



Transnational Law Institute



Parallel Report on Brazil for the Committee on Economic, Social and Cultural Rights 74th Session

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I. Executive Summary

We are grateful to the Committee on Economic, Social and Cultural Rights for this opportunity to address them at this critical time for Brazil. Our focus is the resource rights of peoples, as affirmed by Article 1 and Article 25 of the International Covenant on Economic, Social and Cultural Rights (the ICESCR). Our main recommendations to the ESCR Committee are as follows. We respectfully recommend that the Committee

1. Robustly affirm the natural resource rights of all peoples: both the rights of indigenous peoples and of the Brazilian people.
2. Urge the government not to waver in its commitment fully to respect resource rights, and to resist the pressures to adopt policies that are detrimental to these rights.
3. Urge the government to speed up land reform and adopt measures to address political and judicial resistance to it.
4. Urge the government not to put large infrastructure projects ahead of indigenous peoples' rights and environmental concerns. Of particular concern are three recent developments: (1) the approval a fast track for Parliament's vote on Bill 490/2007, which significantly reduces the right to land of indigenous peoples; and (2) Parliamentary approval in May 2023 of legislation that transfers the power of demarcation of indigenous lands from the Indigenous Peoples

¹ Terra de Direitos is a Brazilian human rights organisation founded in 2002, which advocates for land rights, food sovereignty, and democracy. The Transnational Law Institute of the School of Law, King's College London, founded in 2014, is globally recognized as a leading centre for transnational legal scholarship. Clean Trade is a British human rights organisation founded in 2018, devoted to securing the natural resource rights of all peoples.

- Foundation (FUNAI) to the Ministry of Justice and (3) the federal government's declared intention to explore oil at the environmentally sensitive area of the mouth of the Amazon river.
5. Urge the government to commit sufficient resources to the demarcation agencies, speed up the process of granting quilombola communities title to their lands and implement policies that improve the economic situation of these communities while the process of granting land deeds is underway.
 6. Urge the government to speed up the process of recognition and protection of traditional peoples' and communities' rights to land.
 7. Urge the government to protect water resources from degradation and pollution, and to guarantee access to clean water and sanitation to the whole population.
 8. Urge the government to protect Brazil's forests from illegal logging and to adopt the following measures:
 - To enact into hard law the president's pledge at COP 27 to zero deforestation by the end of 2030;
 - To ensure that the new Action Plan for Prevention and Control of Deforestation in the Legal Amazon (*PPCDAm*), enacted in May 2023, is fully implemented;
 - To ensure popular participation in the formulation and execution of national policies on the environment, biodiversity, and climate change;
 - To implement transparency mechanisms for environmental inspection in cases of deforestation;
 - To implement a plan for strengthening the protection of conservation units according to the Aichi Targets of the Convention on Biological Diversity;
 - To create indicators for the recognition of indigenous and traditional communities' lands, combining territorial planning and environmental protection.
 9. Express concern that the Judiciary, the National Congress and the Executive may undermine the rights of Indigenous Peoples to be consulted and to participate in decisions that will affect their lands and resources, which would be a violation of Article 1.2.
 10. Urge the government to investigate and punish the murder of peasants, quilombolas, human rights advocates, and environmental defenders. The government should also allocate appropriate funding to the Federal Programme to protect human rights defenders.
 11. Urge the Brazilian government, legislatures, judiciary and police to protect its citizens' rights to natural resources from harmful exploitation by national and international companies, in particular through implementation of existing laws that impose liability for human rights violations and environmental harm.

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III. Introduction

This parallel report is a collaboration between Terra de Direitos, the Transnational Law Institute (TLI) of King's College London, and Clean Trade—three organisations committed to the full and effective implementation of peoples' rights to natural resources, as declared in common Article 1 of the two human rights Covenants, and also article 25 of the ICESCR and article 47 of the ICCPR. Our report has three main aims:

1. To provide the Committee with factual background useful for its review of Brazil's official report;
2. To apply the Committee's familiar interpretations of Article 1 rights to the Brazilian context; and
3. To encourage the Committee explicitly to affirm the interpretations of the resource rights of peoples that the Committee and other authoritative sources have already implicitly affirmed.

As our report will emphasize, this is a crucial moment for the Committee **robustly to affirm the resource rights of all peoples: both of indigenous peoples and of the national peoples that are the citizens of an independent state**. Violations of resource rights are rising across the globe, including in Brazil. These violations are particularly concerning as they are often closely connected with **violations of other fundamental human rights** including **life, physical integrity, and political participation**, as well as **socio-economic rights** of peoples, such as the right to an adequate standard of living (art. 11), the right to health (art. 12), the right to the opportunity to gain a living by work (art. 6), the right to enjoy the benefits scientific progress (art. 6). As the Committee has properly emphasized in its **Issues Paper on Sustainable Development and Human Rights**, "Social and economic development depends on the sustainable management of our planet's natural resources."² Securing the resource rights of peoples is indispensable for making natural resource management sustainable.

Moreover, when peoples' resource rights are violated, environmental degradation is much more likely to take place.³ A violation of natural resource rights is therefore often also a **violation of the right to a clean, healthy and sustainable environment recognized by the United Nations ([Resolution 76/300](#), of 28 July 2022 and several national constitutions, including the Brazilian one in article 225..**

For all these reasons, the protection of resource rights recognized in Article 1 and 25 of the ICESCR has never been more critical. In our times of environmental degradation and climate change, protecting the resource rights of indigenous peoples and of national peoples has the potential to benefit not only those peoples, but humanity as a whole.

We therefore respectfully urge the Committee to consider **strengthening its statements regarding the resource rights of peoples that are recognized in Articles 1 and 25**. We also ask the Committee to **emphasize the resource rights not only of indigenous peoples but of citizens in general**.

² *Transforming Our World: The 2030 Agenda for Sustainable Development* (21 October 2015) A/RES/70/1, Para 33.

³ See Luis Patriani, "[Where Indigenous land rights prevail in Brazil, so does nature, study finds](#)", Mongabay, 6 April 2023; Report of the Special Rapporteur on the rights of indigenous peoples, UN Doc. A/77/238 (19 July 2022); UNEP: *Land Restoration for Achieving the Sustainable Development Goals* (UNEP, 2019); FAO & FILAC (2021) *Forest Governance by Indigenous and Tribal Peoples: An Opportunity for Climate Action in Latin America and the Caribbean*; IUCN (2016) *IUCN's Rights-Based Approach: A Systematization of the Union's Policy Instruments, Standards and Guidelines*.

IV. The Rights of Peoples to Their Resources in Article 1.2

The human rights Covenants declare the rights of peoples over the resources of their territory.⁴

Common Article 1.2 of the Covenants states that

All peoples may, for their own ends, freely dispose of their natural wealth and resources . . . In no case may a people be deprived of its own means of subsistence.⁵

Moreover, both Covenants also reaffirm this right in their last substantive article:

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.⁶

Significantly, **this is the only human right that is stated twice in both Covenants**; no other Covenant right is reemphasized in this way. The Covenants are, in turn, accepted by the preponderance of states. Ninety-eight percent of the world's population lives in a state that is party to at least one of these treaties.⁷

The Covenants ascribe resource rights to “all peoples.” The Committee's jurisprudence has highlighted the resource rights of *indigenous peoples* (e.g., the Yanomami, the Munduruku, the Kayapo in Brazil) as well as the *national peoples* that are constituted by all the citizens of an independent state (e.g., the people of Brazil).

