

# WORKERS' RIGHTS AND SOCIAL PROTECTION IN BRAZIL

Legal and policy gaps



COLOPHON

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

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



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## GLOSSARY OF ACRONYMS

ILO	International Labour Organisation
STF	Federal Supreme Court
SUS	Brazil's Universal Health System
WHO	World Health Organisation

# 1

## 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>1</sup> To be allowed to accede, Brazil needs to demonstrate “willingness, preparedness and ability” to “adopt OECD practices, policies and standards.”<sup>2</sup> 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.”<sup>3</sup> 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.<sup>4</sup>

**At present, Brazil is far from being in alignment with these values, standards and obligations. In the view of the authors of this paper series, Brazil’s record on environmental protection, deforestation and the fight against climate change, and its failures to protect the human rights of workers, environmental and human rights defenders, indigenous peoples, and other traditional communities, currently make it unfit for accession.**

This paper is one of five submitted by Conectas Human Rights (Conectas), OECD Watch, and the International Federation for Human Rights (FIDH) to the OECD assessing the extent to which Brazil’s laws, policies and practices in these areas meet OECD expectations. This paper focuses on labour rights and social welfare. It is likely of particular interest to the OECD Labour and Social Affairs Committee and its divisions, but also to the committees on Investment and Public Governance.

While over the course of the 20th century, Brazil made advancements in its legislation and governance mechanisms concerning protection of workers’ rights, over the last several years, the situation has changed drastically. The 2017 passage of a major labour reform law (Law No. 13,467/2017) was particularly harmful in fundamentally changing general principles of labour law in Brazil, deregulating workers’ rights and disorganizing trade unions with the stated goal of generating employment. The reform has prompted increased informality and precariousness of work in Brazil without reaping the economic benefits expected of it.

Meanwhile, the Bolsonaro administration has further weakened labour protections in Brazil by defunding (even temporarily eliminating) key ministries, passing executive orders and promoting legislation that further deregulate working conditions, under-equipping inspection efforts, and failing to ensure accountability for those who violate existing labour standards.

Civil society organizations, researchers and members of academia, labour rights organisations, and others have shown that the increasing vulnerability of labour rights and social protection in Brazil results from both omissions and intentional actions of the government. These failures put into question Brazil’s “willingness, preparedness and ability” to comply with OECD values and standards, all of which constitute critical aspects of the OECD’s decision on whether or not to invite aspiring states to accede.

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

This paper examines existing gaps in Brazil’s protections of labour rights and social welfare through the lens of five case examples that demonstrate the human and societal impact of those gaps. Based on this analysis, the paper makes recommendations for changes in Brazilian laws, policies, and practices necessary to close the gaps and address the associated human impacts. **Conectas, OECD Watch, and FIDH urge the OECD, its member states and technical committees to make compliance with these recommendations a condition since qua**



## Prominent cases

non for accession. They also urge the OECD, member states and technical committees to take the views and observations of civil society organisations and other experts into account in their decision-making process regarding Brazil's accession.

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



### 2.1 Poor policies on collective dismissals: the case of jet manufacturer Embraer

Unlike other OECD member and member-candidate states including France, Portugal, Mexico, and Argentina, Brazil does not have legislation establishing limits for collective dismissals.<sup>5</sup> In collective dismissal cases, Brazil's legal regime offers no worker protections, such as a requirement of previous dialogue with unions, authorization from relevant authorities, organization of dismissals into tiers taking into account factors such as seniority, age, or family-related expenses, etc., or even a requirement of benefit packages that allow workers to face unemployment with a higher level of security.

Recent collective dismissals by Brazilian commercial jet manufacturer Embraer are illustrative of the problem. Embraer is the third largest plane manufacturer in the world. With revenue exceeding \$1 billion, it is the main exporter of high added-value products in Brazil.<sup>6</sup> In February 2009, Embraer, without prior negotiation with the workers' union, fired 4,273 employees, or 20% of the company's entire workforce. The justification for the dismissal was the global economic crisis.<sup>7</sup> The workers received the news with surprise, for in the previous year, the company had broken its sales record and delivered over 200 jets worldwide.<sup>8</sup>

The validity of the dismissal was questioned in court by the workers' union representation (Collective Labour Dispute No. 309-2009-000-15-00), claiming that Embraer, even though it was aware that the dismissal of a significant number of workers would lead to severe social and economic impacts in the region, undertook no prior collective negotiations with the unions to attempt to mitigate said impacts.<sup>9</sup>

Although Brazilian case law offered a few minimum requirements for mass dismissal cases, the issue was the source of intense debate in Brazilian courts, and the case still lacks a final decision over 12 years later.<sup>10</sup> Moreover, as is discussed in Section 3 on labour-related legal and policy gaps in Brazil, the 2017 labour reform in Brazil undermined these minimal protections under case law by establishing that no dismissal, even if it were collective, would require prior authorization from union entities or collective pacts or agreements in order to become effective.<sup>11</sup>

Since Embraer's salient collective dismissal in 2009, collective dismissals without prior collective negotiations have

become increasingly frequent, leaving a trail of socio-economic impacts at an individual, family, and social level wherever they occur. A recent example involved Fogo de Chão, a Brazilian barbecue chain with over 60 restaurants worldwide and over \$300 million in revenue.<sup>12</sup> In 2020, claiming the effects of the COVID-19 pandemic as justification, the barbecue chain dismissed 690 workers without any prior negotiation and without duly paying its employees' severance packages.<sup>13</sup> That same year, Embraer once again entered the spotlight by firing 2,500 workers from its facilities without prior collective negotiations and amidst claims employees were harassed to join voluntary dismissal plans. A court complaint was filed by the workers' unions, but the Labour Courts rejected the action.<sup>14</sup>



Card from Oxfam Brasil report "Sweet fruits bitter lives – the story of workers behind the fruit we eat". Text reads: "Tell the supermarkets you want fruits free from human suffering."

