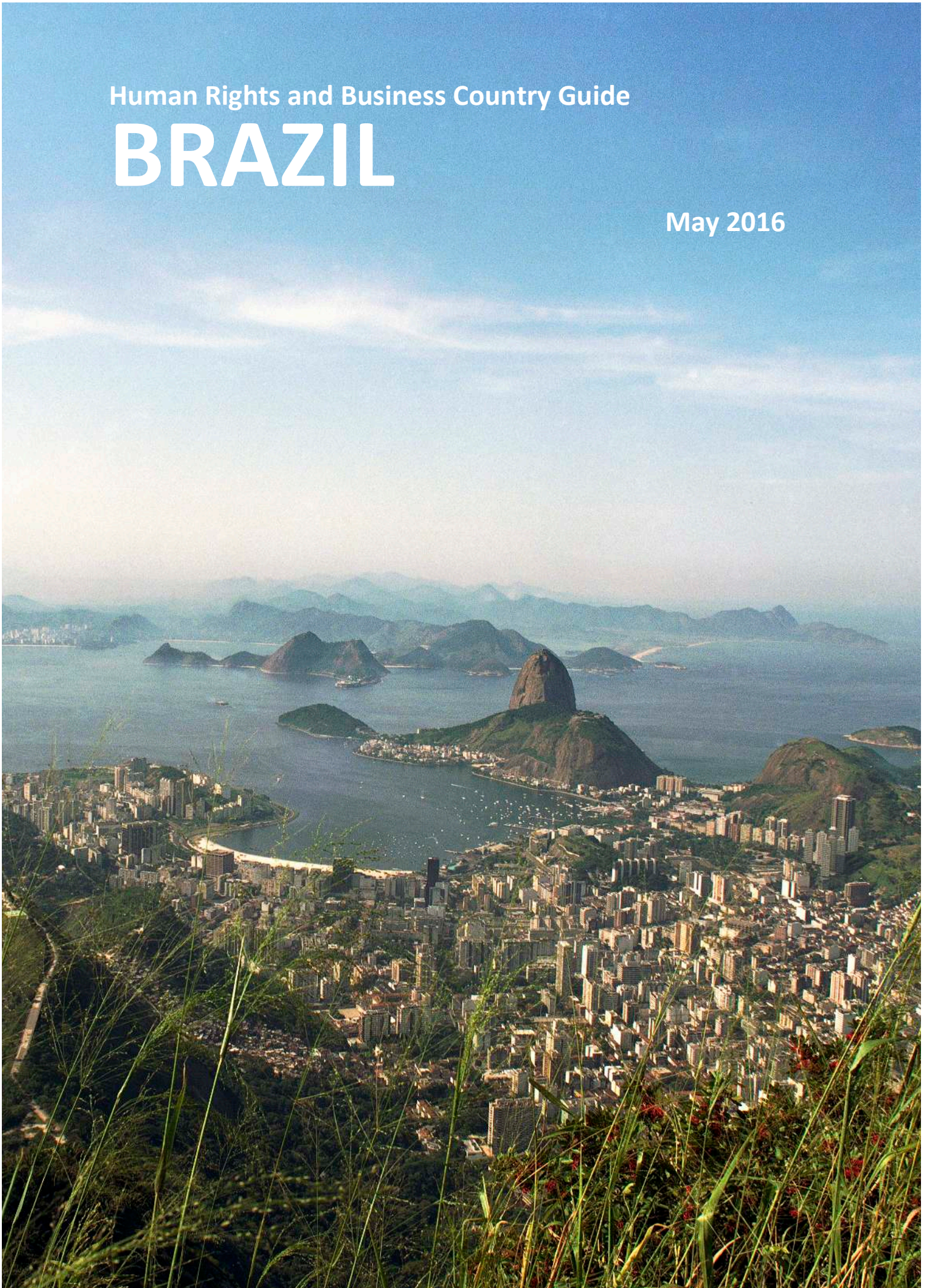


Human Rights and Business Country Guide

# BRAZIL

May 2016



# How to Use this Guide

*This Human Rights and Business Country Guide contains information regarding the potential and actual human rights impacts of businesses. The information in this Guide is gathered from publicly available sources, and is intended to help companies respect human rights and contribute to development in their own operations and those of their suppliers and business partners.*

## About the Human Rights and Business Country Guide

The Human Rights and Business Country Guide provides country-specific guidance to help companies respect human rights and contribute to development.

For companies to manage their potential human rights impacts, they must have comprehensive information about the local human rights context in which they operate. The Country Guide provides a systematic overview of the human rights issues that companies should be particularly aware of. For each issue, it provides guidance for companies on how to ensure respect for human rights in their operations or in collaboration with suppliers and other business partners.

The Country Guide is not only a resource, but a process. This Guide was produced through a systematic survey carried out by the Danish Institute for Human Rights (DIHR) and the Ethos Institute. The aim of this Guide is to improve the human rights practices of companies, including through facts-based dialogue regarding the issues presented here.

How the Human Rights and Business Country Guide can be used by companies

- Develop company policies and procedures related to human rights issues in the local environment.
- Assess and track the potential human rights impacts of your own operations or in suppliers, business partners and investments.
- Raise awareness among staff, suppliers and other business partners.
- Engage with workers, potentially affected communities, consumers and other stakeholders whose human rights might be affected by your operations.
- Engage with civil society organisations, government bodies or international organisations on human rights-related issues.
- Provide background information for auditors.
- Establish or collaborate with mechanisms for workers, communities and other whose human rights might be affected by your operations.
- Contribute to development initiatives that align with human development needs and priorities in the local context.
- How the Human Rights and Business Country Guide can be used by governments
- Review and reform public policy and legislation relevant to the human rights impacts of business, including in the areas of labour, environment, land, equal treatment, anti-corruption, taxation, consumer protection or corporate reporting.

- Ensure respect for human rights in the state's own business affairs such as state-owned companies, sovereign wealth funds and other investments, public procurement, development assistance, export credit and other activities.
- Build awareness and capacity on human rights and business issues within relevant areas of public administration.
- Provide targeted advice to domestic companies.
- Inform the development of trade policy, trade and investment agreements and trade and investment promotion.
- Improve effective access to judicial and non-judicial remedies for victims of business-related human rights abuses.
- Enhance the contribution of the private sector in national and regional development programmes relevant to human rights.

#### **How the Human Rights and Business Country Guide can be used by civil society organisations**

- Inform human rights research and monitoring related to business operations.
- Work with affected workers and communities to define human rights and human development priorities related to the role of business.
- Provide capacity-building to government, business and civil society stakeholders on human rights and business.
- Work with local stakeholders to provide recommendations to business and government.
- Facilitate dialogue and engagement with, including multi-stakeholder forums, with state agencies and businesses.

The Country Guide aims to work with all stakeholders to promote, monitor and expand the activities described above. We request that all stakeholders who use the findings of the Country Guide in their work notify the Country Guide team of their activities and lessons learned. These experiences will be included in the Country Guide website, [HRBCountryGuide.org](http://HRBCountryGuide.org).

## Country Guide Process

Brazil is currently at step 2 in the Country Guide process.

The Brazil Country Guide was produced by the Danish Institute for Human Rights (DIHR) and the Ethos Institute.

The Country Guide is a compilation of publicly available information from international institutions, local NGOs, governmental agencies, businesses, media and universities, among others. International and domestic sources are identified on the basis of their expertise and relevance to the Pakistani context, as well as their timeliness and impartiality.

The survey of publicly available, international sources was carried out by DIHR in 2014. The draft was updated and localized by Ethos Institute with some interaction with local stakeholders, from January to March 2015. The current version was comprehensively updated in early 2016.

The completed Country Guide aims to provide a comprehensive overview, on the basis of the information available, of the ways in which companies do or may impact human rights in Brazil. The current Country Guide is not meant as an end product, or a final determination of country conditions. It is intended to be the basis, and the beginning, of a process of dissemination, uptake and modification.

DIHR and Ethos Institute seek further engagement with local stakeholders, and intend to update the Country Guide on that basis.

## Country Guide Content

### Areas for Attention

Each section of the Country Guide identifies areas for particular attention by businesses. The Country Guide identifies these areas through an analysis of the country's legal framework for human rights protection; enjoyment of human rights in practice; and the proximity of third-party human rights violations to company operations.

The headline and risk description describe the relevance of each issue for businesses. The text that follows the risk description presents the quantitative and qualitative information upon which this determination was based.

**Background & Context** gives an overview of economic, political and demographic characteristics.

**Rights Holders at Risk** identifies groups that may be vulnerable to workplace discrimination or community impacts.

**Labour Standards** identifies areas for attention related to employees and working conditions. This section includes child labour, forced labour, trade unions, occupational health & safety and working conditions.

**Community Impacts** identifies areas for attention related to communities whose human rights may be affected by company operations. This section includes impacts related to environment, land & property, revenue transparency & management and security & conflict.

**Sector Profiles** identifies human rights and business impacts related to a particular industry sector, such as extractive operations, manufacturing or agriculture.

**Region Profiles** identifies regions of the country where the risk of adverse human rights impacts differs markedly from the national profile. This may include underdeveloped regions, export processing zones or conflict areas.

### Cases

Each rights issue includes cases from media and law where the rights issue in question has been allegedly violated. These cases are drawn from the Business and Human Rights Resource Centre, international and local NGOs and stakeholder consultations. The cases presented here should not be considered comprehensive.

### Access to Remedy

Victims of corporate human rights abuses have the right under international law to mechanisms that provide for remedy. The UN Guiding Principles on Business and Human Rights explicitly obligate governments and businesses to provide and/or participate in such mechanisms.

The Country Guide includes information under each rights area about the remedy mechanisms available to redress violations of the right. Where possible, this also includes practice information about the effectiveness of such bodies, and the number of cases they have heard and redressed.

## Human Rights Guidance for Businesses

This section includes guidance for businesses to prevent and mitigate their adverse human rights impacts. This guidance is drawn from the Danish Institute for Human Rights (DIHR) existing library of human rights due diligence recommendations, as well as international frameworks, principles and guidelines. Where available, this section includes recommendations issued by local NGOs and directed specifically at companies operating in the country.

This section also includes examples of initiatives carried out by companies to mitigate their human rights impacts. These are organized into Due Diligence Initiatives—activities that aim to meet the company’s responsibility not to violate human rights—and Beyond Compliance Initiatives—activities that aim to contribute to development beyond this baseline obligation.

## Engagement Opportunities

Companies have a responsibility to prevent negative human rights impacts, but they also have an opportunity to contribute to positive human rights impacts. Each section of this Guide includes information for companies to link their policies and community engagement processes to ongoing governmental and institutional efforts to promote and fulfil human rights.

This includes Public Sector Initiatives—activities where the government is aiming to fulfil or promote the right in question through discrete programmes—as well as Development Priorities—themes identified by international institutions as warranting deliberate attention, or where companies could have the greatest impact with their development initiatives.

The purpose of the information in this section is to inspire further efforts and engagement by businesses, as well as to identify existing programmes that companies could support or take part in.

## About DIHR

The Danish Institute for Human Rights is a National Human Rights Institution accredited under the UN Paris Principles, and carries out human rights and development programmes in Denmark and around the world. Since 1999, the Danish Institute has worked closely with the business and human rights communities to develop tools and standards for better business practice.

*For more information, see [humanrights.dk](http://humanrights.dk).*

## About Ethos Institute

Brazil’s Ethos Institute is the strategic partner of the Human Rights and Business Country Guide in Brazil, facilitating local engagement with stakeholders in business, government and civil society. The mission of the Ethos Institute is to mobilise, sensitise and help companies manage their business in a socially responsible manner, making them partners in building a sustainable and just society.

The Ethos Institute seeks to spread the practice of corporate social responsibility, helping businesses to:

- Understand and progressively incorporate the concept of socially responsible corporate behaviour;
- Implement policies and practices that meet high ethical standards, contributing to the achievement of sustainable economic development in the long term;
- Assume their responsibilities in relation to all those affected by their activities;

- Demonstrate to shareholders the relevance of socially responsible behaviour on the long-term return on their investment;
- Identify innovative and effective ways of working in partnership with communities in the construction of the common welfare;
- Thrive, contributing to social, economic and environmental sustainability.

# Table of Contents

<b>How to Use this Guide .....</b>	<b>2</b>
<b>Table of Contents .....</b>	<b>7</b>
<b>Background &amp; Context.....</b>	<b>8</b>
<b>Rights Holders at Risk .....</b>	<b>18</b>
<b>Child Labour .....</b>	<b>33</b>
<b>Forced Labour .....</b>	<b>39</b>
<b>Occupational Health &amp; Safety .....</b>	<b>44</b>
<b>Trade Unions .....</b>	<b>50</b>
<b>Working Conditions .....</b>	<b>54</b>
<b>Environment .....</b>	<b>62</b>
<b>Land &amp; Property .....</b>	<b>75</b>
<b>Revenue Transparency &amp; Management .....</b>	<b>81</b>
<b>Security &amp; Conflict.....</b>	<b>91</b>
<b>Access to Remedy.....</b>	<b>95</b>
<b>Sources.....</b>	<b>102</b>
<b>Endnotes .....</b>	<b>107</b>

# Background & Context

*Overview of political and socio-economic conditions in which businesses operate. This information is designed to inform businesses of the broader political and development trends in the country.*

Demographics & Economy	
Population	204,259,812 (July 2015 est.)
Ethnic Groups	White 47.7%, mulatto (mixed white and black) 43.1%, black 7.6%, Asian 1.1%, indigenous 0.4% (2010 est.)
Religious Groups	Roman Catholic 64.6%, other Catholic 0.4%, Protestant 22.2% (includes Adventist 6.5%, Assembly of God 2.0%, Christian Congregation of Brazil 1.2%, Universal Kingdom of God 1.0%, other Protestant 11.5%), other Christian 0.7%, Spiritist 2.2%, other 1.4%, none 8%, unspecified 0.4% (2010 est.)
Languages	Portuguese (official and most widely spoken language)  <b>note:</b> less common languages include Spanish (border areas and schools), German, Italian, Japanese, English, and a large number of minor Amerindian languages

## Political, Economic & Development Statistics

*Quantitative indicators and country rankings*

Country Rankings & Ratings			
	2013	2014	2015
Reporters Without Borders: Press Freedom Index  (Where 1 indicates the highest degree of freedom)	108	111	99
Freedom House: Map of Freedom - Political Rights  (On a scale of 1 through 7, where 1	2	2	2



indicates the highest level of freedom)			
Freedom House: Map of Freedom - Civil Liberties  (On a scale of 1 through 7, where 1 indicates the highest level of freedom)	2	2	2
Form of government	Federative Republic		
Most recent general election	26 October 2014		
Current head of state	President Dilma Rousseff		
Ruling party	Workers' Party or PT		
Other major parties	<ul style="list-style-type: none"> <li>• Brazilian Communist Party or PCB</li> <li>• Brazilian Democratic Movement Party</li> <li>• Brazilian Labor Party or PTB</li> <li>• Brazilian Renewal Labor Party or PRTB</li> <li>• Brazilian Republican Party or PRB</li> <li>• Brazilian Social Democracy Party or</li> <li>• Brazilian Socialist Party or PSB</li> <li>• Christian Labor Party or PTC</li> <li>• Christian Social Democratic Party or PSDC</li> <li>• Communist Party of Brazil or PCdoB</li> <li>• Democratic Labor Party or PDT</li> <li>• The Democrats or DEM (formerly Liberal Front Party or PFL)</li> <li>• Free Homeland Party or PPL</li> <li>• Green Party or PV</li> <li>• Humanist Party of Solidarity or PHS</li> <li>• Labor Party of Brazil or PTdoB</li> <li>• National Ecologic Party or PEN</li> <li>• National Labor Party or PTN</li> <li>• National Mobilization Party or PMN</li> <li>• Party of the Republic or PR</li> <li>• Popular Socialist Party or PPS</li> <li>• Progressive Party or PP</li> <li>• Progressive Republican Party or PRP</li> <li>• Republican Social Order Party or PROS</li> <li>• Social Christian Party or PSC</li> <li>• Social Democratic Party or PSD</li> <li>• Social Liberal Party or PSL</li> <li>• Socialism and Freedom Party or PSOL</li> <li>• Solidarity or SD</li> <li>• United Socialist Workers' Party or PSTU</li> <li>• Workers' Cause Party or PCO</li> </ul>		

Development Indicators & Trends			
	2012	2013	2014
GDP growth	1.8	2.7	0.1
GDP growth in Latin America	3.2	3	3.2
GDP per capita (PPP)	US\$15,700	US\$16,100	US\$16,200
Human Development Index rank	79	79	75
Human Development Index score	0.73	0.74	0.75
Human Development Index score – Latin America and the Caribbean	0.73	0.74	0.74
HDI discounted for inequality	0.54	0.54	0.55
Gini coefficient	52.7	52.9	n/a
Percentage of population below national poverty rate	9.0	8.9	n/a
Percentage of population below absolute poverty rate (\$1.25 per day)	3.8	n/a	n/a

## Political Context

### *Governance structures and political developments*

After almost two decades of military dictatorship, Brazil became a democracy in 1985. Presidential elections are held by popular vote every four years. In October 2010, Dilma Rousseff of Brazil's Workers' Party (PT) was elected as Brazil's first female president.<sup>1</sup> She was re-elected in October 2014 for a second term by 4 percent (52 to 48).<sup>2</sup> According to Freedom House in 2015, the 2014 elections were the closest and most divisive in Brazil's history.<sup>3</sup>

Brazil has a multiparty system that suffers from a high degree of fragmentation. Twenty-eight political parties were represented in the lower house, reportedly impacting on coalition building.<sup>4</sup>

Freedom of association and expression are guaranteed by the constitution. Defamation was a crime with penalties including imprisonment. Episodes of journalists being attacked by the police were reported by Freedom House in 2015.<sup>5</sup> In urban areas that were controlled by organised crime, the right to association was limited by the threat of violence.<sup>6</sup>

The Marco Civil Bill was adopted in 2015 and guarantees universal Internet access and provides strong privacy protections for Brazilian users.<sup>7</sup>

In June 2013, protests across the country on issues including corruption, education, health, police violence and the high cost of hosting international sporting events occurred.<sup>8</sup> The civil unrest, which spread to more than 100 cities, was the worst in the past two decades and forced president Rousseff to

propose a referendum on political reforms in fiscal responsibility, education, health, constituent assembly and public transportation.<sup>9</sup>

President Rousseff became extremely unpopular in 2015 as a result of an economic recession and the adoption of austerity measures to correct the imbalances in the public sector, together with big corruption scandals involving the ruling party PT.<sup>10</sup> Millions of citizens in dozens of cities demonstrated in the streets to protest the rampant corruption, extreme economic measures and rollbacks of social benefits, calling for the impeachment of the president.<sup>11</sup> March 2016 witnessed the biggest protests since the military dictatorship. Demonstrators again protested over the president's mismanagement of the economy and the bribery scandal at the state-owned oil company, Petrobras.<sup>12</sup>

## Socio-Economic Context

### *Human development indicators and trends*

Brazil is an upper middle-income country<sup>13</sup> and the largest in area and population in Latin America and the Caribbean.<sup>14</sup>

Its latest Human Development Index value for 2014 was 0.75, above the Latin America and Caribbean average, and its ranking was 75 out of 188 countries, placing Brazil in the high human development category. However, when the HDI value was discounted for inequality it fell to 0.54, above the figure for average loss due to inequality in the Latin America and Caribbean region.<sup>15</sup> Its latest Gini coefficient, which measures income inequality, was 52.9, one of the highest in the world.<sup>16</sup>

A study conducted by the International Policy Centre for Inclusive Growth noted in 2015 that the income of the richest 10 percent of adults equalled around half of the income of all Brazilian families (52 percent), the top 1 percent around a quarter (23.2 percent), and the top 0.1 percent around a tenth (10.6 percent), rates that were above acceptable limits for democratic societies.<sup>17</sup>

According to the Inter-American Development Bank, Brazil made remarkable economic progress in recent decades.<sup>18</sup> Through the implementation of various social programmes, particularly the Bolsa Familia, Brazil reduced by 82 percent the number of undernourished persons between 2002 and 2013. Poverty rates were reduced from 25.5 to 3.5 percent. Various international organisations, including the World Food Programme, have recognised the Brazilian efforts towards reducing poverty levels, and according to the government as of November 2015, 345 missions from 92 countries visited Brazil in order to learn from its experience.<sup>19</sup> The World Bank noted in 2015, however, that since 2013, the reduction in poverty indicated signs of stagnation.<sup>20</sup>

Differences in social indicators were great between regions, especially in terms of health, infant mortality and nutrition. The North and Northeast regions presented the greatest challenges.<sup>21</sup>

In terms of the Millennium Development Goals, Brazil achieved all targeted indicators, according to the government in 2014, especially in relation to poverty reduction, child mortality rate, maternal mortality rate, access to education, gender equality, and access to drinking water. HIV-AIDS incident rate stabilised while TB and Malaria rates were reduced.<sup>22</sup>

## Development Frameworks

*Companies should consult affected communities and align their development initiatives with national and local priorities. The following section identifies existing strategies for poverty alleviation and community empowerment.*

### Plan Brazil Without Misery 2011 –2015

The government adopted the Plan that has three main commitments:

To raise the per capita household income of the target population;

To expand access to public goods and services; and

To provide access to jobs and income opportunities through productive inclusion initiatives.

The Plan further seeks to create skills and expand the opportunities of people living in extreme poverty, by improving cash transfer policies such as Bolsa Familia, increasing access to social protection services and improving their quality, and implementing productive inclusion initiatives aimed at different vulnerable groups such as informal urban workers, family farmers, collectors of recyclable material, homeless people, traditional communities and indigenous people.<sup>23</sup>

The Plan's framework contemplates the development of policies in the following areas: Social, Infrastructure, Productive and Environmental, and Territory, Management and Sovereignty.<sup>24</sup>

### Inter-American Development Bank Country Strategy 2012-2014

The strategy focuses on six objectives:

- Stimulate social and productive inclusion;
- Improve the conditions of the country's infrastructure;
- Promote the development of sustainable cities;
- Improve the institutional capacity of public entities;
- Increase the sustainable management of natural resources and climate change mitigation and adaptation plans; and
- Promote development through the private sector.

These objectives were set according to the government's priorities and as a result of discussions that included national and subnational authorities, civil society representatives and the private sector. The strategy also gives a greater emphasis to the North and Northeast regions.

The strategy further calls for a greater private sector involvement in the development of infrastructure including the expansion and maintenance of federal, state, and municipal highways; logistics infrastructure and systems for cargo transport; cargo and passenger rail transportation; among others.<sup>25</sup>

### United Nations Development Assistance Framework 2012-2015

A programme document between the government and the UN Country Team describing collection actions and strategies toward achieving national development

The UNDAF aims to contribute to Brazil's development process.

The following four key priorities were identified:

- MDGs for all Brazilians in an expanded context of national policies for development, to reduce inequalities of race, ethnicity, gender and age, in the assessment and achievement of these goals;
- Green economy and decent work in the context of poverty eradication and sustainable development; and
- Security and citizenship, in order to improve the systems of justice and public safety and ensure the enforcement of fundamental rights, focusing on the most vulnerable populations through more integrated and effective policies to prevent and combat violence, including violence arising from natural disasters and other emergencies.

The UNDAF invites the private sector to contribute in the implementation of the framework.<sup>26</sup>

## World Bank Country Partnership Strategy 2012-2015

The Strategy seeks to maintain the knowledge generation and transfer, with greater emphasis on inclusiveness, in line with the national goal of eradicating extreme poverty, expanding its support for the Northeast region and for sustainable development in the Amazon, the Cerrado and other fragile ecosystems.<sup>27</sup>

The Strategy focuses on four strategic objectives:

- Increase the efficiency of public and private investments;
- Improve the quality and expand the provision of public services for low income households;
- Promote regional economic development through improved policies, strategic infrastructure and investments, and support for the private sector in border areas; and
- Further improve sustainable natural resource management and enhance climatic resilience while contributing to local economic development and helping to meet rising global food demand.

The World Bank staff undertook consultations with numerous federal, state and municipal authorities, private sector and civil society organizations, that represented all five regions of the country.