It is well established in CESCR jurisprudence that **indigenous and national peoples** have the right to self-determination, including in the context of article 1.2 of the ICESCR. For instance, in its Concluding Observations regarding Paraguay, the CESCR expressed its concerns “about the fact that the State party has not yet legally recognized the right of indigenous peoples to dispose freely of their natural wealth and resources or put in place an effective mechanism to enable them to claim their ancestral lands (art. 1).”⁸ The Committee also referred to indigenous peoples' right to self-determination in its Concluding Observations on Argentina, Finland, Guatemala, and Cambodia.⁹

The Committee has also highlighted that Article 1.2. supports the right to free, prior and informed consent, as affirmed in the UN Declaration on the Rights of Indigenous Peoples.¹⁰

The CESCR has also repeatedly confirmed that Article 1.2 applies to the peoples of independent states, and not only to peoples living under foreign domination.¹¹ The CESCR and the HRC have also affirmed that these **national peoples** are constituted by all the citizens of that state.¹²

4 This section draws on the research of Prof. Leif Wenar (Stanford University, USA) and Prof. Jeremie Gilbert (University of Roehampton, UK), both members of Clean Trade. See *Fighting the Resource Curse: The Rights of Citizens Over Natural Resources*, 19 NW. J. HUM. RTS. 30 (2020). <https://scholarlycommons.law.northwestern.edu/njihr/vol19/iss2/2>.

5 G.A. Res. 2200A (XXI), International Covenant on Civil and Political Rights, art. 1 (Dec. 16, 1966) [hereinafter ICCPR]; G.A. Res. 2200A (XXI), International Covenant on Economic, Social and Cultural Rights, art. 1 (Dec. 16, 1966) [hereinafter ICESCR]. Together referred to as the “Covenants”.

6 ICCPR, supra note 3, at art. 47; ICESCR, supra note 3, at art. 25.

7 Ratification of 18 International Human Rights Treaties, UN Off of the High Comm'r for Hum Rts., <http://indicators.ohchr.org/>; Total Population by Country, World Population Review, <http://worldpopulationreview.com/countries/>.

8 CESCR, Concluding Observations: Paraguay, ¶ 6, UN Doc. E/C.12/PRY/CO/4 (Mar. 20, 2015).

9 CESCR, Concluding Observations: Argentina, UN Doc. E/C.12/ARG/CO/3 (Dec. 14, 2011); CESCR, Concluding Observations: Finland, UN Doc. E/C.12/FIN/CO/6 (Dec. 17, 2014); CESCR, Concluding Observations: Guatemala, UN Doc. E/C.12/GTM/CO/3 (Dec. 9, 2014); CESCR, Concluding Observations: Cambodia, UN Doc. E/C.12/KHM/CO/1 (June 12, 2009).

10 See CESCR, Concluding Observations: Colombia, UN Doc. E/C.12/1/Add.74, ¶¶ 12, 33 (Nov. 30, 2001); see also Concluding Observations: Brazil, UN Doc. E/C.12/1/Add.87, (May 23, 2003).

11 CESCR, Concluding Observations: Azerbaijan, E/C.12/1/Add.20, ¶ 16 (Dec. 22, 1997); CESCR, Concluding Observations: Democratic Republic of Congo, E/C.12/COD/CO/4, ¶ 13 (Dec. 16, 2009).

12 CESCR, Concluding Observations: Cambodia, E/C.12/KHM/CO/1, ¶ 15 (June 12, 2009); HRC, General Comment No 12: Article 1 (Right to Self-Determination), 21st Sess., ¶ 1, 2 (Mar. 13, 1984).

The resource rights of both indigenous peoples and national peoples fall within three categories:¹³

(1) **Procedural rights** require states to provide **public information** regarding resource management, to **act transparently**, and to **ensure participatory decision-making by the people**;

(2) **Substantive rights** require the state to use the territory's natural resources in ways that **benefit the people**, along two dimensions:

(a) the "floor": the benefits of resource exploitation must first be used to **provide the people with means of subsistence**;

(b) the "wall": all the proceeds of resource exploitation must **benefit only the people, not other parties (e.g., corrupt officials)**;

(3) **Remedial rights** require the state to pursue **asset recovery** in cases where resources belonging to the people have been wrongfully expropriated.

We invite the Committee to review Brazil's obligations under Article 1.2 in light of these three categories of rights. To do so we wish to bring to the attention of the Committee specific information concerning the resource rights of both the indigenous peoples of Brazil and of the Brazilian people as a whole.

V. Resources Rights in Brazil

Brazil's lavish endowment of natural resources present both opportunities and perils. The country's enormous territory (the fifth largest in the world) is diverse in its resources, population density and economic development. While the South and South-east are densely populated and more developed in terms of infrastructure and wealth, the North and the Northeast have the greatest abundance of natural resources. This represents an important challenge for protecting peoples' rights to resources, as the presence of the state in some of the vast and remote areas of the country (especially the Amazon Forest) is scant. Yet these are exactly where some of the most challenging conflicts over resources are taking place. The recent case of the Yanomami indigenous people is a tragic example, discussed below, yet sadly only one among several. Moreover, the diversity and size of Brazil's national population has challenged the state to formulate laws that adequately protect the resource rights of the Brazilian people as a whole.

Brazil's record on respecting Article 1.2 of the ICESCR (the "right to natural resources") is patchy and has significantly deteriorated during the mandate of the previous government (2019-2022). The new government (2023-2026) has pledged to remedy some of the worst violations and has already taken some actions in this direction. Yet it is too soon to know how determined and effective the new government will be. One important obstacle will be the current **composition of Parliament**. Also elected for the next four years (2023-2026), Parliament includes a significant number of parliamentarians representing interests that are incompatible with respect for the right to natural resources. Another obstacle will be the view of many individuals in the **government's own political base** who still hold a view of economic development that favours large infrastructure projects like dams and industrial mining which, as history shows, are often not sustainable and violate peoples' rights to natural resources.

The Committee should urge the government not to waver in its commitment fully to respect the right to resources and to resist the pressures from parliamentarians, businesses, civil society organisations, and its own political base to adopt policies that are detrimental to peoples' rights to natural resources. This report will highlight the most harmful bills currently pending in Parliament and governmental policies announced by government in each of the sections below. The main message is that **Brazil's legal framework of protection of the right to natural resources—on paper one of the best in the world—must be both reinforced and protected from erosion by interest groups with strong political representation.**

¹³ See Wenar and Gilbert, *Fighting the Resource Curse: The Rights of Citizens Over Natural Resources*, 58-67.

Brazil's Legal Framework

The Brazilian Constitution of 1988 strongly affirms the resources rights of peoples. Indeed, several provisions, read together, form a complex and comprehensive system of protections of resource rights, covering especially the “floor” of these rights, discussed in Section IV above.

Article 3 of the Constitution sets out the four fundamental aims of the Brazilian republic, in light of which all other provisions should be interpreted. They are (I) “to build a free, just and solidaristic society,” (II) “to guarantee national development,” and (III) “to eradicate poverty and marginalization, and to reduce social and regional inequalities,” (IV) and “to promote everyone’s well-being, without prejudice to origin, race, gender, colour, age, and any other form of discrimination.” Brazil was also one of the first countries in the world to include the “right to a ecologically balanced environment” (art. 225). The eradication of poverty and the promotion of everyone’s well-being (objectives III and IV) are particularly relevant to the implementation of peoples’ rights to resources. As common Article 1.2 of the ICESCR and ICCPR states, **“In no case may a people be deprived of its own means of subsistence.”** This text establishes the “floor” of a national people’s rights to resources: the benefits of resource exploitation must first be used to secure for citizens their means of subsistence.

