

MERCOSUR-EUROPEAN UNION TRADE AGREEMENT: RISKS AND CHALLENGES FOR INDIGENOUS PEOPLES IN BRAZIL

Ricardo Verdum





REPORT

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Acronyms and Abbreviations

| | |
|------------|--------------------------------------------------------------------------------------|
| 6ª CCR | 6th Coordination and Review Chamber |
| ABA | Brazilian Association of Anthropology |
| ADIN | Unconstitutionality Direct Action |
| APIB | Articulation of Indigenous Peoples of Brazil |
| APOINME | Articulation of Indigenous Peoples of the Northeast, Minas Gerais and Espírito Santo |
| APROSOJA | Soybean and Corn Producers Association of Mato Grosso |
| ARPIN-SUL | Articulation of Indigenous Peoples of the South |
| ARPIPAN | Coordination of Indigenous Peoples of the Pantanal |
| ATL | Terra Livre Camp |
| ATY GUASSÚ | Great Assembly of the Guarani People |
| CAR | National Environmental Registry of Rural Properties |
| CCJC | Constitution, Justice and Citizenship Commission |
| CLPI | Free, Prior and Informed Consent |
| CNPI | National Council for Indigenous Policy |
| COIAB | Coordination of the Indigenous Organizations of the Brazilian Amazon |
| CPI | Parliamentary Inquiry Committee |
| EFTA | European Free Trade Association |
| EU | European Union |
| FICO | Central West Integration Railway |
| FPA | Agriculture Parliamentary Front |
| FPE | Evangelical Parliamentary Front |
| FTA | Free Trade Agreement |
| FUNAI | National Indian Foundation |
| Ha | Hectare |
| IAEI | Agriculture, extractives and infrastructure industries |
| IBAMA | Brazilian Institute of the Environment and Renewable Natural Resources |
| IBGE | Brazilian Institute of Geography and Statistics |
| IL | Indigenous Land |
| ILO | International Labour Organization |
| LAC | Self-declaratory licence |
| LC | Complementary law |
| MAPA | Ministry of Agriculture, Livestock and Food Supply |
| Mercosur | Southern Common Market |
| MMA | Ministry of the Environment |
| MP | Provisional Measure |
| MPF | Federal Public Ministry |
| PDL | Legislative Decree Bill |
| PEC | Proposed Amendment to the Constitution |
| PGR | Attorney-General's Office |
| PL | Bill of Law |
| PPI | Investment Partnership Programme |
| Resex | Extractive Reserve |
| SENAR | National Rural Learning Service |
| SPU | Union Heritage Secretariat |



Executive Summary

This report was commissioned by the International Work Group for Indigenous Affairs (IWGIA) to describe and analyse the potential effects of the Trade Agreement between the Southern Common Market (Mercosur) and the European Union on Indigenous Peoples and their living conditions in Brazil.

The consummation of the Agreement between Mercosur and the European Union countries will enable the formation of one of the largest “free trade” areas on the planet. The two regional blocs involve 31 countries, with an estimated population of approximately 780 million, representing around 25% of the world economy. It is estimated that the European Union is currently the world’s largest agricultural importer: the bloc’s imports equalled around US\$182 billion in 2018. On the other hand, if urgent containment measures are not taken, we have no doubt that the pressure and advance of the agro-pastoral frontier will expand towards new areas, especially forest areas in the Amazon and over the Cerrado and Pantanal regions, promoting deforestation and generating countless social conflicts in the countryside. This will be mainly as a result of the growth in exports of meat, soy, corn and ethanol, produced in large industrial farms in Brazil and Argentina. And as the national economy’s dependence on the production and marketing of agricultural products increases, and the pressure for the expansion of the agricultural frontier grows, particularly aimed at incorporating new areas, this will result in increased pressure aimed at controlling the use and exploration of Indigenous territories, whether they are recognized/titled or in the process of delimitation by the Brazilian State.

In this report, we will see that the situation of the land rights of Indigenous Peoples and communities is at extreme risk of setback, especially as a result of a coalition of forces under the coordination of sectors interested in expanding the agricultural frontier over Indigenous Lands. The advantages that the Parties may eventually gain through the Agreement between Mercosur and the European Union will, conversely, be a disaster for the Indigenous Peoples and communities of Brazil.

There are 724 Indigenous Lands with some degree of formal recognition by the national state. They occupy an area of 117,377,021 hectares (1,173,770 km²), which means that 13.8% of the country’s land is set aside for the use of Indigenous Peoples. In legal and administrative terms, 487 Indigenous Lands (106,808,547 hectares) have obtained the highest level of formal recognition, that is, they have been approved by presidential decree, followed by registration in the Cadastral Registry of the corresponding district and in the Union Heritage Secretariat (SPU). In formal terms, this guarantees access to specific public policies aimed at Indigenous Peoples. In the 237 not ratified, the Indigenous Peoples that inhabit them are in a situation of greater vulnerability and risk because the current federal government has excluded those communities living in Indigenous Lands not yet approved from the State protection due to Indigenous Peoples. They are thus vulnerable to land grabbing and unjustified occupation by third parties, whether to produce commodities or to transform them into financial assets, and populations are subject to violence and actions of forced collective deterritorialization.

The report is organized as follows. In Section II, we note the recognition status of Indigenous Lands and offer a brief presentation of the issues involved. In Section III, we deal with the role of agricultural companies and their strategies in the Brazilian National Congress. In Section IV, we discuss the synergies between agriculture, extractivism and its associated infrastructure, particularly in the Brazilian Amazon. In Section V, we deal with the attacks on Indigenous Peoples’ self-determination, and describe the legislative proposals being discussed by the National Congress, an action being voted on in the Supreme Court, the criteria and procedures adopted by the National Indian Foundation (FUNAI) in the last two years, and an indisputably unconstitutional law approved by the government of Rondônia State. The report ends with a summary of the main issues arising



from this analysis and a recommendation.

The report is based on an analysis of academic literature, policy documents and legislation, documents produced by civil society (Indigenous, environmental and human rights organizations), and short interviews with key sources.



Photo: Tiago Miotto/Cimi



I - Introduction

After two decades of negotiations, in July 2019, Mercosur and the European Union announced the conclusion of an Agreement in Principle. This Agreement is not limited to opening new markets and reducing customs tariffs that regulate the purchase and sale of goods and services. It also covers political and cooperation issues, as well as migration, environmental protection and human rights. For the Mercosur countries, this is the bloc's first major trade agreement. Among the goods that Brazil is now able to export to the EU, agricultural products hold the greatest potential and mutual commercial interest. Brazil is currently the second largest supplier of agricultural products to the European market. And, from a strategic point of view, the Agreement is, for agribusiness in Brazil, an alternative to its current dependence on agricultural commodity exports to, mainly, China. But for countries like Germany, for example, the Agreement also means the possibility of expanding the markets for its chemical, automobile and machinery and equipment industries. The consummation of the Agreement between Mercosur and the EU countries will enable the formation of one of the largest "free trade" areas on the planet.² The two regional blocs together involve 31 countries, with an estimated population of approximately 780 million, representing around 25% of the world economy. It is estimated that the EU is currently the largest agricultural importer globally, and that in 2018 the bloc's imports totalled some US\$182 billion.³

On the other hand, if urgent containment measures are not taken, we have no doubt that the pressure and expansion of the agro-pastoral frontier will increase towards new areas, especially forest areas in the Amazon and over the Cerrado and Pantanal regions, promoting deforestation and generating countless social conflicts in the countryside, mainly as a result of the growth in exports of meat, soy, corn and ethanol from Brazil and Argentina, produced on large industrial farms.⁴ And as the national economy's dependence on the production and marketing of agricultural products grows, the need to expand the agricultural frontier, particularly aimed at incorporating new areas, will result in increased pressure aimed at controlling the use and exploration of Indigenous territories, whether they are recognized/titled or in the process of delimitation by the Brazilian State.⁵

Only two explicit mentions of Indigenous Peoples can be found in the documents that make up the Agreement. There is nothing related to the recognition/titling of their territories. The Trade and Sustainable Development chapter, Article 8, Trade and Sustainable Management of Forests, states that "The Parties recognize the importance of sustainable forest management and the role of trade in pursuing this objective and of forest restoration for conservation and sustainable use", and that each Party shall promote, as appropriate and with their prior informed consent, the inclusion of forest-based local communities and Indigenous Peoples in sustainable supply chains for timber and non-timber forest products, as a means of enhancing their livelihoods and promo-

2 To enter into force, the treaty needs to be approved not only by the European Parliament but also by all 27 EU member states and the four Mercosur member states - Argentina, Brazil, Paraguay, Uruguay (Venezuela is currently suspended). Any country's veto would be enough to halt the Agreement's progress.