## 2.2 Poor working conditions in supply chains: the case of the tropical fruit industry

Brazil is among the five largest exporters in the world, in terms of value, of nearly thirty agricultural products.<sup>15</sup> From among these products, tropical fruit exports are especially significant: Brazil is the third largest producer of tropical fruits in the world, with annual revenues exceeding \$1 billion.<sup>16</sup>

Unfortunately, Brazilian production chains for tropical fruits are permeated with poor labour conditions. A large portion of the men and women who work in these productive chains live in intensely vulnerable conditions, without employment agreements lasting more than six months and without adequate pay to provide them and their families a decent living. Fruit workers are among the 20% poorest workers in Brazil.<sup>17</sup> In addition to inadequate contracts and pay, these workers face inadequate working conditions. For example, workers are given inadequate allowance for rest and sanitary services unsuitable for adequate personal hygiene. Workers also face a high risk of poisoning by agrochemicals, often lacking adequate protective gear. Brazil actively uses many agrochemicals banned in many other OECD states, and Brazil's fruit exports lead in rankings of foods grown with excessive (often illegally excessive) use of such chemicals.<sup>18</sup>

Gender discrimination also features heavily in the fruit industry. Women in these value chains are usually hired for activities such as fruit cleaning and packing that are only in demand during specific seasons of the year. For this reason, women, more so than men, are hired for short periods of time and dismissed multiple times over the year, causing them to live in conditions of constant insecurity. This is evident in Oxfam Brasil's report, "Frutas Doces, Vidas Amargas" (Sweet Fruit, Bitter Lives), which analysed labour conditions in the industry. Testimony

from women fruit workers demonstrate "that the needs and particular characteristics of women workers, who are often mothers, are not taken into consideration in a predominantly male environment." For example, in addition to having fewer work opportunities and earning less than men, women workers in the industry are not given work conditions that meet their caregiving needs, such as to breastfeed babies throughout the day, or take leave to care for sick family members.<sup>19</sup>

Structural sexism in Brazil is still an unfortunate reality.<sup>20</sup> A gender-based wage gap persists: even if they are more qualified than male counterparts, Brazilian women workers receive 77.7% of men's salary. Brazilian women also suffer with an unpaid workload, taking care of children, other family members, and the home. Studies show women dedicate 21.4 hours per week to unpaid homecare activities, almost twice as much as men, who spend around 11 hours. The uneven divide of homecare responsibilities hinders women's permanence in the job market and pushes them toward lower paid and less dependable work.



## 2.3 Poor protections for worker health: the case of the Eternit asbestos mining company

The mining of asbestos ore in Brazil has its origins in the first half of the 20th century. This history, from the beginning, has included the Brazilian company Eternit, which has become nationally known for involvement in one of the most infamous occupational illness cases in Brazil.

Asbestos is a fire-proof, nearly indestructible fibre commonly used in industrial products and construction materials. According to the World Health Organisation (WHO), all forms of asbestos give cancer.<sup>21</sup> The main type of cancer related to the substance is mesothelioma, which attacks the membranes that coat organs such as the lungs and can cause death within a year. Asbestos may be related to lung cancer, larynx cancer, and ovarian cancer, as well as to asbestosis, a disease that causes a stiffening of the lung and difficulty breathing.

Workers that handle the fibre directly, whether in mines (in extraction), factories (in "benefitting," or the breaking of asbestos into smaller pieces), or the trade and installation of products that contain asbestos, are at high risk of damaging exposure.<sup>22</sup> Each year, asbestos is estimated to kill 107,000 people worldwide,<sup>23</sup> which represents over 60% of all work-related cancers.<sup>24</sup> From 1980 to 2010, Brazil registered over 4,000 deaths by mesothelioma.<sup>25</sup> Because of its documented harms, the WHO<sup>26</sup> and the International Labour Organization (ILO)<sup>27</sup> have urged



cessation of the use of asbestos,<sup>28</sup> and over 70 countries have created legislation to ban asbestos from their territories, including many OECD member states.<sup>29</sup>

Brazilian company Eternit, whose 2021 revenues exceeded \$43 million, primarily through exports,<sup>30</sup> has been producing asbestos for decades without ensuring adequate protections for worker health.<sup>31 32</sup> In the Osasco Eternit factory alone, it is estimated that over 10 thousand workers were exposed to asbestos. From a sample of 1,000 former workers at this facility, nearly 300 were contaminated and 90 died between 2000 and 2013. However, it is believed that the number may be much larger, since Eternit concealed and hindered countless notifications of work-related illnesses. One example is that of worker Nelson de Oliveira, who contracted mesothelioma and, in 2005, already in his ICU bed, had his medical treatment conditioned to the signature of an extrajudicial agreement with the company. As a result of the agreement, de Oliveira received the equivalent of \$4,700 and waived any other kind of claim against the company. One month later, he passed away, but Eternit never issued his work accident notification.<sup>33</sup>

Because of this and other cases involving workers who fell ill in multiple Eternit facilities throughout Brazil, in 2017, the Federal Supreme Court (STF) mandated the end of the asbestos mining operations. Delays in carrying out this decision allowed Sama, the Eternit group mining company and the third largest producer of chrysotile asbestos in the world,<sup>34</sup> to continue mining operations until February 2019.

Sadly, in July 2019, a state law (Law No. 20,514), sanctioned by the governor of Goiás, Ronaldo Caiado – who received \$60,000 in donations from Sama for his senate campaign in 2014<sup>35</sup> – authorized the extraction and benefitting of chrysotile asbestos in the state solely for exporting purposes. While limiting the use of the asbestos to export, only, may have helped protect other individuals in the state, it did nothing to protect workers handling the substance. In February 2020, Eternit resumed mining in the last asbestos mine in Brazil, one of the largest in the world, located in Minaçu, Goiás.<sup>36</sup>

The resumption of activities in Minaçu was the subject of court proceedings. At first, the judiciary branch suspended the company's activities, but in September 2021, the Superior Court of Justice authorized the resumption of ore benefitting exclusively for exporting purposes. Soon after, the company announced that it would resume excavations to continue to extract asbestos from the mine.<sup>37</sup>

According to an article by The Intercept, Eternit continues to deny that asbestos is bad for human health and instead attributes responsibility to the workers themselves for their illnesses.<sup>38</sup> According to the article, even in cases of acute and progressive respiratory disfunction, constant cough, extenuating exhaustion, and hemorrhage,<sup>39</sup> physicians paid by the mining company indicate other causes for these symptoms, such as not using personal protection equipment and consuming cigarettes and alcohol, thereby concealing the role of asbestos in causing the documented ailments.<sup>40</sup>



## 2.4 Persistent conditions of modern slavery: the case of the Brazilian coffee sector

From 1995 to 2021, 57,644 workers were rescued from slavery in Brazil.<sup>41</sup> Complaints involving the use of slave labour in the country are frequent and involve even major, famous companies, such as international clothing brand Zara which, in three different occasions, was accused of using slave and child labour in its Brazil production chain.<sup>42</sup> Slave-like conditions are also found at major infrastructural projects, such as the expansion of the International Airport of Guarulhos, São Paulo, undertaken for the Rio 2016 Olympic Games.<sup>43</sup>

However, rural areas concentrate the largest number of enslaved workers.<sup>44</sup> In 2021 alone, 1,551 workers were rescued from slave-like conditions in rural areas.<sup>45</sup> Almost 60% of rural workers in Brazil continue to be employed informally and are thus deprived of the legal protections that are generally guaranteed by formal employment.<sup>46</sup> Informality exacerbates the vulnerability of these workers, whose rights are often violated.

