms proposed as a condition for membership. The papers also ask the OECD to ensure Brazil's and other pending accession processes are transparent and formally inclusive of stakeholder participation.

## About this paper series

This series of five briefing papers by OECD Watch, Conectas Human Rights (Conectas), the International Federation for Human Rights (FIDH), and the Observatory for the Protection of Human Rights Defenders (FIDH-OMCT) presents research drawn from a process of extensive consultation with Brazilian and international civil society on the causes of governance gaps in Brazil. The papers are written within the context of the Mind the Gap project of the Centre for Research on Multinational Corporations (SOMO), which aims to identify and address governance gaps that enable corporations to escape responsibility for their adverse impacts on human rights and the environment.<sup>1</sup>

We identify failures of governance across five critical areas that are resulting in serious harm to people and the environment:

- ◉ Climate change and deforestation,
- ◉ Environmental degradation,
- ◉ Indigenous peoples rights,
- ◉ Civic space for environmental and human rights defenders, and
- ◉ Labour rights.

The legal and policy failures discussed vary slightly for each topic, but include a range of things, such as:

- ◉ Budget, staffing, and resource cuts at key ministries,
- ◉ Restructuring and political weakening of key ministries,
- ◉ Failure to ensure accountability by the executive branch,
- ◉ Failure to ensure accountability by the judiciary,
- ◉ Dismantling of the human rights and environmental legal and regulatory framework,
- ◉ Low public access to information and exclusion of civil society from governance, and
- ◉ Repression of and attacks against civil society and the media.

Each paper uses a few case studies as a launch point to demonstrate the human and planetary toll of Brazil's governance failures. Each paper then identifies the leading legal and policy failures that are allowing the situations in the case studies to arise, and offers practical recommendations for what Brazil should do to resolve those failures and meet the values and standards of the OECD. Each paper identifies the OECD committees and instruments that might be particularly relevant to the issue covered in that paper. Finally, each paper lays out the specific reforms Brazil must adopt to address the governance failures, and calls for the OECD to require these reforms as a condition of membership and ensure a transparent and participatory accession process.

This summary paper serves as an overarching introduction to and summary of the other five in the series. Here, we provide a brief introduction to the OECD accession process. We then give a preview of what the other papers discuss: we highlight the poor state of affairs, salient causes of governance gaps, relevant OECD committees and instruments, and a short case example for each of the five topic areas. This summary paper concludes by explaining at a general level the reforms Brazil must take to address the governance failures, and reiterating our call for the OECD to require these reforms as a condition of membership, and ensure a transparent and participatory accession process.

## 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.<sup>2</sup> Full membership would bring Brazil powerful economic and political advantages, including improved standing among donors and increased access to trade and foreign direct investment.

To join the OECD, Brazil, like the other five countries, must prove itself “willing, prepared, and able” to align its domestic laws and policies with the OECD’s instruments and standards across a wide range of governance areas. **At the moment, however, Brazil is far from being aligned with OECD standards, nor has it demonstrated commitment to the OECD’s values on rule of law, protection of human rights, and promotion of environmental sustainability.** To the contrary, taking its ongoing destruction of the Amazon rainforest as just one example, Brazil’s policies have raised concerns of many in the global community.

Accession as it traditionally was granted – with little focus on democratic values and more attention to liberalizing investment markets – would represent an unfortunate lost opportunity in the case of Brazil. But the OECD’s recent messaging suggests its desire for a better – more values-focused – process for the upcoming accession processes. The OECD has emphasized commitment to “preserving [the] like-minded nature” of its member states, including regarding fundamental values.<sup>3</sup> Moreover, its January 2022 accession process invitation announcement made clear the “values shared by OECD Members, including... the rule of law and the protection of human rights” and noted members’ “goals to tackle climate change, including halting and reversing biodiversity loss and deforestation.”<sup>4</sup>

This gives reason to expect – and demand – that during Brazil’s upcoming accession process, the OECD make good on those stated values and require Brazil to seriously reverse course on its poor environmental and human rights governance.

**This is our expectation of the OECD: that it use the accession process to require meaningful reforms by Brazil to close the significant legal and policy gaps our research exposes that currently stymie its protection of the rule of law, human rights, and the environment – and to grant membership only when Brazil has done so. We also ask the OECD to ensure Brazil’s and other pending accession processes are transparent and formally inclusive of stakeholder participation.**

## The OECD accession process

Brazil has been attempting for over a decade to align itself with OECD instruments, and it has formally pursued accession since May 2017.<sup>5</sup> The process of joining the OECD is long and complex, and the standard for accession is somewhat vague: Candidate member states like Brazil must demonstrate their “willingness, preparedness, and ability...to adopt OECD practices, policies and standards.”<sup>6</sup> The OECD is also keen to preserve its membership’s “like-mindedness” regarding core values – including on rule of law, human rights, and the environment.<sup>7</sup> The process of accession usually takes several years and requires candidate states to take on significant domestic reforms – from passage of new laws to creation of new ministries – for which the OECD sets up a rigorous roadmap.

To help civil society understand an OECD accession, OECD Watch has developed the **Civil society guide to influencing the accession process**. The guide explains why accession can provide an opportunity to realize reforms in candidate states, what the stages of the process are, and how civil society can engage with the OECD and member states at each stage to encourage a rigorous review.

The entire process can be thought of in three phases: pre-accession, accession, and post-accession.

- The pre-accession period involves opaque political debate over whether, and in what order, prospective member states will be invited to accede. This phase occurs largely outside of public view. While it was in this phase, Brazil actively attempted to align itself with OECD instruments to make itself more ready for the accession process whenever it would begin.
- The accession phase begins when the OECD’s highest governing body – its Ministerial Council – formally invites a prospective member state to begin accession discussions. **This is the phase in which Brazil currently finds itself, along with the other five countries.** The invitation launches the long and technical review process for the candidate member. The OECD develops a (largely generic) “roadmap” for the candidate state’s accession process. Then every OECD committee relevant for that state leads its own review. Each committee begins by evaluating the state’s current level of alignment with instruments and values of relevance to that committee. Country visits may be part of the committee’s review. The committee next requires the adhering state to adopt reforms necessary to show it meets the accession standard. The committees work closely with the state over a span of time (past reviews have taken 2 to 7 years) to track its progress. **It is during this review that the OECD can and must require Brazil to implement the reforms needed to close the governance gaps our research exposes, ensuring alignment with the OECD’s practices, policies and standards and members’ shared values. It is also this committee-level review that the OECD should ensure is transparent and formally inclusive of stakeholder, including civil society, participation.**
  - Once all the OECD committees involved in the process have given their formal opinion, the Ministerial Council makes a final decision on inviting the state to become a member. If accession is granted, the prospective member must follow its own internal ratification or accession procedure, which may involve passage of a law in the country’s parliament to approve the accession domestically.
- Post-accession, if an OECD committee feels a state still must do more to bring itself into alignment, it may assign the state ongoing requirements to fulfil. If this occurs, the committee normally establishes monitoring and reporting requirements for the new member.

