



FACULTY OF LAW  
Lund University

Amanda Oliveira

To Keep the Forest Standing:  
Analyzing Proposals to Safeguard the Brazilian  
Amazon Through Mandatory Due Diligence

JAMM07 Master Thesis

International Human Rights Law  
30 higher education credits

Supervisor: Daria Davitti

Term: Spring 2023

# Contents

<b>SUMMARY</b> .....	<b>1</b>
<b>PREFACE</b> .....	<b>2</b>
<b>ABREVIATIONS</b> .....	<b>3</b>
<b>1. Introduction</b> .....	<b>4</b>
1.1. Background and Problem.....	4
1.2. Purpose and Research Questions.....	6
1.3. Methodology and Material.....	7
1.4. Outline.....	8
1.5. Delimitations.....	8
<b>2. Protection and conservation status of the Brazilian Amazon</b> .....	<b>10</b>
2.1. Highlighting the importance of the Amazon Rainforest for the world.....	10
2.2. Brazilian Amazon and its main threat – business-related deforestation.....	14
2.3. Environmental Law – where are we now in the legal protection of the Amazon?.....	17
2.3.1. <i>Environmental protection evolution in Brazil</i> .....	17
2.3.1.1. <i>The period when protection was only on paper</i> .....	17
2.3.1.2. <i>A new era for environmental protection</i> .....	19
2.3.1.3. <i>A Backslide in environmental protection: challenging times</i> .....	23
2.3.2. <i>The right to a healthy environment as a human right</i> .....	24
<b>3. Regulating Business and Human Rights – the Human Rights Due Diligence Framework</b> .....	<b>27</b>
3.1. Human rights due diligence framework in International Law.....	27
3.1.1. <i>States obligations to regulate human rights and businesses</i> .....	27
3.1.2. <i>Business obligations to address human rights impacts</i> .....	34
3.2. Human rights due diligence framework in Brazil.....	35
3.2.1. <i>The Report of the UN Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises in Brazil</i> .....	39
3.2.2. <i>The OECD Responsible Business Conduct Policy Reviews</i> .....	40
3.3. Human rights compliance initiatives adopted by cattle businesses operating in the Amazon.....	42
<b>4. Strengthening the HRDD framework in Brazil to protect the Amazon</b> .....	<b>44</b>
4.1. Proposing a short-term goal: a national mandatory due diligence law.....	44
4.1.1. <i>The necessity of a mandatory due diligence law</i> .....	46
4.1.2. <i>Essential elements for an effective mandatory national due diligence law</i> .....	48
4.2. Proposing a long-term goal: a Latin America Agreement on Business and Human Rights.....	52
<b>5. Conclusion</b> .....	<b>54</b>
<b>Bibliography</b> .....	<b>57</b>

# Summary

The Brazilian state has failed to protect the Amazon rainforest, its biodiversity, and its forest-dependent population. Scientific evidence proves the vital importance of the Amazon biome for life on Earth, as well as its crucial role in maintaining global climate balance. Recently, deforestation rates in Brazil have skyrocketed. A wide range of civil society and official reports show that deforestation linked to business activities in the region is the main threat to keeping the Brazilian Amazon standing. This thesis argues that the Brazilian National Guidelines on Business and Human Rights, which rely on voluntary adherence, do not effectively protect the Amazon. Hence, it will explore the legal context, international frameworks, and the lack of compliance by Brazilian companies with human rights and environmental standards. In the end, this thesis proposes enacting a mandatory due diligence law in Brazil, inspired by German and French models, to hold businesses accountable and ensure comprehensive efforts to protect the Amazon. Lastly, the thesis suggests a long-term objective of a Latin American agreement to create a common environmental due diligence framework for the region, focusing on forest-risk commodities, fostering collective action, and protecting the Amazon.

# Preface

This thesis is the result of my dissatisfaction with the ongoing human rights violations in Brazil. For many years, working as a legal advisor at the Federal Public Office gave me the personal satisfaction of fighting on the right side to address the profound inequalities in my country. However, a moment arrived when the research path presented itself as the most impactful way to bring about the social transformations I wanted to experience.

Therefore, my eternal gratitude to the Swedish Institute and Lund University for making a lifelong dream come true. This thesis has been produced during my scholarship period at Lund University, funded by the Swedish Institute.

Special thanks to my supervisor Professor Daria Davitti, who has always encouraged me and refined my ideas throughout this process.

Furthermore, I am grateful to the brilliant and kind researchers at the Raoul Wallenberg Institute, Dr. Michael McEachrane, Dr. Desmond Johnson, and Dr. Claudia Ituarte-Lima, for their valuable support and engaging discussions on my thesis work. Dear Dr. Demond Johnson, you will be truly missed by us all.

Finally, I would not have been able to complete this work without the support of Leila Bandeira and Pedro Cassiano.

Dear Leila Bandeira, I could never thank you enough for all your kindness. You helped me to find peace and clarity, especially in the most difficult moments of these two years. We did it.

My deep gratitude to my dear brother Dr. Pedro Cassiano, who always believed in me throughout this master's degree. Your existence lights my life with meaning and joy. I love you, my brother.

Lund, May 24, 2023.

Amanda Oliveira

# Abbreviations

APP	Permanent Preservation Areas
ARPA	Amazon Protected Areas Program
BNDES	Brazilian Development Bank
CONAMA	National Environmental Council
COP	Conference of the Parties
EU	European Union
HRDD	Human Rights Due Diligence Framework
IBDF	Brazilian Institute for Forestry Development
IBAMA	Brazilian Institute for the Environment and Renewable Natural Resources
INPE	Brazilian National Institute for Space Research
IPCC	Intergovernmental Panel on Climate Change
NCP	National Contact Point
NGO	Non-governmental Organization
OECD	Organisation for Economic Cooperation and Development
PPCDAm	Action Plan for Prevention and Control of Deforestation in the Legal Amazon
RAISG	Amazon Network of Georeferenced Socio-Environmental Information
RBC	Responsible Business Conduct
SEMA	Special Secretariat for the Environment
SNUC	National System of Conservation Units
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNGP	United Nations Guiding Principles on Business and Human Rights

# 1 Introduction

## 1.1. Background and Problem

“The Amazon Forest is of worldwide importance due to its immense socio-environmental diversity”, states the United Nations Development Program (UNDP) in its research documents on the 2030 Agenda for Sustainable Development implementation.<sup>1</sup> Housing around half of the world's biodiversity and providing crucial ecosystem goods and services, the Amazon Rainforest plays a “critical role in the climate and functioning of ecosystems at the local, regional, and global levels”.<sup>2</sup> Furthermore, according to the Network of Solutions for the Sustainable Development of the Amazon (SDSN Amazônia), the Amazon River alone supplies approximately 15% of all the world's fresh water entering the oceans.<sup>3</sup> While the Amazon biome is not exclusive to Brazil in Latin America, 60% of the forest is within Brazilian territory, crossing all of its nine states.<sup>4</sup> Besides being the nation with the largest portion of the Amazon; Brazil is also the country with the highest deforestation rate.<sup>5</sup> Efforts to protect the rainforest in Brazil have faced considerable challenges in recent years, especially regarding businesses operations in the area. Between 2003 and 2015, Brazil witnessed its largest reduction in deforestation due to protectionist laws and investments in public enforcement systems. At that time, the country seemed to be on the right path toward strong environmental protection, in line with international agreements and global concerns around the need to preserve the Amazon. However, after the elections in 2018, the situation radically changed. The lack of concern for environmental protection in public policy led to levels of deforestation in the Amazon never seen before. Brazilian National Institute for Space Research (INPE)

---

<sup>1</sup> Collen, W. et al. (2016) ‘Policy Paper – The Amazon and Agenda 2030, UNDP Regional Centre for Latin America and the Caribbean, Panamá’. Available at: <https://www.undp.org/latin-america/publications/amazon-and-agenda-2030> (Accessed 3 March 2023).

<sup>2</sup> *Ibidem*. P. 3.

<sup>3</sup> Viana, V. et al. (2014) ‘Soluções para o desenvolvimento sustentável da Amazônia. Cienc. Cult., São Paulo, v. 66, n. 3, p. 25-29’, Sept. 2014. Available at: [https://sdsn-amazonia.org/wp-content/uploads/2021/03/2014\\_Solucoes-para-o-desenvolvimento-sustentavel-da-Amazonia.pdf](https://sdsn-amazonia.org/wp-content/uploads/2021/03/2014_Solucoes-para-o-desenvolvimento-sustentavel-da-Amazonia.pdf) (Accessed 3 March 2023).

<sup>4</sup> The Brazilian states that are home to the Amazon Forest are Acre, Amapá, Amazonas, Maranhão, Mato Grosso, Pará, Rondônia, Roraima and Tocantins.

<sup>5</sup> RAISG (2014) ‘Amazonia: Densidad de Carbono - Territorios Indígenas - Áreas Naturales Protegidas, RAISG/COICA/WHRC/EDF’. Available at: <https://www.raisg.org/pt-br/publicacao/mapa-de-densidade-de-carbono/> (Accessed: 3 March 2023).

announced record areas of deforestation in 2022, with the biggest leap in forest clearing having occurred between 2019 and 2022.

During COP 27 in November 2022, the newly elected president of Brazil Luís Inácio Lula da Silva stressed that climate security for the world depends on preserving the Amazon. He pledged to eliminate deforestation and degradation of the Amazon biome by 2030, while pushing for a responsible use of the forest and its natural resources. Sustainability is indeed a crucial driver for a considerable drop in deforestation levels, but not the only. The Amazon Network of Georeferenced Socio-Environmental Information (RAISG) data show that 84% of the cause of this deforestation is linked to large scale agricultural and livestock activity in the region, that is, business activities. Nonetheless, Brazilian laws – even before the greatest period of deforestation in the country’s history – never required companies to assess human rights adverse impacts and the law still fails to do so. In fact, environmental licensing, especially for large business projects,<sup>6</sup> is increasingly flexible in the country. Hence, “despite the numerous domestic and international regulations in place to protect the Amazon rainforest from deforestation, unfortunately, these conventions lack effective means for promoting accountability”.<sup>7</sup> To restore Amazon conservation before the point of no return is reached,<sup>8</sup> sustainability will need to be coupled with laws aimed at obliging companies to respect human rights and the environment in their outcomes. Based on international standards and foreign laws regarding the framework brought by the United Nations Guiding Principles on Business and Human Rights (UNGPs), the implementation of a mandatory and detailed national due diligence legal instrument is urgently needed.

---

<sup>6</sup> World Bank (2019) ‘A importância fundamental da biodiversidade da Amazônia para o mundo: uma entrevista com Thomas Lovejoy’, World Bank News [online]. Available at: <https://www.worldbank.org/pt/news/feature/2019/05/22/why-the-amazons-biodiversity-is-critical-for-the-globe> (Accessed 10 March 2023).

<sup>7</sup> Perez, R. (2015) ‘Deforestation of the Brazilian Amazon under Jair Bolsonaro’s Reign: A Growing Ecological Disaster and How It May Be Reduced’, University of Miami Inter-American Law Review, 52(2), pp. 195–238. Available at: <https://search.ebscohost.com/login.aspx?direct=true&AuthType=ip,uid&db=edshol&AN=edshol.hein.journals.unmialr52.16&site=eds-live&scope=site> (Accessed: 11 April 2023). P. 197.

<sup>8</sup> Radwin, M. (2022). ‘Deforestation is pushing Amazon to ‘point of no return’: WWF report’. Mongabay [online]. Available at: <https://news.mongabay.com/2022/11/deforestation-is-pushing-amazon-to-point-of-no-return-wwf-report/> (Accessed 10 March 2023)

## **1.2. Purpose and Research Questions**

This thesis aims to discuss the Brazilian State's failure to fulfill its obligation to protect the Amazon against human rights abuses regarding environmental protection by large businesses operating in the Rainforest. Deforestation driven by beef companies is the main cause of degradation in the Amazon. As will be argued, Brazil has been disrespecting Principle 3 of the UN Guiding Principles on Business and Human Rights, allowing for non-sustainable exploitation of the forest while not requiring any consequential implementation of a human rights due diligence framework (HRDD). The focus of this study is the following research question and sub-questions:

### **Research question**

1. To what extent is the UN Human Rights Due Diligence framework implemented in Brazil and is it contributing to the protection of the Amazon rainforest?

### **Sub-questions**

2. What is the current legal context for protecting the Amazon rainforest?
3. Is international or national law regarding human rights due diligence being implemented in Brazil and why?
4. What are Brazil's human rights due diligence responsibilities about regulations for livestock businesses operating in the Amazon, and are they particularly strong and urgent given the environmental crises of climate change and biodiversity loss facing the planet?
5. What other steps – short and long-term – could be taken to implement a human rights due diligence framework for companies operating in Amazon?



### 1.3. Methodology and Material

This thesis employs a legal-doctrinal methodology. To answer the research questions, the method undertaken will entail **a)** an analysis of the legal framework governing the relationship between business and human rights regarding Amazon protection; and **b)** a legal and critical interpretation of the existent body of Brazilian law requiring businesses to respect human rights and the environment in their outcomes.

The use of the legal-doctrinal methodology aims to identify, examine, and review the legal framework concerning Amazon Forest protection and deforestation. In other words, this methodology aims to uncover “coherence and clarity in all the legal materials bearing on the dilemma under investigation”<sup>9</sup> to conduct a critical analysis of the identified legal structure. By investigating the judicial framework and comparing it with reports and reviews, this study intends to assess legal strengths, weaknesses, and the practical implications for addressing deforestation and sustainability in the Brazilian Amazon.

Based on the idea that interpreting is also a path of science,<sup>10</sup> the use of legal interpretation tries to understand the context behind laws about human rights and due diligence for businesses regarding Amazon protection. Hence, the analysis employed in this study also considered which actors designed the framework in force nowadays in Brazilian legal system. As a result, some explanations can emerge for why international or national law is not being implemented and if it is having the desired effect or not. It must be borne in mind that the legislative process is more than just a set of technical procedures; it is also the confluence of social and political discussions ongoing while the legislation is being created. For this reason, interpretation can be a tool to unveil potential clarifications for this thesis problem.

---

<sup>9</sup> Egan, S. (2018) ‘The doctrinal approach in international human rights law scholarship.’ In Lee McConnell & Rhona Smith (Eds.), *Research methods in human rights* (pp. 24–41). Routledge. <https://doi-org.ludwig.lub.lu.se/10.4324/9781315672632-3>. P. 27.

<sup>10</sup> Scheinin, M. (2017) ‘Chapter 2: The art and science of interpretation in human rights law. Edward Elgar Publishing’ (*Handbooks of Research Methods in Law series*). doi:10.4337/9781785367793.00009. P. 17-37.

To support this study and its conclusions, the materials used consisted of primary and secondary sources. For primary sources, this thesis will rely on international law and Brazilian law. As for secondary sources, this work will analyze academic literature, NGO's reports, reviews by two international organizations about companies operating in Brazil, investigative journalistic news, as well as data collected and interpreted by civil society and official public bodies.

#### **1.4. Outline**

This thesis is organized into five chapters. The first chapter presents the background, problem, purpose, research questions, methodology, material, outline, and delimitations. The second chapter will contextualize and justify the protection of the Amazon in Brazil, highlighting its significance in maintaining the global climate balance, biodiversity, and the livelihoods of forest-dependent populations. In addition, it will discuss the critical phase of degradation of the biome today, whose main cause is deforestation linked to the large cattle agribusiness in the region. The chapter will also examine the evolution of environmental legal protection in Brazil, including recent setbacks in this area. The third chapter will critically analyze the application by the Brazilian State of international norms regarding the obligation to respect human rights and corporate responsibility. Additionally, it will discuss reports produced by international organizations that assess the compliance of companies operating in Brazil with human rights standards. The fourth chapter aims to provide proposals for enhancing respect for human rights and environmental protection by Brazilian companies, categorized into short-term and long-term objectives. These goals intend to contribute to the reduction of deforestation rates in the Amazon and curb violations against local populations and forest defenders. Finally, the fifth chapter serves as a conclusion, presenting the final considerations and conclusions drawn from the entire thesis.

#### **1.5. Delimitations**

Deforestation in the Brazilian Amazon is caused by various business activities, including livestock, mining, and soy plantations. To narrow the scope of this work and provide an

in-depth perspective, this thesis focuses on investigating the main driver for deforestation in the Amazon, namely the cattle business. Therefore, the analysis concentrates on the Brazilian beef industry and its compliance with human rights norms and environmental protection. However, although mining and soy plantations are not discussed, it is worth highlighting that the proposed mandatory due diligence law at the end of this study would also address the harms caused by those operations to some extent.

Furthermore, concerning the harms caused by companies operating in the Amazon, deforestation is accompanied by a wide range of human rights and environmental violations. For instance, reports from NGOs and activists often assert that agribusinesses disregard free, prior, and informed consent of indigenous peoples when conducting their activities. They may also forcefully displace local communities and initiate land conflicts with the forest's original inhabitants. Once again, due to time and scope constraints, the discussions were limited to issues related to forest clearing and did not delve into explaining these violations in detail, as doing so would require analyzing a broader spectrum of national and international laws.

Finally, during discussions at the seminars with other colleagues, it was pointed out that Brazil's failure to protect the Amazon and its population could potentially involve addressing a case of transboundary damage under international law. Acknowledging the State liability for cross-border harm related to climate change and biodiversity loss would provide new avenues for confronting the issue before International Courts for example. While this question poses an intriguing discussion, given to the objective of this study, I was unable to stretch the research questions to that extent. Nevertheless, I believe it would be an exciting topic to explore in the future.

## 2 Protection and conservation status of the Brazilian Amazon

### 2.1. Highlighting the importance of the Amazon Rainforest for the world

Climate regulation, biodiversity maintenance, human health support, and livelihood sustenance are crucial ecosystems services provided by forests.<sup>11</sup> According to Robert Walker, “the greatest present-day concern focuses on tropical deforestation, which drives species to extinction, releases greenhouse gases, and undermines the sustainability of local environments”.<sup>12</sup> Considering its size and biodiversity, the Amazon Forest stands out as a unique and unparalleled ecosystem worldwide, housing endemic and endangered flora and fauna.<sup>13</sup> To illustrate the global relevance of the Amazon biome, three main aspects need to be discussed: its contribution to the greenhouse effect, its rich biodiversity, and the forest-dependent population. Firstly, in terms of global warming, there is a close link between a healthy forest and the retention of greenhouse gases that trap heat in Earth’s atmosphere, since trees play “a vital role in keeping our planet livable”.<sup>14</sup> In other words, “a rainforest influences the global carbon cycle and hemispheric hydrological systems, essential for regional and global economic activity and livelihood”.<sup>15</sup> Naturally, the Amazon absorbs and stores carbon dioxide from the atmosphere through photosynthesis, maintaining the necessary levels of greenhouse gases to keep global warming within vital limits. However, over the past fifty years, human activities have been disrupted this natural cycle and accelerated global warming to

---

<sup>11</sup> Aleixo, L.S.P. & Junior, M.K.A. (2022) ‘Deforestation and climate change in Brazil – legal and policy gaps’. OECD Watch, The Netherlands. Available at: [oecdwatch.org/wp-content/uploads/sites/8/2022/03/Bridging-Brazilian-governance-gaps-Deforestation-and-climate-change.pdf](https://oecdwatch.org/wp-content/uploads/sites/8/2022/03/Bridging-Brazilian-governance-gaps-Deforestation-and-climate-change.pdf) (Accessed 5 April 2023).

<sup>12</sup> Walker, R. (2003) ‘Mapping Process to Pattern in the Landscape Change of the Amazonian Frontier’, *Annals of the Association of American Geographers*, 93(2), pp. 376–398.

<sup>13</sup> Perez, R. (n. 7).

<sup>14</sup> Laurence, W.F. (1999) ‘Gaia’s Lungs’, *Natural History*, 108(2), p. 96. Available at: <https://search.ebscohost.com/login.aspx?direct=true&AuthType=ip,uid&db=a9h&AN=1587448&site=eds-live&scope=site> (Accessed: 7 March 2023).