The Strategy includes the participation of the private sector through public private partnerships at all levels of government to contribute in the achievement of higher rates of inclusive and sustainable growth.<sup>28</sup>

## International Legal Commitments

*Accession and ratification of international human rights instruments*

UN Conventions	
International Covenant on Economic, Social and Cultural Rights	ACCEDED
International Covenant on Civil and Political Rights	ACCEDED
Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the Abolition of the Death Penalty	ACCEDED
Convention Against Corruption	RATIFIED

Convention Against Torture	RATIFIED
Convention on the Elimination of All Forms of Racial Discrimination	RATIFIED
Convention on the Elimination of All Forms of Discrimination Against Women	RATIFIED
Amendment to article 20, paragraph 1 of the Convention on the Elimination of All Forms of Discrimination against Women (1995)	ACCEDED
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (1999)	RATIFIED
Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity (1968)	NOT SIGNED
Convention on the Prevention and Punishment of the Crime of Genocide (1948)	RATIFIED
Amendment to article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination (1992)	NOT SIGNED
Convention on the Rights of Persons with Disabilities	RATIFIED
Optional Protocol to the Convention on the Rights of Persons with Disabilities (2006)	RATIFIED
Convention on the Rights of the Child	RATIFIED
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	RATIFIED
Optional Protocol on the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	RATIFIED
International Convention for the Protection of All Persons from Enforced Disappearance (2006)	RATIFIED
International Convention on the Protection of All Migrant Workers and Members of Their Families	NOT SIGNED
Convention Against Transnational Organized Crime	<b>RATIFIED</b>
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organised Crime	<b>RATIFIED</b>
<b>Regional Instruments</b>	
American Convention on Human Rights	ACCEDED

Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights	ACCEDED
Inter-American Convention on the Prevention, Punishment and Eradication against Women	RATIFIED
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities	RATIFIED
Inter-American Convention to Prevent and Punish Torture	RATIFIED
Protocol to the American Convention on Human Rights to Abolish the Death Penalty	RATIFIED
<b>International Labour Organization Conventions</b>	
ILO Hours of Work (Industry) Convention (C1, 1919)	NOT RATIFIED
ILO Forced Labour Convention (C29, 1930)	RATIFIED
ILO Hours of Work (Commerce and Offices) Convention (C30, 1930)	NOT RATIFIED
ILO Night Work of Young Persons (Non-Industrial Occupations) Convention (C79, 1946)	NOT SIGNED
ILO Labour Inspectors Convention (C81, 1947)	RATIFIED
ILO Freedom of Association and Protection of the Right to Organise Convention (C87, 1948)	NOT RATIFIED
ILO Night Work of Young Persons Employed in Industry Convention (C90, 1948)	NOT RATIFIED
ILO Protection of Wages Convention (C95, 1949)	RATIFIED
ILO Right to Organise and Collective Bargaining Convention (C98, 1949)	RATIFIED
ILO Equal Remuneration Convention (C100, 1951)	RATIFIED
ILO Social Security (Minimum Standards) Convention (C102, 1952)	RATIFIED
ILO Abolition of Forced Labour Convention (C105, 1957)	RATIFIED
ILO Discrimination (Employment and Occupation) Convention (C111, 1958)	RATIFIED
ILO Social Policy (Basic Aims and Standards) Convention (C117, 1962)	RATIFIED
ILO Equality of Treatment (Social Security) Convention (C118, 1962)	RATIFIED
ILO Employment Policy Convention (C122, 1964)	NOT RATIFIED

ILO Minimum Age (Underground Work) Convention (C123, 1965)	NOT RATIFIED
ILO Medical Care and Sickness Benefits Convention (C130, 1969)	NOT RATIFIED
ILO Minimum Wage Fixing Convention (C131, 1970)	RATIFIED
ILO Holidays with Pay (Revised) Convention (C132, 1970)	RATIFIED
ILO Workers' Representatives Convention (C135 of 1971)	RATIFIED
ILO Minimum Age Convention (C138, 1973)	RATIFIED
ILO Migrant Workers (Supplementary Provisions) Convention (C143, 1975)	NOT RATIFIED
ILO Working Environment (Air Pollution, Noise and Vibration) Convention (C148, 1977)	RATIFIED
ILO Occupational Safety and Health Convention (C155, 1981)	RATIFIED
ILO Workers with Family Responsibilities Convention (C156, 1981)	NOT RATIFIED
ILO Termination of Employment Convention (C158, 1982)	NOT RATIFIED
ILO Indigenous and Tribal Peoples Convention (C169, 1989)	RATIFIED
ILO Night Work Convention (C171, 1990)	RATIFIED
ILO Prevention of Major Industrial Accidents Convention (C174, 1993)	RATIFIED
ILO Worst Forms of Child Labour Convention (C182, 1999)	RATIFIED
ILO Maternity Protection Convention (C183, 2000)	NOT RATIFIED

## Environmental Instruments

Stockholm Convention on Persistent Organic Pollutants (2001)	RATIFIED
Kyoto Protocol (1997)	RATIFIED
United Nations Convention on Biological Diversity	RATIFIED
United Nations Framework Convention on Climate Change	RATIFIED
Montreal Protocol on Substances that Deplete the Ozone Layer, 1987	ACCEDED
Basel Convention on the Control of Transboundary Movements of Hazardous Wastes, 1989	ACCEDED



## Other International Instruments

Declaration on the Rights of Indigenous Peoples	SIGNED
Rome Statute of the International Criminal Court	RATIFIED
UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage (1972)	ACCEDED

# Rights Holders at Risk

*Societal groups particularly vulnerable to employment-related discrimination or poor development outcomes*

Operating Environment		
	Brazil	Latin America and the Caribbean
HIV/AIDS prevalence (ages 15-49)	0.4 (2013)	0.03 (2013)
Female labour participation rate	59 (2015)	52.9 (2010)
Percentage urban population	85 (2013)	80 (2014)
Percentage rural population	15 (2013)	20 (2014)
Human Development Index score	0.75 (2014)	0.74 (2014)
HDI adjusted for inequality	0.55 (2014)	0.57 (2014)
HDI Gender Equality Gap Index score	0.99 (2014)	0.97 (2014)
Population below PPP US\$1.25 per day (%)	3.8 (2012)	4.6 (2011)
Literacy rate, 15-24 years old (%)	98.6 (2012)	98.3 (2015)
Maternal mortality ratio (per 100,000 births)	69 (2013)	85 (2013)
Seats held by women in national parliament (%)	9 (2015)	27.4 (2015)
Labour force	108 million (2014)	
Percentage of population 15-24 years old	16.47 (2015)	
Law prohibits discrimination on the grounds of	origin, race, colour, sex and age.	

Major ethnic group	Afro-Brazilians
Recognition of indigenous groups in law	The constitution guarantees indigenous peoples the right to their own social organisation, customs, languages, beliefs and traditions, in addition to traditional land rights. <sup>29</sup>
Major Indigenous groups	Guarani (with over 50,000 members); Makuki, Terena and Kaingang (with 30,000 members each). <sup>30</sup>
Major religious groups	Roman Catholic 64.6%, other Catholic 0.4%, Protestant 22.2% (includes Adventist 6.5%, Assembly of God 2.0%, Christian Congregation of Brazil 1.2%, Universal Kingdom of God 1.0%, other Protestant 11.5%), other Christian 0.7%, Spiritist 2.2%, other 1.4%, none 8%, unspecified 0.4% (2010 est.)
Major migrant groups	Bolivia, Paraguay, Peru, US, UK and The Philippines.
Persons with disabilities	24 percent of the population (approx. 45.6 million people)
Relevant legislation	<ul style="list-style-type: none"> <li>• The Constitution, 1988</li> <li>• The Labour Code, 1943</li> <li>• Law for the Promotion of Persons with Disabilities, 1989</li> <li>• Law Maria da Penha on Domestic Violence, 2006</li> <li>• Statute on Racial Equality, 2010</li> <li>• Law that criminalises discrimination against persons living with HIV/AIDS, 2014</li> </ul>
Responsible agencies	<ul style="list-style-type: none"> <li>• Commission for Equal Opportunities</li> <li>• Ministry of Labour and Employment</li> <li>• Ministry of Health</li> <li>• Ministry of Justice - National Foundation for Indigenous People</li> <li>• National Council Against Discrimination</li> <li>• National Secretariat for the Promotion of the Rights of People with Disabilities</li> <li>• Secretariat for Racial Equality Policies</li> </ul>

	<p>Promotion</p> <ul style="list-style-type: none"> <li>• Secretariat for Human Rights - National Council for the Rights of Handicapped Persons</li> <li>• Secretariat for Human Rights - National Council for the Rights of the Elderly</li> <li>• Secretariat for Women’s Policy - Working Group on Equality in the World of Work</li> <li>• Participative Commission for the Prevention of HIV/AIDS in the workplace</li> </ul>
<p>Local NGOs addressing this issue</p>	<ul style="list-style-type: none"> <li>• Advocaci Cidadã pelos Direitos Humanos</li> <li>• Grupo Gay de Bahia</li> <li>• Acao Social para Igualdade das Diferencas</li> <li>• Associacao Brasileira de Gays, Lesbicas e Transgeneros</li> <li>• Grupo Dignidade</li> <li>• Instituto de Defesa dos Direitos Humanos</li> <li>• Nucleo da Acao Solidaria a AIDS</li> <li>• Instituto Cultural Afro-Brasileiro Olufon Deyi</li> <li>• Observatorio de Favelas do Rio de Janeiro</li> <li>• Organizacao de Direitos Humanos Projeto Legal</li> <li>• Instituto das Tradicoes Indigenas</li> <li>• Instituto Migracoes e Direitos Humanos</li> <li>• Uniao Brasileira para Pessoas com Deficencia</li> </ul>

## Country Context

*Human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.*

The constitution prohibits discrimination based on origin, race, colour, sex and age,<sup>31</sup> while the Brazilian Criminal Code criminalises discrimination on the basis of race, colour, ethnicity, religion and nationality, and several other federal laws address different forms of discrimination.<sup>32</sup>

The constitution also establishes the prohibition of any differences in the performance of duties or hiring criteria based on sex, age, colour and marital status.<sup>33</sup> Denying employment on the basis of gender, race, age or family situation is also prohibited by the Labour Code of 1943.<sup>34</sup>

### Afro-Brazilians

The constitution seeks to eliminate racial discrimination, preserve cultural diversity and protect the land rights of *Quilombola*, rural communities comprised of the descendants of African slaves. The Statute on

Racial Equality of July 2010 provides for affirmative action and seeks to protect the rights of Afro-Brazilians and other ethnic groups through provisions that regulate health care, housing, safety and protection for African-origin religions.<sup>35</sup> It also provides for vocational training and employment opportunities, and the granting of incentives for the adoption of equality measures in the private sector.<sup>36</sup> In 2014, Law 12.990 was adopted by which 20 percent of all job opportunities in the public sector, including public and semi-public enterprises, were reserved for Afro-Brazilians.<sup>37</sup>

According to the latest Census, from 2013, Afro-Brazilians made up 53 percent of the population, comprising approximately 106 million people.<sup>38</sup> They were mostly located in the Northeast regions (75%), followed to a lesser extent by Southeast regions (45%).<sup>39</sup>

In general terms, approximately 48 millions afro-Brazilians were working as of 2013, an increase from 27 million in 1993, while 49 percent were working in the formal sector, compared to 57 percent for white people.<sup>40</sup> The government also reported that even though the majority of Brazilians were Afro-Brazilians, only 30 percent worked in the public sector as of 2015.<sup>41</sup>

According to the International Labour Organization, salaries of Afro-Brazilian workers in 2013 were 46.6 percent lower than those of white workers.<sup>42</sup>

In its latest report, from 2012, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) stated that gender and racial stereotypes have contributed to the segregation of Afro-Brazilian women into lower quality jobs.<sup>43</sup> Afro-Brazilian women were overrepresented in low paid, often exploitative job.<sup>44</sup>

Most Afro-Brazilians lived in the poorest and least developed regions in Brazil.<sup>45</sup> 5.4 percent of Afro-Brazilians were in conditions of extreme poverty, compared to 2.3 percent of whites, as of 2013.<sup>46</sup> 43 percent experienced food insecurity and 52 percent lacked housing with adequate sanitation.<sup>47</sup> However, official figures from 2015 reported declining poverty since 2002 among Afro-Brazilians.<sup>48</sup> In terms of total years of schooling (12 years or more) there has reportedly been an increase from 10 percent in 1993 to 35 percent in 2013.<sup>49</sup>

Afro-Brazilians were reportedly underrepresented among state and municipal governments, particularly in senior positions.<sup>50</sup>

## Migrant Workers

The national immigration policy and the protection of migrant workers provides for the same rights for national and migrant workers, without discrimination on grounds of gender, race, political opinion, national extraction, ethnic or social origin, nationality, age, economic position, wealth or civil status.<sup>51</sup>

Undocumented workers were estimated in 2013 to be less than 1 percent of the total population and came primarily from other South American countries such as Bolivia, Paraguay and Peru.<sup>52</sup> In the state of Sao Paulo, there were an estimated 200,000 Bolivians employed in the textile sector under precarious working conditions as of 2014.<sup>53</sup>

In terms of documented migrant workers, 47,356 authorisations were approved in 2014, a reduction of 23 percent in relation to 2013, according to the National Immigration Council.<sup>54</sup> Documented temporary migrant workers were mostly from the United States of America and the Philippines, followed by the United Kingdom and most were working in Rio de Janeiro and Sao Paulo. In terms of permanent positions, Italy, Portugal and Japan were the countries of origin of the most workers.<sup>55</sup>

## Persons with Disabilities

The constitution guarantees persons with disabilities the fulfilment of human rights and fundamental freedoms and prohibits any discrimination with respect to wages and hiring.<sup>56</sup> Law 7853 criminalises the

act of discriminating against persons with disabilities,<sup>57</sup> and a quota system introduced in 1999 prescribes a certain percentage of employees with disabilities according to the size of each enterprise.<sup>58</sup>

The latest official data, from 2010, indicated that 24 percent of the population had disabilities,<sup>59</sup> comprising approximately 45.6 million people. The great majority were between 15 and 64 years of age and lived in the Northeast regions.<sup>60</sup>

According to the government in 2012, despite the quota system, persons with disabilities' participation in the labour market was low. Over 380 million people with disabilities were working in 2014, corresponding to 0.07 percent of all jobs in Brazil.<sup>61</sup> The employment rate for persons with disabilities, however, has been increasing in recent years.<sup>62</sup>

Salaries of persons with disabilities were reportedly R\$2,304 (approx. US\$576) on average in 2014.<sup>63</sup>

The Office of the UN High Commissioner for Human Rights noted in 2012 that women with disabilities represented 34 percent of total employees and earned 20 percent less than women without disabilities and 32 percent less than men with disabilities.<sup>64</sup>

Many persons with disabilities were reportedly living in poverty and with no access to resources for an adequate standard of living. Indigenous people with disabilities in rural areas were particularly vulnerable to poverty.<sup>65</sup> Infrastructure and telecommunications services were not fully accessible to persons with disabilities, especially in rural areas, according to the UN Committee on the Rights of Persons with Disabilities in 2015.<sup>66</sup> Access to health services was also limited.<sup>67</sup>

## Persons Living with HIV/AIDS

Law 12.984, adopted in 2014, criminalises discrimination against persons living with HIV/AIDS, including imprisonment. The Ministry of Labour adopted a regulation in 2014 setting guidelines for combating discrimination against persons living with HIV/AIDS in the workplace. No worker can be forced to disclose their HIV status.<sup>68</sup>

The government estimated that approximately 734,000 persons were living with HIV/AIDS as of 2013, with a prevalence rate of 0.4% in the general population. The highest concentration rates were found among individuals aged 25 to 39 in both sexes.<sup>69</sup> According to UNAIDS, HIV prevalence rates increased 11 percent between 2005 and 2013.<sup>70</sup>

The Brazilian government has guaranteed universal and free access to antiretroviral treatment since 1996, and more than 400,000 people were receiving treatment as of 2014.<sup>71</sup>

## Human Rights Defenders

In 2007 a National Policy for the Protection of Human Rights Defenders was adopted.<sup>72</sup> However, serious violence against human right defenders has persisted. The UN Special Rapporteur on the situation of Human Rights Defenders stated in 2014 her concern about the killings, harassments, intimidations and criminalisation of members of organisations defending against environmental and land-related violations. Episodes of violence were also reported against those working to put an end to discrimination against the LGBT community.<sup>73</sup> The Inter-American Commission on Human Rights added that private parties have been known to murder human rights defenders as retaliation for their activity in defending land and environmental rights from illegal logging in the Amazon jungle and conflicting claims over land.<sup>74</sup>

According to a 2012 Global Witness report, the majority of reported business-related killings were in Brazil, followed by Peru and Colombia.<sup>75</sup>

Human Rights Watch reported in 2013 that over the past decade more than 2,000 rural activists have received death threats in Brazil.<sup>76</sup> Global Witness further noted in 2012 that killings of human rights defenders were reportedly common in Brazil's cattle ranching sector.<sup>77</sup> The same source added that from 2002-2014, 477 land and environmental defenders were killed in Brazil.<sup>78</sup>

## Indigenous Peoples

The constitution guarantees indigenous peoples the right to their own social organisation, customs, languages, beliefs and traditions, in addition to traditional land rights.<sup>79</sup>

According to the 2010 census, Brazil had approximately 197 different indigenous groups totalling around 817,000 people,<sup>80</sup> or 0.4 percent of the total population.<sup>81</sup> Based on the latest data available, from 2010, indigenous people were located in 688 indigenous lands and in some urban areas, especially in the Amazon region.<sup>82</sup> The largest community is the Guarani, with over 50,000 members, followed by the Makuki, Terena and Kaingang communities, with 30,000 members each.<sup>83</sup> The government stated in 2010 that more than 80 isolated, uncontacted indigenous groups could be living in the Amazon rainforest.<sup>84</sup>

Minority Rights Group International reported in 2015 that even though a significant proportion of indigenous people lived in urban areas, most lived in rural areas rich in forestry and minerals, making vulnerable to logging and mining.<sup>85</sup> In many instances, the government reportedly sponsored mega-projects resulting in forced displacement, including the preparations for the World Cup in 2014.<sup>86</sup>

According to the latest Census, from 2010, most indigenous people worked in agriculture and received salaries that were on average R\$788 (approx. US\$197) per month, lower than the minimum wage. Only 1.5 percent of indigenous people received salaries that were more than 5 times the minimum wage, a percentage that fell to 0.5 for indigenous people living in traditional lands.<sup>87</sup>

In its latest report from 2009, the UN Special Rapporteur on the Rights of Indigenous Peoples found that indigenous peoples were unable to exercise their full right to self-determination; faced discrimination in social and political life; and were subject to violence by police forces and private armed guards hired by non-indigenous farmers.<sup>88</sup> In the last century, according to *International Business Times*, over 90 tribes had vanished from the Amazon.<sup>89</sup>

According to a 2013 Reuters report, pressures from the Frente Parlamentar da Agricultura (FPA), a group of parliamentarians that represent the interest of agribusiness and landlords in the National Congress, continuously challenged the boundaries of indigenous territories.<sup>90</sup>

Indigenous people lived in conditions of poverty, with limited access to water and sanitation, exposed to violence and, in the case of women, forced into trade sex, according to Minority Rights Group International in 2015.<sup>91</sup>

The National Foundation for Indigenous People (FUNAI) has been criticised for failing to provide effective support to indigenous communities. The UN Special Rapporteur further noted in 2009 that the institution, although doing exemplary work in some areas, had been traditionally dominated by 'non-indigenous bureaucrats and social scientists who shared a highly paternalistic posture towards indigenous peoples and a model of development that is not in keeping with contemporary standards of indigenous self-determination.'<sup>92</sup> FUNAI has not reportedly been provided with sufficient funds to fulfil its mandate.<sup>93</sup>

## Rural Poor

According to the Rural Poverty Portal, landless people and smallholder farmers make up Brazil's rural poor population. The North East region was particularly vulnerable to poverty and more than half of its

population was poor.<sup>94</sup> Most had limited access to public services and were vulnerable to adverse climate change conditions.<sup>95</sup>

A 2015 article from the Brazilian newspaper *Vermelho* reported that large powerful ranchers incurred in violent conflicts with poor settlers in order to cease their land. Rondonia, Para and Maranhao were particularly vulnerable to conflicts.<sup>96</sup>

## Sexual Minorities

Federal law does not prohibit discrimination based on sexual orientation, yet several states and municipalities have laws protecting sexual minorities from discrimination in the workplace.<sup>97</sup> In May 2011, the Supreme Federal Court held that same sex couples are entitled to legally marry.<sup>98</sup>

The latest Census, from 2010, highlighted that 60,000 homosexual couples were living in the same household in Brazil.<sup>99</sup>

In practice, members of the LGBT community reportedly faced obstacles to access the job market. A 2015 survey conducted by Elancers found that 18 percent of companies would not hire a homosexual for certain vacancies, especially executive positions. Another survey conducted the same year by the consulting firm Santo Caos found that 40 percent of LGBT workers faced discrimination in the workplace, including from management and colleagues.<sup>100</sup>

Only 40 percent of people assumed their sexual orientation to their bosses while only 2 percent to the Human Resources Department as a result of fear from discrimination in the workplace and dismissal or doubts about their professional capabilities.<sup>101</sup>

According to the latest government report, from 2012, the LGBT community suffered from widespread discrimination and violence. Figures from 2012 indicated that 27 episodes of human rights violations against the LGBT community were reported per day, compared to 18 in 2011. Those episodes occurred particularly against women, Afro-Brazilians and youth.<sup>102</sup>

## Urban Poor

According to the latest 2010 Census, approximately 11 million people lived in slum areas, the so-called favelas. South East regions and cities such as Sao Paulo and Rio de Janeiro were particularly prone to favelas.<sup>103</sup> The government reported that 1 out of 4 people living in favelas was under the Bolsa de Familia subsidy programme which started a decade ago, and that it contributed to the decline of poverty levels in those communities.<sup>104</sup> Data Favela Institute reported that middle-class families in favelas grew from 33 to 65 percent over the last decade.<sup>105</sup> Nevertheless, most favelas lacked effective sewage system, access to clean water and waste management system, according to the Borgen Project in 2015.<sup>106</sup>

Favelas reportedly had little government regulation.<sup>107</sup> The Inter-American Development Bank reported in 2012 that its population suffered from social and ethnic discrimination by the police.<sup>108</sup> The Huffington Post added that gang members,<sup>109</sup> and former and off-duty security officers reportedly intimidated residents and conducted illegal activities such as commissioning protection money.<sup>110</sup>

Public authorities and service providers avoided installing water and sanitation networks as several prosecution officers declared it illegal to provide water and sanitation services to informal settlements, which, according to the UN Special Rapporteur on the human rights to safe drinking water and sanitation in 2014, impacted on their right to access to water and sanitation.<sup>111</sup>



## Women

The constitution guarantees gender equality and same access to land to women and men, irrespective of marriage.<sup>112</sup>

Brazil has an array of laws in place that protect women from discrimination and violence in the workplace.<sup>113</sup> The Labour Code provides that employees who perform the same job are entitled to the same pay.<sup>114</sup> In 2008, Brazil extended its maternity leave from 120 days to 180 days, leaving the supplementary 60 days as an optional choice for private companies. Companies choosing to grant the additional 60 days could deduct the additional salary paid to the female employee from their income tax.<sup>115</sup> As of December 2012, only 10 percent of companies were providing the benefit to its employees.<sup>116</sup> The newspaper *Folha do Sao Paulo* reported in 2013 that in practice, the benefits were implemented only by multinational companies and state-owned enterprises.<sup>117</sup>

Women participation rate in the labour market was 59 percent in 2015, a slight reduction from previous years, according to the World Bank.<sup>118</sup> As women reportedly dedicated on average 22.5 hours a week to family chores,<sup>119</sup> the World Bank stated in 2013 that their access to the job market remained unequal.<sup>120</sup>

The Ministry of Labour reported that in 2014 women's employment rose 2.5 percent compared to 0.4 percent for men, and it was the highest ever-recorded in Brazil.<sup>121</sup> Sectors included services, construction and commerce.<sup>122</sup> Only 5.1 percent of women had a managerial position in 2013, compared to 6.4 for men.<sup>123</sup> The government has supported the participation of women in the labour market by prioritising universal access to public day care and children centres.<sup>124</sup>

42.7 percent of women worked in the informal sector compared to 41.5 for men, as of 2013. Those figures indicated a decrease from 52 percent of women in the informal sector in 2004.<sup>125</sup> Nevertheless, *O Globo* reported in 2014 that women opted for the informal sector as they provided more work flexibility as most mothers needed to take care of their children and spend extra time taking them to daycare centres.<sup>126</sup>

The ILO also noted in 2012 that nearly 50 percent of women had an informal job in the manufacturing sector, compared to 32 percent for men.<sup>127</sup>

The government reported that women earned on average 70 percent of the salary of men in 2013, an increase from 62 percent from 2004.<sup>128</sup> Salaries were reportedly on average R\$1244 (approx. US\$311) as of 2013.<sup>129</sup>

Sexual harassment is a crime punishable by up to two years in prison but the definition is restricted to hierarchical situations, where the harasser is of a higher rank or position than the victim. A study conducted in 2015 by Vagas found that 10 percent of respondents suffered sexual harassment at work, of which 80 percent were women.<sup>130</sup> Although sexual harassment was a criminal offense, the study found that most people did not come forward with complaints due to fear of losing their jobs.<sup>131</sup> The latest UN Committee on the Elimination of Discrimination against Women (CEDAW) report, from 2012, noted inequality in access to education based on race, ethnicity and socioeconomic background. Rural women, who were the most affected by poverty, had limited access to health and social services and indicated low political participation rates. Nevertheless, CEDAW further stated that the government reported in 2012 that women were more educated than men and enjoyed lower illiteracy rates.<sup>132</sup>

Violence against women is illegal,<sup>133</sup> and according to the government 3 cases per day were reported in 2013. Most cases were related to physical violence.<sup>134</sup>

The Secretariat for Women's Policy lacked sufficient capacity and resources to coordinate with institutions at various levels and to enhance women's rights in development strategies, according to CEDAW.<sup>135</sup>

## Cases

*Reports of business-related human rights issues from NGOs, multilateral institutions and the media.*

- *May 2015, Terra:* A lesbian woman was fired from her job at a Shopping Mall in Sao Paulo due to her sexual orientation.<sup>136</sup>
- *March 2013, UOL News:* A study conducted by the Trade Union for Secretaries in Sao Paulo found that 25 percent of female members suffered from sexual harassment from their bosses.<sup>137</sup>

## Company Initiatives

*Private-sector programmes that aim to ensure respect for human rights or contribute to development*

### Company Due Diligence Initiatives

**Google Brazil (2014):** The company provides its male workers with 4 weeks paternity leave, while the national law mandates to only 5 days.<sup>138</sup>

**BASF:** The German chemical company BASF has undertaken an array of initiatives to uphold equal opportunities for all employees and prospective employees, irrespective of sex or colour. It established a Diversity Committee in 2003 to reverse the overall underrepresentation of women and black employees within the company—especially in management positions. The committee's responsibilities include reviewing and modifying recruitment and selection procedures and educating staff, including management, on issues pertaining to gender and racial equality.<sup>139</sup>

**Walmart Brazil:** The company has adopted initiatives that encourage and guarantee a greater female participation in their workforce, while seeking their empowerment. Its Council on Diversity and Inclusion is composed of 13 leaders, of whom 9 are women, and which debates the evolution of internal gender indicators and an Action Plan to promote women employees into leadership positions. As of 2015, women represented more than 50 percent of its workforce in Brazil.<sup>140</sup>

**The Water and Sanitation Company from the state of Bahia (EMBASA):** The company adopted a Sustainability Policy by which it commits to develop its workforce in a working environment that is based on ethics and transparency; that respects diversity; and promotes inclusion and equality, fostering their motivation and their commitment.<sup>141</sup>

**Eletrobras:** The state-own energy company has set a Gender Hotline so that employees can submit complaints related to gender, mobbing and other issues.<sup>142</sup> The company has also an Ombudsman who received in 2014 5 complaints that were related to human rights violations while other seven in relation to discrimination issues.<sup>143</sup>

### Company Development Initiatives

**Avon Brazil (2015):** The cosmetics company conducted a survey on violence against women, particularly on cyber-aggression done through digital channels. The survey was presented at the Forum 'Talked without fear' held in Sao Paulo. The survey aimed at raising awareness in the population on the issue of combating violence against women.<sup>144</sup>

**Chevron Brasil:** The oil and gas company launched its support to the organisation Rede Asta, which helps female artisans in low-income areas to build small businesses through training, setting production

networks and up sales channels. The company also provided with volunteers to conduct workshops to improve women's business management skills including for the creation of handmade furniture and jewellery.<sup>145</sup>

***Chevron Brasil:*** The oil and gas company partnered with Instituto Empreender in the state of Rio de Janeiro to empower persons with disabilities to access the job market. Training in technological skills was offered and the company also provided with internships. Since 2013, 163 persons with disabilities have benefited from the program while 46 percent found a job.<sup>146</sup>

***Petrobras (2013):*** The company hosted a symposium for over 500 employees from across Brazil on labour rights, social dialogue and the promotion of human rights. Former UN Special Representative on business and human rights, John Ruggie, and the International Labour Organisation participated.<sup>147</sup>

***Nestlé:*** The company has implemented a shared value creation business model in Brazil by using a network of micro-distributors and individual sellers to reach consumers who would otherwise not have access to Nestlé products. The company has chosen to engage direct sellers that are women from impoverished areas in São Paulo and Rio de Janeiro and who were rarely employed before working for the company. In 2009, the company had 200 micro distributors and more than 6,000 saleswomen across Brazil, selling Nestlé products to some 700,000 lower income consumers each month. Each woman worked as an independent sales representative within her community, providing her with flexible work hours. On average, Nestlé saleswomen make 40 percent more than the minimum wage.<sup>148</sup>

***Brazil Bolsa de Valorosos Socionambientais (BVSA):*** BVSA, or social and environmental investment exchange, is the first social investment 'exchange' in the world. BVSA screens projects, whose solutions must be aligned with UN Millennium Development Goals, for quality. Donors can choose what to 'invest' in, but the return is social, not financial.<sup>149</sup>

***Rio Tinto:*** The company, which operates in Brazil, has a human rights policy in place that 'respects the diversity of indigenous peoples, acknowledging the unique and important interests that they have in the land, waters and environment as well as their history, culture and traditional ways.'<sup>150</sup> Rio Tinto's community engagement programmes, which may include enterprise development, training, employment, community-based health and social and cultural heritage initiatives, seek to contribute to the realisation of human rights.<sup>151</sup>

## Stakeholder Recommendations

***United Nations Educational, Scientific and Cultural Organisation:*** UNESCO recommends the private sector to understand the favela economy and the ethics of business in areas of social exclusion.<sup>152</sup>

***'Pillars in Practice' Workshop:***<sup>153</sup> Businesses should create transparent mechanisms that share information with local communities on the potential human rights impacts of company operations, and enable the effective participation of communities in decisions that may impact them.