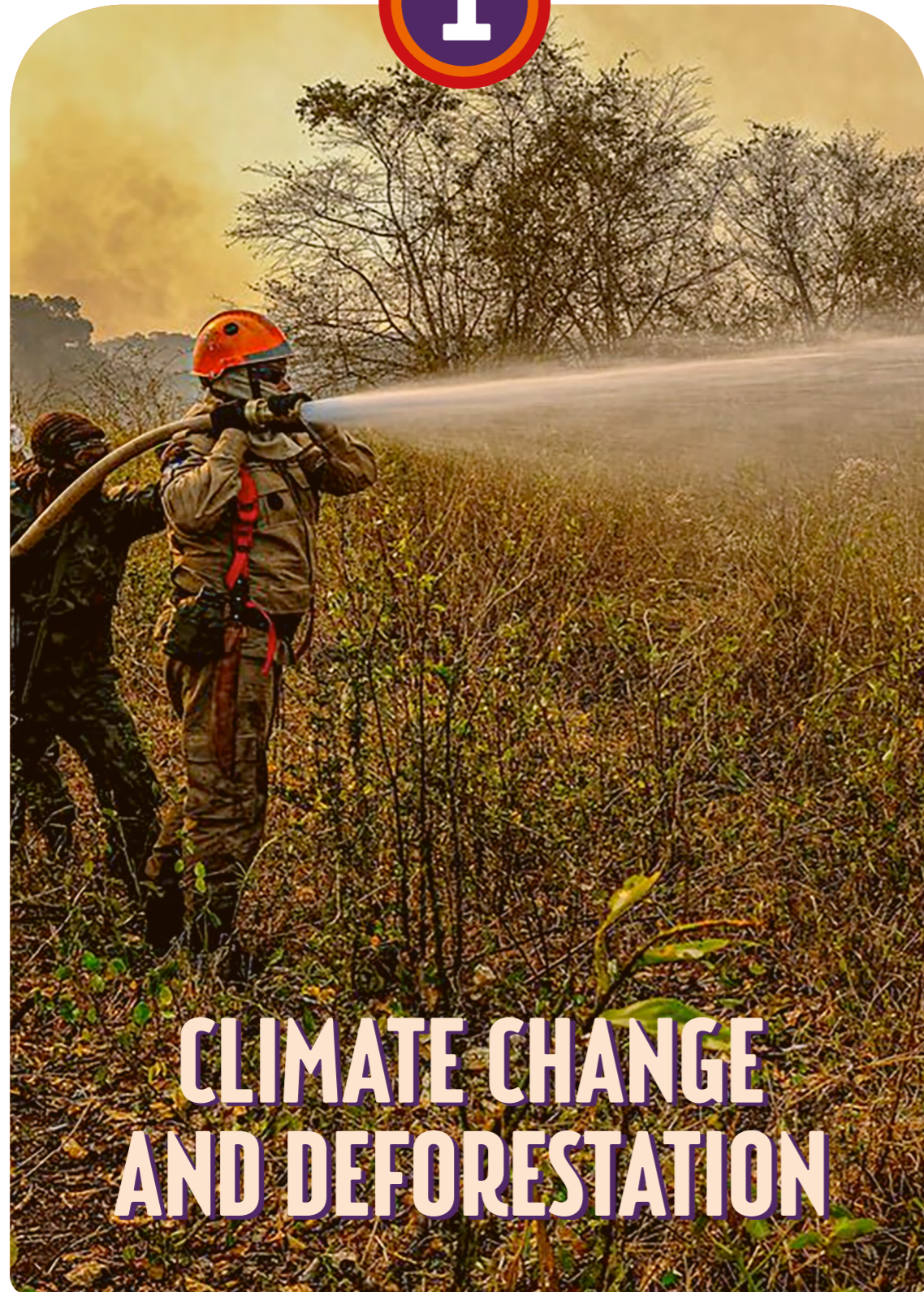
## Causes of governance gaps

Across the five issue areas explored in this paper series – climate change and deforestation, environmental degradation, indigenous peoples rights, civic space for environmental and human rights defenders, and labour rights and social issues – a range of actions or omissions by different branches of the Brazilian government are causing serious governance gaps. The primary causes of these governance gaps include the following legal and policy failures.

- **Budget, staffing, and resource cuts at key ministries**  
For a decade or more, budget, staffing, and other resource cuts at environmental, human rights, and welfare ministries have devastated their ability to carry out their important work. These cuts have deepened notably under the current administration of President Jair Bolsonaro, who has even eliminated some relevant ministries entirely.
- **Restructuring and political weakening of key ministries**  
Beyond resource cuts, other steps have been taken to weaken environmental and human rights protection bodies, such as through the removal of their autonomy, political intervention, or pressure and persecution of public servants.
- **Failure to ensure accountability by the executive branch**  
The resource cuts and institutional weakening of key ministries bear direct relation to their recent ineffectiveness in enforcing penalties against bad actors. From environmental crimes to abuse of human rights defenders to breaches of labour law, far too many violators are escaping penalty, and even notice, by the executive branch.
- **Failure to ensure accountability by the judiciary**  
The Brazilian prosecutorial and judicial system are also failing to hold all law breakers to account due to resource constraints, lack of training, and even studied racial bias.
- **Dismantling of the human rights and environmental regulatory and legal framework**  
Even before the Bolsonaro administration, but particularly during it, the Brazilian government has taken active steps to dismantle existing safeguards for human rights and the environment. From a labour rights overhaul several years ago to ongoing reel-backs of environmental and indigenous rights protections, the legal regime for rights and welfare in Brazil is crumbling.
- **Low public access to information and exclusion of civil society from governance**  
Access to information, including especially environmental information, is low in Brazil – a result partly of low capacity of strapped ministries to collect data in the first place, and of the administration’s policies against implementing its international duties on data transparency. Bolsonaro has also actively restricted or eliminated advisory bodies designed to promote public engagement in policymaking.
- **Repression of and attacks against civil society and the media**  
Using aggressive rhetoric, surveillance, and even an anti-terrorism law, the government is stepping up attacks on critics in civil society and the media.

## ISSUE

# 1



# CLIMATE CHANGE AND DEFORESTATION

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

### Context in Brazil

Brazil's territory covers 60% of the Amazon rainforest, the largest and most biodiverse tropical rainforest in the world encompassing 5,500,000 km<sup>2</sup> and 3,344 formally acknowledged indigenous territories. Nations across the globe are keen to see the Amazon protected. But Brazil's views on this appear not quite in alignment.

In a 2021 report conducting an environmental review of Brazil,<sup>8</sup> the OECD itself noted that since 2015, **deforestation rates have spiraled** in Brazil to decade-high peaks in 2019 and 2020. Greenhouse gas emissions increased 9.6% in Brazil in 2019.<sup>9</sup> 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. In 2020, more than 30% of the Brazilian Pantanal – a savannah biome in the central-west region of Brazil – burned, causing extensive loss of plant and animal species. Moreover, around 94% of the deforestation in the last two years was illegal.<sup>10</sup>

**The main causes of deforestation are well-known: expansion of commercial agriculture and cattle ranching, logging, mining, land speculation, and infrastructure expansion.** According to data published in the journal *Science*, 20% of soybean exports and 17% of meat exports from Brazil could be linked to illegal deforestation.<sup>11</sup> An ongoing lawsuit against the Casino Group, the largest supermarket chain in Brazil and Colombia is discussed below.<sup>12</sup>

### Causes of governance gaps

A range of governance failures in Brazil are contributing to the rampant deforestation that is boosting Brazil's contribution to climate change. Coupled with these failures is widespread climate change denial by key representatives of the Federal Government.<sup>13 14</sup>

