

# Gaps in governance of Responsible Business Conduct in Brazil

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## Introduction

During 2020, the OECD Working Party on Responsible Business Conduct (WPRBC) is conducting a responsible business conduct (RBC) policy review of Brazil. The material below provides insights from civil society on:

1. RBC governance gaps in Brazil regarding adherence to human rights, environmental law and regulation, preservation of indigenous territory, and respect for social welfare and workers' rights,
2. Illustrative examples of these governance gaps, and
3. Proposed solutions to these governance gaps.

This paper is submitted to help guide the research, content, and recommendations of the WPRBC's Brazil RBC policy review.

## Analysis of leading RBC governance gaps in Brazil and their potential solutions

In recent years, the Brazilian government has engaged in numerous attempts to undermine legal and institutional frameworks essential for human rights and the environmental protections, with detrimental effects on enabling conditions for responsible business conduct. Such practices have worsened since the onset of the administration of President Jair Bolsonaro in January 2019, with intensified attacks on democratic institutions and disregard for the rule of law.<sup>1</sup>

Clearly, there are salient examples of private sector actors that are committed to responsible business conduct in Brazil, with serious commitments to human rights and environmental concerns. However, there are alarming cases of private sector actors that have actively engaged in systemic violations of domestic legislation and international standards of human rights and environmental protections. Unfortunately, there are still widespread examples of corporations, both national and multinational, that have demonstrated complacency and complicity in the face of deteriorating conditions of environmental governance in Brazil, despite their substantial political weight.

The current legal, institutional, and political framework of Brazil reveals systemic violations by corporations of human rights, the environment and indigenous and labour rights. The most affected populations are the most vulnerable: indigenous peoples and rural communities, human rights defenders, poor and migrant workers, women and children. These breaches are enabled by salient governance gaps. These gaps, illustrated by case examples, as well as proposed solutions to them, are discussed in the five sections below on:

1. Governance gaps on environmental law and regulation
2. Governance gaps on preservation of indigenous territory,
3. Governance gaps in social security and labour policies
4. Governance gaps and respect for human right

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<sup>1</sup> As cited in this report, the weakening of human rights and environmental frameworks of governance has, in various cases, involved the direct participation of members of the legislative and judiciary branches of the federal government, as well as sub-national government authorities. Similar practices of undermining governance, involving various levels of government, can often be traced to the same economic interests and political patronage groups that exercise considerable leverage at various levels of government.

## 1. Governance gaps in environmental law and regulation, illustrative case examples, and proposed solutions

### 1.1 Governance gaps in environmental law and regulation

#### 1.1.1 Weakened environmental laws and regulations

In recent years, the government has taken steps to weaken environmental laws and regulations by<sup>2</sup>:

- Increasing the ease of environmental licensing processes for business by transferring competence to define environmental license requirements from the federal government to states and municipalities in contradiction to provisions of the Federal Constitution of 1988;
- Backtracking on legal requirements for businesses to conduct effective assessments through exemptions for specific projects and excluding the indirect and cumulative socio-environmental impacts resulting from projects; and Weakening institutional capacities of government agencies involved in environmental licensing – such as IBAMA, ICMBio, FUNAI and IPHAN<sup>3</sup>;
- Use of a legal artifice known as *Suspensão de Segurança* (Security Suspension) allowing a chief justices, upon request from the federal government, to indefinitely suspend court decisions to halt violations of human rights and environmental legislation in the licensing and implementation of development projects on alleged threats to national security and the country's "social and economic order".
- Authorizing an increased number of infrastructure and mining projects in indigenous lands and environmental protection areas.
  - Infrastructure projects in the Amazon are primarily designed to transport agricultural goods from the center of the country to the Atlantic where they are shipped to international markets (link between agribusiness and mega-projects). The projects damage the rainforest and put at risk livelihood of indigenous peoples.<sup>4</sup>

#### 1.1.2 Weakened environmental enforcement and monitoring bodies

Relatedly, the government has also taken steps to weaken environmental enforcement and monitoring bodies, by:

- Further decreases in funding for monitoring institutions such as IBAMA (Brazil's federal environment agency), ICMBio (National Institute for the conservation of biodiversity), CONAMA (National Environmental Council), SEMA (Environmental Agency at the State level) and the DETRAE (Special Secretariat for Social Security and Labor's Division for the Eradication of Slave Labor) threatens indigenous and other rural communities and the protection of their rights<sup>5</sup>. IBAMA applied fewer fines to environmental offenders in 2019 than in the last 24 years.<sup>6</sup> At the same time, there was an increase in deforestation as well as forest fire records in 2019, hitting an 11-year high<sup>7</sup>. The Bolsonaro government

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<sup>2</sup> Heinrich-Böll Stiftung Brazil, Dossier Flexibilization of Brazilian Socio-environmental Legislation, 16 de October de 2017, Available at : <http://www.bricspolicycenter.org/en/publications/socio-environmental-flexibilization-in-brazil-and-international-investments/> and updated in 2019 <https://br.boell.org/pt-br/dossie-flexibilizacao-da-legislacao-socioambiental-brasileira-2-edicao?fbclid=IwAR1TaDSfYLPJ6-egPbkMYlBggHLTKtDxUmKqvwrw5naBVC1fNPnaPqiGfYM>

<sup>3</sup> IBAMA: National Institute for the Environmental and Renewable Natural Resources; ICMBio – Chico Mendes Institute for Biodiversity Conservation, FUNAI – National Indian Foundation, IPHAN – National Institute for Historical and Artistic Heritage.