# Human Rights Guidance for Businesses

*Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context*

## Due Diligence Library

*The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies*

### Discrimination

*Does the company ensure that employment-related decisions are based on relevant and objective criteria?*

- The company identifies different types of discrimination, including those rooted in formal structures and cultural traditions.
- It is company policy to ensure that decisions concerning hiring, wages, promotion, training, discipline, retirement and termination are based only on unbiased criteria, and are not linked to any of the discriminatory characteristics listed in the description for this question.
- Each job category in the company has a written description stating the salary level and the qualifications required for that job category.
- The company ensures that employment advertisements do not reference discriminatory criteria, such as race, gender or age (unless listed as part of a legal equal opportunities promotion).
- The company ensures that job applicants are not asked to give information about their marital status, pregnancy, intent to have children, number of dependents, or similar information that may lead to discriminatory hiring decisions.
- All hiring managers receive training regarding the company's non-discrimination policies.
- The company has established a procedure, accessible and known to all workers, where workers can safely report incidents of workplace discrimination.
- The company takes reasonable steps to enable qualified persons with disabilities or health conditions to gain employment opportunities with the company, for example by providing wheelchair access, flexible working hours, longer breaks etc.

### Fair Treatment

*Does the company protect workers from workplace harassment including physical, verbal, sexual or psychological harassment, abuse or threats?*

- The company has a commitment to prevent workplace harassment.
- The company actively informs workers of their obligations to refrain from violent, threatening or abusive conduct.
- Managers receive training on how to identify and deal with instances of harassment in the workplace.
- The company investigates all complaints of workplace harassment and takes appropriate preventative and disciplinary action including reporting of criminal actions to the appropriate authorities.

## Privacy

*Does the company respect the privacy of its employees whenever it gathers private information or monitors the workplace?*

- The company has a procedure stating which kinds of workplace monitoring are allowed; what kind of personal worker information is retained; where it is stored; who has access; and why the information is necessary.
- Workers are made aware of all workplace monitoring, including cameras and Internet or e-mail monitoring, and the specific purpose of the monitoring.
- The company obtains the worker's prior written consent before gaining information from an individual with whom the worker has a privileged relationship, including a former employer, doctor or lawyer.
- Workers have access to all personal data collected about them, including data concerning disciplinary decisions and data obtained through monitoring, but excluding confidential management specific information related to performance evaluations, salary negotiations, promotions, rotation and similar employment decisions.

## Community Engagement

*Does the company engage with local communities on the actual or potential human rights impacts of its operations?*

- The company has a commitment to engage openly with communities in and around its area of operations, prior to, during and after commencing activities that may negatively impact their access to resources (e.g. water, food, land) or livelihoods (e.g. fishing or hunting grounds).
- The company communicates and consults with local communities prior to, during and after commencing activities to prevent, reduce and mitigate impacts.
- The company takes steps to remedy the legitimate concerns of local communities regarding any negative impacts of the company's operations on the access to resources or livelihoods.

## Country Risk

*Does the company seek to avoid involvement in human rights abuses owing to government or societal practices?*

- If operating in a country or region with systematic human rights abuses, the company seeks to become aware of and avoid the risk of contributing to, endorsing or benefiting from such abuses.
- Where the company risks involvement in systematic human rights abuses owing to government or societal practices, the company seeks to identify solutions through dialogue with other businesses, civil society organisations, experts and other relevant stakeholders, including where possible with the authorities.
- The company ensures that it does not endorse any state imposed discriminatory limitations on the right to vote, and does not pass along information concerning religious, racial, political affiliations or other characteristics of employees which could be used by the government as a reason to restrict the right to vote.

## Standards & Guidance

*NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre*

- International Labour Organization Core Labour Standards on Non-discrimination and the ILO Bureau for Gender Equality: Non-discrimination comprises one of the four core areas of the ILO Declaration on Fundamental Principles and Rights at Work, which comprises the ILO core labour standards. The ILO integrates gender throughout its work, with the objective of achieving gender equality as an essential feature of decent work. This can include advisory services, research and information dissemination, training and capacity building.
- Oxfam Australia: Women, Communities and Mining: The Gender Impacts of Mining and the Role of Gender Impact Assessment (2009): This Guide is intended to inform mining company staff of potential gender impacts of mining projects and introduces some tools and approaches that can be used to conduct a gender impact assessment.
- Women's Empowerment Principles (2010): Developed in collaboration between UN Women and the UN Global Compact, the Women's Empowerment Principles are a set of principles for businesses offering guidance on how to empower women in the workplace, marketplace and community.
- The Forest Peoples Programme: Established in 1990, the Programme is dedicated to supporting Indigenous Forest Peoples protect their land rights and human rights. The Programme works directly with indigenous communities, assisting them in building their own capacities and exercising their human rights.
- IFC Performance Standard 7: Indigenous Peoples (2012): The IFC PS7 and its accompanying guidance offer directions on how private sector projects can respect the human rights of Indigenous Peoples through following the stated requirements.
- International Council on Mining and Metals Good Practice Guide: Indigenous Peoples and Mining (2010): The ICMM is the industry organisation for the mining and metals sector. The Guidance provides advice to companies on how they can build effective relationships with Indigenous Peoples, as well outlining ways in which companies can effectively engage throughout the lifecycle of a project.
- International Working Group for Indigenous Affairs (est. 1968): IWGIA is an international human rights organization specialising in Indigenous Peoples' rights. IWGIA works to further the understanding, knowledge and engagement with the rights of Indigenous Peoples through publications, advocacy programmes and support of local projects.
- The Manila Declaration of the International Conference on Extractive Industries and Indigenous Peoples (2009): The Declaration is a statement on behalf of Indigenous Peoples and support organisations from 35 countries that calls on different stakeholder groups, such as extractive companies, communities and civil society organisations, to respect and uphold the recognised rights of Indigenous Peoples.
- Tebtebba Foundation (Indigenous Peoples' International Centre for Policy Research and Education): The Foundation's main purpose is to work for the respect, protection and fulfilment of Indigenous Peoples' rights and the operationalization of Indigenous Peoples' self-determined sustainable development. The Foundation offers a number of relevant resources on issues such as traditional knowledge and traditional livelihoods, biodiversity and climate change.

- UN Permanent Forum on Indigenous Issues (est. 2000): The Forum was formed to advise the United Nations Economic and Social Council on a number of Indigenous Peoples' rights issues, such as economic and social development, culture, education, environment, health and human rights.
- UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples (est. 2001): The Special Rapporteur mandate is to advise on and monitor the human rights situation of Indigenous Peoples. This includes country reports, promoting good practice, addressing relevant human rights violations and contributing to thematic study on topics related to Indigenous Peoples.

## Engagement Opportunities

*Development initiatives by public and private actors that provide opportunities for companies to contribute to human development*

### Public Sector Initiatives

**Black Entrepreneurship:** The Secretary for the Promotion of Racial Equality (SEPPIR), in collaboration with the Brazilian Service to support PYMES, launched the initiative that has the objective of promoting the value of black entrepreneurship through the development of actions, programmes and public policies to optimise black entrepreneurship and to promote economic growth.<sup>154</sup>

**National Plan on Commerce and Services for Afro-Descendants Professionals:** SEPPIR, in collaboration with the Ministry of Labour and Employment, implements the plan that seeks to qualify 25,000 persons throughout Brazil for the following courses: individual entrepreneurship, tire repairmen, carpenter, tailor, caregiver, electricians, supermarket manager, motorbike mechanic, cashiers, telemarketing and receptionist.<sup>155</sup>

**Training for Women's Empowerment:** The government conducted various training sessions focused on women's access to the job market. From 2012-2013, 16,695 women were trained, both in rural and urban areas.<sup>156</sup>

**Provision of Daycares and Preschool Centres (2014):** The government, with the aim of supporting women's employment, committed to the amount of R\$4 billion (approx. US\$1,000 million) to the construction of daycares and pre-school institutions. During 2014, 2,068 centres were constructed, including in 631 new municipalities.<sup>157</sup>

**The National LGBT System (2013-present):** The system aims to improve the protection of LGBT persons, their families and victims of discrimination. It encourages for the establishment of councils at local level in order to implement the system.<sup>158</sup>

**National Plan for the Rights of Persons with Disabilities – Living Without Limits (2011-present):** The plan provides measures aimed at ensuring access to education, health care, accessibility and social inclusion for persons with disabilities.<sup>159</sup>

**Prize to Enterprises that Promote Gender and Racial Equality at the Workplace (2010-current):** The Minister for Women, Racial Equality and Human Rights, the Special Secretariat for Women Policies and the Minister of Labour and Employment award the prize to public and private enterprises that promote gender and racial equality through their management practices and organisational culture. In 2015, 68 companies were recognised with the award.<sup>160</sup>

**Programme Citizen-Company (Empresa Cidadã) (2009-present):** The government adopted the programme in order to allow the extension of the maternity leave of employees for an extra 60 days in exchange of some tax incentives for the companies joining it.<sup>161</sup>

**University Programme for All (2005-present):** The programme is an incentive for Afro-Brazilians students to attend college through the establishment of a quota-based admission rate.<sup>162</sup> As of 2014, 1,420,290 scholarships were granted to students, of which 50, 3 percent were Afro-Brazilians.<sup>163</sup>

**National Programme for the Protection of Human Right Defenders (2004-present):** The programme aims to protect journalists from being threatened or that face circumstances of exceptional risk.<sup>164</sup> Protection measures include: visiting areas where journalists perform their job, public hearings in order to address conflicts, dissemination of human rights defender's activities, cooperation with national security bodies, follow up on judicial procedures and cases, temporary removal of the human rights defenders from their workplace and, in cases of high risk, police protection. As of 2015, the Programme was operational in seven states, and was giving protection to 209 human rights defenders.<sup>165</sup>

**National Programme to Support Family-Based Agriculture (1995-current):** The programme is designed to provide financial support to rural farmers dependent on family workers by integrating their agricultural production into the agribusiness chain, ultimately leading to an increase in income.<sup>166</sup>

## NGO Initiatives

**Instituto de Defensores de Direitos Humanos:** The organisation works on the promotion and defence of human rights through the provision of free legal advice to victims of human rights violations.<sup>167</sup>



# Child Labour

*Work that interferes with the health, development, education or family life of persons under 18*

Operating Environment		
	Brazil	Latin America and the Caribbean
Percentage of pupils starting grade 1 and reaching last grade of primary	80.6 (2003)	76.1 (2015)
One-year-old children immunised against measles (%)	99 (2013)	92 (2013 - Latin America)
Mortality rate of children under 5 years old (per 1,000 live births)	13.7 (2013)	18 (2013)
Percentage of population below 14	23.27 (July 2015)	
<a href="#">Legatum Prosperity Index</a> : Education	84 (2015)	
Restrictions on children under 18 from working	The law prohibits all children under 18 from working under unhealthy, dangerous or morally harmful conditions. <sup>168</sup>	
Minimum age of employment	16	
End of compulsory education	14 years of age	
Relevant legislation	<ul style="list-style-type: none"> <li>• The Constitution, 1988</li> <li>• The Labour Code, 1943</li> <li>• Law on the status of children and adolescents rights, 1990</li> <li>• Decree 6.481 that establishes the prohibition of hazardous occupations or activities for children, 2008</li> <li>• Law 12.978 that specifies penalties in the Criminal Code for commercial sexual exploitation of children, 2014</li> </ul>	
Responsible ministries	<ul style="list-style-type: none"> <li>• The Ministry of Labour and Employment</li> <li>• National Committee for the Elimination of</li> </ul>	

	Child Labour
Local NGOs addressing this issue	<ul style="list-style-type: none"> <li>• Reporter Brasil</li> <li>• Saude Crianca</li> <li>• Asociacao Sonho Infantil</li> <li>• Instituto Pro Educare</li> <li>• Casa do Zezinho</li> </ul>

## Country Context

*Human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.*

The Brazilian constitution recognises the right to childhood as a social right, and child labour is prohibited by the constitution and by federal law.<sup>169</sup> The minimum working age is 16, but the law prohibits all children under 18 from working under unhealthy, dangerous or morally harmful conditions.<sup>170</sup> According to the National Household Survey, published in 2014,, an estimated 3.3 million children between the ages of 5 and 17 worked in the formal and informal sectors.<sup>171</sup> The government noted in 2015 that child labour rates fell by 58 percent from 2001-2013, more than the world average of 36 percent in the same period of time. The reduction was attributed to the implementation of social programs such as cash transfers that supported family income.<sup>172</sup> The Committee on the Rights of the Child has also recognised in 2015 the overall reduction in child labour rates however, it remained concerned about the persistence of a large amount of child labourers in Brazil.<sup>173</sup>

Most of the reduction in child labour occurred among children between 5 and 9, especially in the agricultural sector.<sup>174</sup>

In 2013, Reporter Brasil noted that judges frequently granted authorisations to children under the age of 16 to work in dangerous and hazardous conditions based on the need for children to contribute to the family's economy. In 2011 alone, 3,134 authorisations were granted, impacting existing efforts to combat child labour.<sup>175</sup>

The Ministry of Labour and Employment (MTE) had approximately 3,000 inspectors distributed in all 27 states, and could fine violators who are guilty of employing underage children.<sup>176</sup> The MTE conducted 9,838 inspections from April 2014-April 2015, resulting in the removal of 5,688 children and adolescents from child labour. Most child labourers were found in Pernambuco, followed to a lesser extent by Minas Gerais, Matto Grosso do Sul and Goias.<sup>177</sup> A 2015 Human Rights Watch report noted that the MTE was understaffed to enforce labour laws consistently and effectively.<sup>178</sup>

## Worst Forms of Child Labour

Decree 6.481, from 2008, establishes the prohibition of hazardous occupations or activities for children. In 2014, Law 12.978 was passed and specifies penalties in the Criminal Code for commercial sexual exploitation of children.<sup>179</sup>

The UN Committee on the Rights of the Child noted in 2015 a high prevalence of child labour in the informal and agriculture sector. Children were working including in the production of apples, beans, sugarcane, coffee, tobacco, palm oil, cacao, mate tea and manioc.<sup>180</sup> The U.S. Department of State also stated in 2015 that children worked in the production of ceramics and bricks, garments, footwear and leather.<sup>181</sup> Forced labour under slave-like conditions in farms was further reported by the UN Committee.<sup>182</sup>

Commercial sexual exploitation was reportedly a problem in Brazil.<sup>183</sup> There were reports that police officers and government officials were involved in trafficking for commercial sexual exploitation.<sup>184</sup> Highway stops were reportedly areas for commercial sexual exploitation of children.<sup>185</sup> Official figures reported that in 2013, 254 persons were victims of trafficking, most of them children and adolescents for commercial sexual exploitation.<sup>186</sup>

Children were trafficked for prostitution, and the UN Committee noted that tourist agencies, hotels and taxis were connected to the crime, particularly in large development project areas in the North and North-East regions<sup>187</sup> in connection to Carnival Season<sup>188</sup> and related to the 2014 World Cup.<sup>189</sup> Girls and indigenous children were particularly vulnerable to trafficking.<sup>190</sup>

High levels of sexual abuse and sexual violence against children were reportedly occurring at schools, institutions, police stations and detention centres.<sup>191</sup>

## Education

Under Brazilian law, education is free and compulsory between the ages of 7 and 14.<sup>192</sup>

The UN Committee on the Rights of the Child noted in 2015 disparities in the access and quality of education between rural and urban areas, particularly at the secondary level. Afro-Brazilians and indigenous children had lower literacy rates than the general population.<sup>193</sup>

According to the U.S. Department of State in 2015, 96 percent of working children attended school.<sup>194</sup>

The UN Committee further expressed concern in 2015 at the increased involvement of the private sector in education, particularly the high fees they charged, and the increase in public funding for private sector education for the purchase of standardised teaching and school management system that may not be adequately customised for effective use.<sup>195</sup>

## Cases

*Reports of business-related human rights issues from NGOs, multilateral institutions and the media.*

- *August 2014, Instituto Humanitas Unisinos:* A 15-years old Bolivian adolescent was rescued by inspectors from the Ministry of Labour and Employment from slavery-like conditions at a garment factory in Casa Verde. The girl was working between 13 to 14 hours a day.<sup>196</sup>
- *January 2013, Reporter Brasil:* One adolescent and 15 other women between 18 and 20 years of age were found under conditions of sexual exploitation in a brothel near the Belo Monte Dam infrastructure.<sup>197</sup>

## Company Initiatives

*Private-sector programmes that aim to ensure respect for human rights or contribute to development*

### Company Due Diligence Initiatives

**Unilever Brasil:** The company is committed to the UN Guiding Principles on Business and Human Rights. It has adopted a Policy on Responsible Procurement by which it sets fundamental principles that are to be applied when contracting with their supply chain, and includes the prohibition to employ any person

below 15 years of age, or below the age for compulsory education. When young workers are employed, they cannot perform work that interferes with their schooling or access to education; and that is detrimental to their mental, physical and social development, and is morally, dangerous or harmful to their life.<sup>198</sup>

## Company Development Initiatives

**Carrefour Brazil (2015):** The company launched a campaign to commemorate Children's Day throughout the month of August. A percentage of all sales during that month was given to Abrinq Foundation that implements initiatives to improve children's life.<sup>199</sup>

**3M Brasil (2014):** The company implements the project Escola Formare in the locations of Manaus and Sumare, by which, in collaboration with the Fundação Lochpe, provides training to youth age 16-18 years to prepare them for a professional career. The training extends for a year and includes 800 hours of theoretical and practical sessions.<sup>200</sup>

## Human Rights Guidance for Businesses

*Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context*

### Due Diligence Library

*The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies*

- The company does not employ workers under 15 years of age for full-time work, 13 years of age for light work and 18 years of age for hazardous work (please see the question description for exceptions).
- If the company employs minors below the age of 18, the company has a list of job functions that can safely be performed by minors.
- The company is aware of local age-levels for completion of compulsory education and does not employ workers under that age for work that may interfere with such education.
- The company has a reliable procedure to check the age of young job candidates by birth certificate, other official forms of identification, or by alternative means such as physical appearance or knowledge of historic events.
- Company apprenticeship programmes do not constitute the main portion of the workforce, are limited in duration, are performed in conjunction with a school programme (or supervised by Labour Ministers or Labour Organisations), and do not interfere with the child's compulsory education.
- If the company becomes aware that it is employing young workers below minimum age, it ensures that they are enrolled in education programme, and that their dependents are compensated for the resulting loss of income.

## Standards & Guidance

*NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre*

- Business and Human Rights Resource Centre, Business & Children Portal: The Portal is an information hub developed to give practical assistance to people from all business sectors in their work and decision-making, leading to better protection of the rights and welfare of children. The Portal has sections on: issues, positive initiatives, alleged abuses, lawsuits and guidance.
- Children's Rights and Business Principles (2012): Developed by UNICEF, UN Global Compact and Save the Children, these Principles are the first comprehensive set of principles to guide companies on the full range of actions that they can take in the workplace, marketplace and community to respect and support children's rights.
- ILO Programme on the Elimination of Child Labour (est. 1992): The Programme has the overall goal of the progressive elimination of child labour, to be achieved through strengthening the capacity of countries to address it and promoting a worldwide movement to combat child labour.
- UN Committee on the Rights of the Child General Comment No.16 on State obligations regarding the impact of the business sector on children's rights (2013): The Committee is the body of independent experts that monitors the implementation of the Convention on the Rights of the Child and the Optional Protocols. In April 2013, the Committee issued a general comment on business and children's rights. The objective of General Comment No.16 is to provide States parties with a framework for implementing the CRC, particularly with regard to the business sector.
- Children's Rights in Impact Assessment – A Tool For Companies (2013): Developed by UNICEF and the Danish Institute for Human Rights, this checklist is a practical tool intended to help companies to identify and manage their impact on children's rights. The checklist contains a set of questions and indicators covering the 10 Children's Rights and Business Principles, addressing different aspects of company policies and operations and the impact on children's rights.
- Better Work (ILO, IFC): Guidance Sheet on Child Labour (2009)

## Engagement Opportunities

*Development initiatives by public and private actors that provide opportunities for companies to contribute to human development*

### Public Sector Initiatives

**Programme to Eradicate Child Labour (PETI) (1996-current):** The programme has been designed to withdraw children 7 to 16 years of age from practices of child labour, and children up to 18 years of age from the worst forms of child labour. PETI provides families with an income of more than R\$154 (approx. US\$38) per month with a monthly cash stipend that amounts to R\$25.00 (approx. US\$6) per child in rural areas and R\$40 (approx. US\$10) per child in urban areas, if they commit to keep their children in school and out of work.<sup>201</sup> Furthermore, all children are obliged to be enrolled in a program that aims to assist them in social development within their family and the community and avoid institutionalization.<sup>202</sup> More than 820,000 children in 3,500 municipalities received aid from PETI.<sup>203</sup>

**Family Basket Programme (2003-current):** The programme consists of a conditional cash transfer that supplements income in families living with between R\$70 (approx. US\$17)- R\$154 (approx. US\$38) a

month. One of the conditions for families to participate in the programme is that children under 18 must attend school regularly. More than 14 million households nationwide receive aid from Bolsa Familia.<sup>204</sup>

**Convergence Agenda for the Integral Protection of Children in the context of Major Events (2014):** In the framework of the agenda, Brazil, with the involvement of its government at national, state and municipal levels; NGOs, private sector and IGOs, promoted awareness raising campaigns, trainings of professionals in the security sector and distribution of guidelines to the media on the comprehensive protection of children. The government also developed a smartphone application (Protect Brazil) that provided information on the location and access to public facilities and social services for the protection of the rights of children in the cities that hosted the 2014 World Cup.<sup>205</sup>

**Information System on Locations of Child Labour (SITI):** The system has been established to contribute to the planning of inspections and to combat the worst forms of child labour. The system contains detailed information on locations where child labour occurs, including the worst forms of child labour, as well as information concerning the commercial sexual exploitation of children.<sup>206</sup>

**More Education Program:** The Ministry of Education implements the program that offers after-school activities and remedial activities to reduce dropout rates and grade repetition, as well as to combat child labour. In 2014, 58,000 schools participated in the programme.<sup>207</sup>

## NGO Initiatives

**Casa do Zezinho:** The organisation seeks for the development of children and adolescents of high social vulnerability. It provides among others with training to better prepare adolescents for a professional career.<sup>208</sup>

# Forced Labour

*Debt bondage, human trafficking or other coercion that makes workers unable to freely leave employment*

Operating Environment	
U.S. Department of Labour Trafficking in Persons: Tier Placement	Tier 2
Relevant laws	<ul style="list-style-type: none"> <li>• The Constitution, 1988</li> <li>• The Labour Code, 1943</li> </ul>
Responsible agencies	<ul style="list-style-type: none"> <li>• Ministry of Labour and Employment</li> <li>• Ministry of Justice</li> <li>• National Commission to Eradicate Forced Labour</li> <li>• National Coordination for the Fight Against Forced Labour (CONAETE)</li> <li>• Tripartite Commission to Combat Trafficking in Persons (CONATRAP)</li> </ul>
Local NGOs addressing this issue	<ul style="list-style-type: none"> <li>• Reporter Brasil</li> <li>• Comissao Pastoral da Terra</li> </ul>

## Country Context

*Human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.*

Brazilian law prohibits forced or bonded labour. Forced labour, referred to in Brazil as labour analogous to slavery, is a criminal offense punishable by up to eight years in prison,<sup>209</sup> and its defined as any of the following activities: submitting a worker to forced labour; submitting a worker to exhaustive work hours; subjecting a worker to degrading work conditions; restricting the movement of the worker due to a debt to the employer or responsible agent.<sup>210</sup> In June 2014, a constitutional amendment was passed to allow the government to confiscate without compensation all the property of landowners and others who force people into slave-like conditions.<sup>211</sup>

According to the Global Slavery Index 2014, there were an estimated 155,300 people in modern slavery in Brazil.<sup>212</sup> Construction was the sector with most slave labour reported, followed by agriculture.<sup>213</sup>

In the agriculture sector, men were subjected to debt bondage, which also extended to ranching, charcoal production, logging and mining. In relation to urban areas, factories, restaurants and hospitality services also reported most cases of forced labour, according to the U.S. Department of State in 2015.<sup>214</sup>

The United Nations Special Rapporteur on Contemporary forms of slavery latest report, from 2011, noted that forced labour was present in the urban garment industry,<sup>215</sup> Undocumented Peruvians and Bolivians were particularly vulnerable.<sup>216</sup> The State of Sao Paulo reportedly has 200,000 Bolivians

working in slave-like conditions in the clothing industry, with working hours that went from Monday to Saturday from 7am to 12pm, and a salary of R\$500 (approx. US\$125) per month, according to the news site Terra in 2015.<sup>217</sup>

The Department of Labour Inspectors at the Ministry of Labour and Employment has established a Mobile Inspectors Unit to address cases of forced labour. In 2013, 2,254 workers were rescued from forced labour conditions.<sup>218</sup> Most cases were found in North and Northeast regions, including in Tocantins, Pará, Minas Gerais, Sao Paulo, Maranhao, Goias and Ceara.<sup>219</sup>

Official figures further reported that from 1995-2013, more than 44 million workers were rescued due to a substantial increase in the number of inspections conducted.<sup>220</sup> A 2014 Pastoral Land Commission report noted in 2015 that the number of inspectors was not sufficient to identify all forced labour cases.<sup>221</sup>

## Trafficking

National legislation prohibits most forms of trafficking in persons, with penalties of up to eight years imprisonment. According to the U.S. Department of State in 2015, Brazilian law was not in line with international standards as the crime of trafficking includes movement as a necessary element and also prohibits moving a person for the purpose of prostitution.<sup>222</sup>