This provision leaves the state a great deal of discretion on how to regulate the exploitation of natural resources. At one extreme is the state’s wholesale nationalization of resources, accompanied by the allocation of the proceeds to secure the means of subsistence for all citizens. At the other extreme is the complete privatization of resources, where citizens’ subsistence is secured through taxation and redistribution. What is not permitted by international law is that a state adopts a model of exploitation—whether nationalized, privatized, or hybrid—that fails to use all resource revenues first to secure citizens’ means of subsistence.

Brazil’s laws set out a model of resource exploitation that is mixed and complex, as one would expect in a large and resource-rich country. To clarify this complex web of legislation, we will address separately the main issues related to resource rights and highlight, within each of them, today’s main areas of concern.

A. Land (Para 26, List of issues)

As common Article 1.2 states, “In no case may a people be deprived of its own means of subsistence.” Other articles in the Covenant reinforce that aim through more specific rights to an adequate standard of living, including food and housing (art. 11), the right to health (art. 12), the right to the opportunity to gain a living by work (art. 6), the right to enjoy the benefits scientific progress (art. 6). For a significant part of the Brazilian population, subsistence and other economic, social and cultural rights require access to the land and its resources. For a significant number of indigenous and other groups, agriculture, fishing, hunting, and gathering have for centuries—even millennia—been the way they have secured their survival with dignity. These ways of life have recently been under significant pressure from several sources: from the concentration of land in the hands of the few, land-grabbing by private individuals and companies, governments’ large infrastructure projects, and pollution from economic activities.

We divide this section into the land rights of four groups: (A.1) citizens in general; (A.2) indigenous peoples; (A.3) quilombolas; and (A.4) traditional peoples.

A.1 Citizens' Rights to Land (Paras 6, c and 26, List of issues)

Law 4.504/1965 ("Land Estatute") Art. 2° *The opportunity to access land ownership is guaranteed to all, conditioned on the social function of land.*¹⁴

Federal Constitution 1988, art. 184: *the state has the power to expropriate, with previous and just compensation, rural properties that are not fulfilling their social function and include them in the land reform programme, which distributes land to poor landless peasants.*

The regulation of the ownership and use of land in Brazil is pregnant with conflicts, many of which have been present since the era of colonial rule. The first Brazilian Land Law (Lei de Terras n. 601) was enacted in 1850 to bring order to the resulting chaos left by more than 300 years of Portuguese dominion, yet it rather consolidated the substantially unequal concentration of land-ownership in Brazil, which persists to this day.

From 1934 onwards several legislative efforts attempted to address this problem, particularly through the constitutional affirmation that ownership of land is conditioned on compliance with the so-called "social function of property." Several governmental policies were adopted to implement this idea, notably through a programme of land reform (*reforma agraria*). Important historical legal landmarks of land reform in Brazil were the Constitutional Amendment n. 10 of 1964 and the Land Law 4.504 of the same year, known as Estatuto da Terra. This legislation tried to democratize ownership and use of land with a progressive land tax, regulation of rural work, and explicit criteria for assessment of compliance with property's social function. However, the twenty years of anti-communist military dictatorship that followed were not auspicious for the implementation of any of these progressive measures. It was only with re-democratization in 1985 that land reform again became possible and urgent.

The constitution of 1988 sets out a legal framework to address the high concentration of land resources in the hands of a small number of individuals and companies.¹⁵ According to the Constitution (Art. 184), the state has the **power to expropriate, with prior and just compensation, rural properties that are not fulfilling their social function** and include them in the **land reform programme**, which distributes land to poor landless peasants. Law 4.504/1965 establishes that the **opportunity to own land is guaranteed to all** and sets out criteria for the specification of land's social function.

Until 1994, the land reform programme proceeded slowly, settling only 58,300 families. From 1994 to 2016, the process gathered considerable speed, with the three democratically elected governments settling nearly 1.3 million families.¹⁶ The number of families settled has declined precipitously since 2016, and the last government did not expropriate a single property during its four years.

Land reform is an important policy to implement the right to resources in Brazil. Access to land is crucial for many people to guarantee a means of subsistence. Yet the implementation of land reform remains well below what it would be if the constitution and laws were properly enforced. Political and judicial resistance to land reform remain powerful obstacles to its adequate implementation.

¹⁴ The text in Portuguese reads: "É assegurada a todos a oportunidade de acesso à propriedade da terra, condicionada pela sua função social, na forma prevista nesta Lei."

¹⁵ According to the most recent study, 10% of the largest properties occupy 73% of the agricultural area of Brazil, while the remaining 90% of smaller properties occupy only 27% of the area, which explains why Brazil's Gini Land Index is one of the highest in the world: 0.73. (The Gini is an indicator that goes from 0 to 1—from perfect inequality to perfect equality). See '[Novel study maps out the inequality of land distribution and ownership in Brazil](#)', Trade, Development & Environment Hub, 10 August 2020.

¹⁶ Catellan et al, 2020.

The Committee should urge the government to speed up land reform and adopt measures to address political and judicial resistance to it. This can include educational campaigns on the links between land reform and international human rights, including the recently adopted [UN Declaration on the Rights of Peasants and Other People Working in Rural Areas](#) (General Assembly, 17 December 2018).

A.2 Indigenous Peoples' Rights to Land (Para 6, b, c and d, List of issues)

"231. Indigenous peoples shall have their social organization, customs, languages, creeds and traditions recognized, as well as their **original rights to the lands they traditionally occupy**, it being incumbent upon the Union to demarcate them, protect and ensure respect for all of their assets."

Indigenous peoples' right to land is regulated separately and in minute detail by the 1988 Constitution. Article 231 recognises indigenous peoples' right to "permanent possession" of their ancestral lands, as well as **exclusive usufruct of the riches of the soil, the rivers and the lakes**. Article 231 also imposes on the state a duty to demarcate and protect these lands against threats.

However, as with land reform, Brazil has to this date failed fully to respect indigenous peoples' rights to their lands. Indeed, the situation deteriorated significantly during the last national government. Invasion, exploitation, and destruction of indigenous lands soared, the state agencies in charge of protection of those lands were dismantled and defunded, and several bills were introduced in the National Congress with support of the last president to weaken the system of legislative protection.¹⁷ As regards the demarcation of indigenous land, the previous president delivered on his promise that "not even one centimeter of indigenous land" would be demarcated during his government.¹⁸ Instead, he pursued what many called an "anti-indigenous agenda" through the National Indian Foundation (FUNAI), based on the outdated idea of cultural assimilation rejected by the Brazilian Constitution. Many argue that the four years of the last national government have been the worst for indigenous peoples since the re-democratization of the country in 1985 and indeed that the government's policies amounted to a deliberate attempt to destroy the remaining indigenous communities of Brazil. Several lawsuits were initiated on this basis,¹⁹ and five requests for investigation of genocide and crimes against humanity have been filed by civil society organisations at the International Criminal Court.²⁰

The most recent dramatic example, which drew considerable international attention, is the **crisis of the Yanomami**, an indigenous people of the Amazon living along the border between Brazil and Venezuela. Despite being one of the earliest peoples to have their land demarcated, in 1992, the Yanomami have suffered continuously from the invasion of gold miners. The miners have destroyed the forest, polluted the rivers with mercury, brought contagious diseases, and regularly committed acts of violence against the Yanomami, including sexual violence against the women.²¹ During the last government and in great part due to its policies, the situation became much worse. By the end of 2022, it was estimated that over 20,000 miners were illegally inside Yanomami territory. The presence of the miners led to a humanitarian crisis, with hundreds of Yanomami children dying from malnutrition.²² The current government declared a health emergency in its first days in office and

¹⁷ See Human Rights Watch, 9 August 2022, "[Brazil: Indigenous Rights Under Serious Threat](#)".