<sup>15</sup> Assail, T. et al. (2021). ‘Environmental Framework: For lending and investing in sustainable intensification of cattle ranching in the Amazon and Cerrado. Full Report’ [online] The Nature Conservancy. Available at: <https://www.nature.org/content/dam/tnc/nature/en/documents/brasil/tnc-environmentalframeworkcattle.pdf> (Accessed 6 April 2023). P. 11.

dangerous levels, as concluded in the 2021 IPCC Report.<sup>16</sup> Deforestation in the Amazon, whether through tree cutting or burning, leads to the release of stored carbon dioxide into the atmosphere, one of the main gases responsible for the greenhouse effect. Scientists have been warning that if deforestation rates exceed 20 to 25%, there is a risk of reaching a point of non-return,<sup>17</sup> causing the rapid transformation of the Amazon into a non-forest ecosystem.<sup>18</sup> During the COVID-19 pandemic, global greenhouse gas emissions temporarily dropped by 7% due to economic slowdown. However, in Brazil there was an increase of this emissions in 9.5% just for the year of 2020. According to the Climate Observatory study, this growth was mainly attributed to deforestation in the Amazon, resulting in a per capita emissions four times higher than that of the United States of America during that year.<sup>19</sup> Hence, these statistics are concerning, given the Amazon “major role in climate change and regional changes in microclimate”.<sup>20</sup> The distinguishing feature of climate change is its global causes and consequences, coupled with long-term and persistent impacts. Without the world's largest rainforest, the greenhouse effect would escalate, triggering a global chain of events with persistent and long-term impacts, such as frequent droughts, severe storms, heat waves and climate fires.<sup>21</sup>

In addition to its importance in climate regulation, the Amazon needs to be seen and protected because of two other equally significant aspects: biodiversity and the forest-dependent population. First, there is no dispute to the fact that “the tropics hold a disproportionate amount of global biological diversity and are key to meeting the international community’s aims of socially just sustainable development and effective

---

<sup>16</sup> Stern, N.H. (2007) ‘The economics of climate change. the Stern review.’ Cambridge University Press. Available at: <https://search.ebscohost.com/login.aspx?direct=true&AuthType=ip,uid&db=cat02271a&AN=atoz.ebs2677842e&site=eds-live&scope=site> (Accessed: 6 April 2023).

<sup>17</sup> Radwin, Maxwell (n. 8).

<sup>18</sup> Tropical Forest Alliance (2022). ‘IFACC Report. Finance for a Forest-Positive Future: the transition to sustainable cattle and soy production.’ [online] Available at: [https://www.tropicalforestalliance.org/assets/IFACC/IFACC\\_REPORT\\_Low.pdf?vid=3](https://www.tropicalforestalliance.org/assets/IFACC/IFACC_REPORT_Low.pdf?vid=3) (Accessed 6 April 2023). P. 6.

<sup>19</sup> Potenza, R.F. et al. (2021). ‘Análise das emissões brasileiras de GASES DE EFEITO ESTUFA e suas implicações para as metas climáticas do Brasil 1970 – 2020’, [online], Sistema de Estimativas de Emissões e Remoções de Gases de Efeito Estufa (SEEG). Available at: [https://seeg.eco.br/wp-content/uploads/2023/03/SEEG9\\_DOC\\_ANALITICO\\_2021\\_FINAL.pdf](https://seeg.eco.br/wp-content/uploads/2023/03/SEEG9_DOC_ANALITICO_2021_FINAL.pdf) (Accessed: 5 April 2023), p. 37.

<sup>20</sup> Assail, T. et al. (n. 15). P. 11.

<sup>21</sup> Perez, R. (n. 7).

biodiversity conservation”.<sup>22</sup> The uniqueness of the Amazon includes being home to a remarkable diversity of life and species, along with the wide range of solutions that this biodiversity system provides to biological challenges worldwide.<sup>23</sup> For instance, chemical compounds and genetic materials found in the Amazon have been extensively used in the development of medicines, food technology and sustainable products. Nonetheless, not all existing biodiversity in the rainforest has been studied and there are still a wide range of species awaiting discovery.<sup>24</sup> Therefore, the protection of Amazonian biodiversity is of international interest, considering the benefits – known and yet to be discovered – that it provides to human health and ecosystems across the planet.<sup>25</sup> Furthermore, it is scientifically proven that the loss of a species or an ecosystem is irreversible. As a result, biodiversity is irreplaceable, making any activity that threatens the preservation of the forest unacceptable. This irreplaceability of biodiversity has provoked a biocentric turn, particularly evident in the laws and courts of some Latin American countries.<sup>26</sup> The ongoing debates on the subject have the potential to raise the Amazon biome to a new international level of protection by giving its personality entitled of rights<sup>27</sup> and, above all, putting an end to the myth of nature's inexhaustibility that currently exists in Brazil.<sup>28</sup>

---

<sup>22</sup> Barlow, J. et al. (2018) ‘The future of hyperdiverse tropical ecosystems’, *Nature: International weekly journal of science*, 559(7715), pp. 517–526. doi:10.1038/s41586-018-0301-1.

<sup>23</sup> World Bank (n.6).

<sup>24</sup> This gap in knowledge about Amazonian biodiversity is called the *Linnean Shortfall*. “*The term alludes to the Swedish naturalist who created the binomial system of zoological classification, initiating the scientific description and systematic review of biological diversity. The deficit refers to the large discrepancy that exists between the number of organisms formally described by science (about 1.7 million) and what is estimated to be discovered and described (something between 3 and 100 million!)*.” Marcon, J.L., Menin, M., Araújo, M.G.P., and Hrbek, T. (2012) *Biodiversidade Amazônica: caracterização, ecologia e conservação*. Edua, Manaus, p. 14.

<sup>25</sup> Fearnside, P.M. (1999) ‘Biodiversity as an environmental service in Brazil’s Amazonian forests: Risks, value and conservation’, *Environmental Conservation*, 26, pp. 305-321. Available at: <https://doi.org/10.1017/S0376892999000429>.

<sup>26</sup> Dalla Riva, L. and Melo, M.P. (2022) ‘Rights of Nature in Brazil: limits and possible interpretations of the 1988 Constitution’, *Rivista Ordines*, vol. 1, pp. 292-317. Available at: <http://www.ordines.it/wp-content/uploads/2022/08/11-MELO-DALLA-RIVA.-Rights-of-the-Nature-in-Brazil.pdf> (Accessed: 8 April 2023).

<sup>27</sup> Wesche, P. (2021) ‘Rights of Nature in Practice: A Case Study on the Impacts of the Colombian Atrato River Decision’, *Journal of Environmental Law*, 33(3), pp. 531–556. Available at: <https://search-ebshost-com.ludwig.lub.lu.se/login.aspx?direct=true&AuthType=ip,uid&db=edshol&AN=edshol.hein.journals.jenv33.35&site=eds-live&scope=site> (Accessed: 10 April 2023).

<sup>28</sup> Girardi, G. (2023) ‘O mito da natureza inesgotável e do mato sem valor impulsionou desmatamento no Brasil’, [online] *Estadão*, Available at: <https://www.estadao.com.br/sustentabilidade/o-mito-da-natureza-inesgotavel-e-do-mato-sem-valor-impulsionou-desmatamento-no-brasil/> (Accessed: 9 April 2023).

Finally, one cannot lose sight of the Amazon forest-dependent population, including its indigenous people. Approximately 30 million individuals live in the Amazon, including 1.6 million members from nearly four hundred different indigenous communities.<sup>29</sup> Deforestation for pasture often leads to land conflicts with the original inhabitants of the area, while climate change resulting from deforestation initially impacts those directly living in forest ecosystems. Despite being the most vulnerable to the adverse effects of climate change due to their geographical location, “their local narratives of indigenous people are frequently neglected in scientific discourses on adaptation to climate change”.<sup>30</sup> Not only does the Climate Observatory study mentioned earlier, but studies conducted by RAISG<sup>31</sup> also reinforce that indigenous people and conservation units are fundamental in preserving the rainforest.<sup>32</sup> In Brazil, the states of Amapá and Amazonas possess the largest areas of indigenous lands and conservation units, alongside low deforestation rates. Consequently, these states exhibit the most negative rates for carbon emissions in the country, indicating that the vegetation in these regions sequesters more carbon from the atmosphere than it emits.<sup>33</sup> The predominant preservationist consciousness among indigenous populations stems from their biocentric view of the forest. By perceiving nature and humanity as equally important components of the same ecosystem, safeguarding the forest at any cost also ensures human survival. Hence, data collection and research papers within these communities substantiate the legitimacy of indigenous knowledge systems in preserving the forest<sup>34</sup> and maintaining its biodiversity, which benefits the entire world.<sup>35</sup>

---

<sup>29</sup> Tropical Forest Alliance (n. 18), p. 6.

<sup>30</sup> Bauer, T., de Jong, W. & Ingram, V. (2022). ‘Perception matters: An Indigenous perspective on climate change and its effects on forest-based livelihoods in the Amazon.’ *Ecology and Society*, 27(1), 17. doi: 10.5751/ES-12837-270117 27

<sup>31</sup> Ecociencia (2019) ‘Nuevo estudio hace el balance de las reservas de carbono en la Amazonia’, [online] Available at: <https://ecociencia.org/nuevo-estudio-hace-el-balance-de-las-reservas-de-carbono-en-la-amazonia/> (Accessed: 10 April 2023).

<sup>32</sup> Bourscheit, A. (2023) ‘Parques e TIs são as tábuas de salvação para onças na Amazônia’, [online], *O Eco*. Available at: <https://oeco.org.br/reportagens/parques-e-tis-sao-as-tabuas-de-salvacao-para-oncas-na-amazonia/> (Accessed: 10 April 2023).

<sup>33</sup> Potenza, R.F. et al. (n. 19), p. 37.

<sup>34</sup> Carvalho, S. et al. (2020) ‘A changing Amazon rainforest: Historical trends and future projections under post-Paris climate scenarios’, *Global and Planetary Change*, 195. doi:10.1016/j.gloplacha.2020.103328.

<sup>35</sup> Marcus Vinícius C. Schmidt et al. (2021) ‘Indigenous Knowledge and Forest Succession Management in the Brazilian Amazon: Contributions to Reforestation of Degraded Areas’, *Frontiers in Forests and Global Change*, 4. doi:10.3389/ffgc.2021.605925.

## 2.2. Brazilian Amazon and its main threat – business-related deforestation

Brazil has a polluting profile associated with a specific type of emission: deforestation.<sup>36</sup> Consequently, the nation ranks as the fifth-largest climate polluter,<sup>37</sup> yet it has failed to derive any positive outcomes for its gross domestic product. In recent years, Brazil has experienced increased deforestation while simultaneously becoming poorer, indicating that economic growth has not led to equitable wealth distribution among the population.<sup>38</sup> Since the 1950s, the Amazon has lost 19% of its vegetation cover, primarily due to the development of large businesses activities within forest areas. The commodity market and technological innovations in the late 1990's boosted the expansion of soy cultivation and livestock in the Amazon, increasing deforestation rates by pushing the agricultural frontier into the rainforest.<sup>39</sup> Various studies produced by civil society and the United Nations Environment Program highlight that cattle marketing is the main cause of this deforestation. For instance, data collected by RAISG and MapBiomas reveals that 84% of deforestation in the Amazon is attributed to large scale agriculture activities.<sup>40</sup> Moreover, according to the National Space Research Institute (INPE), 65% of the deforested areas are now covered by pastures.<sup>41</sup> The expansion of livestock in Brazil is staggering. Between 1990 and 2019, beef productivity in the country grew by 128%, and, from 2008 to 2019, it accounted for over 90% of forest loss.<sup>42</sup> Currently, Brazil hold the title of the world's leader in beef exportation and possess the largest commercial cattle herd.<sup>43</sup> However, the global market dominance in beef industry has come at the cost of converting substantial portions of the Amazon to livestock production through forest

---

<sup>36</sup> Potenza, R.F. et al. (n. 19), p. 42.

<sup>37</sup> *Ibidem*, p. 8.

<sup>38</sup> *Ibidem*, p. 5.

<sup>39</sup> Nepstad, D. et al. (2014) 'Slowing Amazon deforestation through public policy and interventions in beef and soy supply chains', *Science*, 344(6188), pp. 1118–1123. Available at: <https://search.ebscohost.com/login.aspx?direct=true&AuthType=ip,uid&db=edsjsr&AN=edsjsr.24743976&site=eds-live&scope=site> (Accessed: 11 April 2023)

<sup>40</sup> RAISG (2020) 'Amazonia Under Pressure' [online] Available at: <https://www.raisg.org/en/publication/amazonia-under-pressure-2020/> (Accessed: 11 April 2023), p. 33.

<sup>41</sup> Repórter Brasil (2021). 'Steak in the supermarket, forest on the ground.' Available at: <https://reporterbrasil.org.br/wp-content/uploads/2021/02/fil%C3%A9-no-supermercado-EN-14-02.pdf> (Accessed 6 May 2023).

<sup>42</sup> Tropical Forest Alliance (n 18) P. 6.

<sup>43</sup> "The Brazilian Institute of Geography and Statistics (IBGE) estimates that there are more than 200 million head of cattle in Brazil. This is almost one cattle per inhabitant." <<https://www.boinalinha.org/quem-somos/>> (Accessed 23 April 2023)



clearing. In 2019 and 2020, deforestation rates reached unprecedented numbers not seen since the mid-2000s, when farmers engaged in seasonal burnings to clean the land for agriculture activities.<sup>44</sup> With increasing global demand for food, including meat, Brazilian beef exports by domestic companies are projected to increase by 35% over the next two decades.<sup>45</sup>

In his Report, the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment highlighted agriculture as “the largest single factor in the destruction of ecosystems and the decline in biological diversity”.<sup>46</sup> Additionally, the Report identified beef demand as a major driver of deforestation. This analysis is particularly pertinent given the context of the Amazon. Brazilian agribusiness sector is linked to deforestation due to its use of unsustainable practices, which include the adoption of low technology, insufficient investment in soil and pastures, and poor livestock management. Considering that an increase in the beef demand is expected, this growth will be largely met expanding pastures by further devastating forest areas. Furthermore, scientific studies indicate that a degraded pasture becomes unusable for raising cattle after only three or four years of use.<sup>47</sup> For beef companies unconcerned with human rights and environmental protection, expanding production to new lands in the Amazon is the most appealing business decision. Profit at any cost has been the rule in Brazilian agriculture activities instead of investing in sustainable practices. When confronted with this situation, the largest beef companies, namely JBS, Minerva Foods, and Marfrig, argue that “the biggest challenge to keeping deforestation out of their supply chains are *indirect suppliers* – farms where cattle are born and/or fattened”.<sup>48</sup> They claim they cannot monitor cattle purchased from these indirect suppliers whose farms are linked to deforestation in the Amazon. Nevertheless, the substantial economic power held by these companies raises doubts

---

<sup>44</sup> Perez, R. (n. 7), p. 199.

<sup>45</sup> Assail, T. et al. (n .15).

<sup>46</sup> UN General Assembly. (2020). Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment. A/75/188. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/184/48/PDF/N2018448.pdf?OpenElement>

<sup>47</sup> Assail, T. et al. (n .15) P. 12

<sup>48</sup> Campos, A., Wasley, A., Heal, A., Phillips, D., & Locatelli, P. (2020) ‘Revealed: New Evidence Links Brazil Meat Giant JBS to Amazon Deforestation’, The Guardian, [online] Available at: <https://www.theguardian.com/environment/2020/jul/27/revealed-new-evidence-links-brazil-meat-giant-jbs-to-amazon-deforestation> (Accessed 9 April 2023)

about their true inability to oversee their supply chain. As a counterargument, investigative journalism has also provided evidence that JBS trucks, for example, transport cattle from farms fined for illegal deforestation in the Amazon to other suppliers. This material evidence demonstrates JBS's involvement in facilitating "cattle laundering", where "livestock from dirty farms linked to deforestation can end up being moved and mixed in with cattle from clean farms".<sup>49</sup> Such discoveries have raised concerns among countries that import beef from Brazil, particularly in the European Union. Over a five-year period, the mentioned slaughterhouse companies exported US\$ 3 billion in beef product to Europe and the United Kingdom.<sup>50</sup> For that reason, the UK government produced a report suggesting the drafting of a law that would require British companies to avoid environmental damage and human rights abuses in their supply chains, with a specific focus on naming beef as one of the commodities with the highest risk.<sup>51</sup> In May 2023, the EU enacted a new legislation requiring companies operating within its jurisdiction to guarantee the importation of agriculture commodities, including cattle, free from deforestation and devoid of any association with other human rights violations.<sup>52</sup> Considering the statistics shown, this directive, which mandates EU-based companies to establish traceability measures for commodities, is expected to have significant repercussions on the future dynamics of the Brazilian meat market.

The year 2023 is crucial for tackling deforestation in time to meet the Paris Agreement climate goals. Studies prove that reducing deforestation is one of the most effective and affordable ways to combat climate change and the biodiversity crisis.<sup>53</sup> In this context,

---

<sup>49</sup> Wasley, A., Heal, A., Campos, A., Locatelli, P., & Phillips, D. (2020) 'Brazilian Meat Giant JBS Trucked Cattle from Deforested Amazon Ranch', The Bureau of Investigative Journalism, [online] Available at: <https://www.thebureauinvestigates.com/stories/2020-07-27/brazilian-meat-giant-jbs-trucked-cattle-from-deforested-amazon-ranch> (Accessed 9 April 2023).

<sup>50</sup> Wasley, A., & Heal, A. (2019) 'EU imported \$3bn worth of Brazilian beef from companies linked to deforestation', The Bureau of Investigative Journalism, [online] Available at: <https://www.thebureauinvestigates.com/blog/2019-09-30/eu-imported-3bn-worth-of-brazilian-beef-from-companies-linked-to-deforestation> (Accessed 9 April 2023)

<sup>51</sup> Wasley, A., Heal, A., Campos, A., Locatelli, P., & Phillips, D. (n. 48).

<sup>52</sup> Chávez, L. T. (2023) 'EU approves law for deforestation-free trade – Companies Required to Respect Environment, Human Rights in Supply Chains', Human Rights Watch, [online] Available at: <https://www.hrw.org/news/2023/05/16/eu-approves-law-deforestation-free-trade> (Accessed: 17 May 2023).

<sup>53</sup> Benzeev, R. (1) et al. (2022) 'What's governance got to do with it? Examining the relationship between governance and deforestation in the Brazilian Amazon', PLoS ONE, 17(6 Jun). doi:10.1371/journal.pone.0269729.

the international community has been emphasizing the importance of implementing net-zero polices, both public and private, that prioritize the fight against deforestation.<sup>54</sup> As pressure grows for deforestation-free supply chains, it is essential to take proactive action against Brazil's commercial livestock production for its non-traceability due to its global consequences. It is worth highlighting that the EU's deforestation-free and due diligence laws demonstrate that tracking livestock is feasible, especially for large companies with significant leverage over their suppliers.<sup>55</sup> Consequently, to meet Paris Agreement reduction target, Brazil must adopt new legal instruments to tackle deforestation and its link with cattle ranching within the Amazon rainforest.

## **2.3. Environmental Law – where are we now in the legal protection of the Amazon?**

### **2.3.1. Environmental protection evolution in Brazil**

#### **2.3.1.1. The period when protection was only on paper**

The period between the 18th and 19th centuries in Brazil lacked an effective environmental policy despite the enactment of laws touching the topic of protection. The first legal attempt to preserve the Amazon took place in 1911 with the publication of the inaugural '*Brazilian Forest Map*', which detailed information on the country's various biomes and their conservation status. This study led to the first legal instrument delimiting a 2.8 million hectares of forest reserve in the state of Acre.<sup>56</sup> However, in practice, the law was innocuous as no measure was implemented to effectively protect the designated area. Subsequently, during the Era Vargas,<sup>57</sup> Brazil witnessed the beginning of its

---

<sup>54</sup> Thomson, E. & Fairbairn, A., (2023) '2023: A watershed year for action on deforestation, Global Canopy, Oxford, UK.' Global Canopy [online] Available at: <https://forest500.org/publications/2023-watershed-year-action-deforestation> (Accessed: 9 April 2023).

<sup>55</sup> *Ibidem*.

<sup>56</sup> Brazil (1911) Federal Decree No. 8.843, 26 of July of 1911. [online] Available at: [http://www.planalto.gov.br/ccivil\\_03/decreto/1910-1929/d08843.html](http://www.planalto.gov.br/ccivil_03/decreto/1910-1929/d08843.html) (Accessed: 9 April 2023).

<sup>57</sup> The Vargas Era corresponds to the 15-year period in which Getúlio Dornelles Vargas was president of Brazil (1930 to 1945). Vargas, defeated in the elections, seized power by preventing the ascension to the position of president-elect Júlio Prestes. Vargas centralized power and dissolved the national congress. One of the outstanding characteristics of his government was the investment in the industrialization of the country, more specifically in the industries of raw materials and large goods. Brazil, then, ceased to be

industrialization process when primary industries, such as logging and mining, prospered. From then on, the need to regulate the use of forests also arose. This era led to the enactment of the Forest Code by Decree 23.793, aiming to promote sustainable extraction and protect vegetation, with a minimum requirement of 25% preservation on private land. Despite its theoretical conservation-oriented content, in practice the code was flawed in practice due to the lack of clear delineation of preservation areas and efficient enforcement of protected zones.<sup>58</sup> As a result, no designated preservation spaces were effectively established in the Brazilian Amazon from 1910 until the 1960s.