Brazil was a source, transit and destination country for men and women subjected to sex trafficking and forced labour. Women from neighbouring countries were reportedly sexually exploited in Brazil, while women and men from Haiti and China were exploited in forced labour in sectors including construction, textile industry and small businesses.<sup>223</sup>

Official figures reported that in 2013, 254 persons were victims of trafficking, most of them for commercial sexual exploitation.<sup>224</sup> The number of cases reported to the government indicated an increase of 856 percent from 2011 to 2013.<sup>225</sup> Sao Paulo was the State with most cases reported, followed to a lesser extent by Minas Gerais and Santa Catharina.<sup>226</sup>

## Cases

*Reports of business-related human rights issues from NGOs, multilateral institutions and the media.*

- *September 2015, News site 7 dias:* A Brazilian court condemned the construction company Odebrecht to the payment of US\$13 million for slavery-like working conditions at a site in Angola, Africa. The company denied the allegations stating that it was one of its subsidiaries that committed the violation, thus, Brazilian tribunals did not have jurisdiction over the case.<sup>227</sup>
- *August 2015, InPACTO:* The railway company ALL America Latina Logistica was condemned to the payment of R\$15 millions (approx. US\$3,750 million) on charges of slavery-like working conditions of 55 workers.<sup>228</sup>
- *August 2015, InPACTO:* 11 contractors that were hired by the company Brasil Global Servicos were rescued by the authorities from slavery-like working conditions in relation to the construction of residential complexes for the 2016 Olympic village.<sup>229</sup>
- *February 2015, Pastoral Land Commission:* 33 workers were found under slavery-like working conditions at a Vale facility site in Mina do Pico de Itabirico in Matto Grosso do Sul. The Ministry of Labour and Employment ordered the company to close down the site.<sup>230</sup>



- *August 2014, Instituto Humanitas Unisinos:* 12 Haitians and 2 Bolivian workers were rescued by inspectors from the Ministry of Labour and Employment from slavery-like working conditions at a garment factory in Sao Paulo. Employees were working between 11 and 15 hours a day, under a precarious working environment.<sup>231</sup>
- *2014, Global Slavery Index:* Landless migrant workers were offered a job by a middleman on two remote farms in Para. The workers were forced to work for 6 months, controlled by gunmen and not paid.<sup>232</sup>
- *June 2013, Instituto Humanitas Unisinos:* Workers were found under slavery-like working conditions at an herb-tea plantation farm in South Parana. Workers did not have access to clean water, and many of them did not know the amount of their salaries.<sup>233</sup>
- *September 2013, The New Zealand Herald:* According to Brazil's Labour Ministry, 111 men were found working under slave-like conditions at a construction company working on the pre-World Cup expansion of Sao Paulo's international airport.<sup>234</sup>

## Company Initiatives

*Private-sector programmes that aim to ensure respect for human rights or contribute to development*

### Company Due Diligence Initiatives

*Petrobras (2005-current):* Petrobras provides professionals engaged in registration activities training to demand compliance with contractual requirements related to forced labour. Any failure to comply leads to the cancellation both of new and current contracts.<sup>235</sup>

**The Brazilian Vegetable Oil Industry Association (ABIOVE):** As part of the soy production chain, ABIOVE has adopted a 'Zero Tolerance' policy on forced labour. All companies in the industry have included in their soy purchase contracts a clause that annuls the contract if forced labour is used.<sup>236</sup>

### Company Development Initiatives

**National Pact for the Eradication of Slave Labour Institution (2014-current):** The Institute was created in order to strengthen, broaden and give sustainability to the actions developed in the framework of the National Pact for the Eradication of Slave Labour. Its mission is to promote the prevention and the eradication of child labour in Brazil in the supply chain of local and multinational companies. As of 2015, the Institute was composed of 39 companies and 12 organisations. Activities included: Monitoring of activities committed by its members, raising awareness campaigns at company level to prevent and eradicate forced labour, and support the reintegration of workers victims of forced labour.<sup>237</sup>

## Stakeholder Recommendations

**Walk Free Foundation (2014):** The organisation recommends that companies:

- Sign and participate in the National Pact to Eradicate Slave Labour;
- Work with suppliers to ensure that victims of modern slavery receive compensation, including as a result of under or non-payment of wages and excessive recruitment fees;
- Conduct supply chain mapping exercise regarding suppliers and sub-suppliers in Brazil to identify high risk suppliers and take preventive action.<sup>238</sup>

**The UN Special Rapporteur on Contemporary Forms of Slavery (2012):** The Special Rapporteur recommends the private sector in Brazil include provisions on forced labour in all contracts with joint venture partners, suppliers and subcontractors and to develop a code of conduct requiring suppliers to not use forced labour. The Special Rapporteur also encourages businesses to join the National Pact for the Eradication of Slave Labour.<sup>239</sup>

## Human Rights Guidance for Businesses

*Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context*

### Due Diligence Library

*The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies*

- Workers can give notice and leave employment within a reasonable length of time. This is clearly communicated to workers prior to starting employment.
- The company (or its recruitment agencies) ensures that it does not withhold wages or bonuses and that it pays them in a timely and regular manner.
- The company ensures it does not make deductions from wages for disciplinary measures or other deductions not authorised by national law.
- Within normal working hours workers are able to earn a living wage sufficient to meet the basic needs of themselves and their closest dependents.
- Overtime work is paid, voluntary and not compelled through threat of pay deductions, termination or other sanctions.
- The company (or its recruitment agencies) ensures that it does not retain identity cards, passports, travel documents or other personal items without which workers cannot leave employment. If letters of release or other documents are needed for the worker to leave employment, such letters are issued without delay.
- All workers are allowed to leave company premises during breaks and at the end of their shifts, and workers in company housing may freely enter and exit their accommodation at any time.
- The company (or its recruiting agencies) ensures that it does not require workers to pay recruitment fees or lodge money deposits.
- Loans or salary advancements to workers are based on fair terms that are clearly explained to the worker, are not granted to cover basic living expenses, are limited in size, and do not require the worker to remain with the company until repayment is completed.
- If the company uses prison labour it ensures that all prison workers have been convicted by a court of law, and that the work is voluntary and supervised by a public authority.
- The company ensures that it does not use labour from agencies or firms involved in human trafficking or other forms of bonded labour.

# Engagement Opportunities

*Development initiatives by public and private actors that provide opportunities for companies to contribute to human development*

## Public Sector Initiatives

**Second National Plan to Combat Trafficking in Persons (2013–2016):** The Ministry of Justice established an inter-ministerial committee to strengthen intra-governmental cooperation, offer training and disseminate information on trafficking in persons.<sup>240</sup>

**Slave, no way! Programme (2004-current):** Coordinated by the Special Secretariat for Human Rights, Reporter Brazil and the International Labour Organisation, this programme is designed to promote awareness of forced labour among potential victims through the education of children and adolescents, as well as training of grassroots leaders.<sup>241</sup>

**The 'Dirty List' Programme (2004-current):** The Ministry of Labour and Employment publishes a 'Dirty List' naming companies and property owners who use forced labour. The listed companies are banned from acquiring credit from state-owned banks.<sup>242</sup> Since its establishment, the list has reached more than 400 employers as of 2015.<sup>243</sup>

## NGO Initiatives

**Reporter Brasil:** The organisation developed a methodology for the identification and tracking of supply chain while investigating and analysing labour problems in commercial relationships. This mapping of supply chain companies contributed to the creation of the National Pact for the Eradication of Slave Labour.<sup>244</sup>

# Occupational Health & Safety

*Unsafe or unhealthy working conditions that expose workers to the risk of accidents or occupational illnesses*

Operating Environment	
Relevant laws	<ul style="list-style-type: none"> <li>• The Constitution, 1988</li> <li>• Labour Code, 1943</li> <li>• Organic Health Law, 1990</li> </ul>
Responsible agencies	<ul style="list-style-type: none"> <li>• Ministry of Labour and Employment</li> <li>• Ministry of Health</li> <li>• National Social Security Institute</li> </ul>
Local NGOs addressing this issue	<ul style="list-style-type: none"> <li>• Associação do Trabalhadores Portadores de Doenças Ocupacionais e Acidentados do Trabalho de Mogui Guacu e Região</li> <li>• Centro de Atendimento do Trabalhador</li> </ul>

## Country Context

*Human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.*

The constitution stipulates that the federal government should safeguard the safety and occupational health of workers. The Ministries of Labour, Social Welfare and Health developed relevant guidelines in accordance with the Labour Code of 1943, and the Organic Health Law.<sup>245</sup> Additional regulatory norms lay out procedures aimed at reducing the risk of accidents, diseases and other potential harm in the workplace.<sup>246</sup> Employers are required to establish internal committees for accident prevention in the workplace and workers could generally remove from situations that endangered their life or safety.<sup>247</sup>

The implementation of the universal health care system in 1988 established a health surveillance model designed to target both formal and informal enterprises. The aims were to assess workplace safety, occupational risks, the health conditions of employees and their surroundings, including the impact on nearby communities and the environment.<sup>248</sup>

According to the National Social Security Institute (NSSI), 717,000 work-related accidents were recorded in 2013, a slight increase from 713,000 cases recorded in 2012.<sup>249</sup> Out of all accidents reported, 2,700 resulted in the worker's death. Most episodes were recorded in Sao Paulo, followed by Minas Gerais and Rio Grande do Sul.<sup>250</sup> According to the National Association of Labour Judges in 2015, those figures

indicated that on average 7 persons died daily at their workplace, particularly when hired as a contractor.<sup>251</sup>

A 2015 study conducted by the Brazilian Institute for Geography and Statistics found, however, that around 5 million workplace accidents occurred in 2013, a figure six times larger than the one reported by the NSSI. The study concluded that official figures reported did not include public officials or informal workers (approximately 14 million workers as of 2014).<sup>252</sup> Underreporting of cases occurred in the formal sector.<sup>253</sup>

The number of official cases reported placed Brazil as the country with the 4th most severe workplace accidents in the world, behind China, India and Indonesia.<sup>254</sup>

Due to work-related accidents, the government reportedly lost on average R\$71 billion (approx. US\$17 billion) annually. From 2007-2013, the NSSI gave compensation of R\$58 billion (approx. US\$14 billion) due to death, permanent disability or temporary retirement.<sup>255</sup> The government initiated a series of judicial actions to recover money from companies that contributed to accidents due to negligence or not compliance with labour laws in relation to OHS and as of 2015, more than R\$10 million (approx. US\$2.5 million) were recovered.<sup>256</sup>

Sectors where the most accidents were reported included commerce and car repair, social services, construction, transportation and food preparation, according to the NSSI.<sup>257</sup>

A 2013 United Food, Farm and Hotels Workers Worldwide report noted that the sugar cane sector was characterised by poor working conditions with high rates of job injuries,<sup>258</sup> particularly related to the use of *machetes* (knives) to cut canes.<sup>259</sup>

In terms of workplace illnesses, 15,226 were registered in 2013 compared to 16,898 in 2012.<sup>260</sup>

The Labour Inspection Secretariat is the body within the Ministry of Labour and Employment (MTE) responsible for labour inspections. The inspectorate monitors compliance with the law as well as the implementation of enforcement actions.<sup>261</sup> The MTE had as of 2012 approximately 3,000 inspectors distributed across 27 state-level offices.<sup>262</sup> Despite the fact that the working population increased by 9 million people over the past decade, the number of inspectors was nearly the same, limiting the scope of inspections. In the Federal District alone, there were reportedly 0.87 inspectors assigned to each 10,000 group of workers, as of 2012.<sup>263</sup> Trade union representatives reported to the International Labour Organization in 2013 that the number of inspectors was insufficient and made impossible for companies to be inspected as often and thoroughly as needed to ensure the application of the laws, especially in rural areas.<sup>264</sup>

The government reported that more than 60,000 inspections in relation to occupational health and safety took place from January-October 2015. Most were conducted in the construction sector, followed by the agriculture sector.<sup>265</sup>

## Cases

*Reports of business-related human rights issues from NGOs, multilateral institutions and the media.*

- *June 2015, Reporter Brasil:* The mining company Vale was condemned to the payment of R\$804 millions (approx. US\$200 million) due to the high number of workplace accidents at their Caraja facility since 2000. The Tribunal stated that more than 2,000 workers suffered from dangerous accidents as a result of lack of implementation of basic occupational health and safety regulations.<sup>266</sup>

- *July 2015, Gazeta do Povo:* The chain retailer Bompreco Supermercados do Nordeste was condemned to the payment of R\$40,000 (approx. US\$10,000) to an employee due to a workplace illness. The tribunal also ordered the company to reimburse the National Social Security Institute R\$7,200 (approx. US\$1,800) that were given to the worker for same illness.<sup>267</sup>
- *August 2013, AZ Net:* The Ministry of Labour filed a lawsuit against Samsung over working conditions at its Manaus factory. Conditions included lack of seats in the production line and lack of breaks and days off. 2,000 employees reportedly took sick leave of up to 2 weeks due to back pain problems and repetitive strain injury.<sup>268</sup>
- *March 2013, Reuters:* Shell and BASF agreed to pay R\$620 million (approx. US\$155 million) as compensation for workers' exposure to toxic chemicals for over three decades at its Paulina, São Paulo, plant.<sup>269</sup>

## Company Initiatives

*Private-sector programmes that aim to ensure respect for human rights or contribute to development*

### Company Due Diligence Initiatives

**Volkswagen (VW):** The car manufacturing company together with the German Agency for Technical Cooperation and the International Labour Organization signed an agreement with the overall aim of establishing and implementing national OHS action programmes in the VW supply chain in 5 countries, including Brazil. The company committed to implement a 'process optimisation system' for its suppliers, incorporating international labour standards. The project developed an OHS action programme, both to inform national policy and to ensure that national policies were incorporated at the workplace, and also built capacities among suppliers and regulators to uphold a high standard of safety and health.<sup>270</sup>

**PepsiCo South America Foods- Brazil (2011-present):** The company designed an Incident-Free Environment Reward Programme that gives awards to local plants when achieving 90 incident-free days.<sup>271</sup>

**Eletrobras:** The state-owned energy company includes occupational health and safety topics in the collective bargaining agreement executed between the Eletrobras companies and the Labour Union, which is amended every year to ensure the protection of workers rights in relation to health, quality of life, and workplace safety. The company also invests in training, education, counselling, prevention and risk control programs for its employees, family members, and communities, especially when the occupational activities involved high occurrence or high risk of specific occupational diseases. Among the initiatives adopted the following were recorded: Internal Occupation Accident Prevention Week, Health Promotion and Disease Prevention Courses, Vaccinations Campaign, etc.<sup>272</sup>

# Human Rights Guidance for Businesses

*Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context*

## Due Diligence Library

*The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies*

*Does the company ensure that its workers are provided safe, suitable and sanitary work facilities?*

- Responsibilities for health and safety tasks are clearly defined.
- The company routinely monitors its production processes, machinery and equipment to ensure that they are safe and in good working order.
- Workers and managers are trained to respond to workplace emergencies; first aid kits and fire extinguishers are readily available; and escape exits are clearly marked and free from obstruction.
- The workplace is maintained to ensure clean and comfortable conditions including a suitable temperature, ventilation and lighting; suitable washing and sanitation areas appropriate for both genders.
- Residential or overnight facilities are safe and sanitary and meet the basic needs of workers including with regard to safety, space, temperature, lighting, ventilation, food, water, sanitary facilities, privacy and affordability.
- The company provides safe drinking water for workers and facilities for clean and sanitary food storage and eating.
- Where relevant the company has put in place special health and safety precautions for pregnant women, employees with disabilities, night workers, young workers and other vulnerable groups.

*Does the company ensure that workers are provided with the protective equipment and training necessary to perform their tasks safely?*

- The company has a procedure to ensure that all workers are provided, free of charge or deposits, with the protective equipment necessary to safely perform their job functions.
- The company is committed to ensuring that workers use the protective equipment provided and understand why it is necessary to use the equipment.
- The company ensures that all workers have the necessary training to safely perform their job functions and keeps workers fully informed, in a language and form understandable to them, of the health and safety procedures.
- An accurate record is kept of who has been trained and for what tasks.
- On a regular basis and when assigned to new tasks, workers receive training in the safe use of equipment and processes.
- A company function or member of staff is responsible for keeping informed of scientific and technological developments regarding health and safety risks and protective equipment.

*Does the company actively involve workers in health and safety work?*

- The company consults employees on health and safety issues either directly or through a freely elected safety representative(s) for relevant groups of employees.
- A health and safety committee has been established including employee safety representatives and representatives from management.
- Health and safety accidents are reported and investigated including involving the relevant worker(s), and actions are taken to prevent recurrences.
- Health and safety near-misses (accidents not resulting in injury) are reported and investigated to help improve safety.
- Health and safety accidents are monitored including hours lost as a result of injury or illness and e.g. compared to total hours worked (lost time injury frequency).

## Standards & Guidance

*NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre*

- IFC Performance Standard 2: Labour and Working Conditions (2012): FC PS2 is guided by the international labour standards as outlined by the ILO and covers health and safety.
- Portal for Responsible Supply Chain Management: The Portal is designed to support companies in improving the social and environmental conditions within their supply chain. The Portal offers tools and guidance on a number of supply chain issues, such as child labour, corruption and discrimination. In addition, the Portal also details sector specific resource material and pertaining legislation.
- Ethical Trading Initiative Base Code (2012) and ETI Principles of Implementation (2009): The Ethical Trading Initiative is an alliance of business stakeholders promoting the implementation of corporate codes of practice that cover supply chain working conditions. The alliance consists of companies, NGOs and trade union organisations. The ETI Base Code has been developed as a code of labour practice, targeted generally for supply chains, and is in line with the key international labour standards. The accompanying ETI Principles of Implementation outline the requirements needed by corporate members to implement the ETI Base Code in their supply chains, including the necessary commitments, management practices and behaviours.

## Engagement Opportunities

*Development initiatives by public and private actors that provide opportunities for companies to contribute to human development*

### Public Sector Initiatives

**National Campaign to Prevent Workplace Accidents (2015):** The campaign was launched by the Ministry of Labour and Employment (MTE) with the aim of warning and informing workers on the importance of the use of collective and personal protection. The campaign falls under the National Strategy to Reduce Workplace Accidents which is based on the following four areas: intensification of inspections, broadening of the analysis conducted by labour inspectors, creation of a National Pact to Reduce Accidents and Workplace Illnesses, and the launching of the referred campaign.<sup>273</sup>



**Campaign Green April (2014-present):** The MTE launched the campaign with the objective to reduce workplace accidents and illnesses, in addition to mobilise the society to prevent workplace accidents. April was chosen due to the World's Health Day (April, 7<sup>th</sup>) and the International Day in Memory of Victims of Workplace Accidents (April, 28<sup>th</sup>).<sup>274</sup>

**Seminar on a Safe Working Environment:** The Superior Labour Tribunal organised the event in order to create awareness on a safe working environment. Panels included the discussion of the National Policy on OHS, current jurisprudence, etc.<sup>275</sup>

**Worker's Meal Programme (PAT)(1976-current):** Employers could volunteer provide nutritionally balanced meals to employees in exchange for tax deductions. As of December 2015, 223.415 companies were registered to the programme.<sup>276</sup>

# Trade Unions

*Restrictions on the right of workers to collectively represent their interests*

Operating Environment	
Largest trade unions and union confederations	<ul style="list-style-type: none"> <li>Workers in Brazil General Central (CGTB)</li> <li>Brazilian Trade Union Central (CSB)</li> <li>Workers' Unitary Central (CUT)</li> <li>Workers' General Confederation (CGT)</li> <li>Forca Sindical (FS)<sup>277</sup></li> <li>Trade Union Central and Popular Conlutas</li> <li>Brazil's Workers Central (CTB)</li> <li>General Union of Workers</li> <li>Trade Union of Workers</li> </ul>
Relevant laws	<ul style="list-style-type: none"> <li>The Constitution, 1988</li> <li>The Labour Code, 1945</li> </ul>
Responsible agencies	<ul style="list-style-type: none"> <li>Ministry of Labour and Employment</li> <li>Labour Relations Council</li> </ul>

## Country Context

Human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.

### Barriers to Unionisation

The constitution guarantees freedom of association for workers and employers, with the exception of the armed forces, police, and other civil servants and public employees.<sup>278</sup> The union structure in Brazil follows corporatist legislation enacted in the 1930s and is commonly referred to as 'the unicidad system'.<sup>279</sup> Only one union is allowed in a given geographical area (normally a county or city), unions are classified according to professions and workers must perform similar work and be in a similar position within the employment hierarchy. Consequently, there are different unions for different categories of professional positions: professional unions (*categorias profissionais*) representing employees, and economical unions (*categorias econômicas*) representing employers.<sup>280</sup> According to a 2014 report from the International Trade Union Confederation (ITUC), there were excessive requirements for establishing a trade union.<sup>281</sup>

According to a 2013 study published by the Foundation Perseu Abramo, from 2005-2011, union rates increased from 16.4 to 17 percent of the workforce. The study concluded that even though more than 13 million jobs were created during that period, only 2.8 million workers joined unions due to, among others, the fact that most of the jobs were in the service sector where unionisation was reportedly more difficult.<sup>282</sup>

At the same time, unionisation rates indicated an increase for indigenous and afro-Brazilians workers, while white workers unionisation rates indicated a reduction. In terms of sectors, agriculture indicated the highest increase, from 20.7 percent to 26.9 percent, followed by transport, warehousing and communication from 20 percent to 25 percent.<sup>283</sup>

According to Freedom House in 2015, trade unions in Brazil were regarded as more independent from political party control than in most other countries in Latin America.<sup>284</sup>

## Collective Bargaining

The constitution guarantees the right to collective bargaining for all workers except public servants.<sup>285</sup> the International Labour Organization's Committee of Experts for the Application of Conventions and Recommendations (ILO CEARC) referred in 2014 to the need for public employees who were not engaged in the administration of the State to have the right to collective bargaining.<sup>286</sup>

Collective bargaining agreements may only have a maximum duration of 2 years, which, according to the International Trade Union Confederation (ITUC) in 2014 was a restriction on the duration of the right.<sup>287</sup> The law allows the government to reject clauses of collective bargaining agreements that conflict with government policy.<sup>288</sup>

The ILO reported in 2012 that approximately 90 percent of all wage-related negotiations, particularly in the industry and service sectors between 2004 and 2010, resulted in wage increases equal to or greater than inflation compared to figures before that period, where only 50 percent of successful cases were reported.<sup>289</sup>

The latest data from the Ministry of Labour reported a total of 32,662 collective bargaining agreements registered as of 2008.<sup>290</sup>

## Strikes

The right to strike is protected for private and public sector workers by both the Labour Code and the constitution.<sup>291</sup> The law also allows an employer to replace workers during a legal strike in the event that it causes irreparable damage to the machinery or goods of the company.<sup>292</sup>

A strike is deemed illegal or 'abusive' by labour courts if a number of standards are not met, including maintaining vital services during a strike, notifying employers at least 48 hours before walking out and terminating the strike after a labour court decision.<sup>293</sup>

In practice, the U.S. Department of State reported in 2015 episodes of employers firing strike organisers for reasons ostensibly unrelated to strikes.<sup>294</sup>

## Anti-Union Discrimination

The government stated that national legislation does not define anti-union acts, situation that prevented the authorities on their efforts to take effective prevention and repressive measures against those acts, according to the ILO's CEARC in 2015.<sup>295</sup>

The U.S. Department of State reported in 2015 that intimidation and killings of rural union organisers and their agents occurred.<sup>296</sup>

Anti-union discrimination in the media, banking and chemical sectors was also reported by the Single Confederation of Workers, according to the ILO in 2014.<sup>297</sup>

The United Steelworkers Organisation further noted in 2012 that companies sometimes tried to bribe or intimidate trade union leaders, and used legal, economic and political mechanisms to ignore the demands from trade unions and other groups who criticised the behaviour of the companies.<sup>298</sup>

## Company Initiatives

*Private-sector programmes that aim to ensure respect for human rights or contribute to development*

### Company Due Diligence Initiatives

**Chiquita Brands International (2001 – present):** The International Unions for Food Workers (IUF), the Coordinating Committee of Banana Workers' Unions (COLSIBA) and Chiquita signed a framework agreement on freedom of association, minimum labour standards and employment in Latin American banana operations. The agreement, called the IUF/COLSIBA and Chiquita Agreement, commits Chiquita, its suppliers, contract growers and venture partners to respect the right of workers to be represented by independent trade unions and bargain collectively. The agreement has resulted in increased trade union membership and fewer strikes because a dispute resolution process was built into the agreement.<sup>299</sup>

**Eletrobras:** The state-owned energy company has adopted a Code of Conduct that includes the support for the right to freedom of association of its employees. In 2014, a total of 77 operations, including from its suppliers, were identified as being at risk of having their rights to freedom of association and collective bargaining violated.<sup>300</sup>

## Human Rights Guidance for Businesses

*Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context*

### Due Diligence Library

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*Does the company recognise the rights of its workers to freedom of association and to bargain collectively?*

- The company has a commitment to recognise the rights of its workers to freedom of association and collective bargaining, including the right to freely form and/or join independent trade unions, and this commitment is clearly communicated to all employees.
- The company recognises workers' organisations for collective bargaining purposes and has procedures in place to ensure regular collective bargaining with authorised worker representatives concerning all workplace related issues.
- The company allows worker representatives access to collective bargaining agreements, company premises, employees and other relevant documentation needed to fulfil their duties.
- The company prohibits discrimination or adverse actions against worker representatives or employees for participating or refraining to participate in lawful trade union activities.

- The company has agreed with workers' representatives about the requirements of a fair hearing to be followed in relation to all disciplinary cases and employee grievances.
- The company has a committee, with participation of employee-elected representatives, which is responsible for hearing, processing, and settling disciplinary cases and employee grievances.

*If independent trade unions are either discouraged or restricted, does the company enable workers to gather independently to discuss work-related problems?*

- The company allows employees to engage in regular employee-only meetings within normal working hours, where employees can discuss concerns regarding working conditions.
- Where allowed by local legislation, and if independent trade unions are not present, the company informs employees of their right to form independent collective representation at the workplace.
- Where allowed by local legislation, the company informs workers of their right to engage in regular collective bargaining concerning all workplace issues.
- Company management meets regularly with worker representatives to discuss work-related problems and any concerns/complaints employees may wish to raise.