Among the main industries involving modern slavery, coffee harvesting has had one of the highest tallies of rescued workers in recent years.<sup>47</sup> Brazil is the largest coffee exporter worldwide, responsible for nearly a third of global coffee farming.<sup>48</sup> The state of Minas Gerais is the epicentre of Brazilian coffee farming.<sup>49</sup> Unfortunately, the region has the largest amount of coffee-related slave labour cases in Brazil, including from brands certified and awarded for allegedly producing “sustainable coffee.”<sup>50</sup>

One way to tell the story of the labour and human rights violations in coffee farms of the South of Minas Gerais starts in Tanhaçu, Bahia. There, each year before the coffee harvest begins, recruiters known as “gatos” attract workers from poor Brazilian cities with misleading descriptions of good employment. Believing the promises to be true, hundreds of workers board clandestine buses that take them to the farms located hundreds of kilometres away from their homes. However, when they reach their final destination, many find themselves in a situation that is completely different from the one promised by the recruiters.

Reports from labour inspections on coffee farms show workers are kept in conditions analogous to slavery. Reports describe work in conditions of constant fatigue, with working days beginning at 4 a.m., involving long walks to and from the coffee bushes, and late nights home after long days of picking.<sup>51</sup> The reports also show that most of these farms do not offer accommodations that satisfy basic needs for survival and dignity (for example, in most cases, there is no running water, beds, or toilets) or supply basic personal protective equipment, such as gloves and safety glasses. These conditions increase risks to workers' health due to both the physical effort of the intense harvesting work and prolonged exposure to pesticides. Hunger is frequently



described as part of workers' daily routine. In one case, when workers were not paid, their food supplies ran out and they had to feed themselves on leftover rice they found and papayas they picked on the farm. There is also record of instances where employers confiscated workers' employment documents, defrauded payments (did not pay workers the full amount agreed upon beforehand), and used the labour of children as young as age 16.<sup>52</sup>

The exposure to poor working conditions faced by these individuals is compounded by their subjection to other forms of social discrimination, namely related to race, level of education, and age. This discrimination increases vulnerability to exploitation: 77% of workers rescued from slave labour in Brazil between 2013 and 2018 were non-white and 97% didn't have a high school education. The vast majority are young, between 18 and 24 years of age.<sup>53</sup>

And since 2020, there has been additional vulnerability linked to the COVID-19 pandemic. In a single inspection in 2021, many of the more than 60 workers rescued from a coffee plantation were infected with the virus.<sup>54</sup> Reports show that even with prior knowledge of the presence of COVID-infected workers, no assistance was provided and no measures were implemented to mitigate the spread of the disease: tests were taken, but no other COVID-19 protocols were observed, such as social-distancing and mask-wearing. Even if they were sick, workers were kept on their work posts and lodged with the other workers.<sup>55</sup>



## 2.5 Failure to protect workers from COVID-19: the case of the Brazilian meat industry

COVID-19 affected workers in many industries beyond the coffee industry in Brazil. COVID-19 outbreaks in Brazilian meat packing plants warrant attention, evidencing the state's failure to effectively protect meat packers during the global pandemic and contributing to human rights violations in a major global supply chain.

On 11 March 2020, the WHO decreed the existence of a global pandemic due to the COVID-19 virus.<sup>56</sup> Unfortunately, Brazilian president Jair Bolsonaro resisted adoption of sanitary and protective measures for Brazilian society.<sup>57</sup> Bolsonaro constantly underestimated the severity of the disease, advocated for the use of ineffective treatments without scientific support, ignored the urgency of purchasing vaccines, attacked local politicians who adopted measures against the pandemic, stimulated public gatherings lacking social distancing, and discouraged the use of masks and social distancing as measures to contain the spread.<sup>58</sup> Bolsonaro's approach to the pandemic contributed to the deaths of over 600 thousand people as a result of the disease (at time of publication).<sup>59</sup> Bolsonaro's denial of the public health crisis also led to the filing of a lawsuit by the Brazilian Bar Association claiming that the government did not make "proper use of its prerogatives to face the public health emergency," having otherwise acted "constantly in an insufficient and precarious manner" and practiced "irresponsible actions contrary to the health protocols approved by the scientific community and applied by Heads of State worldwide."<sup>60</sup>

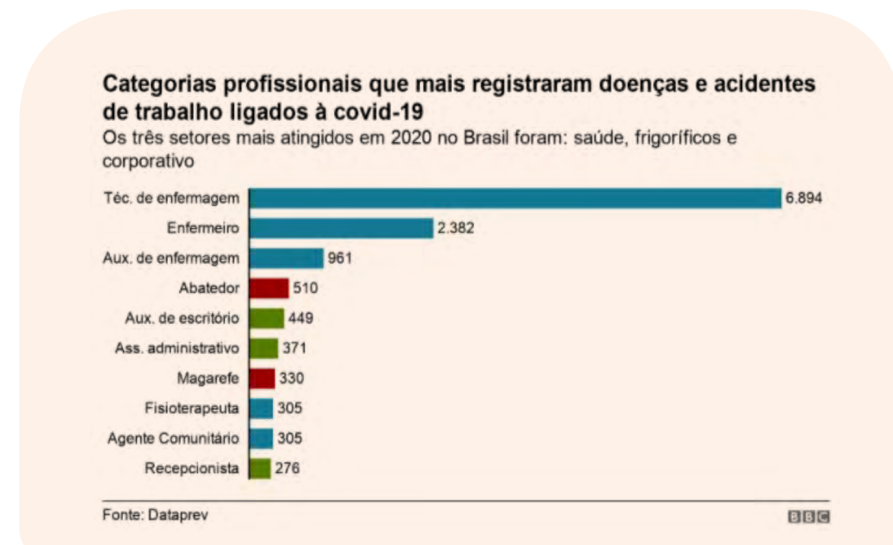
The isolation and social distancing measures suggested by the WHO made it clear how the easily the virus can spread, especially in collective spaces such as work environments, including in the meat industry. However, the Brazilian federal government, even before issuing instructions to employers on preserve the health of their workers, opted to prevent employers from being held accountable for COVID-19-related illness among workers. Provisional Measure no. 927/2020 established that cases of contamination by the coronavirus would not be considered work-related illnesses unless the worker could manage to prove the existence of a causal nexus between the illness and their occupation. This measure exposed workers to risks and prevented their access to social security mechanisms, particularly sick pay and accident leave. The measure was fortunately later declared unconstitutional by the STF,<sup>61</sup> which understood that, by excluding contamination by the coronavirus from the list of occupational illnesses as a rule, which would transfer the burden of proof to the worker, the rule would be contrary to the understanding of the constitutional court regarding objective employer responsibility.<sup>62</sup>

After this decision, the Ministry of Health issued Ordinance no. 2.309/2020<sup>63</sup>, including COVID-19 among the list of occupational illnesses. However, one day after its publication, the ministry changed course and revoked the

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rule (Ordinance no. 2.345/2020<sup>64</sup>), demonstrating the contradictory behaviour of the Ministry of Health, which at times disregards and other times champions science.

