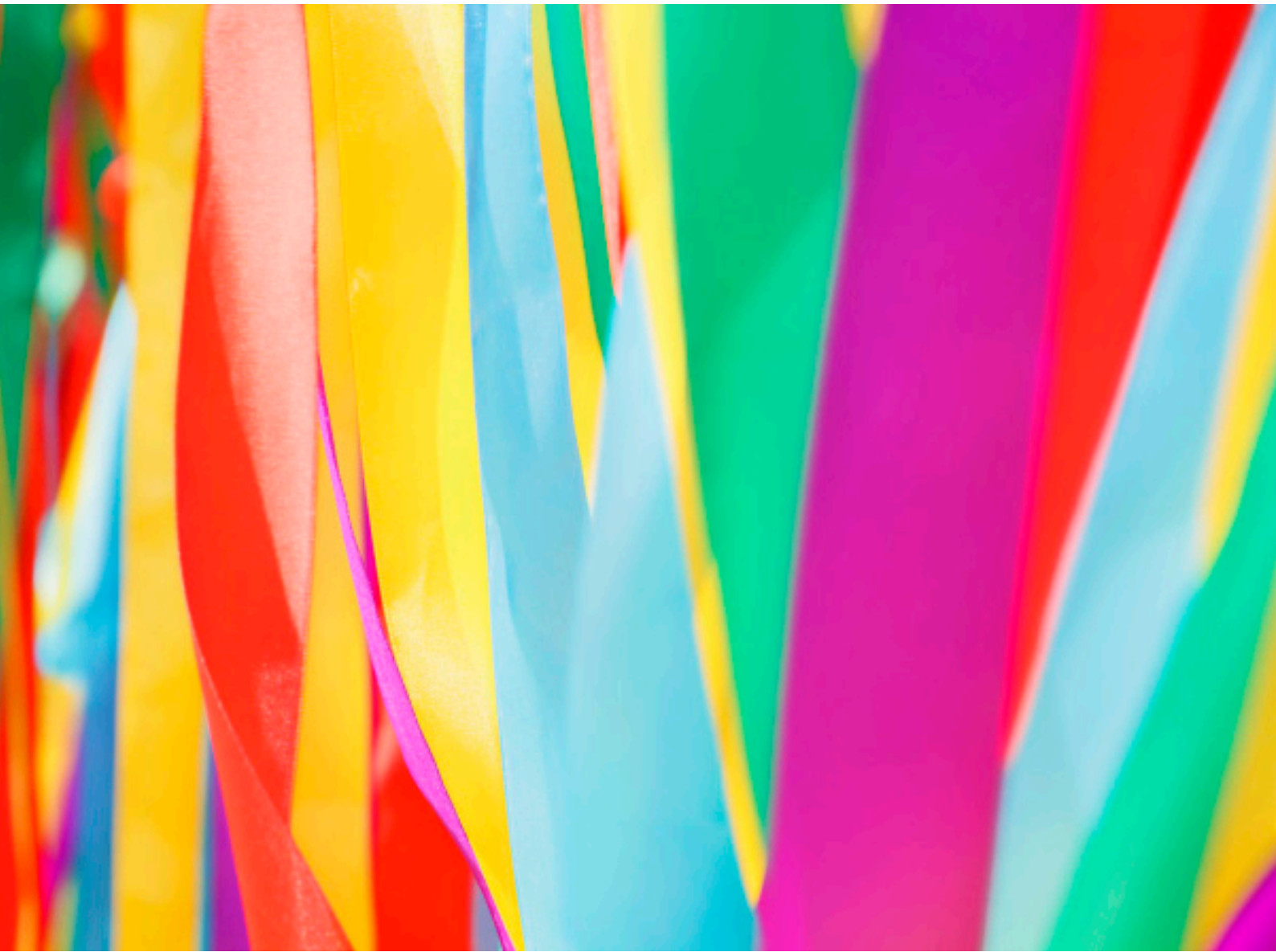




OECD Responsible Business Conduct Policy Reviews

BRAZIL



OECD RESPONSIBLE BUSINESS CONDUCT POLICY REVIEWS: BRAZIL

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Foreword

In recent years, there has been a growing expectation that businesses should produce and supply goods and services responsibly. It is widely recognised nowadays that companies should contribute to sustainable development and observe internationally recognised principles and standards of Responsible Business Conduct (RBC). The expectation that businesses act responsibly has been accompanied by an increased acknowledgement that governments have an essential role to play in creating an enabling policy and regulatory environment that helps to drive, support and promote responsible business practices.

The OECD Responsible Business Conduct Policy Review of Brazil was jointly requested by the Ministry of Economy and the Ministry of Women, Family and Human Rights of Brazil. It takes stock of relevant legislations, regulations and policies existing in Brazil in areas covered by the OECD Guidelines for Multinational Enterprises, as well as in other relevant policy areas. The Review formulates policy recommendations to support Brazil not only in regulating and enforcing in pursuit of RBC, but also to leverage and incentivise responsible business practices. It also includes an analysis of the Brazilian National Contact Point for RBC and puts forth actions to strengthen its role as an agent of policy coherence. These recommendations are key to building an enabling policy and regulatory environment for RBC in Brazil, which in turn can help the country recover from the COVID-19 crisis in a responsible and sustainable way and keep building on its openness to trade and investment as a strategy for economic growth in the aftermath of the crisis. Additionally, the Review could serve to inform the development of Brazil's National Action Plan on RBC (Plano de Ação direcionado à promoção da Conduta Empresarial Responsável, PACER) and National Action Plan on Business and Human Rights.

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Acronyms and abbreviations

ABGF	Agência Brasileira Gestora de Fundos Garantidores e Garantias
ALADI	Asociación Latino-Americana de Integración
Anti-Bribery Convention	OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions
AS/COA	Americas Society/Council of the Americas
BHR	Business and Human Rights
BHRRC	Business and Human Rights Resource Centre
BIT	Bilateral Investment Treaty
BNDES	Banco Nacional de Desenvolvimento Econômico e Social
CAMEX	Chamber for External Trade of the Ministry of Economy
CAR	Sistema Nacional do Cadastro Ambiental Rural
CAS)	ILO Conference Committee on the Application of Standards
CBD	Convention on Biological Diversity
CCS	Carbon Capture and Storage
CEACR	ILO Committee of Experts on the Application of Conventions and Recommendations
CEBDS	Conselho Empresarial Brasileiro para o Desenvolvimento Sustentável
CEIS	Cadastro de Empresas Inidôneas e Suspensas
CFIAs	Cooperation and Facilitation Investment Agreements
CGU	Controladoria-Geral da União
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CNDH	Conselho Nacional dos Direitos Humanos
CNEP	Cadastro Nacional das Empresas Punidas
CNI	National Confederation of Industry
COAF	Conselho de Controle de Atividades Financeiras
COFIG	Comitê de Financiamento e Garantia das Exportações

COMEX	Costa Rican Ministry of External Trade
Conabio	National Biodiversity Commission
CONAETI	Comissão Nacional de Erradicação do Trabalho Infantil
Conaflor	National Forest Commission
CONAVEG	Executive Commission for the Control of Illegal Deforestation and Recovery of Native Vegetation
CONINV	Comitê Nacional de Investimentos
COVID-19	Coronavirus disease 2019
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
CSO	Civil Society Organisation
CSR	Corporate Social Responsibility
CVM	Comissão de Valores Mobiliários
Due Diligence Guidance	OECD Due Diligence Guidance for Responsible Business Conduct OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector OECD-FAO Guidance for Responsible Agricultural Supply Chains OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector
Due Diligence Guidance for RBC	OECD Due Diligence Guidance for Responsible Business Conduct
ECA	Export Credit Agency
ECG	Export Credits Group
EFTA	European Free Trade Association
EIA	Environmental Impact Assessment
EITI	Extractive Industries Transparency Initiative
Embrapa	Brazilian Agricultural Research Corporation
ENIMPACTO	Estratégia Nacional de Investimentos e Negócios de Impacto
EPL	Empresa de Planejamento e Logística S.A.
Escazú Agreement	Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean
ETEA	Economic and Trade Expansion Agreement
EU	European Union
FBMC	Brazilian Forum on Climate Change
FDI	Foreign Direct Investment
FGE	Fundo de Garantia à Exportação

FGTS	Social Security and the Severance Pay Fund
FNMA	National Environment Fund
FPIC	Free Prior and Informed Consent
FTA	Free Trade Agreement
FUNAI	National Foundation for the Indigenous
GATT	General Agreement on Tariffs and Trade
Gaecos	Special Action Group to Combat Organized Crime
GDP	Gross Domestic Product
GHG	Greenhouse Gas
GPA)	Agreement on Government Procurement
GRI	Global Reporting Initiative
GTEX	Grupo Técnico de Estudos Estratégicos de Comércio Exterior
GTPS	Brazilian Roundtable on Sustainable Livestock
GVC	Global Value Chain
IBAMA	Brazilian Institute of the Environment and Renewable Natural Resources
IBGE	Instituto Brasileiro de Geografia e Estatística
IDB	Inter-American Development Bank
IFC	International Finance Corporation
ILO	International Labour Organization
ILO Convention No. 169	ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169)
ILO MNE Declaration	Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy
IPA	Investment Promotion Agency
IPs	Indigenous Peoples
ISDS	Investor-State Dispute Settlement
ISO	International Organization for Standardization
ITUC	International Trade Union Confederation
LAC	Latin America and the Caribbean
LGBTI	Lesbian, Gay, Bisexual, Transgender and Intersex
MAPA	Ministry of Agriculture, Livestock, and Food
MBRE	Brazilian market of emission reduction
MERCOSUR	Mercado Común del Sur
MMFDH	Ministry of Women, Family and Human Rights

MPF	Ministerio Publico Federal
MSMEs	Micro, Small and Medium-sized Enterprises
NAMAs	Nationally Appropriate Mitigation Actions
NAP	National Action Plan on Business and Human Rights
NCP	National Contact Point for Responsible Business Conduct
NDC	Nationally Determined Contribution
NGO	Non-Governmental Organisation
OECD	Organisation for Economic Co-operation and Development
OGP	Open Government Partnership
OID	Ombudsman de Investimentos Diretos
OTLA	Office of Trade and Labour Affairs (Department of Labour of the United States)
PACER	Plano de Ação direcionado à promoção da Conduta Empresarial Responsável
PEIEX	Programa de Qualificação para Exportação
PETI	Programa de Erradicação do Trabalho Infantil
PFI	OECD Policy Framework for Investment
Planaveg	the National Plan for the Recovery of Native Vegetation
PLANCITE	Plano Nacional de Combate à Informalidade dos Trabalhadores Empregados
PNAD	National Household Survey
PNMC	2009 National Policy on Climate Change
PPL	Public Procurement Law
PROEX	Programa de Financiamento às Exportações
RBC	Responsible Business Conduct
RBCLAC	Responsible Business Conduct in Latin America and the Caribbean
RST	Responsible Sourcing Tool
SAI	Social Accountability International
SCE	Seguro de Crédito à Exportação
SDGs	Sustainable Development Goals
SEBRAE	Brazilian Support Service for SMEs
SE-CAMEX	Secretaria-Executiva da Câmara de Comércio Exterior
SENAR	National Service for Rural Apprenticeship
SEPEC	Secretaria Especial de Produtividade, Emprego e Competitividade
SEST	Secretaria de Coordenação e Governança das Empresas Estatais
Sector-specific Due Diligence Guidance	OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from

	Conflict-Affected and High-Risk Areas OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector OECD-FAO Guidance for Responsible Agricultural Supply Chains OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector
SIASG	Integrated System for Administration of General Services
SINAIT	National Union of Labour Inspectors
SINIMA	National Environmental Information System
SINVE	Subsecretaria de Investimentos Estrangeiros
SIPEF	Public Integrity System of the Federal Executive Branch
SISNAMA	National Environmental System
SMEs	Small and Medium-sized Enterprises
SOE	State-Owned Enterprise
SSDS	State-to-State Dispute Settlement
STN	Secretaria do Tesouro Nacional
STPC	Secretariat for Transparency and Prevention of Corruption
TAC	Conduct Adjustment Agreements
TCU	Tribunal de Contas da União
The 2030 Agenda	The 2030 Agenda for Sustainable Development
The Guidelines	OECD Guidelines for Multinational Enterprises
The SOE Guidelines	OECD Guidelines on Corporate Governance of State-Owned Enterprises
The ACI Guidelines	OECD Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises
TPA	Trade Promotion Agreement
TPP	Trans-Pacific Partnership
TSD	Trade and Sustainable Development
UN	United Nations
UNCAC	United Nations Convention Against Corruption
UNCTAD	United Nations Conference on Trade and Development
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UN ECLAC	United Nations Economic Commission for Latin America and the Caribbean
UNFCCC	United Nations Framework Convention on Climate Change
UN Global Compact	United Nations Global Compact
UNGPs	United Nations Guiding Principles on Business and Human Rights
UNOHCHR	Office of the United Nations High Commissioner for Human Rights

UNWG	United Nations Working Group on Business and Human Rights
UPR	Universal Periodic Review
U.S.	United States
USD	United States Dollars
WBCSD	World Business Council on Sustainable Development
WEF	World Economic Forum
WTO	World Trade Organization

Executive summary

Brazil is the world's ninth largest economy, and the largest and most populous country in the Latin America and Caribbean (LAC) region, with 211 million inhabitants. The country has made substantial socio-economic progress over the past two decades and is classified as an upper middle-income economy. However, Brazil faces several structural challenges regarding its socio-economic development, linked to productivity, investment, fiscal outcomes, education, social protection, income inequality and corruption. These factors affect well-being and the business environment, and constrain inclusive and sustainable growth. Trade and investment are important in the Brazilian economy, but the country is less integrated in global value chains (GVCs) than peer economies of similar economic development.

Brazil has ratified a number of key instruments related to RBC, on human and labour rights, environmental protection and anti-corruption. Brazil is a Key Partner of the OECD, and recently started proceedings towards a possible accession. In 1997, Brazil adhered to the OECD Guidelines for Multinational Enterprises (the Guidelines); since then, in 2003, establishing an NCP and adhering to all Council Recommendations on sectoral due diligence guidance. Since 2018, Brazil's National Guidelines on Business and Human Rights have provided a framework for RBC and encouraged policy coherence across government. In late 2020 and early 2021, Brazil commenced the development of a National Action Plan to promote RBC (Plano de Ação direcionado à promoção da Conduta Empresarial Responsável, PACER) and a National Action Plan (NAP) on Business and Human Rights. While a range of regulations encourage companies to adhere to environmental, social, and governance (ESG) standards, Brazil has not yet developed a consistent practice of incorporating an RBC approach in major policy instruments for national development.

Brazilian companies are relatively strongly involved in implementing the 2030 agenda, but initiatives to promote and implement RBC expectations specifically remain incipient. Brazil's CSOs take an active stance in the promotion and awareness raising around RBC expectations. Brazil's rankings in global indices reflect that its performance on a range of economic, social and environmental indicators could still significantly improve, such as by including RBC considerations in public policies.

Brazil is one of the hardest hit countries by the COVID-19 pandemic globally in terms of cases and deaths. The pandemic hit Brazil during a fragile recovery from its recession in 2014-16. Brazilian companies and value chains have been impacted seriously by the consequences of the pandemic. The pandemic also severely affected employment and aggravated structural challenges in Brazil.

An enabling environment for RBC in Brazil can be key to address many of the challenges facing the Brazilian economy. This includes a fragile recovery from a recent recession, threatened by the impact of the COVID-19 pandemic, but also weaknesses in the labour market, characterised by high unemployment, inequalities and a large degree of informality. A stronger focus on RBC could underpin the Government's development objectives and plans, as a way to foster the country's contribution to the SDGs. Neither Brazil's 2020-2023 Multiannual Plan, nor the Federal Strategic Development Plan for 2020–2031, include specific considerations regarding the role of businesses to promote social or environmental development beyond economic growth. Additionally, Brazil's ranking in global indices reflect that its performance on a

range of economic, social and environmental indicators could still significantly improve, including by better including RBC considerations in public policies.

Brazil has a strong legal framework for the protection of human rights. The country ratified eight out of nine core human rights Conventions, and the main human rights instruments of the Inter-American Human Rights System. Brazil's Constitution includes a detailed chapter on human rights. Brazil has had successive National Programmes on Human Rights, but to date, these do not have a strong focus on RBC. In 2018, Brazil adopted National Guidelines on Business and Human Rights. As mentioned above, Brazil launched the development of a National Action Plan on RBC (PACER) in line with the Guidelines, and a National Action Plan on Business and Human Rights. However, serious challenges to human rights persist. In particular, indigenous, afro-descendant and other local communities are at risk of human rights violations from business activities on their land, which, is not fully demarcated despite a specific provision to that effect in the Constitution. Brazil is also among the most dangerous places for human rights defenders acting in the field of business and human rights.

Brazil has a solid legislative and policy framework responding to labour rights issues. The country ratified seven out of eight fundamental ILO Conventions; the Constitution contains an extensive chapter on social rights that recognises a wide range of labour rights, and the country has an elaborate legal framework for labour rights, including a general labour law reformed in 2017. A number of challenges affect the labour market in Brazil, including severe impacts from the COVID-19 pandemic and high levels of informality correlated with inequality. There are concerns regarding a weakening of social dialogue in the country, notably as a result of the widespread reforms affecting the membership of collegiate bodies, or the organisation of trade unions. Likewise, there are concerns about access to labour courts and the resources allocated to the labour inspectorate. Brazil has ambitious plans to tackle slave-like labour, child labour and informality, but to date, they do not include a strong component of RBC due diligence.

As home to the world's largest tropical rainforest, the Amazon, Brazil is considered the most biologically diverse country in the world and an "environmental powerhouse". Brazil has made efforts on environmental and climate protection over several decades, but recent years see challenges. Brazil has ratified or acceded to major multilateral environmental agreements, and has developed an advanced body of environmental legislation and an elaborate institutional environmental system. Brazil has recently announced its ambition to reach CO₂ neutrality by 2050. Until 2015, deforestation declined by 75% between 2005 and 2014. However, annual forest loss has been increasing significantly in Brazil in recent years, reaching decade highs in 2019 and 2020. This development jeopardises climate change targets, biodiversity and human rights. Commitments on CO₂ neutrality have yet to be reflected in the country's most recent NDCs. Recently, concerns emerged about inter-governmental coordination in environmental matters and the resourcing of environmental agencies. Recent environmental legislation, aimed at creating legal certainty, sparked concerns that environmental standards and their enforcement had in fact been weakened. Likewise, the abovementioned reforms of collegiate bodies generated concerns about public participation in environmental matters. In a similar vein, Brazil has not yet ratified the Escazú agreement seeking to protect environmental defenders. Brazil could provide greater support to business efforts in tackling climate change. Brazil has adopted policies on this topic, but these policies could be grounded in more reliable data, be aligned with climate change objectives, and better target business impacts on forests.

Brazil has faced systemic corruption reaching the highest levels of government over the past decades, prompting efforts to address corruption and strengthen the overall political integrity of the country. Brazil has ratified a number of international instruments on the topic and created public institution towards combating corruption, such as the Office of the Comptroller General or the Public Ethics Commission. Legislation meeting international standards is largely in place. Brazil has worked to increase the awareness of civil society and business on their roles in preventing corruption, and has led enforcement actions against acts of corruption. Despite these efforts, perceptions of corruption and of the government's inability to fight it persist. Challenges remain with regards to implementation of preventive ethics and

compliance measures in the operations of companies, particularly SMEs. Similarly, channels for internal reporting are not available across the board, and awareness of reporting channels is low.

Public procurement, as one of policy areas that can incentivise RBC, increasingly promotes aspects of RBC, but a coherent approach is missing. Brazilian federal public procurement law foresees that all procurement procedures are sustainable and support sustainable development of the country itself, in line with the country's national strategies, without a focus beyond the country's borders. The reform of Federal public procurement law in 2021 introduced the concept of sustainable public procurement, but did not appear to have a substantial bearing on the integration of RBC in public procurement. While the legal and regulatory framework for sustainable public procurement has provisions for the inclusion of several RBC objectives in public procurement, these are dispersed over a number of different legal acts, jeopardising implementation. Emphasis is on environmental and integrity aspects, and awareness of RBC or risk-based due diligence in public procurement is low. There is limited overarching guidance for contracting authorities and public procurers towards a consistent, comprehensive promotion of RBC through public procurement. Risk-based due diligence could be expanded beyond integrity concerns, to cover a comprehensive set of RBC objectives.

Some Brazilian SOEs are among the largest companies globally. Often, these SOEs, like Petrobras and Eletrobras, operate in sectors with high RBC risks, like the oil and gas and electricity sectors. Brazil's main SOE groups have taken significant steps to address RBC-related risks, with a focus on anti-corruption, the environment and human rights. These initiatives have been sparked by legal reforms. SOEs largely integrate RBC considerations in their policies and management systems, and they attempt to identify, prevent and mitigate adverse impacts. Nevertheless, these attempts do not appear to form part of a structured and comprehensive approach on RBC. Brazil's main SOE groups do not seem to have developed specific capacity building and training for their officials on RBC as a coherent and structured approach, and in particular, on how to limit adverse impacts and manage risks in practice through a clear and detailed due diligence process as conceived in the OECD RBC instruments.

Brazil's trade and investment policies, including its treaty network, considers RBC expectations to an extent. Most notably, Brazil developed a model investment agreement – the Cooperation and Facilitation Investment Agreements (CFIAs) that include sustainability provisions as well as an RBC clause to encourage investors to adopt responsible business practices. However, these provisions and clause are not subject to dispute resolution mechanisms. With the Ombudsman (or Focal Point) and the Joint Committee, the CFIAs create a dual institutional governance structure that could contribute to prevent business-related adverse impacts and facilitate access to remedy for victims of such impacts. Several entities, including the Chamber for External Trade (CAMEX), provide financial support to Brazilian exporters, while the Federal Brazilian Trade and Investment Promotion Agency (Apex-Brasil) assists them in developing their activities abroad through non-financial support. CAMEX's support is linked to measures aiming at increasing integrity. Beyond initiatives on compliance and sustainability, Apex-Brasil's activities are rarely focused on promoting RBC practices and standards. The inclusion of RBC considerations in the financial support granted to trade activities could be reinforced.

Brazil still has some steps to take in creating an enabling policy environment for RBC. There is a need to effectively regulate and enforce in support of RBC by filling-in existing gaps in legislations and regulations in areas covered by the Guidelines by ensuring inclusive stakeholder participation, and enforcing and implementing existing laws, regulations and policies in such areas. It is also necessary to leverage and incentivise RBC by resorting more systematically to other relevant policy areas through which responsible business practices can be facilitated and encouraged. Doing so is fundamental if Brazil wishes to thrive economically and meet its citizens' expectations in a post COVID-19 world in which an ever-increasing amount of public and private actors will call to build back better, more responsibly and sustainably, and to adopt responsible business practices going forward.

The elaboration of the Review included consultations with the Government, as well as with local business associations and other stakeholders, throughout the process. This allowed raising awareness about the importance of building an enabling policy and regulatory environment for RBC in Brazil among relevant actors. Through tailored recommendations, the Review now aims to support the Brazilian Government in the construction of such environment by identifying key policy areas for action and suggesting concrete and coherent policy measures to this end. A key measure in this regard is the development of the PACER and the NAP. It would also imply strengthening the Brazilian NCP so that it can contribute to, and support, government action on RBC. If the NCP continues to receive adequate resources and capacity, it can play an important role in promoting RBC across government and can underpin the construction of an enabling environment for RBC. The upcoming peer review of the Brazilian NCP will be an important step in consolidating good practice. In the aftermath of the COVID-19 crisis, the RBC Policy Review aims to contribute to enhancing Brazil's economic, social and environmental outcomes by promoting responsible business practices that meet its trade and investment partners' demands, thereby reinforcing its integration in the global economy.

Introduction and overview

Over the last decade, there has been a growing expectation for businesses to produce and supply goods and services responsibly. The concept of ‘Responsible Business Conduct’ (RBC) – which entails that businesses contribute to sustainable development whilst preventing and mitigating the adverse impacts that their activities, supply chains, and/or business relationships may cause or contribute to on people, planet and society – has gained increased attention. In addition, since 2015, businesses are expected to play a role in the implementation of the 2030 Agenda for Sustainable Development (the 2030 Agenda) and to contribute to solve sustainable development challenges, while respecting labour rights and environmental and health standards.¹ RBC and the 2030 Agenda are closely intertwined. Not only does RBC relate to several of the Sustainable Development Goals (SDGs) defined in the Agenda,² it is also envisaged as one of the means of implementation, RBC being one of the most important business contributions to the SDGs.³

There is thus nowadays a wide recognition that businesses – regardless of their size, sector, operational context, ownership, and structure – should contribute to sustainable development and observe internationally recognised RBC principles and standards, such as the OECD Guidelines for Multinational Enterprises (the Guidelines). The Guidelines are the most comprehensive set of recommendations addressed by governments to businesses on a wide array of areas of potential business responsibility, such as the respect for human rights, the promotion of labour rights, the protection of the environment, or the fight against corruption. They notably encourage companies to conduct due diligence to identify and address the risks of adverse impacts that may be associated to their operations, supply chains and business relationships.

Additionally, responsible business is increasingly recognised as being good business leading to value creation. This has been further demonstrated in the context of the crisis triggered by the Coronavirus (COVID-19) pandemic. Businesses observing RBC principles and standards and implementing due diligence have generally been better equipped to face the disruptions and challenges brought about by the crisis and to recover due to enhanced resilience and a focus on long-term value.

The growing expectation that businesses act responsibly has been accompanied by an increased acknowledgement of the role governments play in promoting and enabling RBC. Governments that have adhered to the Guidelines have the legal obligation to establish a National Contact Point for RBC (NCP) to promote and disseminate their recommendations and act as a non-judicial grievance mechanism in cases of alleged non-observance by businesses of such recommendations. However, beyond the establishment of NCPs, all governments – including those that have not adhered to the Guidelines – have an essential part to play in creating an enabling policy and regulatory environment to drive, support and promote responsible business practices. In practice, such an environment can be constructed through a combination of policies that can be grouped into two main policy orientations, i.e.:

- *Regulating and enforcing in support of RBC*, which entails that governments not only embed in their domestic legal and regulatory frameworks the legislations and regulations necessary to govern business conduct and prevent the occurrence of RBC issues in the areas covered by the Guidelines, but also deploy the resources and capacities required to implement them; and

- *Leveraging and incentivising RBC*, which implies that governments resort to other relevant policy areas to facilitate and encourage RBC, either by leading by example in their role as economic actors and/or commercial activities, or through economic policies that can shape business conduct.