<sup>4</sup> Globo, *Conquista estratégica ou risco para a floresta? Projetos para a bacia do Rio Tapajós geram debate*, 22 May 2019, available at : <https://g1.globo.com/natureza/desafio-natureza/noticia/2019/05/22/conquista-estrategica-ou-risco-para-a-floresta-projetos-para-a-bacia-do-rio-tapajos-geram-debate.ghtml> ; see also: <https://news.mongabay.com/2018/10/grainrail-2nd-revolution-in-brazilian-agribusiness-and-amazon-threat/>

<sup>5</sup> Instituto socioambiental, *O que mudou (ou sobrou) na Funai após 100 dias de gestão ruralista?*, available at: <https://www.socioambiental.org/en/node/6572>

<sup>6</sup> Reuters, Brazil agency gives out fewest environmental fines in 24 years, 9 March 2020, available at : <https://www.reuters.com/article/us-brazil-environment-idUSKBN2oW2ZJ>

<sup>7</sup> Aljazeera, *Amazon burning: Brazil reports record surge in forest fires*, 19 August 2019, available at : <https://www.aljazeera.com/news/2019/08/amazon-burning-brazil-reports-record-surge-forest-fires-190821052601171.html>

argues that IBAMA applies sanctions in an "ideological" way to harm the business sector, alleging it is an "industry of fines."

- Only 3,33% of the fines applied on companies that commit environmental infractions are effectively paid.<sup>8</sup>
- Political interventions within enforcement agencies, with qualified professional staff substituted in high level posts by political appointees that lack technical qualifications, while pursuing private interests that run counter to the mandate of institutions.<sup>9</sup>
- Failing to address lengthy judicial proceedings contribute to the impunity of corporate environmental offenders and prevents redress.<sup>10</sup>

## 1.2 Illustrative case examples of governance gaps in environmental law and regulation

The following cases provide additional evidence of governance gaps in environmental law and regulation in Brazil:

### 1.2.1 The Case of Piquiá in Açailândia, Maranhão

For decades the communities have been suffering from the acute pollution created by large-scale mining of iron ore from the Carajás mine, the biggest open-pit-iron mine in the Amazon, of the company Vale S.A., its transformation into pig-iron and its freighting. Inhabitants notably report numerous health issues, including serious respiratory, sight and skin problems. Pig iron and coal-burning companies have been operating for over 6 years without an environmental license and despite the acknowledgement by SEMA that they do not comply with environmental regulations. SEMA lacks capacity to monitor and relies exclusively on companies self-monitoring data. The lack of adequate monitoring equipment by authorities, impacts their independence. What allows the steel mills to continue in operation is the automatic renewal instrument which prevents the finding of irregularities to be enough grounds to interrupt operations, and the sanctions applied are ineffective. The new Gusa Nordeste steel mill, Aço Verde Brasil (AVB), was inaugurated in December 2015, despite the fact that the steel mills were operating, at that time, in non-compliance with environmental licencing conditions. If after years of struggle, the signing of a construction contract for the relocation of over 300 families came as a relief, the process remains in jeopardy due to budget cuts in the Minha Vida Minha Casa, the federal social housing agency that is to participate in the construction costs of the new village. Moreover, there has been no proper acknowledgment of responsibility for the harm on the part of the company or the state, nor adequate redress as most of the cases brought by communities are still pending execution.

### 1.2.2 The case of Brumadinho tailings dam

On January 25, 2019 a tailings dam owned by mining company Vale broke down in Brumadinho, releasing a wave of 12,000,000 cubic meters of toxic waste.<sup>11</sup> This caused the instant death of 272 people, of whom 242 were employees of the company. After more than 13 months, 11 victims still have not had their remains found or identified. Water sources were severely contaminated, affecting people's health along the Paraopeba River Basin and threatening the water supply of 5.5 million residents of several municipalities in the metropolitan region of Belo Horizonte. Counterintuitively, Vale intends to re-initiate and expand its extractive activities in the mine of Jangada, in Brumadinho, dramatically threatening the water security of the region, since it will destroy important sources of water that are fundamental for the human supply of

<sup>8</sup> The Intercept, Calote Bilionário, 21 October 2019 available at : <https://theintercept.com/2019/10/21/ibama-bilhoes-multas-ambientais/>

<sup>9</sup> Instituto socioambiental, *O que mudou (ou sobrou) na Funai após 100 dias de gestão ruralista?*, available at: <https://www.socioambiental.org/en/node/6572>

<sup>10</sup> See for example, FIDH and Justiça nos Trilhos, *Piquia Foi a Lut: Um balanço do cumprimento das recomendações para abordar as violações aos direitos humanos relacionadas à indústria da mineração e da siderurgia em Açailândia, Brasil*, May 2019, Available online: <https://www.fidh.org/IMG/pdf/bresil734portweb2019.pdf>

<sup>11</sup> The collapse of the Brumadinho tailing dam followed the collapse of the Fundão Dam in Mariana (MG) On November 5, 2015, the Fundão Dam broke and caused a tsunami of 43.8 million cubic meters of mud and tailings. The leak destroyed villages, killed 19 people, left hundreds of homeless and contaminated the Rio Doce Basin. The rupture of the dam is considered the greatest socio-environmental tragedy in the country and left a trail of environmental, economic and social devastation in the states of Minas Gerais and Espírito Santo.

thousands of people. Other tailings dams such as Forquilha I and III, (in Ouro Preto / Itabirito), Sul Superior (in Barão de Cocais) and B<sub>3</sub> / B<sub>4</sub> (in Macacos) are recently reported by the National Mining Agency (Agência Nacional de Mineração, ANM), to be at risk of imminent collapse in Minas Gerais<sup>12</sup>.

The Brazilian judicial system has been unable to make companies accountable for this and similar major crimes and disasters:

- No satisfactory measures were taken to impose punishment on those responsible for the Fundão dam tragedy in 2015.
- In addition, no substantial changes have been taken to ensure that similar disasters would not be repeated. Despite the efforts to tighten Dam regulations with the aim to transition from wet to solid waste, these have not resulted in effective changes. For instance, high risk Dams' licenses, such as Brumadinho, have been rather extended and thus the conversion date postponed. Furthermore, Brumadinho and Mariana dams are not isolated cases: authorities have identified 47 other dams that pose immediate stability risks in the country<sup>13</sup>.