From the perspective of fighting the disease, this behaviour, associated with the weakening of labour inspections itself, contributed to the prevalence of under-reporting of cases in the country. Even so, one can identify, from the issuance of Work Accident Notifications, the categories that most often reported worker contamination.<sup>65</sup>



Title in English: *Professional categories that most recorded illnesses and accidents at work linked to covid-19*. Subtitle in English: *The three most affected sectors in 202 in Brazil were: health, food processing, and corporate*. The professional categories are, from top to bottom: *Nursing technician, Nurse, Nurse Assistant, Slaughterhouse worker, Office assistant, Administrative assistant, Butcher, Physical therapist, Community agent, and Receptionist*.

In Brazil, the meat packing industry was declared essential and kept in operation during the COVID-19 pandemic. As was recognised in relation to North American meat packing plants,<sup>66</sup> animal slaughter in Brazil appeared among the economic activities that most reported worker contamination by the coronavirus, exceeded only by activities linked to the health sector. Unfortunately, the state did not work together with companies to ensure protection of these essential workers. In 2020 alone, outbreaks of the disease were identified in meat packing plants throughout Brazil, with emphasis on facilities linked to major companies in the industry, JBS and Brazilia Foods, SA (BRF), which concentrate the largest number of workers in the country. The largest food and beverage company in the world and the second largest food company, JBS exports its products to over 190 countries and has revenues of approximately \$50 billion.<sup>67</sup> The company's facilities in Passo Fundo, Rio Grande do Sul, were shut down in two occasions. The first was due to the COVID-19 outbreak that contaminated multiple workers. The second was a result of the disregard for sanitary and epidemiological rules to contain the virus.<sup>68</sup>

Meanwhile, at the São Miguel do Guaporé meat producing facilities in the state of Rondônia, it was proven that the company did not offer COVID-19 detection tests and did not send its workers to get tested, even when they had symptoms. Other irregularities related to the disease protocol were also identified: poor performance of the medical sector, lack of personal protection equipment, disregard of the minimum distancing between production lines, and lack of control over gatherings, among others.<sup>69</sup> The disregard towards protocol and hygiene rules were responsible for a swift propagation of the virus among workers at the plant, which represented 60% of the cases of infection in the city as a whole, which has only 25 thousand inhabitants.<sup>70</sup>

The cases described above show multiple ways in which labour rights and social protection are under threat in Brazil. The following legal and policy gaps, among others, are enabling these types of situations to occur.

### 3.1 Legislative reduction of labour protections

#### • The Labour Reform Law No. 13,467/2017

On December 23, 2016, the government of then-President Michel Temer presented Bill No. 6787/2016 proposing changes to “adapt the legislation to new work relations,” with a request for urgent processing.<sup>71</sup>

The labour reform, approved in 2017 by Law No. 13,467/2017, changed approximately 200 articles of the Consolidation of Labor Laws, thereby fundamentally changing general principles of labour law in Brazil, deregulating workers’ rights and disorganizing trade unions with the stated goal of generating employment. The weakening and flexibilization of rights were immediately put into practice. Instead of protecting the weakest link in labour relationships, the reform increased inequality by providing more protection for employers and giving them more guarantees and freedom. The reform reversed protections developed in case law formed over decades by the Superior Labor Court (SLC), the highest labour court in Brazil, whose interpretations were favourable to workers.

The labour reform has been in effect for four years as of November 11, 2021. Contrary to widely touted expectations, it did not generate a notable increase in jobs; instead, it weakened labour relations, removed rights protections, increased informal work, and enabled exploitation of the working class.<sup>72</sup>

According to data from the Continued National Household Sample Survey from the Brazilian Institute of Geography and Statistics (IBGE), in 2016, there were 10.1 million unregistered employees in the private sector and 22.4 million self-employed workers. By 2020, there were 11.6 million and 24.2 million, respectively. In 2021, the Brazilian unemployment index reached 14.7% (over double the global average), leading the country to reach the fourth largest unemployment rate in the world and the worst place among members of the G20.<sup>73</sup>

The following subsections identify some of the particularly problematic changes introduced by the labour reform.

#### • Collective dismissals

In past decades and given legislative omission on the matter, the SLC used the Brazilian constitution and ILO Conventions,<sup>74</sup> particularly Conventions No. 87,<sup>75</sup> 98,<sup>76</sup> and 135,<sup>77</sup> to consolidate the understanding that collective dismissals would only be valid following prior negotiation with the trade union representing its professional category.

But as hinted in the Embraer case above, the labour reform undid this established principle and allowed all dismissals (individual, plural, or collective) to be undertaken without prior authorization from a trade union or the entering of a collective convention or labour agreement to become effective.<sup>78</sup>

#### • Temporary and intermittent contracts

The labour reform also made worker hiring rules more flexible, creating atypical labour types.

With the reform, the regulation on temporary contracts – previously limited to urban activities for extraordinary



and temporary situations only, for 90 days at most<sup>79</sup> – was relaxed in order to enable companies to hire on a periodic, seasonal, or intermittent basis whenever desired. This change was extended to all types of companies, whether urban or not, with the maximum temporary contract duration lengthened to 270 days. The changes resulted in the reduction of stable jobs and subjection of workers to increased lack of remuneration during periods of work inactivity.

Also, in terms of hiring, the reform introduced in Brazil the construct of intermittent labour. This has contributed to increase informality and precariousness by allowing jobs that do not guarantee a minimum wage and other important labour rights. In addition, the reform encouraged fraudulent practices that mask labour relations through the so-called “pejotization” by allowing the hiring of companies formed of a single person through the formation of a subcontracting chain (outsourcing, “quarterização” /sub-contracting, etc.).

By normalizing short-term contracts that should be exceptions to the norm, the reform required workers to assume the risks and costs of economic inactivity in increasingly precarious positions.

#### • Outsourcing

In Brazil in past decades, outsourcing was often used solely as a means to reduce labour costs by paying lower wages, providing worse labour conditions, and fragmenting unions.<sup>80</sup> To address this phenomenon, in the absence of a specific law on outsourcing<sup>81</sup> and given frequent frauds and labour conflicts involving subcontracting, the SLC regulated the matter through a precedent to authorize only the subcontracting of functions that were not part of the core activities of the company (precedent 331 TST).