¹⁸ <https://www1.folha.uol.com.br/poder/2018/11/no-que-depender-de-mim-nao-tem-mais-demarcacao-de-terra-indigena-diz-bolsonaro-a-tv.shtml>. And <https://www1.folha.uol.com.br/poder/2018/12/bolsonaro-diz-que-indio-quer-dentista-e-internet.shtml>.

¹⁹ Civil Public Action (Ação Civil Pública) nº 1070916-27.2021.4.01.3400, pending at the 9ª. Federal Civil Court of the Federal District Circuit, filed by Defensoria Pública da União (DPU) and Articulação dos Povos Indígenas do Brasil (APIB) against the Federal Government and Fundação Nacional do Índio, in October 2021.

²⁰ See Nadia Pontes, '[ICC asked to probe Brazil's Bolsonaro over alleged genocide](#)', Deutsche Welle, 8 September 2021.

²¹ <https://sumauma.com/en/por-que-os-garimpeiros-comem-as-vaginas-das-mulheres-yanomami/>

²² <https://www.theguardian.com/world/2023/mar/17/amazon-mining-indigenous-children-health-lula>

implemented a complex operation to try to evict the miners. This operation has been partly successful, but is still facing significant challenges.²³

Brazil's new government has pledged during its election campaign to reverse the last government's course and has already taken some positive steps. One positive step is the creation for the first time in Brazil's history of the Ministry of Indigenous Peoples' Affairs and the appointment of an indigenous woman to head it, Sonia Guajajara.²⁴ Another positive step has been the immediate revocation of hundreds of ordinances enacted by the previous government to weaken indigenous groups and environmental protections (the *revogaço*).²⁵ The new government is also to be commended for its prompt and strong reaction to the Yanomami crisis (see box above) and the allocation of extraordinary emergency funds to the Ministry of Indigenous Peoples' Affairs to enable it to fulfil at least part of its functions.

Yet one must be realistic about the enormity of the new government's task and the significant obstacles in its way. Underfunding, political opposition both at the National Congress and in local governments, and the Workers' Party own ambiguous stance on indigenous peoples' rights and environmental protection are some of the greatest challenges to be faced.

The Committee should urge the government to fulfil its campaign promises by not putting large infrastructure projects (such as the construction of dams, ports, motorways, train lines, and oil fields) ahead of indigenous peoples' rights and environmental concerns.

The Committee should also express particular concern about two recent developments: (1) the approval on 24 May 2023 of an ['urgency requirement' \(fast track\)](#) for Parliament's vote on Bill 490/2007, which significantly reduces the right to land of indigenous peoples; and (2) the approval in Parliament in May 2023 of legislation ([MP 1154/2023](#)) that transferred the power of demarcation of indigenous lands from the Indigenous Peoples Foundation (FUNAI) to the Ministry of Justice.

A.3 Quilombolas' Rights to Land (Para 6, a and c, List of Issues)

Transitional Constitutional Provisions, Art 68

"Final title shall be recognized for the remaining members of quilombos (the former fugitive enslaved communities) who are occupying their lands, and the State shall grant them the respective deeds."

Quilombolas are the communities of black people who descended from those enslaved during the almost four centuries of the legal slavery in Brazil. The word "quilombola" comes from *Quilombo*, which is what the fugitive enslaved people called the villages they founded to try to escape slavery. The Constitution of 1988 recognised the right of quilombolas to their land in Article 68 of the transitional provisions.

Yet as with indigenous peoples' lands demarcation, the recognition and protection of quilombolas' lands is seriously lagging. The process of recognizing quilombolas' lands is in the remit of the Palmares Cultural Foundation (Fundação Cultural Palmares, linked to the Ministry of Culture) and the National Institute of Colonization and Land Reform (Instituto Nacional de Colonização e Reforma Agrária-Incra), which functions under the Ministry of Agriculture. According to the Foundation, there are 3,475 quilombola

²³ <https://www.theguardian.com/world/2023/may/01/yanomami-territory-illegal-miners-death-toll>

²⁴ <https://news.mongabay.com/2023/01/sonia-guajajara-turnaround-from-jail-threats-to-minister-of-indigenous-peoples/>

²⁵ <https://news.mongabay.com/2023/01/president-lulas-first-pro-environment-acts-protect-indigenous-people-and-the-amazon/>

communities in Brazil, out of which 2,819 have already been certified—yet only 138 (less than 7%) have been granted deed to their lands.²⁶

According to a study conducted by Terra de Direitos, on the current pace of demarcation it will take 2,188 years for Brazil to complete the 1,802 processes currently pending in INCRA.²⁷ Without title to their lands, quilombola communities are vulnerable to land predators and violence. Members of the communities are also not allowed to receive public funds and policies that are crucial to their subsistence and that enable them to remain on their lands instead of leaving for the city in search of jobs. This situation is particularly unjust, as the members of quilombola communities are among the most deprived in the Brazilian, with 75% of them living in extreme poverty,²⁸ and have been subject to almost four centuries of despicable slavery.

As with indigenous peoples, the obstacles to securing the quilombolas' constitutional rights to their land are the underfunding of the state agencies in charge of the process, political resistance, and conflict over land boundaries. The four years of the previous government were particularly harmful to quilombolas, with historically low demarcation and a drastic defunding of the demarcation agency, whose budget fell from R\$75,800,000 to a meagre R\$769,100 (about US\$150,000), its lowest level ever²⁹ The new government has made some efforts to ameliorate this situation, such as the reinstatement of the Ministry of Racial Equality, which has a specific secretariat to oversee the implementation of land rights (the [Secretariat for Policies for Quilombolas, Traditional Peoples and Communities of African Descent, Terreiros' Peoples and Gypsies](#)).

The Committee should urge the government to commit sufficient resources to the demarcation agencies, speed up the process of granting quilombola communities title to their lands and, crucially, implement policies that improve the economic situation of quilombola communities while the process of granting land deeds is underway.

A.4 Traditional Peoples' Rights to Land

1988 Constitution, art. 216 "Brazilian cultural heritage includes material and immaterial goods, taken either individually or as a whole, that refer to the identity, action and memory of the various groups that form Brazilian society, including:

I. forms of expression;

II. modes of creating, making and living;

III. scientific, artistic and technological creations;

IV. works, objects, documents, buildings and other spaces intended for artistic-cultural manifestations;

V. urban complexes and sites with historical, landscape, artistic, archeological, paleontological, ecological and scientific value.

§1°. The Government, with the collaboration of the community, shall promote and protect Brazilian cultural heritage by inventories, registries, surveillance, monument protection decrees, expropriation and other forms of precaution and preservation."