Developing an enabling policy and regulatory environment for RBC is becoming increasingly important to thrive in the global economy and ensure economic, social and environmental progress. Such an environment is key for a country to be perceived as a reliable and safe place to source from, trade with, and/or invest in. This is all the more true in a world in which the COVID-19 crisis has severely disrupted international trade and investment and global value chains (GVCs), and where major trade and investment players are paying more and more attention to RBC issues.

Several OECD legal instruments acknowledge the role that governments play vis-à-vis RBC. In particular, the Chapter on 'Policies for enabling RBC' (Chapter 7) of the OECD Policy Framework for Investment (PFI)⁴ recognises that governments have a role in providing an enabling environment for RBC and sets forth recommendations in this regard.⁵ Additionally, various other OECD instruments and guidance documents on RBC and RBC-related areas contain policy guidance on government policies and policy coherence to promote and enable RBC.

The OECD is thus uniquely positioned to support governments in their paths towards the development of enabling policy and regulatory environments for RBC through coherent policies. It is in this context that the RBC Centre of the OECD takes part in the Project 'Promoting Responsible Business Conduct in Latin America and the Caribbean' (RBC-LAC Project), together with the International Labour Organization (ILO) and the United Nations Office of the High Commissioner for Human Rights (OHCHR). This Project, funded by the European Union (EU), seeks to promote smart, sustainable and inclusive growth in the region by supporting responsible business practices in line with the international RBC instruments of the three implementing organisations.⁶ The activities of the OECD under the Project are structured around three mutually reinforcing pillars, respectively aimed at: (i) reinforcing government policies for RBC, (ii) helping businesses to conduct due diligence in priority sectors, and (iii) facilitating access to remedy through the strengthening of NCPs.⁷

The present Review comes within the scope of the first pillar on government policies for RBC. It aims to bring support to the Government of Brazil in building an enabling policy and regulatory environment for RBC through coherent policies. The ultimate goal is that, in the aftermath of the COVID-19 crisis, such an environment contributes to enhance the country's economic, social and environmental outcomes, by reinforcing its integration in the global economy through strengthened trade and investment relationships.

For this purpose, the Review takes stock of relevant policies existing in Brazil in selected areas covered by the Guidelines, as well as in other relevant policy areas through which the Government can exemplify RBC and shape business conduct. On this basis, it formulates concrete and actionable policy recommendations to help Brazil regulate and enforce in support of RBC in areas covered by the Guidelines and leverage and incentivise RBC through other relevant policy areas that have a bearing on business conduct. It also includes an analysis of the Brazilian NCP and makes recommendations to ensure that the NCP can fulfil its mandate, but also play a key role in the design and implementation of RBC-related policies and act as a promoter of policy coherence for RBC across government.

The analysis presented in the present Review could serve to inform and support the ongoing parallel processes of developing an Action Plan on RBC and a National Action Plan on Business and Human Rights (NAP) in Brazil. It could also help inform ongoing policies and reforms in relevant fields, such as, for example, the ambitious Mobilisation for Employment and Productivity initiative led by the Ministry of Economy. As such, the Review is also relevant for, and can be used as a resource document by, stakeholders wishing to better understand how Brazil could build an enabling policy and regulatory environment for RBC and the different actions that could be taken towards this objective.

The Review was prepared by the OECD Secretariat in response to a formal request for an RBC Policy Review jointly formulated by Brazil's Ministry of Economy (through the NCP) and Ministry of Women, Family and Human Rights in December 2019. It was elaborated in cooperation with the Brazilian NCP through a process that involved, among others steps: the exchange of information on relevant legislations, regulations, policies and initiatives existing in Brazil via an RBC Policy Questionnaire completed by several government entities; detailed desk-based research; as well as a two-week fact-finding mission organised in December 2020 virtually due to the pandemic of COVID-19. During the fact-finding mission, the OECD Secretariat met with representatives of multiple government entities, business associations, trade unions, civil society organisations (CSOs) and indigenous peoples (see the Annex A for a detailed list of the participants in the meetings). A consultation meeting was also held with representatives of EU and OECD countries in Brazil to inform them about the review process and obtain their inputs.⁸ The draft of the Review was subsequently shared with the government entities that participated in the fact-finding mission, which provided feedback and inputs on its different sections. The draft was discussed by the OECD Working Party on Responsible Business Conduct at its meeting of 22-24 November 2021. Subsequently national stakeholders submitted comments on the review through OECD Watch (a global network of civil society organisations) and the OECD Trade Union Advisory Committee (TUAC), which were taken into account for its finalisation in consultation with the Government.

This Review is structured as follows. After a brief explanation of the concept of RBC and an overview of the main OECD instruments and tools in the field (**Section 1**), it describes the main opportunities and challenges for RBC in Brazil in terms of socio-economic context, general legal and policy framework, RBC awareness, and institutional setting (**Section 2**). The Review then analyses the legislations, regulations, policies and initiatives existing in Brazil in selected areas of the Guidelines (**Section 3**, as well in other relevant policy areas through which the Government can leverage and incentivise RBC, and formulates recommendations to develop and strengthen these different elements (**Section 4**). Finally, it examines the situation of the Brazilian NCP and explores the role it could play across government to promote policy coherence for RBC (**Section 5**). The Review concludes by an overall assessment of Brazil's government policies pertaining to RBC and summarises the recommendations addressed to the Brazilian Government to build an enabling policy and regulatory for RBC in the country (**Section 6**).

1 What is Responsible Business Conduct?

RBC has a two-fold objective. On the one hand, it entails that all enterprises – regardless of their legal status, size, ownership structure or sector – make a positive contribution to economic, environmental and social progress in the countries in which they operate with a view to achieving sustainable development. On the other, it implies that enterprises avoid and address adverse impacts on people, the planet and society caused by their activities and/or prevent and mitigate adverse impacts directly linked to their operations, products or services through supply chains and/or business relationships. As these impacts cover a range of substantive areas, the scope of RBC is broad and crosscutting. Risk-based due diligence is central to identifying, preventing and mitigating actual and potential adverse impacts, and is thus a key element of RBC (OECD, 2015^[1]).

RBC is increasingly relevant for the global agenda. It is a powerful tool to deal with the downsides of globalisation and foster the positive contribution of businesses to economic and sustainability outcomes. It can help attract responsible investment, facilitate insertion in GVCs, minimise risks for businesses, and ensure the respect of stakeholder rights. It can also contribute to making progress towards sustainable development by maximising the private sector's contribution to the Sustainable Development Goals (SDGs) and mobilising the resources necessary for financing the implementation of the 2030 Agenda (OECD, 2016^[2]).

Box 1.1. RBC, Corporate Social Responsibility, and Business and Human Rights: Lost in translation?

Many businesses, governments and stakeholders are familiar with the term Corporate Social Responsibility (CSR), which has historically been used to describe business interactions with society.

Over the last years, CSR has increasingly been used alongside RBC and Business and Human Rights, with some using the terms interchangeably (e.g. the EU). How do these concepts relate to each other?

They all reflect the expectation that businesses should consider the impact of their operations, supply chains, and business relationships on people, the planet and society as part of their core business considerations and not as an add-on. This includes the need to avoid and address negative environmental and social impacts.

A key characteristic of CSR, RBC and Business and Human Rights is that they refer to corporate conduct beyond simply complying with domestic law and call on business to contribute positively to sustainable development while managing risks and impacts that may result from their activities. These concepts should not be understood to be equivalent to philanthropy.

Source: (ILO/OECD/UNOHCHR, 2019^[3]).

1.1 OECD instruments and tools on RBC

The OECD has developed an important number of instruments and tools aimed at fostering the adoption and implementation of RBC practices by businesses but also of RBC policies by governments.

1.1.1 *The OECD Guidelines for Multinational Enterprises and the NCPs*

The main instrument aimed at promoting the adoption of RBC practices by businesses are the the Guidelines. The Guidelines are recommendations from governments to businesses on how to act responsibly⁹ that cover all areas of potential business responsibility, including human rights, employment and industrial relations, environment, information disclosure, bribery and corruption, consumer interests, science and technology, competition, and taxation. The Guidelines were adopted in 1976 and last updated in 2011 to include a Chapter on human rights aligned with the UN Guiding Principles on Business and Human Rights (UNGPs), following the example of the Chapter on Employment and Industrial Relations, which is aligned with ILO's labour standards.

To date, 50 countries (of which 38 OECD members and 12 additional economies) – including Mexico, Chile, Colombia, Peru, Argentina, Brazil, Costa Rica and Uruguay¹⁰ – have adhered to the Guidelines, thereby committing to implement them and encourage their use.

Adherents to the Guidelines have the legal obligation to set up a NCP to further their implementation. NCPs have two main functions. On the one hand, they promote the Guidelines and handle enquiries to make them known among relevant stakeholders and across government entities. On the other hand, they serve as a grievance mechanism to resolve “specific instances”, that is cases relating to the non-observance of the recommendations contained in the Guidelines.

Up to now, the 50 existing NCPs have dealt with more than 500 specific instances arising in over 100 countries, thereby playing a critical role in ensuring that the Guidelines are implemented globally.

1.1.2 *The Due Diligence Guidance*

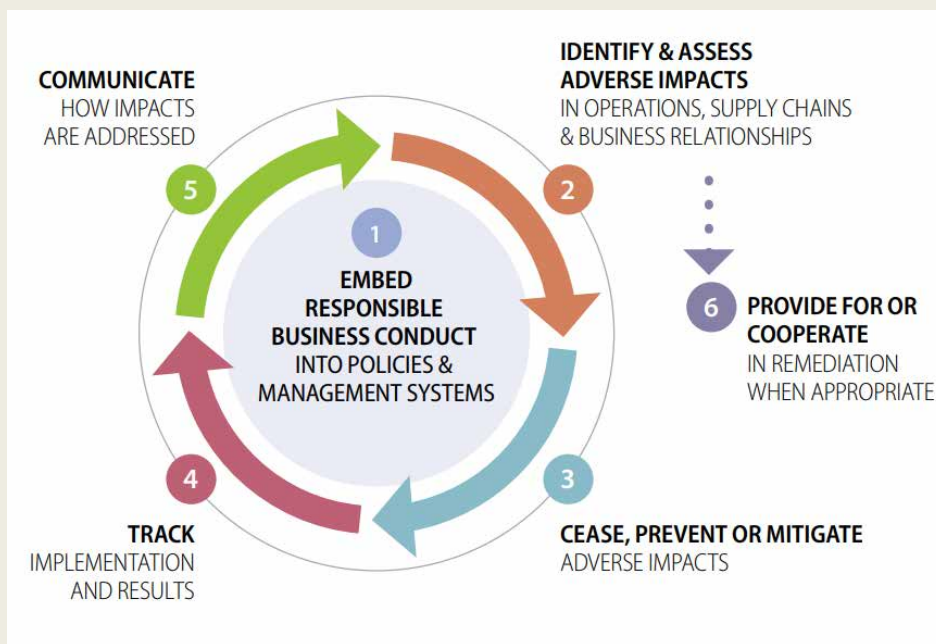
The Guidelines embed the expectation that enterprises carry out due diligence to identify, prevent and mitigate real and potential adverse impacts on people, the planet and society, and to account for how those impacts are addressed. Based on this expectation, the OECD has developed a range of instruments providing guidance on due diligence, with the aim of helping companies operating in different sectors understand and address RBC risks.

In 2018, the OECD issued a general Due Diligence Guidance for RBC (the OECD Due Diligence Guidance for RBC) to promote a common understanding among governments and stakeholders of due diligence for RBC. The Guidance defines a six-step process for due diligence (see Box 1.2), which is relevant for all types of enterprises operating in all countries and sectors of the economy (OECD, 2018^[4]). As such, it also serves to implement the due diligence recommendations contained in the UNGPs and the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (the ILO MNE Declaration).

Box 1.2. The due diligence process and supporting measures

Taking into account the fact that due diligence should be commensurate with risk and appropriate to a specific enterprise's circumstances and context, the OECD Due Diligence Guidance for RBC establishes a six-step process to conduct due diligence that can be used by any enterprise irrespective of the location or sector of its operations.

This process consists in embedding RBC into the enterprise's policies and management systems (step 1) and undertaking due diligence by identifying actual or potential adverse impacts on RBC issues (step 2), ceasing, preventing or mitigating such impacts (step 3), tracking implementation and results (step 4), communicating how impacts are addressed (step 5), and enabling remediation when appropriate (step 6).



Source: (OECD, 2018^[5]).

In addition to the general OECD Due Diligence Guidance for RBC, the OECD has developed sector-specific due diligence guidance for the minerals, extractives, agriculture, and garment and footwear sectors (OECD Sector-specific Due Diligence Guidance). This Guidance helps enterprises identify and address risks to people, the planet, and society that can be associated with business operations, products or services in these specific sectors (see Box 1.3).

Box 1.3. OECD Sector-specific Due Diligence Guidance

The OECD has developed Due Diligence Guidance for four specific sectors, all of which have been embedded into OECD Council Recommendations:

- OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas
- OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector

- OECD-FAO Guidance for Responsible Agricultural Supply Chains
- OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector

These OECD Council Recommendations recommend that adhering governments and their NCPs actively promote the use and observance of the Guidance by enterprises operating in and from their territories, but also take measures to support the adoption of risk-based due diligence frameworks for responsible supply chains, and ensure the widest possible dissemination of the Guidance (including among relevant government entities), and their use as resources by stakeholders.

As part of its work on RBC in the financial sector, the OECD has also developed papers on RBC for Institutional Investors and Due Diligence for Responsible Corporate Lending and Securities Underwriting.

Sources: (OECD, 2019^[6]; 2018^[7]; 2017^[8]; 2017^[9]; 2016^[10]) (OECD/FAO, 2019^[11]).

1.1.3 The Policy Framework for Investment

Besides fostering the adoption and implementation of RBC practices by businesses, the OECD also encourages the adoption and implementation of enabling policy and regulatory environments for RBC by governments through the PFI.¹¹ The PFI is designed to help governments maximise the development impact of investment (OECD, 2015^[12]) and contains a chapter dedicated to policies for enabling RBC (see Chapter 7). This Chapter has become a reference for designing and implementing strong RBC policy frameworks and coordinating government efforts on RBC (See Box 1.4).

Box 1.4. Extracts from Chapter 7 of the PFI – Policies for enabling RBC

Governments can enable RBC in several ways:

- Regulating – establishing and enforcing an adequate legal framework that protects the public interest and underpins RBC, and monitoring business performance and compliance with regulatory frameworks;
- Facilitating – clearly communicating expectations on what constitutes RBC, providing guidance with respect to specific practices and enabling enterprises to meet those expectations;
- Co-operating – working with stakeholders in the business community, worker organisations, civil society, general public, across internal government structures, as well as other governments to create synergies and establish coherence with regard to RBC;
- Promoting – demonstrating support for best practices in RBC;
- Exemplifying – acting responsibly in the context of the government's role as an economic actor.

Source: (OECD, 2015^[11]).

1.2 Alignment with other international instruments

The OECD instruments and tools on RBC are aligned and complement the other international instruments on responsible business practices developed by the ILO and the UN, i.e. the ILO MNE Declaration and the UNGPs. Jointly, the Guidelines, the ILO MNE Declaration, and the UNGPs set the global expectations for RBC and have become a key reference for responsible business (ILO/OECD/UNOHCHR, 2019^[31]).

The three instruments outline how enterprises can act responsibly. They all establish in this regard that any enterprise (regardless of its size, sector, operational context, ownership and structure) should make a positive contribution to the economic, environmental and social progress of the countries in which it operates, while avoiding and addressing adverse impacts on human and labour rights, the environment and society. This covers not only impacts that the enterprise may cause or contribute to through its own activities but also those impacts directly linked to its operations, products or services through its supply chains and/or business relationships. According to these instruments, enterprises should undertake due diligence to identify, prevent and mitigate adverse impacts and account for how those impacts are addressed. In addition, where enterprises identify that they have caused or contributed to adverse impacts, they are expected by the three instruments to provide access to remedy through legitimate processes (ILO/OECD/UNOHCHR, 2019^[3]).

The OECD, the ILO and the UN each bring their own value-added to the implementation of the principles and standards contained in the Guidelines, the ILO MNE Declaration and the UNGPs based on their mandate and expertise: the OECD with its broad approach to RBC and the links to economic policies, the ILO with its tripartite structure and authority on international labour standards, and the UNOHCHR and the UN Working Group on Business and Human Rights (UNWG) with their expertise on Business and Human Rights and UN human rights mandates (ILO/OECD/UNOHCHR, 2019^[3]).

2 Context: Opportunities and challenges for Responsible Business Conduct in Brazil

The way in which RBC can be promoted and enabled largely depends on a country's specific context. The socio-economic background, the existing policies pertaining to RBC, the degree of awareness of businesses and other stakeholders on RBC, or the existence and situation of the NCP, can all constitute opportunities and/or challenges for the adoption and implementation of responsible business practices. Analysing them is fundamental to better understand the drivers and hindrances that a national context may present for the construction of an enabling environment for RBC.

2.1 Economic background of relevance for RBC in Brazil

Brazil is the ninth biggest economy in the world and the largest in Latin America and the Caribbean at a nominal GDP of US\$ 1.84 trillion in 2019. With 211 million inhabitants, the country is the most populous in the region (World Bank, 2020^[13]). Brazil's economy has been growing strongly at the beginning of the 2000s, which was supported by a well-developing demography and increasing commodity prices. In the period between 2003 and 2013, 14% of the population was successfully lifted out of poverty. Economic growth, social transfers and improvements in education drove the reduction of poverty and inequality. As of 2012, Brazil saw a severe decline in economic growth resulting in a drastic recession in 2014-16. Real GDP growth stood at sluggish 1.3 percent from 2017 to 2018 and 1.1 percent in 2019 (OECD, 2020^[14]).

The country is classified as an upper middle-income economy (World Bank, 2020^[13]). Brazil's economic structure is driven by services accounting for 74% value added GDP, followed by industry (21%) and agriculture, forestry and fishing (5%) (OECD, 2020^[14]). Brazil has changed towards a diversified economy highly reliant on the services sector, which is the main contributor to Brazil's GDP, investment and job creation. Services such as for business, information, government, finance and transport have grown impressively and contribute largely to building value added. However, they serve mostly the large domestic, as opposed to the export market (Arbache, Rouzet and Spinelli, 2016^[15]). In addition to services, Brazil has a large manufacturing sector including industries such as steel, automotive, chemicals, garment, aircraft, machinery and other equipment. The country is also uniquely endowed with natural resources, which are essential to Brazil's economic development. Brazil is a major producer of agricultural goods, minerals, oil and gas. The country is the third largest exporter of agricultural products globally and it is one of the biggest producers of soybeans, sugarcane, maize, coffee, cotton and oranges as well as meat (OECD/FAO, 2019^[11]). Between 1995 and 2018, Brazil's agricultural exports almost quadrupled (FAO, 2020^[16]). The agriculture sector employs about 9% of the workforce (United Nations, 2020^[17]) and it is estimated that the whole agribusiness sector accounted for 20% of the economy's labour force, and represented 19% of GDP in 2017 (PwC, 2019^[18]). The productivity growth in the agricultural sector has been one of the highest in the world (4.1% between 1991 and 2015) (OECD/FAO, 2019^[11]). In addition to agriculture, the country has a significant extractive and minerals sector which accounts for 4% of Brazil's GDP and is responsible for 25% of the country's export value (WITS, 2020^[19]). Today, Brazil ranks among the leading producers of minerals building on abundant and diverse reserves of minerals such as bauxite (aluminium), iron ore, niobium, nickel and gold (EIA, 2019^[20]). In addition, the production of oil and gas has increased in Brazil since the early 2000s driven by the emerging exploration of pre-salt reserves. Business activities in the minerals sector as well as in agriculture (including informal and illegal activities) can raise important sustainability and RBC challenges, relating to social, environmental and human rights issues (OECD, 2020^[21]).

Despite the socio-economic progress over the past two decades, Brazil's economic development faces several structural challenges with regard to productivity, investment, fiscal outcomes, education, social protection, income inequality and corruption. These factors affect well-being and business environment, and constrain inclusive and sustainable growth (OECD, 2020^[14]). According to the most recent OECD Economic Survey, large inequalities remain in income distribution in Brazil. The earnings of the top 10% of the population are more than four times as high as those of the bottom 40%. The poverty rate measured as USD 5.50 per day (2011 PPP) continues to be high, affecting 20% of the population in 2018 (World Bank, 2020^[22]). As highlighted by the UNPD, Brazil is the seventh most unequal economy globally in terms of income distribution (UNDP, 2019^[23]). Inequality and poverty disproportionately affect women and non-white Brazilians (OECD, 2020^[14]). Additionally, regional disparities affect the economic development of Brazil. The north-eastern states are characterised by lower income, higher poverty, labour informality and illiteracy compared to the southeast of the country (OECD, 2020^[14]).

Although trade and investment play a major role for the Brazilian economy, the country is less integrated in global value chains (GVCs) than peer economies of similar economic development. The share of exports and imports in GDP has increased but remains low at 30% (OECD, 2020^[14]). In 2018, Brazil ranked 25th worldwide in terms of total gross product exports (USD 242 billion) and 30th in total gross product imports (USD 173 billion) (Observatory of Economic Complexity, 2020^[24]). In 2020, Brazil's main trading partners for exports were China (USD 68 billion), the European Union (USD 28 billion), United States (USD 21 billion), Argentina (USD 8 billion) and Canada (USD 4 billion). Main partners for imports were China (USD 34 billion), the European Union (USD 27 billion), United States (USD 24 billion), Argentina (USD 8 billion) and South Korea (USD 4 billion). The largest proportion of Brazilian merchandise trade for exports are commodities, in particular minerals and agricultural products, and for imports machinery, chemical products and minerals (OECD, 2020^[14]). In 2020, top products for exports were soy beans (USD 29 billion), iron ore (USD 24 billion), crude oils (USD 19 billion), cane sugar (USD 7 billion) and beef (USD 7 billion). The country's top imports were production platforms/vessels (USD 10 billion), prepared oils (USD 7 billion),

telecommunication equipment (USD 4 billion), integrated circuits (USD 4 billion) and flexible tubing (USD 4 billion) in the same year (Government of Brazil, 2021_[25]).

Brazil sought to open its economy since the 1990s by undertaking trade policy reforms and reducing tariffs, but trade in value added and integration in GVCs remains low (OECD, 2020_[14]). The country participates in several preferential trade agreements. Brazil concluded new agreements such as the Mercosur-EU and Mercosur EFTA in 2019, which are yet to enter into force. Moreover, Brazil currently holds trade negotiations with Canada, Korea and Singapore (World Bank, 2020_[22]).

Apart from trade, Brazil is open to investment and barriers to Foreign Direct Investment (FDI) are around OECD average (OECD, 2020_[14]). In 2019, Brazil ranked as the top 9th recipient of FDI inflows, and the first one in Latin America and Caribbean. In the same year, inward FDI stocks amounted to USD 675 billion (37% of GDP) and inward FDI inflows to USD 69 billion (OECD, 2021_[26]). 32% of inward investment was in the processing of oil, coke and petroleum sectors. Apart from oil and gas, Brazilian sectors receiving FDI are the automotive industry, financial services, commerce, electricity, and the chemical industry. In 2019, the largest investors in Brazil were the Netherlands, USA, Germany, Spain, the Bahamas, Luxembourg, UK, Canada, France and Chile (UNCTAD, 2020_[27]).

Brazil's economy, as many other countries, is exposed to unprecedented socio-economic challenges, since it registered its first case of COVID-19 on 26 February 2020. Brazil is one of the hardest hit countries by the pandemic globally in terms of cases and deaths (World Bank, 2020_[28]). The COVID-19 pandemic hit Brazil with a fragile recovery from its recession in 2014-16. As a result of the COVID-19 outbreak, GDP contracted dramatically and fell by an estimated 4.5 percent in 2020. However, Brazil's economic growth is projected to rebound by 3.6 percent in 2021 (IMF, 2021_[29]).

Brazilian companies and value chains have been impacted seriously by the consequences of the pandemic. Between the first half of 2019 and 2020, the value of exports fell by 7.1% and the value of imports by 5.2% (ECLAC, 2021_[30]). In 2020, FDI inflows to Brazil fell by 50% compared to the previous year and foreign equity investment in oil and gas extraction decreased by 77% in the first quarter of 2020 (UNCTAD, 2021_[31]). According to IBGE, the negative effect of the pandemic on companies was especially high in the services, industry, construction and trade sector. The drop in sales hit in particular small businesses. 71% of SMEs indicated that there was a negative impact on revenue during the pandemic (IBGE, 2020_[32]).

The Covid-19 crisis affected deeply the employment situation and aggravated structural challenges in Brazil. As a result of the Covid-19 crisis, unemployment in Brazil increased to over 14% in 2020 according to IBGE's National Household Survey (PNAD). Job losses were predominant among informal workers of which 5.7 million lost their jobs in the first quarter of 2020. Moreover, the survey shows that the pandemic exacerbated income inequality. On average, the top 10% of Brazilians lost 3% of their income during the pandemic, while the income of the poorest 40% - including work and government assistance - dropped by more than 30% (IBGE, 2021_[33]). Informal workers and other vulnerable groups including women and indigenous peoples have been especially exposed by the impact of the pandemic with an increased risk of poverty (World Bank, 2020_[28]). The portion of Brazilians living in extreme poverty is projected to increase to between 10% and 15% in January 2021 (Duque, 2020_[34]).