# Working Conditions

*Employment status, wages, working hours and social security*

Operating Environment	
Minimum wage	R\$ 788 (2015)
Relevant laws	<ul style="list-style-type: none"> <li>• The Constitution, 1988</li> <li>• The Labour Code, 1945</li> </ul>
Responsible agencies	<ul style="list-style-type: none"> <li>• Ministry of Labour and Employment</li> <li>• Social Security Ministry</li> <li>• National Social Security Institute (NSSI)</li> <li>• Superintendence of Complementary Social Security</li> </ul>
Local NGOs addressing this issue	<ul style="list-style-type: none"> <li>• Instituto de Estudo do Trabalho e Combate a Pobreza</li> <li>• Associacao Brasileira de Previdencia</li> </ul>

Working Conditions: National Law		
	Brazil	International Standard
Standard workweek	44	48
Overtime pay rate	1.5x	1.25x
Holidays with pay, per year	30 days	3 weeks
Maximum daily working hours	8	10
Maximum weekly working hours	44	48
Uninterrupted weekly rest period	24 hours per 7 days	24 hours per 7 days

# Country Context

*Human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.*

The constitution establishes decent working conditions as a central component of economic development.<sup>301</sup>

## Wages

The constitution provides for a minimum wage satisfying basic living needs and establishes a system of national minimum wages.<sup>302</sup> The minimum wage, which is fixed every year by legislation,<sup>303</sup> applies to formal employment in the private and public sectors and acts as a benchmark for social security policies such as pensions, disability and employment benefits.<sup>304</sup> In January 2015, the minimum monthly salary was set as R\$788 (approx. US\$197), which was considered the highest recorded in terms of real value since 1983.<sup>305</sup>

A report by the National Institute for Statistics indicated that the medium wage in 2015 was R\$2,104 (approx. US\$526), an increase of 33 percent over the last 12 years.<sup>306</sup>

According to the government, approximately 47 million workers received the minimum wage as of 2015.<sup>307</sup> The Organization for Economic Cooperation and Development (OECD) also noted in 2015 that 67 percent of the population aged 15 to 64 had a paid job.<sup>308</sup>

In 2013, the International Labour Organisation (ILO) reported that in the last decade, the average real wage grew more than four percent annually, and the unemployment rate declined. This figure placed Brazil among the countries in the region with the highest increase in wages throughout that period.<sup>309</sup> Nevertheless, the Inter-union Department of Statistics and Socio-economic Studies estimated in 2015 that the minimum wage to cover a basic food basket for a family of 4 should be set at R\$3,240 (approx. US\$810), four times more than the minimum wage.<sup>310</sup> The value was set for Porto Alegre, which reportedly had the most expensive food basket nationwide.<sup>311</sup>

The ILO also noted in 2013 that white workers reportedly received a wage that was 46.4 percent higher than that of Afro-Brazilians and 56 percent of households had per capita incomes below the minimum wage.<sup>312</sup>

A study conducted in 2015 by the Foundation Institute of Economic Research found that employees received an entry level salary 10 percent lower than the one that was given to the employee leaving the job, rate even lower than during the 2009 economic crisis.<sup>313</sup>

Employers have reportedly been known to retain large amounts from worker's wages for the repayment of loans or other financial transactions. To address this problem, the government has set the limit of authorized deductions at 40 percent of the total salary.<sup>314</sup>

## Working Hours

The constitution establishes a maximum of 44 working hours per week and eight hours per day. Overtime cannot exceed more than two hours per day.<sup>315</sup> Exceptions exist in certain situations for overtime in excess of two hours. Overtime pay must be at least 1.5 times the regular pay—but collective agreements may establish higher overtime pay.<sup>316</sup> These provisions are in line with international standards.

Official figures from 2014 reported that the average working week was 39 hours, where men worked 41 hours a week while women worked 35 hours. This difference could be due to the fact that women

dedicated more hours per week performing household tasks (20 hours compared to 9.8 for men).<sup>317</sup> The OECD added in 2015 that 10 percent of employees worked very long hours, lower than the OECD average set of 13 percent.<sup>318</sup>

The organisations IndustriAll and Global Witness reported in 2013 that Brazilian trade unions have been actively negotiating a reduction in working time and that successful cases included in the chemical and pharmaceutical sectors, which reached a 39 and 40 working hours per week, respectively.<sup>319</sup>

According to IG Noticias, some companies in 2013 reportedly include so-called 'mobile working hours' in labour contracts. As a result, employees were not guaranteed a minimum wage, as no minimum working hours were required. There were also cases of employees working more than 44 hours weekly without receiving overtime pay.<sup>320</sup>

## Social Security

Brazil has been increasing its social security spending, which includes social assistance, pensions, unemployment insurance and training, accounting for over half of all its social spending.<sup>321</sup> Contribution to the social security insurance is mandatory for employees and employers and ranges from 5 to 20 percent depending on the kind of employment the worker holds.<sup>322</sup> The unemployment benefit cannot be lower than the minimum monthly salary approved by the government annually.<sup>323</sup>

The social security system is composed of three bodies: Social Security Ministry, National Social Security Institute (NSSI) and the Superintendence of Complementary Social Security.<sup>324</sup> The system was modified to include self-employed and domestic workers, substantially increasing the coverage.<sup>325</sup> Employees are required to obtain an official work card in order to be officially registered within the Social Security System.<sup>326</sup>

The government reported in 2015 that approximately 52 million people were contributing to the social security system<sup>327</sup>, while 28.9 million people were receiving benefits from the NSSI as of 2013.<sup>328</sup>

Social security coverage has been increasing over the last decade, both for Afro-Brazilians and white workers and as of 2013, 67 percent of Afro-Brazilians workers were covered while the rate was 77 percent for white workers, according to the NSSI.<sup>329</sup> Women's coverage also reported an increase over the last decade, rising from 60.5 percent in 2004 to 72.3 percent in 2013.<sup>330</sup>

## Informal Sector

Official figures highlighted that approximately 44 million workers were engaged in the informal sector of the economy, in comparison to 55 million in the formal economy.<sup>331</sup> Although progress has been made to reduce informality, the OECD considered in 2014 that the amount of informal workers was still high.<sup>332</sup>

Almost 45 percent of youth aged 16-24 had an informal job while the rate was almost at 50 percent for Afro-Brazilian workers, in comparison to 37 percent in the case of white workers.<sup>333</sup> Informality was reportedly higher in the South and South-East regions, affecting women, Afro-Brazilians, youth and the elderly.<sup>334</sup>

Salaries in the informal sector were 57 percent of a salary in the formal economy in 2013, according to the government.<sup>335</sup>



## Cases

*Reports of business-related human rights issues from NGOs, multilateral institutions and the media.*

- *April 2016, Al Jazeera:* Fast food workers and union leaders simultaneously demonstrated against McDonald's restaurants in various Brazilian cities such as Brasilia, Bahia and Goias, to demand for the respect of Brazilian labour laws including the payment of minimum wage, overtime, vacation and secure a healthy working environment. Workers were reportedly paid just above US\$1 an hour.<sup>336</sup>
- *August 2013, Business Spectator:* Brazil filed a lawsuit against Samsung alleging poor working conditions at a factory in the Amazon. Brazil's Ministry of Labor stated that employees at the factory worked up to 15 hours a day, sometimes for 27 days straight.<sup>337</sup>
- *March 2013, Union of Hotel, Bar and Allied Workers of Sao Paulo and Region (SINTHORESP):* McDonalds Brazil was fined R\$7.5 million (approx. US\$1.8 million) for damages resulting from violations of labour law regarding working hours.<sup>338</sup>

## Company Initiatives

*Private-sector programmes that aim to ensure respect for human rights or contribute to development*

### Company Due Diligence Initiatives

**Unilever Brasil:** The company is committed to the UN Guiding Principles on Business and Human Rights. it has adopted a Policy on Responsible Procurement by which it sets fundamental principles that are to be applied when contracting with their supply chain, and includes among others that all workers should have fair wages and reasonable working hours.<sup>339</sup>

### Company Development Initiatives

*The National Commitment to Improve Labour Conditions in the Sugarcane Activity (2008-current):* The initiative was taken in co-operation between government, businessmen and workers to provide decent working conditions in the sugar and ethanol industry. The initiative combines government policies on schooling and qualification of workers with a set of good business practices concerning, among other things, employment contracts and salaries. Companies choosing to commit to the good practices will be submitted to compliance monitoring.<sup>340</sup>

# Human Rights Guidance for Businesses

*Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context*

## Due Diligence Library

*The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies*

### Working hours

*Does the company ensure that the workweek is limited to 48 hours; that overtime is infrequent and limited; and that workers are given reasonable breaks and rest periods?*

- Normal company working hours are limited to 48 per week by both company policy and practice, or fewer if provided by national law, collective agreement or industry standards.
- Overtime is infrequent, remunerated at premium rate, and does not exceed 12 hours in any one week, or 36 hours per month.
- The company has a system to plan, record and monitor hours worked by each employee, and regularly evaluates whether the number of workers is sufficient to meet production targets without resorting to overtime.
- Where overtime per worker systematically exceeds 12 hours per week, the company increases its workforce to correspond to production targets, or puts in place measures to increase worker productivity and reduce overtime.
- Workers are allowed at least 24 consecutive hours of rest (or more if provided by national law or industry standards) in every seven day period.
- The company ensures that workers have no less than a 30-minute break for every 4 hours of work (or more if provided by national law or industry standards) and that workers are allowed to use toilet facilities whenever necessary and not just during designated breaks.

### Wages

*Does the company provide a living wage that enables workers to meet the basic needs of themselves and their dependents?*

- It is company policy to provide workers with a living wage sufficient to meet basic food, clothing and housing needs and provide some discretionary income for themselves and their dependents.
- The company is aware of whether the legal minimum wage in the country of operation meets the requirement for a living wage.
- If no national minimum wage is established, or if national minimum wage standards are insufficient to meet the basic needs of workers and their dependents, the company calculates a living wage based on the cost of living in its area of operation.
- Part-time workers receive wages and benefits that are proportionate to those of full-time workers, and receive overtime compensation at a minimum of 1.25 times their hourly salary.
- The company pays wages at regular intervals and does not take deductions from wages for disciplinary measures or other deductions not authorised by national law.

- Bonus and piece-rate payment systems are monitored to ensure that the total salary paid meets living wage requirements without resort to overtime.

## Leave

*Does the company ensure that workers are paid holiday leave, sick leave and parental leave in accordance with international minimum standards?*

- Workers are granted at least three weeks of paid holiday leave per year or more if required by national law or collective agreements. Part-time and short-term workers are provided with paid holiday leave proportionate to the number of hours worked, at a rate equal to that of permanent full time employees.
- Workers are entitled to paid sick leave in accordance with the applicable national law. If sick leave is not provided for in national law, the company consults with union or worker representatives to establish alternative means of protection in case of illness or injury.
- The company ensures that sick leave is not deducted from workers' vacation time.
- Female workers are entitled to no less than fourteen weeks of paid maternity leave per child.
- The company grants compassionate or parental leave to workers who have recently adopted a child or children, or have taken on the responsibility to care for foster children or other dependent children.

## Employment status

*Does the company ensure that all workers have an official employment status?*

- The company ensures that all employees receive employment contracts prior to starting work for the company, and that contracts are understood by each employee.
- Contracts detail each employee's rights and obligations of employment, including clear job description, bonus and salary systems, and reasonable notice periods.
- Reference to company handbooks or other relevant documents on employment terms are integrated into the contract.
- The company ensures that contractors provide workers operating within company premises with an official employment status in line with company standards.

## Standards & Guidance

*NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre*

- Ethical Trading Initiative Base Code (2012) and ETI Principles of Implementation (2009): The Ethical Trading Initiative is an alliance of different business stakeholders promoting the implementation of corporate codes of practice that cover supply chain working conditions. The alliance consists of companies, NGOs and trade union organisations. The ETI Base Code has been developed as a code of labour practice, targeted generally for supply chains, and is in line with the key international labour standards. The accompanying ETI Principles of Implementation outline the requirements needed by corporate members to implement the ETI Base Code in their supply chains, including the necessary commitments, management practices and behaviours.

- Institute for Human Rights and Business and Global Business Initiative on Human Rights, State of Play: The Corporate Responsibility to Respect Human Rights in Business Relationships (2012): The Report examines how the UN Guiding Principles can contribute and guide the complex network of business relationships that now exist in a global economy. It explores how companies of all sizes are now beginning to implement human rights considerations and the UN Guiding Principles into both traditional and contemporary business relationships.
- Portal for Responsible Supply Chain Management (est. 2008): The Portal is designed to support companies in improving the social and environmental conditions within their supply chain. The Portal offers tools and guidance on a number of supply chain issues, such as child labour, corruption and discrimination. In addition, the Portal also details sector specific resource material and pertaining legislation.
- IFC Performance Standard 2: Labour and Working Conditions (2012): IFC PS2 is guided by the international labour standards as outlined by the ILO and covers a range of aspects, including: terms and conditions of employment, non-discrimination, health and safety, and forced labour. The Standard addresses employees, contracted workers and supply chain workers.
- International Labour Organization: The International Labour Organization (ILO) is the UN agency responsible for preparing and overseeing international labour standards. The mission and objectives of the ILO are to promote rights at work, encourage decent employment opportunities, enhance social protection and strengthen dialogue on work-related issues.
- OECD Guidelines for Multinational Enterprises (2011): The OECD Guidelines are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. Chapter 5 is on employment and industrial relations, aligning with the international labour standards of the ILO.

## Engagement Opportunities

*Development initiatives by public and private actors that provide opportunities for companies to contribute to human development*

### Public Sector Initiatives

**System of Indicators of Decent Work (2014):** The Ministry of Labour and Employment in collaboration with the International Labour Organization, launched the tool that contains indicators from all municipalities on decent work including job opportunities, working hours, conciliation between labour and family life, equal opportunities, etc.<sup>341</sup>

**Training to Indigenous People on the Social Security Scheme:** The National Social Security Institute provides training to various indigenous communities on their right to social security. In September 2014 a training session was conducted in the community of Carapo, Campo Grande.<sup>342</sup>

**Programme to Support Employment (2015):** The government adopted the initiative in order to support employment at companies that are facing temporary financial crisis. Companies that registered to the program commit not to fire workers in exchange of receiving a subsidy of up to R\$900 (approx. US\$225) per employee that keeps the job. The employer is entitled to reduce by up to 30 percent the working hours and by up to 15 percent the salary that was received by the employee.<sup>343</sup>

## NGO Initiatives

**Associação Brasileira de Previdência:** The organisation works on the defence of the rights of all workers that contribute to social security schemes in order to correct distortions, injustices and illegalities.<sup>344</sup>

# Environment

*Company impacts on the environment that affect the health or livelihoods of local communities*

Operating Environment	
Percentage of population with access to improved water sources	98 (2015)
Environmental Performance Index rank	77 (2015)
Food Security Index rank	36 (2015)
Relevant laws	<ul style="list-style-type: none"> <li>• The Constitution, 1998</li> <li>• National Environmental Policy, 1981</li> <li>• National Water Resources Policy, 1997</li> <li>• National Climate Change Policy, 2009</li> <li>• The Forest Code, 2012</li> </ul>
Responsible agencies	<ul style="list-style-type: none"> <li>• Brazilian Institute of Environment and Renewable Natural Resources</li> <li>• National System of Conservation Units</li> <li>• Ministry of the Environment</li> <li>• National Water Agency</li> <li>• National Environmental System</li> <li>• National Environmental Council</li> </ul>
Local NGOs addressing this issue	<ul style="list-style-type: none"> <li>• Acao Brasileira pela Nutricao e Direitos Humanos</li> <li>• Instituto Amazonia</li> <li>• Instituto de Integracao Social, Desenvolvimento Sustentavel e Preservacao</li> <li>• Organizacao Verde Brasil</li> <li>• Instituto Amazonico de Desenvolvimento Social, Amparo a Pesquisa e a Tecnologia</li> <li>• Movimento de Organizacao Comunitaria</li> <li>• Instituto de Desenvolvimento Social e Economico</li> <li>• Amigos do Protocolo de Kyoto</li> <li>• Amigos da Terra Brasil</li> </ul>

## Country Context

*Human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.*

Brazil is the most biodiverse country in the world. As such, it has developed a comprehensive and advanced environmental legislation framework, though the stringency of environmental legislation varied substantially across jurisdictions.<sup>345</sup>

The constitution recognises the people's right to an ecologically balanced environment.<sup>346</sup> National legislation imposes criminal liability on those who breach environmental laws. Environmental crimes are the only type of crimes that are explicitly recognised by the constitution as corporate criminal responsibility.<sup>347</sup> Company officials can be held accountable for crimes committed by a corporation and penalties include revocation of licenses, fines and imprisonment.<sup>348</sup> The Forest Code requires landholders to set aside a share of their land for forest and soil conservation and restoration, including water bodies and sensitive areas.<sup>349</sup>

National legislation further regulates environmental audits, though they are mandatory in the oil and gas industry only. However, several States have passed laws making environmental audits mandatory for the facilities with the highest level of environmental impact.<sup>350</sup>

Brazil has also been implementing environment-related taxes, though charges on water and pollution were the only form of levies on natural resource use and pollution, according to the Organization for Economic and Development Cooperation (OECD) in 2015.<sup>351</sup>

The institutions dealing with the implementation of environmental laws have reportedly increased their budget and their capacity, and interagency collaboration has also improved. However, according to the OECD in 2015, their capacity varied widely across regions and in cases, was limited.<sup>352</sup>

## Participation & Access to Information

The law establishes the right to access to environmental information on request and require government authorities to proactively make environmental information available to the public.<sup>353</sup>

The constitution requires any project with potentially harmful effects on wildlife and local populations to undergo an environmental impact assessment (EIA). Companies are responsible for conducting an EIA and must hire a firm that specializes in EIAs.<sup>354</sup> The EIA must include consultations through public hearings to assure the participation of local communities. These consultations should provide local communities with detailed information on the EIA process, clarify potential doubts and take into account any recommendations that may arise. Dates and locations of public hearings should be published in an official newspaper in order to ensure adequate participation.<sup>355</sup>

A National Environmental System composed of various governmental institutions is responsible for environmental licensing. The Ministry of Environment (ME) has the mandate to design policies, strategies and criteria that are to be considered under each EIA. The Brazilian Institute of Environment and Renewable Natural Resources (IBAMA) is the institution in charge of issuing environmental licenses to mega infrastructure projects that may have impacts in more than one State and in the oil and gas sectors. The National Portal on Environmental Licensing managed by the ME contains information related to all EIAs that are under consideration and aims to provide a transparent framework over those public processes.<sup>356</sup>

According to the Environmental Democracy Index in 2014, EIAs were in general publicly accessible.<sup>357</sup>

The OECD also reported in 2015 that licensing processes were excessively bureaucratic, without adequate consideration of location, technological alternatives, potential environmental impact and mitigation measures.<sup>358</sup> Interference by local economic and political interests hindered the effectiveness, timeliness and transparency of the process.<sup>359</sup> The organisation further noted that lack of human and financial resources impacted on the accuracy of projected environmental impacts and on the adequacy of proposed mitigation measures.<sup>360</sup>

In 2013, IBAMA proposed a series of changes to the environmental licensing process. It identified the following challenges: absence of a territorial dimension; delays as a result of imprecision in the process, which increased the degree of discretion by licensing officials; absence of a definition and a list of activities that may cause significant environmental impact; mitigation measures that were not always related to environmental impact; methods used to evaluate environmental impact impaired the quality and efficiency of the licensing process; consultation processes often served non-environmental (political, ideological) objectives; and public hearings that gave limited time for proponents to present the project or insufficient time for community representatives to present their demands.<sup>361</sup>

The OECD added that public hearings were limited to providing information and often used to justify a decision rather than a framework to facilitate stakeholder's views taken into account, which resulted in many instances of NGOs opposing development projects related to the exploitation of natural resources.<sup>362</sup> The Environmental Democracy Index further reported in 2014 that State agencies were not required to incorporate public comments in environmental decisions.<sup>363</sup>

The Natural Resource Governance Institute's 2014 Resource Governance Index added a lack of thorough public consultation in EIA processes.<sup>364</sup>

According to a joint written statement submitted by various organisations to the UN Human Rights Council in 2015, EIAs in relation to the planning and licensing of hydroelectric dams in the Amazon were incomplete, lacked an independent and objective analysis and result, and lacked an independent monitoring of impacts and implementation of required mitigation and compensation measures.<sup>365</sup>

## Food & Livelihoods

The Constitution provides for the human right to adequate food.<sup>366</sup>

Pollution from industrial, agriculture and urban effluents and infrastructure development were the main drivers of freshwater habitat loss while urban development along the coast, oil and gas development, overfishing by industrial fisheries and the introduction of water species were the major drivers of marine and coastal biodiversity loss, impacting on local population that depended on small scale agriculture and fishing for their livelihoods.<sup>367</sup>

According to a 2015 study published by the organisation Dossie Abrasco, 70 percent of fresh food that was consumed in Brazil was infested by agrochemicals<sup>368</sup>, while the National Agency of Sanitary Surveillance added that 28 percent of food had unauthorised substances.<sup>369</sup> The rural caucus at Parliament and the agrochemical industry were reportedly pushing against any regulation that limited usage on agrochemicals, according to the Brazilian Association for Collective Health in 2014.<sup>370</sup>

Soy production reportedly used 40 percent of agrochemicals, followed to a lesser extent by corn and sugarcane plantation.<sup>371</sup>

In terms of deforestation, illegal logging, agriculture and pasture expansion were reportedly the ones causing the most deforestation.<sup>372</sup> Survival International reported in 2013 that deforestation impacted indigenous communities living in forested areas, disrupting their livelihoods by shrinking their territory or limiting their access to food. The organisation further noted that pollution associated with agriculture and mining may affect indigenous communities' health and that The Awa, the last nomadic Amazonian tribe, was reportedly at risk of being wiped out entirely as illegal loggers and settlers have deforested 30



percent of their territory and were rapidly closing in on their community, substantially reducing their access to food, shelter and spiritual home. Survival International also stated in 2013 that the government had not taken actions to evict loggers and settlers from these areas.<sup>373</sup>

The government had also announced fracking plans on an area over 120,000 square meters across 12 Brazilian States, including the Amazons, that could affect indigenous peoples living in voluntary isolation in the Javari Valley of Acre State and the Jurua Valley. Fracking would reportedly impact on their livelihood as a result of negative consequences including in their water, soil fertility and biodiversity.<sup>374</sup>

## Water

The constitution and statutory law recognise water as a common resource that should be managed by the state and held in trust for the people with equal and unfettered access.<sup>375</sup> The constitution does not, however, explicitly recognises the right to water and sanitation.<sup>376</sup> Nevertheless, the Water law, adopted in 1997, ensures the priority use of water for human consumption, deriving from the recognition of water as a human right.<sup>377</sup>

Water use permits (abstraction and other uses) are issued by national or state water resource management agency on a direct negotiation between water users and the institution in charge. While demand and water allocation amounts were considered fixed, economic considerations were rarely taken into account, according to the OECD in 2015.<sup>378</sup>

Approximately 40 percent of the population, which accounted to 77 million people, lacked access to a continuous supply of water while 60 percent, accounting to 114 million people, did not have appropriate sanitation solutions, particularly in the North and Northeast regions, according to the UN Special Rapporteur on the human right to safe drinking water and sanitation in 2014.<sup>379</sup> Only 36 percent of rural residents had access to treated water, and most relied on other sources of water supply such as water trucks, rivers, lakes, streams, and cisterns. Approximately 66 million people received water in their homes that did not fully meet legal drinking water quality standards, resulting in the spread of diseases, such as diarrheal.<sup>380</sup> Most urban dwellers in the Northeast region did not have access to water networks.<sup>381</sup> Water scarcity was observed in the Southeast region due to among others, inefficient water use.<sup>382</sup>

Water providers, both public and privately managed, were reportedly charging tariffs for the provision of water that accounted in some cases to almost 25 percent of the family budget, much higher than the international recommendation of a maximum percentage of 5 per cent, according to the UN Special Rapporteur. Sanitation companies were reportedly charging a full fee for collection and treatment, when in practice they were only collecting and not treating the sewage.<sup>383</sup> Some companies were reportedly not taking irregular informal settlements as clients, negatively impacting on their rights to access to water.<sup>384</sup>

In terms of large-scale agriculture, due to the creation of extensive irrigation areas on the Brazilian semi-arid region, wells of local residents were drying out, leaving them without water and forcing them to migrate in search of water resources.<sup>385</sup> The agriculture sector alone accounted for more than 70 percent of water usage as of 2012, highest user among sectors, followed to a lesser extent by the manufacturing industries, according to the OECD in 2015.<sup>386</sup> High levels of pesticide and fertilizers in the agriculture sector, particularly in the South and South-east regions where large-scale farming existed, reportedly impacted in the health of people who depended on the water resources.<sup>387</sup>

The OECD further reported in 2015 that inadequate wastewater treatment caused water contamination in densely populated areas.<sup>388</sup> Only 39 percent of wastewater was reportedly treated, which impacted on human's health by the spread of water-borne diseases.<sup>389</sup> The UN Committee on the Rights of the Child added in 2015 that water-related diseases such as malaria were also caused by the construction of hydroelectric dams.<sup>390</sup>

The UN Committee on the Rights of the Child later reported in 2015 contamination of water resources, particularly between the Tapajos and Xingu rivers in the State of Para, as a result of mining activities and industrial projects, which affected to a greater extent indigenous populations dependant on those resources.<sup>391</sup>

## Air Pollution

The National Air Quality Control Programme sets national air quality standards for five pollutants. Additionally, States are in charge of air regulation and monitoring. However, as of 2012, only 12 of the 27 States had some type of monitoring in place, and few of them provided with accessible data, according to the OECD in 2015.<sup>392</sup>

Rapid urbanisation and industrial development have resulted in air pollution in some city centres.<sup>393</sup> Though air pollution was reduced in major cities, peak concentrations of small particles have grown and regularly exceeded air quality standards as of 2015.<sup>394</sup> Main sources of air pollution were reportedly transport, industry and energy generation.<sup>395</sup> Ethanol production was negatively impacting the air from the burning of sugarcane for harvesting, according to the Bertelsmann Foundation in 2014.<sup>396</sup>

The organisation Corrosion Doctors reported that the most polluted cities in the country were Sao Paulo, Rio de Janeiro, Belo Horizonte and Curitiba.<sup>397</sup>

From 2006-2011, an estimated 135,000 people died in the states of Sao Paulo and Rio de Janeiro alone due to diseases caused by air pollution.<sup>398</sup>

## Cases

*Reports of business-related human rights issues from NGOs, multilateral institutions and the media.*

- *December 2015, Amazon Watch:* The Federal Public Prosecutor Office (MPF) initiated a lawsuit that seeks the recognition that the Belo Monte Dam project in the state of Para constitutes an act of genocide by the Brazilian government and the concessionaire Norte Energia, due to evidence on the destruction of the social organisation, customs, languages and traditions of affected indigenous communities. The Brazilian Institute of Environment and Renewable Natural Resources has already issued an environmental license to the project. According to the MPF, illegalities were presented in the environmental licensing process, and risks identified in the IEA were ignored.<sup>399</sup>
- *December 2015, Land Pastoral Commission:* A Superior Court ordered the suspension of all Vale's mining activities in Onca Puma, Ourilandia do Norte, due to water pollution of the river Catete, which reportedly caused foetal malformation in members of the Sikrin indigenous community. The company reportedly did not implement the socioeconomic projects mandated in the environmental license.<sup>400</sup>
- *November 2015, UOL:* The federal governments of Minas Gerais and Espiritu Santo filed a lawsuit against Samarco, Vale and BHP Billiton requesting compensation that amounted to R\$20 billion (approx. US\$5 billion) for damages as a result of the dam wall collapse in Minas Gerais.<sup>401</sup>
- *November 2015, ABC News:* A dam wall collapse in Minas Gerais released 50 million tons of iron ore waste in the river Doce, polluting it with high levels of toxic heavy metals and other toxics. The collapse reportedly destroyed the nearby village of Bento Rodrigues, leaving approximately 200 villages and 280,000 people without a potable water supply. A UN Special Rapporteur stated that 'the scale of the environment damage is the equivalent of 20,000 Olympic swimming pools of toxic mud waste contaminating the soil, rivers and water system of an area covering over 850

kilometres'. The dam was co-owned by BHP Billiton and Vale. BHP Billiton representatives, however, denied that the waste was toxic, stating that preliminary studies on the river did not significantly differ from 2010 studies in terms of concentration of metals.<sup>402</sup>