**Major budget cuts for environmental ministries and initiatives to fight climate change** have prevented the government from adequately addressing deforestation. In March 2019, president Bolsonaro issued Decree no. 9.741<sup>15</sup> removing a total of BRL 187 million from the Ministry of the Environment. Some programs lost up to 95% of their budget, including initiatives for the implementation of the National Climate Change Policy.<sup>16</sup> Such cuts have continued. While at the April 2021 Climate Summit, President Bolsonaro promised to double the funds destined to environmental control,<sup>17</sup> but on the very next day he approved the federal budget of 2021 with a cut of 24% in environmental affairs.<sup>18</sup> Curiously, the administration is not only reducing environmental budgets, but appears to be **intentionally underspending on some environmental programs**: for example, the Ministry of the Environment refrained from using 39% of the budget forecast for the year 2019, and spent only BRL 40 million for its Climate Change programme out of a designated budget exceeding BRL 400 million.<sup>19</sup>

Beyond budget cuts, other steps have been taken to **weaken environmental protection bodies, such as through the removal of their autonomy, political intervention, or pressure and persecution of public servants.** The year 2020 witnessed a notable "militarization" of environmental protection with the transfer of primary control responsibilities in this area from ministries that previously led the work to the armed forces.<sup>20</sup> In April that year, a reactivated National Legal Amazon Council was designated with 19 members of the military and no members of academia, state governments, the private sector, civil society, The National Indigenous Foundation (FUNAI), indigenous peoples representatives, or even environmental bodies such as the enforcement arm of the Ministry of Environment (IBAMA) or the Chico Mendes Institute for Biodiversity Conservation (ICMbio).<sup>21</sup> The Council then took steps *appearing* to increase environmental protection, but in a manner that actually undermines or disregards existing strong protections.

The budget cuts and institutional weakening of environmental bodies is directly correlated with **reduced enforcement against bad actors.** In a 2021 report, the OECD noted that in 2020, Brazil's enforcement agency issued the lowest number of infraction notices since 1995 (a decrease of 20% from 2019 and 35% from 2018), and that deforestation offenders paid in 2019 fewer than one out of seven fines.<sup>22</sup> The OECD report suggests

“the increase in deforestation rates may be a direct consequence of the reduced compliance monitoring and enforcement since 2019.” **Impunity is not merely an unintended consequence of budget cuts: in 2019, Bolsonaro signed Decree no. 9.760 known informally as the “Zero Punishment Program.”** The decree establishes administrative (as opposed to stronger judicial) punishments for environmental infractions; permits conciliation between the perpetrator and control bodies; and requires payment of fines only after the conciliation hearing.<sup>23</sup> In practice, between April 2019 and October 2020 only five of 7,205 hearings were actually held,<sup>24</sup> raising serious concerns that the delay in hearings may lead to the sunset of payment obligations for thousands of violators.

The administration is actively **dismantling the regulatory and legal regime fighting deforestation.** Numerous executive orders have lowered monitoring or enforcement against deforestation, such as Normative Instruction no. 7<sup>25</sup> to allow administrative controls to occur on natural products *after* their export, an obstacle to proper inspection, and associated Interpretative Order<sup>26</sup> that exempts logging companies from the need to obtain permits to export native wood.<sup>27</sup> The administration is also supporting legislation to cut back current protections. For example, Draft Bills no. 2.633/2020 of the Lower House of Representatives<sup>28</sup> and no. 510/2021 of the Federal Senate,<sup>29</sup> known as “land-grabbing draft bills,” seek to offer a sort of amnesty to land-grabbers and invaders that irregularly occupied, exploited, and deforested federal lands, often home to traditional, indigenous, and *quilombola* communities. Draft Bill no. 1.426/2020<sup>30</sup> seeks to reduce the area of the Amazon Legal Forest Reserve in the states of Amapá and Roraima from 80% to 50%.<sup>31</sup> And Draft Bill no. 3.729/04<sup>32</sup> would dismiss the need for an environmental license for a wide range of economic exploits in agriculture, forestry, livestock farming, and infrastructure. The administration is also undoing the National Climate Change Fund that finances studies, projects, and other initiatives to mitigate climate change and explore climate change adaptation.<sup>33</sup>

And while the administration seems to be maintaining its top-line commitments on reducing greenhouse gas emissions, in December 2020, **Brazil’s “new” Nationally Determined Contribution (NDC) for the UN Framework Convention on Climate Change uses a new methodology<sup>34</sup> that in practice would allow it to increase the amount of carbon dioxide allowed in 2030** by 400 million tonnes compared to the goal presented in 2015.<sup>35</sup> In support of litigation against the new NDC, former ministers of Environment lament the Brazilian government’s accounting “pedalada” (trick) as a potential “precedent so that other countries would present less ambitious goals, harming all.”<sup>36</sup>

Regrettably, **transparency around much environmental information is down, as is civil society engagement in public governance.** The Bolsonaro government has removed or restructured numerous “collegiate bodies” designed to enable public participation in policy making.<sup>37</sup> Civil society representation on the important National Environment Council dropped in 2019 from 23 to 17%, while government representation grew from 29 to 41%, enabling government, together with industry, majority-power to decide measures handled by the Council. Meanwhile, although under prior leadership Brazil was one of the first signers of the Escazú Agreement on access to information in environmental affairs, the current government has not sent it to Congress for approval.

**OECD  
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ISSUE**

Climate change is a focus area for several OECD committees, initiatives, and instruments, such as:

- **Committees:** Environment Policy; Agriculture; Health; Industry, Innovation and Entrepreneurship; Investment; Corporate Governance; Public Governance.
- **Initiatives:** Support of the UN Sustainable Development Goals and adoption of a focus on “green growth”<sup>38</sup>
- **Instruments:** Over 60 OECD legal instruments address sustainability and the environment, including three addressing forest management and others addressing conservation and biodiversity.



**CASE  
STUDY**

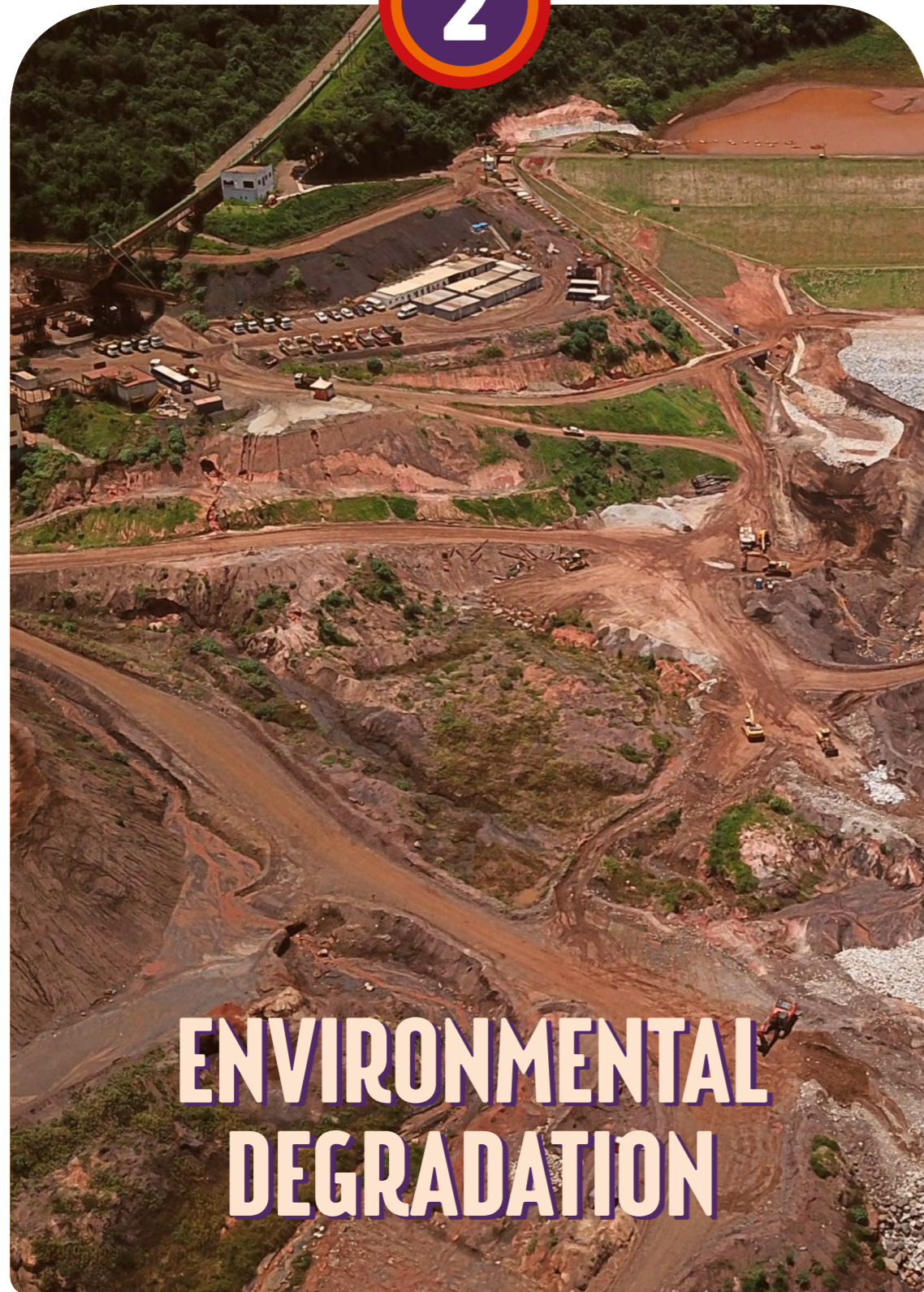
Cattle in deforested area of the Amazon.  
© Bruno Kelly/Amazônia Real