Among other more long-lasting challenges for the Brazilian economy is the high prevalence of informal work (OECD, 2020_[14]). While informality rates in Brazil have been falling since the early 2000s, informal workers, i.e. workers without a formal contract or business register, still amounted to around 35% of Brazil's workforce in November 2020 (IBGE, 2020_[35]). This percentage of informality is higher than in peer countries (OECD, 2020_[36]). According to Ulyssea (2018_[37]), most of the informal firms in Brazil are either not productive enough to become formal or they take advantage of low enforcement to eschew paying the costs of formalisation. Informality is heterogeneously distributed across sectors, regions and workers. Informality rates are especially high in agricultural sub-sectors such as cereals, meats and dairy production as well as in the construction sector (OECD, 2020_[14]). According to the Brazilian Institute of Geography

and Statistics (*Instituto Brasileiro de Geografia e Estatística*, IBGE), in 2019, the percentage of informal workers was highest in the northern (50%) and north-eastern (45%) states such as Pará (62%), Piauí (60%) and Ceará (59%) (IBGE, 2020^[35]). Informality is significantly higher (around 13%) among black and indigenous people in comparison to white people (IBGE, 2019^[38]). Informality poses various challenges to Brazil's economic development such as productivity and fiscal capacity. Informality results also in lower investment of firms in training for workers. Informal workers are exposed to several risks since they are not covered by worker protection rights or unemployment schemes (OECD, 2020^[14]).

Small-and medium-sized enterprises (SMEs), i.e. firms employing less than 250 people are an essential part of Brazil's economy and contribute to 62% of national employment and 50% of value added (OECD, 2020^[36]). In Brazil, 11.5 million SMEs represent 98.5% of all companies, account for 27% of GDP and for 41% of aggregated salaries (OECD, 2019^[39]). The majority of Brazilian SMEs operate in the services and trade sector while SME's contribution to the industry sector is less significant (SEBRAE, 2020^[40]; OECD, 2020^[36]). SMEs are also less involved in innovation and accounted for a low proportion of innovation spending (21%) in 2017. Moreover, small enterprises participate only marginally in the export market and global value chain. In the same year, 3.3% of Brazil's total export value was generated by SMEs (OECD, 2020^[36]).

2.2 International instruments and government policies supporting RBC

At the international level, Brazil has ratified a number of key instruments that underpin RBC in areas such as human and labour rights, environmental protection and anti-corruption (see Table 2.1).

Table 2.1. Brazil's adherence and ratification of key international instruments

Instrument	Ratification or Adherence
OECD Guidelines for Multinational Enterprises	Yes
9 Core UN Conventions on Human Rights	9/9
UN Convention against Corruption	Yes
Fundamental ILO Conventions	7/8
Paris Agreement	Yes
Convention on Biological Diversity	Yes
Escazú Agreement	No
Extractives Industries Transparency Initiative (EITI) Member	No
Voluntary Principles on Security and Human Rights	No

In addition, Brazil is an active Key Partner of the OECD, the co-operation between the country and the Organisation dating back to 1994 (OECD, 2020^[41]). In the field of RBC, Brazil took an important step by adhering to the Guidelines in 1997 and subsequently establishing an NCP in 2003 (See Section 2.3). Brazil has also adhered to all Council Recommendations on sectoral due diligence guidance, including the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (in 2012);¹² the Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector (in 2016);¹³ the OECD-FAO Guidance for Responsible Agricultural Supply Chains (in 2016)¹⁴; and the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector (2017).¹⁵ Finally, it adhered to the OECD Council Recommendation on the Due Diligence Guidance for RBC in 2018.¹⁶

In 2018, Brazil took an important step towards policy coherence for RBC with the adoption of the National Guidelines on Business and Human Rights (Government of Brazil, 2018^[42]). More recently, in December 2020, the National Investment Committee (*Comitê Nacional de Investimentos*, CONINV) gave a mandate to the Brazilian NCP to develop a National Action Plan to promote RBC (*Plano de Ação direcionado à promoção da Conduta Empresarial Responsável*, PACER). Likewise, the Ministry of Women, Family and

Human Rights (MMFDH) announced in 2021 that it would start the process to develop a National Action Plan (NAP) on Business and Human Rights (see Section 3.1.1 and Box 3.1). The Ministry of Economy through the NCP and the MMFDH have indicated working jointly to ensure consistency between the development processes of the PACER and the NAP on Business and Human Rights (Government of Brazil, 2021^[43]). To this end, various exploratory meetings have been held with a view to drawing up a roadmap and initiating a consultation process with stakeholders.

Brazil also took steps to include RBC considerations into the spectrum of trade and investment (European Commission, 2019^[44]) (see Section 4.2), and even though there is no legal requirement for businesses to disclose social or environmental impacts, Brazil adopted a range of regulations to push for the adoption of environmental, social, and governance (ESG) criteria by companies, such as Brazilian Central Bank's Resolution No. 4,327 of 2014, that requires financial institutions to launch and implement a Social and Environmental Responsibility Policy (PRSA) (FEBRABAN, 2015^[45]). The resolution also establishes that financial institutions must encourage the participation of their stakeholders in the process of preparing such policy, and to set-up systems and procedures that make it possible to identify, classify, evaluate, monitor, mitigate and control the socio-environmental risks related to the institution's activities and operations.¹⁷ The need to strengthen policy coherence for RBC in Brazil was also highlighted in a 2020 resolution by the National Human Rights Council (*Conselho Nacional dos Direitos Humanos*, CNDH) to develop a national policy on business and human rights (CNDH, 2020^[46]) (see below, Section 3.1.1).

Brazil has however not yet developed a consistent practice of incorporating an RBC approach in major policy instruments for national development. This is the case of the 2020-2023 Multiannual Plan (Plano Plurianual 2020-2023, PPA) (Government of Brazil, 2019^[47]), one of the main planning tools of the federal administration (CSO Working Group on the 2030 Agenda, 2020^[48]), or of the Federal Strategic Development Plan for 2020–2031 (*Estratégia Federal de Desenvolvimento para o Brasil no período de 2020 a 2031*) established by Presidential Decree 10.531 (Government of Brazil, 2020^[49]), which do not yet include specific considerations regarding the role of business to promote social or environmental development beyond economic growth.

Brazil's ranking in global indices reflect that its performance on a range of economic, social and environmental indicators could still significantly improve, including by better including RBC considerations in public policies (see Table 2.2).

Table 2.2. Ranking in global indices

Indicator	Country Ranking	Number of Countries
WEF Global Competitiveness Index (2019)	71	141
World Bank Doing Business (2020)	124	190
ITUC-CSI Global Rights Index (2020)	Rating 5 (No guarantee of rights)	139
Yale Environmental Performance (2020)	55	180
RSF World Press Freedom (2020)	107	180
Global Slavery Index (2018)	142	167
WEF Global Gender Gap Index (2020)	92	153
Transparency International Corruption Perception Index (2020)	94	179
World Justice Rule of Law Index (2020)	67	128

2.2. Stakeholders' awareness of RBC

Involvement of the Brazilian private sector in the 2030 agenda is relatively strong. Initiatives to explicitly promote and implement RBC principles and standards are conversely still incipient, as shown by the findings of the OECD 2020 Business Survey in LAC (see Box 2.1). For instance, the Brazilian Business

Council for Sustainable Development¹⁸ (*Conselho Empresarial Brasileiro para o Desenvolvimento Sustentável*, CEBDS), the local chapter of the WBCSD, launched in 2017 a SDGs Guidance for Businesses, in collaboration with the Global Reporting Initiative and the Global Compact (CEBDS, 2017^[50]). This Guidance calls on all businesses to comply with relevant international standards –including the Guidelines – and to address adverse impacts on human rights, including those linked to risk areas in their supply chains.¹⁹ More recently, the Brazilian Global Compact Network²⁰ created a platform on business and human rights to promote the UNGPs and the Guidelines, which includes trainings on due diligence (Global Compact Brazil, 2020^[51]). In addition, participants in the Network exchange experiences on four areas related to due diligence: impact assessment, integration and action, monitoring and communication.

Beyond this, the Brazilian private sector has also become more acquainted with the work of the NCP over recent years, organising meetings and events²¹ at the federal and state level.²² There is also an increasing collaboration between the NCP and business associations such as the National Confederation of Industry (*Confederação Nacional da Indústria*, CNI), the Securities and Exchange Commission of Brazil (*Comissão de Valores Mobiliários*, CVM) and Global Compact.²³ However, the fact-finding mission revealed that, although some CSOs and trade unions are aware of the existence of the Brazilian NCP, more actions are needed from the NCP to raise awareness about its procedures to file specific instances, especially among trade unions and CSOs.

As for civil society, Brazil's CSOs are particularly aware of RBC's importance and increasingly demand that both the public and private sectors take measures to effectively prevent and mitigate business-related adverse impacts, particularly on human rights. For example, various CSOs²⁴ worked closely with the CNDH to develop the guidelines for a national policy on business and human rights (CNDH, 2020^[46]) (See also Section 3.1.1). Some Brazilian CSOs are also actively participating in activities aimed at developing binding regulations on business and human rights, be it through the adoption of a binding treaty at the international level (HOMA, 2020^[52]) or the identification of judicial and extrajudicial mechanisms to hold companies accountable for human rights violations, which include the filing of specific instances before the Brazilian NCP (Business and Human Rights Resource Centre, 2018^[53]). Brazil's Unions are also increasing their awareness and involvement in the RBC agenda, especially through the development of capacity building activities, participating in multi-stakeholder discussions and developing specialised materials. In this regard, major Brazilian unions in collaboration with TUAC, have issued a User's Guide for Unionists in Portuguese on the Guidelines (Ethos, n.d.^[54]). In addition, Academia in Brazil has notably contributed to reinforcing the discussions about the importance of observing the international standards of RBC and BHR, through specialised academic research groups such as the Fundação Getulio Vargas in Sao Paulo (FGV Direito SP, 2021^[55]).

Box 2.1. Findings from the OECD 2020 Business Survey in LAC in respect of Brazilian enterprises

The OECD 2020 Business Survey in LAC collected data on the RBC practices of 154 respondent companies operating in Brazil (respondents). The respondents answered different questions on their RBC policies, risk-based due diligence processes, the COVID-19 crisis impact, knowledge of the NCP, and future needs in terms of training and support on RBC-related issues.

Highlights of the Survey's findings include the following:

- **The majority of respondents (63%) have adopted written RBC policies on one of the following issues: human rights, employment and labour rights, environment, combating bribery, consumer interests, and disclosure.** Large companies tend to have higher shares of written policies (67%) compared to SMEs (48%). Overall, most of the respondents have adopted policies focusing on disclosure (90%), while human rights issues were the least addressed (66% of the respondents mentioned having a related policy).¹
- **The majority of respondents (55%) have put in place reporting practices on RBC.** 64% of large enterprises have implemented a reporting mechanism, compared to 22% of SMEs.² However, 45% of the respondent companies do not publish any reporting on RBC.
- **Less than half of the respondents (40%) report adopting an enhanced due diligence process when risks are identified in the supply chain.** As part of their supply chain due diligence process, more than one-third of the respondents carry out risk assessments on all their suppliers and business partners (37%). Notably, nearly 42% require all tier 1 suppliers and business partners to fulfil RBC expectations as part of a contract or agreement. Still, less than 18% organise training sessions on RBC or due diligence for their suppliers and business partners.³
- **Around one fourth of respondents (27%) report having knowledge of the NCP system,** compared to the higher share of the respondents (68%) that indicate not knowing the mechanism. Engagement with the NCP was rated on average 3.1 out of 10 by respondents (with 10 being the highest appreciation and 1 being the lowest).
- **The large majority of respondents declare that the COVID-19 pandemic generated human rights challenges for their companies (67%).** However, 75% of the business report having RBC practices in place (such as due diligence processes), helping them navigate the crisis with respect to the mitigation of risks and the financial situation.⁴
- **The majority of respondents indicate the need for support and training on RBC-related issues.** Specifically, 57% reported the need for capacity building and training activities on due diligence in general, 50% need for training on OECD-RBC instruments, and 43% on NCP tools.⁵

Notes:

¹ Based on 82 responses

² Based on 82 responses

³ Based on 61 responses

⁴ Based on 60 responses

⁵ Based on 58 responses

Source: (OECD, 2021^[56]).

2.3. Brazil's National Contact Point for RBC

The Government adhered to the OECD Declaration on International Investment and Multinational Enterprises in 1997 and established a National Contact Point in 2003. In accordance with the Guidelines, the Brazilian NCP's mandate is twofold: promote the Guidelines and the related Due Diligence Guidance, and handle cases (referred to as 'specific instances') as a non-judicial grievance mechanism.

The NCP is governed by a legal mandate in the form of a government decree (Government of Brazil, 2019^[57]). This new legal instrument reorganises the NCP as part of the newly created Ministry of Economy, resulting from the merger of the ministries of Planning, Finance, Industry and Labour in early 2019. The Ministry of Labour and Social Security was since reinstated in July 2021 (Government of Brazil, 2021^[58]). In terms of institutional arrangements, the NCP is an inter-ministerial working group that meets intermittently, comprised of representatives from eight ministries and agencies.²⁵ It however has a permanent office composed of a Coordinator and an Executive Secretary in the Undersecretariat for Foreign Investment, Executive Secretariat of the Board of Foreign Trade and Investment, Special Secretariat for Foreign Trade and International Affairs, Ministry of Economy.

The Council Decision on the Guidelines require adherent governments to provide their NCPs with sufficient human and financial resources to deliver on their mandate. Since 2019, the NCP has three full time officials and one part time official (the Coordinator). The NCP reported in its 2020 annual report to the OECD that the NCP Coordinator is a senior official, the Undersecretary for Foreign Investment. While the NCP has enjoyed an increase in resources since the previous years, it has faced significant turnover, notably as the NCP has had three different coordinators between 2019 and 2020. There is also frequent turnover in the representatives of various ministries to the working group. In terms of financial resources, the NCP does not have a dedicated budget and its functioning is covered by the Executive Secretariat of the Board of Foreign Trade and Investment.

The Procedural Guidance also requires governments to provide NCPs with a structure that allows it to deal with the wide range of issues covered by the Guidelines, and to maintain relations with, and gain and retain the confidence of stakeholders. Likewise, the Procedural Guidance requires that the structure of the NCP enable it to operate impartially. Through its inter-ministerial working group, the Brazil NCP has access to experts across the government, but unlike many other NCPs, the Brazil NCP does not have a formal advisory body. However, Article 6 of the Decree specifies that, to help with the thematic diversity of the Guidelines and to enhance the effectiveness of its activities, the NCP may make specific requests to the following organisations (as well as consult any other organisations as appropriate):

1. The Special Secretariat for Federal Revenue of the Ministry of Economy;
2. The Ministry of Environment;
3. The Attorney General;
4. The Brazilian Institute for the Environment and Natural Resources;
5. The Chico Mendes Institute for the Preservation of Biodiversity.

The NCP reported that, to date, it had not yet had the opportunity to consult these bodies, but had recently exchanged with the Securities and Exchanges Commission of Brazil, and with the Ministry of Agriculture, Livestock and Food, in particular with regard to the promotion of sectoral due diligence guidance.

Business, trade union and civil society stakeholder groups have all called for the creation of a stakeholder advisory body. Moreover, civil society stakeholders have raised concerns regarding perceptions of impartiality due to the location of the NCP's Coordination and Secretariat in the Ministry of Economy.

In terms of promotion of the Guidelines and related due diligence guidance, the NCP has a dedicated website on the Ministry of Economy's website. The NCP's website is not accessible directly from the homepage, but is located on the third level. It is well-designed and comprehensive, but available only in Portuguese, although a number of documents are also available in English. In past years, the number of

promotional events organised by the NCP and of presentations made by the NCP in events organised by others has been low, relative to the size of the country and of the potential stakeholder audience. In 2019, the NCP undertook a series of eight large promotional ‘roadshows’ across the country. These events gathered a large and diverse audience and focused on introducing the Guidelines and the NCP. In the past year, however, the Covid-19 pandemic situation had an impact on the NCP’s promotional activities, with only one event co-organised for the general public. The NCP did participate as a speaker in a number of online conferences and webinars hosted by others (8 in total). The themes of these events ranged from promoting the NCP and the Guidelines, as well as events focused on access to remedy, policy coherence for RBC, human rights and anti-corruption. Over the past four years, the events organised or participated to by the NCP have tended to target government officials or mixed audiences, and address general topics such as presentations of the Guidelines and of the NCP itself. Therefore, there has not been a strategy to directly promote RBC with key target groups or sectors, or to focus events on key issues. Business stakeholders have indicated collaborating with the NCP on promotion, while also hoping that the NCP will step up its promotional efforts as a result of its reorganisation. In particular, these stakeholders would like promotion to focus increasingly on the Guidelines and the corresponding benefits for companies, rather than only on the NCP itself and its role as a platform for mediation.

In terms of its case-handling function, the NCP has detailed rules of procedure in place and since its establishment, the NCP has dealt with 39 specific instances (see Table 2.3). This represents the fourth highest number of cases in the entire NCP network and highest in Latin America. The Brazilian NCP has also acted as supporting NCP in three cases. The main sectors concerned by specific instances handled by the NCP concern manufacturing (10 cases), finance (9) and agriculture, forestry and fishing (8). The most frequently raised chapters of the Guidelines in cases handled by the NCP are the chapters on employment and industrial relations, general policies (including due diligence), human rights and environment. Twenty-three cases were submitted by trade unions, 12 by NGOs and nine by individuals.

Table 2.3. Specific instances handled by the Brazilian NCP

Title	Status	Date submitted	Date concluded	Outcome
Bahia Specialty Cellulose (BSC)/Copener Florestal, Bracell Group and José Reinaldo Soares da Silva, and Izabel Lopes Soares da Silvas	In Progress	31-8-2020	N/A	Pending
Individuals and Petrobas	Concluded	16-7-2020	05-3-2021	Agreement reached outside of the NCP process
Individual and ENI S.p.A.	In progress	16-7-2020	N/A	Pending
Vale S.A. and Vila Solaris Hospedagens e Eventos, represented by Mr. Rogério Mário Ziviani Gomes	Concluded	14-2-2020	11-5-2021	Agreement reached outside of the NCP process
Vale S.A. and Mr Carlos Cleber Guimarães Júnior and Ms Carla de Laci França Guimarães	In progress	23-01-2020	N/A	Pending
Vale and BHP Billiton and SITICOP, CNO-CUT, BWI, and IndustriALL	Concluded	26-03-2018	01-11-2019	No agreement NCP made recommendations
Alleged violation of employee rights in Brazil	Not accepted	08-08-2018	N/A	N/A
Dunkin’ Donuts and Articulation of Rural Employees of the State of Minas Gerais (ADERE-MG).	In progress	21-08-2018	N/A	Pending
Illy and Articulation of Rural Employees of the State of Minas Gerais (ADERE-MG) & Conectas Direitos Humanos	Not accepted	21-08-2018	13-08-2020	Not accepted NCP made recommendations
Jacobs Douwe Egberts and Articulation of Rural Employees of the State of Minas Gerais (ADERE-MG) & Conectas Direitos Humanos	In progress	21-08-2018	N/A	Pending
McDonald’s and Articulation of Rural Employees of the State of Minas Gerais (ADERE-MG) & Conectas Direitos Humanos	In progress	21-08-2018	N/A	Pending
Nestlé and Articulation of Rural Employees of the State of Minas Gerais (ADERE-MG) & Conectas Direitos Humanos	In progress	21-08-2018	N/A	Pending

Title	Status	Date submitted	Date concluded	Outcome
Starbucks and Articulation of Rural Employees of the State of Minas Gerais (ADERE-MG) & Conectas Direitos Humanos	Not accepted	21-08-2018	13-08-2020	Not accepted NCP made recommendations
Douglas Linares Flinto and ENI S.p.A.	In progress	6-7-2018	N/A	Pending
Postalis, Syndicate, and FINDECT and multinational company	Not accepted	23-08-2017	13-08-2020	N/A
Van Oord Marine Operations Services, and Forum Suape Environmental Association, Conectas Human Rights, Fishermen colony of the city of Cabo de Santo Agostinho, and Both ENDS	Concluded	08-06-2015	05-06-2020	Agreement reached outside of the NCP process The NCP made recommendations and plans for follow up
Alleged human rights impacts by a Brazilian multinational in Bahrain	Not accepted	22-09-2015	30-11-16	N/A
Financial and insurance sector in Brazil	Concluded	04-08-2013	28-01-2015	Agreement reached outside of the NCP process
Kinross Brasil Mineração and Paracatu neighboring associations	Concluded	18-06-2013	21-12-2016	Agreement reached The NCP made recommendations and plans for follow up
Alleged violations of employee rights in Brazil	Not accepted	05-06-2013	09-09-2013	N/A
Manufacturing in Brazil	Concluded	16-10-2013	07-04-2015	No agreement No recommendations
C&A Moda Ltda and individual	Concluded	17-10-2013	08-12-2016	No agreement The NCP made recommendations
Telemarketing in Brazil	Concluded	28-02-2012	28-01-2015	Agreement reached outside of NCP process
Mass layoffs in the banking sector in Brazil	Concluded	06-12-2012	23-04-2013	No agreement The NCP made recommendations
Employment and industrial relations in Brazil	Concluded	19-04-2010	30-03-2012	Agreement reached outside of the NCP process
Job loss in the manufacturing sector in Brazil	Not accepted	15-07-2010	27-04-2012	N/A
Financial and insurance activities in Brazil	Concluded	02-08-2010	23-07-2015	No agreement No recommendation
Employee dismissal in Brazil	Not accepted	04-08-2010	04-10-2013	N/A
Unilever and the trade union Unified Workers' Central (CUT)	Concluded	25-11-2010	10-08-2015	No agreement The NCP made recommendations
Interference with striking workers in Brazil	Concluded	22-09-2009	30-03-2015	No agreement The NCP made recommendations
Interference with striking workers in Brazil	Concluded	22-09-2009	30-03-2015	No agreement The NCP made recommendations
Profit sharing plan negotiation in Brazil	Concluded	06-03-2007	17-05-2013	Agreement reached outside of the NCP process
Employee dismissal in Paraguay	Concluded	07-03-2007	14-09-2012	Agreement reached outside of NCP process
Employment and industrial relations in Brazil	Concluded	19-04-2007	14-09-2012	No agreement No recommendation
Environment and worker's health issues in Brazil	Concluded	08-05-2006	2008	No agreement No recommendation
Safety-related recall of motor vehicles in Brazil	Not accepted	04-07-2006	19-09-2006	N/A

Title	Status	Date submitted	Date concluded	Outcome
Employment and industrial relations in Brazil	Not accepted	12-12-2005	2008	No agreement No recommendation
Construction sector in Brazil	Not accepted	03-05-2004	2012	N/A
Motor vehicle and motorcycle repair in Brazil	Concluded	04-09-2003	25-03-2008	No agreement No recommendation

Source: OECD NCP case database.

3 Regulating and enforcing in support of Responsible Business Conduct in Brazil

Governments can promote and enable RBC by embedding in their domestic legal and regulatory frameworks the legislations, regulations and policies necessary to govern business conduct and prevent the occurrence of RBC issues in the areas covered by the Guidelines. To build an enabling environment for businesses to act responsibly, it is also key that governments deploy the resources and capacities required to implement such legislations, regulations and policies. Brazil can reinforce the steps already taken in this direction by strengthening its regulatory and enforcement actions in several areas of the Guidelines, namely human rights, labour rights, environment, and anti-corruption.

3.1 Human rights

Enterprises can have an impact on virtually the entire spectrum of internationally recognised human rights. Chapter IV of the Guidelines on “Human Rights” draws on, and is aligned with, the UNGPs.²⁶ States have a primary duty to protect human rights. Businesses are expected to respect human rights independently of the state’s ability or willingness to fulfil its human rights obligations. Failure either to enforce relevant domestic laws or to implement international human rights obligations, or the fact that the State may act contrary to those laws and obligations, does not diminish the responsibility of businesses to respect human rights.

Concretely, Chapter IV requires companies to avoid causing, or contributing to, adverse human rights impacts in their own activities, and to seek to prevent or mitigate impacts to which they are directly linked through their supply chains and business relationships. This means that companies should have a policy commitment to respect human rights, carry out due diligence on human rights (notably by reference to the relevant Due Diligence Guidance), and to provide or cooperate with legitimate remediation processes where such adverse human rights impacts have occurred.

3.1.1 Legal, policy and institutional framework

Legal and policy framework

At international level, Brazil is a party to eight out of nine core human rights conventions (OHCHR, 2021^[59]).²⁷ It has not signed nor ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.²⁸ Brazil has accepted the individual complaints procedures of the Convention against Torture, the International Covenant of Civil and Political Rights; the Convention on the Elimination of All Forms of Discrimination against Women; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Rights of the Child; and the Convention on the Rights of Persons with Disabilities (OHCHR, 2021^[59]). It is also a party to the main human rights instruments of the Inter-American Human Rights System²⁹ and recognised the competency of its main organs (OAS, 2021^[60]). International human rights treaties that are approved by both chambers of the Parliament by a majority of three fifths have the same legal value as constitutional amendments.³⁰ The convention on the rights of persons with disabilities is the only one to have been approved in this form.

At domestic level, Title II of the Constitution of Brazil of 1988 covers 'Fundamental rights and their guarantees', and contains chapters on individual and collective rights and duties, and social rights. Brazil also has an extensive collection of legislations protecting human rights, e.g. to prevent discrimination on a number of grounds (race, age, sexual orientation, etc.) particularly at work. Brazil to date does not have legislations relating to due diligence for RBC, and none is currently in preparation. However, Brazil faces a general challenge related to the implementation and enforcement of legislation. Given the size of the country, the state is less effectively present in certain remote areas. According to the World Justice Project, Brazil has a score of 0.51 for regulatory enforcement, which is in line with the regional average, but below the global average (World Justice Project, 2021^[61]). To note, in 2020, this score had decreased for the third year in a row.

From a policy point of view, to tackle the main human rights challenges, Brazil has adopted successive National Programmes on Human Rights (Government of Brazil, 2009^[62]). The Programme currently in force, the third, was adopted in 2009, and has six 'axes of orientation':

- Democratic interactions between the state and civil society;
- Development and human rights;
- Universalising rights in a context of inequality;
- Public security, access to justice and combating violence;
- Education and culture on human rights;
- Right to memory and truth.