### 1.3 Proposed solutions to governance gaps in environmental law and regulation

The Brazilian National Guidelines on Business and Human Rights, established by Decree 9.571 / 2018 have proven inadequate and insufficient to ensure business conduct meeting international standards for protection and redress in the area of business and human rights<sup>14</sup>. Therefore, the following alternative measures are proposed as essential steps to resolve the governance gaps discussed above:

#### 1.3.1 Reinforce the legal framework for environmental licensing:

- The Brazilian Congress must ensure that any decisions concerning bill 3729/2004 (under consideration in the Chamber of Deputies ) and bill 168/2018 (similar bill under consideration in the Senate) on a "General Law on Environmental Licensing" - establishing rules for the licensing of activities or undertakings that use environmental resources, which effectively or potentially pollute or cause any environmental degradation - are adopted through a process that is transparent and which guarantees the active involvement of all impacted segments of society. These bills must not be adopted unless they fully align with international standards on protection of human rights and the environment.
- Adopt regulations that
  - 1) ensure the suspension of any unlicensed mining and industrial activity, including of steel factories, until the relevant regulatory bodies verify its compliance with environmental legislation,
  - 2) prohibit automatic renewal of steel operations for which compliance verification has not been conducted;
  - 3) Sanction with suspension and banning of operations, any entity conducting or allowing unlicensed activities; and
  - 4) prevent recidivist offenders from obtaining new operating licenses.
  - 5) ensure that environmental licensing of hydroelectric dams and mining projects in interstate basins are carried out by the federal environmental agency, IBAMA.

#### 1.3.2 Strengthen protections for tailings dams

- Approve and implement bill 550/2019 and 36 other bills that are pending in the National Congress to strengthen safety of tailings dams.<sup>15</sup>

<sup>12</sup> Jornal O Tempo, *Após chuvas, ANM vê risco iminente de rompimento de quatro barragens da Vale*, 20 February 2020

<https://www.otempo.com.br/cidades/apos-chuvas-anm-ve-risco-iminente-de-rompimento-de-quatro-barragens-da-vale-1.2300342>

<sup>13</sup> ANM, *ANM interdita 47 barragens por falta de declaração de estabilidade*, 2 April 2020, available at: <http://www.anm.gov.br/noticias/anm-interdita-47-barragens-por-falta-de-declaracao-de-estabilidade>

<sup>14</sup> Oxfam and Business & Human Rights Resource Centre, *Um PNA disfarçado?*, available at: <https://oxfam.org.br/setor-privado-e-direitos-humanos/impacto-das-multinacionais-brasileiras/um-pna-disfarçado/>

<sup>15</sup> Projeto de Lei 550/19, 20 de março de 2019, available at:

<https://www.google.com/url?q=https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao%3D2194912%26fichaAmigavel%3Dnao&sa=D&ust=1589274618056000&usq=AFQjCNGGS9h-nyDipfwatfmZjQB-BbZ6Xg>

- Revoke the concession and environmental license for Vale S.A.'s proposed expansion of the Jangada mine in Brumadinho where two dams (VI and Capim Branco) are considered dangerously unstable. Require Vale and its subsidiary Minerações Brasileiras Reunidas (MBR) to submit a Closing Plan for the Jangada mine. The closure of this mine is essential for the preservation of water sources, the life of communities, forests and all the biodiversity that survived the 2019 tragedy in Brumadinho (guarantee of non-repetition).
- Adopt measures immediately to address the imminent risk of collapse of dams as identified by the National Mining Agency (ANM).<sup>16</sup>
- Subordinate the elaboration of dam projects to river basin management plans, with analysis of prevention and mitigation plans by the respective committees and in accordance with Strategic Environmental Assessments - SEAs, when available.
- Mandatory creation of a compensation fund for the adoption of contingency plans for high risk and impact projects.

### 1.3.3 Ensure adequate budget for environmental monitors

- Allocate to environmental monitoring bodies an adequate budget and technical capacity to fulfill their roles independently, including to identify and sanction companies out of compliance with environmental law and regulation, with investment in new efficient monitoring technologies.

### 1.3.4 Ensure access to remedy for adverse court impacts on the environment.

- Provide effective mechanisms to remedy the violations resulting from corporate infringement of environmental law and regulation, including by avoiding setting claims through agreements in particular when they concern recidivist offenders.

## 2. Governance gaps in protection of indigenous territories, illustrative case examples, and proposed solutions

The year 2019 witnessed an enormous **increase in the destruction of indigenous territories. One vital threat are increasing number of mining processes** (with a rise of 91% over the previous year)<sup>17</sup>. But also illegal logging and fire setting rose by 70-80% in 2019 compared to the 2018: Loggers and farmers first clear the forests by chopping trees then set fires to clear and flatten the area completely in order to allow for cattle to grass<sup>18</sup>. This destruction of indigenous land has had fatal consequences for the indigenous peoples, their livelihood, the regional biodiversity and the global climate.

### 2.1 Governance gaps in protection of indigenous territories

#### 2.1.1 Dismantling of the National Indian Foundation (FUNAI)

The National Indigenous Foundation (FUNAI), is the Brazilian Government body that establishes and develops policies related to indigenous peoples, namely the demarcation and protection of the lands traditionally inhabited and used by these communities. The Bolsonaro government has systematically dismantled FUNAI, drastically cutting its budget<sup>19</sup> and filing positions in FUNAI with people who have little

<sup>16</sup> See ANM notícias, *ANM interdita 47 barragens por falta de declaração de estabilidade*, available at : <http://www.anm.gov.br/noticias/anm-interdita-47-barragens-por-falta-de-declaracao-de-estabilidade>

<sup>17</sup> Apublica, *Quem sai ganhando com a mineração em terras indígenas: A mineração em terra indígena com nome, sobrenome e CNPJ*, 20 February 2020, available at : <https://apublica.org/2020/02/a-mineracao-em-terra-indigena-com-nome-sobrenome-e-cnpj/>

<sup>18</sup> National Geographic, *See how much of the Amazon is burning, how it compares to other years*, 29 August 2020, available at : <https://www.nationalgeographic.com/environment/2019/08/amazon-fires-cause-deforestation-graphic-map/> ; see also CNN, *The Amazon is Burning because the World Eats so Much Meat*, 23 August 2018, available at: <https://edition.cnn.com/2019/08/23/americas/brazil-beef-amazon-rainforest-fire-intl/index.html>