After the 1960s, the dictatorship rose to power in Brazil. During the military regime, there was a geographical expansion of the economy, leading to rapid industrial development in the northern region of the country. As the Amazon is in this part of Brazil, economic growth resulted in widespread deforestation, raising concerns about environmental protection, particularly among the international scientific community.<sup>59</sup> It was during this period that the Brazilian Forest Code underwent amendments through Law n. 4.771, introducing areas of environmental protection known as Legal Reserves and Permanent Preservation Areas (APPs). The APPs required each property or rural possession to preserve a percentage of its territory, which varied according to the region and biome. The implementation of these legal measures would result in an expansion of reserve areas, ultimately reaching a total of 80% of the Amazon's preserved forest areas. The APPs also aimed to safeguard areas prone to erosion or landslides, such as riverbanks, hilltops, and slopes, which were not allowed to be deforested.<sup>60</sup> At the time this represented the first law to protect several areas of the Amazon and other Brazilian biomes. Furthermore, in 1967, the military government established the Brazilian Institute for Forestry Development (IBDF) to manage national preservation areas. Paradoxically, the IBDF was

---

essentially agrarian. In 1945, Vargas was forced to step down from the presidency by the military, but he returned to power in 1951.

<sup>58</sup> Filho, A. O. S., Ramos, J. M., Oliveira, K., & Nascimento., T. N. (2015). 'A evolução do código florestal brasileiro.' *Caderno De Graduação - Ciências Humanas E Sociais - UNIT - SERGIPE*, 2(3), p. 271–290. Available at: <https://periodicos.set.edu.br/cadernohumanas/article/view/2019> (Accessed: 7 March 2023).

<sup>59</sup> Dias, J.M. & Pereira, N.M. (2010) 'Considerações sobre a evolução do Sistema Nacional de Unidades de Conservação e o ordenamento territorial da Amazônia: interações entre o Estado e a Ciência', *Desenvolvimento e Meio Ambiente*, 21, pp. 69–88. [online] Available at: <https://search-ebshost-com.ludwig.lub.lu.se/login.aspx?direct=true&AuthType=ip,uid&db=edsdoj&AN=edsdoj.3b1601438ca6447c9082fecf07d54417&site=eds-live&scope=site> (Accessed: 28 February 2023).

<sup>60</sup> Filho, A. O. S., Ramos, J. M., Oliveira, K., & Nascimento., T. N. (n. 56), p. 279.

linked to the Ministry of Agriculture.<sup>61</sup> Shortly thereafter, in 1970, a movement began to expand environmental preservation areas in Brazil and worldwide, largely influenced by UNESCO initiatives<sup>62</sup> for ecological protection. Then, Brazil experienced a significant increase in the number of legal conservation units, going from zero to nearly three hundred in that same year.<sup>63</sup> In the following years, the government established a Special Secretariat for the Environment (SEMA) in 1973 and included goals to preserve the Amazon in the National Development Plan II in 1975. Nevertheless, these legal developments did not reflect a genuine commitment by the military government to environmental protection because “environmental agencies received little or no budgetary support for the proper execution of the created legal instruments”.<sup>64</sup> The laws enacted by the government were primarily a response to growing international concerns and pressures on the environment, rather than being designed to effectively protect the Amazon. For instance, during the discussions at the Stockholm Conference in 1972,<sup>65</sup> Brazil assumed a leadership role among developing nations, adopting a stance resistant to environmental concerns in favor of unrestricted economic growth. The military government’s moto was “Develop first and pay the costs of pollution later”.<sup>66</sup>

### **2.3.1.2. A new era for environmental protection**

With Brazil’s re-democratization between the 1980s and 1990s, discussions regarding environmental preservation and social inclusion gained strength. During this period, Law

---

<sup>61</sup> Brazil (1967). ‘Law-Decree No. 289, 28 of February of 1967’ [online] Available at: [http://www.planalto.gov.br/ccivil\\_03/decreto-lei/1965-1988/del0289.htm](http://www.planalto.gov.br/ccivil_03/decreto-lei/1965-1988/del0289.htm) (Accessed: 28 February 2023).

<sup>62</sup> The UNESCO initiatives during this period that influenced Brazilian law were **i.** Man and the Biosphere (MAB) Programme in 1970 – available at; <https://en.unesco.org/mab>, **ii.** Convention on Wetlands of International Importance especially as Waterfowl Habitat in 1971 – available at: <https://en.unesco.org/about-us/legal-affairs/convention-wetlands-international-importance-especially-waterfowl-habitat>, and **iii.** The World Heritage Convention in 1972 – available at: <https://whc.unesco.org/en/convention/>.

<sup>63</sup> Dias, J.M. and Pereira, N.M. (n. 57), p. 75

<sup>64</sup> *Ibidem*.

<sup>65</sup> The Stockholm Conference, also known as the United Nations Conference on the Human Environment, took place in Sweden from June 5 to 6, 1972. This convention was a milestone as it marked the first time the UN convened to discuss environmental issues on a global scale.

<sup>66</sup> The speech delivered by Brazilian Minister Costa e Cavalcanti during the Stockholm Conference in 1972 is CETESB (2013) ‘estocolmo\_72\_Volume\_II.pdf’, [online] Available at: [https://cetesb.sp.gov.br/proclima/wp-content/uploads/sites/36/2013/12/estocolmo\\_72\\_Volume\\_II.pdf](https://cetesb.sp.gov.br/proclima/wp-content/uploads/sites/36/2013/12/estocolmo_72_Volume_II.pdf) (Accessed 28 February 2023).

n. 6.938<sup>67</sup> created the National Environmental System (SISNAMA) and the National Environmental Council (CONAMA) to operate in an inter-institutional cooperation framework, also involving civil society in the development of public policies for environmental protection.<sup>68</sup> The concern for environmental safeguarding continued with the enactment of the 1988 Federal Constitution, which marked the beginning of the Democratic Rule of Law in Brazil.<sup>69</sup> Within the environmental chapter, the Constitution divided the responsibility for its preservation between the government and civil society. It also implemented a tier-based management system whereby governments shared responsibility for forest governance, placing the main duty to enforce environmental regulations on the federal government.<sup>70</sup> Despite its progressive nature, the Constitution did not sufficiently integrate environmental agencies nor provide them with adequate budget allocations to accomplish their goals.<sup>71</sup> Thus, in 1989, with the escalation of pressure for an environmental policy in the country, the murder of environmentalist Chico Mendes, and the intensification of fires in the Amazon, Law n. 7.735 created the Brazilian Institute for the Environment and Renewable Natural Resources (IBAMA). This institution centralized the functions previously assigned to the IBDF and SEMA, fundamentally transforming environmental management in Brazil and playing a crucial role in protecting and enforcing compliance with environmental laws in an integrated manner. Additionally, IBAMA became responsible for environmental licensing and authorization for using natural resources in the country, with the power to impose fines and carry out seizures. Finally, in 1990, in response to movements led by organized civil society, Decree n. 98.987<sup>72</sup> created the Extractive Reserve. This category represented the first protected area in the Amazon, designed for the sustainable management of the forest by rubber tappers under the supervision of research institutes.<sup>73</sup>

---

<sup>67</sup> Brazil (1981) 'Federal Law No. 6.938, 31 of August of 1981' [online] Available at: [https://www.planalto.gov.br/ccivil\\_03/leis/l6938.htm](https://www.planalto.gov.br/ccivil_03/leis/l6938.htm) (Accessed 3 March 2023)

<sup>68</sup> Dias, J.M. and Pereira, N.M. (n. 57), p. 77.

<sup>69</sup> Brazil (1988) 'Constituição da República Federativa do Brasil', [online] Available at: [https://www.planalto.gov.br/ccivil\\_03/constituicao/constituicao.htm](https://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm) (Accessed 3 March 2023), article 225.

<sup>70</sup> Benzeev, R.(1) et al. (n. 53).

<sup>71</sup> Dias, J.M. and Pereira, N.M. (n. 57), p. 78

<sup>72</sup> Brazil (1990). 'Law-Decree No. 98.897, 30 of January of 1990' [online] Available at: [http://www.planalto.gov.br/ccivil\\_03/decreto/antigos/d98897.htm](http://www.planalto.gov.br/ccivil_03/decreto/antigos/d98897.htm) (Accessed: 28 February 2023).

<sup>73</sup> *Ibidem*, p. 78-79

Only in 2000 did a new era of environmental legal protection begin in Brazil with the enactment of Law n. 9.985,<sup>74</sup> following intense debates within civil society involving scientists and traditional populations.<sup>75</sup> This law established the National System of Conservation Units (SNUC) to organize and enhance various environmental conservation units. Protected areas were categorized into integral protection units and sustainable use units. There were two essential innovations introduced by this legislation: **i.** the sustainable development reserves, where the exploitation of natural ecosystems under a sustainable management regime was authorized; and **ii.** the requirement for public consultation with local stakeholders to establish new environmental conservation units.<sup>76</sup> Two years later, on the occasion of the 2002 Earth Summit,<sup>77</sup> the Brazilian government, under the coordination of the Ministry of the Environment, created the Amazon Protected Areas Program (ARPA). The aim of ARPA was to support the consolidation of 60 million hectares of conservation areas in the Amazon and ensure the effectiveness of the SNUC. The program exceeded its initial goal by encompassing 120 Conservation Units covering a total area of 62.5 million hectares. Moreover, ARPA received financial support from several entities, including the World Bank, and national and international NGOs. This legislation elevated Brazil's position in terms of forest protection. Scientific analyses indicate that, as of 2003, Brazil<sup>78</sup> has accounted for 74% of the world's protected areas, and since 2008, 42% of the Amazon has been designated as a protected area by law. This overprotective legal framework, however, still lacked a management plan for Amazon conservation units that would allow for super-efficient preservation in practice.<sup>79</sup>

From 2005 to 2013, the gap between law and practice changed with an impressive 70% reduction in the rate of deforestation in the Amazon driven by investments in public

---

<sup>74</sup> Brazil (2000) 'Federal Law No. 9.985, 18 of July of 2000' [online] Available at: [https://www.planalto.gov.br/ccivil\\_03/leis/19985.htm](https://www.planalto.gov.br/ccivil_03/leis/19985.htm) (Accessed 3 March 2023)

<sup>75</sup> Traditional populations or communities is an official term defined by law in Brazil. Item I, article 3, of Decree 6.040/2007 says that traditional peoples and communities are "*culturally differentiated groups that recognize themselves as such, that have their own forms of social organization, that occupy and use territories and natural resources as a condition for their cultural, social, religious, ancestral and economic reproduction, using knowledge, innovations, and practices generated and transmitted by tradition*".

<sup>76</sup> *Ibidem*, p. 80-81

<sup>77</sup> United Nations (2002) 'Johannesburg Declaration on Sustainable Development adopted at the United Nations World Summit on Sustainable Development, Johannesburg, September 4, 2002', UN Doc. A/CONF. 199/20.

<sup>78</sup> Jenkins, C.N. (1) and Joppa, L. (2) (2009) 'Expansion of the global terrestrial protected area system', *Biological Conservation*, 142(10), pp. 2166-2174-2174. doi:10.1016/j.biocon.2009.04.016. P. 2170.

<sup>79</sup> Dias, J.M. and Pereira, N.M. (n. 57), p. 83

policies. Such policies included “the establishment of new conservation units, recognition of land rights of traditional communities, and implementation of the Action Plan for Prevention and Control of Deforestation in the Legal Amazon” (PPCDAm).<sup>80</sup> The PPCDAm played a crucial role in achieving this decline. In 2004, the federal government created the PPCDAm to address deforestation and promote sustainable development in the Amazon.<sup>81</sup> The plan was developed due to the recognition that isolated measures taken by Brazilian environmental agencies were insufficient to tackle the causes of deforestation, necessitating an integrated policy approach. This plan was structured in strategic sectors, namely **i.** Territorial and Land-Owning Planning, **ii.** Promotion of Sustainable Activities, and **iii.** Monitoring and Environmental Control. Over the subsequent years, the plan unfolded in three distinct execution phases: 2004 to 2008; 2009 to 2011; and 2012 to 2015. The first phase was the most productive, resulting in more than 25 million hectares of federal conservation units and the demarcation of 10 million hectares of indigenous. In the second phase, the implementation of monitoring and environmental control measures led to a significant decrease in deforestation rates. A satellite-based warning system called DETER was utilized, and integrated deforestation surveillance actions were carried out by IBAMA in collaboration with security forces.<sup>82</sup> A fourth phase, focusing on rules and economic instruments to stimulate a forest-based economy and productive development with minimal forest impact, began to be developed.<sup>83</sup> Simultaneously, in 2009, surrounding changes to the Forest Code were initiated. Then new Forest Code was published by Law n. 12.651,<sup>84</sup> but it faced strong criticism for regressing on environmental advancements in the country. Influenced by the

---

<sup>80</sup> OCDE (2021) ‘Evaluating Brazil’s progress in implementing Environmental Performance Review recommendations and promoting its alignment with OECD core acquis on the environment.’ [online] Available at: <https://www.oecd.org/environment/country-reviews/Brazils-progress-in-implementingEnvironmental-Performance-Review-recommendations-and-alignment-with-OECD-environment-acquis.pdf> (Accessed: 27 February 2023).

<sup>81</sup> Brazil (2003). ‘Decree of 3 of July of 2003 – Plano de ação para a prevenção e controle do desmatamento na Amazônia legal.’ [online] Available at: [http://redd.mma.gov.br/images/publicacoes/PPCDAM\\_fase1.pdf](http://redd.mma.gov.br/images/publicacoes/PPCDAM_fase1.pdf) (Accessed: 27 February 2023).

<sup>82</sup> Brazilian system DETER can be accessed at this link <<http://terrabilis.dpi.inpe.br/>> (Accessed: 27 February 2023).

<sup>83</sup> Brazil (2016) ‘Plano de Ação para Prevenção e Controle do Desmatamento na Amazônia Legal (PPCDAm) - Plano Operativo 2016-2020.’ [online] Available at: <<https://www.gov.br/mma/pt-br/assuntos/servicosambientais/controle-de-desmatamento-e-incendios-florestais/pdf/PlanoOperativo20162020.pdf>> (Accessed: 27 February 2023).

<sup>84</sup> Brazil (2012). ‘Law n. 12.651 of 25 of May of 2012’. [online] Available at: [https://www.planalto.gov.br/ccivil\\_03/\\_ato2011-2014/2012/lei/112651.htm](https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2012/lei/112651.htm) (Accessed: 27 February 2023).



ruralist group, the new legislation reduced legal forest reserves and permanent preservation areas. Additionally, obligations to for reforestation and fines for illegal deforestation carried out before July 22, 2008, were granted amnesty.<sup>85</sup> Despite this, until 2013 Brazilian environmental protection in general experienced great advances with historic drops in deforestation rates.

### **2.3.1.3. A Backslide in environmental protection: challenging times**

It turns out that worse times were yet to come for the preservation of the Amazon. The fourth phase of the PPCDAm was never implemented. Brazilian environmental protection suffered a major setback with the change of government in 2018. The new federal administration “paralyzed and interrupted practically all measures previously adopted”,<sup>86</sup> mainly in the inspection field. Public protection bodies, such as IBAMA, were weakened with budget cuts and the Secretariat for Climate Change, where the Department of Policies to Combat Deforestation operated, was extinguished. For instance, the number of inspectors employed at IBAMA decreased from 1,600 in 2009 to 780 in 2019, with only a small fraction of them working in the Amazon.<sup>87</sup> Consequently, recent years have seen growing levels of deforestation due to the emptying of protection agencies and legal flexibility. Brazil went against international consensus on environmental protection and climate change mitigation, which was even widely publicized in the media around the world. For example, Norway and Germany, the main funders of the Amazon Fund<sup>88</sup> created after the COP12, suspended transfers during Bolsonaro’s government since no

---

<sup>85</sup> Rede Brasil Atual (2018) 'Meio ambiente sai perdedor com o novo Código Florestal, diz especialista', Rede Brasil Atual, [online] Available at: <https://www.redebrasilatual.com.br/ambiente/meio-ambiente-sai-perdedor-com-o-novo-codigo-florestal-diz-especialista/> (Accessed: 7 March 2023).

<sup>86</sup> Girardi, G. (2022) 'O que foi o PPCDAm, plano do PT contra desmatamento desmobilizado por Bolsonaro', Folha de S.Paulo, [online] Available at: <https://www1.folha.uol.com.br/ambiente/2022/10/o-que-foi-o-ppcdam-plano-do-pt-contra-desmatamento-desmobilizado-por-bolsonaro.shtml> (Accessed: 6 March 2023).

<sup>87</sup> Perez, R. (n. 7), p. 208.

<sup>88</sup> The Amazon Fund was created by Federal Decree n. 6.527 in 2008 after being proposed by the Federal Government during the discussions at COP-12. The National Bank for Economic and Social Development (BNDES) is responsible for allocating the Fund resources in forest protection projects <<https://www.amazonfund.gov.br/en/home/>>.

efforts were taken to address the issue.<sup>89</sup> Then, between August 2020 and July 2021, the deforested area corresponded to 13,200 km<sup>2</sup>: the largest in fifteen years.<sup>90</sup>

### 2.3.2. The right to a healthy environment as a human right

The right to a clean, healthy, and sustainable environment – and consequently the obligation to protect it – is not guaranteed in any international hard law, that is, any binding instrument. Some international treaties<sup>91</sup> refer indirectly to obligations regarding the environment, but far from the protection that is being advocate in recent years. Besides, those treaties were adopted at a time when environmental rights and climate change were not a major concern of the international community, which explains why the issue was so poorly addressed.<sup>92</sup> After the 1972 UN Conference on the Human Environment in Stockholm, “the relationship between human rights and environmental quality” become to be recognized due to claims for a modern international environmental law.<sup>93</sup> A draft declaration on the subject began to be worked out and discussed in 1994, but never entered in force.<sup>94</sup> In parallel, UN human rights treaty bodies were supporting *the “greening” of human rights*<sup>95</sup> in their jurisprudence and documents when it meant guaranteeing other rights’ implementation, such as the right to life, water, health, and property. In other words, environment protection was safeguarded because of its connection to a human need – which implies a hierarchy among it convey an anthropocentric understanding of environmental rights.

---

<sup>89</sup> Boffey, D. (2019) Norway halts Amazon fund donation in dispute with Brazil.’ BBC [online] Available at: <https://www.theguardian.com/world/2019/aug/16/norway-halts-amazon-fund-donation-dispute-brazil-deforestation-jair-bolsonaro> (Accessed: 7 March 2023).

<sup>90</sup> Coelho-Junior, M. G. et al. (2022) Unmasking the impunity of illegal deforestation in the Brazilian Amazon: a call for enforcement and accountability, *Environ. Res. Lett.* 17 041001. <https://doi.org/10.1088/1748-9326/ac5193>

<sup>91</sup> Those treaties are the International Covenant on Economic, Social and Cultural Rights (Article 12) and the Convention on the Rights of the Child (Article 24).

<sup>92</sup> European Parliament (2021) 'EPRS\_ATA(2021)698846\_EN.pdf', [online] Available at: [https://www.europarl.europa.eu/RegData/etudes/ATAG/2021/698846/EPRS\\_ATA\(2021\)698846\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2021/698846/EPRS_ATA(2021)698846_EN.pdf) (Accessed: 17 April 2023).

<sup>93</sup> Etty, T. et al. (2022) ‘The Possibility of Radical Change in Transnational Environmental Law’, *Transnational Environmental Law*, 11(3), pp. 447–461. Available at: <https://search-ebshost-com.ludwig.lub.lu.se/login.aspx?direct=true&AuthType=ip,uid&db=edshol&AN=edshol.hein.journals.tev111.32&site=eds-live&scope=site> (Accessed: 16 April 2023).

<sup>94</sup> UN Special Rapporteur on Human Rights and the Environment (1994) Human rights and the environment: final report / prepared by Fatma Zohra Ksentini, Special Rapporteur. E/CN.4/Sub.2/1994/9. Geneva: UN, 6 July 1994.

<sup>95</sup> European Parliament (n. 89).

In July 2022, after 30 years of claims,<sup>96</sup> the UN General Assembly (UNGA) finally adopted the Resolution A/RES/76/300<sup>97</sup> recognizing the right to a clean, healthy, and sustainable environment as a human right. It is important to note that the Brazilian delegation voted in favor of approving the resolution at the UNGA but expressed dissatisfaction with its final version. Brazil's representative at the UN regretted the omission of a clear reaffirmation of the principle of State sovereignty in the resolution and the absence of robust provisions addressing indispensable elements for its implementation by developing countries, such as financial resources, training, and technology transfer, which were recognized by the resolution.<sup>98</sup>

A year earlier and in a more detailed text, the UN Human Rights Council had done the same in its Resolution A/HRC/48/13<sup>99</sup> by also recognizing the right to a safe, clean, healthy, and sustainable environment as a human right. Despite being soft laws – non-binding instruments that do not create obligations for States – these recognitions constituted a response to the triple planetary crisis<sup>100</sup> and can serve as a model for domestic legislation. The resolutions also signify a global consensus on the relevance and urgency of addressing this topic. World's unprecedented climate change, nature and biodiversity loss, and pollution and waste led the UN to call States, international organizations, business enterprises and other relevant stakeholders to cooperate in taking measures to enhance environmental protection. These resolutions incorporated global awareness of companies' impacts on the environment, reflecting a significant development of the Paris Agreement, which recognized the need for the private sector to play a role in addressing climate change.