Each axis is divided into 'guidelines', i.e. high level objectives, which are then subdivided into 'strategic objectives' that comprise programmatic actions. For each 'programmatic action', a responsible public authority is designated, and for some, a concrete course of action is recommended. There is no strong focus or specific objective related to RBC in the programme. However, despite being adopted prior to the UNGP, some of the programme's objectives include actions on business and human rights, in particular as regards the implementation of development projects by large enterprises. The plan in this respect includes the objective to increase the commitments of companies with regard to RBC and human rights,

as part of the strategic objective to affirm the principles of human dignity and equality as foundations for the national development process. Likewise, the plan includes a programmatic action to stimulate RBC to tackle sexual exploitation and child labour in their operations and supply chains as part of the strategic objective to tackle sexual violence against children and adolescents. The plan also includes objectives aimed at ensuring respect for human rights by companies supplying the state. Referring to that objective, the Ministry of Woman, Family and Human Rights adopted in 2019 a code of conduct on respect for human rights for enterprises supplying of goods and services to the ministry (Government of Brazil, 2019^[63]). In February 2021, the Ministry of Women, Family and Human Rights adopted an ordinance setting up a working group composed of 14 members of the ministry with a view to evaluating the National Programme and making recommendations for its improvement. Recommendations for revising the plan are due by November 2021 (Government of Brazil, 2021^[64]). Civil society organisations criticised the ordinance for failing to include stakeholder participation in the process, and called for its revocation (Terra de Direitos, 2021^[65]; Human Rights Watch, 2021^[66]).

In 2017, Brazil participated in the third cycle of the Universal Periodic Review by the UN Human Rights Council, receiving 246 recommendations from 103 delegations, and accepting all but four. Three of the accepted recommendations pertained to the development of a NAP (UN Human Rights Council, 2017^[67]). In February 2020, the Chamber of Deputies (the lower chamber of the Brazilian Parliament) took the innovative step of setting up a special Observatory, housed in the Parliamentary Committee on Human Rights and Minorities, to monitor the effective implementation of the recommendations of the UPR, in partnership with the Office of the UN High Commissioner for Human Rights (Government of Brazil, 2020^[68]). On 30 April 2021, the Observatory organised its first session to discuss the implementation of the recommendations on business and human rights.

Prior to that, in 2015, Brazil had benefitted from a country visit of the UN Working Group on business and human rights. While pointing to a number of issues (see below), the UNWG's report recognised the strength of Brazil's constitutional and legal framework for the protection of human rights, but recommended to improve intra-government coordination on the issue of business and human rights, dialogue with stakeholders, awareness by business, and called on Brazil to develop a NAP (UN Working Group on Business and Human Rights, 2016^[69]).

Indeed, the disparate references to RBC in general or thematic human rights programmes do not give clear orientations on the conduct of enterprises in respect of human rights, although admittedly many of these programmes were adopted prior to major advances in the field, including the adoption of the UNGPs and the 2011 revision of the Guidelines, when the human rights chapter was added. In order to provide a clear framework for promoting business respect for human rights, in 2018, the government of Brazil adopted by decree National Guidelines on Business and Human Rights (the National Guidelines) (Government of Brazil, 2018^[42]).

The National Guidelines are non-binding for companies and articulated around the structure of the UNGPs, focusing on the state duty to protect, the corporate responsibility to respect, and access to remedy, and create mechanisms for the implementation, monitoring and evaluation of the National Guidelines (see Box 3.1).

Box 3.1. The National Guidelines on Business and Human Rights

The National Guidelines contain five sections:

Preliminary provisions

The preliminary provisions clarify that the Guidelines are non-binding for enterprises, and apply, to the extent of their capacities, to SMEs. These provisions also provide for a creation of a 'Business and human rights seal' by the Government.

Obligations of the state with regard to the protection of human rights in business activities

The National Guidelines lay out activities whereby the state will discharge its responsibility to protect, including e.g.

- Educating and training civil servants on the subject;
- Strengthening policy coherence on business and human rights;
- Improvement of transparency and social participation mechanisms;
- Adoption of norms, policies and incentives to promote respect of human rights by companies, e.g. through public commitments, plans, reporting, prevention measures, control, creation of complaints channels, encouraging accountability and redress;
- Prioritising action in high risk sectors such as extractives, consumer goods retail, infrastructure, chemicals and pharmaceuticals;
- Promoting due diligence with large enterprises;
- Combating labour discrimination and promoting social dialogue;
- Creation of permanent committees to combat disasters in business contexts and negotiate working conditions and dispute resolution;
- Monitoring disaster relief through human rights indicators.

Responsibilities of companies to respect human rights

This section recalls the responsibility of businesses to respect all internationally and constitutionally recognised human rights norms, and lists activities that enterprises should carry out in support of this obligation, including to inform and train their workforce on human rights and publish a public commitment on business and human rights, based on the UNGP, the OECD Guidelines and ILO conventions. This section also contains detailed provisions on the establishment and implementation of due diligence mechanisms by enterprises in their operations and supply chains, on decent work, on combating discrimination, on complaints mechanisms and on transparency with regard to human rights performance.

Access to reparation and remedy mechanisms

This section notably lays out the requirement for the state to create and maintain effective judicial and non-judicial grievance mechanisms, and to incentivise companies to create and/or cooperate with grievance mechanisms. It lists the types of remedies that should be available and specifies that these processes should be clear and transparent, operate with impartiality and equitability and that their effectiveness should be monitored through indicators. This section does not mention the NCP.

Implementation, monitoring and evaluation of the National Guidelines

This section tasks the Ministry of Women, Family and Human Rights to create a committee of support and monitoring for the National Guidelines, composed of representatives of government and of

stakeholders and academia. Such committee is notably in charge of elaborating annual plans for the implementation of objectives, of conducting studies to support normative developments and to consult with relevant parties.

The National Guidelines are quite detailed and form a good basis for action on business and human rights. The provisions of the National Guidelines were viewed as useful and comprehensive, and welcomed as a first attempt at a structured government policy on this issue. However, these achievements were somewhat eclipsed by the fact that they were not elaborated through solid consultation with stakeholders, who were 'taken by surprise' by the adoption of the decree, thereby reducing the possibility for people and communities affected or potentially affected by business-related activities to participate in the elaboration of the National Guidelines (Carneiro Roland, 2018^[70]; Conectas, 2018^[71]).

Government officials indicated that, as at the end of 2020, the implementation of this decree had not yet fully started, including the setting up of the support and monitoring committee, and it remains to be seen what the recent developments regarding the development of NAPs (see below) will mean for the implementation of the National Guidelines.

In March 2020, the National Council on Human Rights (see Box 3.3) also adopted a Resolution setting out National Guidelines for a Public Policy on Business and Human Rights (the CNDH Guidelines) (CNDH, 2020^[46]). The CNDH Guidelines partly overlap with the National Guidelines published in 2018, but were adopted through a participatory process notably involving the various branches of government (executive, legislative, judiciary), the private sector, and civil society, in response to criticism that the National Guidelines had been adopted without the involvement of stakeholders (HOMA, 2020^[72]). Article 1 of the CNDH Guidelines indicates that they are addressed to agents and institutions of the state, including the justice system, enterprises and financial institutions active in Brazil, as well as internationally active Brazilian enterprises. The objective of the CNDH Guidelines is to orient and assist with the application of national and international human rights norms, including economic, social, civil, political and labour rights, the right to development, decent work, self-determination and a balanced environment, including at work, as well as the right of indigenous peoples and traditional and Quilombola (i.e. Afro-descendant) communities. The CNDH Guidelines are articulated around several axes and subsequently elaborated upon:

- The supremacy of human rights over any agreement of an economic nature, on trade, services or investment;
- The state duty to implement measures to prevent and remedy human rights violations by corporations;
- The obligation of companies to put measures in place to prevent human rights violations in its activities and supply chains, and to provide for and collaborate in remediation of such violations;
- The right of affected persons to integral reparation;
- The periodic implementation, monitoring and evaluation of the Guidelines (CNDH, 2020^[46]).

In 2020, the Government of Brazil also took decisive steps towards the development of national strategies on RBC and business and human rights.

First, in December 2020, the National Committee on Investment (CONINV), an inter-ministerial committee that is part of the Chamber for External Trade (CAMEX) of the Ministry of Economy in charge of elaborating FDI-related policy proposals, adopted a resolution to elaborate a national action plan on RBC (*Plano de Ação direcionado à promoção da Conduta Empresarial Responsável*, PACER), to be piloted by the Executive Secretariat of CAMEX, through the Undersecretariat for Foreign Investment, where the NCP is located. The Undersecretariat has hired an additional official for this purpose and the NCP has been providing support to the process. The resolution instructs CAMEX to consult with relevant government departments, as well as the private sector. The Undersecretariat is currently defining its strategy and

methodology for stakeholder consultation. The resolution establishes a strong link between the plan and the OECD Guidelines, and additionally states that the plan is meant to support the accession of Brazil to the OECD (Government of Brazil, 2020^[73]). The delivery of the PACER is foreseen for August 2022. This is a promising development and an opportunity to increase uptake and implementation of RBC in Brazil, and to improve policy coherence across relevant government agencies. In particular, the fact that the Ministry of Economy is leading on this project will be key to get buy in from, and send a strong signal to, the business community. The leading role of the NCP in this regard is also a major opportunity to increase its standing within and outside of government, but also to act as an agent of coherence across government. Article 4 of the resolution states that the themes covered by the PACER should correspond to those of the OECD Guidelines.

Secondly, in parallel to the process started by CONINV, the Ministry of Woman, Family and Human Rights (*Ministério da Mulher, da Família e dos Direitos Humanos*) is also developing a National Action Plan focused on business and human rights issues, following the UNWG's recommendation following its 2015 visit (UN Working Group on Business and Human Rights, 2016^[69]). It is not yet clear which plan will cover labour rights. The formal decision to develop such a plan has not yet been made, and a decree in that regard is expected in the near future. The Ministry of Woman, Family and Human Rights reported that it has been consulting within the government and with civil society and international organizations regarding the plan, which is set to be adopted by December 2022. The Ministry and the NCP have also reported being in contact regarding their respective projects for plans, with the intention of developing both plans through a single process or at least through close collaboration (Government of Brazil, 2021^[43]).

Many stakeholders have reacted positively to these announcements, and have stressed, in line with the report of the UNWG after its 2015 country visit, the necessity to consult broadly with stakeholders during the development process of the plans, although some also stressed the need to explore binding avenues and reinforce national legislation.

The Ministry of Woman, Family and Human Rights and the Ministry of Economy should closely collaborate in the development of their respective plans, aligning their goals and competences, and avoiding duplication, confusion, gaps or inconsistencies. To reduce these risks, and also in recognition of the many links that exist between human rights and other issues such as environment, labour or corruption, they could consider merging the processes and each contribute within their competences, to the development of a single ambitious and comprehensive plan. Additionally, a clear, transparent and inclusive process for stakeholder participation should accompany the development of the plan(s), foreseeing meaningful opportunities and fora for stakeholders to input and comment on drafts. Joint membership of both ministries in the NCP is an opportunity in this regard.

Institutional framework

Judicial and administrative remedy mechanisms

In order to be effective, a legal and policy framework requires an adequate institutional framework that ensures its implementation. Likewise, the right to remedy is a core tenet of the international human rights system. As part of their duty to protect human rights against abuse by business, States must take appropriate steps to ensure that when such abuses occur, victims have access to effective remedy. The judicial system is particularly important in this regard.

Title IV, Chapter III of the Constitution of Brazil lays out the principles governing the functioning and independence of the judiciary, and describes its various organs. The judicial system is divided between the federal level and the state level, as states are responsible to organise their own court system. Federal courts comprise general and specialised jurisdictions, and are competent for a limited number of areas, including those in which the state has an interest, whereas state courts are competent for all other disputes. In light of the size of the country, both federal and state courts must establish a system of itinerant justice

(Art. 107, para. 2; para. 115, para. 1; Art. 125, para. 7). Article 109 of the Constitution provides for special procedures in case of serious human rights violations. Proceedings and trials for these cases can be initiated before federal courts by federal judges or by the attorney general (V-A and para. 5).

The Public Prosecutor's office also has an important role at federal and state level in the defence of human rights and access to justice. As part of their duties, public prosecutors not only are responsible for the initiation of criminal proceedings on behalf of the state, but also are in charge of ensuring that public authorities respect citizen's rights, and may initiate civil proceedings to defend certain interests (Art. 129). Accordingly, the Public Prosecutor's office has used this competence to assist affected persons in seeking remedy for human rights violations by companies. For example the Public Prosecutor's office recently negotiated a settlement agreement with the mining company Vale to compensate for the damage caused by the collapse of the Brumadinho tailings dam collapse in 2019 (Ministerio Publico Federal, 2021^[74]). Article 134 also includes, as a means of promoting human rights, for a system of public legal defence, the Public Defender of the Union, to represent the needy before courts. The Public Defender has notably used this competence to redress the imbalance in resources between parties to disputes related to business impacts. In its 2020 annual report, the Public Defender notably mentions intervening in this context in favour of indigenous communities challenging a repossession claim on their land by a multinational energy company (Defensoria Publica da Uniao, 2020^[75]). More generally, the Public Defender's office has set up several Specialised Monitoring Committees to support persons and communities affected by large industrial projects, such as the Belo Monte hydroelectric dam project in Altamira,³¹ or important corporate impacts, such as the Brumadinho tailings dam collapse.³²

The judicial system in Brazil is strong and can play a key role in access to remedy for corporate impacts in Brazil. Illustratively, the activities of the Public Prosecutor's office were praised by the UNWG in its report following its 2015 country visit. According to the World Justice Project, Brazil has a score of 0.54 for civil justice, which is slightly above the regional average. Brazil ranks highly on the sub-indicators of accessibility, absence of corruption and improper government influence, whereas it is within the regional average for absence of discrimination, and below average for delays and enforcement of judicial decisions (World Justice Project, 2021^[61]).

State-based non-judicial grievance mechanisms

Judicial grievance mechanisms are the main avenues to seek remedy for corporate impacts in Brazil, but state-based non-judicial grievance mechanisms also exist in Brazil. The NCP is the most important non-judicial grievance mechanism in the RBC field. As indicated above, the Brazilian NCP is one of the most active and best staffed in the global network of NCPs and has recently undergone some reforms to increase its access to expertise from across government. With 39 cases received, the Brazilian NCP is also the 4th NCP having received the most cases, including 19 cases related to the human rights chapter of the Guidelines (see Box 3.2).

Box 3.2. NCP cases relating to human rights

Since 2011 and the addition of the human rights chapter to the OECD Guidelines, the Brazilian NCP received 19 cases related to the human rights chapter, representing 75% of all cases received since that date. The majority of those cases are still in progress, and are involve primarily the agricultural sector (8 cases) and mining sector (7 cases). Four of these cases notably relate to tailings dam collapses (see below).

An example of a case handled by the Brazilian NCP and related to human rights in the mining sector is the case of Kinross Brasil Mineração and Paracatu neighboring associations (2013).

On 18 June 2013, the Brazilian NCP received a submission from the city of Paracatu's neighbouring associations alleging that the use of explosives by Kinross Brasil Mineração, part of the Canadian multinational enterprise "Kinross Gold Corporation Group", damaged surrounding homes and that some of the infrastructure built by Kinross made access from the rural area of Machadinho to the city of Paracatu difficult.

In August 2013, the NCP accepted the submission for further examination and offered its good offices which were accepted by both parties. Three mediation meetings took place between September 2015 and September 2016, and the parties reached an agreement. Although no link was established between the company's use of explosives and the damage to homes, Kinross stated its intent to repair the homes in three urban neighbourhoods through a partnership project with the City of Paracatu and the active participation of the community.

The NCP released its final statement on 21 December 2016 (i.e. three and a half years after submission), which included the following recommendations to the company, in particular to conduct due diligence processes that assess the adverse impacts of its mining activities. In addition, the NCP requested to remain informed of the partnership project foreseen in the agreement, but no formal follow up took place and the NCP did not release a follow up statement.

Source: (OECD, 2013^[76]).

Alongside the NCP, Brazil has set up *ad hoc* non-judicial grievance mechanisms, such as a mechanism whereby it is possible to file a complaint against a company in relation to breaches of consumer rights.³³ The National Council on Human Rights also has a grievance function that applies to RBC matters (see Box 3.3).

Box 3.3. The National Council on Human Rights

The National Council on Human Rights (*Conselho Nacional de Direitos Humanos*, CNDH) is the National Human Rights Institution of Brazil. It was initially created by Law No. 4,319, of 16 March 1964, then modified by Law No. 12,986, of 2 June 2014.

The CNDH is composed equally of 11 representatives from federal public institutions and 11 representatives from civil society. The presidency and vice-presidency are held by a representative of the public sector and a representative of civil society, who alternate roles after one year in office. Both are elected by the Plenary for a two-year term, while gender parity is also observed in the electoral process.

In 2021, the presidency of the CNDH was held by a representative of the Public Defender's Office of the Union, and the vice-presidency by a representative of the Central of Cooperatives and Solidarity Enterprises in Brazil. They will then swap their mandate after a year.

The CNDH monitors the implementation of government human rights policies and the national human rights program, advises the government on normative, administrative and legislative acts pertaining to human rights, and monitors administrative and judicial processes related to serious human rights violations. It may also issue recommendations to public and private entities on the protection of human rights.

The CNDH can also investigate human rights violations, and apply sanctions in relation to them, such as warnings, public censorship, recommendation of removal from office, as well as recommendation that no funds, aids or subsidies be granted to entities that violate human rights.

The CNDH is linked to the executive branch, through the Ministry of Human Rights, unlike most NHRIs in the region which received their mandate from the legislative branch. While the CNDH seeks to carry out its missions in accordance with the 'Paris Principles' relating to the Status of National Institutions (UN General Assembly, 1993^[77]) it is not accredited under the Paris Principles and is not a member of GANHRI. Several recommendations were made in the Universal Periodic Review to strengthen the CNDH and seek 'A' status under the Paris Principles.

Source: (Government of Brazil, n.d.^[78]).

In relation to RBC, among its various competences to monitor and promote human rights in Brazil, the CNDH may receive denunciations and information about situations of breaches of human rights, conduct investigations, and apply sanctions. It may also liaise with other public authorities where necessary (see Art. 4 of Law No. 12,986). The CNDH may also make determinations, by decision taken at the majority of its members, as to the existence of human rights violations of exceptional gravity, for the purpose of assisting with their monitoring, investigation, prosecution and adjudication (Art. 4, para. XVI).

Such a determination was notably made in the case of the 2015 collapse of the Fundao tailings dam located in Mariana, Minas Gerais. By resolution of 11 December 2019, the CNDH recognised as human rights violations of exceptional severity (the equivalent of crimes against humanity), the murder of 19 people caused by environmental and other crimes resulting from the collapse of the Fundão dam operated by Samarco Mineração S.A., a joint venture of Vale and BHP Billiton (CNDH, 2019^[79]). This resolution was subsequently transmitted to the judicial authorities to inform their decision. Previously, the CNDH had also conducted emergency fact-finding and published a report human rights violations in the wake of the Brumadinho dam collapse of 2019 (CNDH, 2019^[80]).

The NCP and the CNDH cooperate regularly, albeit on an informal basis. For example, the NCP and the CNDH are not represented in each other's structures.

The NCP and the CNDH should continue and deepen their collaboration, and ensure that they can mutually reinforce their contribution to RBC, for example through regular exchanges of information, provision of investigation services by the CNDH to the NCP, or inclusion of the CNDH in the inter-ministerial committee of the NCP.

3.1.2 Rights-specific issues

Rights of indigenous peoples, local and afro-descendant communities

Past reports from the United Nations and the Inter-American Commission of Human Rights, as well as from civil society organisations, report corporate impacts on the rights of indigenous peoples and local communities as a key RBC issue in Brazil. On top of persistent discrimination endured by minority groups such as indigenous communities and Afro-descendant communities (*Quilombolas*), the issue of land rights and the absence or delays in the demarcation of land owned by these disadvantaged groups in certain areas of the country such as the Amazon, is consistently flagged.

Although Article 231 of the Brazilian Constitution recognises rights to indigenous communities on the lands they traditionally occupy, and requires the government to demarcate these lands, to date less than half of indigenous land has been demarcated.³⁴ The lack of status of most indigenous lands is leading to negative impacts, as it encourages the illegal exploitation of these lands, particularly for mining, logging or cattle grazing. Civil society reports argue that such developments have intensified in recent years (Amnesty International, 2021^[81]), leading to increasingly numerous conflicts,³⁵ such as in the context of illegal mining on the territory of the Munduruku in the state of Para (Ministerio Publico Federal, 2021^[82]).

The Government of Brazil should ensure that lands traditionally occupied by indigenous and other local and Afro-descendant communities are effectively protected against illegal business activity, and to demarcate such lands to increase legal certainty regarding the rights of local communities, in accordance with Brazil's Constitution, notably articles 67 and 68.

Additionally, the right of indigenous peoples to free, prior and informed consent is not effectively implemented. Although Brazil is a party to ILO Convention No.169 on Indigenous and Tribal Peoples and a signatory to the UN Declaration on the rights of indigenous peoples, there is a lack of clear legal and regulatory framework on FPIC (Hanna and Vanclay, 2013^[83]). The same would apply in respect of the rights recognised by the International Convention on the Elimination of All Forms of Racial Discrimination, of which Brazil is a party, to Afro-descendant communities on lands traditionally occupied by them.³⁶ For example, under Article 231, para. 3 of the Constitution, projects aimed at exploiting such lands or their sub-soil must be authorised by the National Congress, after 'hearing' local communities. It has been reported that this language had been used to carry out consultations that did not raise to the standard of FPIC in relation to large-scale investment projects, leading certain communities to conduct their own consultation process and courts to suspend projects for lack of compliance with the FPIC standard (Rede de Cooperacao Amazonica, 2018^[84]). Where ministries take part in such processes, they may be viewed as having a conflict of interest as their objective is to promote investment and economic activity (Mebratu-Tsegaye and Kazemi, 2020^[85]).

A 2021 report by the Inter-American Commission of Human Rights characterises the situation of indigenous peoples and other local communities in Brazil as 'serious and worrying', particularly as government policies have recently taken a favourable approach to granting authorisations for large industrial projects on indigenous lands, while failing to adequately protect indigenous peoples and communities (Inter-American Commission of Human Rights, 2021^[86]), under justification of economic development 'at any cost' (UN Human Rights Council, 2020^[87]). Of particular concern to indigenous communities is draft law 191/2020 presented by the Government to facilitate the exploitation of natural

resources on indigenous land,³⁷ and which is being met with widespread opposition from civil society and indigenous groups (Centro de Trabalho Indigenista, 2020^[88]). As a result of the above, indigenous peoples and Afro-descendant communities have been disproportionately affected by the impacts of large scale projects, for example as documented in the report of the CNDH on the impacts of the Belo Monte hydroelectric dam project and the Belo Sun gold mining operations on the Juruna people in the state of Para (CNDH, 2017^[89]).

These issues are compounded by the fact that the federal agency in charge of policy for the promotion and protection of the rights of indigenous communities, the National Foundation for the Indigenous (FUNAI) has been weakened of late, notably by severe budget cuts, attempts to alter its mandate and changes in leadership (Inter-American Commission of Human Rights, 2021^[86]). This has been impairing its ability to coordinate and implement policies to protect indigenous peoples, in particular its key role in the demarcation of indigenous land.

Several other institutions have mandates to promote and protect the rights of Quilombola and local communities. These institutions include: the National Institute for Colonization and Agrarian Reform (INCRA, *Instituto Nacional de Colonização e Reforma Agrária*), the Fundação Cultural Palmares, and the Chico Mendes Institute for Biodiversity Conservation (ICMBio). First, INCRA participates in the protection of afro-descendants communities by titling Quilombola territories. Since the institution became the competent authority at the federal level for titling Quilombola land in 2003 (Government of Brazil, 2003^[90]), more than 1 500 territories have been titled to these communities throughout Brazil (Lomba and Campos, 2019^[91]). Despite the aforementioned efforts, the titled territories, as well as those identified in the regularisation process, only represent 0.03% of the national territory (INCRA, 2016^[92]). Second, the Fundação Cultural Palmares participate in the promotion and preservation of the Quilombola's cultural and historical heritage. According to decree N° 4.887 of 2003, when INCRA expedites land titles, the Fundação Cultural Palmares must guarantee legal assistance to Quilombola communities for the defense of their possessions against disseize and harassment. Finally, in line with its mission of formulating and implementing public policies that protect the environment and promote socio-economic development, ICMBio allows local communities to occupy Federal Conservation Units (FCU) as a strategy to protect their means of living, culture, and traditions (Government of Brazil, 2000^[93]).

Brazil should ensure that consultation processes related to business operations – in particular large industrial projects – on indigenous land are systematically carried out and meet the FPIC standard, so as to minimise the negative impacts currently borne by indigenous and other local communities as a result of such projects. In light of their mandate to promote and protect the rights of indigenous, afro-descendant and local communities, FUNAI, INCRA, ICMBio and the Fundação Cultural Palmares should be key actors in these processes.

Human rights and environmental defenders

Related to the issues above, another salient human rights issue that is consistently flagged in recent international organisation and civil society reports is that of threats, intimidations, violence against, and even the murder of, human rights and environmental defenders and their families (UN Working Group on Business and Human Rights, 2016^[69]). In this regard, the issue of human rights defenders was the subject of 8 recommendations at the last UPR of Brazil, which Brazil accepted (UN Human Rights Council, 2017^[67]).

Analysis and data compiled in 2021 by the Business and Human Rights Resource Centre lists Brazil among the most dangerous places for human rights defenders acting in the field of business and human rights (Business and Human Rights Resource Centre, 2021^[94]), and tracked over 150 instances of attacks against defenders in the last five years (Business and Human Rights Resource Centre, 2021^[95]).

According to several reports, these violations typically occur in the context of disputes over land rights and the defence of land by indigenous peoples in the context of opposition to mega mining or hydroelectricity

projects, or to large agri-business operations (Terra de Direitos, 2015^[96]; Front Line Defenders, 2017^[97]; Indigenous Peoples Rights International, 2021^[98]). These situations have also been increasing in recent years. For example, a recent report by the Inter-American Commission of Human Rights noted a 350% increase of murders of *Quilombolas* representatives in the context of land titling conflicts between 2016 and 2017 (Inter-American Commission of Human Rights, 2018^[99]).

