



# BRAZIL REGIONAL POLICY BRIEFING #1: INDIGENOUS PEOPLES' PROTECTION AND RIGHT TO LAND IN BRAZIL

Policy brief prepared by BMJ & Associates for the Tropical Forest Alliance

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## About this briefing

TFA has identified the need to build awareness of relevant policy developments in Brazil among corporate stakeholders related to deforestation and the forest positive agenda. In service of this objective, TFA commissioned BMJ & Associates to develop regular regional policy briefings for Brazil, which will provide comprehensive and impartial information on the policy and geopolitical context related to deforestation and the forest-positive agenda to help stakeholders engage with policymakers.

The Brazilian State has three independent and harmonious Powers: Executive, Legislative, and Judiciary Branches. The Presidency of the Republic rules the Executive Branch alongside 37 Ministries. The National Congress (Lower and Upper Houses) represents the Legislative Branch, while the Judiciary has different bodies, the highest instance being the Supreme Court (STF).

This report covers measures that each of these powers is currently considering regarding indigenous land rights, as **indigenous lands have one of the lowest deforestation rates** compared to other Brazilian land categories.<sup>1</sup> Misappropriation of indigenous lands is an important topic for Brazilian authorities and all stakeholders trying to curb deforestation in the country. **Proper demarcation and law enforcement to secure indigenous lands, and the recognition of indigenous practices, customs, and social organization are central to fulfilling their conservation potential and guaranteeing the rights of traditional peoples.** For this to occur, there is a need for greater harmony on this topic between the branches of government.

The recent humanitarian crisis involving the Yanomami people put indigenous rights in the spotlight, reinforcing the need for measures that guarantee indigenous people's survival and recognize land sovereignty.

## Summary of insights

1. **President Lula created the Ministry of Indigenous Peoples, which indicates the government's commitment to indigenous policy and land demarcation in the country.** The Ministry will be headed by Sônia Guajajara and will be responsible for developing policies related to the management and demarcation of indigenous lands, which are crucial for the preservation of the Amazon Forest.
2. **The Executive Branch will work transversally to build policies aligned to the Sustainable Development Goals.** In relation to indigenous peoples, the Executive Branch has taken a stance against mining on indigenous lands and has sought to include representatives of the indigenous peoples in representative environmental councils, including the Guidance Committee of the Amazon Fund.
3. **Landholding regularization and mining on indigenous lands are still not consensual themes in the Legislative Branch.** These two agendas can have direct effects on deforestation rates in Brazil, and to date there is no consensus on them among parliamentarians. The expectation is that the bill that deals with mining on indigenous lands will not be debated in the first semester, and if it does get approved, the Executive Power will veto it. The text of the bill on land tenure regularization, on the other hand, is expected to undergo changes to include the position of the Executive Branch once this position is presented.
4. **The Judiciary will rule on the “Temporal Landmark” of indigenous lands.** The thesis considers that indigenous people could only claim lands they owned at the time of the promulgation of the constitution on October 5, 1988. The decision will directly affect the demarcation of indigenous lands, and it is expected that the case will be ruled on in the second half of 2023.
5. **The following brief will provide a more holistic overview of the new Brazilian government structure, and relevant policies on sustainable, deforestation-free commodity production and trade.** For the next briefing, the indication of the main stakeholders linked to the environmental agenda in Brazil will have been finalized, and it will be possible to fully assess the structure and scenario of the environmental agenda in Brazil.

## FACTS ABOUT INDIGENOUS LANDS AND PEOPLE IN BRAZIL

Indigenous Lands*	Indigenous Population**	
74 lands declared by the Ministry of Justice	896.917 people (0,5% of the Brazilian population)	517.383 (58%) live inside indigenous lands
43 Identified by FUNAI		379.534 (42%) live outside indigenous lands
Represent 13% of the Brazilian territory and 23% of the Amazon Forest	Amazonas state has the largest indigenous population	

\*Socio-environmental Institute (ISA) \*\* Brazilian Institute of Geography and Statistics (IBGE)

## MINISTRY OF INDIGENOUS PEOPLES

President Lula created for the first time the Ministry of Indigenous Peoples. The Cabinet will be responsible for producing policies for the indigenous, managing indigenous lands, and protecting of isolated indigenous peoples. Federal Representative and indigenous activist Sônia Guajajara heads the Ministry.