The 2017 labour reform reversed that protection provided by the SLC by eliminated the distinction between core activity and ancillary activity. The legislation authorized broad and unrestricted outsourcing of all types of activities to other companies, allowing 100% outsourcing. In practice, therefore, there can be a company in Brazil without any employees, with an entire productive chain and management under a subcontracting regime. The change has significantly weakened union representation and led to a worsening in labour conditions: lower wages (payments over 20% lower than they were prior to the passage of the reform), more accidents, high employment turnover, and longer work hours.<sup>82</sup>

Completing the picture, rules relative to business liability in subcontracting cases were also changed, hindering the payment and recovery of labour and social security debts by these workers.

#### • Trade union financing

Since the start of the 20th century, unions in Brazil had the following characteristics: uniqueness (through a prohibition on the creation of more than one union organization to represent a professional or economic category in the same territorial base); sole representation (automatic binding of the worker to the trade union representing their category, to represent them and ensure collective rights regardless of their union adherence); and legally established compulsory contribution (union dues).

With the evident intention of hindering the functioning of unions, the labour reform significantly altered the ways by which unions are financed in Brazil.

First, the reform did away with the union tax. Distinct from dues collections, the “union tax” was collected by the government and dispersed to trade unions to support their representational activities. The elimination of the tax revenue for unions placed new finance collection requirements on unions, who lacked adequate human and financial resources to undertake this work.

Second, the reform abolished compulsory contribution,<sup>83</sup> imposing the need for prior, express, and individual authorization from workers to contribute to unions.<sup>84</sup> This required trade unions to re-organise millions of workers

to become dues-paying members. Again, this forced trade unions to establish resourcing institutional arrangements previously provided by the government.

These changes required unions to re-negotiate processes with potentially hundreds of employers, which now possess significant increased leverage under the new reform. The immediate consequence of these changes was a drastic reduction of the source of funding for union entities,<sup>85</sup> the de-structuring of unions, and the reduction of their bargaining power in negotiations for regulations, protections, and guarantees of worker rights.

#### • Prioritization of individual agreements over collective rights

The labour reform also privileged individual rights (individual agreements) over collective rights by removing the need for union participation in negotiations and weakening workers’ negotiation status. The reform also granted negotiated matters prevalence over what is provided in the law (legislated matters), effectively enabling individual workers to negotiate away, to their own disadvantage, legislated rights.

Given these and other changes through the labour reform, trade unions and associations filed complaints on the labour reform to the ILO. This fact culminated in the inclusion of Brazil, in 2018, on the ‘short list’ of countries whose labour regime most severely violates international labour law.<sup>86</sup> According to Brazil’s largest trade union CUT, it was the first time in 20 years that the country entered the list.<sup>87</sup> Ever since, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has made observations to Brazil in relation to the changes brought about by the reform, in particular about the precedence given to agreements and employment contracts over legislation.<sup>88</sup>

#### • Weakening of other labour laws and regulations

As a candidate, Bolsonaro argued that “fewer rights are better than no jobs.”<sup>89</sup> Keeping to that philosophy and building on the labour reform that predated him, Bolsonaro has continued to advance even deeper legislative drawbacks of workers’ rights.

Under Bolsonaro’s direction, the government carried out a review of almost all the Regulatory Norms of the Ministry of Labor, which address occupational health and safety conditions.<sup>90</sup> This has caused reactions from specialists concerned about the risk of undermining punishments for slave labour (which are based on these norms) and increasing rates of accidents and death among workers, including in children and young people,<sup>91</sup> in a country that already ranks second in the G20 in terms of mortality from accidents at work.<sup>92</sup>

Since 2019, Bolsonaro’s government has proposed new fixed-term contracts for young workers that would exempt employers from paying labour and social rights, such as MP 881/2019, MP 905/2019, and MP 1045/2021.

The Bolsonaro administration is also supporting legislative reforms that, if passed, would lead to an even greater deterioration of the country’s legal and institutional framework for the protection of labour and social rights. Two concerning examples include Senate Bill 432/2013, which restricts slave labour only to cases where there is restriction of freedom, and Constitutional Amendment n° 18/2011, which would reduce the minimum age for work to 14, under the false conception that child labour is a valid solution to poverty and unemployment.

Such constitutional amendments and bills have been regularly discussed without any popular participation – especially with unions, other representatives of workers, and the public organisations and entities that fight labour irregularities.

## 3.2 Weakening of regulatory bodies

### Temporary elimination of the Ministry of Labor and Social Security

As in other areas, since President Bolsonaro took office in 2019, his administration has sought to restructure regulatory bodies or amend their composition to render them more subservient to the executive's demands.

One of the first measures taken by his administration was to eliminate the Ministry of Labor and Employment, turning it into a secretariat under the Ministry of Economy. The justification was that the ministry was allotted between political parties with the sole purpose of spending time and money with union and professional registrations, and that integrating the ministries would modernize public policies and render them more dynamic.<sup>93</sup>

However, more than a mere administrative adjustment, this act removed the subject of labour from the core of the executive branch, interrupting all of the work performed by the Ministry that, after its creation in 1930, had survived even the military dictatorship period. 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>94</sup>

Nearly two years passed without a central entity responsible for preparing a systematic employment policy for Brazil. Fortunately, in July 2021, the government once again created a distinct Ministry of Employment and Social Security.

Yet rather than indicating Bolsonaro's concern with the high levels of unemployment in the country, many experts suspect the decision had a strictly political purpose. Creating the ministry required the Bolsonaro administration to make over 200 political appointments in the new ministry, which manages the Severance Pay Indemnity Fund and the Deliberative Board of the Worker Support Fund, with collective assets of \$100 million.<sup>95</sup> Bolsonaro needed to boost his support in Congress, and made many of the political appointments with politicians at least centrist in their policies and likely more open to his efforts to curtail workers' rights.

### Understaffing and budget cuts at labour regulators

Undoubtedly due to the administration's efforts to reduce government oversight of labour relations, government labour inspection bodies have been weakened, as evidenced by a growing shortage of public staff – primarily due to a hiring freeze – and budget cuts at the monitoring bodies.

In the first annual budget prepared by the Bolsonaro administration, funds for labour inspections, responsible for monitoring and enforcing labour laws, were cut by 49% compared to the previous year.<sup>96</sup> The labour inspection budget was reduced to the point where, in August of 2017, operations came to a complete halt due to the lack of resources.<sup>97</sup> When the head of labour inspections made this fact public, rather than redressing the situation and restoring the budget, higher authorities simply fired him.<sup>98</sup>

In direct correlation with those cuts, Brazil has experienced a significant decline in its number of trained labour inspector, which have seen a reduction by a third in the past ten years, from 2,935 in 2010 to 2,050 in 2020.<sup>99</sup> The low number of inspectors is not enough to reach all country regions, especially the more remote ones, and has made it difficult for the government to monitor and enforce labour standards.