Already in 2007, Brazil adopted a national policy for the protection of human rights defenders, establishing principles and guidelines for the protection of persons or organisations at risk or vulnerable due to their activities in defence of human rights (Government of Brazil, 2007^[100]). Additionally, the federal government and the government of certain states have since 2016 been implementing protection programmes for human rights defenders, whereby persons at risk may seek measures of protection and ensure that they can militate safely where they operate. In 2019, the programme was reformed, notably to also include environmental defenders (Government of Brazil, 2019^[101]). Some civil society organisations have however criticised the programme, as it notably does not provide collective protection to groups and organisations. Moreover, organisations also pointed to the need to address the root causes of the violations, alongside granting protection, to avoid perpetuating the problem. Moreover, there is unequal adherence to the programme by States, and its budget, after peaking in 2018, has been cut by almost 30% in 2019 (Budahazi, A et al, 2020^[102]). At international level, in 2018 Brazil signed but did not yet ratify the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean ('Escazú Agreement'), that notably commits state parties to protect human rights defenders in environmental matters, and that entered into force on 22 April 2021 after being ratified by twelve countries (United Nations, 2021^[103]) (see also below, Section 3.3.1).

Finally, several organisations, including the Inter-American Commission of Human Rights (Inter-American Commission of Human Rights, 2021^[86]) have expressed concern at Government policies and hostile declarations which they view as curtailing the ability of civil society to defend human rights and other causes such as environmental protection (Comitê Brasileiro de Defensoras e Defensores de Direitos Humanos, 2019^[104]). Provisional Measure No. 870, which tasked the federal government with supervising, coordinating and controlling the activities of NGOs on the national territory, and was later overturned by the National Congress following protests, is an example of these concerns. Likewise, the creation in 2020 of the National Council of the Legal Amazon (Government of Brazil, 2020^[105]) as a government collegiate body in charge of coordinating and integrating government actions related to the Legal Amazon, including proposing policies and initiatives related to the preservation, protection and sustainable development of the Legal Amazon, is another cause for concern, as it does not include representatives of stakeholders (Observatorio do Clima, 2020^[106]).

Brazil should ensure that its measures to protect human rights defenders address the root causes of risks to which they are exposed, including business activities. In this context, Brazil should ensure that its policy for the protection of human rights defenders remains current, and that any government policy and legal framework does not limit the ability of human rights defenders and organisations to act in their area of focus. Implementing institutions should have adequate resources to implement the policy. The Federal and the States' Governments should provide adequate funding for implementing this policy, and liaise to increase adherence at the state level.

Policy recommendations

1. **Ensure coherent, clear, transparent, inclusive and participatory processes for the development of the PACER and the NAP, if possible by merging the two processes.**
2. **Strengthen collaboration between the NCP and the CNDH.**
3. **Protect the land rights of indigenous, afro-descendant and other local communities, notably through demarcation, and ensure that consultation processes related to business operations – in particular large industrial projects – on indigenous land are systematically carried out and meet the FPIC standard, and effectively protect human rights and environmental defenders.**

3.2 Labour rights

Chapter V of the Guidelines on “Employment and Industrial Relations” aims to promote observance among enterprises of the international labour standards developed by the ILO, notably the fundamental principles and rights at work, as recognised in the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (ILO 1998 Declaration). Other issues addressed in this Chapter of the Guidelines relate to the provision of adequate information to workers on company operations, ensuring consultation and cooperation between employers and workers, as well as providing the best possible conditions of work, including adequate wages and occupational safety and health at work.

The labour market in Brazil has been characterised since the 2014 recession by raising unemployment (from about 7% in 2012 to about 12% in 2019), significant rates of informality (informal workers representing over 40% of the employed workforce, see below). Moreover, the job market in Brazil is characterised by a high degree of structural inequality, with lower-paying sectors such as agriculture or domestic services having a higher proportion of women and non-white workers. As a result, in 2019, white workers earned, on average, 73.4% more than non-white workers, and men 29.6% more than women (IBGE, 2020^[107]). In terms of social conflicts, however, the number of strikes has been steadily declining, from 2093 instances of strike in 2016 to 649 in 2020 (DIEESE, 2021^[108]). The labour market and working conditions in Brazil were also severely affected by the COVID-19 pandemic in 2020 and 2021 (Box 3.4).

Box 3.4. Impact of the COVID-19 pandemic on the labour market in Brazil

Brazil has been one of the worst-hit countries by the COVID-19 pandemic, with over 18M cases and over 500,000 deaths as at mid-2021. The Government of Brazil rapidly took measures to allow the partial or total suspension of work contracts for defined periods with unemployment compensation to relieve the burden on enterprises and ensure continuation of employment as per Provisional Measure No. 936 of 1 April 2020 (Government of Brazil, 2020^[109]), which was then turned into law No. 14,020 of 6 July 2020 (Government of Brazil, 2020^[110]).

These measures could not prevent a sharp and immediate drop in the size of the workforce, with 5.2M workers leaving the job market in the first months of the pandemic, and close to 1M becoming unemployed. Moreover, the measures to maintain employment were only available to workers with an employment contract; informal and self-employed workers were eligible to a monthly lump sum of 600 reais (i.e. about USD 115), which was reduced in later iterations of the programme. As a result, the COVID-19 pandemic is likely to have hit most strongly the more vulnerable workers in those categories, including women and ethnic minorities (Mattei and Heinen, 2020^[111]). The most recent statistics (the last quarter of 2020) indicate that the unemployment rate had raised by 2.5 points compared to the previous year at 14.4%, and that the workforce was smaller by over 15M people. Breaking down this figure reveals that 5.9% of the white workers' population left the job market, which is half the proportion of non-white workers (9.7%) that left the workforce. Finally 16.8% of the employed workforce worked less hours than usually, and 19.6% earned an income lower than usually (IBGE, 2021^[112]).

3.2.1 Legal and institutional framework

Legal framework

At the international level, Brazil is a member of the ILO Governing Body, and has ratified 98 ILO conventions (of which 69 are in force), including seven out of eight fundamental conventions and three out of four governance conventions (see Box 3.5).

Box 3.5. ILO fundamental and governance conventions ratified by Brazil

ILO fundamental conventions¹

- Forced Labour Convention, 1930 (No. 29)
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
- Equal Remuneration Convention, 1951 (No. 100)
- Abolition of Forced Labour Convention, 1957 (No. 105)
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
- Minimum Age Convention, 1973 (No. 138 - Minimum age specified: 16 years)
- Worst Forms of Child Labour Convention, 1999 (No. 182)

ILO governance conventions²

- Labour Inspection Convention, 1947 (No. 81)
- Employment Policy Convention, 1964 (No. 122)
- Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)

Notes:

¹ The fundamental convention not ratified by Brazil is the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

² The governance convention not ratified by Brazil is the Labour Inspection (Agriculture) Convention, 1969 (No. 129)

Source: (ILO, n.d._[113]).

At national level, the Constitution of Brazil contains an extensive chapter on social rights that recognises a wide range of labour rights (Title II, Chapter II). Article 7 recognises rights of individual workers covering notably protection against unfair dismissal, protection of wages and provisions for minimum wages, maternity and paternity leave, annual leave, or non-discrimination. Article 8 recognises freedom of association and collective bargaining. Article 9 recognises the right to strike. Article 10 ensures '[t]he participation of workers and employers [...] in the collegiate bodies of government agencies in which their professional or social security interests are subject of discussion and resolution.' Article 11 foresees the election of worker representatives in companies of more than 200 workers for the purpose of negotiating with the employer.

Brazil also has an elaborate collection of labour laws comprising a general labour law (the 'Consolidated Labour Law', or CLT) and several dozen specialised labour laws addressing topics such as work by children and teenagers, freedom of association, collective bargaining and industrial relations, conditions of work and occupational health and safety. Brazil also has the third highest collective bargaining coverage rate in Latin America after Uruguay and Cuba, with 70.5% of workers covered by at least one collective bargaining agreement as of 2014.³⁸

The CLT was reformed in 2017 with the aim of modernising labour relations, fostering job creation and reducing informality in the job market (Government of Brazil, 2017_[114]). Some of the main changes brought about by the new labour law include:

- Giving collective agreements precedence over non-imperative legislation (art. 611-A and B CLT) and establishing the possibility for the employment contracts of higher-earning workers to derogate from applicable law and collective bargaining agreements (art. 444 CLT);
- Regulating intermittent work (Art. 542-A CLT);
- Regulating telework (Title II, Chapter II-A, CLT);

- Regulating working times (Title II, Chapter II CLT).

Although the World Bank has positively received the added flexibility offered by the labour law reform in terms of labour regulation (World Bank, 2018^[115]), the adoption of the labour reform sparked intense opposition from the labour movement (Carbonai, 2019^[116]). Civil society and unions reported during interviews that these provisions, aimed at making employment more flexible, ran the risk of eroding the rights of workers. Trade unions interviewed for the purposes of this review criticised that, in their view, the labour law reform introduced far-reaching changes, largely removing previously established sources of financing. According to the Centre for Union Studies and Labour Economics (Centro de Estudos Sindicais e Economia do Trabalho, CESIT), trade unions were concerned about their ability to fund themselves and fulfil their function, notably as a result of the abolishment of compulsory union dues (Art. 578 CLT) (Centro de Estudos Sindicais e de Economia do Trabalho, 2017^[117]). The National Association of Labour Justice Magistrates also expressed serious reservations regarding the effects of the law, noting in a 2019 brief that '[d]espite the promises of "modernizing" labor relations, officially released data reveals a deepening of social inequalities, devaluation of human labor and greater vulnerability of workers, driven by the deliberate attempt to de-characterize the protective nature of Labor Law, with affronts to the Constitution and violations of International Labor Conventions.' (ANAMATRA, 2019^[118])

The labour law reform has in recent years been examined by ILO supervisory bodies for conformity with various Conventions. Brazil has been on the agenda of the Conference Committee on the Application of Standards (CAS) in 2018 and 2019, notably to discuss the conformity of the labour law reform with ILO Convention No. 98 on the Right to Organise and Collective Bargaining (ILO, 2018^[119]) (ILO, 2019^[120]). The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has made observations to Brazil in 2018, 2019 and 2020 in relation to its labour law reform (ILO, 2018^[121]; ILO, 2019^[122]; ILO, 2020^[123]). In particular, the Committee of Experts considered that the precedence given to collective agreements and employment contract over legislation as enshrined in new articles 611 A and B, and 444 CLT is not wholly in accordance with ILO Convention No. 98 and requested that Brazil take measures to clarify the scope of these articles. On the other hand, the Committee of Experts noted with interest the end of mandatory union dues, which had been flagged in the past as not in conformity with the principles of freedom of association. On that issue, the CAS requested in 2019 that Brazil 'continue to examine, in cooperation and consultation with the most representative employers' and workers' organizations, the impact of the reforms and to decide if appropriate adaptations are needed', and to report accordingly to the CEACR within the regular reporting cycle (ILO, 2019^[120]). During discussions before the CAS, the Government of Brazil strongly challenged the impartiality of the CEACR process and the validity of its conclusions.

Other labour rights issues in Brazil have been raised at the ILO. There have been 72 complaints against Brazil before the ILO's Committee on Freedom of Association, four of which are still active and six representations for alleged violations of other ILO Conventions, two of which are still pending, including one regarding Convention No. 169 on the Rights of indigenous and tribal peoples, and one regarding Convention No. 154 on Collective Bargaining.³⁹

Institutional framework

Several important changes have taken place over the last few years in the institutional framework related to labour rights in Brazil. At the level of the executive, in 2018, the Ministry of Labour, that had been in existence for about 90 years, was demoted to the level of a Secretariat housed in the newly created Ministry of Economy, which was formed by combining four formerly distinct Ministries.⁴⁰ The reason for this change was to promote coherence between labour policy and economic policy. As indicated above, the Ministry of Labour and Social Security was reinstated in July 2021. Brazil reported that the rationale for reinstating the ministry was to lead job creation efforts following the COVID-19 pandemic's negative effects on the employment market (see Box 3.4). Brazil does not have high union density,⁴¹ and has not ratified ILO

Convention No. 87 on Freedom of Association and Protection of the Right to Organise. Brazil reported that its lack of ratification of ILO Convention No. 87 was notably due to a contradiction with Article 8 II of the Constitution, that prohibits the establishment of more than one union per profession or category of workers per territorial unit (Aparecido, 2017_[124]), and that ratification may therefore be a long term effort as it would likely require a Constitutional amendment. However, as shown by the high rate of collective bargaining coverage (see above), it has a strong tradition of social dialogue, underpinned by tripartite institutions. The National Labor Council (*Conselho Nacional do Trabalho*), for example, is a collegiate body located in the Ministry of Labour and Social Security, responsible for proposing policies and actions to modernise labour relations, composed of six representatives of the Government; six workers representatives and six employers representatives. It is tasked with proposing policies and actions to modernise labour relations; encourage collective bargaining and social dialogue as mechanisms for resolving conflicts; promote understanding between workers and employers and seek solutions on strategic issues related to labour relations, and to propose guidelines for the elaboration of plans, programmes and rules on public policies in labour matters (Government of Brazil, 2019_[125]). Another important tripartite body is the Permanent Joint Tripartite Commission (*Comissão Tripartite Paritária Permanente*), in charge of proposing actions in the areas of health and safety at work; proposing measures to harmonise the protection of workers in the context of the country's economic development and encourage dialogue between workers and employers to improve working conditions (Government of Brazil, 2019_[125]).

To note in this regard is that these bodies and many others 'collegiate bodies' (*colegiados*), i.e. mixed bodies composed of representatives of government and stakeholders that contribute to policy in certain fields, have recently been overhauled as a result of a new government policy that seeks to limit membership in these bodies, and notably requires special justification to create a collegiate body of more than six members (Government of Brazil, 2019_[126]). Stakeholder representatives who provided input for the purpose of this review reported being concerned about a degradation of social dialogue in Brazil, citing the abovementioned reform of collegiate bodies, but also the demotion of the Ministry of Labour, which was perceived by unions as a sign of a lesser commitment of government to social dialogue, and as reducing their access to government. As noted above, the Ministry of Labour and Social Security was reinstated in July 2021.

The initiative on Mobilisation for Employment and Productivity (*Mobilização pelo Emprego e Produtividade*) currently being developed by the Ministry of Economy's Special Secretariat for Productivity, Employment and Competitiveness (*Secretaria Especial de Produtividade, Emprego e Competitividade – SEPEC*) is illustrative of these concerns. This initiative aims at reforming and modernising the Brazilian economy around eight programmes grouped into two 'nests', i.e. improving the business environment, and the Brazil of tomorrow (Government of Brazil, 2020_[127]). Among various programmes, the initiative notably plans to cut public spending by 1 trillion reais (i.e. about 193 billion USD) by 2022; and to implement a 'great deregulation' to simplify requirements on business, including through a new methodology for regulatory impact assessments that will seek to measure the cost of new regulatory measures on businesses (Government of Brazil, 2020_[128]). This programme is developed in close partnership with business (in particular organisations representing SMEs) and local governments (SEBRAE, 2020_[129]), but despite its ambition and its potential transformative nature on the regulation of social and environmental impacts of companies, it does not involve trade unions or representatives of other interests groups like civil society.

Brazil should continue to ensure that its regulatory initiatives include strong participation and social dialogue, in particular for initiatives that touch upon social and environmental impacts of business. Brazil should preserve and consolidate an enabling environment where trade unions are able to effectively participate in social dialogue. In that spirit, and taking account of relevant legal pre-requisites, Brazil should consider ratifying ILO Fundamental Convention 87 on Freedom of Association and Protection of the Right to Organise Convention, which underpins Chapter V of the MNE Guidelines.

The labour law reform of 2017 also brought important changes to access to remedy with respect to labour rights. According to the Constitution of Brazil, labour disputes are heard by specialised labour courts (Arts. 111-116). The new law strengthened the conditions provided by former Art. 790 §3 of the CLT that allowed an employee to be granted ‘free justice’ (*justiça gratuita*), i.e. to be exempt from paying the court fee, to litigate a labour dispute (Ramos, 2020_[130]). The objective of the government was to limit abusive litigation by employees and reduce the backlog in the judiciary, but this was also analysed as restricting access to justice (Correia, 2019_[131]). Available statistics indicate that the number of new cases filed before labour courts in the first year following the reform had dropped by a third (Government of Brazil, 2018_[132]). Labour judges are concerned in this regard that the drop in cases might threaten the financial viability of labour courts (ANAMATRA, 2019_[118]). The CLT also provides for the possibility of extra-judicial resolution of labour disputes, through conciliation (Title X, Chapter III CLT), ‘terms of adjustment of conduct’ signed with the Public Prosecutor (*termo de ajuste de conduta*, Art. 876 CLT), or collective agreements (*dissídios coletivos*, Title X, Chapter IV CLT). These methods of resolution, which are supported in each state by the mediation section of the regional superintendence of labour, are more frequent in relation to labour disputes than in other areas, with up to 24% of all disputes being settled through conciliation (Government of Brazil, 2019_[133]). Since 2000, the Brazilian NCP has also handled 21 specific instances related to Chapter V of the Guidelines on Employment and Industrial Relations, though only one led to agreement, outside of the NCP process.⁴²

Brazil should continue to ensure effective and affordable access to remedy to victims of labour rights violations, including by monitoring the effects of the 2017 reform and identifying needs for adaptations where appropriate. It should notably ensure that the NCP continues to be adequately resourced and constantly build further capacity in respect of labour issues.

With regard to labour inspection, Brazil is a party to Convention No. 81 (1947) on labour inspection in industry and trade, but not to Convention No. 129 (1969) on labour inspection in agriculture (ILO, 2021_[134]). The labour inspectorate, located in the Secretariat of Labour, is responsible for monitoring and enforcing labour laws, as provided for by Art. 21 XXIV of the Constitution, and Title VI, Chapter I of the CLT. According to information provided by the Government of Brazil for the purpose of the review, the priorities for labour inspection from 2020 on are laid out in internal planning guidelines that establish the following strategic objectives:

- Eradicate slave-like labour;
- Eradicate child labour and protect adolescent workers in labour relations;
- Combat informality in salaried work;
- Ensure compliance with legal quotas for admitting apprentices and people with disabilities;
- Reduce morbidity and mortality due to accidents or illnesses at work;
- Ensure safe and healthy work environments and processes;
- Continuously improve regulatory standards for occupational health and safety;
- Prevent accidents and illnesses at work through research and dissemination of results; and
- Combat social security payment default and tax evasion.

The federal labour inspectorate has been experiencing a decrease in budget and staff between 2010 and 2018, going from over 3,059 active inspectors in 2010 to 2,303 in 2018 (Reuters, 2019_[135]). In 2019, the CEACR responded to a direct request on the application of ILO Convention No. 81 (Labour Inspection) filed by the National Union of Labour Inspectors (SINAIT) regarding the effectiveness of labour inspection in Brazil, in particular whether the number of active inspectors was sufficient to ensure the effective discharge of their functions. As a result, the CEACR requested the Government of Brazil to ‘indicate the measures adopted to ensure that the number of labour inspectors is sufficient for the effective discharge of their duties.’ (ILO, 2019_[120]). In 2021, Brazil had increased the human resources of the labour inspectorate, having 2,997 inspectors active throughout the national territory (ILO, 2021_[134]). Moreover,

Brazil reported a shift in its labour inspection strategy, characterised by an increased use of technological systems to oversee a greater number of activities and companies in Brazil, which consequently reduces the number of labour inspectors needed. Over the last years, Brazil reported that a larger number of inspections were carried out based on data bank diagnostics, which Brazil considers to be a more efficient use of resources.

The Secretariat of Labour maintains a statistics portal tracking the activity of labour inspectors in the country. A review of available data relating to inspections for specific issues (health and safety at work and forced labour) reveals a slight increase in the number of enterprises inspected between 2016 and 2019, and a drop in 2020, which was caused by the COVID-19 pandemic forcing the Secretariat to remove some inspectors from the field as a protective measure.⁴³ Brazil reported that this was somehow compensated by alternative actions, such as increased social dialogue and orientation activities, such as public campaigns and recommendations to sectors more heavily affected by the pandemic, following guidelines by ILO and the World Health Organization. Results achieved through inspections have however decreased in the last ten years, with a progressive erosion of the overall number of infraction notifications despite more inspections (see Figure 3.1), and a sharp drop in the yearly number of workers in slave-like conditions found during inspections (from 2808 in 2013 to 936 in 2020). Experts explain these numbers as the result of a decrease in resources allocated to inspections (Arbex, Galiza and Oliveira, 2018^[136]). It would be useful to review the effects on the recent increase in the resources of the labour inspectorate on this data.

Figure 3.1. Number of labour infractions notified by labour inspectors (2012-2021)



Source: (Labour Inspection in Brazil, n.d.^[137]).

To ensure that its elaborate system of labour protection is as effective as possible, Brazil should continue to strengthen the functioning of the labour inspectorate.

3.2.2 Specific labour rights impacts related to business in Brazil

This section focuses on the salient issues of forced labour, child labour and informality. Other relevant issues such as non-discrimination and freedom of association and collective bargaining are addressed elsewhere in this report, respectively in the Section 3.1 and in the subsection above on the Institutional framework for labour governance.

Forced labour and slave-like labour

Forced labour as well as poor labour conditions have historically been an issue in Brazil, and have been among the labour-related policy priorities of successive governments for a number of years.

According to the ILO and data from labour inspection in Brazil, over 55,000 persons were freed from forced labour in Brazil since 1995. The sector in which forced labour is most pervasive is agriculture in general, and more in particular cattle farming in the Amazon region. However, in recent years, more inspections have been conducted in urban centres, which has allowed to discover more instances of forced labour, primarily in the construction and garment sectors. Forced labour correlates closely with inequality, as

persons most affected are domestic and foreign migrants looking for economic opportunities, particularly men between 18 and 44 years, of which a third are illiterate. Between 2003 and 2018, 77% of persons affected by forced labour were non-white. Women represent less than 4% of persons affected by forced labour (ILO, 2021^[138]; Observatório da Erradicação do Trabalho Escravo e do Tráfico de Pessoas, 2021^[139]).

Brazil has ratified ILO Conventions Nos 29 and 105 on forced labour, but not the 2014 Protocol to ILO Convention No. 29, which provides for measures by governments to ‘support [...] due diligence by both the public and private sectors to prevent and respond to risks of forced or compulsory labour’ (Art. 2 (e)). Art. 139 of the Brazilian penal code criminalises ‘slave-like labour’ (*condição análoga à de escravo*), which is defined as ‘reducing someone to a slave-like condition, either by submitting them to forced labour or exhausting work, or by subjecting them to degrading working conditions, or by restricting, by any means, their mobility due to debt contracted with the employer or intermediary.’ Brazil also has legislation further specifying these notions (Government of Brazil, 2017^[140]). In the Brazilian context, ‘slave-like labour’ therefore includes, but is potentially wider than the notion of forced labour covered by ILO conventions (see ILO Convention No. 29, art. 2(1)). Regulations, policies and bodies active in this field generally cover this wider scope, which is why this section will use the term ‘slave-like labour’.

Brazil has created dedicated bodies and policies to combat slave-like labour. In 2003, Brazil adopted its first National Plan for the Eradication of Slave-Like Labour (*Plano Nacional para Erradicação do Trabalho Escravo*), meant to implement the National Programme on Human Rights (see above) and to coordinate and integrate the actions of the various public and private actors on this topic. Building on this first plan, in 2008 a second plan was issued, containing 66 actions divided into the following themes: general actions; confrontation and repression; reinsertion and prevention; information and training; and economic repression (Government of Brazil, 2008^[141]). Notable actions include the creation and appropriate resourcing of mobile teams of specialised labour inspectors at federal level, and the maintenance of a ‘dirty list’ (*lista suja*) of employers found to have used slave-like labour (see Box 3.6). In 2020, Brazil also introduced ‘Sistema Ipê’, an initiative to facilitate the process of receiving and screening slave labour complaints, as well as the operational planning and communication between state agencies involved in combatting slave labour. The system allows for anyone to file a complaint on the digital platform, and to monitor the entire process (Government of Brazil, 2020^[142]). A similar tool will be launched in 2021 in relation to child labour (see below).

A gap in the plan is the absence of strong actions to leverage businesses themselves in the fight against slave-like labour. The pillar on information and training lists actions to inform, raise awareness and train businesses on the issue, but these remain soft and general. The plan does not in this regard reference RBC or make a link with due diligence to prevent and address the issue of slave-like labour in supply chains, given that its last version predates the last revision of the Guidelines in 2011. However, Brazil reported that in 2021, the Labour Inspectorate created a Working Group to Promote Decent Work in Supply Chains, with the aim of developing a strategy to promote RBC and due diligence regarding decent work across supply chains.

A National Commission for the eradication of slave-like labour was created in 2003 to support and monitor the implementation of the plan. The Commission was wound down and recreated in 2019 (Government of Brazil, 2019^[143]) notably to reduce its size to eight members (instead of 18), four from government and four from civil society, in line with the new policy on collegiate bodies (see above). Civil society expressed concern about the representativeness of the Commission as a result of this limitation of its membership (Conectas et al., 2020^[144]). The National Commission is supported by State Commissions for the eradication of slave-like labour. As indicated above, specialised mobile teams have been created within the labour inspectorate and a specific methodology for the detection of slave-like labour was adopted, in recognition of the sensitive and dangerous character of these missions (Government of Brazil, 2017^[140]).

Box 3.6. The 'dirty list' (*lista suja*) of employers found to have used slave-like labour in Brazil

In 2004, the Government of Brazil created a registry of employers who have verifiably submitted their workers to slave-like labour. This 'dirty list' is one of the main instruments to combat slave-like labour in Brazil and has been repeatedly celebrated as a best practice as it guarantees transparency about cases of slave-like labour (UN Working Group on Business and Human Rights, 2016^[69]). Inclusion of a company on the dirty list is the prerogative of the labour inspection and is irrespective of other civil or criminal judicial proceedings incepted against the company in question.

The rules governing the list have been revised for the last time in 2016 and have recently sustained a constitutional challenge by a business association (Government of Brazil, 2020^[145]). The rules provide that any employer found by labour inspectors to have submitted workers to slave-like conditions and to which a final notice of infraction was delivered, will be included on the list for two years and be subject to regular controls. In case of further findings of slave-like labour, the employer will remain for two more years on the list. The list is regularly updated and is publicly available on the website of the Secretariat of Labour. In June 2021 the list contained 92 employers, and includes their name, address, identification number, reference to the infraction notice, date of inclusion, and number of workers rescued.