<sup>19</sup> Instituto socioambiental, *O que mudou (ou sobrou) na Funai após 100 dias de gestão ruralista?*, available at: <https://www.socioambiental.org/en/node/6572>

or no knowledge of indigenous peoples, or have connections to the agricultural lobby and evangelical mission (namely Marcelo Xavier da Silva and Ricardo Lopes Dias).<sup>20</sup>

### 2.1.2 Failure to properly recognize and demarcate indigenous land

Indigenous people have a constitutionally-recognised right to land<sup>21</sup>, which should be protected through the formal recognition and demarcation of indigenous land. This process, regulated by Decree 1775/96, is an administrative procedure which requires, among others, identification and delimitation studies of the territory traditionally occupied by indigenous peoples, physical demarcation, withdrawal of non-indigenous occupants, and registration. However, the demarcation process has not yet been fully completed in 63% of the Indigenous reservations (TIs or Terras Indígenas) in Brazil<sup>22</sup>, and in a majority of TIs the recognition process has not even started.

### 2.1.3 Promotion of exploitation in indigenous land by the Bolsonaro government

President Jair Bolsonaro has advocated opening indigenous land for industrial exploitation, particularly through passing Bill 191/2020 (which was initially withheld by President of the Chamber of Deputies Rodrigo Maia after country wide mobilizations by indigenous peoples)<sup>23</sup>. The bill regulates the exploitation of mineral, water and organic resources in indigenous reservations, it defines the specific conditions for the research and extraction of mineral resources, hydrocarbons, and for the hydroelectric exploitation of rivers in indigenous reserves,<sup>24</sup> which has helped lead to an increase in mining and illegal logging and agricultural settlement.

### 2.1.4 Increase in racist statements against indigenous by Bolsonaro government

President Jair Bolsonaro has increased racist statements against indigenous people,<sup>25</sup> leading to significantly increased attacks on indigenous people. Indeed, never in two decades so many indigenous leaders have been assaulted or killed.<sup>26</sup>

## 2.2 Illustrative case examples of governance gaps in protection of indigenous territories

### 2.2.1 Case of the Munduruku People

Sawre Muybu is a traditional territory of the Munduruku indigenous people, covering slightly over 178,000 hectares along the right margin of the middle Tapajós River. The demarcation of this indigenous territory, in accordance with the Brazilian Constitution, has long been a demand of the Munduruku people. Despite the completion of detailed anthropological studies that confirmed the importance of Sawre Muybu as a

<sup>20</sup> Apublica, Funai pode ser mediadora de mineração em terra indígena, 10 September 2019, available at: <https://apublica.org/2019/09/funai-pode-ser-mediadora-de-mineracao-em-terra-indigena/>; see also: Gazeta do Povo, Funai: quem é Marcelo Augusto Xavier, novo presidente do órgão, available at: <https://www.gazetadopovo.com.br/republica/funai-quem-e-novo-presidente-marcelo-augusto-xavier/>; an CIMI, Presidente da Funai nomeia profissionais desqualificados e ex-assessor de deputado ruralista para coordenar demarcações, 11 November 2019, available at: <https://cimi.org.br/2019/11/presidente-da-funai-nomeia-profissionais-desqualificados-e-ex-assessor-de-deputado-ruralista-para-coordenar-demarcacoes/>; The Guardian, 'Genocide' fears for isolated tribes as ex-missionary named to head Brazil agency, available at: <https://www.theguardian.com/world/2020/feb/05/brazil-indigenous-tribes-missionary-agency-ricardo-lopes-dias-christianity-disease>

<sup>21</sup> Presidência da República, Constitution of the Federal Republic of Brazil of 1988, available at: [http://www.planalto.gov.br/ccivil\\_03/constituicao/ConstituicaoCompilado.htm](http://www.planalto.gov.br/ccivil_03/constituicao/ConstituicaoCompilado.htm) and Decreto No 1.775, of January 8, 1996, available at: [http://www.planalto.gov.br/ccivil\\_03/decreto/D1775.htm](http://www.planalto.gov.br/ccivil_03/decreto/D1775.htm)

<sup>22</sup> CIMI, Relatório Violência - Dados 2018, available at: <https://cimi.org.br/wp-content/uploads/2019/09/relatorio-violencia-contra-os-povos-indigenas-brasil-2018.pdf>

<sup>23</sup> Reuters, No Rush on Bill to Allow mining on Brazilian Indigenous Lands, 18 February 2020, available at: <https://www.reuters.com/article/us-brazil-environment/no-rush-on-bill-to-allow-mining-on-brazilian-indigenous-lands-speaker-says-idUSKBN20C2JH>

<sup>24</sup> Agência Câmara de Notícias, Projeto do governo viabiliza exploração de minérios em terras indígenas, February 2020, available at: <https://www.camara.leg.br/noticias/634893-projeto-do-governo-viabiliza-exploracao-de-minerios-em-terras-indigenas/>

<sup>25</sup> Survival International, What Brazil's President, Jair Bolsonaro, has said about Brazil's Indigenous Peoples, available at: <https://www.survivalinternational.org/articles/3540-Bolsonaro>

<sup>26</sup> CIMI, Relatório Violência contra os povos indígenas do Brasil - Dados 2018, available at: <https://cimi.org.br/wp-content/uploads/2019/09/relatorio-violencia-contra-os-povos-indigenas-brasil-2018.pdf>; see also: Mongabay, Calls for justice after latest murder of indigenous Guajajara leader in Brazil, 3 April 2020, available at: <https://news.mongabay.com/2020/04/calls-for-justice-after-latest-murder-of-indigenous-guajajara-leader-in-brazil/>, and Murders of indigenous leaders in Brazil Amazon hit Highest level in Two Decades, 14 December 2019, available at: <https://news.mongabay.com/2019/12/murders-of-indigenous-leaders-in-brazil-amazon-hit-highest-level-in-two-decades/>

traditional territory of the Munduruku, the federal government balked at moving ahead with its demarcation.