## Casino Group

In 2020, indigenous peoples of the Brazilian and Colombian Amazon and non-governmental organizations from Brazil, France, and the United States filed a lawsuit in France against the Casino Group, the largest supermarket chain in Brazil and Colombia.<sup>39</sup> The lawsuit accused the Casino Group of selling meat produced through illegal deforestation and land-grabbing.<sup>40</sup> The complaint alleges that the Casino Group regularly purchased meat from three slaughterhouses owned by JBS, a multinational meat packing corporation. In turn, the slaughterhouses acquired cattle from 592 suppliers allegedly responsible for at least 50,000 hectares of deforestation between 2008 and 2020, an area five times the size of Paris.<sup>41</sup> The complaint also alleges violations of indigenous peoples’ rights, such as the invasion of traditional lands<sup>42</sup> of the Uru Eu Wau Wau people in the state of Rondônia,<sup>43</sup> for the cultivation of livestock supplied to the Casino group. The complaint, filed under the new French duty of vigilance law,<sup>44</sup> argues the company failed its duty of vigilance commitments, which require it to identify and address any actual or potential violations of human and environmental rights in its supply chain.<sup>45</sup> The claimant groups request compensation of €3.25 million for environmental damages and €10,000 for pain and suffering to each of the organizations.

## ISSUE

# 2



Aerial view of Brazilian mining multinational Vale at the Corrego do Feijão mine in Brumadinho, Belo Horizonte's metropolitan region, Minas Gerais state, Brazil, on December 17, 2019. The upstream tailings dam burst on January 25, spewing millions of tonnes of minerals-laced sludge across the countryside. At least 257 people were killed – with 13 still missing – and communities in the area were devastated. © Douglas Magno/AFP

### Context in Brazil

Brazil enjoys remarkable biodiversity, not least in the Amazon rainforest, which represents over half of the world's rainforest territory. But that biodiversity is at serious risk, not only from deforestation, but from pollution and environmental degradation from industrial activity widespread in Brazil.

Examples abound. **Mining activities such as in the steel and gold industries** often occur without adequate protection to prevent run-off of toxic waste and ensure clean up dilapidated structures. The Case of Piquiá de Baixo in Açailândia, Maranhão, discussed below, offers an illustrative example in the steel sector. In the gold mining sector, the toxic chemical mercury is used to extract gold and then left to pollute waterways. Because so much of gold mining occurs illegally on indigenous lands in Brazil, the mercury contamination is completely unmonitored by environmental, health, and other regulatory agencies. Recent infamous **dam collapses such as the Mariana and Brumadinho collapses** in the state of Minas Gerais have spilled hundreds of millions of cubic meters of mud and waste into the environment, decimating human, animal, and plant ecosystems and disrupting whole regions' water access. Meanwhile, **widespread and indiscriminate use of harmful pesticides for the agriculture sector** – including pesticides and application methods forbidden in most OECD member states – are contaminating waters and soils and causing serious health impacts to people and animals.

### Causes of governance gaps

A number of serious governance gaps are stymying prevention and accountability – and even basic transparency – on the environmental degradation underway. The following governance failures are yielding these gaps:

As discussed in the previous segment on climate change, **major budget cuts to environmental ministries** have left them unable to enforce existing policies. The federal government's proposed 2021 budget for its environmental agencies was the lowest in 13 years, with a drop of 5.4% from the previous year.<sup>46</sup> **Staff reductions and installation of political appointees with limited experience** has also weakened the capacity of environmental agencies – **permitting impunity for bad actors**. In 2020 the government reduced the staff of the Ministry of Environment's by 50%.<sup>47</sup> And in February 2019, the Minister of Environment removed most of the regional directors of the Ministry's enforcement agency<sup>48</sup> and replaced them with new appointees, many of whom did not meet the minimum requirements for their new positions.<sup>49</sup> The agencies tasked with monitoring pesticide use do not have the capacity to test for all active ingredients or all pesticides used in the country.<sup>50</sup> Meanwhile, the OECD itself has noted that "vacancies at the federal [environmental] enforcement agency, IBAMA, have been left unfilled for years and enforcement staff has fallen by 55% since 2010."<sup>51</sup> Unsurprisingly, a 2015 study found that only 3.33% of the fines applied on companies for environmental infractions since 1980 had been effectively paid.<sup>52</sup> Moreover, even in major pollution cases such as the Mariana and Brumadinho dam collapses, **the Brazilian prosecutorial and judicial system has been unable to hold the companies and/or their senior managers accountable** for environmental crimes.

**The government is taking active steps to dismantle the regulatory framework for environmental protection.** Instead of tightening controls over dam safety after the Mariana collapse, Brazil's government expedited licensing<sup>53</sup> and, in some cases (such as for Brumadinho<sup>54</sup>) actually extended licenses for high-risk dams. Meanwhile, the government is pushing a "destruction package" of bills to allow large-scale exploitation of protected indigenous lands, ease rules for environmental assessments, and lower requirements for approval of new pesticides.<sup>55</sup> Working independently of the legislature, the Bolsonaro administration has already passed a large number of executive decrees amending or revoking existing environmental protections related to water reservoirs, irrigation, and incineration of toxic wastes.<sup>56</sup>

**Access to environmental information is low.** As concluded by the UN Special Rapporteur on Toxic Waste after visiting Brazil in December 2019, "unavailability of information is a recurrent concern" in Brazil.<sup>57</sup> This results partly from the incapacity of public institutions to generate their own information, causing an over-reliance on, and deference to, business-provided information. This also results from the government's failure to meet its



international obligations under the Escazu agreement to ensure access to information on environmental impacts, and to its recent act of eliminating or restructuring “collegiate bodies” designed to enable public participation in policy making.<sup>58</sup> These changes have made it easier for the federal government to introduce detrimental changes to environmental protection rules.