3. More information on Brazil's possible trade integration with China, the US and the EU in: Buchmann, Massuquetti and Azevedo (2021). In August 2019, a bilateral trade agreement was also signed between Mercosur (Argentina, Brazil, Paraguay and Uruguay) and the European Free Trade Association (EFTA, which includes Switzerland, Liechtenstein, Norway and Iceland). More in GRAIN (2019, 2021).

4. Almeida (2010); Canuto, Luz and Santos (2020, 2021); Yoshie Martins Kato and Leite (2020).

5. In 12/2020, over a hundred social organizations signed a letter criticizing the Free Trade Agreement between Mercosur and the EU and calling on the Brazilian Parliament to promote a broad social debate on the impacts that the Agreement could bring to peoples, male and female workers, and the territories of the country (<https://www.inesc.org.br/mais-de-100-organizacoes-assinam-carta-contra-acordo-mercosul-ue/>). On the potential effects of the Agreement on the Cerrado biome and the Indigenous and traditional peoples who live there, see Ponte and Santos (2021).



ting the conservation and sustainable use of forests.⁶ There is also a brief and general reference dealing with intellectual property in the same Chapter, Article 10.2.⁷

In this report, we will see that the situation of Indigenous Peoples' and communities' land rights is at an extreme risk of setback, especially as a result of a coalition of forces under the coordination of sectors interested in expanding the agricultural frontier onto Indigenous Lands. The advantages that these sectors may eventually have with the Agreement will, conversely, be a disaster for Indigenous Peoples and land-based communities in Brazil.

II – Recognition of Indigenous Lands

According to the Brazilian Institute of Geography and Statistics (IBGE), a total of 896,917 people declared themselves Indigenous in the 2010 Census. Of this total, 324,834 were registered by the Institute as living in urban areas, and 572,083 in rural areas, inside or outside Indigenous Lands.

There are a total of 724 Indigenous Lands with some degree of formal recognition from the national state.⁸ They occupy a total area of 117,377,021 hectares (1,173,770 km²), which means that 13.8% of the country's land is set aside for the use of Indigenous Peoples. In legal and administrative terms, 487 Indigenous Lands (106,808,547 hectares) have reached the highest stages of formal recognition, that is, they are approved by presidential decree, followed by registration on the Cadastral Registry of the corresponding district and in the Union Heritage Secretariat (SPU). In formal terms this guarantees access to specific public policies aimed at Indigenous Peoples in the country.

Chart 1: Situation of Indigenous Lands in Brazil

| Status | ILs | Area (hectares) |
|----------------------------------------------------------|-------------------|---------------------------|
| Under Identification / Restricted use for non-indigenous | 120 | 1,084,049 |
| Identified | 44 (6.08%) | 2,191,924 (1.87%) |
| Declared | 73 (10.08%) | 7,293,033 (6.21%) |
| Reserved/Approved | 487 | 106,808,547 |
| Total | 724 (100%) | 117,377,553 (100%) |

Source: *Instituto Socioambiental*, situation at 28/07/2021.

6. Available at: https://trade.ec.europa.eu/doclib/docs/2019/july/tradoc_158166.%20Trade%20and%20Sustainable%20Development.pdf

7. Available at: http://siscomex.gov.br/wp-content/uploads/2021/01/Propriedade_Intelectual.pdf

8. The process of recognition/entitlement of Indigenous Lands is based on the provisions of article 231 of the 1988 Constitution, article 17 of Law 6001/1973 ("Indigenous Statute") and Decree No. 1775 of January 8, 1996, which provides for the administrative procedure for the demarcation of Indigenous Lands, among other measures.



In the 237 not ratified, the Indigenous Peoples that inhabit them are in a situation of greater vulnerability and risk. This is because the current federal government has excluded from the protection the State owes peoples and communities living on Indigenous Lands not yet approved. In this condition, lands are vulnerable to grabbing and undue occupation by third parties, whether for the production of commodities or to transform them into financial assets, and populations are subject to violence and actions of forced collective deterritorialization⁹ In a survey carried out by the Chamber of Indigenous Populations and Traditional Communities of the MPF (6th CCR/MPF) in June 2020, it was found that some 10,000 properties were superimposed on Indigenous Lands or areas of restricted use in different phases of regularization!¹⁰In the period from 2011 to 2021, only 28 areas were declared as Indigenous Lands, and the number of those approved was only 22!¹¹President Jair Bolsonaro has not ratified, and his government has not declared, a single area as Indigenous, fulfilling one of its main electoral campaign commitments in 2017 and 2018.

The situation of pressure and vulnerabilities is more serious when the collective territorial rights of Indigenous communities are not recognized, or when, despite having been registered, that is, their Indigenous Land created on paper, the State does not guarantee them the human and material conditions necessary for their protection. In order to discourage invasions and environmental depredation, the State must have an adequate and effective presence in these areas, strengthening the local capacities of the population to exercise surveillance and control, and territorial and environmental management. The parallel precariousness of the services provided by FUNAI, through systematic cuts made to its annual budget and the loss of political decision-making power in matters under its responsibility regarding environmental licensing processes, when it needs to assess and take a stand on the socio-environmental impact on a given Indigenous Land, has had direct negative effects on the territorial rights of Indigenous groups. Unfortunately, in a widespread and systematic way in the Amazon, and in the rest of the country in recent years, the situation even worsened from 2019 onwards, when bodies such as FUNAI and the Brazilian Institute of the Environment and Renewable Natural Resources (IBAMA), under the Ministry of the Environment (MMA), were politically colonized and administratively occupied by managers and technicians aligned with agribusiness interests.

Recent research on land grabbing in public forests in the Amazon found that, of the 49.8 million hectares of forests under State and federal responsibility, but not yet allocated to any category of use, 11.6 million hectares (23%) had been irregularly declared in the National Environmental Registry of Rural Properties (CAR) as rural properties for private use!¹² By 2018, researchers had identified 2.6 million deforested hectares in these areas. By 2019, this was the land category into which most forest fell in the Amazon. Researchers recommend that urgent measures be taken so that forest areas not yet earmarked can be allocated as protected, Indigenous or lands destined for sustainable use as determined by law. In the meantime, federal and State governments will need to make use of all available legal and punitive instruments to protect the integrity of these forests. If no-

9. On the financialization of land and the notion of land grabbing in regions with the presence of Indigenous and traditional communities, see Gilbert (2017). On land grabbing and the interests of the Brazilian rural sector, see Sauer (2010), Flexor and Leite (2017), Wilkinson (2017), Reydon and Fernandes (2018) and Silva (2019).

10. More information at: <http://www.mpf.mp.br/pgr/noticias-pgr/normativa-da-funai-que-fragiliza-protexcao-de-terras-indigenas-esta-suspensa-em-8-estados-da-federacao/> In October 2020, the Agribusiness Observatory (Observatório do Agronegócios no Brasil) released a survey similar to the one by the MPF and found that 297 Indigenous Lands in the country have part of their legal territory registered in the Rural Environmental Registry (CAR) in the name of individuals or legal entities, facilitating land grabbing, acts of violence and the expulsion of the Indigenous population (<https://deolhonosruralistas.com.br/2020/10/27/terras-em-297-areas-indigenas-esta-cadastradas-em-nome-de-milhares-de-fazendeiros/>).