The Munduruku Territory Sawré Muybu in Pará is one of the most affected by illegal gold mining. The indigenous community is currently facing more than 500 illegal miners<sup>27</sup> and nearly their entire territory is targeted by mining requests<sup>28</sup>. Furthermore, delays in its demarcation appear to be linked to the fact that the São Luiz do Tapajós mega hydroelectric dam, slated for construction by the federal government, would flood three Munduruku villages (Sawré Muybu, Dace Watpu, Karo Muybu), within the perimeter of the territory proposed for demarcation, which would be unconstitutional. The combination of resistance of the Munduruku people, IBAMA's questioning of a highly deficient environmental impact study and economic crisis put the project on hold. Despite official publication of the anthropological studies in April 2016, demarcation of the Sawre Muybu territory has still not occurred. This has facilitated invasions by illegal loggers and gold miners (garimpeiros). The Munduruku people living in the area of Sawre Muybu are currently facing more than 500 illegal miners<sup>29</sup> and nearly their entire territory is targeted by mining requests.<sup>30</sup>

## 2.3 Proposed solutions to governance gaps in protection of indigenous territories

### 2.3.1 Demonstrate renewed symbolic commitment to indigenous rights

- Renew commitment to Constitutional Arts. 231 and 232 to prevent the destruction and invasion of indigenous territories.
- Take legal action to punish the infringements of Constitutional Art. 231 and 232.

### 2.3.2 Strengthen FUNAI

- Increase the budget of the FUNAI, especially for indigenous land demarcation. Ensure 100% demarcation of indigenous territory before accession to the OECD, since Art. 67 of the Constitution already demands the completion of all demarcations by 1993<sup>31</sup>.
- Remove any person with conflict of interest ties to the agribusiness, logging, mining and other predatory activities, as well as those that promote obsolete ideologies of assimilation that are unconstitutional.

### 2.3.3 Bill 191 should not be approved

- By opening indigenous lands to exploitation and the economic interests extractive industries, the bill threatens the life, livelihood and freedom of indigenous peoples who have the right to enjoy their traditional territory - without mining, without hydroelectric dams and without agribusiness that threaten its biodiversity - in communion with rivers, forests and animals.

## 3. Governance gaps in social security and labour policies, illustrative case examples, and proposed solutions

Although Brazil has high rates of unemployment and informal and precarious work, the government has weakened assistance and social security policies. The collapse of the assistance and social security system

<sup>27</sup> CIMI, *Relatório Violência contra os povos indígenas do Brasil - Dados 2018*, available at: <https://cimi.org.br/wp-content/uploads/2019/09/relatorio-violencia-contra-os-povos-indigenas-brasil-2018.pdf>

<sup>28</sup> Apublica, *Quem sai ganhando com a mineração em terras indígenas: A mineração em terra indígena com nome, sobrenome e CNPJ*, 20 February 2020, available at: <https://apublica.org/2020/02/a-mineracao-em-terra-indigena-com-nome-sobrenome-e-cnpj/>

<sup>29</sup> CIMI, *Relatório Violência contra os povos indígenas do Brasil - Dados 2018*, available at: <https://cimi.org.br/wp-content/uploads/2019/09/relatorio-violencia-contra-os-povos-indigenas-brasil-2018.pdf>

<sup>30</sup> Apublica, *Quem sai ganhando com a mineração em terras indígenas: A mineração em terra indígena com nome, sobrenome e CNPJ*, 20 February 2020, available at: <https://apublica.org/2020/02/a-mineracao-em-terra-indigena-com-nome-sobrenome-e-cnpj/>

<sup>31</sup> Presidência da República, Constitution of the Federal Republic of Brazil of 1988, available at: [http://www.planalto.gov.br/ccivil\\_03/constituicao/ConstituicaoCompilado.htm](http://www.planalto.gov.br/ccivil_03/constituicao/ConstituicaoCompilado.htm)

happening since mid-2019 dramatically affects the most miserable people: the youngest children, the elderly and people with disabilities in the lower class.<sup>32</sup> More than 5 million Brazilian citizens are being deprived of access to social programs and social security benefits.

### 3.1 Governance gaps in social security and labour policies

#### 3.1.1 Restrictions on public spending:

One leading cause of the weakened social situation for Brazilians is recent restrictions on public spending:

- In 2016, the approval of the Constitutional Amendment 95/2016 (EC 95) imposed a constitutional cap on public spending and provoked 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>33</sup>. In August 2018, seven UN Special Procedures issued a joint statement urging Brazil to reconsider its austerity measures, including Constitutional Amendment 95/2016, and to put the human rights of its population and the center of its economic policies<sup>34</sup>. According to a study by the Budget and Financing Commission (Cofin) of the Brazilian National Health Council (CNS), Brazil's public health system (SUS) has lost R\$ 20 billion (about US\$ 4 billion) only in 2019 because of the cut in investments due to EC 95<sup>35</sup>. This thought to have reduced dramatically the capacity of the public health system to respond satisfactorily to the COVID-19 health crisis<sup>36</sup>.
- In 2019, the government passed a public pension reform despite many protests and has intensified the social problems experienced by the majority of the population<sup>37</sup>.