- *December 2014, Organization AXA:* Four Corean citizens were imprisoned on charges of biopiracy and other means of appropriating the knowledge of indigenous peoples in Xingu.<sup>403</sup>
- *October 2013, Reporter Brasil:* The indigenous peoples Enawene Nawe in Matto Grosso could not reportedly continue with their practice of fishing in the river Juruena due to the negative impact from hydroelectric powers to the fish supply.<sup>404</sup>
- *April 2013, Gulf News:* The National Steelworks Company was requested to immediately remove 750 people living near its Rio de Janeiro plant after soil was found to contain up to 90 times the legal limit of toxic and potentially carcinogenic substances, including lead and cadmium.<sup>405</sup>

## Company Initiatives

*Private-sector programmes that aim to ensure respect for human rights or contribute to development*

### Company Due Diligence Initiatives

**The Water and Sanitation Company from the state of Bahia (EMBASA):** The company adopted a Sustainability Policy by which it commits to promote spaces of dialogue with communities that may be impacted by their operations, and informed them about new interventions in relation to the provision of water and sanitation. The company also commits to contribute with measures for the preservation, conservation and recuperation of spring waters needed for human consumption; evaluate all environmental aspects of its activities in all decision making processes, encouraging the effective involvement of all managers and employees on environmental issues; and adopt and maintain patterns of environmental quality of all effluents in conformity with the national legislation.<sup>406</sup>

**Brazilian Development Bank:** The Bank introduced environmental screening for its major lending projects and some sectors with potentially high environmental impacts such as soya, sugar, ethanol, meat processing and fossil energy. For those areas, the Bank has developed sector-specific policies such as the 2009 environmental safeguard policy for the meat processing industry, requiring a traceable system to ensure that ranchers from which cattle are purchased meet labour laws and do not drive deforestation, and the 2010 policy to ensure that agri-business loans do not encourage deforestation in the sugar and ethanol industry.<sup>407</sup>

**Brazilian Central Bank (2014):** The Bank adopted a regulation that requires every financial institution operating in the country to establish a social and environmental policy, or if such policy is in place, to review it in accordance to the provisions of the new rule. Financial institutions should establish internal procedures; controls; socio-environmental risk management systems and governance structures to ensure compliance with their policies, including actions plans for the adequate monitoring and mitigation of the risk.<sup>408</sup>

**The Brazilian Vegetable Oil Industry Association (ABIOVE)- Brazilian Grain Exporters Association (ANEC) (2006-current):** ABIOVE and ANEC and their respective member companies developed the Soy Moratorium Initiative in order not to trade soy in deforested areas within the Amazon Biome after the signing of the agreement. The Soy Moratorium inhibits deforestation.<sup>409</sup>

**Natura:** The cosmetics company seeks to minimise its environmental impact throughout life cycles and works with family producers and traditional communities to promote sustainable income generation. In

2010 it launched an strategic sourcing programme aimed at increasing sustainability on its supply chain, which includes social and environmental costs and benefits.<sup>410</sup>

## Company Development Initiatives

**PepsiCo Brasil:** The beverages company have partnered with the Columbia Water Centre at Columbia University to develop, test and deliver solutions for water insecurity around the world. In the framework of the collaboration, water allocation plants were created in Brazil that helped provide fresh water to more than 4 million people.<sup>411</sup>

**Coruripe Mills:** The company set aside 17,000 hectares of its own land for conservation purposes, of which more than 9,000 were converted into Private Nature Reserves, including Porto Cajueiro in Minas Gerais, and Pereira in Alagoas. It also established a nursery of rainforest plant species, which produces 50,000 seedlings of these species.<sup>412</sup>

**Brazilian Business and Ecosystems Service Partnership:** The partnership between businesses and civil society organisations seeks to show the business benefits of ecosystem services in Brazil. Through the Corporate Ecosystem Service Review, managers develop strategies to address business risks and identify opportunities arising from a country's dependence and impact on ecosystems.<sup>413</sup>

## Stakeholder Recommendations

**International Labour Organization:** The ILO recommends the inclusion of certain employment requirements for forest workers as key conditions when awarding forest concessions in public forests in the Amazon.<sup>414</sup>

### **'Pillars in Practice' Workshop:**<sup>415</sup>

- Businesses should design environmental management policies that integrate human rights considerations.
- Environmental due diligence processes should include a human rights perspective.
- Businesses should raise awareness of and educate their workforce on the relationship between business operations and their potential impact to the environment and human rights. Educational Programmes should be targeted at all levels of management.
- Large companies should build capacity of small and medium sized enterprises on human rights and the environment.
- Businesses should design and formulate indicators on human rights and the environment and subsequently publicly report on these.
- Businesses should create transparent mechanisms that share information with local communities on the potential human rights impacts of company operations, and enable the effective participation of communities in decisions that impact may them.
- Company chemical waste mechanisms should ensure that chemical discharge does not negatively impact on human rights.

# Human Rights Guidance for Businesses

*Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context*

## Due Diligence Library

*The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies*

### *Precautionary Approach*

*Does the company support a precautionary approach to environmental issues?*

- The company provides information to stakeholders about uncertainties and potential risks to workers, consumers, the public and the environment of the company's products and processes.
- The company identifies any soil and water contamination at its site or sites, assesses the environmental impacts and remedies any significant contamination.
- The company tries to avoid environmental damage by regular maintenance of production processes and environmental protection systems (air pollution control, waste water treatment systems etc.).
- The company conducts systematic risk assessments of materials used, products and processes to apply the precautionary approach.
- The company ensures transparency and engages in regular stakeholder dialogue with neighbours, civil society organisations and others with an interest in the company on critical environmental issues.
- If relevant, the company supports scientific research on environmental issues relating to the company's products and processes.

### Emergency Response

*Does the company have emergency procedures in place to prevent and address accidents affecting the environment and human health?*

- The company has identified the hazardous operations and the potential consequences on human health and the environment if an accident occurs.
- The company has detailed procedures, plans, equipment and training programmes to prevent accidents and emergencies.
- The company has detailed procedures, plans and equipment to effectively respond to accidents and emergencies if they occur.
- The company trains workers to respond to accidents and emergencies, including carrying out emergency drills at least once a year involving all workers.
- Where there is significant risk of impacts on local communities, the company has a procedure that enables it to immediately notify affected local communities about industrial emergencies, and informs about emergency response, evacuation plans and medical response.

### Energy Consumption and Climate Change

*Does the company take measures to reduce energy consumption and emissions of greenhouse gasses?*

- The company complies with regulation regarding use of energy resources and emissions of greenhouse gases.

- The company has a climate strategy that identifies opportunities to reduce the company's energy consumption and/or emissions of greenhouse gases.
- The company has initiated practical activities to reduce energy consumption and/or greenhouse gas emissions.
- The company provides information and trains employees to implement energy reduction measures.
- The company monitors its energy consumption and/or emissions of greenhouse gases.
- The company has defined a baseline for its greenhouse gas emissions, which includes a definition of the business operations and activities, and the greenhouse gases that are accounted for e.g. as described in the Greenhouse Gas Protocol.
- The company has targets for reducing its energy consumption and/or emissions of greenhouse gases.
- The company engages with the government and civil society organisations to develop policies and measures that provide a framework for the business sector to contribute to building a low carbon economy.

### Water and Waste Water

*Does the company take measures to reduce water consumption and treat waste water?*

- The company has the necessary permits to extract water or obtain water from the public water supply and for any waste water discharges.
- The company treats waste water before discharge to reduce adverse environmental impacts. If waste water treatment takes place outside the company's premises, the company is aware of the effectiveness of the treatment.
- The company monitors waste water discharges, including types, limit values and quantities of pollutants in the waste water.
- The company has targets for reducing water consumption and/or increasing the amount of water reused or recycled in different business operations and activities.
- The company provides information and trains workers to implement measures to reduce water consumption and reduce the need for waste water treatment.
- The company's use of water and its waste water discharges do not negatively affect the sustainability of water resources, the natural environment or the availability of water for drinking and sanitation purposes.
- The company engages with national, regional and local public authorities, and civil society organisations to address water sustainability issues related to affected water resources.

### Waste Management

*Does the company take measures to prevent and reduce the production of waste and ensure responsible waste management?*

- The company has the necessary permits for the handling, storage, recycling and disposal of waste, and, if relevant, complies with requirements for transporting hazardous waste across borders.
- The company has a strategy to manage waste responsibly and continuously attempts to prevent and reduce the production of waste.
- The company ensures that waste relevant for recycling is sorted and handed over to a recycling company.
- The company monitors the types and quantities of waste produced, including where and how waste is recycled, treated or disposed of.

- The company has targets for reducing waste production and/or increasing waste reused/recycled and measures its progress against these targets.
- The company provides information and trains workers on the safe handling, storage, transport and disposal of hazardous and special waste types.
- The company marks areas used for storage of waste, and properly labels all containers for storing waste, including a relevant symbol of danger for hazardous waste.
- The company requests recycling/treatment/disposal receipts from transport contractors.
- The company uses licensed contractors for the transport, recycling, treatment and disposal of hazardous waste.

### Air Emissions

*Does the company prevent, reduce and treat air emissions?*

- The company has the necessary permits for emissions to air, and complies with legal requirements (e.g. air pollution standards and limit values).
- The company provides information and trains workers on how to manage air emissions.
- The company monitors the types and quantities of relevant emissions to air.
- The company treats relevant pollutants before they are emitted to the atmosphere (e.g. by using filters).
- The company continuously attempts to prevent and reduce air emissions.

### Noise, Odour, Light and Vibrations

*Does the company prevent and reduce impacts on the surrounding environment from noise, odour, light and vibrations?*

- The company has the necessary permits for levels of noise, odour, light and vibrations, and complies with legal requirements (e.g. standards or procedures).
- The company provides information and trains workers to manage noise, odour, light and vibrations.
- The company monitors levels of noise, odour, light and vibrations on the surrounding environment.
- The company treats/minimises impacts to ensure that there are no significant levels of noise, odour, light and vibrations.
- The company continuously attempts to prevent and minimise the levels of noise, odour and light (e.g. enclosed production, shielding, etc.).
- Chemicals and Other Dangerous Substances
- Does the company minimise the use and ensure safe handling and storage of chemicals and other dangerous substances?
- The company has the necessary permits and complies with legal requirements for the handling, use and storage of chemicals and other dangerous substances.
- The company does not manufacture, trade and/or use chemicals and other dangerous substances subject to national or international bans or phase-outs.
- The company provides information and trains workers on the safe handling and use of chemicals and other dangerous substances.
- The company monitors the quantities of all chemicals and other dangerous substances used in production and maintenance.
- The company marks areas used for storage of chemical substances and products.
- The company properly labels all chemical substances and products including name of the chemical and a relevant symbol of danger.

- The company considers substitution important and continuously tries to use less harmful chemicals and substances.

### Biodiversity

*Does the company prevent, minimise and remedy significant impacts on biodiversity?*

- The company has the necessary permits to operate in or alter the natural environment, and complies with legal requirements.
- The company is committed to operating within the framework of international conventions addressing biodiversity (e.g. the Convention on Biological Diversity, Cartagena Protocol on Bio-safety and the CITES Convention).
- The company has assessed important positive and negative impacts of its operations and activities on the natural environment and biodiversity (e.g. IUCN's Red List of Threatened Species and no alien invasive species).
- The company has previously and/or is currently taking measures to prevent and reduce the impacts of its operations and activities on biodiversity.
- The company clearly labels products containing GMOs and indicates if GMOs have been used in the production process.
- The company ensures that it has not had any unintended releases of GMOs.
- The company documents that workers have been adequately trained to handle GMOs.

### Natural Resources

*Does the company ensure that natural resources are used in a sustainable manner?*

- The company has the necessary permits and complies with legal requirements regarding the cultivation, harvest, extraction and/or use of natural resources (e.g. wood, fish, metals, oil, coal).
- The company complies with legal requirements regarding the cultivation, harvest, extraction and/or use of natural resources (e.g. wood, fish, metals, oil, coal etc.).
- The company ensures that workers are trained in the sustainable cultivation, harvesting, extraction and/or use of natural resources.
- The company continuously attempts to prevent, minimise and remedy significant impacts on natural resources through environmentally friendly methods and alternative resource use.
- The company ensures that its use of renewable resources does not negatively affect the sustainability of the resource (i.e. the resource's ability to regenerate).
- The company demonstrates efforts to substitute non-renewable resources used in production with renewable resources.
- The company works with local and national public authorities as well as with international institutions to address sustainability issues related to natural resources (e.g. wood, water, fish, metals, oil etc.).

### Environmentally Friendly Technologies

*Does the company encourage the development and use of environmentally friendly technologies?*

- The company uses environmentally friendly technology.
- The company regularly evaluates its processes and technologies to see if there are more environmentally friendly alternatives.
- When developing new technologies and products, the company focuses on developing environmentally friendly technology e.g. by using life cycle assessments (LCA), design for sustainability or a cradle-to-cradle approach.



- When planning new investments in technology, the company considers the best available technology and stipulates minimum environmental criteria.
- When investing in new buildings, the company implements environmentally responsible and resource-efficient materials and/or technologies.
- The company makes information describing the environmental performance and benefits of using environmentally friendly technologies available to stakeholders.

## Standards & Guidance

*NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre*

- **CEO Water Mandate (2011):** Launched as a collaborative initiative of the UN, UN Global Compact, the Government of Sweden and a dedicated group of companies, the CEO Water Mandate is a public-private initiative designed to assist companies with the development, implementation and disclosure of policies and practices relating to water sustainability. It covers six core elements: direct operations, supply chain and watershed management, collective action, public policy, community engagement and transparency.
- **IFC Performance Standards on Environmental and Social Sustainability (2012):** The IFC Performance Standards provide directions to businesses on due diligence on environmental and social matters. Several of the standards are pertinent to environment, including: Assessment and Management of Environmental and Social Risks and Impacts (PS1), Resource Efficiency and Pollution Prevention (PS3), Community Health, Safety, and Security (PS4), and Biodiversity Conservation and Sustainable Management of Living Natural Resources (PS6).
- **Institute for Human Rights and Business, Business, Human Rights & the Right to Water— Challenges, Dilemmas and Opportunities:** This report summarises the views of various stakeholders on issues pertaining to the right to water, including consideration of the scope of a company's responsibility to respect the human right to water; the applicability of the human rights-based approach to management of water-related issues; and the business case for engaging with water-related issues.
- **ISO 14000 Standards on Environmental Management Systems:** Developed by the International Organisation for Standardisation, the ISO 14000 Standards provide businesses and organisations with a number of tools to assist in their environmental management systems. The key objective of the standards is to encourage different actors to reduce the negative impact that their activities may have on natural resources such as air, water or land.
- **United Nations Special Rapporteur on the Human Right To Safe Drinking Water and Sanitation (est. 2008):** Amongst a range of issues, the mandate of the Special Rapporteur includes consideration of the regulation of the private sector in the context of private provision of safe drinking water and sanitation.
- **Global Water Tool (2007):** Developed by the World Business Council for Sustainable Development, this tool is designed for companies and organisations to map their water use, including risks associated with water use in global supply chains.

# Engagement Opportunities

*Development initiatives by public and private actors that provide opportunities for companies to contribute to human development*

## Public Sector Initiatives

**Best Practices on Local Management Award (1999-present):** The government adopted the initiative in order to recognise and give value to good practices that aimed to improve the quality of life of citizens. Projects considered for the Award included the areas of Environment, Sanitation and Housing, in urban and rural areas.<sup>416</sup>

**Agua Brazil Programme (2010-2015):** The programme was created by the *National Water Agency* in partnership with Banco do Brasil, the World Wildlife Fund Brasil and the Banco do Brasil Foundation with the goal of preserving water resources. The partnership seeks to find solutions, in conjunction with society at large, relating to water-use issues. R\$57 million (approx. US\$25 million) were invested in the programme.<sup>417</sup>

**The National Environmental Conference (2003-present):** The government of Brazil committed to organise the Conference as a national forum to enhance civil society participation in the discussion and definition of the main elements of its sustainable development policies. Delegates to participate at the Conference are selected at state level, and stakeholders include NGOs, social movement, private sector, indigenous communities and traditional communities. The latest Conference took place in 2013 with climate change as its principal topic of discussion.<sup>418</sup>

**Bolsa Floresta (2007-present):** The State of Amazonas adopted the initiative in order to compensate traditional and local families living in state-level sustainable development reserves for their environmental conservation efforts, mainly to limit the amount of forested lands cleared and converted to farming. The programme is financed by the State of Amazonas and some large companies.<sup>419</sup>

**Bolsa Verde Programme (2011-present):** The government launched the initiative based on the transfer of payments as a reward for using environmentally sustainable practices. The programme has four objectives: promoting ecosystem conservation and sustainable use, promoting community participation and improvement in participant's quality of life, increasing the income of people living in extreme poverty who carry out activities for the conservation of natural resources in rural areas, and promoting the participation of beneficiaries in environmental, social, technical and professional capacity-building activities.<sup>420</sup>

**Environmental labelling Programme (2002-present):** The Ministry of Environment created the programme with the aim of contributing to the increased demand for products with less environmental impact, and it was developed to coordinate and better articulate environmental labelling initiatives.<sup>421</sup>

## NGO Initiatives

**Instituto Amazonia:** The organisation has the objective to defend, preserve and conserve the environment and the promotion of sustainable development. Its work is centred in the Amazona's sustainability as a tool of human development that is based on its ecosystem, its ethnic diversity, the assurances of its cultural identity, among others.<sup>422</sup>

# Land & Property

*Human rights impacts related to company acquisition, use and management of land*

Operating Environment	
International Property Rights Index rank	64 (2015)
Heritage Foundation: Economic Freedom Index Property Rights score	118 (2015)
Relevant law	<ul style="list-style-type: none"> <li>The Constitution, 1998</li> <li>The Land Statute, 1964</li> </ul>
Responsible ministries	<ul style="list-style-type: none"> <li>National Institute of Colonization and Agrarian Reform (INCRA)</li> <li>National Indian Foundation (FUNAI)</li> <li>National Council on Indigenous Policy</li> </ul>
Local NGOs addressing this issue	<ul style="list-style-type: none"> <li>Coordinadora da Articulacao dos Povos Indigenas do Brasil</li> </ul>

## Country Context

*Human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.*

### Land Administration

The constitution guarantees land ownership as a fundamental right.<sup>423</sup>

In Brazil, land tenure regimes include individual and collective ownership, state land, leases and partnerships, and cooperative land.<sup>424</sup> Special tenure regulations existed for indigenous people and Afro-Brazilian *quilombolas* communities.<sup>425</sup>

Indigenous territories comprised approximately 13 percent of Brazil's territory,<sup>426</sup> especially in the Amazonia.<sup>427</sup> The government reported in 2015 that over the last decade, around 14 million hectares of land were awarded to indigenous peoples.<sup>428</sup> In November 2015, a draft amendment to the constitution was presented that would transfer responsibility for the legalisation and demarcation of indigenous territories from the executive branch agencies to Congress. The proposal, according to the news site Rede Brasil Atual, would allow the rural caucus at Parliament to use its influence and power when deciding over indigenous territory, negatively impacting on indigenous communities.<sup>429</sup> Demarcation processes of indigenous territories have reportedly been delayed, impacting on their right to property and self-determination.<sup>430</sup>

The Economist stated in 2013 that criticisms of the National Indian Foundation (FUNAI) were related to delays in demarcating and protecting lands indigenous people have traditionally occupied.<sup>431</sup>

In terms of quilombola communities, from 2012-2013, 72,000 hectares were guaranteed to those communities, benefitting 2,300 families.<sup>432</sup>

The Pastoral Land Commission reported that from 2011-2014 a fall in the number of new rural settlements and land titling of indigenous territories and quilombolas occurred, while at the same time, investment in agri-business projects grew, resulting in a more unequal land distribution.<sup>433</sup>

60 percent of the most arable land was owned by the largest estates, while the poorest 30 percent of the population had less than 2 percent of farmland, according to Freedom House in 2015.<sup>434</sup> IPS News added in 2015 that 200,000 peasants did not own a plot of land to farm.<sup>435</sup>

According to a 2013 Huffington Post report, land reform in Brazil has been drastic, owing to the fact that Brazil had one of the most unequal distributions of land in the world.<sup>436</sup> The Bertelsmann Foundation reported in 2014 that powerful landlords in some rural areas with strong influence on public officials responded violently over agrarian reform attempts.<sup>437</sup> Freedom House added that the rural caucus at Parliament was also opposing those reforms.<sup>438</sup>

According to the Organization for Economic and Development Cooperation (OECD) in 2015, Brazil did not have an integrated system of land administration across the three levels of governments. The lack of clarity around property rights for public and private land contributed to problems related to unplanned and unauthorised land use.<sup>439</sup> USAID's latest report, from 2011, stated that the government's capacity to ensure security of tenure was limited because of inaccurate land registry, overlapping titles for the same parcels as well as a lack of capacity to ensure protection from eviction even when boundaries were recorded and formal titles issued.<sup>440</sup>

## Land Acquisition

Land in Brazil can be obtained through purchase, transfer of ownership or government allocation.<sup>441</sup> The constitution allows for expropriation of land not being used to perform a social function or for public utility or need subject to a fair and prior compensation in cash.<sup>442</sup> The Land Statute of 1964 stipulates that land can be expropriated if it is not put to 'social use',<sup>443</sup> but does not clearly define that term.<sup>444</sup>

The constitution prohibits the removal of tenants from their lands, including indigenous peoples, with the exception of extreme cases, which require the authorisation of the National Congress.<sup>445</sup>

The Pastoral Land Commission has compiled comprehensive annual reports on land conflicts in Brazil, which over the decade revealed that more than 400 people have been killed, including indigenous people, small-scale farmers, peasants and human rights defenders.<sup>446</sup> The New York Times added in 2012 that, in many cases, so-called 'pistoleiros', gang of gun-wielding men hired by local landowners, loggers, ranchers and farmers, were responsible for many of the killings.<sup>447</sup> Violent attacks against indigenous peoples were allegedly paid for by farmers and landholders related to agribusiness industries, including hiring militia to attack and intimidate indigenous people in order to spread physiological terror that would result in the eviction of those people, according to the UN Special Rapporteur on the Rights of Indigenous People in 2015.<sup>448</sup> The Brazilian newspaper Vermelho added in 2014 that an 'organised crime' composed of private entities was killing anyone opposing to agribusiness in the Amazonia.<sup>449</sup> Guarani, Kaiowa and Terena peoples were reportedly the communities most vulnerable to conflicts with ranchers in Matto Grosso do Sul.<sup>450</sup>

According to indigenous leaders in the region, their peoples lived a 'genocide', as more than 390 guarani kaiowa indigenous people were assassinated over the last 12 years and almost 800 committed suicide as a result of conflicts related to insufficient land for their livelihoods, as reported in a 2015 BBC article.<sup>451</sup>

In 2015, various farms in Matto Grosso do Sul were occupied by indigenous people that claimed their ancestral land. Some of those lands were reportedly already recognised to them by anthropological studies while others were already demarcated as indigenous territories. There were also instances of

land sold to farmers by the State, who reportedly used their legal titles to fight for their land at the judiciary.<sup>452</sup> Ranchers, according to a 2015 Globo report, would remove 'by force' indigenous people occupying their lands.<sup>453</sup> As a result of the high level of conflict in the region, the government authorised in September 2015 the deployment of military troops in an attempt to control the conflicts.<sup>454</sup>

Indigenous peoples were reportedly forced evicted from their lands as a result of land grabbing by ranchers, development of extractive industries, illegal logging and other industrial projects, impacting on their right to adequate standard of living, as reported by the UN Committee on the Rights of the Child in 2015.<sup>455</sup>

Furthermore, around 250,000 people were forcibly evicted in connection to the implementation of urban infrastructure projects and the construction of stadiums for the 2014 World Cup and 2016 Olympic Games. The UN body further noted in 2015 that many of those forcibly evicted were provided with insufficient compensation. Demolitions of houses took place in some cases even before the resettlement plan occurred, and the government intimidated many families in order to leave their homes.<sup>456</sup> In 2011, the UN Special Rapporteur on the right to adequate housing reported receiving allegations concerning displacement and evictions in relation to World Cup and Olympic preparations in Sao Paulo, Rio de Janeiro, Belo Horizonte, Curitiba, Porto Alegre, Recife, Natal and Fortaleza, potentially constituting violations of human rights. The Special Rapporteur noted a 'pattern of lack of transparency, consultation, dialogue, fair negotiation, and participation of the affected communities in processes concerning evictions undertaken or planned in connection with the World Cup and Olympics.'<sup>457</sup>

In terms of compensation, according to the latest UN Report on the Situation of Indigenous People, from 2009, the government reportedly only offered compensation to indigenous land for improvements on the land and not for the total value of the land once it was demarcated and registered.<sup>458</sup>

## Free, Prior & Informed Consent

The constitution guarantees the customary land rights of indigenous groups<sup>459</sup> and requires consultations with indigenous peoples before congressional approval of the clearing or use of their traditional lands.<sup>460</sup>

Brazil ratified ILO Convention 169 on Indigenous and Tribal Peoples Convention and signed the UN Declaration on Indigenous People.<sup>461</sup> The government recognised indigenous people and quilombola communities as subjects of ILO Convention 169.<sup>462</sup> In 2012 a Working Group in charge of proposing a regulation for the ILO Convention 169 was created, however, as of March 2016, no text has been approved by Congress.