11. More information at: https://pib.socioambiental.org/pt/Situa%C3%A7%C3%A3o_jur%C3%ADdica_das_TIs_no_Brasil_hoje

12. CAR was created by Law No. 12.651/2012 and is regulated by Normative Instruction MMA No. 2 of May 5, 2014. It is a digital database that gathers environmental information on rural properties and possessions. Registration in the CAR is the first step to achieving the property's environmental legal status.



thing is done, in the current scenario, the Amazon previously known as “no man’s land” may quickly descend into “lawless land” through the usurpation of public natural heritage!¹³

Pressure for access to public land by the agricultural sector, whether to produce or simply to hold it as a financial asset, has also influenced decisions at the subnational level. Through Complementary Law 1089, sanctioned by the Governor of Rondônia, Colonel Marcos Rocha (PSL), 202,000 hectares of protected areas have been extinguished in the State, removing protection from significant portions of the Jaci-Paraná Extractive Reserve and the Guajará-Mirim State Park. This law is being challenged in the courts. Jaci-Paraná has lost 171,000 hectares (almost 90% of its territory) and the Guajará-Mirim State Park 55,000 hectares. The passing of the Complementary Law opened up the Karipuna, Uru-Eu-Wau-Wau, Karitiana, Lage and Ribeirão Indigenous Lands to more invasions because the protected areas served as buffer zones!¹⁴Of the fifteen Indigenous Lands monitored by the Deforestation Alert System on Indigenous Lands with Confirmed Records of Isolated Peoples (SIRAD-Isolados), the Uru-Eu-Wau-Wau lands were the most invaded in June: 57.6 hectares were deforested in just 30 days. The second area that suffered most from illegal deforestation was the Araribóia, with two invasions identified on the margins of the territory, and finally a new deforestation area in the Piripkura, with 122 hectares logged less than one metre from the boundary of Indigenous Lands. In total, 60 hectares were deforested within the monitored territories!¹⁵

As Brazil today has an openly anti-Indigenous and anti-environmental government - as expressed through speeches, administrative measures and omissions, politically sustained mainly thanks to the support it receives from the military¹⁶and agribusiness - the direct negative effects that the Agreement could have on a significant portion of the country’s Indigenous population are worrying. Over the past two years, FUNAI has been orientated not to carry out any demarcation of new Indigenous Lands and to authorize the installation of third parties on the lands already recognized by the Indigenous body itself as traditional but which are neither approved nor are Indigenous reserves or fully regularized Indigenous domain lands, a determining factor in the intensification of land grabbing actions. This policy is exactly what came to be guided by the text presented by FUNAI in its Normative Instruction No. 9 of April 16, 2020. Thus, although the importance of applying a “free and informed prior consultation” for Indigenous Peoples and affected communities is mentioned in the negotiations of the Mercosur-EU Agreement, it is not yet defined how this will be done, and so the document leaves the Bolsonaro government ample room for manoeuvre, admittedly contrary to the application of this and other provisions of ILO Convention 169, a position brokered by the Agriculture Parliamentary Front (FPA), which enjoys broad support in the National Congress.¹⁷

13. Azevedo-Ramos et al (2020).

14. More information at: <https://www.greenpeace.org/brasil/blog/apos-aprovacao-de-lei-que-reduziu-areas-protegidas-em-rondonia-ameacas-e-invasoes-aos-territorios-indigenas-se-intensificaram/>

15. More information at: https://www.socioambiental.org/sites/blog.socioambiental.org/files/nsa/arquivos/isa_si_jun_af01_desktop.pdf

16. Martins Filho (2021).

17. Pregori (2021); APIB (2021); ABA (2021); FPA (2021a, 2021b).



III – Agribusiness Policies

Over the last two decades, the agricultural and extractive industries, and their associated logistics infrastructure, have exerted strong pressure on political decisions and public policies for the recognition/titling of land to Indigenous, traditional and rural peoples and communities in Brazil!¹⁸This is particularly so for the agricultural industry, which from 2005 organized itself as a parliamentary bloc in the National Congress, creating the so-called FPA, also known as the ruralist bench. The FPA and the Evangelical Parliamentary Front (FPE) are the most organized supra-party thematic collegiate bodies, with the greatest political strength in the National Congress. While coalitions on certain issues between both fronts are not uncommon, FPE members are also members of the ruralist bench.¹⁹

As of 2013, the FPA set in motion a strategy primarily focused on opposing the demarcation of Indigenous Lands and questioning the legal instruments and administrative processes of this public policy. Over the last decade, disqualification of the work of anthropologists in preparing reports and expert reports, characterized as “partial” and “ideological”, was one of the main political strategies to delegitimize the regularization of Indigenous Peoples’ traditional lands, as well as other traditional communities. They also questioned FUNAI, the Brazilian Association of Anthropology (ABA) and Indigenous, human rights and environmental NGOs.²⁰

In the case of Indigenous Lands already recognized/titled, the strategy to gain access turned out to be, fundamentally, the integration of Indigenous territories and territorialities (duly adapted and subordinated) into the multi-scale and multi-site dynamics of agribusiness production and reproduction²¹In the State of Mato Grosso, the case of the Xavante from the Sangradouro/Volta Grande Indigenous Land is a good example: it is sustained and made viable through coordination and partnership involving an Indigenous association created for this purpose, the rural landowners’ union, the Soybean and Corn Producers Association of Mato Grosso (APRO-SOJA), the National Rural Learning Service (SENAR), town halls, seed and machinery supplier companies, the financial system, federal parliamentarians and, rubber-stamping the agricultural enterprise on Indigenous land, FUNAI. The case we are referring to is the Sangradouro and Volta Grande Indigenous Cooperative operating on Indigenous land, formed from the incentives granted to the Primavera do Leste rural union. The so-called “Indigenous Independence Project”, conceived by the leadership of the Rural Union, is part of the most recent onslaught of national and international agricultural sector economic and financial groups against Indigenous territories in the Mato Grosso Cerrado. In records available at FUNAI and on the aforementioned rural union websites, and in videos made by some Xavantes, there is numerous evidence of this union actions aimed at creating a Cooperativa Agrícola Indígena and the agricultural project. The organization of trips to Pareci Indigenous territory, where there is another soy production cooperative operating, and the running of courses for tractor drivers and others. A trip to Brasília by some Xavantes was organized as part of this strategy, where they took part in a political rally in support of President Jair Bolsonaro on the Esplanade of Ministries on May 15. The discourse by the participants of the Indigenous cooperative incessantly repeats notions such as poverty, hunger and underdevelopment to refer to their own people. If these problems are real, the cause is their

18. Verdum (2012, 2015a, 2015b); Verdum et al (2019); Bebbington et al (2018); Bebbington, Verdum, Gamboa and Bebbington (2018, 2019).

19. On the membership and political action of the agribusiness sector in Brazil, see Heredia, Palmeira and Leite (2010), Pompeia (2020, 2021) and Pompeia and Schneider (2021).

20. A instalação e o andamento dos trabalhos da Comissão Parlamentar de Inquérito da Fundação Nacional do Índio e do Instituto Nacional de Colonização e Reforma Agrária (CPI Funai/Incra), ocorrido entre 2015 e 2017, isso fica bastante evidente. Mais informações em: Costa (2019) e Santos (2020).

21. See: <http://www.portal.abant.org.br/2021/05/19/a-nova-investida-do-setor-agropecuário-e-o-etnocídio-indígena-no-cerrado/>



encirclement by agribusiness in the Cerrado and the many roads, small hydroelectric plants and railways (FICO) projects in the pipeline²²In neither case do Xavante or Pareci have direct land leases, which is prohibited by law because Indigenous Lands are Union lands²³

IV – Synergies between Agriculture, Extractivism and Infrastructure

Large-scale extraction of plant resources (natural or cultivated), minerals and hydrocarbons dates back a long way in the relationship between the Brazilian economy and the global economy, both in colonial and post-colonial periods. Harnessing these resources continues to play a prominent role in the country's development strategies. It was the main path adopted by the inclusive development policies promoted by the two terms of President Luís Inácio Lula da Silva and the first term of President Dilma Rousseff - policies to reduce poverty and income inequality, environmental justice, gender equity, human rights and citizenship - generating ambiguous outcomes. We have seen the production and implementation of large-scale spatial plans linking agribusiness, extractive and infrastructure industries, promoting the opening and consolidation of new extractive and agricultural frontiers, and greater synergy between extractivism, agribusiness, infrastructure, financing and political decisions. Legal and institutional reforms aimed at deregulation, promoting agribusiness, extractive industries and infrastructure as an explicit development strategy; further regulatory changes in access to land and natural resources; and deregulation and greater constraint on the enforcement of environmental and territorial rights and Indigenous Peoples' self-determination. In addition to organized deregulation, extra-legal processes were added, such as clandestine and illegal deforestation and extraction of timber and minerals. Such is the case of the Yanomami Indigenous Land and the Tapajós River region, in Pará State, affecting several Indigenous communities that live there.

By defining the guidelines for the construction of hydroelectric plants, Brazil's energy policy meets new demands for expansive economic sectors, including mining and agribusiness, which have played a decisive role in the process of reprimarization of the national economy by strengthening a neo-extractive growth model based on commodities exports. Currently, government infrastructure policies are central to the national planning guidelines.²⁴

Below is a map that explains the growing synergy between agriculture, extractivism and infrastructure. The main logistics routes in the Brazilian Amazon are represented, including waterways, railways and highways, intermodal and trans-shipment terminals, some already existing and others under construction or in the licensing process. With the demand for grains and ores from China, the way out through the transport corridor known as Arco Norte tends to be accelerated, given the ensuring reduction in transport costs of up to 34%, which will boost grain production, especially in the western region of Pará and northern Mato Grosso.