The list only covers employers that directly submit workers to slave-like labour, and not those whose supply chain includes slave-like labour or that fail to conduct due diligence to screen their supply chains for slave-like labour.

Note: The list is available at https://www.gov.br/trabalho/pt-br/inspecao/areas-de-atuacao/cadastro_de_empregadores.pdf
Source: (Government of Brazil, 2016^[146]).

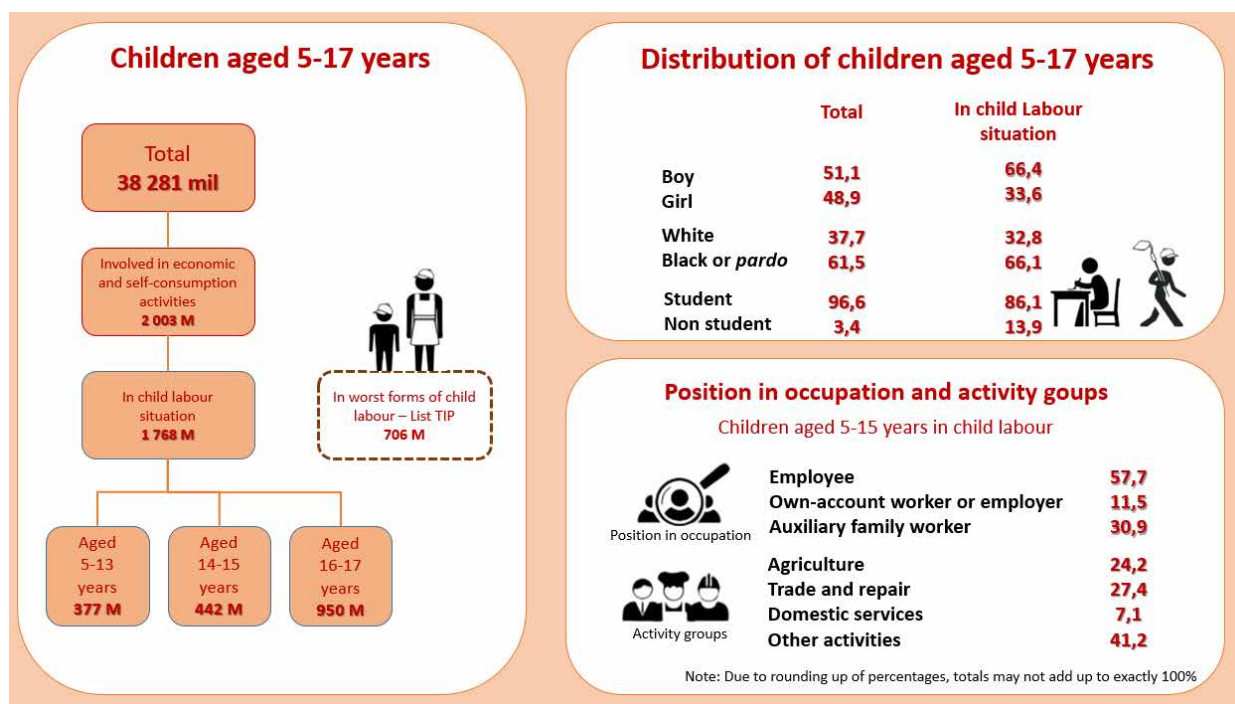
Brazil should continue to implement its ambitious policy of combating slave-like labour and should complement it with a dimension of inciting companies to combat slave-like labour along supply chains by encouraging due diligence based on the OECD Guidelines and due diligence guidance. The NCP should play a central role developing this due diligence dimension.

Child labour

Brazil has an elaborate legislation with regard to child labour. At international level, Brazil is a party to the UN Convention on the Rights of the Child, and to ILO Conventions 138 on minimum age and 182 on the worst forms of child labour, and to ILO Recommendations 146 on minimum age and 190 on the worst forms of child labour. At domestic level, the Brazilian legislation provides that the minimum age to work is 16, or 14 to be in an apprenticeship (Government of Brazil, 1990^[147]).

Child labour has been dropping continuously in Brazil in recent years, but remains a concern. Recent statistics show that child labour fell from 5.3 million working children in 2004 to 1.768 million in 2019, representing 4.5% of the population aged 5-17. There was a 16.8% decrease in child labour between 2016 and 2019. Over three quarters of working children are between 14 and 17, but in 2014, only 15.2% of that age group, who could in theory be working legally, were formally employed (Criança Livre de Trabalho Infantil, 2020^[148]). Child labour in Brazil disproportionately affects non-white boys, and is most prevalent in the agricultural, trade and repair, and domestic services sectors. Moreover, almost 40% (706,000) working children were performing one of the worst forms of child labour (see Figure 3.2). Moreover, child labour was more common in urban contexts and in the north eastern and south eastern regions of the country (Criança Livre de Trabalho Infantil, 2020^[148]).

Figure 3.2. Main data regarding child labour in Brazil (2019)



Note: Translated from the original version in Portuguese.

Source: (IBGE, 2019_[149]).

In response to this situation, and in recognition of the multifaceted causes and impacts of child labour, Brazil put in place a series of strategies aimed at eradicating child labour. The oldest one, which was inceptioned in 1996 and revised several times since is an inter-sectorial programme to eradicate child labour (*Programa de Erradicação do Trabalho Infantil – PETI*) that focuses on working through local social services with families using social benefits, social initiatives and educational services to remove children from work and support families depending on their income (Government of Brazil, 2020_[150]). The social aspects of PETI were complemented in 2010 with strategic actions to be carried out by local authorities and structured around five axes: a) Information and Mobilization; b) Identification; c) Protection; d) Defence and Accountability; e) Monitoring. Like for forced labour, mobile labour inspections units were also set up in the labour inspectorate to combat child labour (Government of Brazil, 2014_[151]), with specific inspection methodologies (Government of Brazil, 2013_[152]).

Finally, at policy level, the federal government adopted since 2010 three successive national plans for the prevention and eradication of child labour and the protection of adolescent workers (*Plano Nacional de Prevenção e Erradicação do Trabalho Infantil e Proteção ao Trabalhador Adolescente*) to coordinate the actions of the diverse actors in the field and establish common guidelines of protection. These plans are supported and monitored by the National Commission on the eradication of child labour (*Comissão Nacional de Erradicação do Trabalho Infantil – CONAETI*), a collegiate body of the Secretariat of Labour that was also wound down and recreated in early 2021 (though it is yet to meet in its current configuration) to reduce membership as part of the new government policy on collegiate bodies (see above) (Government of Brazil, 2020_[153]) The last plan, covering the period 2019-2022, aims to be a key contributor to the achievement of SDG 8.7 in Brazil,⁴⁴ and is organised around seven transversal and intersectoral axes of action. Each axis contains one or several objectives broken down into 99 actions in total, that are each attributed to a responsible entity, and linked to indicators and a timeline. Box 3.7 shows the axes and objectives that make up the latest plan. As is the case for forced labour, the plan does not include strong

actions that seek to rely on enterprises themselves in the fight against child labour, beyond the informational objective contained under axis 7.

Therefore, even though Brazil's strategy to combat child labour has been successful in reducing the number of working children and teenagers in the last decade,⁴⁵ it could be even more successful by trying to leverage enterprises, notably by promoting due diligence practices seeking to ensure that child labour is identified and addressed in companies' operations and supply chains. As noted above, Brazil reported that in 2021, the Labour Inspectorate created a Working Group to Promote Decent Work in Supply Chains, with the aim of developing a strategy to promote RBC and due diligence regarding decent work across supply chains.

Brazil should complement its strong strategy on combating child labour with a due diligence component, encouraging companies to identify and address child labour in their operations and their supply chains, based on relevant OECD sectoral due diligence guidances. The NCP should play a key role in this regard.

Box 3.7. Third National Plan for the prevention and eradication of child labour and the protection of adolescent workers (2019-2022)

This plan covers the period 2019-2022. It aims to be a key contributor to the achievement of SDG 8.7 in Brazil, and is organised around seven transversal and intersectorial axes of action. Each axis contains one or several objectives broken down into 99 actions in total, that are each attributed to an entity responsible, and linked to indicators and a timeline. Below is the main structure of the plan, outlining the strategic axes and related objectives.

1. Prioritising the prevention and eradication of child labor and protection of adolescent worker in political and social agendas

1.1.1. Prevent and eradicate child labour and protect adolescent workers

2. Promoting communication and social mobilisation actions

2.1.1. Raise awareness and mobilise society about damages caused by child labour

2.1.2. Create channels where children and teenagers are heard and can make proposals

3. Creating, improving and implementing mechanisms for the prevention and eradication of child labor and protection of adolescent workers, with emphasis on the worst forms of child labour

3.1.1. : Ensure compliance with legislation on the prohibition of child labor and protection of adolescent workers by public officials and the private sector

3.1.2. Elaborate, approve and implement legislative amendments related to child labor and protection of adolescent workers

3.1.3. Train and raise awareness of public officials on issues of child labor and adolescent workers

3.1.4. Effectively integrate programs, plans and actions related to combating child labor and protecting adolescent workers

3.1.5. Ensure teenager access to learning

4. Promoting and strengthening the family from the perspective of its emancipation and social inclusion

4.1.1. Generate employment and income opportunities for adult family members who use child labor as a direct or indirect source of income

4.1.2. Prevent children and adolescents from families benefiting from the PETI and Bolsa Família programs from remaining or returning to child labor

4.1.3. Create an opportunity to transform the values that perpetuate the use of child labour by families

5. Guaranteeing quality public education for all children and teenagers

5.1.1. Enable access to full-time education

5.1.2. Achieve universal, permanent and successful access to primary education

6. Protecting the health of children and adolescents against exposure to the risks of work

6.1.1. Ensure comprehensive care in the health system for working children and teenagers

7. Fostering knowledge generation about the reality of child labor in Brazil, highlighting its worst forms

7.1.1. Expand the knowledge base on child labour in Brazil, especially with regard to the worst forms

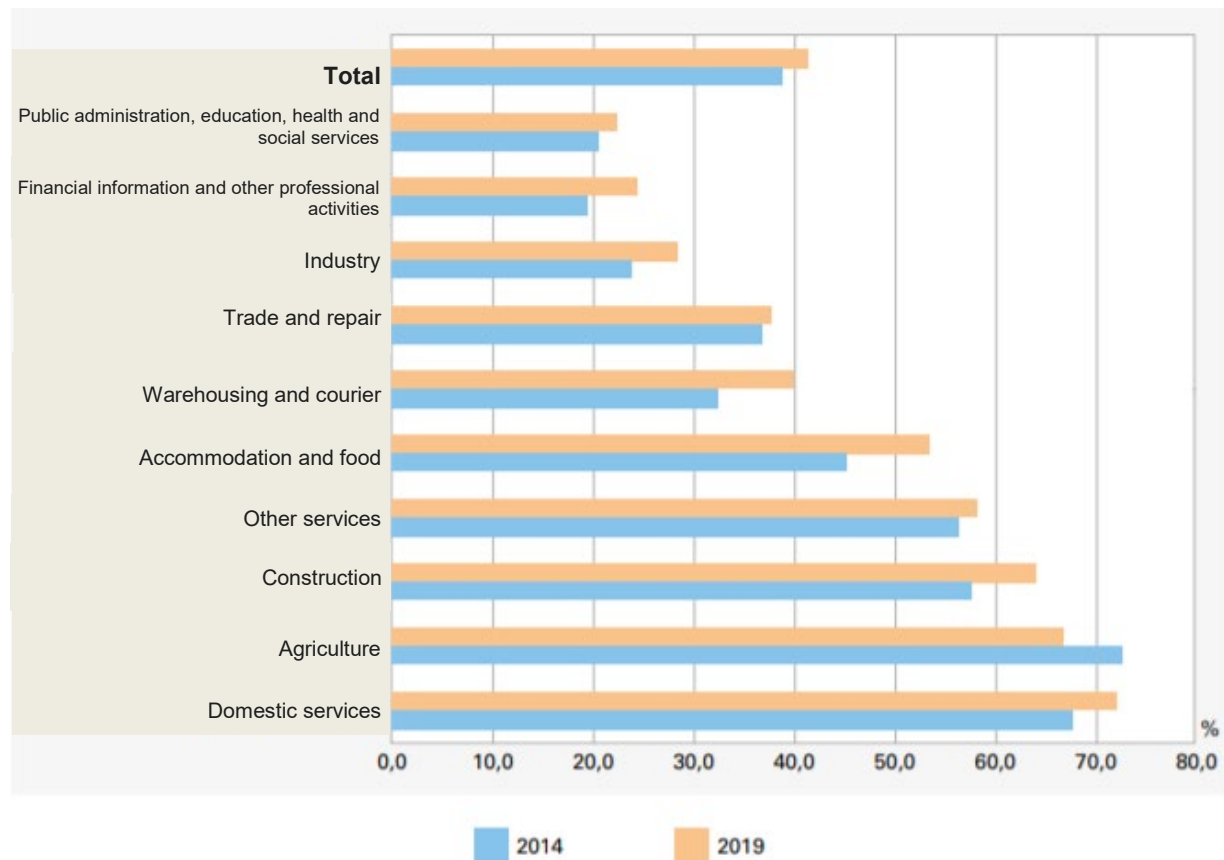
Source: (Government of Brazil, 2019_[154]).

Informality

In Brazil, 41.6% of workers were part of the informal sector in 2019, and therefore informality of the labour market is a concern in Brazil, notably as there is a strong correlation between informal employment and slave-like and child labour. Additionally, as indicated above, informality in Brazil is strongly correlated with inequality, as informality disproportionately affects non-white workers: 34.5% of white workers were part of the informal economy, compared to 47.4% of non-white workers. The gender distribution of informality is even, but men and women working informally are concentrated in different sectors. Informality is also unevenly distributed across the Brazilian territory, with the northern and north eastern regions having the highest rate of informality (61.6% and 56.9% respectively), the southern and south eastern the lowest (34.9 and 29.1%). Sectors most affected by informality are domestic services, agriculture and construction (IBGE, 2020_[35]).

Informality is demonstrably associated with a number of economic and developmental challenges including lower levels of access to finance for the private sector, lower labour productivity, slower physical and human capital accumulation, and smaller fiscal resources. Informality is also associated with higher income inequality and poverty and less progress toward the SDGs. Moreover, countries with a large informal economy are less likely to be able to recover in a fast, green and inclusive way, as recovery measures pursuing these objectives will typically not apply to the informal sector (Ohnsorge and Yu, 2021_[155]). The size of the informal sector in Brazil is below the median rate in Latin America,⁴⁶ but a concerning fact is that between 2014 and 2019, informality has increased in all sectors, except agriculture (IBGE, 2020_[107]), as a result of the recession that hit the country as of 2014 (see Figure 3.3). As indicated above, the COVID-19 pandemic severely affected Brazil, leading to a 5% contraction of GDP (OECD, 2020_[14]). This also led to a contraction of the informal sector (ILO, 2020_[156]) and losses of incomes for informal workers, increasing their vulnerabilities (Ramírez and Handeland, 2021_[157]).

Figure 3.3. Informality rate per economic sector in Brazil (2014-19)



Note: Translated from the original version in Portuguese.

Source: (IBGE, 2020^[107]).

Causes of informality in Brazil are multi-factor and notably include the following:

- Limited knowledge of labour and tax law by SMEs;
- Low amount and low deterrence of fines and other sanctions for employing informal workers;
- Limited knowledge about the social prejudice caused by informality and consequently widespread social tolerance for informality;
- Inconsistencies in social policies and programmes that may incentivise workers to remain informal (e.g. social benefits reserved to people with no other source of income) (Araujo, 2018^[158]).

In response, Brazil adopted a number of legislations and policies to tackle informality. It is a party to ILO Recommendation No. 204 on the transition from the informal to the formal economy. The already discussed 2017 Labour Reform was also explicitly aimed at reducing informality, one of the key innovations being the creation of the intermittent work contract. Early analysis of the impact of this legislative innovation reveals that the uptake of this form of contract has been limited, as they represented only 0.29% of all employment contracts in 2019, with 11% of intermittent workers having in fact no activity, and intermittent work seldom being covered by sectoral collective agreements. Moreover, these contracts were also analysed as giving discretion to the employer regarding the modalities of work and were shown to be concentrated in sectors such as services and sales where workers are more vulnerable and that are associated with more precarious working conditions, greater working hours and lower wages (Pereira and Lemos, 2021^[159]).

Brazil should continue monitoring the effects of intermittent work contracts, and adapt its policies according to findings, to ensure that intermittent work contracts do in fact contribute to the reduction of informality as intended and adequately protect the rights of vulnerable workers in at-risk sectors.

As of 2014, the fight against informality was intensified through the National Plan to Combat Informality of Employed Workers (Plano Nacional de Combate à Informalidade dos Trabalhadores Empregados – PLANCITE). PLANCITE aims to drive the formalisation of over 14 million workers through actions aimed at encouraging spontaneous formalisation, and through increasing the effectiveness of labour inspection actions in respect of informality (Government of Brazil, 2021^[160]). Essentially, measures taken under PLANCITE fall under four main axes of action that seek to integrate the various strands of public action and policy around the issue of informality, which was analysed as the main success of the plan:

- Increasing the presence of the state through improvement of labour inspection;
- Integrating policy with other areas of governance;
- Informing and raising awareness of social actors;
- Incentivising social dialogue (Araujo, 2018^[158]).

For that purpose, inspection methodologies in respect of employee registration were improved in 2014 (Government of Brazil, 2014^[161]). One of the strategies of the plan in respect of labour inspection relies on using technologies to track and identify potential situations of informality to better target inspection missions. This strategy has increased the efficiency of labour inspection in combating informality across the country. Contrary to what was found in relation to slave-like labour (see above), even though the yearly number of inspections in respect of informality has decreased between 2015 and 2019 as a result of a reduction of resources, the number of irregular workers discovered and regularised has increased (Araujo, 2018^[158]). Moreover, labour inspection was instructed to prioritise the processing of notices of infraction pertaining to informality (Government of Brazil, 2014^[161]).

Another way in which Brazil could address the issue of informality is by encouraging enterprises in the formal sector to conduct due diligence not only with respect to their activities but also to their supply chains and business relationships, in particular when these relationships include informal firms. Formal companies' leverage on informal firms may help prevent and address adverse impacts on labour rights caused by the latter, or even incentivise informal firms to transition toward the formal economy. The NCP has a particular role to play in this regard, as its mandate includes promoting the Guidelines and the related Due Diligence Guidance, and handling cases involving companies that fail to conduct effective due diligence.

Based on the analysis above, it seems that the Brazilian strategy on combating informality is showing positive results, at least through the new labour inspection policies. The strategy however could be even more effective if it considered the contribution that a strong RBC and due diligence approach to formalising the economy could bring, in particular by encouraging companies to track and address the issue of informality in their supply chains. As noted above, Brazil reported that in 2021, the Labour Inspectorate created a Working Group to Promote Decent Work in Supply Chains, with the aim of developing a strategy to promote RBC and due diligence regarding decent work across supply chains.

Brazil should continue to prioritise the formalisation of the economy as a way to better ensure effective enjoyment of labour rights and to spur its contribution to the SDGs, raising awareness of the effects of informality with businesses and focusing as well on the reduction in inequality associated with informality. It should also complement its current strategy with a strong RBC and due diligence component to leverage action by companies in their supply chains in combating informality, based on OECD due diligence guidance. The NCP has an important role to play in this regard.

Policy recommendations

4. **Ensure that regulatory initiatives include strong participation and social dialogue, in particular for initiatives that touch upon social and environmental impacts of business; and effective and affordable access to remedy to victims of labour rights violations, notably by building further capacity at the Brazilian NCP.**
5. **Continue to invest in strong labour inspection, to ensure that its elaborate system of labour protection is as effective as possible.**
6. **Complement existing policies on combating slave-like and child labour by inciting companies to conduct due diligence throughout their supply chain in respect of these risks, with the NCP in the lead.**
7. **Continue to prioritise the formalisation of the economy as a way to better ensure effective enjoyment of labour rights and to contribute to the SDGs, and leverage company action in this regard through due diligence, with the NCP in the lead.**

3.3 Environment

Chapter VI of the Guidelines calls on enterprises to take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development. This entails sound environmental management that aims to control both direct and indirect environmental impacts (this includes impacts on public health, safety); establishing and maintaining appropriate environmental management systems; improving environmental performance; being transparent about the environmental impacts and risks, including also reporting and communicating with outside stakeholders. It also entails being proactive in avoiding environmental damage; working to improve the level of environmental performance in all parts of their operations, even where this may not be formally required; and training and education of employees with regard to environmental matters. Other parts of the Guidelines (e.g. the chapters on disclosure, consumer interests and science and technology) are also relevant to environmental impacts, and in particular, impacts related to greenhouse gas (GHG) emissions. For example, the Guidelines reference expectations to set targets that are consistent with international commitments; disclosure of social and environmental risk reporting with a particular focus on GHG emissions; and providing access to information and informing consumers of the environmental and social impact of their decisions.

This section provides an overview of the current regulatory and institutional regime – with a focus on recent developments. This is followed by further detail on regulatory initiatives relevant to environmental justice (with a focus on access to information, public participation in environmental decision making and access to remedy) and environmental impact assessments (EIAs). This section then turns to actions to address climate change and to combat deforestation and forest degradation respectively – with a focus on private sector-led initiatives and encouraging RBC in the context of global environmental threats and objectives.

3.3.1 Environmental Governance in Brazil

Legal and regulatory framework

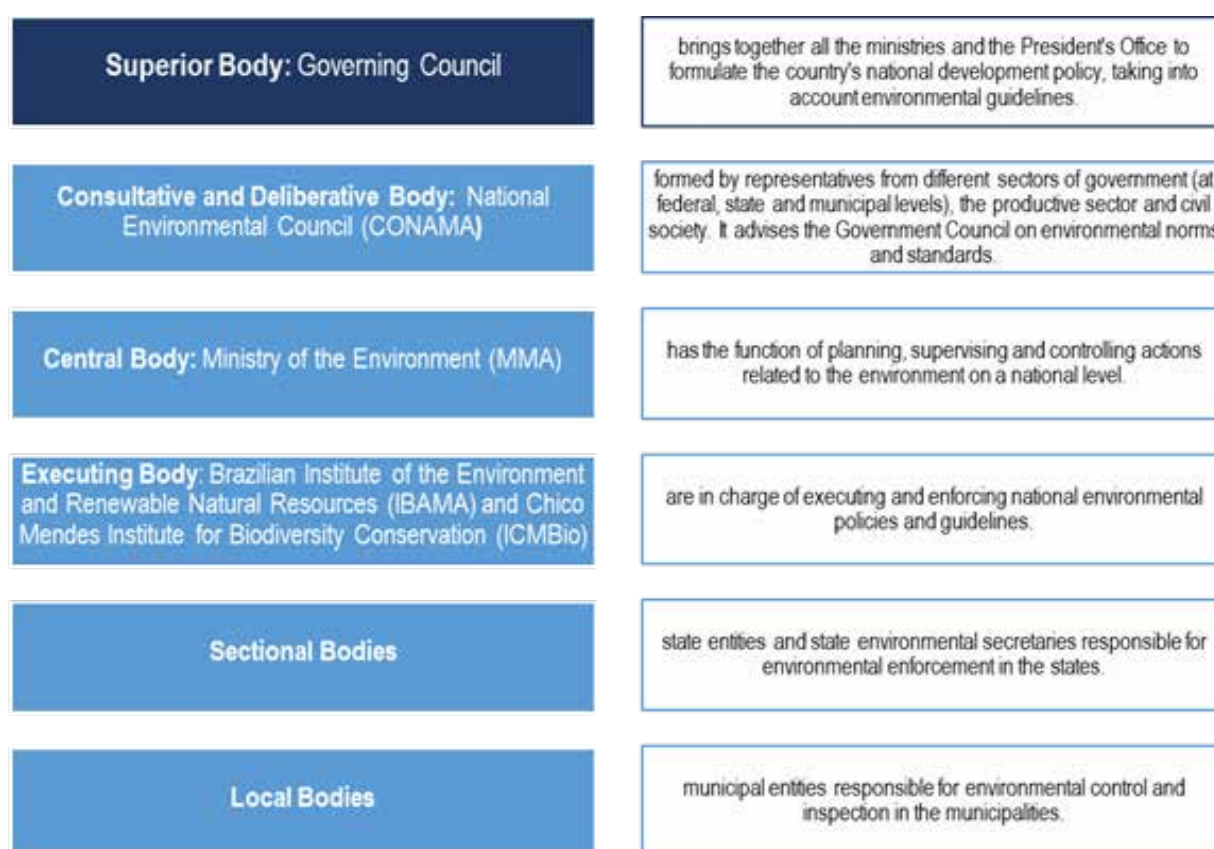
Brazil has an advanced body of environmental legislation. The 1988 Brazilian Constitution recognises the right to an ecologically balanced environment and recognises environmental policy as a common and

convergent responsibility shared by the federal, state and municipal levels of government (Arts. 22, 23, 24).

At international level, Brazil has ratified or acceded to major multilateral environmental agreements, including among others the Paris Agreement, the UN Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol, the Convention on Biological Diversity (CBD) and its Cartagena and Nagoya Protocols.

Moreover, since the adoption of the 1981 National Environmental Policy Law (PNMA) (Government of Brazil, 1981^[162]), Brazil has developed a comprehensive and advanced environmental legislative framework at the national level and in most states. The National Environmental System (SISNAMA), created by the PNMA brings together relevant government institutions in a complex governance framework of councils and executive agencies. The structure of SISNAMA is outlined below in Figure 3.4.