---

<sup>96</sup> Etty, T. et al. (n. 90). P. 449.

<sup>97</sup> UN General Assembly (2022) 'The human right to a clean, healthy and sustainable environment: resolution / adopted by the General Assembly', A/RES/76/300, Available at: <https://digitallibrary.un.org/record/3983329?ln=en> (Accessed 16: April 2023)

<sup>98</sup> United Nations. (2022). General Assembly 12437th Plenary Meeting. <https://press.un.org/en/2022/ga12437.doc.htm> (Accessed 3rd June 2023).

<sup>99</sup> UN Human Rights Council (2021). 'The human right to a clean, healthy, and sustainable environment: resolution / adopted by the Human Rights Council on 8 October 2021', A/HRC/RES/48/13. Available at: <https://digitallibrary.un.org/record/3945636> (Accessed: 16 April 2023).

<sup>100</sup> UN Environment Programme (2022) 'Action on the Triple Planetary Crisis', UNEP, [online] Available at: <https://www.unep.org/news-and-stories/speech/action-triple-planetary-crisis>. (Accessed: 20 April 2023).

It must be highlighted that Resolution A/HRC/48/13 specifically underlined the need for businesses enterprises to secure human rights defenders working in environmental matters rights. This was the result of complaints from Latin American and Caribbean countries regarding the protection of environmental defenders, especially the *indigenous* “population campaign against logging, mining, and oil exploration in protected areas”.<sup>101</sup> Even before the recognition of a health environment as a human right, the Human Rights Council’s periodic review already posed recommendations to Brazil regarding “reducing deforestation, respecting indigenous peoples and protecting the environment and biodiversity when authorizing economic activities”.<sup>102</sup> By recognizing the right to a safe, clean, healthy, and sustainable environment as a fundamental human right and acknowledging the imperative of safeguarding human rights defenders, Resolutions A/RES/76/300 and A/HRC/48 provide a comprehensive framework for advocating corporate responsibility in the protection of the Amazon and its defenders. However, these Resolutions, while crucial in setting the stage in conjunction with the UNGP’s, do not possess sufficient authority on their own to impose obligations on companies to address the environmental impacts within their value chains. Furthermore, they bolster existing national laws to strengthen environmental protection measures, but still lack a binding instrument that obliges and defines the parameters to be followed by companies.

---

<sup>101</sup> UN Environment Programme (2022) 'Historic Move: UN Declares Healthy Environment a Human Right', UNEP, [online] Available at: <https://www.unep.org/news-and-stories/story/historic-move-un-declares-healthy-environment-human-right> (Accessed: 20 April 2023).

<sup>102</sup> Knox, John H. UN. Human Rights Council. Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment. UN. Secretary-General. (2020). Human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment: note / by the Secretary-General, A/73/188. Available at: <https://digitallibrary.un.org/record/1639368>. (Accessed 20 April 2023) Para 62.

# 3 Regulating Business and Human Rights – the Human Rights Due Diligence Framework

## 3.1. Human Rights Due Diligence framework in International Law

During the 1970s, high-risk industries such as oil, gas, and mining in conflict zones, along with poor labor conditions in the garment industry and the increasing presence of foreign multinational enterprises, sparked the debate on corporate responsibility in global supply chains. Prior to this period, discussions on human rights issues were considered solely State's matters, without the involvement of private actors. However, lately, there has been an increase in soft-law instruments addressing the role of business in the field of human rights within the UN and the Organization for Economic Co-operation and Development (OECD).<sup>103</sup> For the purpose of this chapter, the focus will be on the content of four key documents on the issue of corporate responsibility and human rights: the OECD Guidelines for Multinational Enterprises from 1976; the UN Global Compact from 2004; the UN Draft Norms on the Responsibilities of Transnational Corporations and Others Business Enterprises also in 2004; and the UN Guiding Principles on Business and Human Rights, introduced by John Ruggie and unanimously endorsed in 2011. The latter instrument marked a significant milestone in human rights due diligence for companies and set the stage for a new approach to addressing businesses adverse human rights impacts.

The OECD Guidelines for Multinational Enterprises were first elaborated in 1976 and lastly revised in 2011.<sup>104</sup> The latest document is a more sophisticated version and

---

<sup>103</sup> Bernaz, N. (2017) Business and human rights: history, law, and policy – bridging the accountability gap. Routledge (Human rights and international law). Available at: <https://search.ebscohost.com/login.aspx?direct=true&AuthType=ip,uid&db=cat07147a&AN=lub.4950546&site=eds-live&scope=site>. P. 163-164.

<sup>104</sup> OECD is a European organization by nature, created in 1961 for the reconstruction of Europe with the post-World War II Marshall Plan. Only western and developed countries are members of the institution, but progressively the accession of emerging countries - such as the BRICS (Brazil, Russia, India, China, and South Africa) – has been considered. Popularly the institution is known as “the rich club”.

incorporates the framework present in the UNGP's.<sup>105</sup> The OECD Guidelines establish recommendations for multinational companies operating in the countries that adhere to the instrument. They consist of a reunion of non-binding principles and standards to respect and address human rights in supply chains and the impacts of business operations. The intention is promoting responsible business conduct (RBC) towards the development of the global economy. From the beginning, the OECD Guidelines emphasize that these recommendations are meant for multinational companies on a voluntary basis, allowing companies the discretion to decide whether or not to adopt them. Thus, this instrument places a "moral" obligation on businesses to respect international standards regarding human rights. It is noteworthy that the first version of the Guidelines did not specifically mention "human rights", although it did reference key areas such as environment protection. After another document review in 1984, adherent States were compelled to establish a National Contact Point (NCP) for RBC, whose attribution is to promote and supervise the implementation of the guidelines. The NCP functions as a non-judicial grievance mechanism, receiving complaints from companies that are not complying with the objectives of the instrument and addressing the impacts of their operations. Finally, in 1991, after another review of the Guidelines, a new chapter exclusively concerned with the protection of the environment was added. This addition illustrates a paradigm shift in the perception of the role of multinational companies in relation to environmental protection and the climate crisis. To this day, the OECD Guidelines remain an important source of regulation for multinational corporations, and the NCP has become one of the major accomplishments of this soft law instrument.<sup>106</sup>

In turn, the UN Global Compact was an attempt to establish a cooperative relationship between the UN and corporations based on common values and principles. Its proposal came from former UN Secretary-General Kofi Annan during the World Economic Forum of Davos on January 31, 1999. The idea of associating the private sector and the UN on a global scale and across different sectors was innovative. The official launch of the Global Compact took place in 2000 with the tenth and final principle added only in 2004.

---

<sup>105</sup> Mares, R. (2012) 'Business and Human Rights After Ruggie: Foundations, the Art of Simplification and the Imperative of Cumulative Progress', *The UN Guiding Principles on Business and Human Rights – Foundations and Implementation*, 39, pp. 1–50. P. 6.

<sup>106</sup> Bernaz, N. (n. 99). P. 197-203.

The Global Compact principles addressed key areas related to the impacts of corporate activities, including human rights, labor, environment, and anti-corruption.<sup>107</sup> Adherence to the Global Compact is voluntary and requires CEOs to commit to its principles and UN goals, as well as communicate their progress. Moreover, it aims to be a “platform for exchange good practices”<sup>108</sup> among companies. Three out of its ten principles specifically focus on companies' responsibility for environmental protection while developing their activities. Companies that commit to the Global Compact must adopt a precautionary approach to the challenges of protecting the environment (Principle 7), demonstrate environmental responsibility during activities (Principle 8), and invest in the development of sustainable technologies (Principle 9).<sup>109</sup> Despite being the first attempt to establish a relationship between the private sector and the UN, the document is not regulatory in nature, nor does it provide guidance on how to address human rights violations connected with business activities.

Drawing on the previous documents, in 2004, the UN Commission on Human Rights issued the Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights.<sup>110</sup> The Draft Norms relied on the “controversial idea that companies had obligations under international human rights law”.<sup>111</sup> Nonetheless, traditionally, private actors lack obligations under international law as these norms only regulate the relationship between States. Consequently, the Draft Norms faced opposition from business representatives but received support from human rights advocacy groups who sought to maintain obligations on the private sector during subsequent discussions for the development of the UN Guiding Principles.<sup>112</sup> Among the Draft Norms, only one out of the twenty-three rules concerned the obligation of businesses to protect the environment in the exercise of their activities. However, this norm did not provide specific guidelines on how these protections should be

---

<sup>107</sup> Bernaz, N. (n. 99). P. 177.

<sup>108</sup> Bernaz, N. (n. 99). P. 179.

<sup>109</sup> <<https://unglobalcompact.org/what-is-gc/mission/principles>> (Accessed: 22 February 2023).

<sup>110</sup> UN Sub-Commission on the Promotion and Protection of Human Rights, Economic, Social and Cultural Rights (2003) Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, E/CN.4/Sub.2/2003/12/Rev.2. Available at: <https://digitallibrary.un.org/record/501576> (Accessed 24 February 2023).

<sup>111</sup> Bernaz, N. (n. 99). P. 185-186.

<sup>112</sup> Bernaz, N. (n. 99). P. 188.

implemented; it simply required businesses to adhere to national and international environmental protection standards.<sup>113</sup> In the end, the Commission on Human Rights did not endorse the Draft Norms and instead requested the appointment of a Special Representative by the UN Secretary-General to investigate States and businesses' responsibilities to address human rights issues. Therefore, in 2005, UN Secretary-General Kofi Annan appointed Harvard Professor John Ruggie to this position, which led to the UN Guiding Principles on Business and Human Rights.

None of the documents produced prior to 2008 have had as much of an impact on the discussion of corporate responsibility as the UN Guiding Principles.<sup>114</sup> John Ruggie – as the United Nations (UN) Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises – conducted three years of extensive studies and consultations on the matter among all stakeholders involved through five continents.<sup>115</sup> In 2008, he presented the UNGP's and, in 2011, the UN Human Rights Council unanimously endorsed it. Once the principles received endorsement, a group of five experts was appointed to form the UN Working Group on Business and Human Rights to guide, disseminate and implement the guidelines. It widely recognized that his mandate left a remarkable legacy. The so-called Ruggie's Principles, often referred as a "common global platform for action",<sup>116</sup> marked not an end but the beginning of collective efforts towards a new human rights approach in business operations. This non-binding guidance to address companies' responsibility for human rights impacts is based on the UN "Protect, Respect, and Remedy" framework. Under this framework, Ruggie's Principles "rested on three pillars: States duties to protect against human rights harms according to International Law, corporate responsibility to respect human rights by acting with due diligence to avoid and address abuses related with their operations, and the victims' right to access effective remedy".<sup>117</sup> Each pillar

---

<sup>113</sup> UN Sub-Commission on the Promotion and Protection of Human Rights, Economic, Social and Cultural Rights (n. 106).

<sup>114</sup> UN Human Rights Council (2011) Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie: guiding principles on business and human rights: implementing the United Nations "protect, respect and remedy" framework, A/HRC/17/31. Para 6.

<sup>115</sup> Bernaz, N. (n. 99). P. 190-191.

<sup>116</sup> Mares, R. (n. 101).

<sup>117</sup> Mares, R. (n. 101) P. 3-4.



complements the others, but they are not interdependent. Therefore, States and companies have distinct but complementary responsibilities regardless of the circumstances. What sets this framework apart from other instruments is its equal treatment of all pillars within their own respective competencies, aiming to improve existing business and human rights practices. Ruggie emphasized that the UN Guiding Principles do not establish new international law,<sup>118</sup> which contributed to their positive reception by States and corporations.<sup>119</sup> Moreover, they introduced a risk-based due diligence process as a crucial element in assessing human rights impacts throughout the lifecycle of business operations, aiming to prevent or mitigate these risks. Consequently, under the UNGPs, the human rights due diligence (HRDD) system emerged as a prominent regulatory tool to monitor, evaluate, address, and report on multinational enterprises' impacts on human rights and any associated harm resulting from their activities.<sup>120</sup> Based on this instrument, the obligations of States and corporate responsibility to respect human rights will be duly identified below.

### **3.1.1. States obligations to regulate human rights and businesses**

States are the primary subject of public international law and, therefore, bear the main responsibility for upholding human rights. In this sense, they are the entities to whom international treaties assign obligations for the implementation of human rights. In 1987, Asbjorn Eide, the Special Rapporteur on the Right to Food, categorized States' responsibility for human rights into three levels: the obligation to respect, protect and fulfill. This categorization, based on Henry Shue's tripartite typology, has been widely used in UN reports and by scholars.<sup>121</sup> Shue argues that there should be no distinction between rights, as each category – economic, civil, political, cultural, and social – encompasses fundamental needs of individuals. Thus, the division exists within

---

<sup>118</sup> UN Human Rights Council (n. 110). Annex – General Principles.

<sup>119</sup> Mares, R. (n. 101). P. 5.

<sup>120</sup> Partiti, E. (2020) 'Trust and Global Governance: Ensuring Trustworthiness of Transnational Private Regulators', *New York University Journal of International Law, and Politics*, 52(2), pp. 415–484. Available at: <https://search.ebscohost.com/login.aspx?direct=true&AuthType=ip,uid&db=edshol&AN=edshol.hein.journals.nyuilp52.17&site=eds-live&scope=site> (Accessed: 22 February 2023). P. 419.

<sup>121</sup> Jägers, N. (2002) *Corporate human rights obligations*. Intersentia (School of Human Rights Research: v.17). Available at: <https://search.ebscohost.com/login.aspx?direct=true&AuthType=ip,uid&db=cat07147a&AN=lub.2037495&site=eds-live&scope=site> (Accessed: 22 February 2023). P. 77.

obligations themselves, as the effective implementation of a human right requires the fulfillment of multiple types of obligations,<sup>122</sup> as explained further below.

The obligation to respect entails the duty of refraining from violating a human right.<sup>123</sup> It corresponds to negative obligations that require States to not interfere, that is, abstain from violating individual's rights and freedoms. On the other hand, the obligation to protect carries a positive aspect, compelling States to take measures to prevent third parties from violating human rights.<sup>124</sup> Lastly, the obligation to fulfill equals obligations of result and it also demands positive actions towards its implementation. States must ensure that individuals' basic needs are fully met in accordance with international human rights standards.<sup>125</sup> These obligations of protection and fulfillment are primarily assigned to States alone. According to Nicola Jägers, in relation to the obligation to respect, there is less controversy regarding its application to business actors, as will be further discussed.<sup>126</sup> It is understood that the duty of respect attributed to States does not exempt companies from their own obligation to prevent and address human rights violations related to their business activities. However, there is a consensus that this businesses' liability should be "pursued indirectly, by first activating the positive obligations of States to regulate private actors within their jurisdiction".<sup>127</sup> This forms the foundation for advocating the establishment of compulsory due diligence legislation by States, particularly when it becomes evident that voluntary initiatives by companies do not effectively prevent the occurrence of environmental and human rights harm.

Departing from this notion, States are directly responsible to ensure that private actors – which include businesses – do not cause or contribute to adverse human rights impact. This duty to safeguard individuals' rights reflects obligations already enshrined in

---

<sup>122</sup> *Ibidem*. P. 76

<sup>123</sup> UN Commission on Human Rights (1988) 'The right to food', 7 March, E/CN.4/RES/1988/29. Available at: <https://digitallibrary.un.org/record/41174>. Para 67.

<sup>124</sup> *Ibidem*. Para 68.

<sup>125</sup> *Ibidem*. Para 69.

<sup>126</sup> Jägers, N. (n. 117). P. 79.

<sup>127</sup> Mares, R. (2006) Institutionalisation of corporate social responsibilities: synergies between the practices of leading multinational enterprises and human rights law/policy. Juridiska institutionen, Lunds universitet. Available at: <https://search.ebscohost.com/login.aspx?direct=true&AuthType=ip,uid&db=cat07147a&AN=lub.1626726&site=eds-live&scope=site> (Accessed: 22 February 2023). P. 5.

international human rights law and is clearly articulated in Pillar 1 of the UN Guiding Principles.<sup>128</sup> By being obliged to protect human rights, States must prevent, investigate, prosecute, or redress corporate abuses. In principle, States are not responsible for violations committed by private actors, unless they have failed to comply with their obligations under international law or to take appropriate measures to avoid and remedy a harm. It is also recommended that States set up clear expectations to respect human rights for business within their territory and abroad. Special attention was given in this recommendation to multinational companies, particularly those operating in high-risk contexts, such as conflict areas, to prevent businesses from contributing to serious human rights violations.<sup>129</sup>

Furthermore, Ruggie's principles provide practical guidance to States on how to fulfill their duty to protect.<sup>130</sup> The operational section of the UNGPs highlights the importance of governments adopting a "smart mix of measures" that combines the implementation of national and international laws to ensure that companies respect human rights.<sup>131</sup> In other words, they advocate for strengthening the legal framework and public policies in cases where existing laws are not effectively enforced by States or where protective laws are lacking, with the aim of addressing corporate abuses.<sup>132</sup> Therefore, States must review their legal systems to determine if they can effectively shape business behavior in accordance with human rights standards. Finally, States duty to protect also encompasses the obligation to provide access to effective remedies for the victims in case of abuses according to Pillar 3.<sup>133</sup> This pillar assumes a critical role in ensuring access to effective procedural and substantive remedies, particularly for human rights activists. By enabling the availability of compensatory, punitive, and preventive measures, it has the potential to offer the necessary protections for defenders, as emphasized in Resolution A/HRC/48/13 mentioned earlier.<sup>134</sup>

---

<sup>128</sup> UN Human Rights Council (n. 110) Annex, I. The State duty to protect human rights.

<sup>129</sup> *Ibidem*. Annex, I. The State duty to protect human rights, A. Foundational principles, Commentary on Number 2.

<sup>130</sup> *Ibidem*. Annex, I. The State duty to protect human rights, B. Operational principles.

<sup>131</sup> *Ibidem*, Annex, I. The State duty to protect human rights, B. Operational principles, Commentary on Number 3.

<sup>132</sup> *Ibidem*. Annex, I. The State duty to protect human rights, A. Foundational principles, Commentary on Number 1.

<sup>133</sup> *Ibidem*, Annex, III Access to remedy.

<sup>134</sup> UN Human Rights Council (n. 95).

### 3.1.2. Business obligations to address human rights impacts

Traditionally, under the principle of sovereignty, only States are recognized as subjects of public international law. However, this paradigm is subject to criticism. Scholars like Antônio Augusto Cançado Trindade<sup>135</sup> challenge this notion that ‘non-state actors’, such as individuals, are excluded from the international law. This exclusion is even more contentious when it comes to norms produced by States that affect third parties, for instance, corporations. In this regard, as previously discussed, the UNGPs deviate from the typical approach to soft law at the UN level. The extensive consultation process led by John Ruggie<sup>136</sup> exemplifies the involvement of various stakeholders, including businesses and civil society, in the decision-making process of the UNGPs.<sup>137</sup> However, it remains indisputable that international law can exclusively binds States, even when it establishes that private actors should respect human rights standards.

Stakeholders’ reports, including those produced by NGOs, provided compelling evidence of a significant rise in human rights violations linked to businesses activities, particularly in countries where States are failing to fulfill their human rights obligations under international law.<sup>138</sup> As Bernaz points out, “businesses, as non-state actors, are first and foremost subjected to the domestic law of the country in which they are legally registered as well as the law of the country in which they are operating”.<sup>139</sup> In light of the indirect influence of international law on businesses, the primary responsibility for safeguarding human rights rests with States. The UNGPs further reinforce this perspective by rejecting the assumption that corporations bear legally binding obligations under existing international law and emphasized the central role of states in protecting human rights.<sup>140</sup>

---

<sup>135</sup> Trindade, A.A.C. (2013) *International law for humankind: towards a new jus gentium*. 2. rev. ed. Martinus Nijhoff (The Hague Academy of International Law monographs: 8). P. 213.

<sup>136</sup> Ruggie, J. G. UN. Special Representative of the Secretary-General on Human Rights and Transnational Corporations and Other Business Enterprises (2008). ‘Protect, respect and remedy: a framework for business and human rights: report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises’ A/HRC/8/5. Available at: <https://digitallibrary.un.org/record/625292>. (Accessed: 23 February 2023) Para 4.

<sup>137</sup> Bernaz, N. (n. 99). P. 91.

<sup>138</sup> Bernaz, N. (n. 99). P. 92.

<sup>139</sup> Bernaz, N. (n. 99). P. 93.