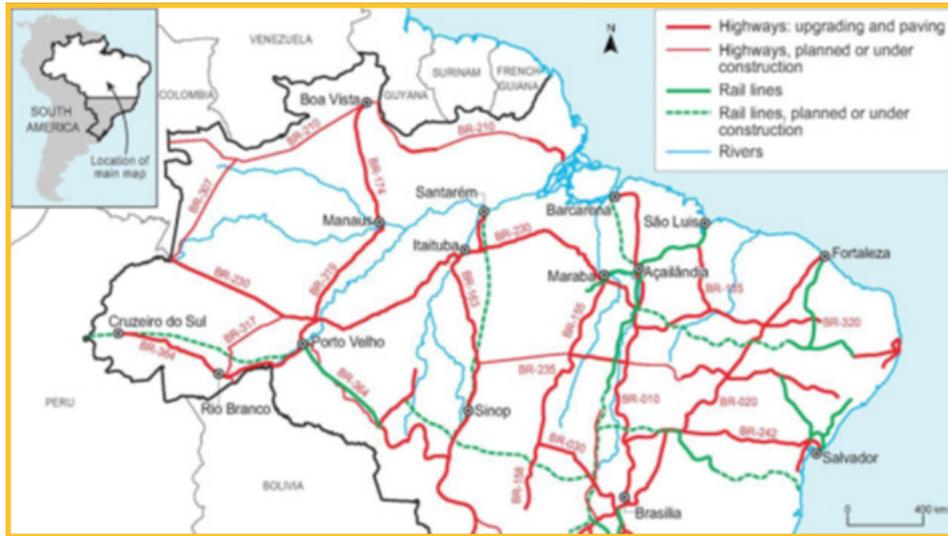
22. More information at: Gomide and Kawakubo (2006); Reporter Brasil (2010); ABA (2021).

23. On February 24, 2021, FUNAI published Joint Normative Instruction 1, which provides for the procedures to be adopted throughout the environmental licensing process for projects or activities located or developed within Indigenous Lands whose entrepreneurs are Indigenous organizations. According to paragraph 1 of article 1, "the mixed organizations involved must be of majority indigenous domain, in accordance with the inalienability and unavailability of indigenous lands, their lease being prohibited" <https://www.in.gov.br/en/web/dou/-/instrucao-normativa-conjunta-n-1-de-22-de-fevereiro-de-2021-304921201>

24. Verdum (2012, 2015).



Arco Norte is a strategic plan comprising seven Brazilian ports located above the 16° Parallel (six in the North and one in the Northeast): Porto Velho (RO); Miritituba (PA); Santarém (PA); Barbacena (PA); Itacoatiara (AM); Manaus (AM); and Itaqui (MA)²⁵For transport by rail, the EF-170 (MT/PA) railroad, known as Ferrogrão, is being licensed as a parallel route to the BR-163, causing social and environmental impacts along the basins of the Xingu and Tapajós rivers, particularly in the Xingu Indigenous Park. Designed to cover 1,000 kms between Itaituba (PA) and Sinop (MT), the railway will connect the largest grain-producing region in the country to the port of Miritituba (PA). There is no evidence that, in accordance with legal provisions, the federal government has listened to the opinions of affected Indigenous Peoples and communities²⁶



Source: Bebbington et al (2018)

The main waterways by which mineral and agricultural commodities (grains) are transported through the Brazilian Amazon are shown below. Investments in transport infrastructure for agricultural products will increase the flow of minerals extracted from the region²⁷

25. More on Arco Norte at Centro de Estudos e Debates Estratégicos (2016); Oliveira and Théry (2018); Silva, Soares and Lucas (2020).
26. Costa et al (2021); Arini (2021).
27. For more on mineral extraction in the Brazilian Amazon, see Silva Filho (2020).

Chart 2 - Commodity outflows by waterway in the Brazilian Amazon

| <i>Waterway</i> | Main products shipped | Notes |
|-------------------------------|------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Tocantins-Araguaia | Bauxite, alumina | It currently has a navigable length of 2,250 km, covering Goiás, Mato Grosso, Tocantins, Maranhão and Pará states. Along its course, there are five dams – one of which accommodates the Tucuruí lock – and its navigability is restricted to six months of the year due to obstacles such as sandbanks, rocks and crossbars. As it is connected to the Solimões-Amazonas waterway, it shares the transport of large volumes of cargo with the former. For inland navigation, the main cargo is transported by semi-trailers, which are mainly concentrated on the Manaus/AM –Belém/PA line. In the 2016-2019 PPA, a budget of R\$ 800 million is anticipated for the Adequacy of Navigability and Expansion of the Tocantins-Araguaia Waterway. |
| Solimões-Amazonas Complex | Soy, bauxite and iron ore | The main transport route in the Amazon Region and one of the largest hydrographic networks in the world. It is some 16,797 km long. Bauxite, for example, uses the Solimões-Amazonas corridor departing from Oriximiná/PA and Juruti/PA for export abroad or to other Brazilian port facilities via cabotage. In 2013, 47.8 billion TKU (Tonnes per Kilometre) were transported on this waterway, representing more than 74% of the Brazilian waterway TKU. |
| Madeira | Soy and corn | The Madeira waterway is the second in terms of TKU in Brazil. There are no hydraulic works and few restrictions in times of drought. Even with good natural navigation conditions, it requires signalling and dredging to maintain an adequate channel for the transport of grains, fuels and other products. Much of the soy produced in the Brazilian Midwest comes from Porto Velho/RO and goes down the Madeira River to Itacoatiara/AM or Santarém/PA, from where it is exported. |
| Tapajós – Teles Pires | Soy and corn | Alternative for the flow of grain production from the central region of the country. Its potential for navigation can reach up to 1,043 km. The waterway transport between Santarém and Cachoeira Rasteira directly depends on the construction of hydroelectric plants with lock systems, which would allow navigation along extensive segments of the rivers. In addition, between Itaituba and Cachoeira Rasteira, additional measures will be needed, such as rock demolition, dredging, river regularization and signalling. Environmental issues and the presence of Indigenous Peoples along the river channels have added uncertainty to the viability of this waterway. |
| Paraguay/Paraná ²⁸ | Iron ore and manganese | These mineral commodities are shipped in Corumbá/MS and Ladário/MS and transported to the ports of Argentina, from where they are exported. |

Sources: ANTAQ, 2013, 2014. Self-elaboration.

28. The Paraná River, one of the main commercial waterways in South America, has reached its lowest level in nearly 80 years due to a prolonged drought in Brazil that scientists attribute to climate change. At peril is a vast ecosystem that includes potable water for 40 million people, the livelihood of fishing communities and farmers, and the navigability of this major export hub. More on “Vale iron ore shipments at lowest amid Parana holocaust drought”, August 10, 2021, <http://www.minesandcommunities.org/article.php?a=14644>



V – Attacks on Indigenous Self-Determination

When analysing the institutional and non-institutional political scenario, we need to go back to the conceptual and political discussion that marked and, in a way, guided the advances made in the last 50 years regarding Indigenous rights in Brazil and other Latin American countries. I am referring to the concept of self-determination applied to Indigenous Peoples within the scope of the Brazilian national state. The current Brazilian political scenario is one of rupture with the last three decades which, despite setbacks and oscillations, were generally defined by key advances in the definition and realization of Indigenous Peoples' rights.²⁹ Since the second half of the last decade, worrying changes have taken place in the Brazilian public sphere. The fragile structures of social participation and shared management of public policies have been undone or weakened, and changes are being made to the laws, allowing a broader and more intense human intervention in natural areas. The political-economic agents responsible for the extraction of natural resources (mining, agriculture, timber, others) and the development of large-scale infrastructure, including dams, hydroelectric plants, power transmission lines, waterways and highways, are among the main forces driving these vicissitudes.³⁰

The meaning and political use of the idea of self-determination – and associated concepts such as freedom, autonomy and sovereignty, among others – is at the heart of several decisions regarding Indigenous Peoples and the territories in which they live that are being taken or that could be taken in this and the coming years by the three powers of the Brazilian Republic. This becomes clear when we analyse and contextualize a particular set of measures taken by the federal public administration over the last 27 months, and the legislative projects that have been prioritized, especially by sectors that, within the National Congress, are seeking to implement State reforms by establishing a legislative architecture aimed at ensuring access to what seems to be its main interest: the lands of Indigenous Peoples and the natural resources that are found therein. Next, we will review the main legislative proposals that are currently being processed by the National Congress and which put at risk the Indigenous rights conquered with and from the Federal Constitution of 1988. As I hope will become quite clear, the political agents proposing these are closely linked to large landowners and national and globalized agribusiness.