The National Indigenous Peoples Foundation (Funai) is now an entity linked to the Ministry of Indigenous Peoples. Joênia Wapichana, the first indigenous woman elected to the House of Representatives, will chair Funai. Wapichana is also the first indigenous person to head Funai.

Both Sônia Guajajara and Joênia Wapichana are closer to indigenous peoples communities than previous people in similar roles. Thus, the new Ministry and Funai will likely be more active in opposing issues such as mining on indigenous lands and easing of environmental law. Many other top-level positions within the Indigenous People Ministry and Funai are also held by representatives of large indigenous organizations.

The Indigenous Peoples Ministry will work with the Ministry of Environment and Climate Change to develop new policies according to the Sustainable Development Goals.



PROFILE

TECHNICAL      POLITICAL

Cabinet members:

Eloy Terena  
**Executive Secretary**

Jozi Kaingang  
**Chief of Staff**

Marcos Xucuru  
**Special Advisor to the Ministry**

Sônia Guajajara - Minister of Indigenous People

Federal Representative (PSOL/SP) and executive coordinator of the Articulation of Indigenous Peoples of Brazil for the Amazon.

WHAT TO EXPECT?

- Sônia Guajajara is an important representative of the Indigenous Peoples and was active in the opposition to the Bolsonaro government.
- She is expected to work for the demarcation of indigenous lands and for an end to illegal mining and mining on indigenous lands.

Ministry of Indigenous Peoples	
Secretariats	Secretaries
Environmental and Indigenous Territorial Rights	<b>Eunice Kerexu</b> , Former Executive Coordinator of the Articulation of Indigenous Peoples of Brazil (APIB).
Environmental and Indigenous Territorial Management	<b>Ceiça Pitaguary</b> , former coordinator of the Federation of Indigenous Peoples and Organizations of Ceará and of the Indigenous Health Council. Also worked as an articulator of the Special Coordination of Public Policies for the Promotion of Racial Equality (Ceppir).
Articulation and Promotion of Indigenous Rights	<b>Juma Xipaia</b> , indigenous activist and the first woman to become a cacique in the Middle Xingu.

Indigenous land ownership and management have been a crucial factor in reducing deforestation in Brazil: when indigenous people have ownership and control over their traditional territories, the areas they manage are protected as is the biodiversity within them. Many of these areas are in the Amazon rainforest. <sup>1</sup>The demarcation of lands does not imply a prohibition of economic activities but the transfer of territorial rights. However, the ownership and management of indigenous lands is often threatened by external factors, such as illegal logging, mining, and large-scale agriculture, both on the border and inside the area reserved for indigenous people. These activities can cause significant damage to the forest and to the communities that depend on it. Therefore, it is crucial that governments and other stakeholders work to protect the rights of indigenous people and support their efforts to manage their lands sustainably.

## EXECUTIVE DEVELOPMENTS

Funai was the main coordinator and executor of the federal government's indigenous policy since 1967, still during the military dictatorship. Since then, Funai has been responsible for promoting actions for ethnodevelopment, conservation, and the environmental recovery of indigenous lands. Funai also planned the National Policy for Territorial and Environmental Management of Indigenous Lands (PNGATI)<sup>2</sup>. However, over the last three years, indigenous and environmental organizations have had several setbacks on these topics and indigenous people

<sup>1</sup> PNAS (2020): [Collective property rights reduce deforestation in the Brazilian Amazon.](#)

claim they lost their prominence in the decision-making process in Funai. Funai suffered critical budget losses and its weakening has harmed its capacity to monitor and track illegal mining inside indigenous lands.

The demarcation demands are not a new move. Since the Michel Temer administration (2016-2018), indigenous people report challenges in obtaining the demarcation of their lands. This issue increased during the Bolsonaro administration, alongside a worsening of the indigenous health care policy, especially during the pandemic.

**Mining in indigenous lands was one of the Bolsonaro government's major plans.** In 2020, the President sent [bill 191/2020](#) to Congress, to allow mining in indigenous lands. In 2022, Bolsonaro created the Support Program for the Development of Artisanal and Small-Scale Mining, electing the Amazon region as the center of exploration. **The easing of environmental enforcement actions and of regulations around mining have contributed to an increase of illegal mining in recent years, which in turn has been associated with an increase of 81% in the rate of illegal deforestation in protected areas in the first half of 2020<sup>3</sup>.**

The Bolsonaro administration suffered criticism regarding the **land reform and titling process**, especially concerning indigenous and *quilombola* lands, but defended itself by claiming that it has already granted more than 353 000 land titles in three and a half years, more than were granted between 2000-2016.