Compounding the human impacts of these governance failures in the environmental sphere, **weakness in Brazil’s health care system prevents victims physically harmed by the pollution from receiving adequate care.** Most people impacted live in remote areas lacking adequate access to health care and training on what symptoms are linked to the various types of contamination to which they are exposed. Unfortunately, despite the chronic underinvestment in Brazil’s universal health system, the current administration proposed a budget reduction of R\$35 billion for 2021 (close to US\$7 billion). This comes on the back of a devastating constitutional amendment in 2016 (EC 95) which established a cap on social spending, including on health.<sup>59</sup>

**OECD  
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Environmental degradation is a focus area for several OECD committees, initiatives, and instruments, such as:

- **Committees:** Environment Policy; Agriculture; Health; Industry, Innovation and Entrepreneurship; Investment; Corporate Governance; Public Governance; Steel
- **Initiatives:** Support of the UN Sustainable Development Goals and adoption of a focus on “green growth”<sup>60</sup>
- **Instruments:** Over 60 OECD legal instruments address sustainability and the environment, including several addressing pesticide use as well as conservation and biodiversity.

**CASE  
STUDY**

**Piquiá de Baixo**

For decades, the communities of Piquiá de Baixo and the California settlement in Açailândia, in the Brazilian State of Maranhão, have suffered environmental pollution caused by solid waste emanating from steel operations near their homes.<sup>61</sup> The solid residue resulting from several plants’ operations have contaminated the environment over a prolonged period of time, seriously damaging not only the surrounding soil, air, water, animals, and vegetation, but also people’s health.<sup>62</sup> The UN Special Rapporteur on Toxic Waste has noted that **“sixty five percent of community members reported respiratory problems, with others suffering from ophthalmological diseases, and various skin conditions, aggravated by the pollution.”**<sup>63</sup> The situation has **deteriorated with the current COVID-19 emergency**, since the community is at greater risk of severe infection due to the prevalence of chronic respiratory diseases.<sup>64</sup> Meanwhile, health care provision in the municipality has been historically limited and underfunded.

The steel companies have been able to operate largely unsupervised by public authorities, because while in 2011 state-level authorities (called Secretariats for the Environment and Natural Resources or SEMAs) were tasked with overseeing these companies, Maranhão SEMA’s resources were not boosted alongside its increased responsibility.<sup>65</sup> In the period between 2010 and 2017, for example, the agency was unable to produce one single technical study on the quality of air, water, and soil in the area surrounding the steel plants.<sup>66</sup> In fact, the steel companies were able to operate without a valid environmental licence for years,<sup>67</sup> because although the Maranhão SEMA did not renew their licences, finding they were not complying with environmental regulations,<sup>68</sup> it took no action to ensure

compliance – and an automatic renewal mechanism allowed the steel companies simply to continue their operations without a valid license.<sup>69</sup> The Maranhão SEMA claimed that it applied the pertinent sanctions but, as of 2019, no information was published regarding the types of sanctions, when they were applied and whether the companies had complied with them. Meanwhile, capacity constraints have made SEMA reliant on the steel companies’ self-monitoring and self-generated data.<sup>70</sup>

In 2005, Piquiá de Baixo residents filed lawsuits claiming moral and material damages. It took eight years for the first instance judge to decide in favour of the claimants. And while the outcome of many of the legal battles continues to be favourable for the community, the judicial path has not been easy for them. In addition, community leaders have faced legal suits and harassment from Vale S.A.<sup>71</sup> While in 2016 an agreement for the relocation of over 300 families was reached, five years later the process is still not completed.<sup>72</sup> Thus, 16 years after they launched their legal actions, eight years since the court’s favourable decision and five years after signing the relocation contract, the community is still living in the contaminated area and awaiting relocation to a safe place. To this day, neither the government nor the companies have acknowledged their responsibility for the harm caused to communities.



View of the Piquiá de Baixo neighbourhood which shows the proximity of the houses to the steel plants. © Marcelo Cruz

**“Guaranteeing the right to integral protection for the families of Piquiá means ensuring legal security in the democratic state. To this end, it is necessary to guarantee the functionality of the mechanisms of social control over the environmental impact studies and licences that authorise the activity of companies, as well as the creation of laws that encourage public policies of compensation/corrective and preventive measures.”**

Valdenia Paulino, *Justiça nos Trilhos*

## ISSUE

# 3



Mobilization of indigenous people in Brasília on the Esplanada dos Ministérios against PL 490 and against the time frame that would be voted on in the STF. © Cícero Pedrosa Neto/Amazônia Real

### Context in Brazil

Brazil is home to over 300 distinct indigenous groups encompassing about a million people. They live across the country, primarily in ancestral natural lands where they play a major role outweighing their small population size in the conservation of natural resources and, through the protection of forests, the prevention of climate change. Unfortunately, while indigenous peoples rights – such as to self-determination and free, prior, and informed consent (FPIC) over use of their territories – are protected under international law, **those rights are under systematic attack in Brazil**. Afro-descendant communities such as quilombolas and other traditional peoples are experiencing a similar situation.

A major threat to indigenous peoples' rights is **the government's failure to protect indigenous lands through "demarcation."** Although the constitution required all Indigenous lands to be assessed and labelled for protection by 1993, successive governments have repeatedly failed to complete the task. Likely as a result of the current president's rhetoric against Indigenous peoples and their rights, **the incidence of land-grabbing has sky-rocketed in recent years**, rising for example from 109 cases in 2018 to 256 in 2019, impacting at least 151 indigenous lands of 143 peoples in 23 states.<sup>73</sup> In tandem with increased land grabs, **violence against indigenous peoples has increased**. There were 277 reported cases of violence against indigenous persons recorded in 2019, among which almost half (133) were assassinations and homicides.<sup>74</sup> The Inter-American Human Rights Commission demonstrated its concern over attacks against the indigenous population in Brazil in a 2021 report,<sup>75</sup> while another 2021 report by Indigenous Peoples' Rights International (IPRI) reveals systematic violence against indigenous peoples, encompassing practices such as harassment, suppression of rights, and denial of identity, beyond other criminal offenses.<sup>76</sup>

### Causes of governance gaps

**The Bolsonaro administration is actively shirking its constitutional duty to demarcate indigenous lands.** While still a candidate, Bolsonaro called demarcation "an obstacle for development"<sup>77</sup> that "suffocates agribusiness." He has now met his unconstitutional campaign promise that "there won't be an inch of demarcated land" during his presidency.<sup>78</sup> He even had his Ministry of Justice ask FUNAI to review the validity of 27 past demarcation cases.<sup>79</sup>

**The government is also actively weakening the regulatory and legislative regime for protection of indigenous peoples' rights.** While the Constitution prevents exploration and extraction of minerals on indigenous lands except under certain strict conditions, draft legislation presented by Bolsonaro's administration would authorize not only mineral resource extraction, but also exploration of hydrocarbons and use of water resources for electric power generation on indigenous lands without the current protections.<sup>80</sup> Meanwhile, although Brazil is a signatory to ILO Convention no. 169 that among other things requires states to ensure FPIC, new draft legislation urges the President to challenge Brazil's ratification, arguing that Brazil's support of Convention no. 169 prevents the country's economic growth.<sup>81</sup> Two other draft bills, known as the "land-grabbing draft bills," seek to amend the Property Regularization Law<sup>82</sup> to offer a sort of amnesty for land grabbers and invaders who irregularly occupied and exploited Federal lands even where they are used by indigenous, *quilombola*, and traditional communities.<sup>83 84</sup> If passed, these bills would have sweeping impact on cleaning the slates of violators of indigenous peoples territory: to take just one example, on the Yanomami peoples' lands where gold can be found, it is estimated that approximately 20 thousand prospectors live illegally.<sup>85</sup> In June 2020, two Yanomami indigenous youths were killed in their own lands by two prospectors near an illegal heliport.<sup>86</sup>