Around 180 legislative proposals related to the rights of Indigenous Peoples are in the process of being passed in the National Congress. Not all are intended to limit or withdraw Indigenous rights. On the contrary, many of them seek to regulate or even expand rights already established by the Federal Constitution of 1988, while others intend to make the provisions of ILO Convention 169 operative, introduced in the Brazilian legal and normative framework via publication of Legislative Decree 143 of June 20, 2002, and Decree 5051 of April 19, 2004.

However, some of the various legislative proposals that aim to restrict or even withdraw established rights from Indigenous Peoples are truly worrying. Not only for what they propose but also mainly because they have coordinated and mobilized various interest groups within the National Congress. In particular, interests that fall upon traditional Indigenous territories and on the rights of these populations to use the natural resources present in these areas. In the following, I will indicate and review the legislative proposals that have generated the greatest concerns among Indigenous organizations and their allies within Brazilian civil society. Although it cannot be said that the proposals are directly related to the Mercosur-EU Agreement, the fact that agricul-

29. Verdum (2017); Carneiro da Cunha and Barbosa (2018); Barreto Filho and Ramos (2019); Bonilla and Capiberibe (2021).

30. Ver Bebbington, Bebbington et al (2018); Bebbington, Verdum et al (2018, 2019); Castro (2018); Verdum (2012, 2015)



tural production is of great relevance for this deal makes these, whether voluntarily or involuntarily, a driving force behind the proposed measures. Hence the need to pay special attention to what could happen after their approval.

1. In the National Congress

a) Proposed Constitutional Amendment 187/2016 – The proposal was presented to the Board of the Chamber of Deputies by Deputy Vicentinho Júnior (PSB/TO) in February 2016. It is aimed at “adding §8 to art. 231 of the Federal Constitution of 1988, in order to allow indigenous communities to practice (mechanized) agricultural and forestry activities on their lands, as well as commercialize production and manage their income”. After being debated in the Constitution, Justice and Citizenship Commission (CCJC) for more than two years and having Deputy Alceu Moreira (PMDB/RS) of the ruralist bench as rapporteur, the proposal was filed and dismissed in early 2019. The Proposed Amendment to the Constitution (PEC) was finally approved under the CCJC in August 2019 and is currently subject to consideration by the Chamber’s Plenary.

b) Bill 490/2007 – The project was presented to the Board of the Chamber of Deputies by Deputy Homero Pereira (PR/MT) in March 2007. He proposed modifying Law 6001 of December 19, 1973, which regulates the Indian Statute, to make the Legislative Power part of the recognition/titling process of Indigenous Lands. It was debated and approved by the Agriculture, Livestock, Supply and Rural Development Commission (CAPADR) in 2008, then rejected by the Human Rights and Minorities Commission (CDHM) in 2009 and later archived and de-archived three times (2011, 2015 and 2019). In June 2021, the bill was debated and approved by the Constitution and Justice Commission (CCJC), but not before undergoing profound changes. In place of the original text, the CCJC plenary approved a substitute project promoted by CAPADR. This debate and decision were followed remotely and in person by various Indigenous movements and organizations,³¹ with demonstrations against its approval that were harshly repressed by the military and National Congress security personnel.³² As proposed by the original Bill 490, the replacement text incorporated a set of provisions present in other bills that were appended to it, for the most part creating obstacles or hindering the process of recognition/entitlement of Indigenous Lands. It includes the so-called time frame, which briefly means that, for the purposes of demarcation, “lands traditionally occupied by Brazilian indigenous peoples are those which, on the date of the promulgation of the Federal Constitution, October 5, 1988, were simultaneously: –I - inhabited on a permanent basis; II – being used for their productive activities; –I - essential for the preservation of environmental resources necessary for their well-being; –V - necessary for their physical and cultural reproduction, according to their uses, customs and traditions”. Otherwise, due proof would be needed that there was a persistent dispossession preventing the presence of the claimant Indigenous community in the place and on the date considered to be the time frame. In addition, the administrative processes (Article 14) for the demarcation of Indigenous Lands that have not yet been completed will be aligned with the provisions of this Law (if/when approved); and any demarcation that does not meet the precepts established by this Law (Article 15) will be null. The bill also establishes (Article 20) that indigenous peoples’ usufruct does not cover: –I - the use of water resources and energy potential, which will always require the authorization of the National Congress; –I - ex-

31. On June 29, 2021, more than 160 civil society organizations sent an open letter to the president of the Chamber of Deputies, Arthur Lira, opposing Bill 490/2007, which hinders the demarcation of Indigenous Lands and generates an environment of vulnerability for the territories and living conditions of Indigenous populations, whether they are recognized/titled or not. For the entities that signed the document, the bill is an attack on native peoples and the environment. See: <https://www.conectas.org/wp-content/uploads/2021/06/Carta-para-Sr-Arthur-Lira-Repudio-a-violencia-contra-povos-indigenas.pdf>

32. <https://congressoemfoco.uol.com.br/direitos-humanos/manifestacao-indigena-contra-demarcacao-de-terras-e-reprimida-pela-policia/>



ploration and mining of mineral wealth, which will require the authorization of the National Congress, ensuring their participation in the profits, in accordance with the law; III – permissions that need to be obtained for prospecting and, where appropriate, mining; –V - areas whose occupation meets the relevant public interest of the Union. And that Indigenous usufruct should not overlap with the “interests of national defence and sovereignty”, enabling the implementation of various types of undertakings on Indigenous Lands already recognized and titled, such as mining, hydroelectric plants, highways and others. The bill also allows (Article 27) “the exercise of economic activities on indigenous lands, by the community itself, allowing the cooperation and contracting of non-indigenous third parties”. The institution of the time frame, the limitations imposed on Indigenous usufruct, as well as the non-incorporation of the provision of free, prior and informed consent, are the three main critical points and reasons for the Indigenous movement’s and its allies’ discontent in relation to the current (substitutive) Bill 490/2007. In practice, given the prevailing political profile and dominant economic interests in the National Congress, we have no doubt that if the bill becomes Law, the obstacles to realizing the Indigenous right to land as established in the Federal Constitution of 1988 will be considerably greater. Due to the many divergent opinions, the matter must be considered by the Plenary of the Chamber of Deputies, on a date not yet established. If approved, the bill will move on to the Federal Senate.³³

c) Bill 191/2020 - Authored by the Executive, through this bill the federal government wants to authorize the exploration and extraction of minerals and hydrocarbons on Indigenous Lands, as well as the installation and operation of hydroelectric plants, transmission lines, distribution and pipeline systems, among other associated infrastructure. In addition, it intends to authorize the economic exploitation of Indigenous Lands through activities such as agriculture, livestock, extractivism and tourism; and the granting of permits for small-scale gold mining and growing of genetically-modified organisms (GMO). In the text of the bill and the justification that accompanies it, the government questions the fairness of the process of demarcating Indigenous Lands, including those that have already been ratified by past governments, and denies the Indigenous population the right to consultation and free, prior and informed consent. It proposes institutional arrangements and a mechanism for “Indigenous participation” which, in contexts of vulnerability, poverty and asymmetries, creates room for the action of corruption networks and patronage practices, resulting in the installation or intensification of conflicts in rural communities. In short, it opens a wide spectrum of ways by which to instrumentalize and commodify territories, nature, knowledge, social relations, bodies and subjectivities, both individual and collective, in addition to putting the lives of isolated and recently contacted Indigenous Peoples at serious risk.