<sup>140</sup> Monnheimer, M. (2021) *Due diligence obligations in international human rights law*. Cambridge University Press. Available at: <https://search.ebscohost.com/login.aspx?direct=true&AuthType=ip,uid&db=cat07147a&AN=lub.6809281&site=eds-live&scope=site> (Accessed: 3 March 2023). P. 11

Hence, the level of compliance with human rights standards by corporations within a country will rely on the internalization of the framework proposed by international instruments. Monnheimer asserts that the acknowledgement of accountability of non-state actors for human rights under a general principle of international law would require the existence of this legal principle in the domestic laws, along with its practical and suitable application at the international level.<sup>141</sup>

According to Enrico Partiti, the UNGPs' goals have prompted governmental authorities in Western countries to introduce national laws that require mandatory HRDD, mostly for companies operating in high-risk human rights sectors.<sup>142</sup> Partiti further explains that HRDD entails "companies investigating their supply chains, being aware of possible human rights risks associated with their activity, taking appropriate action to remedy these risks, and transparently communicating their efforts to the public".<sup>143</sup> Notably, one of Ruggie's key principles is the requirement for companies to investigate the entire value chain must.<sup>144</sup> This aspect of HRDD encompasses the regulation of one private actor by another, including suppliers and other business partners. Such regulation would have a transformative effect, for instance, in addressing the practices of livestock operations in the Amazon.

### **3.2. Human Rights Due Diligence framework in Brazil**

Regarding Brazil's status within the international human rights protection system, the country began ratifying relevant international human rights treaties only after its re-democratization in 1985.<sup>145</sup> The first international human rights treaty incorporated into Brazilian law was the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment in 1989. It is understandable that this treaty was the inaugural milestone of international human rights protection in the country, as several crimes of torture occurred

---

<sup>141</sup> Monnheimer, M. (n. 136). P. 16.

<sup>142</sup> Partiti, E. (n. 116) P. 420.

<sup>143</sup> Partiti, E. (n. 116) P. 433.

<sup>144</sup> UN Human Rights Council (n. 110) Annex, II. The corporate responsibility to respect human rights, B. Operational Principles, Commentary on Number 17.

<sup>145</sup> Piovesan, F. (1996) A Constituição de 1988 e os tratados internacionais de proteção dos direitos humanos. *Revista da Procuradoria Geral do Estado de São Paulo*, nº 45/46. Available at: <<https://www.pge.sp.gov.br/centrodeestudos/revistaspge/revista3/rev6.htm>> (Accessed: 10 March 2023).

against pro-democracy demonstrators during the dictatorship. Subsequently, many other core human rights conventions were also internalized in the national system.<sup>146</sup> This paradigm shift was also reflected in the Federal Constitution of 1988, which established human rights as the guiding pillar of international relations. There was a need to establish the country's commitment to respecting and guaranteeing human rights in the global arena after the prolonged period of military dictatorship.<sup>147</sup>

Because of the adoption of the Vienna Declaration and Program of Action<sup>148</sup> during the World Conference on Human Rights in Vienna, in 1993, Brazil implemented the National Human Rights Program (PNDH). After the initial version in 1996, two subsequent versions were launched in 2002 and 2009. Each stage of the program focused on specific group of rights over the years. The first version (PNDH-1) was enacted by Decree n. 1.904<sup>149</sup> and aimed to ensure respect for civil rights in the country, such as freedom of expression and protection against discrimination. The second version (PNDH-2), introduced by Decree n. 4.229<sup>150</sup>, examined the implementation of social rights due to the inequalities affecting vulnerable populations in Brazil. The PNDH-2 had the unique feature of prior public consultation via the internet, to guarantee popular participation in the drafting process. The last version of the program (PNDH-3), published under Decree n. 7.037<sup>151</sup>, consisted of a more concrete block of actions than the previous ones. In chapter 3 of PNDH-3, titled “Development and Human Rights”, the obligation to respect human rights by companies was mentioned as follows: “It considers it essential to monitor respect for Human Rights in projects implemented by transnational companies, as well as their impact on the manipulation of development policies.” However, the text was vague

---

<sup>146</sup> Those instruments incorporated by Brazil were the Convention on the Rights of the Child, September 24, 1990; the International Covenant on Civil and Political Rights, on January 24, 1992; the International Covenant on Economic, Social and Cultural Rights, on January 24, 1992; the American Convention on Human Rights, on September 25, 1992; the Inter-American Convention to Prevent, Punish and Eradicate Violence against Women, on November 27, 1995.

<sup>147</sup> Piovesan, F. (n. 141).

<sup>148</sup> UN General Assembly (1993), Vienna Declaration and Programme of Action, A/CONF.157/23. Available at: <https://digitallibrary.un.org/record/183139> (Accessed 10 March 2023).

<sup>149</sup> Brazil (1996), ‘Federal Decree No. 1.904, 13 of May of 1996.’ [online] Available at: [http://www.planalto.gov.br/ccivil\\_03/decreto/d1904.htm](http://www.planalto.gov.br/ccivil_03/decreto/d1904.htm) (Accessed 10 March 2023).

<sup>150</sup> Brazil (2002), ‘Federal Decree No. 4.229, 13 of May of 2002.’ [online] Available at: [https://www.planalto.gov.br/ccivil\\_03/decreto/2002/d4229.htm](https://www.planalto.gov.br/ccivil_03/decreto/2002/d4229.htm) (Accessed: 10 March 2023).

<sup>151</sup> Brazil (2009), ‘Federal Decree No. 7.037, 21 of December of 2009.’ [online] Available at: [https://www.planalto.gov.br/ccivil\\_03/\\_ato2007-2010/2009/decreto/d7037.htm](https://www.planalto.gov.br/ccivil_03/_ato2007-2010/2009/decreto/d7037.htm) (Accessed: 10 March 2023).

and limited the obligation to respect human rights to transnational companies.<sup>152</sup> None of the subsequent PNDH-3 guidelines specified how this enforcement would occur or which companies would be required to demonstrate the human rights impact of their operations.<sup>153</sup> It is important to note that the national human rights program has not had any updates after 2009, which means that it has remained unchanged for thirteen years.

National regulation of expected corporate behavior regarding human rights impacts arose only due to strategic interest in joining the OECD. Analyzing the context in which the law was created is crucial reaching this conclusion. Firstly, Brazil began cooperating with the OECD in the 1990s, same time as Mexico, Chile, and Argentina also expressed interest in joining the organization. Despite not being a member, Brazil adhered to the OECD Guidelines for Multinational Enterprises in 1997 and subsequently established a National Contact Point (NCP) in 2003.<sup>154</sup> Later, in March 2007, Brazil joined the “key partner” program, recognizing its strategic importance as the seventh-largest economy in the world.<sup>155</sup> Since then, Brazilian governments have been adopting legal measures related to the OECD Guidelines. Notably, the adherence to the Council Recommendations due diligence guidance for specific sectors and for RBC stands out. This led to the implementation of the first framework on the subject in Brazil – the so-called Brazilian National Guidelines on Business and Human Rights<sup>156</sup>, developed without popular participation or transparency in the process. Later, in 2020 and the beginning of 2021, a National Action Plan on RBC and a National Action Plan on Business and Human Rights started to be developed. Only the former was delivered in

---

<sup>152</sup> Trentin, M. & Lopes, R. (2018). Elementos para uma Política Brasileira de Direitos Humanos e Empresas: o acúmulo do GT Corporações. Para uma política nacional de Direitos Humanos e Empresas no Brasil: Prevenção, Responsabilização e Reparação. *Friedrich Ebert Stiftung Brasil*. Análise n. 48/2018. Available at: <http://www.global.org.br/wp-content/uploads/2019/05/Para-uma-pol%C3%ADtica-nacional-de-Direitos-Humanos-e-Empresas-no-Brasil-Preven%C3%A7%C3%A3o-Responsabiliza%C3%A7%C3%A3o-e-Repara%C3%A7%C3%A3o.pdf>. P. 8.

<sup>153</sup> OECD (2022), OECD Responsible Business Conduct Policy Reviews: Brazil, OECD Publishing, Paris. [online] Available at: <https://mneguidelines.oecd.org/oecd-responsible-business-conduct-policy-reviews-brazil.pdf> (Accessed 10 March 2023). P. 14.

<sup>154</sup> OECD (2018) Active with Brazil. [online] Available at: <https://www.oecd.org/latin-america/Active-with-Brazil-Port.pdf> (Accessed: 20 February 2023).

<sup>155</sup> OECD (2022) The OECD and Brazil: A mutually beneficial relationship [online] Available at: <https://www.oecd.org/latin-america/countries/brazil/> (Accessed: 20 February 2023).

<sup>156</sup> Brazil (2018) ‘Federal Decree No. 9.571, 21 of November of 2018.’ [online] Available at: [https://www.planalto.gov.br/ccivil\\_03/\\_ato2015-2018/2018/decreto/d9571.htm](https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/decreto/d9571.htm) (Accessed 10 March 2023).

December 2022, albeit receiving significant criticism that will be explored in the next chapter.<sup>157</sup> Despite the context, these measures had the desired effect of showcasing Brazil's "will, readiness, and capacity" to embrace "OECD policies, practices, and standards".<sup>158</sup> For that reason, on January 25, 2022, Brazil was invited to begin the process of membership.<sup>159</sup>

An examination of the deforestation rates during the period when Decree n. 9.571<sup>160</sup> and the National Action Plan on Business and Human Rights were in effect reveals a high level of deforestation, raising questions about the timing of the OECD's invitation to membership. Furthermore, while these norms were being amended, the Brazilian government paradoxically suspended environmental protection measures. During this time, the political scene in Brazil displayed hostility towards environmentalist movements, with some even questioning the credibility of academic institutions and scientific data on deforestation rates and the urgency of addressing climate change. It is also noteworthy that Brazil's accession to the OECD was one of the campaigns promises<sup>161</sup> made by then-president Jair Bolsonaro, who also pledged to halt the demarcation of indigenous lands in favor of ranchers.<sup>162</sup> Therefore, the underlying legislative intentions behind the National Guidelines on Businesses and Human Rights suggest that the government's concern regarding corporate activities was merely a facade.<sup>163</sup>

---

<sup>157</sup> Figueiredo, Ana Laura (2022). Current Brazilian framework of public policies on Human Rights and Business: Decree No. 9571/18. *HOMA*. 21 September. Available at: <https://homacde.com/index.php/2022/09/21/current-brazilian-framework-of-public-policies-on-human-rights-and-business-decree-no-957118/>

<sup>158</sup> OECD (2017), Report of the Chair of the Working Group on the Future Size and Membership of the Organisation to Council - Framework for the Consideration of Prospective Members. [online]. Available at: <http://www.oecd.org/mcm/documents/C-MIN-2017-13-EN.pdf> (Para 27).

<sup>159</sup> OECD Newsroom (2022), "OECD takes first step in accession discussions with Argentina, Brazil, Bulgaria, Croatia, Peru, and Romania". [online] Available at: <https://www.oecd.org/newsroom/oecd-takes-first-step-in-accession-discussions-with-argentina-brazil-bulgaria-croatia-peru-and-romania.htm>

<sup>160</sup> Brazil (2018) 'Federal Decree No. 9.571, 21 of November of 2018.' (n. 156).

<sup>161</sup> BBC (2020). Brasil na OCDE: O que o país cedeu aos EUA em troca de apoio à entrada no 'clube dos países ricos' [online] Available at: <https://www.bbc.com/portuguese/internacional-50009155>> (Accessed: 9 March 2023).

<sup>162</sup> Resende, S. M. (2018) 'No que depender de mim, não tem mais demarcação de terra indígena', diz Bolsonaro a TV, Folha de S.Paulo [online] Available at: <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> (Accessed: 7 May 2023).

<sup>163</sup> Carta Capital (2020) As 26 principais violações ao meio ambiente feitas por Jair Bolsonaro. February 11. Available at: <https://www.cartacapital.com.br/blogs/brasil-debate/as-26-principais-violacoes-ao-meio-ambiente-feitas-por-jair-bolsonaro/> (Accessed: 6 May 2023).



### **3.2.1. The Report of the UN Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises in Brazil**

In 2015, the UN Working Group's Report<sup>164</sup> examined the relationship between the UN Guiding Principles and business behavior regarding human rights in Brazil, taking an intersectoral perspective. The Experts carefully analyzed the following sectors: energy, extractivism, civil construction, and agribusiness, whose activities significantly impact the Amazon biome. Overall, the Working Group observed that Brazil has a strong legislative framework for human rights and has ratified the most pertinent international instruments in this field. Furthermore, it was acknowledged that the Brazilian government indeed required companies and foreign investors to respect human rights and environmental laws. Nevertheless, in practice, businesses operating in the country did not conduct human rights impact assessments or engage in stakeholder consultation in accordance with national or international standards. A small percentage of Brazilian CEO's demonstrated concern for human rights, but only when it could potentially affect business activities. Hence, none of the companies showed voluntary interest in investigating the effects of their activities on stakeholders or the environment within a framework of sustainable social development.

The Report particularly criticized the lack of measures to address human rights adverse impacts in large development projects in the country. Additionally, the Working Group emphasized that the Brazilian Development Bank (BNDES), the main financier of large-scale projects, did not possess a policy of transparency concerning compliance businesses' adherence to social and environmental laws. Communities affected by extractive industries, agribusinesses, and civil construction denounced various harms, including activist intimidation, deforestation, land conflicts, and water pollution. It was also observed that certain large projects were undertaken by a consortium of private and State-owned companies, such as the one responsible for the Belo Monte hydroelectric

---

<sup>164</sup> UN Human Rights Council. Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises (2016) Report of the Working Group on the Issue of Human Rights and Transnational Corporations and other Business Enterprises on its mission to Brazil. Geneva: UN, 12 May 2016. A/HRC/32/45/Add.1.

plant in Pará.<sup>165</sup> For this reason, one of the main findings of the visit was the vulnerability, isolation, and rejection of stakeholders by companies and decision makers. Regrettably, none of the considerations outlined in the report were taken into account during the preparation of the National Guidelines on Business and Human Rights three years later.<sup>166</sup>

### **3.2.2. The OECD Responsible Business Conduct Policy Reviews of Brazil**

The review of the Brazilian RBC Policy was formally requested by the Ministries of Economy and of Women, Family and Human Rights in December 2019, during the administration of the former President Bolsonaro. It is worthy noting that the OECD defined RBC as “businesses' contribution to sustainable development while preventing and mitigating adverse impacts in their activities, supply chains, and/or business relationships”.<sup>167</sup> As aforementioned, the latest OECD Guidelines for Multinational Enterprises, which align with the United Nations Guiding Principles on Business and Human Rights (UNGPs), have incorporated a due diligence framework into their operational guidance. Consequently, OECD assessment of Brazilian policies considered comprehensive international RBC standards, which encompass areas such as human and labor rights, environmental protection, and anti-corruption. In this sense, this review not only provided a thorough evaluation of corporate behavior but also demonstrated the significant connection between the lack of business respect for human rights and the protection of the Amazon rainforest.

Brazilian public policies and national human rights programs do not implement RBC in practice. Moreover, there is no legal requirement for businesses to disclose their social

---

<sup>165</sup> Belo Monte, considered the fourth largest hydroelectric plant in the world, is the most expensive project underway in the country and a threat to Amazonian biodiversity and indigenous population. Despite failing to meet the conditions to mitigate the adverse socio-environmental impacts, the Norte Energia Consortium obtained authorization to operate the hydroelectric plant. Prosecutors managed to temporarily suspend activities through the Federal Court, and the case also reached the Inter-American Court of Human Rights. However, the construction followed its course regardless. The Working Group heard testimonies from affected communities and identified a lack of Norte Energia responsibility to exercise human rights due diligence and avoid causing human rights harm. Higgins, Tiffany (2021). Amazon's Belo Monte dam cuts Xingu River flow 85%; a crime, Indigenous say. 8 March. *Mongabay News*. Available at: <https://news.mongabay.com/2021/03/amazons-belo-monte-dam-cuts-xingu-river-flow-85-a-crime-indigenous-say/>

<sup>166</sup> Figueiredo, Ana Laura (n. 153).

<sup>167</sup> OECD (n. 149) P. 17.

and environmental impacts, as revealed by one of the initial significant findings of the study. Despite the establishment of a National Guidelines on Business and Human Rights and a National Action Plan on RBC, the OECD has identified substantial and persistent obstacles in Brazilian business activity when it comes to addressing human rights impacts. In fact, the Review consider “Brazil among the most dangerous places for human rights defenders acting in the field of business and human rights”.<sup>168</sup> Violence against human rights defenders often occur in the context of mining or hydroelectricity projects and large agri-business operations. In this aspect, there remains a mistrust towards the Brazilian NCP in mediating stakeholders' claims against companies, particularly due to its placement under the Ministry of Economy. OECD data show that, since 2011, the NCP has received only 19 cases, of which 8 were related to the agriculture sector and 7, the mining businesses. As a result of these challenges, Brazilian civil society organizations have been actively advocating for measures to prevent and mitigate businesses-related adverse impacts. This includes pushing for the adoption of a binding treaty under international law or the establishment of mechanisms to hold companies accountable for violations.<sup>169</sup>

Furthermore, OECD has expressed concern over the weakening of environmental standards and their enforcement in Brazil, resulting in heightened deforestation rates in the Amazon and undermining efforts to achieve climate change targets, including the goal of CO2 neutrality by 2050. Recent government policies have granted authorization for large-scale industrial projects on indigenous lands, prioritizing economic development without considering the associated costs, as highlighted in the 2021 Report of the Inter-American Commission of Human Rights.<sup>170</sup> The OECD made it evident that there is a growing disconnection between climate change targets and the impact of business on forests, coupled to the failure to comply with the obligation of prior consultation with indigenous peoples.

---

<sup>168</sup> *Ibidem*. P. 46.

<sup>169</sup> *Ibidem*. P. 30

<sup>170</sup> *Ibidem*. P. 45

### 3.3. Human rights compliance initiatives adopted by cattle businesses operating in the Amazon

In response to a Greenpeace report in 2009 that exposed the link between meatpacking companies, supermarkets and deforestation within their suppliers, businesses were compelled to act.<sup>171</sup> These measures included suspending beef purchases from farms associated with deforestation and terminating commercial relationships.<sup>172</sup> The websites of the three leading companies in the sector – JBS<sup>173</sup>, Marfrig<sup>174</sup>, and Minerva<sup>175</sup> – prominently feature their proposed sustainable business model, which encompass monitoring the production chain to address deforestation. It is of significance that JBS and Marfrig have also joined the Brazilian Business Council for Sustainable Development (CEBDS), a non-profit civil association created in 1997 by, as they call themselves, “*transformation agents*”.<sup>176</sup> CEBDS has guaranteed being committed to defending the Amazon and its biodiversity, which motivated the Council presence at COP27.<sup>177</sup> Simultaneously, the Federal Public Prosecutor's Office has entered into agreements with over one hundred companies, requiring them to purchase meat only from farms with no history of deforestation after 2008. This initiative, known as "Cattle on the Line" is still in effect.<sup>178</sup> Both JBS<sup>179</sup> and Marfrig<sup>180</sup> had signed this agreement on March 2013 and May 2010 respectively. Nonetheless, the Prosecutors themselves acknowledge that audits

---

<sup>171</sup> Greenpeace (2009) *Farra do boi na Amazônia: Dossiê Greenpeace / Bullfighting spree in the Amazon: Greenpeace dossier*. [online] Available at: <http://greenpeace.org.br/gado/farradoboiaamazonia.pdf> (Accessed: 17 May 2023).

<sup>172</sup> Repórter Brasil (n. 41).

<sup>173</sup> JBS (2023) 'NetZero', [online] Available at: <https://jbs.com.br/netzero/> (Accessed: 9 May 2023).

<sup>174</sup> Marfrig (2023) 'Commitments', [online] Available at: <https://www.marfrig.com.br/en/sustainability/commitments> (Accessed: 17 May 2023)

<sup>175</sup> Minerva Foods (2023) 'Cadeia de fornecedores', [online] Available at: <https://minervafoods.com/dedicacao-ao-planeta-2/#cadeia-de-fornecedores> (Accessed 9 May 2023).

<sup>176</sup> Brazilian Business Council for Sustainable Development (CEBDS) <<https://cebds.org/quem-somos/>> (Accessed: 9 May 2023).

<sup>177</sup> Conselho Empresarial Brasileiro para o Desenvolvimento Sustentável (2022). *Relatório de atividades COP27 / COP27 Activity Report*. [online] Available at: [https://cebds.org/wp-content/uploads/2022/12/RelatorioAtividades\\_Cop27\\_2022.pdf](https://cebds.org/wp-content/uploads/2022/12/RelatorioAtividades_Cop27_2022.pdf) (Accessed: 9 May 2023).