²⁶ <https://www.politize.com.br/automatico-titulacao-de-terras-quilombolas-no-brasil/> and

<https://agenciabrasil.ebc.com.br/direitos-humanos/noticia/2018-05/menos-de-7-das-areas-quilombolas-no-brasil-foram-tituladas>

²⁷ <https://terradedireitos.org.br/noticias/noticias/no-atual-ritmo-brasil-levara-2188-anos-para-titular-todos-os-territorios-quilombolas-com-processos-no-incra/23871>

²⁸ [agenciadenoticias.ibge.gov.br/media/com_mediaibge/arquivos/9eab8499f5479b9751d5a6ef03bc38f.pdf](https://www.ibge.gov.br/media/com_mediaibge/arquivos/9eab8499f5479b9751d5a6ef03bc38f.pdf). See also

https://www.gov.br/incra/pt-br/assuntos/governanca-fundiaria/passo_passo_quilombola_incra.png and

<https://terradedireitos.org.br/noticias/noticias/nossos-produtos-apodrecem-na-terra-ou-temos-que-vender-bem-abaixo-do-valor-para-podermos-ter-um-dinheiro/23849>

²⁹ https://www.inesc.org.br/wp-content/uploads/2022/10/Orcamento-Regularizacao-Fundiaria-Quilombola_2014-a-2023.pdf and <https://terradedireitos.org.br/noticias/noticias/por-que-a-titulacao-do-quilombo-overnada-paiol-de-telha-e-tao-blematica/23074>

In addition to indigenous peoples and quilombolas, traditional peoples also have rights to land, defined by the ILO Convention 169 (which Brazil ratified in June 2002). In contrast to the rights of indigenous and quilombola peoples, traditional peoples' rights to land are not expressly included in the Constitution, but rather derive from a systematic interpretation of the constitutional text, infraconstitutional laws, and international treaties. The key constitutional provision is article 216, which guarantees cultural rights, including "modes of creating, making and living," (s. II) which cannot be guaranteed without access to land.

In terms of infraconstitutional provisions, several decrees are relevant.³⁰ Decree n. 6.040, of 7 February 2007, which set the National Policy for the Sustainable Development of Traditional Peoples and Communities, is particularly significant. This decree states clearly that **the right to land and its resources is indispensable for the protection of the cultural, social, and economic rights of traditional peoples and communities** and that strengthening territorial rights is thus crucial for these groups.

There is no specific procedure for the demarcation of land of traditional peoples. It is only through environmental law that they achieve the protection of their rights to land and resources—specifically, through the creation of a type of conservation unit called "extractive reserves".³¹ The problem, as with all types of demarcation addressed above, is the underfunding of the implementation and protection agencies—in this case the **Chico Mendes Institute for Biodiversity Conservation** (*Instituto Chico Mendes de Conservação da Biodiversidade, ICMBio*) and the police—as well as political opposition to the creation of extractive reserves.

The Committee should urge the government to speed up the process of recognition and protection of traditional peoples' and communities' rights to land, in particular as the creation of such reserves are crucial for sustainable development and fulfilment of article 11.2(a) of the ICESCR.

B. Water

Although sometimes overlooked, water is a critical resource with an independently recognised human right.³² Water is not only needed to sustain human life directly, it is also important for health, agriculture, fishing, industrial activities, and energy generation. Brazil has the largest renewable water resources in the world (almost a fifth of the world's reserves—³³more than double those of Russia, the second largest). Yet Brazil also faces water shortages due to environmental degradation near water sources (e.g., deforestation) and mismanagement of water supply.³⁴

As a result, Brazil currently fails to secure the subsistence "floor" of the right to natural resources in relation to access to water. These failures include:

- i. An inadequate supply of clean water to the entire population;
- ii. An inadequate supply of sanitation services in many communities;
- iii. Inadequate protection of the environment around water sources, in particular against degradation by deforestation;

³⁰ Decree of 27 September 2004, replaced by Decree of 13 July 2006, a product of the First Meeting of Traditional Peoples and Communities (I Encontro dos Povos e Comunidades Tradicionais). Decree n. 8.750, of 9 May 2016, established the National Council of Traditional Peoples and Communities.

³¹ Law 9.985/2000.

³² Article 11 of the ICESCR and Resolution 64/292, the United Nations General Assembly, which explicitly recognized the human right to water and sanitation and acknowledged that clean drinking water and sanitation are essential to the realisation of all human rights.

³³ <https://www.worldbank.org/en/news/feature/2016/07/27/how-brazil-managing-water-resources-new-report-scd>

³⁴ <https://www.worldbank.org/en/news/feature/2016/07/27/how-brazil-managing-water-resources-new-report-scd>

iv. Inadequate protection of rivers and the sea against pollution from private activities, including mining, oil prospecting, and pesticide use.

Of special concern recently has been the pollution of the waters of rivers in the Amazon by illegal gold mining. As several studies have shown, members of indigenous communities living near the mines have extremely high levels of mercury in their blood, which causes several serious diseases affecting the neurological system, with particularly dire consequences for pregnant women, children, and the elderly.³⁵

The clearing of the Amazonian Forest for agricultural use—the leading cause of forest loss in Brazil—is also genuinely concerning. The implications of this forest clearing for biodiversity and climate change are easily appreciated. Pesticides and fertilizers used in agriculture also wash easily into the rivers, polluting the water and having deleterious impacts on the health and subsistence of the riverine populations. This agricultural water pollution has become so extensive in the past decade that “giant islands of algae” (sargassum) have appeared in the Caribbean Sea and along the Brazilian Atlantic coast, killing wildlife and discouraging tourism.³⁶

Lack of access to clean water is a significant problem in Brazil, and it is a problem particularly serious for the quilombolas. As mentioned earlier, 75% of those living in quilombolas suffer extreme poverty. Only 15% of quilombola houses have access to a public water network and only 0.2% are connected to a sewage system.³⁷ This situation was particularly challenging during the Covid 19 pandemic, when access to clean water was critical. To try to force the Brazilian state to address the situation, the National Coordination for the Articulation of Rural Quilombola Communities (Coordenação Nacional de Articulação das Comunidades Rurais Quilombolas - CONAQ) filed a constitutionality challenge at the Brazilian Supreme Federal Court (Arguição de Descumprimento de Preceito Fundamental nº 742) requesting emergency orders to mitigate the impact of the pandemic, including the provision of clean water.³⁸

The Committee should urge the government, as part of its obligations under Articles 1.2, 11, 12 and 25 to protect water resources from degradation and pollution, and to guarantee access to clean water and sanitation to the whole population, eliminating the great disparities that currently exist in access to these essential resources. The Committee should in particular urge the government to refrain from the policy of exploring oil at the extremely sensitive mouth of the Amazon river.³⁹

C. Illegal Deforestation (Para 5, List of Issues)

Given the well-known importance of the Amazon Forest for biodiversity and climate regulation, the growing pace of its deforestation of the past few years is a great concern not only for Brazilian citizens, but also for the world. 2019 marked a turning point in Brazilian environmental policy, when the federal government implemented a deliberately anti-environment agenda, based on the denial of climate change, the legitimization of extractive practices (especially by agribusiness and the logging and mining

³⁵ See Octavio Ferraz, Luis Patriani and Patrick Granja, ‘Everybody has mercury poisoning—children, old people, pregnant women.’, Sumauma, 6 February 2023.