d) Draft Legislative Decree 177/2021 – Through this decree, the President of the Republic would be authorized to withdraw Brazil from ILO Convention 169. It is a proposal of direct interest to the agricultural sector, and agribusiness in general. The project author is no other than Federal Deputy Alceu Moreira (MDS/RS) who, in the 2019-2020 biennium, held the presidency of the FPA, the best organized and most politically powerful supra-party thematic collegiate in the National Congress. In the first half of 2019, FPA was the main advocate for the proposal to transfer the competence for identifying and titling Indigenous Lands to the Special Secretariat for Land Affairs at the Ministry of Agriculture, Livestock, and Food Supply (MAPA). Upon taking office on January 1, 2019, President Bolsonaro issued Provisional Measure 870, through which he transferred the process of identification, delimitation and titling of Indigenous Lands to MAPA. If this desire were to be fulfilled, it would place the possibility of enforcing the territorial right of Indigenous Peoples in the hands of the social agents who have less interest in its materialization as public policy. A detailed analysis of the bill, its

33. Coinciding with the vote on Bill 490 at the CCJC, several technical notes critical to the project were produced, see: APiB (2021), DPU (2021), Cimi (2021), ISA (2021), Wapishana (2021) and MPF (2021). The deliberative meeting that approved the legislative project under the CCJC was held on 06/23/2021. The full meeting recordings are available at: <https://www.camara.leg.br/evento-legislativo/62049>



constitutionality and its possible effects, was published by the 6th Coordination and Review Chamber of the Federal Public Ministry (6th CCR/MPF) on March 1, 2019. In this, the MPF concludes that it is an unconstitutional measure that should be rejected by National Congress. Reactions such as this, added to a broad national and international social mobilization against the Bolsonaro government's pitch, achieved the desired effect: the proposal was rejected on two occasions by National Congress and, the second time, the refusal was reinforced by an opinion, also unfavourable, of the Federal Supreme Court (STF)³⁴ Returning to Bill 177/2021, however, ten days after its registration with the Board of the Chamber of Deputies on May 6, 2021, the FPA published a note on its website expressing total support for the legislative project. They argue that the need for prior, free and informed consent with institutions representing Indigenous Peoples, as established by Convention 169, violates national sovereignty and makes the development of the country's infrastructure almost impossible. They are also against the criterion of "Indigenous" self-identification as a key fact in the application of territorial law, as well as the application of the concept of "Indigenous people"³⁵ On June 1, 2021, the MPF and the Brazilian Association of Anthropology (ABA) brought together lawyers and jurists to debate the political intentions, economic interests and social implications of Brazil's withdrawal from ILO Convention 169.³⁶

e) Bill 2395/2015 – Authored by federal deputy Vicentinho Júnior, the bill proposes modifying Law 6001/1973 ("Indigenous Statute") in order to allow Indigenous communities to practise agricultural and forestry activities on their lands, as well as to commercialize what is produced and manage any income earned. As Indigenous territories are Union lands, Indigenous Peoples are not allowed to produce monocultures for sale nor to lease lands to third parties. In practice, the three projects are aimed at creating the legal conditions for Indigenous people to develop extensive monoculture agriculture and/or lease their lands to non-indigenous people to develop this type of industry. Two other projects were added to this: a) Bill 1443 of April 19, 2021, authored by Deputy Carla Zambelli (PSL/SP), "on indigenous economic freedom, ensuring the autonomy of communities for the management and use of their lands and heritage"; b) and Bill 3045 of May 21, 2019, authored by Deputy Nelson Barbudo (PSL/MT), "on the exercise of agroforestry activities on indigenous lands and other measures".

f) Bill 3729/2004 – Authored by Deputies Luciano Zica (PT/SP), Walter Pinheiro (PT/BA), Zezéu Ribeiro (PT/BA) and others, the bill provides for environmental licensing; regulates item IV of § 1 of art. 225 of the Federal Constitution; amends Laws 9605 of February 12, 1998, and 9985 of July 18, 2000; and revokes provisions of Law 7661 of May 16, 1988, among other arrangements. The replacement for Bill 3729/2004, prepared by Rapporteur Deputy Neri Geller (PP/MT), was approved by the Chamber of Deputies on May 13, 2021, with a large majority of votes and massive support from the ruralist bench, and is now in the process of evaluation by the Federal Senate. Although it is known as the General Environmental Licensing Law, in practice it establishes the so-called self-declaratory licence (LAC), issued automatically without prior analysis by any agency, and restricts

34. More information on the MPF demonstration in: <http://www.mpf.mp.br/atuacao-tematica/ccr6/documentos-e-publicacoes/publicacoes/nota-tecnica/2019/nota-tecnica-1-2019-assinada.pdf>. About the STF decision, see: <https://portal.stf.jus.br/noticias/verNoticia-Detalhe.asp?idConteudo=418183>.

35. FPA note is available in: <https://fpagropecuaria.org.br/2021/05/06/nota-de-apoio-ao-pdl-177-2021/>

36. The webinar "Importance of ILO Convention 169 for the protection of the rights of Indigenous Peoples and Traditional Communities" had the participation, as speakers, of Joênia Wapichana, federal deputy and coordinator of the Joint Parliamentary Front in Defence of Indigenous Peoples; Luiz Eloy Terena, representative of the Articulation of Indigenous Peoples of Brazil (Apib); Jefferson Pereira, Quilombola lawyer at the National Coordination for the Articulation of Quilombos (Conaq); Alfredo Wagner de Almeida, ABA representative; José Francisco Calí Tzay, UN Special Rapporteur on the rights of indigenous peoples; and Martin Hahn, Director of the ILO Office in Brazil. Ubiratan Cazetta, National Attorney and president of the National Association of Attorneys (ANPR), and Ricardo Verdum, of ABA, also participated as commentators. The event was livestreamed and is available online at: <https://youtu.be/FEQx0JJSn9k>



social participation in the licensing process, including communities directly and indirectly affected by infrastructure projects.³⁷The bill further restricts, weakens and, in some cases, even extinguishes an important part of the instruments for evaluating, preventing and controlling the socio-environmental impacts of economic activities and projects in the country. Transformed into law, the bill would encourage and legalize the deforestation that, in general, goes hand in hand with infrastructure development in the Amazon, such as roads and hydroelectric plants. If approved, at least 297 Indigenous Lands - 41% of the total area with ongoing demarcation processes at the National Indigenous Foundation (FUNAI) but not yet ratified - would be disregarded for the purposes of evaluating, preventing and compensating for social and environmental impacts. This is because the bill only provides for licensing of Indigenous territories that have already been approved, that is, with demarcation complete, or with restricted use for Indigenous groups living in isolation. Quilombola territories that are not yet recognized/titled are also disregarded and placed at risk and vulnerability.³⁸

g) Bill 510/2021 - Authored by Senator Irajá (PSD/TO), the bill provides for land title regularization of occupations, by alienation or granting of rights of use in areas under the Union's domain; establishes the date of May 25, 2012, when the current Forest Code was issued, as a time frame for occupation; expands the area subject to regularization to up to 2,500 hectares; prior inspection of the area to be regularized is waived, and may be replaced by an occupant declaration; among other arrangements. In general terms, the bill resumes the proposal submitted by the federal government on December 10, 2019, through Provisional Measure 910, which had a similar objective but expired because National Congress was unable to deliberate the matter in a timely manner, thus expiring on May 19, 2020.³⁹The draft of the provisional measure was drawn up within the scope of the MAPA, which amended provisions of Laws 11,952/2009, 8666/1993 and 6015/1973, aimed at making the land tenure regularization procedure "more agile". In practice, like Bill 510, Provisional Measure 910 would encourage continuity of the occupation process and the deforestation of public (Union) lands; it would especially benefit recent cases of invasion and land grabbing, including Indigenous Lands not yet recognized/approved.⁴⁰

h) Bill 2633/2020 - For Brenda Brito (2020: 19), "Bill 2633/2020 brings limited measures to increase the efficiency of land tenure regularization. Furthermore, it contains propositions that can weaken the necessary safeguards for land tenure regularization policy, in addition to the risk of creating conditions that encourage

37. For more information on the main and most serious problems of replacement Bill 3729/2004, see the following document signed by eight Indigenous, environmental and human rights organizations: <https://www.inesc.org.br/wp-content/uploads/2021/05/Principais-pontos-criticos-PL-3729-Subs.-Neri-Geller.pdf>

38. On May 17, 2021, the Brazilian Society for the Advancement of Science (SBPC) officially declared itself against the proposal for a new General Law on Environmental Licensing, arguing that the legislative initiative is incompatible with the Federal Constitution and in violation of principles of national environmental management. An open letter disseminated by SBPC is available at: <http://portal.sbpnet.org.br/noticias/sbpc-se-manifesta-contra-aprovacao-da-nova-lei-geral-do-licenciamento-ambiental/> For more information on the main and most serious problems of replacement Bill 3729/2004, see also a document signed by eight Indigenous, environmental and human rights organizations available at: <https://www.inesc.org.br/wp-content/uploads/2021/05/Principais-pontos-criticos-PL-3729-Subs.-Neri-Geller.pdf> A manifesto signed by 28 Indigenous, environmental and human rights organizations against Bill 3791/2004 was released on May 11, 2021. Available at: <https://apiboficial.org/files/2021/05/Manifestac%C3%A7%C3%A3o-MNI-Contra-A-Lei-Geral-do-Licenciamento.pdf>.