According to a joint written statement submitted by various organisations to the UN Human Rights Council in 2015, in Brazil free, prior and informed consent (FPIC) in the planning, licensing and construction of Amazonian dams was systematically violated. This was due to the lack of a consistent position by the government on how the right to consultation and FPIC must be applied, and the prevalence of an alliance between the Ministry of Mines and Energy, political parties and private companies over indigenous peoples' rights.<sup>463</sup>

Lack of consultations with indigenous communities in relation to hydropower projects in the North and Northeast regions, especially in the basin of Juruena, Teles Pires and Tapajós rivers, were noted by Reporter Brazil in 2013.<sup>464</sup>

Various sources reported that Chief Justices used the legal tool known as 'security suspension' in order to unilaterally suspend decisions related to indigenous people's rights including prior consultation, based on grounds of social and economic order.<sup>465</sup>

Amazon Watch reported in 2015 that the government failed to consult with indigenous people about the threats of fracking in their territories, including in the Amazon and protected areas.<sup>466</sup>

In its latest report from 2009, the UN Special Rapporteur for Indigenous Rights concluded that there was insufficient consultation with indigenous peoples impacted by major development projects and large-scale mining operations.<sup>467</sup>

## Cases

*Reports of business-related human rights issues from NGOs, multilateral institutions and the media.*

- *January 2016, Ministerio Publico Federal:* The Federal Tribunal from Altamira suspended the company Norte Energia S.A. its license to operate the Belo Monte Dam until they comply with their obligation to re-structure the National Indian Foundation's office in the area in order to assist indigenous peoples affected by the project.<sup>468</sup>
- *2015, Minority Rights Group International:* The Brazilian police fired tear gas and rubber bullets in connection to a forced eviction of indigenous people in Aldeia Maracana in Rio de Janeiro.<sup>469</sup>
- *October 2015, Rede Brasil Atual:* More than half of the indigenous reserve Arariboia in Maranhao went on fire. Members of the community stated that large state-owners and loggers were behind the fire as the community was boycotting the access to their ancestral land.<sup>470</sup>
- *August 2015, Green Peace:* Dozens of Guarani Kaiowa indigenous people were injured and one got killed as a result of attacks perpetrated by landlords in Nande Ru Marangatu, Matto Grosso.<sup>471</sup>
- *July 2015, El Pais:* Kurusu Amba indigenous peoples in Coronel Sapucaí in Matto Grosso do Sul invaded two farms that they claimed were their ancestral land. The invasion resulted in the killing of one indigenous person and the disappearance of some members of the community.<sup>472</sup>
- *June 2015, First Peoples Worldwide:* Brazil's government approved a Chinese project to build an east west railroad between Brazil's Atlantic coast and Peru's Pacific coast, triggering apprehensions from the 600 indigenous communities along the proposed path, including communities in voluntary isolation.<sup>473</sup>
- *September 2015, Amazon Watch:* The Environmental Impact Assessment presented by the state-owned Eletrobras in relation to a hydropower project in the Tapajos river had reportedly minimised the negative impacts on the dam, and the Munduruku peoples were not consulted in the planning of it.<sup>474</sup>
- *September 2014, Brasil de Fato:* A Tribunal suspended the activities of the hydropower Sao Manoel in Matto Grosso as a result of a lack of free, prior and informed consent with the indigenous peoples Kayabi, Apiaka and Munduruku.<sup>475</sup>
- *July 2013, Business & Human Rights Resource Centre:* Survival International called on the US company, Bunge, to stop buying sugar cane produced on ancestral lands of the Guarani tribe. The NGO added that they had been evicted from their land and 'lived in appalling conditions.'<sup>476</sup>

## Company Initiatives

*Private-sector programmes that aim to ensure respect for human rights or contribute to development*

### Company Due Diligence Initiatives

**Unilever Brasil:** The company is committed to the UN Guiding Principles on Business and Human Rights. It is committed to respect the property rights of indigenous people, and that all negotiations in relation to their property, including their use and transfer, should be based on the principles of liberty, prior and informed consent, transparency and the disclosure of contracts.<sup>477</sup>

**Marfrig, Minerva, JBS:** The three biggest slaughterhouses in Brazil made a public commitment not to buy from farms that were clearing the Amazon forest or that were established in indigenous lands or conservations. The companies adopted a supply chain monitoring systems to ensure the implementation of the agreement.<sup>478</sup>

**BHP Billiton:** The company has adopted an Indigenous Peoples Policy Statement by which it states its respect for the rights of indigenous people and acknowledges their culture, identity, traditions and customs. In line with its commitment to the International Council on Mining and Metals (ICMM) Position Statement on Indigenous Peoples and Mining, the company seeks consent processes which are based on good faith negotiation and which do not confer veto rights to individuals or sub-groups, nor require unanimous support from potentially impacted indigenous peoples unless legally mandated.<sup>479</sup>

## Human Rights Guidance for Businesses

*Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context*

### Due Diligence Library

*The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies*

*Before buying, renting, acquiring or otherwise accessing land or property, does the company ensure that all affected owners and users of the land or property, have been adequately consulted and compensated?*

- Prior to buying, renting, acquiring or otherwise accessing land or property, whether directly or through a third party, the company identifies all existing owners and users of the land or property, including information land users and customary owners.
- The company investigates the past usage and ownership of the land or property to ensure that past users and owners have not been wrongfully removed, and that any expropriations by the authorities have been conducted in accordance with international law.
- The company consults with affected users and owners of the land or property (including women, tenants, settlers, minorities and other vulnerable groups including indigenous peoples) and seeks their free, prior and informed consent before continuing to acquire or access the land or property.

- The company ensures that its lease or purchase of residential property and sourcing of food commodities does not considerably make housing and food scarce or too expensive for the local people.
- The company ensures that affected owners and users of the land or property are adequately compensated to help them restore their standards of living or livelihoods to the same or higher than before, and that the compensation standards are transparent and applied consistently to all communities and persons affected.

## Standards & Guidance

*NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre*

- **FAO Voluntary Guidelines on the Responsible Governance of Tenure (2012):** Developed by the Food and Agriculture Organisation of the UN (FAO), the Guidelines promote responsible governance of tenure of land, fisheries and forests by outlining the principles and internationally accepted standards for the responsible governance of tenure. The Guidelines inform States and non-government actors on relevant policies, strategies and activities.
- **IFC Performance Standard 5: Land Acquisition and Involuntary Resettlement, and IFC Handbook for Preparing a Resettlement Action Plan (2002):** The IFC Performance Standards are contractually binding on certain projects receiving IFC finance. PS5 is accompanied by a Guidance Note and a Resettlement Handbook that gives detailed guidance on managing resettlement and associated impacts.
- **Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources (2010):** A joint initiative of UNCTAD, FAO, IFAD and the World Bank, these seven principles cover all types of investment in agriculture, including between principal investors and contract farmers. The Principles provide a framework for national regulations, international investment agreements, global corporate social responsibility initiatives and individual investor contracts.

## Engagement Opportunities

*Development initiatives by public and private actors that provide opportunities for companies to contribute to human development*

### Public Sector Initiatives

**Law to compensate farmers (2015):** The law was adopted in September 2015 and it allows for the compensation of farmers that acquired in good faith property over land that was considered indigenous reserve.<sup>480</sup>

**Legal Land Programme (2009-present):** The programme was launched by the Ministry of Agrarian Reform to regularise public land titles in the Amazon region, fight land grabbing, control deforestation and promote sustainable development initiatives. The programme expects to provide land titles to approximately 300,000 rural properties occupied prior to 1 December 2004.<sup>481</sup>

**My House, My Life Housing Programme (2009-present):** This nation-wide initiative is part of Brazil Growth Acceleration Programme, and seeks to provide low- to middle-income families with housing. As of 2015, more than 9.4 million people benefited from the programme.<sup>482</sup>



# Revenue Transparency & Management

*Human rights impacts related to transparency of government revenues received from business and the distribution of such revenues*

<b>Operating Environment</b>	
World Economic Forum Global Competitiveness Ranking	57 (2014-215)
Legatum Prosperity Index rank: Governance	62 (2015)
Ease of Doing Business Index <i>(where 1 indicates greatest ease for doing business)</i>	120 (2015)
Transparency International: Corruption Perceptions Index rank <i>(where 1 indicates the lowest level of corruption)</i>	38 (2014)
<b>World Bank Good Governance Indicators</b>	
Voice and Accountability	60.6
Political Stability	45.1
Government Effectiveness	47.1
Regulatory Quality	50.5
Rule of Law	55.3
Control of Corruption	44.2 (2014)
Government revenue	US\$876.5 billion (2014)
Government expenditure	US\$891.2 billion (2014)
EITI Country	No
Relevant law	<ul style="list-style-type: none"> <li>• The Constitution, 1998</li> <li>• Law to regulates the process of</li> </ul>

	<ul style="list-style-type: none"> <li>public procurement, 1993</li> <li>• Ficha Limpa (Clean Record) anti-corruption law, 2012</li> <li>• The General Public Information Act, 2012</li> <li>• The Clean Company Act, 2013</li> </ul>
Responsible ministries	<ul style="list-style-type: none"> <li>• Office of the Comptroller General</li> <li>• Department of Revenue and Control of Financial Activities</li> <li>• Federal Treasury</li> <li>• Corruption Prevention and Strategic Information Secretariat</li> <li>• Secretariat of the Federal Revenue</li> </ul>
Local NGOs addressing this issue	<ul style="list-style-type: none"> <li>• Olho Vivo</li> <li>• Transparencia Brasil</li> <li>• Sindicato Nacional dos Procuradores de Fazenda Nacional</li> </ul>

## Country Context

*Human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.*

### Corruption

The constitution establishes penalties for misconduct in public administration, and the Penal Code prohibits corruption by domestic officials and in international business transactions.<sup>483</sup> Public officials must abide by financial disclosure laws and these laws are generally enforced.<sup>484</sup> In October 2012, Congress passed the *Ficha Limpa* (Clean Record) anti-corruption law, which prohibits politicians convicted of corruption from seeking office for eight years.<sup>485</sup> The law was considered one of the toughest in the world, though, according to the Business Anti-Corruption Portal in 2015, its enforcement was inconsistent.<sup>486</sup>

The Clean Company Act was passed in August 2013, making companies, not only individuals, liable for corruption at home and abroad. A company found guilty of acts of corruption may be fined up to 20 percent of its gross revenue, could be banned from public sector contracts, and prevented from taking loans from state banks.<sup>487</sup>

In practice, in recent years, a series of corruption scandals have been discovered, particularly in relation to Brazil's state-owned oil company, Petrobras. Several former directors, construction companies and politicians (including former and current Congressmen) were involved in a million-dollar bribe scheme in exchange for contract bids.<sup>488</sup> At the same time, a parallel scheme of fraud in the construction of mega dam projects in the Amazon was discovered, involving Brazilian construction companies, politicians and bureaucrats, according to Amazon Watch in 2015. Money laundering was also associated with the corruption scandal.<sup>489</sup>

The Dow Jones Sustainability Index announced in 2015 that Petrobras would be excluded from its list of blue ribbon companies as a result of the corruption scandal 'Operacao Lava Jato' (Operation Car

Wash).<sup>490</sup> As of December 2015, more than 230 companies were under investigation, as well as 150 executives and Petrobras directors, many of whom were under arrest.<sup>491</sup>

A 2013 Survey from Transparency International indicated that political parties were the institutions perceived as most corrupt, followed by parliament and the police.<sup>492</sup> According to a 2013 Reuters report, the group of parliamentarians, Frente Parlamentar da Agricultura (FPA), commonly referred to as the rural caucus, supported and represented the interest of landowners and ranchers in the National Congress in detriment of indigenous people's, peasants, small rural farmers, among others.<sup>493</sup>

## Revenue Transparency

In May 2012, the General Public Information Act came into force.<sup>494</sup> The Act obliges authorities to publish information on spending and to respond to citizen requests for information. The Act establishes that all information held by the State is public, excluding highly exceptional circumstances.<sup>495</sup> There are no restrictions on any information pertaining to human rights violations carried out by or under the authority of public officials. Any person is entitled to public information and the government must provide it free of charge.<sup>496</sup> Government officials with an oversight role in the hydrocarbon sector are required to disclose their financial interests in any extractive project.<sup>497</sup>

Conectas reported in 2015 on instances where the application of exceptions to the Law on Access to Public information such as national security and commercial confidentiality limited access to information in relation to negotiations involving public entities and foreign governments on financing obtained through the Brazilian Development Bank for the export of Brazilian goods and services.<sup>498</sup>

Publicly traded companies are required to publish annual account reports. Annual reports, balance sheets, income statement and minutes of annual meetings must be published in the Official Newspaper.<sup>499</sup>

In the 2013 Resource Governance Index, Brazil obtained a score of 80, ranking 5<sup>th</sup> out of 58 countries as a result of comprehensive reporting and auditing requirements, as well as checks on the budgetary process. However, it scored poorly on government effectiveness and the rule of law.<sup>500</sup>

The National Agency for Oil, Natural Gas and Biofuel publishes information on reserve, production volumes, prices, exports, investment, the names of companies operating in the country, production data by company, and disaggregated revenue streams, while the Ministry of Energy and Mines publishes annual reports with information on reserves, production and values, prices, investment, royalties and special taxes.<sup>501</sup>

The Natural Resource Governance Institute added in 2013 that Brazil did not publish the content of extractive industry contracts.<sup>502</sup>

A 2013 study conducted by the University of Texas found that information provided by public entities was not satisfactorily addressed and in many cases was incomplete.<sup>503</sup> The same study found that access to information, especially for rural communities, was limited and that communities lacked internet access. Where there was access, they many not have a complete understanding on how to manage online resources. According to the NGO Article 19, governmental institutions reportedly lack thorough knowledge on the legislation and oftentimes information that was requested went through various institutions before reaching its intended destination.<sup>504</sup>

Though Brazil is not a member of the Extractive Industries Transparency Initiative (EITI),<sup>505</sup> state-owned Petrobras has been a member of the EITI International Advisory Group since 2005 and a member of the International Board from 2006-2008, and has committed to standards on disclosure about payments to foreign governments.<sup>506</sup>

## Public Procurement

Law 8666/93 regulates the process of public procurement.<sup>507</sup> Brazil has also set up an electronic System called ComprasNet to conduct most procurement of goods, services and works required by the public administration, which, according to a 2013 Inter-American Development Bank (IADB) report, was effective.<sup>508</sup> The law allows for direct procurement of goods and services, and the government reported that as of 2015, it was 30 percent of all procurement in Brazil.<sup>509</sup>

In 2012, the government adopted Decree 7746 that establishes differentiated criteria for public procurement, giving priority to green products, those produced by small and micro businesses, or having more than 60 percent of local content. According to the Organization of Economic Cooperation and Development (OECD) in 2015, the value of sustainable public procurement almost trebled from 2010-2014.<sup>510</sup>

The IADB further noted that Brazil had a Public Procurement and Contracting System at the federal level that was very robust in regulatory and management terms.<sup>511</sup>

In practice, corruption schemes in the award of contracts were reported. Construction companies reportedly paid millions of reais in bribes to political parties, including the ruling PT, in exchange for the award of contracts for the Belo Monte dam.<sup>512</sup> In relation to the Operation Car Wash, it was reported that the average bribery percentage received by Petrobras executives was three percent of the contracts awarded, resulting in a lost to the company of over R\$4.06 billion (approx. US\$1.5 billion).<sup>513</sup>

According to the Global Competitiveness Report 2014-2015, government officials oftentimes indicated favouritism to well-connected firms and individuals when awarding contracts.<sup>514</sup>

## Revenue Sharing

The statutory Corporate Income Tax is made up of 25 percent for corporate income tax and 9 percent for social contribution on net profit.<sup>515</sup> Additionally, companies contribute with royalties for the exploitation of natural resources. Mining companies contribute with a Financial Compensation for the Exploitation of Mineral Resources (CFEM) of up to 2 percent of companies' net revenue.<sup>516</sup> Mining royalties are to be distributed as follows: 12 percent to the federal government, 23 percent to the producing State and 65 percent to the municipalities of the producing State while funds are to be invested in development projects such as infrastructure, healthcare and education.<sup>517</sup> In October 2013, a draft constitutional amendment bill that would increase mining royalties up to 4 percent of companies' gross revenue was presented to the National Congress.<sup>518</sup> As of December 2015, the project was still under consideration.<sup>519</sup>

Royalties from oil and gas production accounts to 10 percent of production value and may be reduced to 5 percent in special cases. Those royalties are distributed as follows: 52 percent to producing States, 45 percent to municipalities of the producing State, and 10 percent to municipalities where loading or unloading of crude occur.<sup>520</sup> Starting in 2014, royalties from the newly discovered oil production in the pre-salt areas- large reservoirs of oil deep under water- were invested in education (75 percent) and healthcare (25 percent).<sup>521</sup>

The National Treasury is in charge of receiving all payments from extractive companies, while royalties and government profits from offshore oil reserves are deposited into a social fund that are to be used for development projects.<sup>522</sup>

A 2013 IADB study reported that Brazil managed to increase tax revenue to a level greater than the average of developed economies.<sup>523</sup> Nevertheless, inefficiency in tax allocation contributed to the lack of availability of public services and infrastructure, according to Reuters.<sup>524</sup> According to the UK Foreign and Commonwealth Office in 2015, the tax system was complex and vulnerable to corruption, and tax

officials oftentimes requested bribes to relax assessment and inspections, refrain from pursuing acts of tax fraud and give advice on legal possibilities on how to reduce the payment of taxes.<sup>525</sup>

In practice, according to a Sindicato dos Procuradores da Fazenda report, tax evasion accounted to approximately R\$500 billions (US\$125 billion) in 2015.<sup>526</sup> The organisation has claimed that in 2014 alone, the amount of money lost due to tax evasion could have financed more than 4 million equipped health clinics, 9 million classrooms, 97 million computers, distribute around 1.8 Bolsa Familia, among others.<sup>527</sup>

In terms of revenue distribution, the IADB study also found that just a few municipalities received a large amount from the exploitation of natural resources, in detriment of other municipalities, and that income inequality between regions required fund transfer mechanisms for regional distribution of income and the transferring of tax revenues from more developed to less developed regions.<sup>528</sup>

Companies were also involved in a 'wood laundering process' using fake paperwork to bring illegal wood from protected areas of the Amazon to be processed and further exported, according to Greenpeace in 2015.<sup>529</sup>

## Cases

*Reports of business-related human rights issues from NGOs, multilateral institutions and the media.*

- *March 2016, Folha do Sao Paulo:* Former president Lula da Silva was arrested for questioning on evidence that he and his associates benefited from the Petrobras scheme.<sup>530</sup>
- *March 2016, ABC Color:* The president of the construction company Odebrecht was sentenced to 19 years imprisonment on charges of money laundering, corruption, and criminal association in connection to the corruption scandal that involved Petrobras.<sup>531</sup>
- *November 2015, The New York Time:* A Brazilian Senator and a billionaire investment banker were arrested on charges of corruption related to the Petrobras corruption scheme.<sup>532</sup>
- *July 2015, Amazon Watch:* The former president of the construction company Camargo Correa reported that the company paid R\$30 millions (approx. US\$7.5 million) to the ruling PT party and to Brazil's largest political party PMBD, in exchange for its 15 percent share of the construction contract for the Belo Monte Dam.<sup>533</sup>
- *June 2015, Ultima Hora:* The presidents of the Brazilian construction companies Odebrecht and Andrade Gutierrez were detained in connection to the Petrobras corruption scandal. The presidents were accused on grounds of fraud in public tenders. According to the police, the two companies signed up contracts with the government that were increased by 4 percent, money that was later on distributed between Petrobras management and political parties that reportedly supported the scheme.<sup>534</sup>
- *August 2013, Regional Anti-Corruption Initiative:* Alstom, a French power company, reportedly paid millions of dollars on bribes to secure the concession over the extension of the Sao Paulo metro line.<sup>535</sup>
- *June 2013, The Guardian:* The Supreme Court condemned 24 people in connection to the corruption case in Brazil, the *Mensalao* or monthly cash for vote -scheme aimed at buying off votes of members of Congress in exchange for their support on drafts legislations presented by the former Government.<sup>536</sup>

## Company Initiatives

*Private-sector programmes that aim to ensure respect for human rights or contribute to development*

### Company Due Diligence Initiatives

**Usina Usiminas (2014):** The steel producer company created an Internal Auditing 'Canal Aberto' (Open Channel), which is managed by the Audit Committee with the objective to work as a tool to identify, monitor and mitigate risks related to corruption practices. The Open Channel can receive notifications about irregularities observed in the operations of the company as well as on its affiliates.<sup>537</sup>

**Eletrobras:** The state-own energy company has an Ombudsman Office that works as a permanent channel of communication and mediation between the company's senior management, stakeholders and society at large. The Office is also in charge of receiving and processing opinions, complaints, requests for information and compliments. Besides that, the company has a Whistleblower Channel, which is intended to receive information on potential breaches or offenses affecting financial results.<sup>538</sup>

### Company Development Initiatives

**Clean Enterprise - Empresa Limpia:** The initiative seeks to promote a more transparent and ethical market. The Corporate Pact for Integrity and Against Corruption was developed in the framework of the initiative, which is a series of commitments and guiding principles for companies in their efforts to fight corruption.<sup>539</sup> Over 300 companies, both local and multinational, participate in the initiative.<sup>540</sup>

## Human Rights Guidance for Businesses

*Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context*

### Due Diligence Library

*The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies*

#### Signalling a Non-Corrupt Environment

*Does the company take a clear stand against corruption?*

- The company's CEO, director or president has declared that the company will not engage in corruption at any time or in any form.
- The company has a policy rejecting corruption and requiring all directors, managers and workers worldwide to behave ethically and in conformity with the law.
- The company anti-corruption policy includes how to handle requests for facilitation payments, giving and receiving gifts, engaging in sponsorships, giving political contributions, and how to conduct responsible lobbying.
- The company has defined benchmarks and indicators regarding its anti-corruption initiatives and reports these to the public (e.g. in its annual CSR report)

## Anti-Corruption Risk Assessment

*Does the company assess the risk of corruption when doing business?*

- The company evaluates the potential areas of corruption including factors such as type of transaction, countries of operation, industries, and customers or business partners involved.
- The company evaluates the risk of corruption when workers, agents, intermediaries or consultants deal with public officials (including workers of state owned companies).
- The company evaluates the risk of internal and external conflicts of interest in relation to business partners.
- The company has developed an action plan to address the risk of corruption, and has defined responsibilities for each task, as a minimum for high-risk areas.
- The company has identified internal functions with the highest risk of corruption within the company and seeks to address these weaknesses.

## Awareness Raising

*Does the company ensure that relevant workers are properly trained?*

- The company informs all workers about its anti-corruption commitment.
- The company provides regular anti-corruption training for all relevant workers within the organisation e.g. procurement and sales staff.
- Information on disciplinary procedures for violations of company anti-corruption policies is available to workers.
- The company actively seeks worker feedback and dialogue on its anti-corruption initiatives.
- The company has and promotes a function by which workers can safely report suspicion of corruption related cases (e.g. hotline or mailbox) and allocates resources to systematically address the issues that are identified.

## Anti-Corruption Procedures

*Do the company's internal procedures support its anti-corruption commitment?*

- The company has assigned different individuals or departments to be responsible for handling contracts, placing orders, receiving goods, processing invoices and making payments.
- The company mentions 'anti-corruption' and/or 'ethical behaviour' in its contracts with business partners.
- The company prohibits informal employment and any 'off the books' record-keeping
- The company performs internal audits and has checks in place in connection with all anti-corruption commitments.
- The company's procurement, financial and internal audit personnel have clear instructions to look for and to identify alarms, report them to management, and follow-up counter measures.
- The company requests external auditors to maintain a critical eye and follow all alarms and irregularities.
- Any alarm or irregularity reported by external auditors is systematically addressed by management.
- The company monitors compliance and continuously identifies strengths and weaknesses in the anti-corruption initiatives to remain effective and up-to-date in addressing changing risks.

## Agents and Other Associates

*Does the company's anti-corruption initiative cover agents, intermediaries and consultants?*

- The company conducts an inquiry and/or attentiveness (e.g. financial, legal, labour, tax, IT, environment, market/commercial) on all agents, intermediaries and consultants.
- All agreements with agents, intermediaries and consultants are fully documented in written, signed contracts.
- The selection and terms of reference of agents, intermediaries or consultants are approved at the senior management level or at a level above that of the management involved in the operations for which the intermediary is hired.
- Contracts with agents, intermediaries and consultants include a section on anti-corruption and that the contract-holder must comply with all applicable laws and regulations.
- Agents, intermediaries and consultants are provided with information on the company's anti-corruption commitment, anti-corruption policies, training material on anti-corrupt behaviour and information on disciplinary procedures for violations of company anti-corruption policies.
- The company ensures that payment to agents, intermediaries and consultants are in line with standard payments for other service providers of similar ranking.
- The company only makes payments by bank transfer or check – never in cash – in the country of the agent, intermediary and consultant and never to a third party without prior examination.

## Communicate

*Does the company communicate progress on the Global Compact principles with stakeholders?*

- The company identifies stakeholders who affect or can be affected by the company's activities, products and services e.g. a person, group, organisation, authority.
- The company communicates progress openly about how issues covered by the Global Compact principles are managed, including performance results as well as forward-looking information on strategy and management approach, challenges, and dilemmas.
- The company regularly engages in dialogue with stakeholders to keep up-to-date with stakeholder expectations.
- The company communicates openly about how issues covered by the Global Compact principles are managed including challenges, dilemmas, success and failures.
- The company's communication on progress and other performance reporting on issues covered by the Global Compact principles is publically available and communicated to external stakeholders e.g. via the company's and Global Compact website.

## Joint Actions

*Does the company take joint actions with others to engage in and promote anti-corruption initiatives?*

- The company shares experience, procedures and challenges of corruption with other organizations i.e. the local business community, sector initiatives, networks etc.
- The company has initiated or joined initiatives with other companies in the same sector for the purpose of promoting a fair business environment.
- The company stimulates multi-stakeholder dialogue on challenges of corruption.



- The company encourages the local business community and business partners to initiate cooperation to fight corruption.

## Standards & Guidance

*NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre*

- Transparency International Business Principles for Countering Bribery provide a checklist for companies to identify and reduce bribes and facilitation payments in their operations.
- The OECD Guidelines for Multinational Enterprises, applicable to enterprises in OECD Member States (and some others), require companies to respect human rights, including through due diligence. The OECD Guidelines constitute recommendations by OECD member states to multinational enterprises operating in or from adhering countries. The OECD Guidelines include competition, fiscal systems and anti-corruption.