³⁶ <https://infoamazonia.org/2021/03/22/destruicao-da-amazonia-alimenta-maior-cinturao-de-algas-do-planeta/>

³⁷ In Loco Preliminary Observations of IACHR’s visit to Brasil, page 11, <https://www.oas.org/es/cidh/prensa/comunicados/2018/238OPport.pdf>

³⁸ Constitutionality Challenge (Arguição de Descumprimento de Preceito Fundamental nº 742), filed by Coordenação Nacional de Articulação das Comunidades Rurais Quilombolas (CONAQ) and others. Rapporteur: Ministro Marco Aurélio. <<https://redir.stf.jus.br/estfvisualizadorpub/jsp/consultarprocessoeletronico/ConsultarProcessoEletronico.jsf?seqobjetoincidente=6001379>

³⁹ <https://www1.folha.uol.com.br/internacional/en/scienceandhealth/2023/08/attorney-generals-opinion-clears-path-for-government-to-progress-with-oil-exploration-in-the-amazon-rivers-mouth.shtml>

industries), and the dismantling of the environmental protection agencies. The plan of that government included cuts to the budgets of environmental agencies—such as the Brazilian Institute of Environment and Renewable Natural Resources (IBAMA) and the National Institute for Space Research (INPE)—as well as limitations of their remits and the harassment of their employees, the introduction of legislation hindering the creation of new conservation units, the concession of conservation units to the private sector, lessened transparency in environmental policies, the reduction of citizen participation in environmental policies, drastic reductions of environmental inspections and fines, the weakening of environmental legislation, and the incentivization of a false “economic development” of the Forest. One of the most harmful regulatory measures of the previous government was the discontinuation of the Action Plan for Prevention and Control of Deforestation in the Legal Amazon (*PPCDAm*). This policy, adopted in 2004, reduced Amazonian deforestation rates by more than 83%,⁴⁰ and led the United Nations to recognize that Brazil's efforts to combat deforestation were impressive and unprecedented. Studies show that the previous federal government took advantage of the pandemic to intensify environmental deregulation and to dismantle the main federal institutions responsible for environmental protection in the country. As a result, the rate of destruction of the Forest has increased drastically and in April 2022 reached the highest rate of destruction since records began.⁴¹ According to the Annual Deforestation Report of MapBiomias, agriculture is now responsible for 97% of deforestation, followed by cattle farming and mining.⁴²

Although the rapid decline of the Amazon Forest towards the “point of no return” is often seen from the perspective of climate change (and Brazil's failure to meet its commitments made in the Paris Agreement), the impact on the peoples of Brazil is also significant.⁴³ The Amazon's deforestation affects the rights to land of indigenous, quilombola, and traditional peoples, as it is most often their land that is deforested by illegal invaders. The deforestation also affects the rights to resources of Brazilian citizens in general, as the whole population will be deprived a crucial natural resource, for the sake of short-term gains for a few individuals and companies.

In its review of the State's commitments to the ICESCR, we urge the Committee to raise issues concerning illegal deforestation as a violation of peoples' rights to resources under Article 1.2 and 25. The Committee should urge the government to protect Brazil's forests from illegal logging and to adopt the following urgent measures:

- 1) To enact into hard law the president's pledge at COP 27 to zero deforestation by the end of 2030;⁴⁴**
- 2) To make sure that the new Action Plan for Prevention and Control of Deforestation in the Legal Amazon (*PPCDAm*) is fully and strictly implemented;**
- 3) To ensure popular participation in the formulation and execution of national policies on the environment, biodiversity, and climate change;**
- 4) To implement transparency mechanisms for environmental inspection in cases of deforestation;**

40 https://transparency-partnership.net/sites/default/files/brazil_gpa_long_0.pdf.

41 <https://www.newscientist.com/article/2319326-amazon-deforestation-in-april-was-the-worst-in-modern-records/>

42 Relatório Anual de Desmatamento 2021 - São Paulo, Brasil. MapBiomias, 2022. Disponível em: <https://s3.amazonaws.com/alerta.mapbiomas.org/rad2021/RAD2021_Completo_FINAL_Rev1.pdf>.

43 “*Desmatamento em Unidades de Conservação da Amazônia Legal: Uma análise da governança ambiental e climática a partir do PPCDAM.*” (“Deforestation in Conservation Units of the Legal Amazon: an analysis of the environmental and climate governance of the Action Plan for Prevention and Control of Deforestation in the Legal Amazon.”) <https://www.terradedireitos.org.br/acervo/publicacoes/pesquisas-academicas/54/desmatamento-em-unidades-de-conservacao-da-amazonia-legal/23717>

44 <https://www.newscientist.com/article/2347429-cop27-brazils-lula-promises-zero-deforestation-in-the-amazon-by-2030/#:~:text=We%20will%20do%20whatever%20it,renewable%20energy%20across%20the%20country.>

5) To implement a Plan for strengthening the protection of conservation units according to the Aichi Targets of the Convention on Biological Diversity;⁴⁵

6) To create indicators for the recognition of indigenous and traditional communities' lands, combining territorial planning and environmental protection.

D. Pesticides

Brazil is the **world leader in the use of pesticides**. The **indiscriminate use of pesticides affects the Brazilian population as a whole**, but above all, rural workers, native peoples, and traditional communities, such as Indigenous peoples, *quilombolas*, and family farmers, having important implications on several rights, as the right to adequate food, water and the right to health, among others.

Pesticide residues in water and food. An official survey verified the presence of a “cocktail” of 27 pesticides in the water of one in every four Brazilian cities (data from the Ministry of Health, analyzed by Brazilian news agencies and by the Swiss organization Public Eye)⁴⁶. Of the 27 pesticides encountered, 22 are prohibited in the European Union, due to proven risks. The levels of the identified pesticides are above the safety limit according to Brazilian and European legislation. The presence of chemical pesticides in food is also very high. During the last years, there has been an **accelerated pace of release of new pesticides in the country** (Official data from the Ministry of Agriculture, Livestock and Food Supply - MAPA), which has been caused by legislative setbacks and public policies for monitoring and authorizing the use of pesticides in Brazil. In 2022, 652 pesticides were released, an increase of 16% compared to 2016 and the highest number ever recorded by the historical series, produced by the General Coordination of Agrochemicals and Related Products (CGAA) of the Ministry of Agriculture and started 23 years ago.⁴⁷

Bill No. 1.4559/2022, known as the Agrototoxic Bill or Poison Bill, is being discussed in the National Congress, which could further aggravate the scenario. Defended by the ruralist caucus and under the justification of “modernization”, such a project could worsen the situation, authorizing, on a large scale, the use of new pesticides in the country. This project intends to centralize the release of pesticides in the Ministry of Agriculture and remove decision-making power from technical bodies, such as the Sanitary Surveillance Agency (ANVISA) and the Brazilian Institute for the Environment and Renewable Natural Resources (IBAMA), in addition to providing for automatic approval in case the analysis exceeds a period of two years.

Furthermore, it is important to note that in the last few years, there was a scenario of persecution and criminalization of researchers who publish scientific studies on the risks and harms arising from the use of pesticides.

Aerial spraying of pesticides as a serious violation of human rights. Spraying is the form of use of pesticides that is most harmful to health and the environment, because, in addition to the direct impacts on human health, it produces indirect risks and environmental impacts, such as water contamination and the death of pollinating insects, which are essential for agricultural production and for biodiversity. Besides the area directly sprayed, the consequences of this practice affect other crops and livestock, and make organic,

⁴⁵ <https://www.cbd.int/sp/targets/>

⁴⁶ Source: Sistema de Informação de Vigilância da Qualidade da Água para Consumo Humano (SISAGUA), of the Ministry of Health, 2018. Sistematizado por Repórter Brasil, Public Eye e Agência Pública. <https://portrasdoalimento.info/2019/04/15/coquetel-com-27-agrotoxicos-foi-achado-na-agua-de-1-em-cada-4-municipios/>; <https://portrasdoalimento.info/agrotoxico-na-agua/>

⁴⁷ <https://g1.globo.com/economia/agronegocios/noticia/2023/02/06/aprovacao-de-agrotoxicos-no-brasil-bate-recorde-anual-desde-2016.ghtml>

agroecological, and traditional production unviable in territories surrounding large monoculture plantations. There are several cases of communities affected by the aerial spraying of pesticides on their homes and even schools, especially Indigenous peoples, quilombolas, and other traditional peoples and communities. This practice has served as an **instrument for territorial expulsion and as a chemical weapon**.