<sup>178</sup> <https://www.boinalinha.org/quem-somos/>

<sup>179</sup> Federal Prosecution Office (2013) *Termo de Ajustamento de Conduta – JBS* Available at: <https://www.boinalinha.org/wp-content/uploads/2022/08/TAC-MT-JBS.pdf> (Accessed: 9 May 2023)

<sup>180</sup> Federal Prosecution Office (2010) *Termo de ajustamento de conduta – Marfrig*. Available at: <https://www.boinalinha.org/wp-content/uploads/2022/08/TAC-MT-Marfrig.pdf> (Accessed: 9 May 2023).

do not cover indirect suppliers, neither the cattle laundering practices mentioned earlier.<sup>181</sup>

The lack of concrete evidence demonstrating the commitment of agribusiness companies in Brazil to human rights and environmental protection raises concerns about the effectiveness of their proclaimed net-zero policies and efforts to combat deforestation. Reports from NGOs consistently highlight the poor performance of these businesses when it comes to addressing deforestation. Global Canopy's recent assessment of JBS, Marfrig, and Minerva Foods, for example, deemed their efforts to combat deforestation in the Amazon as insufficient, emphasizing their low scores in the sustainability index.<sup>182</sup> Additionally, the absence of consolidated corporate practices in Brazil for tracking animals since birth, as reported by Repórter Brasil, further exposes the shortcomings in the beef industry's practices.<sup>183</sup> Inspections only occur on farms that directly sell to slaughterhouses, overlooking the potential environmental crimes associated with indirect suppliers. This lack of comprehensive oversight hampers the ability to trace compliance with human rights standards throughout the supply chain. Furthermore, for the first time, in 2021, Brazilian and Colombian indigenous groups took Casino supermarket to French courts, accusing it of contributing to deforestation in the Amazon through its meat purchases from JBS slaughterhouses.<sup>184</sup> Therefore, despite public announcements of sustainable practices, companies' failure to voluntarily implement effective measures to ensure compliance with human rights in their operations and suppliers raises questions about their commitment to address deforestation in the Amazon.

---

<sup>181</sup> Repórter Brasil (n. 41) P. 4

<sup>182</sup> Thomson, E. & Fairbairn, A. (n. 54).

<sup>183</sup> Reporter Brasil (2021). Steak in the supermarket, forest on the ground. Report: Monitor 9. Available at: <https://reporterbrasil.org.br/wp-content/uploads/2021/02/fil%C3%A9-no-supermercado-EN-14-02.pdf> (Accessed 6 May 2023).

<sup>184</sup> Business & Human Rights Resource Center (2021) Brazil & Colombia: Amazon indigenous communities & NGOs sue supermarket Casino under French due diligence law over deforestation & human rights violations. March 3rd. [online] Available at: <https://www.business-humanrights.org/en/latest-news/brazil-colombia-amazon-indigenous-peoples-ngos-sue-supermarket-casino-under-french-due-diligence-law-over-deforestation-human-rights-violations/> (Accessed 6 May 2023). The full complaint can be accessed in this link: [http://climatecasechart.com/wp-content/uploads/sites/16/non-us-case-documents/2021/20210302\\_13435\\_complaint.pdf](http://climatecasechart.com/wp-content/uploads/sites/16/non-us-case-documents/2021/20210302_13435_complaint.pdf)

# 4 Strengthening the HRDD framework in Brazil to protect the Amazon

## 4.1. Proposing a short-term goal: a national mandatory due diligence law

From the beginning of discussions within the international community regarding business and human rights, concerns have been raised about whether it would be more appropriate to have a soft law instrument or a treaty with binding obligations. After extensive negotiations with States, companies, and civil society, John Ruggie concluded that the adoption of voluntary guidelines for businesses conduct would effectively address the matter and satisfied States and the corporate sector. Civil society, however, continued to consistently advocate for an instrument with binding force.<sup>185</sup> Bringing the private sector, civil society, and sovereign nations together around a common denominator is, in fact, no simple task. However, throughout history, some governments have often relaxed their demands for strict human rights regulations as a means of attracting investments and bolstering their respective economies. Brazil is not exempt from this pattern. In Chapter 2, when discussing the evolution of Brazilian environmental laws, it was demonstrated how the military dictatorship promoted a model of economic development at any cost. Industries, agriculture, and other large-scale enterprises have expanded within the Amazonian borders, disregarding environmental concerns and legislations. Brazil's ongoing struggle to safeguard the Amazon was further exacerbated when Bolsonaro assumed the presidency in 2018, resulting in a significant setback for environmental protection efforts. The repetition of an unsustainable economic model led to significant international repercussions, primarily driven by the climate crisis imposed on the planet. Consequently, some measures were adopted at the international level, such as the suspension of international donations to the Amazon Public Fund from its main contributors – namely, Germany and Norway<sup>186</sup> – and a complaint against Bolsonaro filed

---

<sup>185</sup> Launch of John Ruggie's "Just Business: Multinational Corporations and Human Rights" (2012) Available at: [https://www.youtube.com/watch?v=\\_UjdBGg0Fd0](https://www.youtube.com/watch?v=_UjdBGg0Fd0) (Accessed: 8 May 2023).

<sup>186</sup> Boffey, D. (n. 86).

at the International Criminal Court.<sup>187</sup> With a new government in place since January 2023, mounting pressures for stricter measures to protect the Amazon are now directed towards the newly elected president.<sup>188</sup> One of these pressures are the regulation and inspection of companies operating in the country, as well as a new perspective on the right to development, adjusted to meet the needs of the population.<sup>189</sup> A voluntarily imposed due diligence law has proven insufficient to effectively mitigate deforestation rates, especially in the face of governments that prioritize economic growth over human rights and environmental laws as previously demonstrated. To effectively address environmental human rights violations and promote responsible business practices, implementing a mandatory due diligence framework is highly recommended. Such framework would require companies operating in Brazil, especially those with activities impacting the Amazon, to conduct extensive assessments of their supply chains, operations, and potential environmental impacts. By being obliged to identify and mitigate risks, companies can be held accountable for any violations or for not taking proactive measures to prevent harm within their suppliers.

Additionally, establishing a future Latin-American agreement on this subject would be a significant step towards regional cooperation and unified efforts in addressing deforestation in the Amazon. This convention could provide a shared framework for countries in the region to enforce mandatory due diligence requirements, share best practices, and collaborate on sustainable development initiatives. By working together, Latin American countries can strengthen their collective response to environmental challenges, protect human rights, and ensure the long-term preservation of the Amazon. Overall, a mandatory due diligence framework and a future Latin-American agreement

---

<sup>187</sup> In October 2021, ex-President Bolsonaro was denounced at the International Criminal Court (ICC) by the NGO AllRise for crimes against humanity in a campaign called “The Planet vs Bolsonaro”. The complaint accused the former President of *pursuing a state policy targeting the destruction of the Brazilian Legal Amazon ecosystems and its Dependents and Defenders*. AllRise continued arguing that, by doing so, he was affecting the entire world with a worsening climate crisis. The full complaint is available at: <https://drive.google.com/drive/folders/1dzrnMgpHuhu2jDdAxKWHymdyY5AD5xM>

<sup>188</sup> Deutsche Welle (DW) News. (2023) International NGOs ask Lula to protect the Amazon. January 26. Available at: <https://www.dw.com/pt-br/organiza%C3%A7%C3%B5es-internacionais-pedem-a-lula-prote%C3%A7%C3%A3o-da-amaz%C3%B4nia/a-64522288>

<sup>189</sup> Homa (2023) Silvio Almeida, new Minister of Human Rights and Citizenship of Brazil, announces the creation of a Special Advisory on Business and Human Rights [online] Available at: <https://homacde.com/index.php/2023/01/26/silvio-almeida-new-minister-of-human-rights-and-citizenship-of-brazil-announces-the-creation-of-a-special-advisory-on-business-and-human-rights/> (Accessed: 8 May 2023)

on environmental human rights violations would contribute to fostering responsible business practices and sustainable development in Brazil and the wider region as will be developed below.

#### **4.1.1. The necessity of a mandatory due diligence law**

The issue of addressing human rights impacts resulting from business activities in the Amazon must include their supply chains, which are crucial to environmental protection and the climate agenda. To ensure sustainable practices throughout the supply chain and adherence to universally recognized human rights standards, including environmental protection, countries like Norway, Germany, France and Switzerland enacted mandatory due diligence legislations.<sup>190</sup> These laws require companies to detect, prevent, mitigate, address and remedy violations of human rights and environmental harm, not only within their own operations but also within their indirect operations, such as suppliers, contractors, and third-party entities. Moreover, they also demand businesses to regularly disclose information about their due diligence tracking systems and results to society. By converting voluntary commitments set out in the UNGPs into legal obligations, national due diligence laws allow companies to be held accountable before courts. For instance, France enacted a due diligence law in March 2017<sup>191</sup> that enabled Brazilian and Colombian indigenous groups in the Amazon to sue the French supermarket chain, Casino, for deforestation and other human rights violations.<sup>192</sup> According to the case, Groupe Casino regularly purchases beef from three slaughterhouses of JBS, which have consistently been linked to deforestation like demonstrated before.<sup>193</sup> The unprecedented

---

<sup>190</sup> Amazon Watch (2023) '2023-respecting-indigenous-rights-toolkit.pdf', [online] Available at: <https://amazonwatch.org/assets/files/2023-respecting-indigenous-rights-toolkit.pdf> (Accessed: 20 May 2023).

<sup>191</sup> Cannelle, L. (2020) The French Loi de Vigilance: Prospects and Limitations of a Pioneer Mandatory Corporate Due Diligence, VerfBlog, June 16th, Available at: <https://verfassungsblog.de/the-french-loi-de-vigilance-prospects-and-limitations-of-a-pioneer-mandatory-corporate-due-diligence/>, DOI: 10.17176/20200616-124112-0. (Accessed 6 May 2023).

<sup>192</sup> To showcase the scale of economic activities conducted by Casino in Latin America, it's worth noting that in 2020, the French group's operations in South America accounted for 46% of its revenue. Lough, R. and Vidalon, D. (2021). Povos indígenas processam varejista Casino por destruição da Amazônia. CNN Brasil, March 3<sup>rd</sup>. Available at: <https://www.cnnbrasil.com.br/economia/povos-indigenas-processam-varejista-casino-por-destruicao-da-amazonia/> (Accessed: 6 May 2023).

<sup>193</sup> Business & Human Rights Resource Center (n. 178).



nature of this lawsuit in France increased the pressure on multinationals operating in Brazil, particularly those in agribusiness.

This thesis revealed that Brazil established a National Guidelines on Business and Human Rights through Decree n. 9.571 of 2018. However, in practice, this norm has proven to be ineffective, as it simply mirrors the voluntary approach of the UNGPs and OECD.<sup>194</sup> Furthermore, Decree n. 9.571 does not specify “whether it is State’s responsibility to impose these constraints on companies and the real feasibility of carrying out such a task”.<sup>195</sup> Considering that Brazil has ratified and incorporated most international human rights treaties, the legal system lacks a norm that eliminates the possibility for companies to choose whether to assess and track human rights impacts in their operations and business partnerships.<sup>196</sup> It is Brazil’s duty, within its obligation to protect and fulfill human rights, to legally ensure that companies do not violate human rights throughout its entire supply chain by establishing a clear framework for achieving this goal. Hence, one pathway involves strengthening the National HRDD through a mandatory due diligence law that prioritizes human rights and environmental protection in the country's economic development.

A mandatory model would also enable access to national and international Courts by individuals, environmentalists, NGOs, and Brazilian public authorities<sup>197</sup> working for

---

<sup>194</sup> Decree 9.751, Article 1, paragraph 2, says: “*The Guidelines will be implemented voluntarily by companies.*”

<sup>195</sup> Roland, M. C. (coord.). Reflexões sobre o Decreto 9571/2018 que estabelece as Diretrizes Nacionais sobre empresa e direitos humanos. *Cadernos Homa*. Juiz de Fora, v. 01, n. 07. dezembro 2018. Juiz de Fora. Available at: <https://homacdh.com/wp-content/uploads/2019/01/An%C3%A1lise-do-Decreto-9571-2018.pdf> (Accessed 4 April 2023).

<sup>196</sup> Reporter Brasil. (2018). Decreto do governo federal fragiliza o cumprimento dos direitos humanos por empresas. [online] Available at: <https://reporterbrasil.org.br/2018/12/decreto-do-governo-federal-fragiliza-o-cumprimento-dos-direitos-humanos-por-empresas/> (Accessed 6 May 2023).

<sup>197</sup> In Brazil, it is incumbent upon the Federal Prosecution Office and the Federal Public Defenders to file collective actions in the Federal Courts and Superior Courts to defend society in accordance with the following articles of the Constitution of the Republic: *Art. 127. The Public Prosecutor's Office is a permanent institution, essential to the jurisdictional function of the State, responsible for defending the legal order, the democratic regime and unavailable social and individual interests. [...] Art. 134. The Public Defender's Office is a permanent institution, essential to the jurisdictional function of the State, being entrusted, as an expression and instrument of the democratic regime, fundamentally with legal guidance, the promotion of human rights and the defense, at all levels, judicial and extrajudicial, of individual and collective rights, in full and free of charge, to the needy, in the form of item LXXIV of art. 5 of this Federal Constitution.* Brazil. (1988) ‘Federal Constitution of 1988.’ Available at: [http://www.planalto.gov.br/ccivil\\_03/constituicao/constituicao.htm](http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm) (Accessed 9 May 2023).

society's goods. With the implementation of a mandatory due diligence, these groups can legally use it as basis to file lawsuits against companies that fail to fulfill their due diligence obligations, as demonstrated in the case of Casino Group. It should be emphasized that the development of judicial precedents on the subject also serves as an additional tool for adjusting and deterring non-compliant practices by companies. Hence, the potential for litigation and legal consequences after enacting a mandatory due diligence would provide strong incentives for companies to investigate human rights and environmental harms direct and indirect linked with their operations. Moreover, increased scrutiny and public disclosure of results relating to companies' social and environmental impacts will likely affect their reputation and financial performance, especially on the international stage.<sup>198</sup> For these reasons, Brazil must prioritize implementing a mandatory due diligence law, which not only provides a clear framework for companies to follow but also promotes corporate responsibility and accountability.

#### **4.1.2. Essential elements for an effective mandatory national due diligence law**

The implementation of a mandatory due diligence law in Brazil, drawing inspiration from international standards, can serve as a valuable framework for promoting maximum sustainability. Unlike traditional corporate audit processes conducted by third parties, mandatory due diligence involves a continuous improvement and risk management process. By emphasizing the ongoing investigation and traceability of commercial operations and their supply chains, the due diligence framework ensures that companies adopt a forward-looking approach in addressing potential damages and anticipating negative impacts. Such an approach aligns with the objective of maintaining environmental integrity and safeguarding human rights of those affected by businesses operations, as exemplified by the existing French and German models. Here lies the corner stone of the due diligence proposed for the first time by the UNGPs: conducting a risk assessment “centered on identifying actual and potential impacts on the human rights

---

<sup>198</sup> The Brazilian Report (2022) ‘New EU deforestation law a red flag for Brazilian exporters’ [online] Available at: <<https://brazilian.report/liveblog/2022/12/06/eu-deforestation-law-brazilian-exporters/>> (Accessed: 1<sup>st</sup> June 2023).

of stakeholders, rather than risks to the company itself and to its shareholders”.<sup>199</sup> Other relevant aspect of the due diligence system is the establishment of engagement channels with stakeholders, by creating remedies or complaints mechanisms regarding businesses activities. In other words, due diligence includes an assessment of a company's policies, procedures, and practices, but it also involves gathering information from external sources, such as suppliers, customers, and civil society organizations.

Briefly, the French due diligence law is built in two mechanisms: “a civil duty of vigilance – seeking the prevention of risks and human rights violations related to business activities; a reparation and liability mechanism for breaches of the obligation by companies”.<sup>200</sup> Under the French law, businesses with more than 5.000 employees in France or 10.000 employees abroad are obliged to create, implement, and publish a vigilance plan. It should be emphasized that the plan covers companies’ own operations, as well as those of their controlled subsidiaries, subcontractors, and suppliers. By turn, in the German due diligence law, companies with more than 3.000 employees are required to identify and prevent human rights violations and environmental damage in their supply chains, both in Germany and overseas. This law also imposes strict liability for harms caused by businesses, which means that they can be held accountable for their suppliers’ actions.<sup>201</sup> German due diligence obligations are structured as follows: “the adoption of a policy statement, establishment of a risk management system, regular risk analyses, the establishment of preventive and remedial measures in the company’s own business and towards direct suppliers, the installation of a complaints procedure, documentation and reporting”.<sup>202</sup> Both legislations share a common focus on addressing concerns related to all tiers of a company's operations, including its business partners. One of the key takeaways from these models is the establishment of direct liability links between companies and their value chains. In fact, this reproduces Ruggie’s idea of “a ‘complicity’ as a benchmark ”<sup>203</sup>, where companies judge the behavior of their business partners when

---

<sup>199</sup> Macchi, C. (2022) Human Rights and Environmental Due Diligence. The Hague: T.M.C. Asser Press. doi:10.1007/978-94-6265-479-2\_5. P. 92

<sup>200</sup> Cannelle, L. (n. 185).

<sup>201</sup> Krajewski, M., Tonstad, K. and Wohltmann, F. (2021). Mandatory Human Rights Due Diligence in Germany and Norway: Stepping, or Striding, in the Same Direction? *Business and Human Rights Journal*, 6(3), 550-558. doi:10.1017/bhj.2021.43

<sup>202</sup> *Ibidem*. P. 555.

<sup>203</sup> Macchi, C. (n. 192) P. 69.

assessing human rights and environmental impacts, as they can also be held accountable for their abuses. In the context of Brazil, legally implementing this non-strict responsibility would be a significant step towards ensuring that businesses operating in the Amazon maintain comprehensive oversight of their suppliers and take necessary measures to prevent deforestation caused by cattle ranching. Still following the ‘complicity’ line of thinking, it is imperative for the mandatory due diligence law to encompass the finance sector as well. This inclusion would introduce a new layer of protection by requiring companies seeking capital injections to undergo rigorous scrutiny to ensure their practices align with sustainability and human rights. As previous demonstrated, BNDES has been responsible for financing large-scale projects in the country without effectively tracking businesses’ compliance with deforestation or human rights impacts. Therefore, addressing the responsibility of investors becomes crucial to assess companies’ forest footprint for responsible investment when enacting a national mandatory HRDD. Moreover, it would hold investors accountable for supporting projects that prioritize sustainable and responsible practices, fostering a more sustainable and socially responsible investment landscape in Brazil.

Nonetheless, the implementation of mandatory due diligence in Brazil must go beyond assuming a connection between legality and sustainability to guarantee the efficient protection of the Amazon.<sup>204</sup> Some worldwide due diligence proposals focus on evaluating a company's ongoing compliance with current environmental and human rights regulations. Legal compliance alone is not sufficient to address the complex environmental challenges and promote sustainable practices in the Amazon. Like showed in previous chapters, deforestation is caused by illegal practices employed by cattle-raising farms combined with lack of investment in sustainable practices by agribusinesses. To achieve efficient protection of the Amazon, its biodiversity and communities, the mandatory due diligence framework should encompass a broader perspective that considers the interplay between legal requirements and environmental sustainability. This means moving beyond a checklist-based approach that focuses solely on verifying authorization to operate and compliance with existing laws. Instead, the

---

<sup>204</sup> Ituarte-Lima, C, Dupraz-Ardiot, A & McDermott, CL (2019) Incorporating international biodiversity law principles and rights perspective into the European Union Timber Regulation, *International Environmental Agreements: Politics, Law and Economics* 19: 255–272.

framework should encourage companies to adopt proactive measures and invest in sustainable practices, such as new livestock management models that incorporate pasture reuse,<sup>205</sup> prioritize stakeholders and indigenous perspectives on the due diligence assessment. Hence, drawing on the insights provided by Ituarte-Lima et al.<sup>206</sup> on the European Union Timber Regulation,<sup>207</sup> a mandatory due diligence framework in Brazil should not only require compliance with environmental and human rights laws, but also encourage companies to regularly assess the sustainability of their operations and invest in new practices that significantly reduce their environmental impact.

Another crucial aspect is that both the French and German corporate due diligence laws have stakeholder engagement as a foundational pillar on their frameworks. In Brazil, there is a lack of popular participation in decision-making related to business activities, which become an obstacle to implement any effective and transparent due diligence system. For instance, during the Brazilian first public hearing on human rights and businesses, several business representatives were absent.<sup>208</sup> The event was only attended by individuals affected by business activities, civil society organizations, members of academia and public representatives responsible for protecting society's interests – the Public Prosecutor's Office and Public Defender's Office. Notably, fundamental environmental bodies in the country, including the Ministry of the Environment, were also absent from the meeting.<sup>209</sup> This situation indicates a dearth of businesses and human rights policies that are committed to fostering an integrative dialogue among stakeholders, as companies tend to avoid addressing violations resulting from their activities. Hence, to meet expectations envisioned by the UNGPs, a Brazilian mandatory due diligence law should

---

<sup>205</sup> Bogaerts, M., Cirhigiri, L., Robinson, I., Rodkin, M., Hajjar, R., Costa Junior, C., Newton, P. (2017). Climate change mitigation through intensified pasture management: Estimating greenhouse gas emissions on cattle farms in the Brazilian Amazon. *Journal of Cleaner Production*, 162, 1539-1550. doi: 10.1016/j.jclepro.2017.06.130. P. 9.

<sup>206</sup> Ituarte-Lima, C, Dupraz-Ardiot, A & McDermott, CL (n. 197) P. 267.

<sup>207</sup> European Union (2010) 'Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market', *Official Journal of the European Union*, L 295, 23-34.