But instead of fighting the incursions on indigenous lands and violence against indigenous peoples, **major budget cuts at environmental and indigenous bodies have made their work almost unfeasible**. FUNAI's total budget for 2020, for instance, represented merely 0.02% of the Federal Government budget, but has been reduced on a yearly basis. Between January and May 2020, FUNAI was allocated the lowest amount in the last ten years.<sup>87</sup> Another indigenous ministry, Fundação Palmares, has experienced a reduction of 76.13% in its budget over 10 years.<sup>88</sup>

Like civil society more broadly, indigenous representative organisations have recently been stripped of their ability to address these and other causes of governance gaps through the Bolsonaro's administration's elimination of numerous social councils and "collegiate boards" that had enabled popular participation.<sup>89</sup> At least three such councils or boards linked to indigenous peoples have been extinguished. Of particular concern, all indigenous representative groups lost their seats entirely<sup>90</sup> on the important National Environmental Council.<sup>91</sup>

**OECD  
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Several OECD committees, initiatives, and instruments are concerned with indigenous peoples rights, including:

- **Committees:** Environment Policy; Agriculture; Development Assistance, Health; Investment; Corporate Governance; Public Governance; Steel
- **Initiatives:** Adoption of a focus on "green growth"<sup>92</sup> and publication of a series "Linking Indigenous Communities with Regional Development"<sup>93</sup>
- **Instruments:** 12 OECD legal instruments mention indigenous peoples, broadly supporting the idea that public policies should heed indigenous peoples' economic interests and respect their rights such as to self-determination and free, prior and informed consent. In its Recommendation of the Council on the Use of Economic Instruments in Promoting the Conservation and Sustainable Use of Biodiversity, the OECD has also acknowledged the link between participation of indigenous peoples in development of environmental policies with effective environmental protection.



Socio-environmental catastrophe caused by the rupture of a dam at the mining company Vale in Brumadinho (MG). © Felipe Werneck/Ibama

## The Mariana and Brumadinho dam collapses

On 5 November 2015 and 25 January 2019, the Brazilian state of Minas Gerais suffered two catastrophic tailings dam collapses that dumped hundreds of millions of cubic tons of ore tailings and mud into the Doce and Paraopeba rivers, respectively, killing hundreds of people, destroying hundreds of homes, and impacting nearly 100 municipalities. Among those impacted were thousands of Indigenous families of several distinct peoples. Pataxó and Pataxó Hã-hã-hãe families inhabiting the margin of the Paraopeba river suffered loss of fishing activities, crop irrigation, cloth and dish washing, bathing, and traditional rituals that depended on a clean water source.<sup>94</sup> As expressed by deputy chief Célia Peixoto, "the Pataxó people came from a drop of water that fell on the earth, our relationship with water is very strong. The dead river gives us much grief."<sup>95</sup>

The collapses notably illustrate not only physical impacts to the Indigenous populations, but violation of their right to FPIC. Beyond the absence of consultation and consent prior to the installation of the dams themselves, these and many other affected communities were not consulted on and given the right to grant or withhold consent to reparations measures. For example, in the case of the Mariana dam collapse (2015), a lengthy lawsuit against involved companies Samarco, Vale S.A., and BHP resulted in a settlement reached without any consultation of the affected indigenous communities or indication of how they would be involved in decision-making and implementation of reparatory measures. In the case of the Brumadinho dam collapse (2019), some impacted indigenous populations have been excluded from the count of those affected by the collapse.<sup>96</sup> Following the Brumadinho collapse, municipalities in the region began drawing on water from the nearby Pará river to replace their lost water supply, thereby reducing the Pará flow and causing an influx of fisherman and tourists that badly disrupted the way of life, leisure, and cultural activities of the Kaxixó indigenous people. Although those impacts resulted directly from the dam collapse, the Kaxixó have been excluded from the Brumadinho reparations conversation.

## ISSUE

# 4

# THREATS TO ENVIRONMENTAL AND HUMAN RIGHTS DEFENDERS

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

## Context in Brazil

Environmental and Human Rights Defenders (EHRD) play a vital role in ensuring that public policies and development projects serve the public without harming the populations directly impacted. But in Brazil, EHRDs' rights are under major threat.

According to data gathered by Global Witness, **Brazil has remained the deadliest or one of the top four deadliest countries for land and environmental defenders in the world from 2002 to 2020.**<sup>97,98</sup> EHRDs in Brazil – including indigenous and traditional leaders, environmental and human rights researchers and journalists, non-governmental organisations, and even some government officials working to protecting the environment and human rights – are experiencing a variety of attacks. These range from killings and beatings, to death threats and intimidation, to criminalisation and arbitrary arrests, to violence against women human rights defenders online, to misinformation and smear campaigns, and violent repression of protests.

**Indigenous rights defenders have borne the brunt of threats and violence.** A non-exhaustive study carried out 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.<sup>99</sup> **The Brazilian media and civil society are also under threat.** In 2019, Brazil ranked among the top 10 countries in the world with the highest rates of impunity for killings of media workers.<sup>100</sup> Brazil is listed 107<sup>th</sup> out of 180 countries in Reporters Without Borders' 2020 World Press Freedom Index.<sup>101</sup>

## Causes of governance gaps

A number of governance failures by the Brazilian government are contributing to the ongoing harms to EHRDs. One such challenge is **the government's failure to curtail illegal business activities.** 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 loggers.<sup>102</sup> As described elsewhere in these papers, significant declines in the government's sanction of illegal business activity harming the environmental – paired with its arguable fostering of illegal business activities through, for example, its legislative initiatives to provide amnesty to land grabbers – correlate directly with the EHRD attacks in relation to those illegal activities.

Meanwhile, **the government's actions to facilitate extractive, infrastructure, and agriculture activities in protected environmental territory fuels the root cause of conflicts that result in such harm to EHRDs.** The government's refusal to demarcate indigenous lands and efforts to enable its exploitation, its significant cuts to the budgets of environmental and indigenous rights protection agencies, and its efforts to minimize environmental protections, such as by easing environmental licensing requirements, all serve to promote the very business activities that generate violence against defenders.