Figure 3.4. Structure of SISNAMA



While considerable progress had been made building the institutional capacity and staff of the Ministry of the Environment (MMA) at the time of OECD's last Environmental Performance Review of Brazil (OECD, 2015^[163]), it is important to ensure the ongoing provision of financial and human resources and technical capacity of both research and environmental agencies at the federal and state level to ensure effective monitoring and enforcement of environmental legislation in Brazil (Athayde et al., 2019^[164]) (Abessa, Famá and Buruaem, 2019^[165]) (Athayde et al., 2022^[166]). The increasing engagement of environmental agencies in inter-ministerial dialogue and progress in integrating environmental considerations across economic and social agendas an important vehicle for policy coherence on environmental aspects of RBC. ***Brazil should continue to ensure inter-ministerial co-ordination as a way to improve policy coherence and enable a whole-of-government approach to sustainable development and RBC in the context of global environmental challenges and objectives.***

In recent years, a number of new legislative acts relating to environmental regulation and regulatory bodies have been introduced. Such reforms on the part of the Government sought to harmonise legislation across different levels of government and to provide greater legal certainty.

However, recent reports have argued that some of these acts have resulted in a weakening of environmental regulation and/or enforcement in Brazil (Vale et al., 2021^[167]) (see below section on Environmental Justice: access to environmental information, public participation in environmental decision making and access to remedy for reference to reforms relating to access to justice and public participation in environmental matters). Some of these reforms include:

- The recent decision of CONAMA to overturn measures protecting coastline areas as permanent preservation areas. This decision was later suspended by the Federal Supreme Court, where the court granted an injunction based on the understanding that the repeal of the relevant regulation was in violation of constitutional environmental protections (CNN, 2020^[168]; Government of Brazil, 2020^[169]).
- The repeal of the 2004 Action Plan for the Prevention and Control of Deforestation in the Legal Amazon (PPCDAm). The PPCDAm was created in response to high levels of deforestation and reportedly the main instrument responsible for an 83% drop in deforestation between 2004 and 2012 (Observatório do Clima, 2021^[170]).
- A new Bill on Environmental Licensing (Projeto de Lei 3.729/2004) was approved by the Chamber of Deputies on 13 May 2021 and has yet to receive the Senate's final approval (Government of Brazil, 2004^[171]). The bill includes a proposal to revise environmental licensing legislation, including the regulation of EIAs. The bill may considerably weaken the environmental licensing process in Brazil as it foresees lower and less requirements for administrative control of the environmental protection requirements for licenses, and limits consultation processes (Rached and Alberto, 2021^[172]).

With respect to environmental compliance and enforcement, the number of environmental field officers of the Brazilian Institute of the Environment and Renewable Natural Resources (IBAMA) has declined by approximately 40% between 2009 and 2019 (New York Times, 2019^[173]) and enforcement action reportedly fell in 2019 and 2020 (Reuters, 2020^[174]; New York Times, 2020^[175]) – their period being the same period in which Brazil has started to see an increase in deforestation (see below) (Conectas et al., 2020^[144]). Further, there has been a notable reduction in the number of environmental embargos that took place between 2018 and 2020, which fell from 2,589 to 385. Embargos, which prevent the marketing of products derived from the area where the environmental damage occurred, are considered some of the most effective measures to limit deforestation in Brazil (Rajao et al., 2021^[176]).

Brazil should ensure that any revisions to environmental regulation look to strengthen the rule of environmental law, including mechanisms for institutional coordination and capacity in enforcement of environmental protection regimes and actions to progress global environmental objectives, for example by addressing uncertainties and gaps in licensing of business activities that cause pollution.

Further to the above, in addressing recent regulatory amendments related to environmental protection, Brazil should provide clarity to business and industry on the integral nature of environmental considerations as part of RBC, and strengthen the integration of OECD due diligence guidance as a means to ensure business is addressing adverse impacts and risks related to the environment. In this regard, Brazil should strengthen the capacity of relevant agencies to enforce environmental regulations, incentivise, and raise awareness of, RBC related to environmental risk and adverse impacts - with a particular focus on climate change, biodiversity loss and deforestation. In this regard, the NCP also has a key role to play in promoting RBC in relation to environmental impacts.

Environmental Justice: access to environmental information, public participation in environmental decision making and access to remedy

With respect to providing access to environmental information, the National Environmental Information System (SINIMA) is responsible for the collection and dissemination of environmental information (Government of Brazil, n.d.^[177]). Law 7804/1989 requires IBAMA to develop Environmental Quality Reports on the state and management of natural resources in Brazil. Brazil is currently preparing the 2020 Environmental Quality Report, to be published in 2021, the latest report having been published in 2013 (Government of Brazil, 2013^[178]; OECD, 2021^[179]).

IBAMA maintains the Federal Technical Register of Potentially Polluting or Natural Resource Consuming Activities (Government of Brazil, 2016^[180]). Participation in the register is mandatory for companies that are involved in potentially polluting activities, use products of flora or fauna, or are required to obtain an environmental license from IBAMA or a state or local government authority (Government of Brazil, 2016^[180]). According to Law 6938/1981, companies must submit annual reports to the registry, which includes information on both process inputs (e.g. energy and raw material use) and environmental impacts (air emissions, wastewater effluents and waste generation) (Government of Brazil, 1981^[162]). Although an important source of data collection and one that could, in the future, capture implementation of environmental due diligence practices in alignment with OECD recommendations, currently only part of the federal register is open to the public (OECD, 2021^[179]).

A uniform system of relevant data stored by environmental and other relevant public agencies was required by Law 12651/2012 and recommended by the Federal Accounting Court (Tribunal de Contas da União, TCU) in 2016 (Government of Brazil, 2012^[181]). The TCU urged the integration of the federal and state databases on Documents of Forest Origin (which provides data on the transportation and use of native wood), the Federal Technical Cadastre for Potentially Pollutant Activities, the database of environmental licences, the National System of Rural Environmental Registry (*Sistema Nacional do Cadastro Ambiental Rural*, CAR) and systems for deforestation monitoring, as well as data from the Federal Tax Bureau and the National Department of Transportation. Some progress has been made since. For example, the Federal Technical Cadastre for Potentially Pollutant Activities is now integrated with databases of 19 states and there is some interagency data exchange in other areas. However not all of the TCU recommendations have yet been implemented (OECD, 2021^[179]).

To support business in implementing environmental due diligence aligned with OECD recommendations – in particular in identifying and assessing risk and the important role of meaningful public consultation – Brazil should improve access to environmental information and data transparency, including by enabling publically accessible, up to date, and periodically published reports on environmental data at federal and state levels, including environmental licensing processes. This is particularly relevant to accessible and accurate data related to deforestation and climate change.

Likewise, to strengthen enforcement actions related to business activities that have adversely impacted the environment, Brazil should strengthen inter-agency coordination and exchange on available environmental data relating to business activities

With regard to public participation in environmental matters, CSOs have highlighted a number of new reforms causing concern, in particular in relation to Brazil's 2019 new policy to reform previously established collegiate bodies, as part of a management rationalisation effort (see above, section 3.2) (Government of Brazil, 2019^[126]). Although under this reform new bodies may still be created, the policy resulted in over 2500 bodies including those charged with environmental oversight being impacted (O Globo Brasil, 2019^[182]). In the environmental area, such bodies included the Brazilian Forum on Climate Change (FBMC), the National Plan for the Recovery of Native Vegetation (Planaveg) and its respective Commission (Conaveg), the National Biodiversity Commission (Conabio) and the National Forest Commission (Conaflor).

Although parts of the 2019 policy were revoked later that same year, including in regard to abolishing collegiate bodies created by law (Government of Brazil, 2019^[183]; 2019^[126]), notable changes that were implemented included the following.

- The structure and governing rules of CONAMA were strongly altered in 2019. For example, members were reduced from 96 to 23, and seats held by civil society environmental organizations were reduced from 22 to four. Ten members representing the Federal Government are fixed and remain in CONAMA for two years, while the terms of other members were reduced to one year. Since then, selection rules for popular representation are conducted through an annual lottery (Government of Brazil, 2019^[184]). Such changes may result in a reduced ability of the Council to be composed of qualified and representative membership. The Federal Supreme Court is currently considering whether the alteration of CONAMA was unconstitutional, however, the trial has been suspended since March 2021 (Government of Brazil, n.d.^[185]; OECD, 2021^[186]).
- In 2020, civil society representation was removed from the deliberative council of the National Environment Fund (FNMA), a government fund with the goal of developing and financing projects supporting the sustainable use of natural resources, and prioritising projects in the Legal Amazon (Government of Brazil, 2020^[187]). Specifically, CSO representation (previously four representatives) was removed, while increasing the number of representatives of private businesses from two to five (Government of Brazil, 2019^[188]).
- The composition of the Executive Commission for the Control of Illegal Deforestation and Recovery of Native Vegetation (CONAVEG), responsible for planning policies against deforestation, was changed and the two seats for CSOs were removed (Government of Brazil, 2019^[189]).
- To support participation of civil society in environmental decision making, and rule of environment law, Brazil should ensure CSOs are able to meaningfully participate and be represented within relevant environmental decision-making and consultative bodies.

In 2018 Brazil signed but did not yet ratify the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement). Brazil reported that, as of 2019 it had been reassessing the content of some of the agreements' provisions in light of its new environmental policy guidelines, and that this reassessment was still ongoing. However, the Ministry of Foreign Affairs has regularly participated in international meetings with the signatory countries of the Agreement.

The Escazú Agreement is the world's first international agreement that includes provisions on the protection of human rights defenders in environmental matters and could be an important opportunity for Brazil to support access to information but also raise companies' awareness of the necessity of involving human rights defenders in due diligence processes. ***This includes protecting avenues for access to environmental information, public participation processes, as well as access to environmental justice through the judicial system. The Government should prioritise ratifying the Escazú Agreement to further enhance the protection of human rights and environmental defenders.***

With respect to access to remedy, Brazil has a strict civil environmental liability regime consistent with good international practice. This means there is no need to prove fault or negligence to impose responsibility for remediating environmental damage (OECD, 2015^[163]). The Constitution also provides a specific obligation for polluters to remediate environmental damage caused by mineral extraction⁴⁷.

In practice, however, seeking compensation often suffers frequent delays and entails recourse to courts of appeal. For example, the TCU identified severe delays in the execution of environmental clean-up by the operator of the Fundão mining tailings dam in Mariana, Minas Gerais. By 2019, it was reported that recovery programmes were still poorly defined, lacking clearly defined actions, goals, indicators, and deadlines. There had been no systematic monitoring of the progress in the implementation of these programmes (Government of Brazil, 2019^[190]).

In addressing failure to take enforcement action or delayed enforcement, Brazil has a series of laws granting prosecution services and CSOs the ability to seek enforcement of environmental rules before a Court (Rosenn, 2011^[191]). This added layer of public surveillance created by this set of legislation has been largely perceived as having had a positive outcome on the enforcement of environmental rules in Brazil (McAllister, 2005^[192]; Sadek, 2009^[193]). However, CSOs have highlighted lengthy judicial proceedings contributing to the impunity of corporate environmental offenders and preventing redress (FIDH and Justiça nos Trilhos, 2019^[194]). For example, procedures that allow for the suspension of injunctions against the government, superposing alleged economic or public order concerns to environmental rights, have reportedly generated a negative impact on the effective access to environmental justice (Luizão and Bellinetti, 2014^[195]).

Access to remedy for environmental impacts by business can also be enabled by non-judicial grievance mechanisms. To date, the Brazilian NCP has received 10 (out of 39) cases) related or partly related to the environment chapter of the Guidelines, one of which led to an agreement within the NCP process (see above, Box 3.2), and one outside of the NCP process.⁴⁸ A recent recurring topic in the cases received by the Brazilian NCP has been the impacts of tailing dams collapses at mining sites in Minas Gerais (see Box 3.8). This increased recourse to the NCP for dealing with these impacts may be indicative of the difficulties to obtain remedy for these impacts through other channels (see above), and of progress yet to be made by the mining sector with respect to environmental due diligence, particularly regarding the requirement to provide for and collaborate in remediation for corporate impacts, when appropriate.

Box 3.8. Recent specific instances submitted to the Brazilian NCP in relation with tailings dams collapses

Impacts resulting from tailings dam collapses are a recurring issue in the mining sector. The Brazilian NCP has sought to provide access to remedy to those affected by these impacts in several cases. In 2019, in the case of Vale and BHP Billiton and SITICOP, CNQ-CUT, BWI, and IndustriALL in which the submitters claimed compensation for the families of the victims of the November 2015 Fundão dam collapse, the Brazilian NCP had made several recommendations to the companies, focused on the need to carry out and increase resources for due diligence in relation to tailings dams.

In 2020, three more cases linked to the Brumadinho dam collapse of January 2019, Vale S.A., and Mr. Carlos Cleber Guimarães Júnior and Ms. Carla de Laci França Guimarães, Vale S.A. and Multiple Individuals, and Vale S.A. and Vila Solaris Hospedagens e Eventos focusing on the economic repercussions of the catastrophe on local populations. The Brazilian NCP accepted all three cases for further examination in April 2020

Source: OECD (2021) *Annual Report on National Contact Points for Responsible Business Conduct* (forthcoming).

Brazil should support business in integrating remediation measures into their environmental risk management processes that include active participation and consultation with affected stakeholders, as recommended by OECD Due Diligence Guidance. In addition, Brazil should ensure effective access to remedy for environmental impacts, through judicial and non-judicial mechanisms, including through the NCP.

Environmental Impact Assessments

As in many other countries, environmental impact assessments (EIAs) are an integral part of the environmental licensing process in Brazil. Specifically, environmental licensing, and EIAs supporting such licenses, are mandatory for all projects with potentially significant environmental impacts.

CONAMA's 1986 Resolution No. 1 (Government of Brazil, 1986^[196]) defines 'environmental impacts' as 'any change in physical, chemical and biological properties of the environment, caused by any form of matter or energy resulting from human activities that directly or indirectly affect the health, safety and well-being of the population; social and economic activities; the biota; the aesthetic and sanitary conditions of the environment; and the quality of environmental resources.'

The EIA process includes an impact assessment study as well as a simplified, non-technical summary to provide information about the EIA process to stakeholders attending public hearings. Both reports must be made publically available. Public hearings are mandatory but only when requested by more than 50 people, the public prosecutor's office, or when deemed necessary by the environment agency. However, CSOs consulted for the purposes of this review have reported that meaningful public participation does not often happen in practice. Post-licence monitoring is also regulated by CONAMA Resolutions (Government of Brazil, 1986^[196]; 1997^[197]) but is also not always effectively implemented (OECD, 2021^[179]).

A 2016 study concerning the licensing practices in four south-eastern states (Minas Gerais, São Paulo, Rio de Janeiro, and Espírito Santo) identified that certain aspects of the EIA procedure are often not carried out. This was reportedly due to the reclassification of potential impacts caused by projects from "intense" to "moderate" or "minimum", which can then exempt the project from a full impact assessment (Oliveira et al., 2016^[198]; OECD, 2021^[179]).

A new Law No. 2159/2021 has been criticised for removing or reducing environmental licensing requirements for certain sectors or projects (Sánchez and Alberto Fonseca, 2019^[199]; Abessa, Famá and Buruaem, 2019^[165]) (Athayde et al., 2022^[166]). The Law simplifies environmental licensing procedures; introducing automatic approval of licences in the absence of responses from the competent authority after a predetermined deadline. It also creates a fast-track, simplified EIA for certain sectors, regardless of the level of potential impact, and pass on to states the authority of establishing their own procedures for specific environmental licensing processes (OECD, 2021^[179]).

Brazil should address gaps in EIA regulation to ensure a strong regulatory and enforcement framework in preventing and addressing adverse environmental impacts by business, and support industry implementation of practices aligned with the recommendations of the Environment Chapter of the OECD Guidelines (which refers to EIA as a key component to assessing and mitigating environmental impacts) – and OECD due diligence guidance.

3.3.2 Combating climate change

According to the 2020 Fourth Biennial Update Report of Brazil to the UNFCCC, in 2016, the total greenhouse gas emissions of the country were 1.38 billion tons of CO₂ equivalent. With regard to sectoral participation in net CO₂ equivalent emissions in 2016, Brazil reported first the energy sector (30%-43%), second the agriculture sector (18%-36%) and third land use, land-use change and forestry (21%-19%) as primary sources of emissions according to three different metrics (Government of Brazil, 2020^[200]). In 2018, Brazil emitted the equivalent of 1.9 tonnes of CO₂ per capita and 406.254 million tonnes in total, followed by an increase to an equivalent of 2.18 tonnes of CO₂ per capita and 406.450 million tonnes in total the subsequent year (OECD, 2021^[201]) (SEEG, 2021^[202]).

Regulatory framework and targets on combating climate change

Brazil's Interministerial Committee on Climate Change (CIM) is responsible for developing Brazil's strategies around implementation, financing, monitoring, evaluation and updating policies, plans and actions related to climate change, including the successive Nationally Determined Contributions (NDCs) (OECD, 2021^[201]).

The 2009 National Policy on Climate Change (PNMC) (Government of Brazil, 2009^[203]) calls for greenhouse gas emissions reductions of between 36.1% and 38.9% compared to business-as-usual

projections for 2020, equivalent to a reduction of between 6% and 10% from 2005 levels. The PNMC sets out instruments to achieve these targets – including the establishment of the federal climate change fund and a possible national carbon market (OECD, 2015^[163]). The National Fund on Climate Change was established in 2009 for the purposes of financing projects, studies and undertakings to reduce greenhouse gas emissions and climate adaptation. Since its creation, 61 projects have been supported by the Fund (Government of Brazil, 2021^[204]). The national carbon market has not yet been fully implemented. At the beginning of 2021, a proposal to regulate the Brazilian market of emission reduction (MBRE) was presented in draft law 528/2021⁴⁹ with the aim of making the Brazilian carbon market viable and operational (EPBR, 2021^[205]).

The PNMC also requires the development of climate change action plans with specific reduction targets, policy actions and monitoring indicators for five sectors, corresponding to the nationally appropriate mitigation actions (NAMAs) that Brazil pledged to undertake under the UNFCCC (OECD, 2015^[163]). Following the ratification of the Paris Agreement, the Brazilian government highlighted that policies, measures and actions to implement its Nationally Determined Contribution (NDC) will be conducted recognizing the regulatory framework already established by the PNMC (Government of Brazil, 2018^[206]).

Brazil's latest 2020 NDC submitted under the Paris Agreement pledges to reduce greenhouse gas emissions by 37% by 2025 compared to 2005 levels with a subsequent indicative contribution of reducing greenhouse gas emissions by 43% by 2030 in comparison to 2005 emissions levels. The NDC states that it is compatible with the objective of reaching climate neutrality by 2060, however, the year in which climate neutrality may be achieved is linked to the market mechanisms provided by the Paris agreement (Government of Brazil, 2020^[207]). At the recent 2021 Leader's Summit on Climate, the President of Brazil committed to reach climate neutrality by 2050 instead of 2060, indicating an important commitment to raising ambition. However this new commitment has not yet been reflected in the country's most recent 2020 NDC. In addition, according to civil society reports, the 2020 NDC resulted in a lowering of ambition regarding emission reduction targets as compared to the 2015 NDC (Instituto Clima e Sociedade, 2021^[208]; World Resources Institute, 2021^[209]).

Brazil should look to revise its current NDC to formalise and reflect the 2050 goal recently announced by the Government and ensure that its current NDC reflects increasing ambition on climate action. In developing implemented plans to action NDC commitments, Brazil should ensure such measures are aligned with the targets of the Paris Agreement, the Government's most recent statements on climate ambition and reaching climate neutrality by 2050 instead of 2060, and support the private sector in implementing aligned commitments, including through risk management processes and frameworks aligned with OECD due diligence Guidance. The latter is particularly relevant for high emitting sectors.

Enabling RBC: Climate change and sustainability in the private sector

This section examines the integration of climate change and broader sustainability issues across sectors and related firm level trends.

Growing awareness of the risks and opportunities associated with climate change has seen increasing adoption of climate commitments among Brazilian companies and the implementation of internal carbon pricing mechanisms (CEBDS, 2019^[210]). In 2019 it was reported that more than 300 Brazilian companies, including 8 of the world's largest companies with revenues over 317USD, adopted quantifiable climate commitments (New Climate Institute et al., 2019^[211]) while another study by the Brazilian Business Council for Sustainable Development (CEBDS) reported that 38 companies operating in Brazil implemented 1340 climate action projects and invested 85.8 billion USD for emissions reduction actions between 2015-2017 (CEBDS, 2018^[212]).

Agriculture is one of the main sectors responsible for climate change globally (OECD, 2019^[213]).⁵⁰ In 2016, the agriculture and livestock sector made up 33.6% of Brazil's total CO₂ equivalent emissions, with a 2.3% rise in emissions compared to 2015. The Land Use Change sector accounted for 22.3% in total emissions,

a 24.8% increase in net emissions compared to the previous year, which was the result of increasing deforestation (Government of Brazil, 2020^[214]).⁵¹ Brazil pointed out that the high contribution of its agricultural sector to emissions compared to other countries could be explained notably by the fact that its energy matrix is also comparatively composed of more renewable sources (Government of Brazil, 2021^[215]).

Several multi-stakeholder coalitions and partnerships have emerged within the sector. For example, in 2010 the Ministry of Agriculture, Livestock, and Food (MAPA), the Brazilian Agricultural Research Corporation (Embrapa) and the National Service for Rural Apprenticeship (SENAR) launched the ABC Cerrado plan to help farmers adopt sustainable technologies and practices that increase productivity and reduce emissions (Piao et al., 2021^[216]). The Brazilian Roundtable on Sustainable Livestock (GTPS), launched in 2007, works with producers, CSOs and retailers to lead and discuss best practices for building sustainable, fair, environmentally sound, and economically feasible livestock value chains (OECD, 2020^[211]), while the multi-sectoral Brazilian Coalition on Climate, Forests and Agriculture works with 260 members, including business associations and companies to promote a low carbon agriculture, livestock and forest-based economy (Brazilian Coalition on Climate Forests and Agriculture, 2020^[217]).

The Brazilian mining industry is the 6th largest in the world (OECD, 2020^[211]), with mining emissions accounting for 0.6% of the Energy sector in 2016 - contributing 32,4% to total emissions (Government of Brazil, 2020^[214]). In 2019, the mining sector announced that it would adopt the Towards Sustainable Mining Initiative (Mining Technology, 2019^[218]) and the Latin American Network on Extractive Industries launched a campaign called “EITI Consciente” with the goal of expanding the Extractive Industries Transparency Initiative (EITI) to include environmental, social and climate change considerations (RLIE, 2019^[219]).

Brazil should seek to further integrate SMEs into business coalitions and multi-stakeholder partnerships to ensure more diverse and representative participation across both sectors. There is an important role for the Government, and particularly the Brazilian NCP, to support and incentivise participation in such initiatives as well as use of, and integration of, OECD RBC standards, where appropriate and in the context of encouraging environmentally sustainable business behaviour.

Brazil has introduced a number of initiatives to leverage the financial sector in support of climate change and sustainability objectives. In particular, the National Monetary Council is increasingly requiring banks, businesses and other actors to integrate ESG considerations into their business activities (Banco Central Do Brasil, 2014^[220]; FEBRABAN, 2014^[221]; Banco Central do Brasil, 2018^[222]). In 2020, as the regulator of the national financial system, the Central Bank launched Agenda BC#, a new sustainability agenda aiming to “promote the allocation of resources towards the development of a more sustainable, dynamic and modern economy, in order to foster sustainable and inclusive growth in Brazil” (Banco Central do Brasil, n.d.^[223]). The Brazilian Banking Federation (FEBRABAN) also published its green taxonomy (FEBRABAN, 2021^[224]). Increasing expectations from investors with respect to environmental and climate change related impacts in Brazil, has been driving action by corporates – particularly with respect to meaningful disclosure practices (Financial Times, 2021^[225]). ***As meaningful ESG reporting remains a challenge for many businesses, Brazil could encourage the use OECD RBC standards to ensure metrics are rooted in internationally agreed definitions on social and environmental issues and serve as a proxy for measuring ESG performance in the absence of appropriate universal indicators.***

3.3.3 Combating deforestation and forest degradation

Brazil houses the world’s largest tropical rainforest, the Amazon (OECD, 2015^[163]), which holds 15 - 20% of global biological diversity, and is considered the most biologically diverse country in the world with at least 103,870 animal species and 43,020 plant species currently known (CBD, n.d.^[226]).

With respect to forested land – whereby a significant percentage of this area is privately owned or indigenous land (Government of Brazil, n.d.^[227]) – the establishment of a vast network of protected areas, new land tenure regularisation, advanced monitoring systems, strict enforcement, and promotion of sustainable natural resource use, helped cut deforestation by 75% between 2005 and 2014 (OECD, 2021^[179]; INPE, 2020^[228]). However, annual forest loss has been increasing significantly in Brazil since 2015, reaching decade highs in 2019 and 2020 (OECD, 2021^[179]). New research suggests that up to 40% of the remaining Amazon forest is already approaching a tipping point where fires and droughts could result in the Amazon transforming from rainforest to savannah (Staal et al., 2020^[229]).

As indicated above (see Section 3.1.2), increasing deforestation rates also have severe human rights impacts, notably on indigenous peoples (see Box 3.9 below) and human rights defenders. Moreover, in 2019, Global Witness recorded 24 murders of land and environment defenders in Brazil; being the third-highest number globally and with almost 90% of these deaths occurring in the Amazon.

Box 3.9. Land grabbing and the role of the private sector

Illegal land grabbing and deforestation reportedly continues to impact indigenous and protected areas in the Amazon.

In March 2021, Brazil's Supreme Court ordered an investigation of the sale of protected indigenous lands in the Amazon Rainforest, which occurred via the social media platform Facebook (Reuters, 2021^[230]). The court ruling was subsequent to a news investigation by the BBC and found that some of the advertised land plots on the platform belonged to the Uru-Eu-Wau-Wau people. Many of the advertised plots had already been deforested. While Facebook did not immediately respond to a request for comment, the company told the BBC in February it was willing to work with local authorities on the issue.

Regulatory framework: deforestation

The current 2020 NDC does not refer to targets or initiatives specific to the land sector for preventing deforestation or restoring forests. This is a divergence from the previous NDC which included a commitment to bring illegal deforestation down to zero by 2030.

In April 2021, the Government presented the Amazon Plan 2021/22, which includes a new official goal to curb deforestation in the Amazon to the 2016-20 recorded average by 2022 (Government of Brazil, 2021^[231]). To achieve this, the plan aims to strengthen and merge surveillance and enforcement agencies, and further advance land regularisation. It also emphasises the need to bring new economic alternatives to people living in the region.