<sup>208</sup> On November 8, 2017, the first public hearing organized by a body of the Federal Public Ministry took place in Brazil. The report of this hearing is a public document that can be accessed at this link: <https://www.mpf.mp.br/pfdc/@@search?path=&SearchableText=PGR-00457563%2F2017> (Accessed 8 May 2023).

<sup>209</sup> Roland, M. C., et al. (2018) Breve análise sobre a 1ª Audiência Pública brasileira sobre Direitos Humanos e Empresas. In. *Cadernos de Pesquisa Homa*, vol. 1, n. 3, 2018. Available at: <https://homacde.com/wp-content/uploads/2018/08/Cadernos-de-Pesquisa-Homa-Audi%C3%Aancia.pdf>

prescribe stakeholder participation. Also, to ensure a quality engagement, this diploma should ensure that companies: **i.** are transparent with their findings and disclosure due diligence reports publicly; **ii.** establishes channels of constant dialogue with stakeholders; **iii.** create extrajudicial remedies in case of violations, enabling individuals to access fair and expedited means of repairing the damages caused without solely relying on court processes.

A final point to emphasize in the provisions for a national mandatory due diligence law concerns to the burden of proof when business activities violate human rights or environmental norms. One of the main criticisms of Decree 9.571 is that the diploma is silent about the burden of proof.<sup>210</sup> Currently, unless expressly stated otherwise by law, claimants are expected to bear the burden of proof in the Brazilian judicial system. However, this requirement put individuals whose rights were violated by multinational corporations at a significant disadvantage, given the large imbalance of economic power between them. This often leads to *probatio diabolica*, i. e. a situation where an impossible proof is placed on the claimant, extremely challenging to obtain justice. Moreover, lack of access to documents and information about a company's operations further exacerbates this disparity in power. To address these challenges, it is imperative that companies are the ones required to provide evidence of compliance with the due diligence system in their own operations and throughout the supply chain. This shift ensures an equitable distribution of the burden of proof in cases involving human rights violations.

#### **4.2. Proposing a long-term goal: a Latin America Agreement on Business and Human Rights**

In the wake of proposals to strengthen business and human rights framework in Brazil, it is important to remember that the country is not the sole harbor of the Amazon biome, and that livestock is also the main driver of deforestation in many Latin American countries. This reality presents an opportunity to establish a regional protection agreement in Latin America aimed at combating deforestation caused by large corporate activities through a mandatory regional due diligence. To be maximally effective, this agreement

---

<sup>210</sup> Figueiredo, A. L. (n. 153).

would need to prioritize environmental due diligence<sup>211</sup> specifically aimed at protecting the Amazon from the impacts of businesses most exposed to forest-risk commodities. Benefits of such an agreement would include **i.** the establishment of a common mandatory due diligence framework that aligns expected business behavior with respect to human rights and environmental standards throughout the region; **ii.** the addition of a new layer of international protection as a treaty would enable States, public authorities, NGOs, and civil society to seek protection before the Inter-American Court of Human Rights against an offending State. Some countries in Latin America have already signaled their support for adopting a treaty regarding mandatory due diligence at the UN level. In 2014, Ecuador, joined by several countries from the Global South, including Bolivia and Venezuela, proposed drafting an environmental due diligence binding instrument.<sup>212</sup> However, there is currently no consensus on a hard law on the topic in the international community, with some states from the Global North and business associations opposing the idea.<sup>213</sup> Negotiations at the UN level could, therefore, take several years despite the emergency crisis facing the Amazon. It would be better to implement a regional treaty, as it would require less conciliation of interests, even though it would still demand strong political commitment from signatory countries, as well as supervised financial and technical resources to monitor and ensure compliance with the provisions of the agreement.

---

<sup>211</sup> OECD (2021) Policy Trends in Environmental Due Diligence [online] available at: <<https://mneguidelines.oecd.org/policy-trends-in-environmental-due-diligence.pdf>> (Accessed 31 May 2023).

<sup>212</sup> UN Human Rights Council (2014) Elaboration of an international legally binding instrument on transnational corporations and other businesses enterprises with respect to human rights ('Ecuador Resolution'). UN Doc. A/HRC/26/L.22/Rev.1.

<sup>213</sup> Macchi, C. (n. 192). P. 142.

## 5 Conclusions

The Amazon rainforest has been the scenario of many human rights violations. This thesis demonstrates that the Brazilian State has failed to respect, protect, and fulfill human rights in relation to the Amazon, its biodiversity, and its forest-dependent population. For many years, scientists worldwide warned about the importance of protecting the Amazon biome for the maintenance of life on the planet, considering the ecosystem services it provides and the role it plays in maintaining climate balance. Recently, due to the triple planetary crisis, the UN has recognized the right to a healthy environment as a human right. This unequivocally reinforces the imperative to protect the Amazon rainforest within the framework of human rights that must be guaranteed by the Brazilian State. Despite the voices echoing in the international community, the Brazilian State insists on remaining deaf. Under governments disconnected from environmental conservation policies and laws, the Amazon has experienced its greatest aggressor: cattle raising for large-scale businesses. The beef empire has been cutting down the forest in the pursuit of economic development at any cost, claiming it to be necessary for an underdeveloped nation. It is evident that Brazil's dominance in the global beef market does not enrich the country from the perspective of distributive social justice. The country's gross domestic product shows that only a few are profiting from the advancement of agribusiness within the forest limits, while the collective loss is undeniable. Moreover, indigenous populations, as well as the activists face more gross violations of their rights – Brazil is the country that kills the most environmentalists, as documented by experts from the UN Working Group and the OECD. These experts also reveal that Brazilian companies exclusively prioritize managing risks to enhance their own profitability and business performance, disregarding environmental and human rights standards necessary for a sustainable society.

Therefore, by establishing the link between deforestation in the Amazon, business activities, and the lack of commitment to the Brazilian law requiring companies to voluntarily respect human rights, this thesis answers its main research question as follows: There is a due diligence legal instrument in place – the Brazilian National Guidelines on Business and Human Rights – drawing on the UNGPs and the OECD Guidelines for Multinational Enterprises. However, by reproducing the voluntary-based adherence



system present in those international soft instruments, the Brazilian National Guidelines on Business and Human Rights do not contribute to the protection of the Amazon rainforest.

To reaching this conclusion and advocate for the enactment of a mandatory due diligence law in Brazil, this thesis addresses other four additional sub-questions. Regarding the legal context protecting the Amazon, there is an extensive yet fragmented set of regulations in place for environmental protection, including specific norms for establishing conservation units in the Amazon. Furthermore, the UN recognition of the right to a healthy environment as a human right links the Brazilian State to the adoption of measures in this regard, given its adherence to the key international human rights treaties. Moving on to the second and third sub-question, this thesis initially examines the international framework concerning the HRDD, elucidating the obligations of States and companies to uphold human rights as outlined on the principles brought by John Ruggie in the UNGP. Subsequently, by drawing upon reviews conducted by the UN Businesses and Human Rights Working Group and OECD, this thesis answers the next sub-question by demonstrating that Brazilian companies do not comply with human rights and environment standards. Despite having a robust human rights framework in place – which includes provisions for environmental protection, there is currently no law mandating companies to respect these norms. Specifically, in the case of livestock businesses, there is a gap between rhetoric and reality that calls for a stronger and more enforceable framework to ensure that Brazilian businesses prioritize human rights and environmental protection in their operations and supply chain.

Finally, answering the fourth sub-question, this thesis proposes a solution to the issue by suggesting steps to strength Brazil's HRDD framework, primarily through directly binding businesses to respect human rights with the implementation of a mandatory due diligence. This short goal proposal emphasizes the necessity of a system where companies are obligated to actively investigate, track, detect, prevent, mitigate, address and remedy violations of human rights and environmental harm. Drawing inspiration from the models in Germany and France, it is recommended to establish a strict liability mandatory due diligence framework, requiring businesses to investigate not only their own operations,

but also their supply chain. Furthermore, the scope of this mandatory due diligence law should be extended to encompass the finance sector, as it serves as a vital tool in promoting responsible investments in Brazil. By holding both businesses and investors accountable, the law would encourage comprehensive due diligence efforts and ensure that capital flows are directed toward environmentally and socially sustainable projects. Additionally, within the Brazilian context, it is crucial to address stakeholder engagement and balance power dynamics when developing a national HRDD framework. Currently, stakeholders are excluded from participating in decision-making processes related to businesses and any public policies on the matter. It is essential to prioritize meaningful stakeholder engagement to ensure the prevention of human rights violations and guarantee an equitable approach to their participation. By actively involving and including stakeholders, their perspectives, concerns, and expertise regarding the Amazon protection should be considered for meaningful stakeholder engagement, transparency, and accountability. As a final proposal on the subject, this thesis suggests a long-term objective consisted in a Latin American agreement that creates a common environmental due diligence framework for the region, focusing on forest-risk commodities. Implementing a cooperative and regional approach would recognize the interconnectedness of Amazonian issues and the need for urgent and collective action. Ultimately, this initiative aims to explore new avenues to protect the Rainforest and its invaluable ecosystems and populations by establishing a mandatory cooperative and regional system of due diligence.

# Bibliography

## Literature

### Books

Bernaz, N. (2017) *Business and human rights: history, law, and policy – bridging the accountability gap*. Routledge (Human rights and international law).

Egan, S. (2018) 'The doctrinal approach in international human rights law scholarship.' In Lee McConnell & Rhona Smith (Eds.), *Research methods in human rights* (pp. 24–41). Routledge. <https://doi-org.ludwig.lub.lu.se/10.4324/9781315672632-3>.

Fearnside, P.M. (1999) 'Biodiversity as an environmental service in Brazil's Amazonian forests: Risks, value and conservation', *Environmental Conservation*, 26, pp. 305-321.

Jägers, N. (2002) *Corporate human rights obligations*. Intersentia (School of Human Rights Research: v.17).

Macchi, C. (2022) *Human Rights and Environmental Due Diligence*. The Hague: T.M.C. Asser Press. doi:10.1007/978-94-6265-479-2\_5.

Marcon, J.L., Menin, M., Araújo, M. G. P., & Hrbek, T. (2012) *Biodiversidade Amazônica: caracterização, ecologia e conservação*. Edua, Manaus.

Monnheimer, M. (2021) *Due diligence obligations in international human rights law*. Cambridge University Press.

Scheinin, M. (2017) 'Chapter 2: The art and science of interpretation in human rights law. Edward Elgar Publishing' (Handbooks of Research Methods in Law series). doi:10.4337/9781785367793.00009.

Stern, N.H. (2007) 'The economics of climate change. the Stern review.' Cambridge University Press.

### Articles

Barlow, J. et al. (2018) 'The future of hyperdiverse tropical ecosystems', *Nature: International weekly journal of science*, 559(7715), pp. 517–526. doi:10.1038/s41586-018-0301-1.

Bauer, T., de Jong, W. & Ingram, V. (2022). 'Perception matters: An Indigenous perspective on climate change and its effects on forest-based livelihoods in the Amazon.' *Ecology and Society*, 27(1), 17. doi: 10.5751/ES-12837-270117 27

Benzeev, R. (1) et al. (2022) 'What's governance got to do with it? Examining the relationship between governance and deforestation in the Brazilian Amazon', PLoS ONE, 17(6 Jun). doi:10.1371/journal.pone.0269729.

Bogaerts, M., Cirhigiri, L., Robinson, I., Rodkin, M., Hajjar, R., Costa Junior, C., Newton, P. (2017). Climate change mitigation through intensified pasture management: Estimating greenhouse gas emissions on cattle farms in the Brazilian Amazon. *Journal of Cleaner Production*, 162, 1539-1550. doi: 10.1016/j.jclepro.2017.06.130. P. 9.

Carvalho, S. et al. (2020) 'A changing Amazon rainforest: Historical trends and future projections under post-Paris climate scenarios', *Global and Planetary Change*, 195. doi:10.1016/j.gloplacha.2020.103328.

Coelho-Junior, M. G. et al. (2022) Unmasking the impunity of illegal deforestation in the Brazilian Amazon: a call for enforcement and accountability, *Environ. Res. Lett.* 17 041001. <https://doi.org/10.1088/1748-9326/ac5193>

Dalla Riva, L. and Melo, M.P. (2022) 'Rights of Nature in Brazil: limits and possible interpretations of the 1988 Constitution', *Rivista Ordines*, vol. 1, pp. 292-317. Available at: <http://www.ordines.it/wp-content/uploads/2022/08/11-MELO-DALLA-RIVA.-Rights-of-the-Nature-in-Brazil.pdf>

Dias, J.M. and Pereira, N.M. (2010) 'Considerações sobre a evolução do Sistema Nacional de Unidades de Conservação e o ordenamento territorial da Amazônia: interações entre o Estado e a Ciência', *Desenvolvimento e Meio Ambiente*, 21, pp. 69–88. [online] Available at: <https://search-ebshost-com.ludwig.lub.lu.se/login.aspx?direct=true&AuthType=ip,uid&db=edsdoj&AN=edsdoj.3b1601438ca6447c9082fecf07d54417&site=eds-live&scope=site>

Etty, T. et al. (2022) 'The Possibility of Radical Change in Transnational Environmental Law', *Transnational Environmental Law*, 11(3), pp. 447–461. Available at: <https://search-ebshost-com.ludwig.lub.lu.se/login.aspx?direct=true&AuthType=ip,uid&db=edshol&AN=edshol.lhein.journals.tev111.32&site=eds-live&scope=site>

Filho, A. O. S., Ramos, J. M., Oliveira, K., & Nascimento., T. N. (2015). 'A evolução do código florestal brasileiro.' *Caderno De Graduação - Ciências Humanas E Sociais - UNIT - SERGIPE*, 2(3), p. 271–290. Available at: <https://periodicos.set.edu.br/cadernohumanas/article/view/2019>

Ituarte-Lima, C, Dupraz-Ardiot, A & McDermott, CL (2019) Incorporating international biodiversity law principles and rights perspective into the European Union Timber Regulation, *International Environmental Agreements: Politics, Law and Economics* 19: 255–272.

Jenkins, C.N. (1) and Joppa, L. (2) (2009) 'Expansion of the global terrestrial protected area system', *Biological Conservation*, 142(10), pp. 2166-2174–2174. doi:10.1016/j.biocon.2009.04.016. P. 2170.

Krajewski, M., Tonstad, K. and Wohltmann, F. (2021). Mandatory Human Rights Due Diligence in Germany and Norway: Stepping, or Striding, in the Same Direction? *Business and Human Rights Journal*, 6(3), 550-558. doi:10.1017/bhj.2021.43

Laurence, W.F. (1999) 'Gaia's Lungs', *Natural History*, 108(2), p. 96. Available at: <https://search.ebscohost.com/login.aspx?direct=true&AuthType=ip,uid&db=a9h&AN=1587448&site=eds-live&scope=site>

Marcus Vinicius C. Schmidt et al. (2021) 'Indigenous Knowledge and Forest Succession Management in the Brazilian Amazon: Contributions to Reforestation of Degraded Areas', *Frontiers in Forests and Global Change*, 4. doi:10.3389/ffgc.2021.605925.

Mares, R. (2006) Institutionalisation of corporate social responsibilities: synergies between the practices of leading multinational enterprises and human rights law/policy. *Juridiska institutionen, Lunds universitet*. Available at: <https://search.ebscohost.com/login.aspx?direct=true&AuthType=ip,uid&db=cat07147a&AN=lub.1626726&site=eds-live&scope=site>

Mares, R. (2012) 'Business and Human Rights After Ruggie: Foundations, the Art of Simplification and the Imperative of Cumulative Progress', *The UN Guiding Principles on Business and Human Rights – Foundations and Implementation*, 39, pp. 1–50.

Nepstad, D. et al. (2014) 'Slowing Amazon deforestation through public policy and interventions in beef and soy supply chains', *Science*, 344(6188), pp. 1118–1123. Available at: <https://search.ebscohost.com/login.aspx?direct=true&AuthType=ip,uid&db=edsjsr&AN=edsjsr.24743976&site=eds-live&scope=site>

Partiti, E. (2020) 'Trust and Global Governance: Ensuring Trustworthiness of Transnational Private Regulators', *New York University Journal of International Law, and Politics*, 52(2), pp. 415–484. Available at: <https://search.ebscohost.com/login.aspx?direct=true&AuthType=ip,uid&db=edshol&AN=edshol.hein.journals.nyuilp52.17&site=eds-live&scope=site>

Perez, R. (2015) 'Deforestation of the Brazilian Amazon under Jair Bolsonaro's Reign: A Growing Ecological Disaster and How It May Be Reduced', *University of Miami Inter-American Law Review*, 52(2), pp. 195–238. Available at: <https://search.ebscohost.com/login.aspx?direct=true&AuthType=ip,uid&db=edshol&AN=edshol.hein.journals.unmialr52.16&site=eds-live&scope=site> (Accessed: 11 April 2023). P. 197.

Piovesan, F. (1996) A Constituição de 1988 e os tratados internacionais de proteção dos direitos humanos. *Revista da Procuradoria Geral do Estado de São Paulo*, nº 45/46. Available at: <https://www.pge.sp.gov.br/centrodeestudos/revistaspge/revista3/rev6.htm>

Trentin, M. & Lopes, R. (2018). Elementos para uma Política Brasileira de Direitos Humanos e Empresas: o acúmulo do GT Corporações. Para uma política nacional de Direitos Humanos e Empresas no Brasil: Prevenção, Responsabilização e Reparação. *Friedrich Ebert Stiftung Brasil*. Análise n. 48/2018. Available at: <http://www.global.org.br/wp-content/uploads/2019/05/Para-uma-pol%C3%ADtica-nacional-de-Direitos-Humanos-e-Empresas-no-Brasil-Preven%C3%A7%C3%A3o-Responsabiliza%C3%A7%C3%A3o-e-Repara%C3%A7%C3%A3o.pdf>.

Trindade, A.A.C. (2013) International law for humankind: towards a new jus gentium. 2. rev. ed. Martinus Nijhoff (The Hague Academy of International Law monographs: 8).

Viana, V. et al. (2014) Soluções para o desenvolvimento sustentável da Amazônia. *Cienc. Cult.*, São Paulo, v. 66, n. 3, p. 25-29, Sept. 2014. Available at: [https://sdsn-amazonia.org/wp-content/uploads/2021/03/2014\\_Solucoes-para-o-desenvolvimento-sustentavel-da-Amazonia.pdf](https://sdsn-amazonia.org/wp-content/uploads/2021/03/2014_Solucoes-para-o-desenvolvimento-sustentavel-da-Amazonia.pdf)

Walker, R. (2003) 'Mapping Process to Pattern in the Landscape Change of the Amazonian Frontier', *Annals of the Association of American Geographers*, 93(2), pp. 376–398.

Wesche, P. (2021) 'Rights of Nature in Practice: A Case Study on the Impacts of the Colombian Atrato River Decision', *Journal of Environmental Law*, 33(3), pp. 531–556. Available at: <https://search-ebSCOhost-com.ludwig.lub.lu.se/login.aspx?direct=true&AuthType=ip,uid&db=edshol&AN=edsho1.hein.journals.jenv33.35&site=eds-live&scope=site>

## International Treaties and Resolutions

Convention on the Rights of the Child (1989) Article 24, [online] Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

International Covenant on Economic, Social and Cultural Rights (1966) Article 12, [online] Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

UNESCO World Heritage Convention (n.d.) 'Convention Concerning the Protection of the World Cultural and Natural Heritage', UNESCO World Heritage Convention, [online] Available at: <https://whc.unesco.org/en/convention/>

UN General Assembly (1993), Vienna Declaration and Programme of Action, A/CONF.157/23. Available at: <https://digitallibrary.un.org/record/183139>

UN Global Compact (2004) Mission and Principles, [online] Available at: <https://unglobalcompact.org/what-is-gc/mission/principles>

UN Human Rights Council (2011) Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business

enterprises, John Ruggie: guiding principles on business and human rights: implementing the United Nations "protect, respect and remedy" framework, A/HRC/17/31.