#### 3.1.2 Restrictions on workers' rights

Another cause of the weakened social situation for Brazilians is recent restriction on workers' rights:

- 2017, the National Congress passed a reform of labor legislation, which imposed serious consequences on the rights of workers.<sup>38</sup> The new laws expanded flexible hiring modalities, allowed non-standardization of working hours, encouraged variable remuneration, and weakened workers' health and safety standards.
- President Bolsonaro's response to the COVID-19 crisis has exacerbated harmful conditions for workers. President Bolsonaro has denied the gravity of the pandemic and promoted confusion in public opinion. Even more seriously, he has imposed measures that vehemently protect the business community and the wealthy at the cost of workers' rights:
  - On 22 March 2020, President Jair Bolsonaro issued a controversial Provisional Executive Order 927 that determines COVID-19 constitutes a *force majeure* allowing companies to adopt protections favoring themselves over workers.<sup>39</sup> Although the president has since repealed one of the most controversial elements of the order that permitted the suspension of employment contracts without the payment of salaries for up to four months, other measures remain. For example, the order permits the reduction of salaries by up to 25% without a reduction in working

<sup>32</sup> Nexo Jornal, [O que causa a fila do INSS. E quais as medidas para zerá-la](https://www.nexojornal.com.br/expresso/2020/01/15/O-que-causa-a-fila-do-INSS.-E-quais-as-medidas-para-zer%C3%A1-la), 15 January 2020, available at :

<https://www.nexojornal.com.br/expresso/2020/01/15/O-que-causa-a-fila-do-INSS.-E-quais-as-medidas-para-zer%C3%A1-la>

<sup>33</sup> More information at: CESR, [Brazil: Human Rights in Times of Austerity](https://www.cesr.org/brazil-human-rights-times-austerity), available at : <https://www.cesr.org/brazil-human-rights-times-austerity>

<sup>34</sup> CONECTAS, *Letter to the Mandates of the Special Rapporteur on the right to education; the Special Rapporteur on the right to food; the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on extreme poverty and human rights; the Special Rapporteur on the human rights to safe drinking water and sanitation; and the Working Group on the issue of discrimination against women in law and in practice*, 18 May 2018, available at : <https://www.conectas.org/wp/wp-content/uploads/2018/08/OL-BRA-4-2018.pdf>

<sup>35</sup> Conselho Saude de Brasil, [Saúde perdeu R\\$ 20 bilhões em 2019 por causa da EC 95/2016](https://conselho.saude.gov.br/ultimas-noticias-cns/1044-saude-perdeu-r-20-bilhoes-em-2019-por-causa-da-ec-95-2016) <https://conselho.saude.gov.br/ultimas-noticias-cns/1044-saude-perdeu-r-20-bilhoes-em-2019-por-causa-da-ec-95-2016>

<sup>36</sup> Conselho Nacional de Saude, [Saúde perdeu R\\$ 20 bilhões em 2019 por causa da EC 95/2016](https://conselho.saude.gov.br/ultimas-noticias-cns/1044-saude-perdeu-r-20-bilhoes-em-2019-por-causa-da-ec-95-2016), 28 de February 2020, available at :

<https://conselho.saude.gov.br/ultimas-noticias-cns/1044-saude-perdeu-r-20-bilhoes-em-2019-por-causa-da-ec-95-2016>

<sup>37</sup> EL Pais, [Os impactos da reforma da Previdência na desigualdade, segundo economistas de esquerda](https://brasil.elpais.com/brasil/2019/08/11/politica/156523667_357865.html), 2 October 2020, available at :

[https://brasil.elpais.com/brasil/2019/08/11/politica/156523667\\_357865.html](https://brasil.elpais.com/brasil/2019/08/11/politica/156523667_357865.html)

<sup>38</sup> Centro de Estudos Sindicais e de Economia do Trabalho (Cesit), *Dossiê Reforma Trabalhista*. Available at: <http://www.cesit.net.br/wp-content/uploads/2017/06/Dossie-14.set2017.pdf>

<sup>39</sup> Presidência da República do Brasil, *Medida Provisória No. 927*, 22 March 2020, available at : [http://www.planalto.gov.br/ccivil\\_03/\\_ato2019-2022/2020/Mpv/mpv927.htm](http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2020/Mpv/mpv927.htm)

hours. It also establishes a “labor law exception” by exempting employers in advance from workplace accident liability in the event that their employees become infected with COVID-19, except when a causal link can be proven by the employee<sup>40</sup>.

- The government subsequently enacted a new Provisional Executive Order 936 that establishes criteria for the reduction of working hours and allows for up to 70% reduction in the salaries, without collective bargaining, only through individual negotiation<sup>41</sup>.

## 3.2 Illustrative case examples of governance gaps in social security and labour policies

### 3.2.1 Slave labour, a repeated human rights violation

- According to the Digital Observatory of Slave Labour in Brazil, a joint project by the ILO and the Federal Labour Prosecution Office, more than 35,000 people were rescued from [slave labour in Brazil](#) over the past 15 years, but over 600 of them ended up in similar conditions at least a second time.<sup>42</sup>
- In Brazil, Maranhão is the state of origin of the largest number of Brazilians who are victims of contemporary slavery. Charcoal production and steel industry constitute at least one fifth of the companies in the “dirty list”. All the cycle of charcoal manufacture implies high risk to the employees: cutting wood, transporting firewood to the oven door, supplying the oven, lighting the fire, monitoring the cooking, removing the charcoal, etc. The worker is submitted, without any protection equipment, to toxic gases, soot, ashes, dust and high temperatures, which can cause problems such as dehydration, burns, severe muscle injuries, inguinal and scrotal hernia, and even fractures or cuts, in case of accident.<sup>43</sup>

### 3.2.2 Restore the CONATRAE (Comissão Nacional de Erradicação do Trabalho Escravo)

- The National Commission for the Eradication of Slave Labor (Conatrae) was extinguished along with other collegiate public administration by Presidential Decree 9759, of April 11, 2019. It was re-established by Presidential Decree 9887, of June 28, 2019.. The new rules imposed restrictions on the number of members and also on the duration of meetings.

## 3.3 Proposed solutions to governance gaps in social security and labour policies

### 3.3.1 Approve necessary new laws protecting workers’ rights

- Approve bill 5016/2005 (imposing more severe penalties for slave labor) and PLP 128/19 (prohibiting the granting of subsidies, tax incentives and public financing to individuals or companies that have subjected workers to conditions similar to slavery).