Yet another cause of governance gaps is the **limited resources and poor institutional design of the National Programme for the Protection of Human Rights Defenders,** a federal programme that is implemented at state level. Extremely limited budgeting restricts the program's monitoring activities to "remote monitoring" over Whatsapp and email, with only a few EHRDs in the programme receiving police escorts. The programme suffers poor coordination between federal and state law enforcement bodies. Meanwhile, a 2016 Presidential Decree excluded civil society as well as FUNAI, the National Institute for Colonization and Agrarian Reform (INCRA), the Agrarian Ombudsman, the Public Ministry, and the Federal Public Defender's Office from the Deliberative Council of the program, preventing those entities most knowledgeable on the situation and needs of EHRDs from guiding the programme's operations.<sup>103</sup>

These governance issues result in failure to prevent impacts against EHRDs. **The government is also failing to ensure accountability for acts that have occurred.** In 2019, Human Rights Watch documented 28 killings of EHRD 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.<sup>104</sup> In 2016, the UN Special Rapporteur on Indigenous Peoples and the Special Rapporteur on Minority Rights both found that **institutional racism – rife in the membership of the judiciary and the law enforcement forces – is a key factor in the patterns of violence** affecting Indigenous peoples, *quilombola* communities, and other traditional communities.<sup>105 106</sup>

**Beyond impunity for attacks by other entities, the government itself is actively attacking non-governmental organisations that question its activities.** In 2019 Bolsonaro created a “Department for Relations with Non-Governmental Organisations” and passed several executive measures creating onerous bureaucratic procedures to make it more difficult for NGOs to operate.<sup>107</sup> While these measures were ultimately amended by the National Congress, they demonstrate the administration’s agenda on this issue.<sup>108</sup> The government has also increasingly used the recently approved Anti-Terrorism Law, as well as the National Security Law that dates back to the military dictatorship, for purposes of political persecution.<sup>109</sup> Concerningly, **government surveillance bears a strong resemblance to past military regime tactics.** A congressional inquiry into INCRA and FUNAI 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, demonstrating the alarming level of surveillance to which Brazilian civil society actors are subjected.<sup>110</sup>

**The government itself is similarly attacking media outlets critical of it.** In April 2021, Amnesty International reported that members of the federal government verbally attacked journalists and their work 449 times in the period between January 2019 and September 2020.<sup>111</sup> President Bolsonaro has encouraged much of the rhetoric against journalists. According to a report by the National Federation of Journalists, the president himself made around 10 attacks against the media each month in 2019.<sup>112</sup>

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Several OECD committees, initiatives, and instruments are concerned with the rights EHRDs, including:

- **Committees:** Environment Policy; Agriculture; Development Assistance; Investment; Corporate Governance; Public Governance; Steel
- **Initiatives:** OECD area of work on civic space involving “civic space scans” of candidate and member states including Brazil, focused on ensuring civic freedoms and a CSO-enabling environment<sup>113</sup>
- **Instruments:** A number of OECD instruments address civic space and threats to defenders, such as the recent OECD DAC Recommendation on Enabling Civil Society in Development Co-operation and Humanitarian Assistance<sup>114</sup>



**CASE  
STUDY**

**Pesticide Poisoning in  
Limoeiro do Norte, Ceará State**

José Maria Filho was a family farmer who, in 2008, began complaining about large fruit-exporting companies (Del Monte, BANESA, Nólem and Frutacor)<sup>115</sup> overusing aerial spraying of pesticides.<sup>116</sup> A key problem of aerial spraying is the pollution caused by “pesticide drift,” which can affect the environment and people surrounding the crops area.<sup>117</sup> Noticing problems on his daughter’s skin,<sup>118</sup> Filho commissioned a study by a group of scientists that showed residues of at least three of the pesticides tested, and up to 12 in certain cases, in the water of the local canals and household faucets.<sup>119</sup> The scientists also documented serious health impacts resulting from pesticide exposure.<sup>120</sup> Filho organised community organizations, researchers, and other supporters to push the City Council to pass, in November 2009, Law 1,278/2009 prohibiting aerial spraying in the municipality. **Five months later, in April 2010, José Maria was shot 25 times a few meters from his home. A month after his death, Law 1,278/2009 was repealed.**<sup>121</sup> Although an investigation was launched right after the murder, lawyers acting for Filho’s family denounced many irregularities, including non-preservation of the crime scene and delays in carrying out the ballistics exam and in bringing forward prosecutions. In June 2012, charges were laid against Frutacor’s owner, a Frutacor manager and other individuals.<sup>122</sup> However, in 2017, the 2nd Criminal Chamber of the Ceará Court of Justice dismissed all charges, including those against the two Frutacor individuals, maintaining the process only against one suspect.<sup>123</sup> Although, positively, a new law has been passed in Ceará banning aerial spraying of pesticides,<sup>124</sup> there is still no accountability for Filho’s death.

## ISSUE

5



Coffee framer in Brazil. Wikimedia Commons

### Context in Brazil

Protecting workers rights is an essential part of ensuring a healthy workforce and population, but in recent years Brazilian workers have seen their rights significantly curtailed. Bolsonaro's predecessor passed a **sweeping, employer-friendly labour reform bill in 2017** that was supposed to generate "millions" of jobs. But data suggests it instead led to an increase in informal work, which provides workers no state protection. Household survey data shows that while in 2016 there were 10.1 million unregistered employees in the private sector and 22.4 million self-employed workers, in 2020 there were 11.6 million and 24.2 million, respectively,<sup>125</sup> showing the labour reform merely "increased informality and the precariousness of labour rights."<sup>126</sup> Meanwhile, the unemployment rate rose from 11.9% to 13.5% in the first year of the Bolsonaro government, and reached a new peak above 14% in April 2021.<sup>127</sup> The labour reform also deeply weakened the income and existence of labour unions and the occurrence of collective bargaining: as a result of the bill, union earnings decreased by more than 85%.<sup>128</sup> The law also led to restrictions in workers' access to justice, including by altering rules around the filing of legal claims for work-related disputes.

Conditions closely resembling slave labour also persist in many parts of the country, not only in rural agricultural settings but also in urban centres. Thousands of workers are being subjected to forced labour, intense and exhausting workdays, degrading conditions, and restricted mobility due to debt contracted with their employers.

### Causes of governance gaps

Even before the Bolsonaro administration, **the Brazilian government adopted legislation significantly reducing protections for workers' rights.** Law No. 13,467/2017<sup>129</sup> (the labour reform) changed approximately 200 articles of the Consolidation of Labour Law in a manner broadly acknowledged to protect employers' rights over workers' rights. The law allows employers to outsource 100% of their labour force and dismiss workers collectively without prior authorization of a union. The law ended mandatory union dues and required prior and express authorization from each worker to contribute to its trade union. Another 2017 Law No. 13,429 increased the ability of companies to use periodic, seasonal, or intermittent work that allows workers far fewer benefits and protections.

**The Bolsonaro administration has continued to advance even deeper legislative drawbacks of workers' rights.** As a candidate, Bolsonaro argued that "fewer rights are better than no jobs."<sup>130</sup> In 2021, a group established by Bolsonaro to explore further labour reforms released a report proposing 330 changes to established labour law that are primarily harmful to workers and protective of employers.<sup>131</sup> Bolsonaro's government issued a norm in 2019 weakening the right to rest on Sundays in six industries.<sup>132</sup> Another norm issued in 2019 initiated the revocation and modification of thirty-six regulatory rules promoting health and safety at work.<sup>133</sup> Law n. 13.874, also passed in 2019, exempted smaller employers from documenting workers' hours, making it harder for workers to show proof of and demand compensation for overtime.<sup>134</sup> Bolsonaro is also proposing new fixed-term contracts for young workers that would exempt employers from paying into social security.<sup>135</sup>

Bolsonaro has existentially undercut ministries focused on labour issues. **One of Bolsonaro's first acts in office was to eliminate the Ministry of Labor and Social Security entirely** in an effort to reduce the state's involvement in the economy.<sup>136</sup> Only some of the ministry's tasks – which had included regulation and oversight of labour relations in Brazil, were passed to the Ministry of Economy.<sup>137</sup> The Ministry of Labor and Welfare was re-established in 2021 to tackle the challenge of addressing record unemployment resulting, in part, from the COVID-19 pandemic.<sup>138</sup>

Undoubtedly as a result of the administration's efforts to reduce government oversight of labour relations, **Brazil has experienced a significant decline in labour inspectors** which have seen a reduction by a third in the past ten years, from 2,935 in 2010 to 2,050 in 2020.<sup>139</sup>

**Brazil's government has also weakened its protections against modern slavery.** Resources for implementing measures to fight modern slavery tackling modern slavery were cut. Further, agribusiness aligned with other business interests to achieve a redefinition of what counts as modern slavery under Brazilian law.