President Lula revoked the Program on his first day in office, and there is no longer consensus within Congress to approve [bill 191/2020](#). The new government is against mining on indigenous lands and will likely reinforce measures to reduce illegal mining.

## LEGISLATIVE DEVELOPMENTS

The Brazilian Congress is still discussing bills that could endanger indigenous people's rights, such as [bill 191/2020](#), which seeks to authorize **mining in indigenous areas**, and [bill 490/2007](#), which would end Funai's capacity to delimit indigenous lands.

In 2022 House Speaker Arthur Lira (PP/AL) endorsed an urgent request for voting on [bill 191/2020](#), saying it would end Brazil's dependence on importing fertilizers by allowing exploration and eventual exploitation of large reserves of potassium on indigenous lands. Senate President Rodrigo Pacheco (PSD/MG) intends to carefully assess this bill. Unlike the House, the Senate will likely hold public hearings and pass the project through the standing committees' analysis. However, parliamentarians may not assess the proposal in the first half of 2023. Lula could also veto the proposal if both House and Senate approve the bill since the government is said to be against it.

Illegal land occupation is a historical problem in Brazil. However there has been a significant increase in the irregular occupation of public lands and areas protected by the Forest Code in recent years. [Bill 2633/2020](#) addresses this issue, seeking to expand **landholding regularization as a way to solve it**. To do this, invaders would be forgiven and would be recognized as the legal owners of the occupied public land. The bill is supported by the agribusiness caucus in Congress, but only the current Minister of Agriculture has publicly supported it within the new government. Thus, the Ministries involved in the discussion may have diverging positions on the issue, which may result in changes to the proposed text or in the deliberation's postponement.

In late 2020, Senate passed [bill 2963/2019](#), which facilitates foreigners to acquire **rural properties**. Opposers **claimed it would harm food production, increase land prices, and promote large-scale internationalization, especially in Amazon areas**. The House of Representatives still needs to assess it.

## JUDICIARY BRANCH – The Supreme Court (STF)

In 2020, the Supreme Court (STF) refused to rule on processes that claim repossession of indigenous areas, especially because of the pandemic. In 2021, STF suspended a Funai resolution that harmed the protection of non-approved indigenous lands and recognized the role of indigenous organizations in proposing actions to grant indigenous rights.

The STF will still rule on the **"Temporal Landmark"** for indigenous lands. The thesis considers that indigenous people could only claim lands they owned at the time of the promulgation of the constitution on October 5, 1988. Justices could resume the trial in the second half of 2023. If the thesis is legitimized by the STF, the demarcation of new indigenous lands may become unfeasible, and it will be possible to challenge the right of indigenous peoples to already recognized territories. The decision on the temporal landmark would be a reference for all cases involving indigenous lands within the Judiciary Branch, as the Brazilian Judiciary adopts a "general repercussion" tool to unify the understanding on issues that have great social, political, economic, or legal relevance that will be used in this case.

## INTERNATIONAL COMMUNITY

International NGOs will likely continue exerting pressure on indigenous lands rights, especially after the Yanomami crisis. These organizations will also press for more severe punishment of Bolsonaro government figures for alleged inaction in protecting indigenous peoples and isolated communities. The Yanomami crisis is now one of the main political crisis that the Bolsonaro government is facing. Indigenous People representatives have already denounced Bolsonaro in several instances of International Law for violations on indigenous rights. While history suggests it is unlikely that these allegations will result in sanctions or other serious measures, international deals, such as the Mercosur-EU agreement may remain stagnant with this issue, linked to deforestation and the advance of illegal mining in the Amazon, in the spotlight of the international community.

## THE NEXT BRIEFING

Our following brief will provide a more holistic overview of the new Brazilian government structure, and relevant policies on sustainable, deforestation-free commodity production and trade. The Brazilian government's approach to environmental and land use policies is closely linked to sustainable commodity production and trade. Brazil has been under pressure for high rates of deforestation, particularly in the Amazon region, given the implications for global efforts to mitigate climate change and protect biodiversity. A holistic overview of the government's structure and policies can help stakeholders to identify opportunities and challenges related to sustainable commodity production and trade in Brazil and promote engagement with the government in developing effective solutions.

## Sources

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<sup>1</sup> According to the Amazon Environmental Research Institute (IPAM)

<sup>2</sup> Implemented through **Decree 7747/2012**

<sup>3</sup> According to data from the Brazilian Institute for Space Research (Inpe)