The situation is not bound to improve soon. Social welfare services were most affected by the budget cut proposed by the federal government in its 2022 budget. The largest cut was found in the Ministry of Labor and Social Security (a cut of \$200 million), notably for administrative activities – data processing and benefit recognition – of the social security body (\$192 million).<sup>100</sup>

## 3.3 Impunity for labour rights violators

The government's poor record in preventing labour violations is compounded and fuelled by its inability to hold labour and social rights offenders to account and guarantee appropriate reparation. The low prospects of punishment provide very little incentive for private actors to comply with labour and social regulations, perpetuating the cycle of abuse and impunity.

Labour offenders in Brazil often escape punishment, and impunity in Brazil encompasses the administrative and the judicial spheres. First of all, despite the important supervisory role of the public administration, there is a lack of observance of legal obligations and non-payments of fines. Among the ten greatest government debtors – who jointly hold a debt estimated at almost 191 billion reais, referring to the charge of labour and social security debts, among others – one may find companies, such as Petrobrás and Vale.<sup>101</sup>

Second, the Brazilian justice system's slow processing of labour-related suits – which allow different kinds of appeals, opportunely used by offenders to delay accountability – often pushes claims beyond their legal statute of limitations, preventing the defendants from ever being held to account.<sup>102</sup>

Furthermore, when we consider that the Brazilian labour law establishes few indicators of employment stability, workers only tend to claim their rights in court after they are dismissed due to the fear of retaliation. But the labour reform made it more difficult to have the right to 'free justice' (terminating the prior exemption from paying court fees). The new heightened risk of paying high court costs has left workers fearful of filing labour claims.<sup>103</sup>

The delay in holding labour offenders liable caused Brazil to be convicted at the international level in 2016. In the Fazenda Brasil Verde case, the Inter-American Court of Justice found that the state violated the rights of 85 victims enslaved in 2000 at a farm in the State of Pará, and of another 43 workers rescued from the same property in 1997. The Court found Brazil had violated the individuals' rights to freedom (specifically the right not to be subjected to any form of slavery or servitude), access to justice, and access to a legal process of reasonable duration. The Court found the individuals had not received adequate judicial protection, which was equivalent to denying them access to justice. This was the first time the Court convicted a state in relation to slave labour and human trafficking.<sup>104</sup>

The failure to ensure accountability for labour violations is particularly evident in relation to slave labour in Brazil: out of 3,450 slave labour inspection operations between 2008 and 2019, only 2,679 defendants were accused of the crime and, out of this set, only 112 were convicted with a final and unappealable decision, which corresponds to 4.2% of all those accused and 6.3% of the number of people taken to court.<sup>105</sup>

In the past, a successful strategy employed by Brazil to fight impunity for practices resembling forced labour in Brazil was publicising a list of violators. For this, a valuable instrument has been used: the so-called "dirty list," a regularly updated and publicly available registry of employers who have verifiably submitted their workers to slave-like labour. Although the list has been widely celebrated as a best practice in promoting transparency on cases of slave-like labour,<sup>106</sup> the "dirty list" was suspended for over two years (2014 to 2016) by the STF after the list became the target of a series of legal measures.

In April 2016, the United Nations published a working paper that highlighted many governance gaps related to modern slavery in Brazil recommending, among other things, the reactivation of the "dirty list."<sup>107</sup> The Brazilian government attempted to attack transparency and weaken the labour protection framework by conditioning the publication of the "dirty list" to a political decision of the federal government.<sup>108</sup> Fortunately, this order was overturned by the STF in 2020, which reaffirmed the list and its publication as constitutional.<sup>109</sup>



### 3.4 Broader reductions in social welfare services

The federal constitution of 1988 established social security as a pillar of the state, assigning government the responsibility of assuring to the population health, social security, and social assistance services. Successive Brazilian administrations have adjusted this system to the needs of the population, seeking to universalize these services with an assured budget.

However, as has occurred in other areas, such as those related to labour protection, the government has increasingly established stricter access measures and budget cuts to the social security regime that have negatively impacted those most dependent on the services, without achieving the desired savings for public accounts. Since mid-2019, more than 5 million Brazilian citizens were deprived of access to social programs and social security benefits.<sup>110</sup>

In 2016, the Brazilian Congress passed the Constitutional Amendment Bill No. 95, also known as “PEC do Teto” (Expense Ceiling Amendment Bill), a new fiscal regime that imposed a constitutional cap on public spending and froze public investment. During the processing of the Amendment Bill, several specialists and entities, such as the Interunion Department of Statistics and Socio-Economic Studies, pointed out that the measure represented an attempt to distance the state from its role as an inducer of the country’s development and that, if approved, it would prevent the population from accessing various public policies and services.<sup>111</sup>

That is what happened: the new fiscal regime provoked a severe impact on basic social and economic rights in the areas of food security, health, and education while exacerbating gender, racial, and class inequalities.<sup>112</sup>

In August 2018, seven UN Special Procedures (working on issues such as foreign debt and human rights, adequate housing, and education) issued a joint statement urging Brazil to reconsider its austerity measures, including Constitutional Amendment 95/2016, and to put its population’s human rights at the centre of its economic policies.<sup>113</sup>

Undoubtedly linked to the government’s social welfare spending cuts, famine once again became a reality in the country. By 2018, 85 million Brazilians faced some degree of food insecurity.<sup>114</sup> In spite of that, one of the first measures of the Bolsonaro administration, in January 2019, was to end the National Food and Nutritional Security Policy, internationally acknowledged for reducing famine in Brazil.<sup>115</sup> By 2021, the number of households experiencing food insecurity had risen to 116.8 million, meaning a full 55.2% of Brazilian homes lacked full and permanent access to food.<sup>116</sup>

Numerous relevant ministries have seen serious cuts under the policy. For example, the Brazilian National Health Council estimates that Brazil’s public universal health system (SUS) lost about \$4 billion in 2019 alone because of the cut in investments due to EC 95.<sup>117</sup> The spending ceiling proved even more harmful during the COVID-19 pandemic, when it became more necessary for the state to act for the social protection of citizens. Though widely recognized as essential<sup>118</sup> to face the virus, the SUS faced major cuts that seriously hindered its ability to respond effectively to the health crisis.<sup>119</sup>

The Bolsonaro administration has also since then cut the budget of many social agencies, further undermining their ability to perform their monitoring and assistance role. Budget cuts have affected pension agencies, the public health system, and public education, among others.<sup>120 121</sup>