In a research⁴⁸ coordinated by Terra de Direitos and the Permanent Campaign Against Pesticides and For Life,⁴⁹ which analyzed 30 collective cases of human rights violations caused by pesticides in all Brazilian states, it was identified that 21 of the cases refer to the aerial spraying of pesticides. In none of the cases were the victims compensated, and in only 4 cases the violators were held partially accountable. The regulation of aerial spraying of pesticides in Brazil is insufficient to protect the human rights of the affected populations and to avoid the contamination of water sources, environmental protection areas, and the death of pollinating insects.

There is a scenario of **underreporting of cases of contamination and poisoning by pesticides**. In Brazil, there is no accessible and unified channel for making complaints, which curbs the provision of emergency assistance to affected populations and compromises the reparation of the victims.

The committee should urge the state to:

- Adopt more protective criteria for human health and biodiversity regarding the registration of pesticides in the country and reject draft bills that weaken the regulatory framework on the theme.
- Establish criteria for the renewal of licenses for pesticides and adopt a system of periodic re-evaluation of products.
- Review the registration of products not authorized or banned in at least three member countries of the Organization for Economic Cooperation and Development (OECD) or in the European Union.
- Improve national rules on aerial spraying of pesticides, in order to protect native peoples and traditional communities, such as Indigenous peoples, quilombolas, and family farmers.
- Create mechanisms of control and track of the pesticides used by different companies in order to allow for impact studies and assessments to be carried out.
- Facilitate access to justice for affected communities, as well as mechanisms for reporting, accompanying, and inspecting violations.
- Ratify the Escazú Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, as well as the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas.

E. Participation Rights: Free and Prior Consultation

ILO Convention 169 and, specifically, the right to free, prior and informed consultation has been an important tool for the territorial protection and free determination of indigenous peoples, quilombola communities, traditional peoples and communities in Brazil. It can also be an effective instrument for the protection of the rights to resources of Article 1.2 of the ICESCR. There are numerous examples in which a lack of consultation has been the prequel for the suspension of projects that affect these communities. Yet Convention 169 is under attack in Brazil from legal challenges and legislative initiatives. Direct Action of Unconstitutionality nº 5905/RR, filed in March 2018 by the then-Governor of the State of Roraima (one

⁴⁸ Available in portuguese: <https://terradedireitos.org.br/uploads/arquivos/Dossie-Agrotoxicos-e-Violacoes-de-Direitos-%28web%29-%281%29.pdf>

⁴⁹ For more information about the Campaign: <https://contraosagrotoxicos.org/como-denunciar/>

of the most deforested areas in the Amazon) aims at the declaration of partial unconstitutionality of the legislative decrees that incorporated Convention 169 into Brazilian law. It argues that “conditioning the execution of public works to prior consultation with the interested indigenous peoples has caused structural damage to the socioeconomic development of the State of Roraima” and that consultations with the communities cannot deprive the “autonomy and the right to regional development constitutionally guaranteed to the State of Roraima.”

The Committee should express concern that a judicial abrogation of Convention 169 through Direct Action of Unconstitutionality nº 5905/RR would be detrimental to the right to resources.

There are also serious concerns that Legislative Decree Bill (Projeto de Decreto Legislativo - PDL) no. 177/2021, which is currently pending at the National Congress, could seriously undermine the rights of indigenous peoples to participate in the decision-making that will impact their lands and resources. The decree's scope is to “authorize the President of the Republic to denounce the ILO Convention.”⁵⁰⁵¹ This would clearly violate indigenous peoples’ rights to free, prior, and informed consent under the ICESCR.

The Committee should express concern that the National Congress and the Executive may undermine the rights of Indigenous Peoples to be consulted and to participate in decisions that will affect their lands and resources, which would be a violation of Article 1.2.

F. Protection of Peasants, Human Rights Advocates, and Environmental Defenders (para 4, List of Issues)

As we have seen above, communities in Brazil face serious challenges in defending their right to land, to a clean and sustainable environment and all the economic, social and cultural rights implicated. The lack of demarcation, titling, and protection to the right to land leave communities vulnerable to invaders and predatory economic actors, who threaten their cultural survival and livelihood.

In this context, leaders who fight for the land rights of their communities often face threats, violence, and even murder. In the past ten years, the Land Pastoral Commission (Comissão Pastoral da Terra - CPT) recorded 412 murders in Brazil.⁵² According to Global Witness, since 2012 Brazil has been the most murderous country for environmental defenders, with 342 lethal attacks in total.⁵³

“On the Frontline: Violence against Human Rights Defenders in Brazil”,⁵⁴ a survey, conducted by the Brazilian human rights organizations Terra de Direitos and Justiça Global, that covers the cases of violence that occurred between 2019 and 2022, mapped 1171 cases of violence against human rights defenders during the period (physical aggression, threat, murders, attacks, criminalization (institutional), delegitimization, sexual harassment and suicide), of which 169 were murders and 579 were threats. The data show the intensification of territorial and environmental conflicts in the country, with cases registered in all Brazilian states.

On average, 3 defenders were murdered per month in the analyzed period. Almost 80% of cases of violence against human rights were committed in the context of territorial conflicts. Indeed, 140

⁵¹ <https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2279486>

⁵² <https://www.cptnacional.org.br/downlods/category/5-assassinatos> Comissão Pastoral da Terra, Land Conflicts’ series (2013-2022) (Conflitos no Campo).

⁵³ <https://www.globalwitness.org/en/campaigns/environmental-activists/decade-defiance/> The discrepancy in numbers between Global Witness and Comissão Pastoral da Terra is due to the fact that the latter reports on all murders in land conflicts whereas the former only those involving environmental defenders, a narrower but overlapping category.

⁵⁴ <https://terradedireitos.org.br/uploads/arquivos/Data-synthesis-%28EN%29.pdf>

murdered human rights defenders were fighting for the right to land, territory, and an ecologically balanced environment; this is the type of struggle of 78.5% of human rights defender's victims of any type of violence identified by the survey.

Such deaths go largely unmentioned in national and international media, achieving notoriety only when a foreigner is killed (as in the tragic cases of the American nun Dorothy Stang and the English journalist Dom Phillips).

[The Protection Program for Human Rights Defenders, Communicators, and Environmentalists](#) (Programa de Proteção aos Defensores de Direitos Humanos, Comunicadores e Ambientalistas - PPDDH), linked to the Ministry of Human Rights and Citizenship, was instituted in 2004. Yet, as with other programmes mentioned in this report, it is currently highly ineffective, mostly due to lack of political will and inadequate funding.⁵⁵

As part of the rights of peoples to resources defined under Article 1.2., the Committee should urge the government to investigate, process and punish cases of murder of peasants, human rights advocates, and environmental defenders. It should also urge the government to allocate appropriate funding to the Federal Programme to protect human rights defenders.

G. Private Companies and Violation of Resources Rights (Para 3, List of issues)

Many of the violations of resource rights in Brazil are perpetrated not directly by the Brazilian state, but rather by private individuals and companies who take advantage of the neglect or complicity of state actors. There are numerous examples of national and transnational companies whose implication in the depletion of Brazil's natural resources is deep. Several studies and reports have been published in the past demonstrating this in detail (Appendix A list some relevant sources).⁵⁶

Particularly concerning has been the conduct of large companies in the farming, logging and mining sectors. The voracity of these sectors for the natural resources of the Amazon and other important biomes in Brazil has placed a serious threat on the environment through the degradation of hundreds of thousands of hectares of forests and other important habitats as well as the pollution of thousands of kilometers of rivers. (see sections above on deforestation and water pollution).