## Engagement Opportunities

*Development initiatives by public and private actors that provide opportunities for companies to contribute to human development*

### Public Sector Initiatives

**Guidelines on Integrity for Micro and Small Businesses:** The Office of the Comptroller General and the Brazilian Micro and Small Business Support Service launched the document in order to raise awareness on transparency among companies. The guidelines aimed to lead businesses on the importance of integrity in its commercial relations, and it contains recommendations on how to structure a programme to combat corruption.<sup>541</sup>

**Scale Brazil Transparent:** The scale is a methodology developed by the Office of the Comptroller General to measure the level of public transparency in States and municipalities, through the measurement of the implementation of the 2012 General Public Information Act. According to the latest evaluation, the states of Bahia, Federal District, Espirito Santo, Goais, Maranhao, Minas Gerais, Sao Paulo and Tocantins were the ones ranking the highest, while Sergipe, Amazonas and Amapa recorded the lowest indicators.<sup>542</sup>

**Group of Friends of Paragraph 47 (2012-present):** Brazil, Denmark, France and South Africa created the Group of Friend to promote corporate sustainability reporting. Activities include identifying government vehicles for promoting corporate reporting; Convening stakeholders to develop best practice examples; Developing principles, indicators, and frameworks to promote sustainability reporting; assistance for developing countries and small and medium enterprises.<sup>543</sup>

**Open Government Partnership (2011-current):** Brazil undertook a leadership role in establishing this multilateral initiative to secure concrete commitments from governments on transparency, anti-corruption and citizen engagement. The country has made commitments in relation to citizen participation, e-government and public procurement. The partnership also promotes corporate accountability.<sup>544</sup>

**The Pro Ethic Registry of Companies (2010-current):** The registry has been created by the Office of the Comptroller General in cooperation with Ethos Institute with the objective of identifying companies that

are committed to preventing and combating corruption. Companies voluntarily request their inclusion in the list after completion of a questionnaire about the implementation of integrity measures and anticorruption policies. As of 2015, 19 companies have been included in the registry.<sup>545</sup>

**The National Registry of Ineligible and Suspended Companies (2009-current):** Administered by the Office of the Comptroller General, the registry includes companies that are barred from entering into contracts with the administration due to the commission of irregularities in their dealing with the public sector.<sup>546</sup>

## NGO Initiatives

**Transparencia Brasil:** The organisation monitors politicians, the use of public funds and the performance of institutions. It also seeks for the integrity of the public power, especially through the increase in the availability of public information.<sup>547</sup>

# Security & Conflict

*Human rights impacts related to company interaction with public and private security providers and related to the impact of business on societal conflict.*

Operating Environment	
Failed States Index	123 (2015)
Legatum Prosperity Index: Safety & Security	85 (2015)
Freedom House: Map of Freedom - Political Rights <i>(On a scale of 1 through 7, where 1 indicates the highest level of freedom)</i>	2 (2015)
Freedom House: Map of Freedom - Civil Liberties <i>(On a scale of 1 through 7, where 1 indicates the highest level of freedom)</i>	2 (2015)
Relevant law	<ul style="list-style-type: none"> <li>The Constitution, 1998</li> </ul>
Responsible agencies	<ul style="list-style-type: none"> <li>Ministry of Defence</li> </ul>
Local NGOs addressing this issue	<ul style="list-style-type: none"> <li>Movimento Pernambuco contra o Crime</li> <li>Viva Rio</li> </ul>

## Country Context

*Human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.*

The constitution protects the right to life, liberty and security, including the prohibition of torture and arbitrary killings and arrest. The death penalty is allowed only in times of war.<sup>548</sup>

### Public Security Forces

In Brazil there are two kinds of police, the civil police in charge of criminal investigations, and the military police with the duty of maintaining public order and prevent crimes.<sup>549</sup>

Freedom House reported in 2015 that law enforcement officials harassed, detained and attacked journalists. In demonstrations during the 2014 World Cup, confrontations between protesters and security agents resulted in injuries and arbitrary arrests.<sup>550</sup> the UN Rapporteur of the Working Group for Arbitrary Detention noted in 2014 an excessive use of deprivation of liberty and a high number of people on preventive detention.<sup>551</sup>

Also, Global Witness reported that public security forces have reportedly used excessive force during clashes that resulted from land conflicts or demands over natural resources.<sup>552</sup>

Violent criminal gang and abusive policing were reported in Brazil. According to the data provided by the Institute of Public Security, police killed 459 people in Rio de Janeiro and 415 people in Sao Paulo in the first six months of 2015, an increase of 18 and 22 percent, respectively, from 2014. Human Rights Watch noted that many of those killings might have been the kind of extra-judicial killings.<sup>553</sup> The Committee on the Rights of the Child stated in 2015 widespread violence at the hands of the military police, the Pacifying Police Unit and the Special Operation Battalion. Children living in favelas were particularly vulnerable to violence during 'pacification' and military operations.<sup>554</sup>

Prison conditions in Brazil were precarious, particularly in the northeastern State of Pernambuco, where the prison held three times as many people as official capacity, according to Human Rights Watch in 2015.<sup>555</sup> Freedom House added that the prison system was largely unfit for human habitation and extreme overcrowding resulted in men and women being held in the same facilities.<sup>556</sup> Torture was reportedly common at police stations and detentions centres.<sup>557</sup> The UN Rapporteur of the Working Group for Arbitrary Detention stated in 2014 that most prisoners were black men with poor backgrounds who could not afford a private lawyer.<sup>558</sup> Private Security Forces

In Brazil, private security officers are allowed to use firearms. The Brazilian Association of Security Professionals noted that many of the estimated half a million private guards in Brazil did not have enough training in relation to the use of fire arms, resulting in cases of human rights abuses.<sup>559</sup>

In its latest report from 2012, Global Witness noted that private security companies hired by private interests, including landowners, loggers and cattle-ranchers, were reportedly responsible for the killings of human rights defenders, indigenous people, small farmers, peasants and rural activist, which served as retaliation for protests over mining and logging operations, agribusiness, hydropower dams and access to ancestral land.<sup>560</sup>

According to the Public Ministry of Brazil in 2013, police investigations have discovered that in many cases, landowners and ranchers illegally possessed firearms and ammunitions that have been connected to assassinations.<sup>561</sup>

## Social Conflict

The Pastoral Land Commission (PLC) reported that in 2014, 1,080 land conflicts were recorded in Brazil. Most conflicts were related to access to land, water and energy as a result of disputes between traditional settlers (indigenous people, quilombola communities, peasants and small farmers) and private entities (mining, agri-business and hydropower companies). The PLC further noted that over the last 30 years, more than 28,800 land conflicts occurred, many of them resulting in the assassination of members of local communities who opposed to the establishment of development projects that would reportedly impact on their livelihoods, particularly in relation to their access to water and energy.<sup>562</sup> The Northeast region (Bahia, Maranhao and Paraiba) recorded most conflicts, followed by Matto Grosso do Sul, Minas Gerais, Amazonia, Rondonia and Pará.<sup>563</sup>

## Cases

*Reports of business-related human rights issues from NGOs, multilateral institutions and the media.*

- *January 2016, Business & Human Rights Resource Centre:* The Brazilian National Truth Commission published a report called 'Economic Cooperation with Brazil's military dictatorship' which includes articles that highlight the development of transitional justice, business, and human rights.<sup>564</sup>
- *November 2015, Terra de Direitos:* The company Syngenta Seeds was condemned for the murder of a rural worker by private militia hired by the company targeting activists who were denouncing experiments on genetically modified corn.<sup>565</sup>
- *September 2015, Business and Human Rights Resource Centre:* A law suit was open against Volkswagen alleging that the company collaborated with the military dictatorship in Brazil that ruled from 1964 to 1985, and that former employees were blacklisted and tortured.<sup>566</sup>
- *October 2013, BBC News:* A Brazilian landowner was given a 115-year prison sentence for the killing of five landless farm workers in the state of Minas Gerais, in 2004.<sup>567</sup>
- *July 2013, Edmont Journal:* Authorities began an investigation into whether telecommunications companies operating in Brazil co-operated with the United States as part of a spying programme that collected information on billions of telephone and email conversations.<sup>568</sup>

## Company Initiatives

*Private-sector programmes that aim to ensure respect for human rights or contribute to development*

## Company Due Diligence Initiatives

**Rio Tinto:** The company, which operates in Brazil, has security procedures that draw on its commitment to the Voluntary Principles on Security and Human Rights. Procedures include guidelines on the use of force, which are reinforced by security and human rights risk assessments for high risk sites, incident reporting, and training for employees and security personnel. In some instances the company also encourages human rights training for public security.<sup>569</sup>

## Human Rights Guidance for Businesses

*Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context*

## Due Diligence Library

*The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies*

*Does the company take steps to ensure that company security arrangements are in accordance with international principles for law enforcement and the use of force?*

- The company regularly conducts security risk assessments, and ensures that company security arrangements, including the deployment of private guards or public security personnel, are proportionate to the security risk.
- Company security risk assessments include the risk of human rights abuses by private and public security personnel.
- The company selects private security firms based on information about professional ability, level of staff training, quality of equipment, past involvement in human rights abuses, links with political factions or organisations and other relevant criteria.
- Contracts with private security firms include requirements related to international human rights standards for law enforcement and use of force; require the investigation and discipline of any unlawful or abusive conduct by security guards; and allow for termination of the contract in case of such conduct.
- There is a manual defining the duties of security personnel, and all security personnel receive training on rules of conduct based on international human rights standards for law enforcement and the use of force.
- Where public security personnel are assigned to company facilities, the company seeks to ensure transparency concerning its interactions with public security agencies, and the company communicates to the relevant public security agencies its desire that security functions be conducted in accordance with international human rights standards for law enforcement and the use of force.
- The company has a procedure for recording security-related incidents, including a mechanism for handling complaints from staff or local communities related to the conduct of security personnel, and forwards credible allegations of human rights abuses to the relevant authorities.
- The company has a procedure for monitoring and evaluating its security arrangements, including the proportionality of the security arrangement; impact on local communities; impact on existing local tensions or conflicts; security incidents recorded; and credible allegations of human rights abuses by company security personnel. Representatives from the local community are consulted as part of the monitoring.

## Standards & Guidance

*NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre*

- International Alert, Conflict Sensitive Business Practices: Guidance for Extractive Industries (2005): International Alert is a peace-building NGO working with civilians and other affected stakeholders in conflict areas. This Guidance is intended for companies in the extractive industries sector, providing advice on conflict-sensitive business practices and the ways in which they can contribute to peace-building.
- International Alert and Fafo Institute, Red Flags: Liability Risks for Companies Operating in High-Risk Zones (2008): The Red Flags address illicit business activities under international and national law. The initiative's objective is to clearly define what types of activities, when committed or aided by businesses, represent breaches of international humanitarian law and international criminal law.

- International Commission of Jurists, Report of the Expert Legal Panel on Corporate Complicity in International Crimes (2008): This three volume report outlines the ICJ Expert Legal Panel's findings and recommendations with regard to corporate legal responsibility for complicity in international crimes, under both civil and criminal law.
- The Dodd-Frank Wall Street Reform and Consumer Protection Act (2010): Section 1502 of the Act requires public and private companies to disclose the use of any conflict minerals in their products. This promotes greater transparency and dissuades companies from engaging in trade that may support regional conflicts.
- International Committee of the Red Cross, Business and International Humanitarian Law (2006): The Guidance explains the obligations of businesses under international humanitarian law, including noting relevant distinctions between international human rights law and international humanitarian law.

## Engagement Opportunities

*Development initiatives by public and private actors that provide opportunities for companies to contribute to human development*

### Public Sector Initiatives

**The Truth Commission (2011-present):** The government established the commission in its efforts to initiate a process of transitional justice. The Commission has the mandate to investigate serious human rights violations as well as the involvement of both private and public companies in the 'system of repression linked to the military'.<sup>570</sup>

**The Favela Pacification Programme (2008-current):** This strategy intends to reduce fights between police forces and gang members in the *favelas* of Rio de Janeiro and includes a new type of police force called the Pacification Police Unit (UPP).<sup>571</sup> The UPP secures a sustained police presence in the *favelas* aimed at taking control from gangs and promoting security for residents.<sup>572</sup> In some favelas, UPP officers organize skill development workshops and youth sport activities to replace violence with peaceful socialization.<sup>573</sup> As of 2015, the government had established 38 UPP in 264 favelas.<sup>574</sup>

### NGO Initiatives

**Viva Rio:** The organisation's mission is to foster a culture of peace and social inclusion. Its areas of work include working with communities exposed to risks and violence, mediate in conflicts and foster integration.<sup>575</sup> The organisation has partnered up with the Pacifying Police Units and in that framework, provided with trainings to military police in Rio de Janeiro including in their relation to communities in pacified areas with the aim to prevent violence.<sup>576</sup>

# Access to Remedy

*Bodies to which victims of corporate human rights abuses can file grievances and seek redress.*

## Judicial Mechanisms

The law provides for an independent judiciary. There are specialised courts for military, police, labour, juvenile, family matters and elections.<sup>577</sup> As of 2014, there were approximately 12,000 prosecutors and 16,000 judges in Brazil.<sup>578</sup>

The government reported that as of 2015, there were approximately 70 million pending cases at the judiciary. Only 28.6 percent of cases prosecuted in 2014 reached a conviction. Out of all cases presented, ten percent were labour disputes, followed by civil and consumer cases. In March 2016 a new civil procedural code entered into force incorporating tools that aimed at reducing the backlog of cases in that particular jurisdiction.<sup>579</sup>

The International Commission of Jurist reported that marginalized and discriminated groups experienced discrimination when seeking remedy, including high costs of legal procedures and difficult obtaining representation.<sup>580</sup> victims of racism and discrimination faced several barriers to access to justice, including a lack of awareness or knowledge of the law which prevented them from reporting cases, negative experiences of the justice system, lack of confidence in the process, discriminatory attitudes or lack of interest among the police and lawyers, and lack of financial resources and geographical marginalisation, according to the UN Working Group of Experts on People of African Descent in 2014.<sup>581</sup> When cases were brought to Courts, convictions were reportedly difficult to obtain as the racial democracy myth made it difficult to prove prejudice or discrimination on grounds of ethnicity or colour of skin.<sup>582</sup> Discrimination cases increased from 84 in 2005-2006 to 148 in 2007-2008, including cases in the Labour Tribunal.<sup>583</sup>

According to the latest USAID Land Tenure and Property Rights Portal report from 2011, cases involving the property rights of vulnerable groups were sometimes not satisfactorily settled, if at all. Judges often lacked the qualifications to adequately address cases of land dispute.<sup>584</sup> Also, Reporter Brasil noted in 2013 that landowners or ranchers were reportedly rarely convicted in cases that were brought to trial in relation to extra-judicial killings in connection with land conflicts.<sup>585</sup>

Freedom House noted in 2015 that Brazil's judiciary was overburdened, afflicted with corruption and subjected to intimidation and other external influences, particularly in rural areas.<sup>586</sup> The 2015 Business Anti-Corruption Portal added that corruption was prevalent in the legal system, particularly in local courts.<sup>587</sup>

The International Commission of Jurists also noted in 2011 that obstacles in accessing judicial remedy in cases of corporate abuse included high costs of legal procedures, ignorance of laws and rights, lack of public interest law firms working with NGOs, an absence of a judicial doctrine of precedent, and non-compliance with judicial decisions and other accountability mechanisms. According to same organisation, in some cases, workers who brought complaints forward faced actual or potential retaliation by companies.<sup>588</sup>



## Labour Courts

Labour courts uniformly enforce federal laws regarding employment relations.<sup>589</sup> As of 2015, there were 24 Labour Tribunals throughout the country,<sup>590</sup> and on average 1.95 labour judges per 100,000 inhabitants, a slight decrease from earlier years.<sup>591</sup>

In 2015, a total of 271.018 cases were pending at the Superior Labour Tribunal, of which 194.970 were new cases. Out of this figure, 276.892 reached judgment, reporting a 7.8 percent increase in effectiveness in relation to 2014 cases. Cases took on average 446 days to be resolved.<sup>592</sup>

In terms of forced labour, the Labour Court has a strong restraining role, since it can impose high fines that make the exploitation of forced labour economically disadvantageous.<sup>593</sup> However, according to a 2011 report from the International Commission of Jurists, efforts against forced labour were often impeded by a lack of effective penalties. The victim's lack of awareness of rights, delays in judicial procedures, the absence of legal representation due to poverty and the economic and political power of large companies were all factors impeding a victim's access to an effective remedy.<sup>594</sup> A report published by the Instituto Humanitas Unisinos noted that from 1996-2013 while more than 44,000 people were removed from slavery-like conditions no perpetrator has been convicted to more than the payment of low amounts of money or community service.<sup>595</sup>

The U.S. Department of State reported in 2015, however, that penalties imposed on labour violations were generally sufficient to deter violations and labour court enforced payments.<sup>596</sup>

## Civil Courts

Individuals or groups can use individual lawsuits and public civil actions to receive redress if a company violates their rights.<sup>597</sup> Remedy can in some cases also be achieved through Conduct Adjustment Agreements (TAC), whose aim is to defend collective rights. When signing a TAC, a company undertakes to adjust its conduct to the requirements established by law.<sup>598</sup>

According to the U.S. Department of State in 2015, backlogs were reported in the civil courts, and cases of corruption, political influence and indirect intimidation occurred.<sup>599</sup>

## Criminal Courts

Environmental crimes were the only crimes for which the constitution expressly recognizes corporate criminal responsibility.<sup>600</sup> However, in 2005 the Superior Court of Justice admitted criminal liability of legal entities, which can be prosecuted jointly with company managers.<sup>601</sup>

The Code of Criminal Procedures allows for a Tribunal by Jury in cases of crimes against the right to life.<sup>602</sup> In that context, cases against businessmen in connection to the assassination of human rights defenders by hired gunmen have been reported, particularly in Matto Grosso do Sul.<sup>603</sup> However, Reporter Brasil noted in 2013 that these cases were in the minority; the common pattern has been to convict the gunmen and not landowners or ranchers responsible for hiring them.<sup>604</sup>

Also, in case an abuse by the state or military police occurs, citizens have the right to file a complaint or criminal suit.<sup>605</sup> According to a Frontline Defenders report, the criminal justice system was unable to process cases efficiently and it failed to investigate, trial and punish perpetrators of violations, and police officers, private security firms and large landowners often went unpunished.<sup>606</sup>

# Non-Judicial Mechanisms

## National Human Rights Institution

Brazil does not have a National Human Rights Institution as per the UN Paris Principles.<sup>607</sup>

## Human Rights Secretariat

The Human Rights Secretariat receives complaints on human rights violations. Since its establishment in 1997, more than 170,000 complaints were registered.<sup>608</sup> The latest data available indicated that in 2012, 3,084 complaints in relation to LGBT's rights violations were received, compared to 1,159 in 2011.<sup>609</sup> In terms of violence against women, 3,150 complaints were received in 2013.<sup>610</sup>

## State Labour Prosecutor

The Office of the State Labour Prosecutor (MPT) is an autonomous public body, independent of the executive, legislative and judicial authorities, with the function to protect fundamental principles and rights at work.<sup>611</sup> The MPT uses public civil suits, including collective civil suits, to impose fines for violating minimum conditions set out by the law.<sup>612</sup> The MPT can open civil inquiries against employers who violate the law. Civil inquiries can lead to the accused having to sign a Conduct Adjustment Term (TAC) taking responsibility to correct the irregularities and pay compensation for the damage caused to the workers. If the accused refuses to sign the TAC, MPT can file a class action lawsuit in the Labour Court.<sup>613</sup>

The MPT has set special offices to address particular violations such as the National Coordination for the Fight Against Forced Labour,<sup>614</sup> the National Coordination for Trade Union's Rights, which deals with freedom of association and collective bargaining cases<sup>615</sup> and the National Coordination to Combat Children and Adolescents Exploitation to address child labour cases.<sup>616</sup>

## Public Prosecutor

A public prosecutor can take action in the following areas: penal action for the accountability of crimes against communities, support for situations of both rural and urban land conflicts through mediation, and civic public action for the defence of the diffuse and collective rights including ethnic and territorial rights, the defence of the environment, combatting pollution and access to natural resources.<sup>617</sup>

# Conciliation-Based Mechanisms

The Ministry of Labour and Employment (MTE) is responsible for mediating conflicts arising from individual complaints.<sup>618</sup> The Office of the MTE is empowered to take actions to redress violations of fundamental principles of rights at work by resolving violations directly with the enterprises concerned, initiating legal action in labour courts or by intervening in the judicial labour cases on behalf of victims.<sup>619</sup> According to latest official data available, 14,555 mediation cases took place in 2008, compared to 8,301 in 1997.<sup>620</sup>

Once a violation of a labour law is confirmed through an administrative process, inspectors apply fines. In case employers do not comply with warnings or sanctions, they may undergo repeated inspections or be taken to the judiciary through the MPT.<sup>621</sup>

## National Agrarian Ombudsman

In 2010, the position of the National Agrarian Ombudsman was created with the aim of promoting dialogue between rural workers and employers, indigenous people, afro-Brazilians, social movements, among others, in relation to land conflict. The Ombudsman also provides assistance to victims in judicial and administrative processes, and contributes with the implementation of the National Program for the Protection of Rural Human Rights Defenders.<sup>622</sup>

## Police-Based Mechanisms

The Civil Police is responsible for initiating police inquiries, which is the first step of a criminal prosecution. The Federal Police is also responsible for the investigation of forced labour and trafficking. According to the U.S. Department of State in 2015, the judicial investigation on trafficking cases took years and delays made trafficker's accountability difficult. Trafficking investigations were further hampered by local political pressure, threats from landowners; shortage of labour inspectors or police, and the remoteness of properties.<sup>623</sup>

The Federal Police has also set an online portal to receive complaints related to trafficking in persons, genocide, hate crimes and child pornography.<sup>624</sup> According to the government, 254 cases were reported in 2013.<sup>625</sup>

## Administrative Mechanisms

The Ministry for the Environment has regulatory powers and may impose administrative sanctions in cases of corporate abuse of human rights.<sup>626</sup> In 2011, the Special Representative of the Secretary General on the issue of human rights and business, John Ruggie, reported that in Brazil separate legal personality and limited liability do not apply to environmental damages caused by companies. If the company's assets are insufficient to cover damages, shareholders can be held liable regardless of fault. Hence, victims of environmental abuses could ask the lifting of the corporate veil when accessing remedy and accessing the parental company's capital should the subsidiary company's assets be insufficient to cover the environmental damage.<sup>627</sup>

Environmental agencies that issue environmental licenses have the mandate to inspect and impose sanctions on polluters when a violation of environmental regulations occurs. Inspectors initially use warnings, and in case no change is been documented, fines are applied. If the fine does not stop the offence, inspectors could close down the activity.<sup>628</sup> The OECD reported in 2015 that insufficient human resources limited inspection capabilities of the agencies, and fines imposed were often ineffective due to very low collection rates.<sup>629</sup>

Complaints can be filed against private entities through an *ação popular* against private entities to obtain protection of the environment. Administrative actions can result in the suspension of the company's environmental license and the imposition of fines. Nevertheless, according to a 2012 International Commission of Jurists report, judicial suspensions of fines imposed by the administration, or lack of compliance with the fines, limited the efficacy of administrative remedies.<sup>630</sup>

In terms of racial discrimination, the Secretariat for the Promotion of Racial Equality has set a Complaints Office to receive cases of racism or racial discrimination in order to conduct an investigation and further refer them to the respective legal jurisdiction. In 2015, 626 cases were received compared to 567 in 2014. Complaints can be submitted by email or phone.<sup>631</sup>

The Ministry of Labour established mobile units for the identification of forced labour cases. The latest data available reported that approximately R\$8 million (approx. US\$2 million) were obtained from employers involved in forced labour cases in 2014.<sup>632</sup>

In addition to that, the Ministry of Labour has developed an online application service to receive flagrant labour laws violations via smart phones. Benefits of the application include the immediate collection of evidence and the geographical location of the event.<sup>633</sup>

## Anti-Corruption Mechanisms

The General Comptroller's Office has set in 2014 an online portal where individuals can submit complaints of alleged corruption cases in agencies and departments of the executive power.<sup>634</sup> As of December 2015, more than 18,000 communications were submitted to the portal, including complaints.<sup>635</sup>

## Informal Mechanisms

Community Justice Centres were created in 2008 in order to facilitate access to justice to the most vulnerable people. As of 2014, those centres were located in 14 states across the country, supporting more than 100,000 individuals. The Centres are composed of community agents that can mediate in conflicts including in relation to property over land and debts.<sup>636</sup>

## International Mechanisms

### UN Human Rights Council

The Human Rights Council has set Special Procedures that are independent human rights experts with the mandate to report on human rights from a thematic or country-specific perspective. They can act upon information received on alleged violations of human rights and send communications to States and non-State actors asking for clarification and action.<sup>637</sup> One of those Special Procedures is the Working Group on the issue of human rights and transnational corporations and other business enterprises.<sup>638</sup>

### Inter-American Commission on Human Rights

The Inter-American Commission on Human Rights is a principal and autonomous organ of the Organization of American States whose mission is to promote and protect human rights. It has set an individual petition system,<sup>639</sup> by which the Commission investigates a human rights violation and makes recommendations to the State responsible to restore the enjoyment of rights whenever possible, to prevent a recurrence of similar events, to investigate the facts and make reparations.<sup>640</sup> The system has been used numerous times by victims in Brazil.<sup>641</sup>

### The World Bank Inspection Panel

The Panel that has the mandate to receive complaints from communities who have been or are likely to be affected by a World Bank-financed projects.<sup>642</sup> Five cases related to Brazil were presented to the

Panel since 1995,<sup>643</sup> including deforestation and environmental degradation;<sup>644</sup> environmental impact assessments and resettlement plans;<sup>645</sup> disclosure of operational information;<sup>646</sup> and natural habitats.<sup>647</sup>

## The Inter-American Development Bank Independent Consultation and Investigation Mechanism

The ICIM is an independent accountability mechanism that investigates allegations by groups or persons of communities that believe have been harmed by Bank-financed projects due to non-compliance with the IDB's operational policies.<sup>648</sup> The mechanism has been used in numerous occasions, and as of 2015, two cases remained open: the first one related to low-income neighbourhood improvement program Habitar Brasil and the second one related to Sao Jose dos Campos urban structuring program.<sup>649</sup>

## The Organization of Economic Cooperation and Development National Contact Point

The Secretariat for International Affairs at the Ministry of Finance, in its capacity of National Contact Point at the OECD has the authority to receive complaints about breaches of the OECD Guidelines for Multinational Enterprise.<sup>650</sup>

The Guidelines are recommendations addressed by governments to multinational enterprises and they provide voluntary principles and standards for responsible business conduct. The Guidelines include chapters on the following topics: Human Rights (Chapter IV); Employment and Industrial Relations (Chapter V); Environment (Chapter VI); Combating bribery, bribe solicitation and extortion (Chapter VII); Consumers Interests (Chapter VIII); Science and Technology (Chapter IX); Competition (Chapter X); and Taxation (Chapter XI).<sup>651</sup>

Three cases were presented in 2013. The first one related to abuses connected to a Brazilian manufacturing company in Bangladesh, the second one related to mining and quarrying in Brazil, and the last one related to manufacturing in Brazil.<sup>652</sup>

## The International Finance Corporation Compliance Advisor Ombudsman

Adverse impacts related to projects financed by the International Finance Corporation or Multilateral Investment Guarantee Agency of the World Bank can be mediated and/or investigated by the Compliance Advisor Ombudsman (CAO). CAO's mission is to address complaints by people affected by IFC/MIGA projects, and to enhance the social and environmental accountability of both institutions. The CAO has indeed both a dispute resolution function and an investigatory one.<sup>653</sup> A complaint was presented in 2004 regarding the issue of categorisation of adverse environmental impacts, including the indirect impacts of a soybean project in Matto Grosso forests.<sup>654</sup>

## International Labour Organization

Trade unions and employers' organisations can submit complaints to the International Labour Organization's Committee on Freedom of Association.<sup>655</sup> As of 2015, two cases were under follow-up.<sup>656</sup>

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