For example, in 2019, despite many protests, the government passed a public pension reform that imposed stricter rules for access to retirement pensions. The rules disproportionately affect informal and lower-income workers such as construction, domestic, farm, mine, and factory workers who are often prone to health, social, and financial vulnerability, as well as labour exploitation.<sup>122</sup> The reform has intensified the social problems experienced by the majority of the population.<sup>123</sup>

In August 2021, the Bolsonaro Administration also terminated one of the most prestigious income transfer

programs in the world, Bolsa Família, notably responsible over its 18 years of existence for having contributed to the reduction of poverty (over 3.4 million raised over the extreme poverty line), child mortality (reduction by more than 16%), regional inequality (reduction of 14.8%), food security (over 80% of the beneficiary families used the benefit to purchase food), and girl-child participation in schools (8% increase).<sup>124</sup> While the Bolsonaro administration replaced Bolsa Família with a new program Auxílio Brasil, experts denounced the change as being one of electoral character (Bolsa Família has always been associated with former president Luiz Inacio Lula da Silva, who created it)<sup>125</sup>. Experts have also warned<sup>126</sup> that the new program is unsafe from a legal and fiscal perspective, because it sets no mandates for government spending or thresholds for the poverty criterion, instead allowing the government to redecide annually how much it will pay as a benefit, and to whom. The program also imposes hardships on those most vulnerable by conditioning the receipt of the benefit to, for example, children’s successful outcomes in sports games and school Olympics, and a day-care voucher solely to families who prove that they perform paid activities or employment.

These types of reductions in public spending are weakening public agencies and hampering coordination efforts, still relatively unconsolidated in Brazil, as well as jeopardizing social rights.

## Relevant OECD committees, initiatives, and instruments

Compared to OECD member countries, Brazil has problematic characteristics in its labour laws and in its job market. The country has unemployment rates that are much higher than those of member countries.<sup>127</sup> Further, the protection of employment agreements against arbitrary dismissals, for instance, is greater in OECD countries than it is in Brazil<sup>128</sup>, and was so even before the 2017 labour reform. In general, recent changes to work and labour protection rules in Brazil, discussed above, have jeopardized its fostering of decent and inclusive working conditions, protection of internationally recognized worker rights, and preparation of new generations for the technologic challenges of the upcoming years – all priorities of the OECD and member states. In sum, indicators referring to multiple work dimensions show that Brazil protects labour and workers less than the other OECD members. This finding is relevant because it points to a flaw in part of Brazil’s liberal discourse that attributes lack of competitiveness in the country to its burdensome and unequal labour legislation.

The OECD’s work on labour and social welfare is undertaken by its specialized committee, the Employment, Labour and Social Affairs Committee (ELSAC). ELSAC works with other relevant bodies of the OECD and other international entities, particularly the ILO, the European Union (EU), the International Monetary Fund (IMF), the World Bank (WB), and others. Furthermore, the Committee assures that the OECD’s stances consider perspectives and knowledge from non-governmental institutions including the Business and Industry Advisory Committee of the OECD (BIAC) the Trade Union Advisory Committee of the OECD (TUAC).

ELSAC focuses on employment, social protection, and international migration, addressing issues such as income inequality, skill building for the new era, ageing and pensions, child well-being and advancing gender equality in the workforce, and integrating immigrants and their children into workforces and societies.<sup>129</sup> The OECD, including through ELSAC, discusses multiple issues related to labour, including: collective bargaining; employment protection legislation; employment quality; future of work; mental health and labour; public employment and management; and education and labour.

Collective bargaining, as an instrument to improve labour and remuneration conditions, is valued by the OECD,<sup>130</sup> which offers data on the matter in its multiple member countries. The Organization offers a table comparing the practice of collective bargaining among its members, with information on trade union structures, trade union scope, and effective results of collective bargaining processes.<sup>131</sup> Furthermore, the OECD seeks to understand changes in collective bargaining processes resulting from alterations in labour structures and the impact of disruptive technologies that qualitatively and quantitatively change companies’ demand for labour.

On labour protection legislation, the OECD has a set of indicators and publications that attempt to compare the members among themselves and to other relevant countries.<sup>132</sup> Of particular relevance in considering Brazil’s present fitness for membership in the OECD, the OECD examines national requirements around worker dismissals, such as: terms for prior notice of layoff; prohibition or limitations to collective dismissals); and compensation for dismissals without cause and the legal definition of this type of dismissal. The OECD also compares aspects of labour lawsuits, with emphasis on the validation by public authorities of dismissals with cause and distribution of the burden of proof among parties to the lawsuit.<sup>133</sup>

When it comes to employment quality, the OECD emphasizes three aspects that guide its analyses: remuneration quality, job market security, and workplace quality. Once again, the performance of Brazil as illustrated above in several of the case examples and discussion of causes of governance gaps suggests that Brazil does not meet core expectations of the OECD on these three issues. Regarding remuneration quality, the OECD attempts to identify the sufficiency of earnings for employee well-being.<sup>134</sup> Job security, in turn, pertains to uncertainties related to the duration of employment agreements. As for the quality of the workplace, the OECD observes non-economic aspects of jobs, including the nature and content of the work performed, work hour agreements and

workplace relations. These factors are measured as indicators of tension in the workplace, expressed in the higher demand for results and the offering of fewer labour resources.<sup>135</sup>

Regarding the future of labour, the OECD reflects on the impact of new technologies and new productive structures on supply and labour characteristics. The Organization has expressed interest and concern over the dynamics of termination of traditional job posts and the advent of new occupations. The OECD’s studies on the results of outsourcing and flexible employment relationship modalities on worker well-being are particularly relevant in relation to Brazil’s policies on these issues.<sup>136</sup>

Although the OECD discusses multiple aspects of labour, there are few legal instruments meant for the subject. Three Recommendations that are relevant on the subject of labour are the Recommendation of the Council on Integrated Mental Health, Skills and Work Policy; the Recommendation of the Council on Ageing and Employment Policies; and the Recommendation of the Council on Gender Equality in Education, Employment and Entrepreneurship. The three instruments refer to specific work aspects and make concessions to the welfare state as understood by a relevant portion of members. The Recommendation of the Council on Integrated Mental Health, Skills and Work Policy (OECD/LEGAL/0420)<sup>137</sup> calls for a better understanding of the relation between mental health and labour conditions. The Recommendation of the Council on Ageing and Employment Policies (OECD/LEGAL/0419)<sup>138</sup> asks for its adhering parties to take measures to encourage workers to retain and hire older employees, such as by preventing age-related discrimination in employment, discouraging compulsory retirement, and promoting worker training and counselling to promote the employability of workers along their working life.