### 3.3.2 Avoid weakening of existing laws on workers’ rights

- Avoid adopting bills and policies, such as Bill 2464/2015, Bill 3842/2012, Senate Bill 432/2013 and Senate Bill 236/2012, that make Article 149 of the Penal Code, which punishes imposing working conditions analogous to slavery, either by subjecting a person to forced labor or degrading working conditions,

<sup>40</sup> Conectas, *Bolsonaro’s Provisional Executive Order to Save Companies leaves workers vulnerable in Crisis*, 25 March 2020, available at : <https://www.conectas.org/en/news/bolsonaros-provisional-executive-order-to-save-companies-leaves-workers-vulnerable-in-crisis> and ANAMATRA, *Anamatra se manifesta sobre o teor da MP 927/2020*, 23 March 2020, available at : <https://www.anamatra.org.br/imprensa/noticias/29459-anamatra-se-manifesta-sobre-o-teor-da-mp-927-2020>

<sup>41</sup> <https://www.anamatra.org.br/imprensa/noticias/29583-nota-publica-5> and <https://reporterbrasil.org.br/2020/04/medida-provisoria-nao-garante-estabilidade-no-emprego-para-quem-aceitar-reducao-salarial-ou-suspensao-do-contrato/>

<sup>42</sup> ILO, *Hundreds of Brazilian workers rescued at least twice from slavery in past 15 years*, 6 February 2018, available at : [https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_617076/lang--en/index.htm](https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_617076/lang--en/index.htm)

<sup>43</sup> Reporter Brasil, *Carvoarias representam um quinto das inclusões na ‘lista suja’ do trabalho escravo*, available at : <https://reporterbrasil.org.br/2014/01/carvoarias-representam-um-quinto-das-inclusoes-na-lista-suja-do-trabalho-escravo/>

more flexible or weaken implementation of Article 243 of the Constitution, which allows the expropriation without compensation of properties where slave labor is found.

### 3.3.3 Restore the CONATRAE (Comissão Nacional de Erradicação do Trabalho Escravo)

- The National Commission for the Eradication of Slave Labor (Conatrae) should be restituted all its rights and powers, and reinforced in its capacity to monitor and sanction violations of the legislation against slave labour.

## 4. Governance gaps in protection of human rights, illustrative case examples, and proposed solutions

The challenges and threats faced by human rights defenders (HRDs) in Brazil remain very high, particularly for those working on issues of land, environment, indigenous peoples, corruption and impunity. Many Human Rights Defenders have experienced death threats, physical attacks, arbitrary arrests and lawsuits. The high number of killings is of particular concern and takes place against a background of widespread impunity.

The year 2019 witnessed an enormous **increase in the attacks and killings of human rights defenders (HRDs) and particularly land environment and indigenous HRDs**. Brazil is considered to have been in 2019 among the 10 most dangerous countries for defenders working in the field of Business and Human Right.<sup>44</sup>

### 4.1 Governance Gaps in respect human rights (including illustrative case examples)

#### 4.1.1 Wave of attacks against human rights institutions

Since the arrival of President Jair Bolsonaro, several human rights bodies have been under attack, through budget cuts and dismissal of their members. For instance, in June 2019, President Jair Bolsonaro, by decree, had dismissed and ended the salaries of the experts of the National Mechanism for Preventing and Combating Torture,<sup>45</sup> the agency responsible for monitoring the conditions of penitentiary units and psychiatric hospitals, besides the considerable budget cuts and modifications in the composition for several human rights monitoring bodies.

On August 27, 2019, the Ministry of Women, Family and Human Rights, Ms. Damares Alves, dismissed the General Coordinator of the National Human Rights Council (Conselho Nacional de Direitos Humanos, CNDH, which is Brazil's national human rights institution) and the main body responsible for investigating human rights violations in the country, in a decision which was published in the Official Journal the same day. The CNDH had chosen its General Coordinator in December 2018, after the election of its members and Executive Board for 2018-2020, in accordance with the Paris Principles which guarantee autonomy and independence of the national human rights institutions. The position is now vacant.

#### 4.1.2 Violation of the Paris principles regarding Brazil's National Human Rights Institution (CNDH)

The CNDH was established by Law No. 12.986 of June 2, 2014, and its work is guided by the Paris Principles, defined by the United Nations in 1992, which guarantee autonomy and administrative independence to the body. Among the activities performed by the CNDH are the monitoring of public human rights policies, the elaboration of legislative proposals, the articulation with public and private entities, as well as with the international and regional systems of human rights.

<sup>44</sup> BHRRC, Human Rights Defenders and Business, Snapshot January 2020, available at : <https://dispatches.business-humanrights.org/hrd-january-2020/index.html>

<sup>45</sup> See Joint Statement by Justiça Global, GAJOP and the World Organization against Torture (OMCT) on June 12, 2019: "Brazil: weakening key anti-torture body is first step in dismantling rule of law". Available here: <https://www.omct.org/statements/2019/06/d25382/>

However, since August 26, 2019, the CNDH has also been prevented from publishing its recommendations, decisions and resolutions on the website of the Ministry of Human Rights, to which it is linked for this purpose. The same day, Ms. Damares Alves, Ministry of Human Rights, had recommended that the statements of the CNDH should be ignored and stated that the Council was "far from concerned about human rights". The arbitrary intervention of the Ministry into the administration of CNDH is a blatant violation of the Paris Principles. It endangers the continuity of an independent monitoring of human rights violations in Brazil.

#### **4.1.3 Public attacks by official against the work of human rights defenders and their legitimate work**

President Bolsonaro has not only criticizes publicly the work of NGOs but has continued to vilify them and even make accusations of terrorism. For example, on 21 August in a statement to reporters against a background of the 82% increase in forest fires in the Amazon, he accused civil society organizations of being responsible for fires in the Amazon: "So, there may be, yes, there may, I am not saying, criminal action by these 'ongueiros' [members of NGOs] to draw attention against myself, against the government of Brazil. This is the war we face".<sup>46</sup> In a similar vein, on 25 October, Environment Minister Ricardo Salles insinuated, in a social media post, that the international organization Greenpeace could be responsible for the oil spill affecting Brazilian waters in northeastern Brazil; president Bolsonaro qualified them of terrorists.<sup>47</sup>

This is why human rights defenders have been facing concerns an anti-terrorism bill that could potentially criminalise social movements and unduly restrict fundamental freedoms as a result of a broad definition of the crime of terrorism, as well as due to the exclusion of a previous article that established an important safeguard by saying that the participation in political demonstrations and social movements would not fall under the legislation's scope.