## Legislation

Brazil (1911) 'Federal Decree No. 8.843, 26 of July of 1911'. [online] Available at: [http://www.planalto.gov.br/ccivil\\_03/decreto/1910-1929/d08843.html](http://www.planalto.gov.br/ccivil_03/decreto/1910-1929/d08843.html)

Brazil (1967). 'Law-Decree No. 289, 28 of February of 1967' [online] Available at: [http://www.planalto.gov.br/ccivil\\_03/decreto-lei/1965-1988/del0289.htm](http://www.planalto.gov.br/ccivil_03/decreto-lei/1965-1988/del0289.htm)

Brazil (1981) 'Federal Law No. 6.938, 31 of August of 1981' [online] Available at: [https://www.planalto.gov.br/ccivil\\_03/leis/l6938.htm#:~:text=Disp%C3%B5e%20sobre%20a%20Pol%C3%ADtica%20Nacional,aplica%C3%A7%C3%A3o%2C%20e%20d%C3%A1%20outras%20provid%C3%A2ncias.](https://www.planalto.gov.br/ccivil_03/leis/l6938.htm#:~:text=Disp%C3%B5e%20sobre%20a%20Pol%C3%ADtica%20Nacional,aplica%C3%A7%C3%A3o%2C%20e%20d%C3%A1%20outras%20provid%C3%A2ncias.) (Accessed 3 March 2023)

Brazil (1988) 'Constituição da República Federativa do Brasil'. [online] Available at: [https://www.planalto.gov.br/ccivil\\_03/constituicao/constituicao.htm](https://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm)

Brazil (1990). 'Law-Decree No. 98.897, 30 January of 1990' [online] Available at: [http://www.planalto.gov.br/ccivil\\_03/decreto/antigos/d98897.htm](http://www.planalto.gov.br/ccivil_03/decreto/antigos/d98897.htm)

Brazil (1996), 'Federal Decree No. 1.904, 13 of May of 1996.' [online] Available at: [http://www.planalto.gov.br/ccivil\\_03/decreto/d1904.htm](http://www.planalto.gov.br/ccivil_03/decreto/d1904.htm)

Brazil (2002), 'Federal Decree No. 4.229, 13 of May of 2002.' [online] Available at: [https://www.planalto.gov.br/ccivil\\_03/decreto/2002/d4229.htm](https://www.planalto.gov.br/ccivil_03/decreto/2002/d4229.htm)

Brazil (2003). 'Decree of 3 of July of 2003 – Plano de ação para a prevenção e controle do desmatamento na Amazônia legal.' [online] Available at: [http://redd.mma.gov.br/images/publicacoes/PPCDAM\\_fase1.pdf](http://redd.mma.gov.br/images/publicacoes/PPCDAM_fase1.pdf)

Brazil (2007). 'Decree No. 6.040, 7 of February of 2007.' [online] Available at: [http://www.planalto.gov.br/ccivil\\_03/\\_ato2007-2010/2007/decreto/d6040.htm](http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2007/decreto/d6040.htm)

Brazil (2009), 'Federal Decree No. 7.037, 21 of December of 2009.' [online] Available at: [https://www.planalto.gov.br/ccivil\\_03/\\_ato2007-2010/2009/decreto/d7037.htm](https://www.planalto.gov.br/ccivil_03/_ato2007-2010/2009/decreto/d7037.htm)

Brazil (2012). 'Law n. 12.651 of 25 of May of 2012.' [online] Available at: [https://www.planalto.gov.br/ccivil\\_03/\\_ato2011-2014/2012/lei/112651.htm](https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2012/lei/112651.htm)

Brazil (2016) 'Plano de Ação para Prevenção e Controle do Desmatamento na Amazônia Legal (PPCDAm) - Plano Operativo 2016-2020.' [online] Available at: <https://www.gov.br/mma/pt-br/assuntos/servicosambientais/control-de-desmatamento-e-incendios-florestais/pdf/PlanoOperativo20162020.pdf>

Brazil (2018) 'Federal Decree No. 9.571, 21 of November of 2018.' [online] Available at: [https://www.planalto.gov.br/ccivil\\_03/\\_ato2015-2018/2018/decreto/d9571.htm](https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/decreto/d9571.htm)

European Union (2010) 'Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market', Official Journal of the European Union, L 295, 23-34.

## Official documents

European Parliament (2021) 'EPRS\_ATA(2021)698846\_EN.pdf', [online] Available at: [https://www.europarl.europa.eu/RegData/etudes/ATAG/2021/698846/EPRS\\_ATA\(2021\)698846\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2021/698846/EPRS_ATA(2021)698846_EN.pdf)

Federal Prosecution Office (2010) Termo de ajustamento de conduta – Marfrig. Available at: <https://www.boinalinha.org/wp-content/uploads/2022/08/TAC-MT-Marfrig.pdf>

Federal Prosecution Office (2013) Termo de Ajustamento de Conduta – JBS Available at: <https://www.boinalinha.org/wp-content/uploads/2022/08/TAC-MT-JBS.pdf>

Knox, John H. UN. Human Rights Council. Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment. UN. Secretary-General. (2020). Human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment: note / by the Secretary-General, A/73/188.

Ruggie, J. G. UN. Special Representative of the Secretary-General on Human Rights and Transnational Corporations and Other Business Enterprises (2008). 'Protect, respect and remedy: a framework for business and human rights: report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises' A/HRC/8/5.

UN Commission on Human Rights (1988) 'The right to food', 7 March, E/CN.4/RES/1988/29.

UN General Assembly. (2020). Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment. A/75/188.

UN General Assembly (2022) 'The human right to a clean, healthy and sustainable environment: resolution / adopted by the General Assembly', A/RES/76/300

UN Human Rights Council (2014) Elaboration of an international legally binding instrument on transnational corporations and other businesses enterprises with respect to human rights ('Ecuador Resolution'). UN Doc. A/HRC/26/L.22/Rev.1.



UN Human Rights Council. Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises. (2016) Report of the Working Group on the Issue of Human Rights and Transnational Corporations and other Business Enterprises on its mission to Brazil. Geneva: UN, 12 May 2016. A/HRC/32/45/Add.1

UN Human Rights Council (2021). 'The human right to a clean, healthy, and sustainable environment: resolution / adopted by the Human Rights Council on 8 October 2021', A/HRC/RES/48/13.

United Nations (2002) 'Johannesburg Declaration on Sustainable Development adopted at the United Nations World Summit on Sustainable Development, Johannesburg, September 4, 2002', UN Doc. A/CONF. 199/20.

UN Sub-Commission on the Promotion and Protection of Human Rights, Economic, Social and Cultural Rights (2003) Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, E/CN.4/Sub.2/2003/12/Rev.2.

UN Special Rapporteur on Human Rights and the Environment (1994) Human rights and the environment: final report / prepared by Fatma Zohra Ksentini, Special Rapporteur. E/CN.4/Sub.2/1994/9. Geneva: UN, 6 July 1994.

## Reports From International Organizations

Collen, W. et al., (2016) Policy Paper – The Amazon and Agenda 2030, UNDP Regional Centre for Latin America and the Caribbean, Panamá. Available at: <https://www.undp.org/latin-america/publications/amazon-and-agenda-2030>

OECD (2017), Report of the Chair of the Working Group on the Future Size and Membership of the Organisation to Council - Framework for the Consideration of Prospective Members. [online]. Available at: <http://www.oecd.org/mcm/documents/C-MIN-2017-13-EN.pdf> (Para 27).

OCDE (2021) 'Evaluating Brazil's progress in implementing Environmental Performance Review recommendations and promoting its alignment with OECD core acquis on the environment.' [online] Available at: <https://www.oecd.org/environment/country-reviews/Brazils-progress-in-implementingEnvironmental-Performance-Review-recommendations-and-alignment-with-OECD-environment-acquis.pdf>

OECD (2022), OECD Responsible Business Conduct Policy Reviews: Brazil, OECD Publishing, Paris.

# Reports From Non-Governmental Organizations

Aleixo, L.S.P. & Junior, M.K.A. (2022) Deforestation and climate change in Brazil – legal and policy gaps. OECD Watch, The Netherlands. [online] Available at: [oecdwatch.org/wp-content/uploads/sites/8/2022/03/Bridging-Brazilian-governance-gaps-Deforestation-and-climate-change.pdf](https://oecdwatch.org/wp-content/uploads/sites/8/2022/03/Bridging-Brazilian-governance-gaps-Deforestation-and-climate-change.pdf)

Amazon Watch (2023) '2023-respecting-indigenous-rights-toolkit.pdf', [online] Available at: <https://amazonwatch.org/assets/files/2023-respecting-indigenous-rights-toolkit.pdf>

Assail, T. et al. (2021). 'Environmental Framework: For lending and investing in sustainable intensification of cattle ranching in the Amazon and Cerrado. Full Report' [online] The Nature Conservancy. Available at: <https://www.nature.org/content/dam/tnc/nature/en/documents/brasil/tnc-environmentalframeworkcattle.pdf>

Potenza, R.F. et al. (2021). 'Análise das emissões brasileiras de GASES DE EFEITO ESTUFA e suas implicações para as metas climáticas do Brasil 1970 – 2020', [online], Sistema de Estimativas de Emissões e Remoções de Gases de Efeito Estufa (SEEG). Available at: [https://seeg.eco.br/wp-content/uploads/2023/03/SEEG9\\_DOC\\_ANALITICO\\_2021\\_FINAL.pdf](https://seeg.eco.br/wp-content/uploads/2023/03/SEEG9_DOC_ANALITICO_2021_FINAL.pdf)

RAISG (2014) Amazonia: Densidad de Carbono - Territorios Indígenas - Áreas Naturales Protegidas, RAISG/COICA/WHRC/EDF. Available at: <https://www.raisg.org/pt-br/publicacao/mapa-de-densidade-de-carbono/>

RAISG (2020) 'Amazonia Under Pressure' [online] Available at: <https://www.raisg.org/en/publication/amazonia-under-pressure-2020/>

Repórter Brasil (2021). 'Steak in the supermarket, forest on the ground.' Available at: <https://reporterbrasil.org.br/wp-content/uploads/2021/02/fil%C3%A9-no-supermercado-EN-14-02.pdf>

Roland, M. C. (coord.). Reflexões sobre o Decreto 9571/2018 que estabelece as Diretrizes Nacionais sobre empresa e direitos humanos. *Cadernos Homa*. Juiz de Fora, v. 01, n. 07. dezembro 2018. Juiz de Fora. Available at: <https://homacdhe.com/wp-content/uploads/2019/01/An%C3%A1lise-do-Decreto-9571-2018.pdf>

Thomson, E. & Fairbairn, A., (2023) '2023: A watershed year for action on deforestation, Global Canopy, Oxford, UK.' Global Canopy [online] Available at: <https://forest500.org/publications/2023-watershed-year-action-deforestation>

Tropical Forest Alliance (2022). 'IFACC Report. Finance for a Forest-Positive Future: the transition to sustainable cattle and soy production.' [online] Available at: [https://www.tropicalforestalliance.org/assets/IFACC/IFACC\\_REPORT\\_Low.pdf?vid=3](https://www.tropicalforestalliance.org/assets/IFACC/IFACC_REPORT_Low.pdf?vid=3)

## Web resources

BBC (2020). Brasil na OCDE: O que o país cedeu aos EUA em troca de apoio à entrada no 'clube dos países ricos' [online] Available at: <https://www.bbc.com/portuguese/internacional-50009155>.

Boffey, D. (2019) Norway halts Amazon fund donation in dispute with Brazil.' BBC [online] Available at: <https://www.theguardian.com/world/2019/aug/16/norway-halts-amazon-fund-donation-dispute-brazil-deforestation-jair-bolsonaro>

Bourscheit, A. (2023) 'Parques e TIs são as tábuas de salvação para onças na Amazônia', [online], O Eco. Available at: <https://oeco.org.br/reportagens/parques-e-tis-sao-as-tabuas-de-salvacao-para-oncas-na-amazonia/>

Business & Human Rights Resource Center (2021) Brazil & Colombia: Amazon indigenous communities & NGOs sue supermarket Casino under French due diligence law over deforestation & human rights violations. March 3rd. [online] Available at: <https://www.business-humanrights.org/en/latest-news/brazil-colombia-amazon-indigenous-peoples-ngos-sue-supermarket-casino-under-french-due-diligence-law-over-deforestation-human-rights-violations/>

Campos, A., Wasley, A., Heal, A., Phillips, D., & Locatelli, P. (2020) 'Revealed: New Evidence Links Brazil Meat Giant JBS to Amazon Deforestation', The Guardian, [online] Available at: <https://www.theguardian.com/environment/2020/jul/27/revealed-new-evidence-links-brazil-meat-giant-jbs-to-amazon-deforestation>

Cannelle, L. (2020) The French Loi de Vigilance: Prospects and Limitations of a Pioneer Mandatory Corporate Due Diligence, VerfBlog, June 16th, Available at: <https://verfassungsblog.de/the-french-loi-de-vigilance-prospects-and-limitations-of-a-pioneer-mandatory-corporate-due-diligence/>, DOI: 10.17176/20200616-124112-0.

Carta Capital (2020) As 26 principais violações ao meio ambiente feitas por Jair Bolsonaro. February 11. Available at: <https://www.cartacapital.com.br/blogs/brasil-debate/as-26-principais-violacoes-ao-meio-ambiente-feitas-por-jair-bolsonaro/>

CETESB (2013) 'estocolmo\_72\_Volume\_II.pdf', [online] Available at: [https://cetesb.sp.gov.br/proclima/wp-content/uploads/sites/36/2013/12/estocolmo\\_72\\_Volume\\_II.pdf](https://cetesb.sp.gov.br/proclima/wp-content/uploads/sites/36/2013/12/estocolmo_72_Volume_II.pdf)

Chávez, L. T. (2023) 'EU approves law for deforestation-free trade – Companies Required to Respect Environment, Human Rights in Supply Chains', Human Rights Watch, [online] Available at: <https://www.hrw.org/news/2023/05/16/eu-approves-law-deforestation-free-trade>

Deutsche Welle (DW) News. (2023) International NGOs ask Lula to protect the Amazon. January 26. Available at: <https://www.dw.com/pt-br/organiza%C3%A7%C3%B5es>

internacionais-pedem-a-lula-prote%C3%A7%C3%A3o-da-amaz%C3%B4nia/a-64522288

Ecociencia (2019) 'Nuevo estudio hace el balance de las reservas de carbono en la Amazonia', [online] Available at: <https://ecociencia.org/nuevo-estudio-hace-el-balance-de-las-reservas-de-carbono-en-la-amazonia>

Figueiredo, Ana Laura (2022). Current Brazilian framework of public policies on Human Rights and Business: Decree No. 9571/18. HOMA. 21 September. Available at: <https://homacdhe.com/index.php/2022/09/21/current-brazilian-framework-of-public-policies-on-human-rights-and-business-decree-no-957118/>

Girardi, G. (2022) 'O que foi o PPCDAm, plano do PT contra desmatamento desmobilizado por Bolsonaro', Folha de S.Paulo, [online] Available at: <https://www1.folha.uol.com.br/ambiente/2022/10/o-que-foi-o-ppcdam-plano-do-pt-contr-desmatamento-desmobilizado-por-bolsonaro.shtml>

Girardi, G. (2023) 'O mito da natureza inesgotável e do mato sem valor impulsionou desmatamento no Brasil', [online] Estadão, Available at: <https://www.estadao.com.br/sustentabilidade/o-mito-da-natureza-inesgotavel-e-do-mato-sem-valor-impulsionou-desmatamento-no-brasil/>

Greenpeace (2009) Farra do boi na Amazônia: Dossiê Greenpeace / Bullfighting spree in the Amazon: Greenpeace dossier. [online] Available at: <http://greenpeace.org.br/gado/farradoboinaamazonia.pdf>

Higgins, Tiffany (2021). Amazon's Belo Monte dam cuts Xingu River flow 85%; a crime, Indigenous say. 8 March. Mongabay News. Available at: <https://news.mongabay.com/2021/03/amazons-belo-monte-dam-cuts-xingu-river-flow-85-a-crime-indigenous-say/>

Homa (2023) Silvio Almeida, new Minister of Human Rights and Citizenship of Brazil, announces the creation of a Special Advisory on Business and Human Rights [online] Available at: <https://homacdhe.com/index.php/2023/01/26/silvio-almeida-new-minister-of-human-rights-and-citizenship-of-brazil-announces-the-creation-of-a-special-advisory-on-business-and-human-rights/>

Launch of John Ruggie's "Just Business: Multinational Corporations and Human Rights" (2012) Available at: [https://www.youtube.com/watch?v=\\_UjdBGg0Fd0](https://www.youtube.com/watch?v=_UjdBGg0Fd0)

Lough, R. and Vidalon, D. (2021). Povos indígenas processam varejista Casino por destruição da Amazônia. CNN Brasil, March 3<sup>rd</sup>. Available at: <https://www.cnnbrasil.com.br/economia/povos-indigenas-processam-varejista-casino-por-destruicao-da-amazonia/>

OECD (2018) Active with Brazil. [online] Available at: <https://www.oecd.org/latin-america/Active-with-Brazil-Port.pdf>

OECD (2022) The OECD and Brazil: A mutually beneficial relationship [online] Available at: <https://www.oecd.org/latin-america/countries/brazil/>

OECD (2021) Policy Trends in Environmental Due Diligence [online] available at: <https://mneguidelines.oecd.org/policy-trends-in-environmental-due-diligence.pdf>

OECD Newsroom (2022), “OECD takes first step in accession discussions with Argentina, Brazil, Bulgaria, Croatia, Peru, and Romania”. [online] Available at: <https://www.oecd.org/newsroom/oecd-takes-first-step-in-accession-discussions-with-argentina-brazil-bulgaria-croatia-peru-and-romania.htm>

Radwin, M. (2022). ‘Deforestation is pushing Amazon to ‘point of no return’: WWF report’. Mongabay [online]. Available at: <https://news.mongabay.com/2022/11/deforestation-is-pushing-amazon-to-point-of-no-return-wwf-report/>

Rede Brasil Atual (2018) 'Meio ambiente sai perdedor com o novo Código Florestal, diz especialista', Rede Brasil Atual, [online] Available at: <https://www.redebrasilatual.com.br/ambiente/meio-ambiente-sai-perdedor-com-o-novo-codigo-florestal-diz-especialista/>

Resende, S. M. (2018) ‘No que depender de mim, não tem mais demarcação de terra indígena’, diz Bolsonaro a TV, Folha de S.Paulo [online] Available at: <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.shtm>

Reporter Brasil. (2018). Decreto do governo federal fragiliza o cumprimento dos direitos humanos por empresas. [online] Available at: <https://reporterbrasil.org.br/2018/12/decreto-do-governo-federal-fragiliza-o-cumprimento-dos-direitos-humanos-por-empresas/>

Roland, M. C., et al. (2018) Breve análise sobre a 1ª Audiência Pública brasileira sobre Direitos Humanos e Empresas. In. Cadernos de Pesquisa Homa, vol. 1, n. 3, 2018. Available at: <https://homacdh.com/wp-content/uploads/2018/08/Cadernos-de-Pesquisa-Homa-Audi%C3%Aancia.pdf>

The Brazilian Report (2022) ‘New EU deforestation law a red flag for Brazilian exporters’ [online] Available at: <https://brazilian.report/liveblog/2022/12/06/eu-deforestation-law-brazilian-exporters/>

UN Environment Programme (2022) 'Action on the Triple Planetary Crisis', UNEP, [online] Available at: <https://www.unep.org/news-and-stories/speech/action-triple-planetary-crisis>.

UN Environment Programme (2022) 'Historic Move: UN Declares Healthy Environment a Human Right', UNEP, [online] Available at: <https://www.unep.org/news-and-stories/story/historic-move-un-declares-healthy-environment-human-right>

United Nations. (2022). General Assembly 12437th Plenary Meeting. <https://press.un.org/en/2022/ga12437.doc.htm>

Wasley, A., Heal, A., Campos, A., Locatelli, P., & Phillips, D. (2020) 'Brazilian Meat Giant JBS Trucked Cattle from Deforested Amazon Ranch', The Bureau of Investigative Journalism, [online] Available at: <https://www.thebureauinvestigates.com/stories/2020-07-27/brazilian-meat-giant-jbs-trucked-cattle-from-deforested-amazon-ranch>

Wasley, A., & Heal, A. (2019) 'EU imported \$3bn worth of Brazilian beef from companies linked to deforestation', The Bureau of Investigative Journalism, [online] Available at: <https://www.thebureauinvestigates.com/blog/2019-09-30/eu-imported-3bn-worth-of-brazilian-beef-from-companies-linked-to-deforestation>

World Bank (2019) 'A importância fundamental da biodiversidade da Amazônia para o mundo: uma entrevista com Thomas Lovejoy', World Bank News [online]. Available at: <https://www.worldbank.org/pt/news/feature/2019/05/22/why-the-amazons-biodiversity-is-critical-for-the-globe>

## Websites

Amazon Fund (n.d.) <https://www.amazonfund.gov.br/en/home/>

Boi na Linha (n.d.) <https://www.boinalinha.org/quem-somos/>

Brazilian Business Council for Sustainable Development (n.d.) <https://cebds.org/quem-somos/>

DETER (n.d.) <http://terrabrasilis.dpi.inpe.br/>

JBS (2023) 'NetZero', Available at: <https://jbs.com.br/netzero/>

Marfrig (2023) 'Commitments', Available at: <https://www.marfrig.com.br/en/sustainability/commitments>

Minerva Foods (2023) 'Cadeia de fornecedores', Available at: <https://minervafoods.com/dedicacao-ao-planeta-2/#cadeia-de-fornecedores>

Conselho Empresarial Brasileiro para o Desenvolvimento Sustentável (2022). Relatório de atividades COP27 / COP27 Activity Report. Available at: [https://cebds.org/wp-content/uploads/2022/12/RelatorioAtividades\\_Cop27\\_2022.pdf](https://cebds.org/wp-content/uploads/2022/12/RelatorioAtividades_Cop27_2022.pdf)

# Table of Cases

Envol Vert et al. v. Casino (2021) France, Saint-Étienne Judicial Court (still pending).