39. On February 3, 2020, the Federal Attorney for Citizens' Rights, an agency linked to the Federal Public Ministry (MPF) released a Technical Note pointing out the unconstitutionality of Bill 910. It verifies, for example, that the initiative does not provide for instruments that ensure reliability of the data reported by the applicants, and the absence of verification of the impact of regularization on policies such as agrarian reform, demarcation and titling of Indigenous and Quilombola areas, recognition of the territorial rights of other peoples and traditional communities and the creation of conservation units. And concludes that the bill looks like a stimulus to new illegalities by continuing to validate environmental and land crimes. Available at: <http://www.mpf.mp.br/pfdc/manifestacoes-pfdc/nota-tecnica-1-2020>

40. Brito and Barreto (2020); Brito (2021). On 05/10/2021, the Environment Commission (CMA) of the Federal Senate held a public hearing to debate PL 510/2021, which amends land regularization rules on land belonging to the Union and the National Institute for Colonization and Agrarian Reform (Incra). Available at: <https://www12.senado.leg.br/noticias/materias/2021/05/10/preocupacao-ambiental-marca-debate-sobre-projeto-de-regularizacao-fundiaria>



new invasions of public lands. Therefore, it needs to be widely debated by the National Congress. In this way, it will be possible to strengthen the practices adopted by land title bodies without generating legal uncertainty. Otherwise, Congress could create more weaknesses in land policy, which would debilitate efforts to reduce deforestation in the Amazon.” Oviedo, Augusto and Lima (2021) found that, between 2018 and 2020, Indigenous Lands showed a 31% increase in the overlapping areas of third-party Rural Environmental Registry (CAR) records, totalling 3,558,457 hectares of third-party CAR records in 2020; that in 2020, deforestation in areas with CAR records overlaid with Indigenous Lands increased 35% compared to deforestation in CAR areas in 2018; and that the survey detected 323 Indigenous Lands with third-party CAR records within them. In short, the transformation of either Bill 510 or Bill 2633 into law would mean the institutionalization of land grabbing in the Union, including Indigenous Lands, whether they are administratively recognized/titled by the Brazilian State or not.⁴¹

i) Bill 2963/2019 - Authored by Senator Irajá (PSD/TO), the bill “regulates art. 190 of the Federal Constitution to provide for the acquisition and exercise of any type of ownership of rural properties by foreign individuals or legal entities, including lease”. In practice, the bill facilitates the purchase, ownership and lease of rural properties by foreign individuals or companies in Brazil, which has been the subject of controversy, including among ruralists.⁴²The area will be limited to 25% of the total area of each municipality but people and companies of the same nationality will have greater restrictions, 10% at most. Areas larger than 15 fiscal modules, lands on borders and in the Amazon will need the authorization of the National Defence Council. The project was approved by the Federal Senate on December 15, 2020, and moved on to the Chamber of Deputies, where it was determined that a Special Committee should scrutinize the matter.



41. Brito (2020); Kluck (2020); Oviedo, Augusto and Lima (2021).

42. More information at: <https://www.brasildefato.com.br/2021/06/21/venda-de-terras-nacionais-para-produtores-estrangeiros-divide-ruralistas-brasileiros> On March 29, 2021, Law 14,130 was approved, amending Law 8,668 of June 25, 1993, establishing Investment Funds in Agro-industrial Productive Chains (Fiagro), and Law 11,033 of 21 December 2004, among other arrangements. In practice, the law stimulates the massive entry of foreign capital into the agribusiness value chain, a form of circumvention of Law 5709/1971, which regulates the acquisition and lease of land by foreigners. See Santos (2020); <https://www.brasildefato.com.br/2021/03/12/a-espera-de-sancao-pl-do-fiagro-escancara-as-porteiras-para-o-capital-estrangeiro>.



2. Supreme Federal Court

Extraordinary Appeal 1,017,365 involving the people of Ibirama-La Klãnõ Indigenous Land, located in Santa Catarina State, is in the process of analysis and ruling by the Federal Supreme Court (STF), and its “general repercussions” regarding future demarcations of Indigenous Lands have been widely recognized.⁴³ The process concerns a repossession action filed by the government of Santa Catarina against the Xokleng people, referring to the Ibirama-Laklãnõ Indigenous Land, where Guarani and Kaingang also live. The decision taken by the STF will serve as a guideline for the federal government and all bodies of the judiciary, in addition to steering legislative proposals addressing the territorial rights of native peoples. At stake is the adoption of the “Indigenous theory” or the “time frame theory”. The latter is based on Binding Normative Opinion 001/2017/GAB/CGU/AGU (GMF-05) of the Attorney General’s Office, approved by the President of the Republic. If the STF rule in favour, FUNAI could carry out a general review of all demarcated lands, as well as neglect to demarcate any areas where there has been no proof of Indigenous occupation since October 5, 1988.⁴⁴

3. National Indian Foundation (FUNAI)

Within the scope of FUNAI, we should mention the publication of three internal normative measures of great consequence:

a) Normative Instruction 9, March 22, 2020 - This establishes new rules for issuing the Declaration of Recognition of Limits in Relation to Private Property. Over the last 15 months, the decision has provoked a wave of Declaration requests. And insofar as it is established therein that the official indigenist body, for the purpose of issuing Declarations, only recognizes as Indigenous Lands those that are ratified by Presidential Decree, in practice at least 237 lands and the communities that live on them remain in a situation of vulnerability.⁴⁵

b) Resolution 4, January 22, 2021 – This establishes the “indigenusness criterion” that the agency started to adopt in view of the need to identify/classify individuals and communities as “Indigenous”, for the purpose of accessing specific public policies. The aim is to build another barrier to accessing lands as determined by the Federal Constitution of 1988.

c) Joint Normative Instruction 1, February 24, 2021 – Signed by FUNAI and IBAMA, this establishes rules for extensive and mechanized agricultural production for commercial purposes within Indigenous Lands and the possibility of shared management of agricultural projects between Indigenous and non-indigenous people. The concept of leasing of plots inside Indigenous Lands re-enters the scene, camouflaged by a discourse that emphasizes the intention to promote “autonomy”, “self-sufficiency”, “income generation”, “sustainability” and “Indigenous protagonism”.

43. Available at: <https://portal.stf.jus.br/processos/detalhe.asp?incidente=5109720>

44. Martins and Martins (2020); Brazil Indigenous Peoples Charter: Levante pela Terra (<https://apiboficial.org/2021/06/14/carta-dos-povos-indigenas-do-brasil-levante-pela-terra/>); STF postpones the judgment of the time frame affecting Indigenous Lands to August (<https://www.andes.org.br/conteudos/noticia/STF-adia-para-agosto-julgamento-do-marco-temporal-que-afeta-terras-indigenas1>); STF postpones judgment on Indigenous Lands time frame (<https://amazoniareal.com.br/marco-temporal-adiado/>).