Furthermore, President Bolsonaro has put in place legal and bureaucratic obstacles to their work. He created the Department for Relations with Non-Governmental Organizations through the introduction of legislative measures, such as Provisional Measure 870 and the Decree No. 9,669/2019, which seem to be designed to interfere unduly in the activities of civil society organizations operating in Brazil or create onerous bureaucratic procedures that would make it more difficult for them to operate. These measures were amended by the National Congress in the wake of mobilizations.

## **4.2 Proposed solutions to governance gaps in respect for human rights**

### **4.2.1 Ensure the integrity and independence of the National Human Rights Institution and other similar bodies**

In line with guidelines on Human Rights and Business adopted by the national human rights institution of Brazil, the State is responsible for promoting, protecting, respecting and improving the mechanisms of prevention and redress for human rights violations in the context of corporate operations, and as a consequence should ensure the integrity of the National Human Rights Institution and other similar bodies; Human rights institutions and bodies must operate in respect of the Paris principles and particularly be ensured against state and corporate capture.

### **4.2.2 Protect human rights defenders**

The State of Brazil must guarantee respect for the constitutional principles of due process, adversarial and broad defense, including ensuring full free legal assistance to persons and groups in vulnerable situations and particularly human rights defenders; and ensure mechanisms to protect human rights defenders and defenders who are at risk and under threat;

All governmental authorities must recognize associations, trade unions, organizations, movements and others forms of representation specific to workers, communities, advocates and human rights defenders as legitimate counterparts for dialogue;

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<sup>46</sup> The Guardian, Jair Bolsonaro Claims NGOs behind Amazon forest fire surge – but provides no evidence, 21 August 2019, Available at : <https://www.theguardian.com/world/2019/aug/21/jair-bolsonaro-accuses-ngos-setting-fire-amazon-rainforest>

<sup>47</sup> Amnesty, Brazil 2029, available at : <https://www.amnesty.org/en/countries/americas/brazil/report-brazil/>

## Conclusion

Governance gaps in the current legal, institutional, and political framework of Brazil enable systematic harm to the environment and breach of indigenous people's rights and workers' rights by corporations. The most affected populations are those who are most vulnerable indigenous peoples and rural communities, human rights defenders, poor and migrant workers, women and children. COVID-19 outbreak has increased the existing social and economic crisis in the country.

However, hard economic times should not be used to justify policies and bills that will impact workers and communities negatively, with job and income losses, for instance, as the government is doing. Instead, the response should have human rights at its core and provide a safety net as an emergency but also for the future. What is particularly concerning is that renewed economic incentives to business interests— including those in the name of promoting a 'green recovery' in the face of the COVID-19 pandemic and the climate crisis <sup>48</sup> – may actually contribute to further deforestation and other forms of environmental degradation, social conflicts and spread of the coronavirus.

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<sup>48</sup>'Governo estrutura primeiro programa de títulos verdes para transportes da América Latina' 10 June 2020, <https://infraestrutura.gov.br/ultimas-noticias/9908-governo-estrutura-primeiro-programa-de-t%C3%ADtulos-verdes-para-transportes-da-am%C3%A9rica-latina.html>

## About the author organisations



**Conectas Direitos Humanos** is a human rights organization based in São Paulo, Brazil. Established in 2001, Conectas works to enforce and promote human rights and combat inequalities to build a fair, free and democratic society from a Global South perspective. Since 2006, Conectas holds Special Consultative status with the United Nations Economic and Social Council (ECOSOC).



The **International Federation for Human Rights (FIDH)** 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. Together with its member organisations, FIDH works with communities throughout the world to ensure corporate accountability and improve victims' access to justice through documentation, advocacy and litigation.



Since 1985, **International Rivers** has been at the heart of the global struggle to protect rivers and the rights of communities that depend on them. We work with an international network of dam-affected people, grassroots organizations, environmentalists, human rights advocates and others who are committed to stopping destructive river projects and promoting better options.



**Justiça nos Trilhos** is an organization working closely with local communities in the Brazilian Amazon – including indigenous peoples, peasants, and afrodescendants – to address human rights and environmental abuses by mining and steel companies. In 2018 Justiça nos Trilhos was announced as the first-ever recipient of the Human Rights and Business Award.



The **Mind the Gap** project consortium aims to increase respect for human rights and achieve justice and remedy for individuals and communities whose lives and livelihoods are affected by multinational corporations. The project consortium contributes to this, first, by exposing harmful corporate strategies that result in avoidance of responsibility for human rights or environmental impacts, and subsequently, by strengthening civil society to implement counter-strategies and advocacy trajectories for claiming and defending human rights.



**OECD Watch** is a global network of civil society organisations with more than 130 members in over 50 countries. OECD Watch's key aim is to inform and advise the global NGO community on how to use the OECD Guidelines for Multinational Enterprises (OECD Guidelines) and its associated grievance mechanism to achieve corporate accountability and access to remedy for individuals harmed by corporate misconduct.



The Centre for Research on Multinational Corporations (**SOMO**) is a critical, independent, not-for-profit knowledge centre on multinationals. Since 1973 we have investigated multinational corporations and the impact of their activities on people and the environment. We strengthen collaboration between civil society organisations through our worldwide network. In these three ways, we contribute to social, environmental and economic sustainability.



The **Society for Threatened Peoples (STP)** is an international human rights organisation working for the protection of persecuted minorities and indigenous peoples. The STP documents human rights violations, raises public awareness and represents the interests of the affected communities before the authorities and policy-makers. It supports local initiatives aimed at strengthening the human rights of minorities and indigenous peoples, working nationally and internationally with other organisations and individuals pursuing similar goals. The STP has consultative status at both the United Nations Economic and Social Council (ECOSOC) and the Council of Europe.