The cases of Cargill and JBS are only two of the most prominent examples among many. Both Cargill's and JBS's operations in the Amazon have been linked with massive deforestation for the production of cattle (JBS) and soy (Cargill) to feed animals whose meat will eventually be sold in the supermarkets of Europe, China and the USA.⁵⁷ According to Mighty Earth, a leading environmental NGO, "Indigenous Peoples who depend on forests have been forced off of their traditional lands, had their land encroached upon by soy plantations, have experienced sharp increases in cancer, birth defects, miscarriages, and other illnesses linked to pesticides and herbicides used to grow soy."⁵⁸

Cattle ranching is the main driver of the relentless destruction of the Amazon. Brazilian NGO Imazon estimates [90% of deforested Amazon land](#) is occupied by cattle pastures. JBS, the largest meat producer in the world, operates in a manner that allows such illegal and environmentally destructive beef to enter its supply chain. This is exactly what an investigation by Greenpeace, Reporter Brasil and Unearthed uncovered at the end of last year. According to the report, "large quantities of beef from farms linked to deforestation enter[ed] JBS's supply chain. The joint investigation also highlights the links between major international banks and financial institutions and deforestation. At the time when JBS was buying thousands of cattle from a major environmental criminal, it was receiving hundreds of

⁵⁵ <https://sumauma.com/en/os-defensores-nao-defendidos/>

⁵⁶ <https://earth.org/major-companies-responsible-for-deforestation/>

⁵⁷ **Cargill: The Worst Company In the World** <https://stories.mightyearth.org/cargill-worst-company-in-the-world/>

⁵⁸ Idem.

millions of dollars in funding from British, European and American banks and asset managers including Santander, Barclays and BlackRock.”⁵⁹

The Committee should take the opportunity of this review to urge the Brazilian government, legislatures, judiciary and police to protect its citizens’ rights to natural resources from harmful exploitation by national and international companies, in particular through implementation of existing laws that impose liability for human rights violations and environmental harm and also duties of due diligence on transnational companies.

VI. Conclusion

We are grateful to the Committee on Economic, Social and Cultural Rights for this opportunity to address them at this critical time for Brazil. Our focus in this shadow report is the resource rights of peoples, as affirmed by Article 1.2 and Article 25 of the ICESCR. As the report hopefully makes clear, resources’ rights of the Brazilian people as a whole, and particularly indigenous, traditional and quilombola peoples, are currently under significant and concerning pressure from the action and omission of government and private actors, and from initiatives currently pending in the National Congress and in the judiciary. And the same is true, unfortunately, of many other countries across the world.

This is therefore a crucial moment for the Committee **robustly to affirm the resource rights of all peoples: both of indigenous peoples and of the national peoples that are the citizens of an independent state.** Violations of resource rights are particularly concerning as they are often closely connected with **violations of other fundamental human rights** including **life, physical integrity, and political participation**, as well as **subsistence and other socio-economic rights** of peoples. Moreover, when natural resource rights are violated, environmental degradation is much more likely to take place.⁶⁰ A violation of natural resource rights is therefore often also a **violation of the right to a clean, healthy and sustainable environment recognized by the United Nations ([Resolution 76/300](#), of 28 July 2022).**

For all these reasons, the protection of resource rights recognized in Article 1 and 25 of the ICESCR and 1 and 47 the ICCPR has never been more critical. In our times of environmental degradation and climate change, protecting the resource rights of indigenous peoples and of national peoples has the potential to benefit not only those peoples, but humanity as a whole.

We respectfully recommend that the Committee

1. Robustly affirm the natural resource rights of all peoples: both the rights of indigenous peoples and of the Brazilian people.
2. Urge the government not to waver in its commitment to fully respect resource rights, and to resist the pressures to adopt policies that are detrimental to these rights.
3. Urge the government to speed up land reform and adopt measures to address political and judicial resistance to it.

⁵⁹ JBS admits to buying almost 9,000 cattle from ‘one of Brazil’s biggest deforesters’, <https://unearted.greenpeace.org/2022/11/11/jbs-cattle-brazils-biggest-deforester-amazon/>

⁶⁰ See Luis Patriani, “[Where Indigenous land rights prevail in Brazil, so does nature, study finds](#)”, Mongabay, 6 April 2023; Report of the Special Rapporteur on the rights of indigenous peoples, UN Doc. A/77/238 (19 July 2022); UNEP: *Land Restoration for Achieving the Sustainable Development Goals* (UNEP, 2019); FAO & FILAC (2021) *Forest Governance by Indigenous and Tribal Peoples: An Opportunity for Climate Action in Latin America and the Caribbean*; IUCN (2016) *IUCN’s Rights-Based Approach: A Systematization of the Union’s Policy Instruments, Standards and Guidelines*.

4. Urge the government not to put large infrastructure projects ahead of indigenous peoples' rights and environmental concerns. Of particular concern are three recent developments: (1) the approval an 'urgency requirement' for Parliament's vote on Bill 490/2007, which significantly reduces the right to land of indigenous peoples; (2) the approval in Parliament in May 2023 of legislation that transfers the power of demarcation of indigenous lands from the Indigenous Peoples Foundation (FUNAI) to the Ministry of Justice and (3) the federal government's declared intention to explore oil at the environmentally sensitive area of the mouth of the Amazon river.
5. Urge the government to commit sufficient resources to the demarcation agencies, speed up the process of granting quilombola communities title to their lands and implement policies that improve the economic situation of these communities while the process of granting land deeds is underway.
6. Urge the government to speed up the process of recognition and protection of traditional peoples' and communities' rights to land.
7. Urge the government to protect water resources from degradation and pollution, and to guarantee access to clean water and sanitation to the whole population.
8. Urge the government to protect Brazil's forests from illegal logging and to adopt the following measures:
 - a. To enact into hard law the president's pledge at COP 27 to zero deforestation by the end of 2030;
 - b. To make sure that the new Action Plan for Prevention and Control of Deforestation in the Legal Amazon (*PPCDAm*) is effectively and strictly implemented;
 - c. To ensure popular participation in the formulation and execution of national policies on the environment, biodiversity, and climate change;
 - d. To implement transparency mechanisms for environmental inspection in cases of deforestation;
 - e. To implement a plan for strengthening the protection of conservation units according to the Aichi Targets **of the Convention on Biological Diversity**;
 - f. To create indicators for the recognition of indigenous and traditional communities' lands, combining territorial planning and environmental protection.
9. Express concern that the Judiciary, the National Congress and the Executive may undermine the rights of Indigenous Peoples to be consulted and to participate in decisions that will affect their lands and resources, which would be a violation of Article 1.2.
10. Urge the government to investigate, process and punish cases of murder of peasants, human rights advocates, and environmental defenders. The government should also allocate appropriate funding to the Federal Programme to protect human rights defenders.
11. Urge the Brazilian government, legislatures, judiciary and police to protect its citizens' rights to natural resources from harmful exploitation by national and international companies, in particular through implementation of existing laws that impose liability for human rights violations and environmental harm and duties of due diligence to transnational companies.



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Annex 1 – Selected Studies and Reports on the Involvement of Private Companies in Resource Rights Violations in Brazil

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