45. Fonseca and Oliveira (2020).



4. Acts at the Subnational Level

On May 20, 2021, the Governor of Rondônia State, Colonel Marcos Rocha (PSL), sanctioned Complementary Law 1089, which was originally PLC 080/2020, authored by the governor himself. Through this law, protection was removed from 219,000 hectares of two conservation units: the Jaci-Paraná Extractive Reserve and the Guajará-Mirim State Park. The Reserve lost 169,000 hectares (almost 90% of its territory) and the State Park lost 50,000 hectares. Complementary Law 1089/21, approved without any free, prior and informed consultation of the affected Indigenous Peoples, made it possible for the Uru-Eu-Wau-Wau, Karipuna, Igarapé Lage, Igarapé Ribeirão, and Karitina Indigenous Lands, and the peoples who are in voluntary isolation in the region surrounding the protected areas, to suffer more invasions, land grabbing and deforestation without any environmental licensing or authorization to suppress native vegetation. This is because the excluded areas served as protective buffer zones. A part of the excluded areas is being used illegally for livestock development, in complete violation of legal norms. Instead of acting to comply with the law, Complementary Law 1089 excuses any damage caused and opens up the possibility of privatizing previously public areas. A few days after the approval of the Complementary Law, the State Public Ministry filed a Direct Action of Unconstitutionality (ADIN) against it and, in early July, the MPF referred the case to the Attorney General's Office (PGR), also claiming its unconstitutionality.⁴⁶

VI - Indigenous Action and Strategies of Political Influence

The main nationwide Indigenous organization is currently the Articulation of Indigenous Peoples of Brazil (APIB). It was formally constituted on the second Terra Livre Camp (ATL), held in the city of Brasília/DF in 2005. The APIB comprises the Articulation of Indigenous Peoples of the Northeast, Minas Gerais and Espírito Santo (APOINME), the Coordination of Indigenous Peoples of the Pantanal (ARPIPAN), the Articulation of Indigenous Peoples of the Southeast (ARPIN-SUDESTE), the Articulation of Indigenous Peoples of the South (ARPIN-SUL), the Great Assembly of the Guarani People (ATY GUASSÚ) and the Coordination of the Indigenous Organizations of the Brazilian Amazon (COIAB). These organizations, in turn, bring together dozens of other Indigenous social organizations representing one or more Indigenous Peoples regionally. They are, on many levels, the main vehicles for mobilizing resistance to the ever-expanding agriculture and cattle raising, extractivism and associated infrastructure frontiers onto their traditional territories.

The first Terra Livre Camp took place in April 2004. It is an annual meeting of Indigenous leaders and organizations, literally camping in Brasília's central square, the Esplanada dos Ministérios, around which the main public bodies and federal agencies are located. It involves three to four days of internal meetings, public demonstrations and talks with government representatives from the three powers. At the end, a document is drawn up containing an assessment of the situation of Indigenous Peoples and the policies of the Brazilian State, and encompassing the main claims and demands made to the legislative, executive and judiciary branches. Between April 27 and 30, 2020, Indigenous people from all over Brazil participated in the XVI Terra Livre Camp. Initially postponed due to the Covid-19 pandemic, APIB decided to hold the 2020 and 2021 camps online. This is undoubtedly the most public and visible strategic action taken by the Indigenous movement, with strong performative and media impacts.⁴⁷

46. More information at: MP goes to court against the law that mutilated UCs in Rondônia (<https://www.oeco.org.br/noticias/mp-entra-na-justica-contralei-que-mutilou-ucs-em-rondonia/>); MP proposes Unconstitutionality Action against State law that reduces Resex Jaci-Paraná and Guajará-Mirim State Park (<https://www.mpro.mp.br/pages/comunicacao/noticias/view-noticias/42625>); MPF's Environmental Chamber states that Rondônia's law reducing protected areas is unconstitutional (<http://www.mpf.mp.br/pgr/noticias-pgr/camara-ambiental-do-mpf-afirma-que-lei-de-rondonia-que-reduziu-limites-de-unidades-de-conservacao-e-inconstitucional>).

47. More information at: Rocha, D. F.; Porto, M. F. S.; Pacheco, T. (2019); Santos, 2019.



By the end of 2018, the participation and political influence of the main Indigenous organizations in the country was taking place in the various sectoral and intersectoral committees, forums, commissions or collegiate councils created in the relevant ministries and bodies, thus creating complex organizational structural processes and cooperative and contesting interactions in their relationship with other social sectors and the State. The so-called structures of participation and social control in public policies were, for the most part, either eliminated or reformulated with the reduced participation or absence of Indigenous organizations' representatives. On November 4, 2019, President Jair Bolsonaro signed Decree 9759, extinguishing autarchies and foundations formed by representatives of the government and civil society to create, execute and monitor the actions of public bodies and State-owned companies from the direct federal public administration. Among the dissolved councils were the National Council for Indigenous Policy (CNPI), created by Decree 8593 of December 17, 2015. On February 12, 2020, the Federal Official Gazette (DOU) published Decree 10,235 through which the participation of representatives of Indigenous Peoples and social movements was excluded from the composition of the National Biodiversity Commission.⁴⁸

The same procedure for dismantling the architecture of social participation and control took place in several of the Federation's States, particularly those governed by conservative political coalitions.

The election of Indigenous lawyer Joênia Wapichana (REDE/RR) as Federal Deputy in 2018 opened a window of opportunity for the reception and processing of Indigenous Peoples' demands in the National Congress. Deputy Joênia is the coordinator of the Joint Parliamentary Front in Defence of the Rights of Indigenous Peoples, composed of 219 deputies and 29 senators. She has been at the forefront of addressing the main issues relating to the constitutional rights of Indigenous Peoples in Brazil. This includes, for example, the resistance against the transfer of the Indigenous Lands demarcation policy to the MAPA⁴⁹ and for the non-approval of Bill 490/2007, within the scope of the Constitution, Justice and Citizenship Commission (CCJC)⁵⁰

VII - Summary of Conclusions

To conclude, we must understand that the social and political processes that have materialized in resolutions, legislative proposals and laws analysed in relation to the rights of Indigenous Peoples and communities in Brazil, and their implementation in the form of public policies for the recognition/entitlement of Indigenous Lands, maintain a direct relationship with the global supply chains of commodity production. Internal demand, and particularly external, especially from the great international economic and financial centres, such as China and the European Union, increases the interest and impetus for spatially expanding the production area, as well as incorporating new portions of land as assets in the financial system.

48. On the so-called architecture of participation in Brazil, see Teixeira, Souza e Lima (2012) and Carlos (2015).

49. STF maintains demarcation of Indigenous Lands within the Ministry of Justice, at least for this year: (<https://www.bbc.com/portuguese/brasil-49187664>);

50. "The war continues, we only lost one battle", says Indigenous leader about PL 490: (<https://apublica.org/2021/06/a-guerra-continua-perdemos-uma-batalha-diz-lider-indigena-sobre-pl-490/>); Rising for the Earth: Indigenous mobilizations against PL 490 spread across the country: (<https://www.socioambiental.org/pt-br/blog/blog-do-monitoramento/levante-pela-terra-mobilizacoes-indigenas-contra-o-pl-490-se-espalham-pelo-pais>); Indigenous peoples occupy National Congress in protest against PL 490: (<https://apiboficial.org/2021/06/08/povos-indigenas-ocupam-cupula-do-congresso-nacional-em-manifestacao-contra-o-pl-490/>). Senate decision returns demarcation of Indigenous Lands to Funai: (<https://www.redebrasilatual.com.br/politica/2019/06/decisao-do-senado-devolve-a-funai-demarcacao-de-terras-indigenas/>); Approved by CCJ, check out what could change with PL 490: (<https://www.correiobraziliense.com.br/brasil/2021/06/4933383-aprovado-na-ccj-confira-o-que-pode-mudar-com-o-pl-490.html>);



Indigenous Lands, both those recognized/approved and those still navigating the recognition process, are under strong pressure. On the ground, invasions are coupled with deforestation and land grabbing, mineral extraction and illegal logging, and the use of key areas to produce agricultural commodities on Indigenous Lands. In the National Congress and Legislative Assembly, the anti-indigenous forces and those who aspire to take over Indigenous Lands are finding ample space to impose their decisions. The Bolsonaro government, supported by the main agribusiness groups, as well as by a network of small and medium farmers who, organized in associations or individually, are seeking opportunities to conquer a piece of land, has tipped the balance even more in favour of withdrawing rights and imposing restrictions on the application of specific public policies. In Brazil, the lives of current and future generations of Indigenous Peoples, communities and families are at risk.

It is for these and other reasons that we suggest that decision makers in the governments and parliaments of the European Union reflect calmly and carefully before signing the Agreement with Mercosur. We ask them to be consistent with the assertion that the protection of the rights of Indigenous Peoples forms a part of EU priority principles, and that either Party and their countries will not be allowed to break the provisions of ILO Convention 169 (1989) and the United Nations Declaration on the Rights of Indigenous Peoples (2007). In this scenario, the right to consultation and free, prior and informed consent of Indigenous Peoples and communities is a first and fundamental right. From an environmental and climatical point of view, they will not contribute to the devastation of Brazilian biomes and regions: Amazon, Pantanal, Cerrado, Caatinga, Atlantic Forest, Pampas and the Semi-Arid regions. Mechanisms of transparency, participation and social control must be created, guaranteeing the participation of the regional Indigenous organizations that make up the APIB, with a presence that feeds through into all biomes and regions of the country.



Photo: Andressa Zumpano/Articulação das Pastorais do Campo



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