In regard to equality at work, the Recommendation on Gender Equality in Education, Employment and Entrepreneurship (OECD/LEGAL/0398)<sup>139</sup> recommends promoting work conditions that allow mothers and fathers to balance their work hours and family responsibilities, facilitating the participation of women in public and private employment. In addition, it encourages members to promote a larger representation of women in decision-making positions, to eliminate discriminating wage disparity between men and women, and to fight sexual harassment in the workplace, through awareness and prevention campaigns.

Gender equality policies related to work have become widespread among OECD members. For example, many have passed legislation, such as on extended paternity leave and family leave, that seeks to enable and encourages a better distribution of responsibilities for family care. The OECD publication *The Pursuit of Gender Equality: An Uphill Battle*<sup>140</sup> presents the evolution of these policies and legislative changes. As mentioned in the case on fruit workers, above, women in Brazil still do not have parity with men in salary, work stability, or work conditions, across a range of sectors. Brazil’s policies need reform to advance equality for women in the labour force.

Further, the Declaration on International Investment and Multinational Enterprises contains language relevant to states’ promotion of respect for labour rights by multinational enterprises. 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 (including labour 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.

The Guidelines’ chapter on Employment and Industrial Relations asserts that enterprises should, among many other things, respect the right of workers employed by the multinational enterprise to establish or join trade unions; respect the right of workers to engage in collective bargaining and constructive negotiations including through unions, to contribute to the effective abolition of child labour and also all forms of forced or compulsory labour; to take adequate steps to ensure occupational health and safety in their operations. Meanwhile, the General Policies chapter of the Guidelines calls on enterprises to refrain from discriminatory or disciplinary action against workers who report practices that contravene the law, the Guidelines, or the enterprise’s policies. The state – in this case Brazil – is required under the Declaration to ensure its multinationals comply with these expectations through effective functioning of its National Contact Point.

## Conclusion and recommendations for Brazil and the OECD

Labour rights and social protections are under threat in Brazil. This paper has discussed several of the governance failures related to this issue, including the 2017 passage of a sweeping labour reform favourable to employers and harmful to unions and the rights of workers; weakening of labour ministries and regulators through budget and resource cuts and other measures, impunity for violators of labour rights, and broader weakening of social welfare in the state.

**These gaps and failures are not only contrary to OECD instruments, standards and commitments such as on protecting the right to collective bargaining, improving employment quality, preparing for the future of work, and advancing gender equality in the workforce, but an affront to the organisation’s foundational values of respect for human rights, democracy and the rule of law.** Crucially, commitment to upholding these values demonstrate what the OECD calls “like-mindedness” of candidate countries, an important consideration during accession.

## Recommendations for reform in Brazil

To bring itself into alignment with OECD standards and the performance of the other member states, Brazil must adopt a number of reforms. Below is a non-exhaustive list of some of these measures which Conectas, OECD Watch, and FIDH urge Brazil to take as a question of priority.

### Legal and regulatory regime

- Repeal the Labour Reform (Law No. 13,467/2017).
- Ensure appropriate protections for labour unions:
  - Enable financing methods for unions that allow them to defend individual and collective rights of the workers they represent;
  - Provide greater transparency to the collective bargaining process by requiring companies to provide unions all the information required for equal and fair participation in the collective bargaining process;
  - Ensure that trade unions are able to effectively participate in social dialogue.
- Abandon de-regulatory legislative proposals and revoke executive decrees, resolutions and ordinances that dismantle or undermine existing labour protections as well as the other fundamental social rights;
- Safeguard and fully implement existing legal protections of labour and social rights;
- Create incentives for hiring women and non-white workers to promote professional equality between genders and races, encouraging a radical change in corporate culture and, consequently, society as a whole;
- Recognize publicly the importance of a couple tools in the fight against slave labour: specifically, Mobile Teams of Labour Inspectors and the “Dirty List”;
- Guarantee the continuity and permanence of social policies that are recognized as successful, such as the Bolsa Família and the National Policy on Food and Nutrition Security;
- Establish urgent measures to reduce food insecurity.

### Protection of labour and social rights

- Comply with its obligations under international and regional labour rights instruments by respecting, and ensuring respect for, labour and social rights;
- Consistently decry child labour, and never present that lower the legal age to work it as a solution to fighting poverty and unemployment, abandoning legislative proposals:
  - Take measures to prevent child labour, such as support and prioritize the education and qualification of children and young people, and ensure their adequate social protection.
- Initiate a broad debate with tripartite participation – Government, workers including their representatives in unions and civil society, and employers – in order to rebuild social rights and promote modalities of work that allow full respect of all labour rights;
- Raise awareness among Brazilian society to understand the social prejudice caused by informality.

### Structure and political capacity of key ministries

- Ensure the existence of the Ministry of and an effective, inclusive, and rights-compatible employment policy;
- Ensure labour ministry equal footing in government hierarchy vis-à-vis economic ministry;
- Restore civil society and other stakeholder representation on collegiate boards and other public advisory bodies;

### Budgets and resourcing at key ministries

- Ensure appropriate budget for all ministries and bodies engaged with the issues discussed, including the labour ministry, the judiciary and prosecutorial offices, and state agencies involved in implementation and enforcement of labour and social relevant programs;
- Increase the resources designated to labour inspections to ensure inspections are adequately equipped to identify labour rights violations;
- Hire more labour inspectors to ensure the strengthening and continuity of labour inspections in all regions of the country and across all areas of the economy.

### Accountability for labour and social offenders

- Investigate and apply sanctions whenever necessary to reported or discovered incidents of violation of labour rights laws;
- Increase capacity for prosecutors and judges to pursue and conclude claims against violators of relevant labour and social laws;
- Approve bills imposing more severe penalties for slave labour and other labour violations;
- Prohibit the granting of subsidies, tax incentives, and public financing to labour offenders;
- Establish in a more stable, clear, and efficient way, the responsibility and liability of companies that benefit from labour violations in their supply chains;
- Promote greater harmonization of the procedures and attributions between the bodies responsible for the protection and guarantee of labour rights (in particular Labor Courts, the Labor Inspection Secretariat and the Labor Prosecution Service);
- Remove the obstacles to workers’ access to justice via the judicial system;
- Guarantee ‘free justice’ (exemption from paying court fees and procedural costs, for the losing party) and free legal aid to all workers who are unable to bear the costs of the process;
- Eliminate the potential for retaliatory litigation, including regarding alleged impacts to a company’s brand in relation to the labour dispute;
- Ensure the maintenance of the ‘Dirty List’.



## Recommendations for the OECD accession process

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

The authors of this paper Conectas, OECD Watch, and FIDH and 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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