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Several OECD committees, initiatives, and instruments are concerned with labour rights, including:

- **Committees:** Employment, Labour and Social Affairs; Development Assistance; Investment; Corporate Governance; Public Governance
- **Initiatives:** Among other work on labour issues, the OECD has a set of indicators and publications that attempt to compare member states' performance among themselves and to other relevant countries.<sup>140</sup> The OECD also conducts research and analysis on other issues including youth and employment, the future of work, and employment quality.
- **Instruments:** A few OECD recommendations address issues around employment, including on gender, aging, and mental health.

**CASE  
STUDY**

## Modern slavery in Brazilian coffee supply chains

The Brazilian state of Minas Gerais is a key location for coffee production, producing more than half of the coffee exported from Brazil, which is one of the largest coffee producers in the world. Unfortunately, the industry is high-risk for labour and human rights violations. From 2015-18 alone, authorities rescued 820 workers from conditions analogous to slavery, wherein workers lack canteens or bathrooms, are not given safety equipment to protect against pesticides, work more than 14 hours per day without breaks, are severely underpaid, and are often constrained in their ability to leave the employer due to debt bondage.



Coffee production in Mato Grosso – MT. © GcomMT/Maria Anffe

Research has shown links to the supply chains of major international coffee sellers Nestlé, Jacobs Douwe Egberts, Starbucks, McDonald's, Dunkin Donuts, and Illy.<sup>141</sup> In August 2018, Conectas and the Brazilian union ADERE MG filed complaints against these six companies with the Brazilian National Contact Point (NCP), a business and human rights grievance mechanism established under the OECD Guidelines for Multinational Enterprises.<sup>142</sup> The complaints allege that the companies have failed, among other things, to undertake adequate due diligence to address conditions of modern slavery in their supply chains. The Brazilian NCP has accepted the complaints against four of the companies, and they are proceeding towards mediation.

## OECD focus on these issues

The preceding segments have provided just a few examples of the OECD committees, initiatives, and instruments that address the topics studied in this series of papers. These range from initiatives to assess the openness of civic space in member and candidate states with an eye to promoting civic freedoms, to legal instruments guiding the use of pesticides for agricultural work. The papers in this series provide much more detailed analysis on these issues.



## Conclusion and recommendations

The challenges discussed in this paper series have led Brazil to fail to safeguard and protect people and the environment. The governance gaps these legal and policy failures engender are causing Brazil to fail to meet many OECD practices, policies, and standards, as well as the organisation's core values of respect for the rule of law, human rights, and the environment.

Taken together, the gaps and failures described in this paper series demonstrate that Brazil is not yet fit for accession. The accession process provides a unique opportunity to achieve alignment, provided accession is conditioned on Brazil meaningfully addressing the causes of governance gaps identified in this paper series.

### The papers in this series make two sets of recommendations:

- Recommendations on policy reforms needed in Brazil to help prevent governance gaps impacting the environment and human rights; and
- Recommendations for the OECD, its technical committees, and its member states to adopt to ensure the accession process is used effectively to achieve the change needed in Brazil.



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



## Recommendations for reform in Brazil

The papers in this series make extensive recommendations on the reforms needed in Brazil to address the causes of governance gaps across the five issues discussed. While the recommendations in the underlying five papers are often very specific (such as to repeal a certain law, or restructure and better resource a particular program), the following recommendations provide a more general picture of needed improvements:

Brazil must:

### Ensure adequate budgets and resourcing at key ministries

- Ensure an appropriate budget for all ministries engaged with the issues discussed, including environmental ministries, indigenous ministries, the labour ministry, the judiciary and prosecutorial offices, and state agencies involved in implementation and enforcement of relevant programs.
- Boost both staff levels and staff grade levels at relevant ministries to ensure adequate resources and technical capacity for implementation and enforcement.

### Strengthen the structure and political capacity of key ministries

- Ensure minimum requirements for the subject matter experience and expertise of political appointees at key ministries: avoid undue reliance on the military for appointments.
- Ensure environmental ministries equal footing in government hierarchy vis-à-vis economic and agriculture ministries.

### Ensure accountability for bad actors via the executive branch

- Investigate and apply sanctions whenever appropriate to reported or discovered incidents of violation of environmental, human rights, and labour rights laws.

### Ensure accountability for bad actors via the judiciary and prosecutorial system

- Increase capacity for prosecutors and judges to pursue and conclude claims against violators of relevant laws.
- Ensure adequate training for law enforcement and judicial officials to counter challenges, such as implicit race bias, that cause them inadequately to address certain reported crimes.

### Strengthen the human rights, labour rights, and environmental legal and regulatory framework

- Repeal numerous identified harmful laws.
- Drop support of several identified draft bills anticipated to be harmful to the environment or human and labour rights.
- Pursue new legislation, in key areas, to boost rights that have been under attack.

### Boost public access to information and engagement in governance

- Fulfil state obligations under the Escazu agreement.
- Reinvigorate implementation of domestic access-to-information laws.
- Improve collection and publication of data by government ministries directly, as opposed to by corporations.
- Restore civil society and other stakeholder representation on collegiate boards and other public advisory bodies.

### Protect civic space for civil society and the media

- Ensure accountability for crimes against EHRDs including in the media.
- Boost funding and federal-state coordination for EHRD support programs.
- Cease government-led attacks against EHRDs and the media, particularly race-based attacks.

## Recommendations for the OECD accession process

Having highlighted the reforms needed in Brazil, the papers in this series then make the following asks of the OECD and its member states:

### Of the OECD and each of the relevant technical committees:

- To carefully consider the research and reform recommendations presented in this paper series 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 series 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 series 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

- 1 For more information on Mind the Gap, please visit [www.mindthegap.ngo](http://www.mindthegap.ngo).
- 2 OECD, 'OECD takes first step in accession discussions with Argentina, Brazil, Bulgaria, Croatia, Peru, and Romania,' 25 January 2022, <https://www.oecd.org/newsroom/oecd-takes-first-step-in-accession-discussions-with-argentina-brazil-bulgaria-croatia-peru-and-romania.htm>.
- 3 OECD, 2021 Ministerial Council Statement, 6 October 2021, para.1, <https://www.oecd.org/mcm/MCM-2021-Part-2-Final-Statement.EN.pdf>.
- 4 OECD, 'OECD takes first step in accession discussions with Argentina, Brazil, Bulgaria, Croatia, Peru, and Romania,' 25 January 2022, <https://www.oecd.org/newsroom/oecd-takes-first-step-in-accession-discussions-with-argentina-brazil-bulgaria-croatia-peru-and-romania.htm>.
- 5 OECD, 'Active with Brazil', March 2018, p 4, <http://www.oecd.org/brazil/Active-with-Brazil.pdf>
- 6 Report of the Chair of the Working Group on the Future Size and Membership of the Organisation to the Council - Framework for the Consideration of Prospective Members, 7-8 June 2017, para 27, <http://www.oecd.org/mcm/documents/C-MIN-2017-13-EN.pdf>.
- 7 OECD, 2021 Ministerial Council Statement, 6 October 2021, para.1, <https://www.oecd.org/mcm/MCM-2021-Part-2-Final-Statement.EN.pdf>.
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