In 2019, the Government of Brazil re-created the inter-ministerial Executive Commission for the Control of Illegal Deforestation and Recovery of Native Vegetation (CONAVEG) co-ordinated by the MMA, and substituted the 2004 Action Plan for the Prevention and Control of Deforestation in the Legal Amazon, and the Action Plan for the Prevention and Control of Deforestation and Forest Fires in the Cerrado (PPCDAM and the PPCerrado respectively), with the 2020 National Plan for the Control of Illegal Deforestation and Recovery of Native Vegetation (Government of Brazil, 2019^[189]).

The National Plan for the Control of Illegal Deforestation and Recovery of Native Vegetation, and the complementing Operational Plan 2020-2023, includes commitments to reduce deforestation, and create conditions for establishing a sustainable development model in the Legal Amazon (Government of Brazil, 2020^[232]; 2020^[233]). Key commitments include coordinating policy and action across different government departments on key priorities including addressing illegal deforestation, land tenure regularisation, territorial planning, payment for ecosystem services and bioeconomy. The National Plan is to be

implemented through a set of sectorial initiatives, such as the Floresta+ project, led by the Ministry of Environment to strengthen the market for environmental services. The project seeks to recognise and value environmental activities on any kind of land covered in native vegetation, including private property, and to encourage their monetary and non-monetary compensation (Government of Brazil, 2020^[234]).

Brazil's 2012 Forest Code (Government of Brazil, 2012^[181]) requires that all rural properties maintain areas of legal reserve of native vegetation, without additional remuneration of landowners. In addition to the legal reserves, the Code also determines the maintenance of permanent preservation areas along rivers and lakes, as well as in sandbanks, mangroves, steep slopes and hilltops.

In addition, the Forest Code covers the implementation of a Federal land registry, and implements an innovative offset system whereby land owners who do not meet their conservation obligations can purchase credits from land owners with surplus access to native vegetation (OECD, 2021^[179]). This offset mechanism depends on clear land rights and accurate information on land use. In this regard, the National System of Rural Environmental Registry (Sistema Nacional do Cadastro Ambiental Rural, CAR), is integral to the implementation of the Forest Code. The registration of land rights and use of the CAR are improving, however inconsistencies and inaccuracies still remain (Ruiz, Luis; Fernandes, Pamela and Guasselli, Laurindo, 2021^[235]; Dantas, 2020^[236]). ***Brazil should ensure the CAR provides accurate and up-to-date information, thereby providing clarity for business and other stakeholders as to land rights, as well as fighting land grabbing that can lead to illegal deforestation.***

In February 2020, the Government created the Amazon Council via Decree n° 10.239/2020. The Council, led by the Vice-President, is comprised of 15 ministries, and is mandated to meet on a regular basis to coordinate initiatives aimed at protecting the Amazon region (Mongabay, 2020^[237]). However, CSOs have expressed concerns over the organizational structure, effectiveness and strategic direction of the new Council (see also above, Section 3.1.2). For example, the Council's formation resulted in the transferring of responsibilities to enforce environmental efforts from specialized environmental agencies such as IBAMA, to Brazil's armed forces (Human Rights Watch, 2021^[238]; Réporter Brasil, 2020^[239]; Mongabay, 2020^[237]).

To strengthen clarity, alignment and implementation of deforestation considerations as part of responsible business behaviour with global climate objectives, Brazil's NDC and related domestic policy referred to above, should include forest protection and deforestation objectives as part of Brazil's broader climate objectives. Moreover, the government should encourage and support business in integrating deforestation and forest degradation considerations into their risk management processes – including by providing clarity around the implementation of relevant regulation and looking to integrate and align with OECD recommendations on due diligence for RBC.

Enabling RBC: Deforestation and restoring forests

Examples of government engagement and cooperation with business in addressing deforestation challenges can be drawn from the Agriculture sector, such as voluntary Conduct Adjustment Agreements (TACs) entered into by the Public Prosecutor's office and the largest companies in cattle ranching, and the soy agribusiness sectors, entered into in 2009 and 2014 respectively in the State of Para (Ministério Público Federal, 2009^[240]; Governo do Estado do Pará et al., 2014^[241]). The TACs were agreed as part of a plea bargain to discontinue prosecution against specific businesses in exchange for their public and monitored commitments not to buy meat or soy from without adequate socio-environmental legal requisites (Massoca, Delaroche and Lui, 2017^[242]). These agreements were later expanded to other states and smaller businesses in the meat sector, and eventually evolved into a more structured project led by the Federal Public Ministry (MPF), which established criteria for businesses to be considered compliant and regularly monitors compliance through auditing missions (Ministério Público Federal, 2020^[243]).

Although the TACs were voluntary on the part of business engagement, and the MPF's actions in ensuring proper implementation faced limitations (JOTA, 2018^[244]), they offer lessons on avenues to engage the private sector in curbing deforestation through responsible business behaviour. In this way, the TACs could offer potential good practice that could be replicated and built upon in addressing deforestation risks within other high risk sectors, such as mining (Massoca, Delaroché and Lui, 2017^[242]; Government of Brazil, 1985^[245]).

As part of broader policy commitments, the Government should require, and support, companies operating in sectors with a high risk of deforestation to embed social and environmental considerations – with a focus on deforestation and forest degradation – into their risk management frameworks, including across supply chains and aligned with OECD due diligence guidance.

In addition to agriculture, the mining sector, and in particular illegal mining, has also been strongly linked to driving deforestation and forest degradation in the Amazon. The Government of Brazil has been making efforts through actions such as creation of a working group focused exclusively on artisanal and small-scale mining, with recommendations aimed at the sustainability of this sector (Government of Brazil, 2019^[246]; 2019^[247]).

In efforts to combat this, the Government of Brazil launched Operation Verde Brasil ('Brazil Green') in September 2019, and which led to the arrest of several people involved in the exploration of illegal mining sites, the seizure of vehicles and machinery, and the imposition of fines adding up to 3,337 billion Brazilian Reals (approx. USD 650M) (Government of Brazil, 2021^[248]). However, civil society and indigenous groups have expressed concerns with regards to the effectiveness of these initiatives, with interviews with industry and civil society groups pointing to the lack of a comprehensive response to the problem of illegal mining (Financial Times, 2020^[249]; Human Rights Watch, 2019^[250]).

Across sectors, responsible business activities in the context of deforestation and forest degradation are increasingly becoming a focus of not only civil society, but also investors as part of ESG considerations (Financial Times, 2020^[251]). For example, in 2020, a group of financial institutions managing more than USD 3.7tn in assets globally (USD 7tn in 2021 (Financial Times, 2021^[252])) addressed a letter to the Government demanding it commit to eliminate deforestation, and at the same time, protect indigenous people's rights. The letter also: "Considering increasing deforestation rates in Brazil, we are concerned that companies exposed to potential deforestation in their Brazilian operations and supply chains will face increasing difficulty accessing international markets. Brazilian sovereign bonds are also likely to be deemed high risk if deforestation continues" (Financial Times, 2020^[251]).

Brazilian businesses are aware of the international pressure Brazil faces from investors and also consumers, particularly in their export markets of Europe and America, and are increasingly looking to meet global standards on ESG (Financial Times, 2021^[225]) (see Box 3.10).

Box 3.10. Amazonian indigenous communities file lawsuit against retailer

In March 2021, indigenous people from Colombia and Brazil filed a lawsuit against the French supermarket chain and retailer Casino Group over deforestation in the Amazon. Casino is being accused of buying meat from suppliers linked to the destruction of the forest, slave labour and not having prevented deforestation and human rights violations in indigenous peoples' lands. The plaintiffs base this action on the 2017 French Due Diligence Law (Loi de Vigilance). The plaintiffs claimed, among other things, the violation of certain rights and the invasion of the land of the Uru Eu Wau community by cattle farms in the state of Rondônia in Brazil. Supported by several NGOs, they requested compensation for the damage suffered. The lawsuit is waiting to be accepted by the French court before it can go to trial

Source: (El País, 2021^[253]).

To support business' continued access to international markets and meeting global ESG ratings and investment approaches, Brazil should enable and engage business in implementing RBC when it comes to forest degradation and deforestation – including through supply chain due diligence aligned with OECD guidance. This recommendation is in addition to ensuring strong legal and governance frameworks are in place when it comes to addressing deforestation and related impacts on people and the natural environment.

Policy recommendations

8. Improve policy coherence and enable a whole-of-government approach to sustainable development and RBC, and ensure that any revisions to environmental regulation look to strengthen the rule of environmental law, and ensure meaningful participation and representation environmental decision-making and consultative bodies. To that effect, prioritise ratification of the Escazú Agreement.
9. Address gaps in EIA regulation to ensure a strong regulatory and enforcement framework in preventing and addressing adverse environmental impacts by business.
10. Support the development of strong environmental due diligence by businesses notably through improved access, transparency and reporting of environmental information, as well as better integration of remediation measures into environmental risk management processes, and as recommended by OECD Due Diligence Guidance, with the NCP in the lead.
11. Ensure that measures to implement key commitments under the current NDC are aligned with recent commitments to raise ambition, the targets of the Paris Agreement, and that the Government supports the private sector, in particular SMEs, in implementing RBC aligned climate action
12. Include forest protection and deforestation objectives as part of Brazil's broader climate objectives and support business in integrating deforestation and forest degradation considerations into their risk management processes, in alignment with OECD due diligence guidance, particularly in sectors with a high risk of deforestation.

3.4 Anti-corruption and integrity

The fight against corruption is an important agenda for both governments and companies, as bribery and corruption can discourage investment, erode democratic institutions, hinder RBC practices, and slow down progress toward development goals. Corruption can have negative effects on people and the overall business environment. Companies have an important role to play in contributing to government's efforts to preventing and combating corruption, as highlighted in Chapter VII of the Guidelines on Combating Bribery, Bribe Solicitation and Extortion. Enterprises, should not, directly or indirectly, offer, promise, give or demand a bribe or other undue advantage to obtain or retain business or other important advantage, and should also resist the solicitation of bribes and extortion. Chapter VII of the Guidelines also calls on enterprises to develop and adopt adequate internal controls, ethics and compliance programmes, or measures for preventing and detecting bribery through a risk-based approach. The OECD Due Diligence Guidance for Responsible Business Conduct provides practical guidance that can help enterprises avoid and address risks of corruption that may be associated with their operations, supply chains and other business relationships.

Similarly to many other countries in Latin America, Brazil has suffered for decades from systemic corruption that has reached the highest layers of its executive, legislative and judicial systems. For example, operation Carwash (*Operação Lava Jato*, see Box 3.14), a criminal investigation carried out by the Federal Police of Brazil that began in 2014 as an investigation into money laundering and expanded to corruption at state-controlled oil company Petrobras and other private companies, has uncovered one of the biggest corruption schemes in Brazil, involving high-level officials, politicians, political parties and several of Brazil's biggest companies and leading to their arrests.

Despite efforts invested by Brazil over the past years to combat corruption, there are still challenges to curb the negative perception with respect to its ability to fight effectively bribery and corruption. This perception is reflected in the country's ranking in international corruption-related indices (see Table 3.1). According to the 2020 Transparency International Corruption Index, Brazil ranked 94th (out of 180 countries) (Transparency International, 2020^[254]). The 2019 Global Competitiveness Index of the World Economic Forum ranked Brazil 71 out of 141 countries. In the 2021 edition of the World Justice Project Rule of Law Index, Brazil ranked 77th out of 128 countries worldwide, lower than in previous years. In 2020, Brazil's score had decreased seven points from 2018, placing Brazil 67th and 16th out of 30 in Latin America and the Caribbean region in 2019 (World Justice Project-, 2021^[255]). In the 2019 Transparency International Global Corruption Barometer in Latin America and the Caribbean, 90% of respondents thought that corruption in the Government is a serious problem and 54% felt that corruption levels had increased since the last survey (Transparency International, 2019^[256]).

Table 3.1. Brazil in international integrity rankings

Indicator	Rank	Past Ranking
Global Competitiveness Index Report 2019 (WEF)	71/141	72/140 in 2018
2020 Corruption Perceptions Index (Transparency International)	94/180	106/183 in 2019
World Justice Project's 2021 Rule of Law Index	77/139	67/128 in 2020

Source: (Transparency International, 2019^[257]); (WEF, 2019^[258]); (World Justice Project, 2021^[61]).

Fighting corruption and promoting integrity require simultaneous actions to address the issue of corruption. In order to combat corruption, Brazil has ratified several international instruments in the field (see Box 3.11). To abide by its international commitments, the Government has sought to adapt the country's anti-corruption legal and institutional framework, leading to a series of reforms notably focusing on accountability of the public sector. Brazil has also taken a number of steps to strengthen the rule of law as illustrated by surveys such as the one undertaken by the Americas Society/Council of the Americas

(AS/COA).⁵² Brazil has also taken important actions aimed at strengthening the country's corporate liability regime for corruption related acts and at encouraging businesses to adopt preventative measures.

Box 3.11. Key international instruments against corruption and bribery ratified by Brazil

Brazil's actions have been guided by its obligations under international conventions against corruption.

Brazil has been a signatory to the OECD Anti-Bribery Convention since 2000 and a participating member of the OECD Working Group on Bribery in International Business Transactions (the Working Group on Bribery) since 2002. Under the Anti-Bribery Convention, Brazil partakes in the peer review process carried out by the Working Group on Bribery. This process, which is divided into several phases, aims at evaluating and making recommendations on the country's implementation of the Convention and related OECD anti-bribery instruments. Brazil's Phase 3 evaluation was completed in 2014 and the corresponding report adopted on 16 October 2014. In October 2016, Brazil presented a written follow-up report on the Phase 3 evaluation to the OECD Working Group on Bribery. In the course of this report, the Working Group on Bribery raised concerns about Brazil's overall level of enforcement. The Working Group therefore recommended that Brazil enhance the enforcement of the foreign bribery offence. Brazil's ability to confiscate the bribe and proceeds of bribery was also subject to concerns, and therefore further guidance and training on confiscation were required. It is widely acknowledged that the confiscation of the proceeds and instrumentalities of a crime constitutes an additional deterrent that may have as great as a fine or prison term; the threat of confiscation is also a preventive measure, as it makes bribe solicitation less attractive to public officials.

Brazil is also a signatory of the Inter-American Convention Against Corruption, ratified in July 2002, as well as of the United Nations Convention Against Corruption (UNCAC), which was ratified in 2005 and promulgated through Presidential Decree No 5,687 of 31 January 2006.

Sources: (OAS, n.d.^[259]) (OECD, n.d.^[260]) (United Nations, n.d.^[261]).

3.4.1 Legal and institutional framework for combating corruption and promoting integrity in the public sector

Brazil has taken important steps to strengthen its public integrity system and prevent misconduct in the public sector. For example, it has adopted several reforms aimed at increasing transparency and directing citizen oversight over public service delivery; introducing a risk-based approach to internal control within public organisations; and promoting high standards of conduct among federal public officials. The creation of the Office of the Comptroller General (CGU) and of the Public Ethics Commission (*Comissão de Ética Pública*) has been a step towards the implementation of Brazil's strategy to enhance integrity and prevent corruption. Since 2007, the fight against corruption within the federal public administration has been incorporated into the National Strategy to Combat Corruption and Money Laundering (*Estratégia Nacional de Combate à Corrupção e à Lavagem de Dinheiro*) (OECD, 2012^[262]). Like most OECD countries, Brazil has also taken steps towards digital government, which can have a positive effect on corruption control.

More recently, in July 2021, Brazil established the Public Integrity System of the Federal Executive Branch (SIPEF), with the Secretariat for Transparency and Prevention of Corruption (STPC) at its centre. SIPEF is responsible for establishing standards and promoting and coordinating integrity practices carried out in the different ministries and public institutions by their respective Integrity Management Units (UGIs). This new system aims to increase the effectiveness of the integrity programmes of ministries, independent government agencies, and public foundations, and hence, to prevent corruption in the public administration sector (Government of Brazil, 2021^[263]).

Brazil has also put in place a system to report instances of corruption in the public sector. In 2019 provisions were adopted in the form of an ‘Anticrime law’ to protect whistle-blowers who report instances of corruption in the public sector (Government of Brazil, 2019^[264]). The Anticrime Law applies to whistle-blowers reporting general public corruption and any fraud related to government procurement and contracts, SOEs, and government-funded programs as well as, more broadly, to criminal activities and administrative misconduct harming what the law identifies as ‘public interest.’ Under the law, whistle-blowers cannot be held criminally or civilly liable for reporting, as long as the information is not provided falsely and maliciously, can receive identity protection, and are entitled to be protected against retaliation. In addition, whistle-blowers, who provide information leading to the recovery of proceeds from crimes against public administration, are entitled to a financial reward of up to 5% of the amount recovered by the state if the information provided results in the recovery of losses by crimes against the public administration (Art. 4 C, Section 3). Furthermore, the law establishes a mandatory requirement for public bodies, including public and mixed-capital companies, to establish whistle-blowing channels for collecting complaints.

Even before adopting the Anticrime Law, Brazil had made efforts to provide safeguards to the identity of whistle-blowers reporting acts of corruption. For instance, in 2019, the National Network of Ombudsmen approved a model regulation for safeguarding the identity of whistle-blowers to protect the trust of the citizens that use the official reporting channel (Government of Brazil, 2019^[265]). This model regulation was later adopted in respect of the Federal Executive Branch (Government of Brazil, 2019^[266])⁵³, and safeguards are now available to protect the identity of whistle-blowers of offenses and irregularities committed by bodies and entities of the federal public administration, directly and indirectly and through the “Fala. BR Platform”, which is an online platform, developed by the CGU, and which allows notably to receive and handle complaints.⁵⁴ Brazil reported that these arrangements are currently under review and guarantees against retaliation under the Anticrime Law are expected to be adopted in late 2021. In addition, within the federal Executive Branch, the reception of whistleblowing reports has been centralised into a single system, under the control of the CGU, and operated by the Sectorial Ombudsman Units in the public bodies. These initiatives have led to increased use of official reporting channels by the public. For instance, between 2018 and 2020 the number of reports filed with the Federal Executive Branch had increased from 35 659 to 81 148 respectively.⁵⁵ Significant progress has also been achieved over the past decade as regards adoption of relevant civil, administrative and criminal offences. Brazil’s actions have been guided *inter alia* by its obligations under the UN Convention Against Corruption, the Inter-American Convention Against Corruption and, with respect to bribery of foreign officials in international business transactions, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

As result of these actions, modern legislation is now largely in place, meeting international standards. The country’s policy framework primarily relies upon Brazil’s Criminal Code (Government of Brazil, 1940^[267]), under which individuals can be held criminally liable for bribery of public officials in Brazil, and Brazil’s anti-corruption law (*Lei anticorrupção*, widely known as the ‘Clean Company Act’), enacted in 2013 (Government of Brazil, 2013^[268]). Under the Clean Company Act and its implementing decree (Government of Brazil, 2015^[269]), legal entities can be held liable for promising, offering or giving, directly or indirectly, an undue advantage to a national or foreign public official. The Clean Company Act not only establishes civil and administrative sanctions for legal entities bribing public officials but also prohibits other conducts such as fraud in public tenders, manipulation of contracts, obstruction of investigations and other illicit acts practiced against both national and foreign public administrations. Most Brazilian states have already implemented the Clean Company Act through local laws or decrees to ensure the effective application of the Law at the state level.

Besides the Criminal Code and the Clean Company Act, other federal laws contain relevant provisions for preventing and sanctioning corruption such as the Administrative Improbability Law (Government of Brazil, 1992^[270]), which establishes civil and administrative liability for acts against public law principles such as legality and integrity; and the Public Procurement Law (Government of Brazil, 1993^[271]) that establishes

rules for public tenders and contracts with the federal government. Breaches of the Administrative Improbability Law may result in sanctions to legal entities and individuals whose misconduct results in illicit enrichment of public officials and losses to the public treasury whereas breaches of the Public Procurement Law may result in sanctions to companies having unduly benefited from any illegal act during a public bidding process, such as fines, suspension and blacklisting from participating in public tenders or signing contracts with government bodies.

The institutional setting of the law enforcement system has been a focus of reform as well. With the objective of better coping with the complexity of corruption related offences and also of taking into account Brazil's federal system, anti-corruption powers have been spread across different institutions (see Box 3.12). The procedural rules can be summarized as follows: if an individual commits a crime of corruption or other crimes set forth in the Criminal Code, the federal or the state police and the state or federal Public Prosecutor's Office are the authorities entitled to investigate and prosecute corruption. For violations of the Clean Company Act, the highest authority of the relevant agency or entity of the executive, legislative and judiciary branches is allowed to investigate the matter and impose sanctions. The Office of the CGU has authority to investigate, process and sanction illegal acts set forth in the law that are committed against a foreign public administration. At the federal executive level, the CGU also has concurrent jurisdiction to initiate administrative proceedings against legal entities as well the authority to audit the proceedings handled by other authorities.

Box 3.12. Main public bodies leading Brazil's anti-corruption investigations and prosecutions

The Public Prosecutor's Office: Crimes set forth in the Brazilian Criminal Code committed by an individual and that damage the federal government fall under the competence of the Federal Public Prosecutor's Office (*Ministério Público Federal*).

State-level Public Prosecutor's Offices: Corruption criminal offences set forth in the Brazilian Criminal Code committed by individuals that damage the government at state and municipal levels are prosecuted by State-level Public Prosecutor's Offices.

Federal Police: The Federal Police conducts investigations initiated by the Public Prosecutor's Office.

State Police: The State Police implements investigations initiated by the State-level Public Prosecutor's Offices.

The General Comptroller's Office (*Controladoria-Geral da União*): The Office of the Comptroller General (CGU) has authority to investigate, process and sanction illegal acts set forth in the Clean Company Act law that are committed against foreign public officials. At the federal executive level, the CGU also has exclusive jurisdiction to negotiate and sign leniency agreements and concurrent jurisdiction to initiate administrative proceedings against legal entities as well as to audit the proceedings handled by other authorities (Article 16, Clean Company Act, Article 29, Decree 8.420/2015).

The Council for the Control of Financial Activities (*Conselho de Controle de Atividades Financeiras* – COAF): The COAF, Brazil's financial intelligence unit at the Ministry of Finance, is responsible for obtaining financial intelligence on Brazil's natural and legal persons. It has played a significant role in the Lava Jato operation, for example by informing the federal authorities about almost 300 suspicious transactions.

Sources: (U4, 2017^[272]).

Brazil has also made strides in strengthening the overall political integrity of the country. Measures to serve this purpose have included the development of new regulations aimed at enhancing transparency in the

funding of political parties. Until 2015, companies were allowed to contribute to candidates or political parties up to 2% of the company's gross revenue in the year prior to the election (Government of Brazil, 1997^[273]). Since then, companies are no longer authorized to make political contributions (Government of Brazil, 2015^[274]). Although the 2015 changes in the regulations covering political party funding represent significant progress with respect to the overall political integrity of the country, Brazil's policy framework in this field is still work in progress as illustrated by on-going debates on the need to regulate lobbying activities. Although regulating lobbying has been on the agenda for Congress for over 20 years, there is still no lobbying regulation in Brazil. Therefore, lobbyists are not required to report their activities, earnings or engagements. The same applies to companies and associations that enlist lobbying services. Brazil has made progress with regards to public transparency of lobbying activities on the federal level. In 2013, Brazil adopted legislation that requires that senior public officials of the Federal Executive Branch make their schedules publicly available (Government of Brazil, 2013^[275]). Furthermore, in October 2019, new provisions on the political parties and electoral campaigns adopted by Brazil's Congress reduced transparency requirements for political parties, opening a door for illicit campaign financing (Transparency International, 2020^[276]). In addition, legal loopholes remain in the lobbying regulation and political financing reform, among other challenges that Brazil faces today (Transparency International, 2019^[277]). Generally, it is important that lobbying regulation public participation, especially of grassroots organisations provide a level playing field to public participation, particularly ensuring access for grassroots organisations and other less privileged groups, in line with the Recommendation of the OECD Council on Principles for Transparency and Integrity in Lobbying. ***Brazil should take steps to ensure that corporate lobbying and political contributions are subject to public disclosure and reporting requirements.***

3.4.2 Efforts to engage companies in the fight against corruption

The Guidelines recognise the important role of companies in combatting bribery and corruption, and recommend that enterprises develop adequate internal controls, ethics and compliance programmes or measures for preventing and detecting bribery, notably on the basis of a risk assessment addressing the individual circumstances of an enterprise. The Guidelines also include recommendations for enterprises to provide safeguards in their own policies to protect bona fide whistleblowing activities.

Brazil has recognized the vital role that the private sector may play in combatting corruption in general and bribery more specifically in line with the Guidelines. Until the adoption of the Clean Company Act in 2013 and its implementing decree in 2015, the authorities had made timid efforts to encourage the development of good practices amongst companies. Since then, Brazil has taken important steps to raise awareness among companies with respect to their role in preventing corruption and the importance for them of implementing controls in the fight against corruption and other illicit conducts in the corporate environment. The Clean Company Act not only provides that legal entities can be held liable for harmful acts as mentioned earlier, but also makes corporate compliance programs a mitigating factor for companies facing sanctions in case of violations.⁵⁶ In addition to the Clean Company Act, Brazil adopted a 'Statue of SOEs' (Government of Brazil, 2016^[278]), which provides that state-owned enterprises in Brazil implement corporate governance and compliance practices in their organisations, such as codes of conduct, training on the codes, and integrity policies for all the personnel (OECD, 2018^[279]).

Brazil has also been very active in raising private sector and civil society awareness on bribery, including among SMEs, notably through the publication of material related to the Clean Company Act and its implementing decree. The Clean Company Act's implementing decree (Government of Brazil, 2015^[269]) provides guidance on what can be considered an effective compliance programme under the federal anti-corruption law (see Box 3.13). The CGU has provided further guidance on the adoption of corporate compliance programmes by publishing the Integrity Program Collection consisting of a series of manuals, guides, and other publications covering topics such as the implementation of integrity programs by entities in the private sector, by SOEs and by public entities (each with their specific manuals and publications);

the evaluation of integrity programs in leniency agreements and in administrative procedures on violations of the Clean Company Act; managing integrity risks; and integrity best practices for SMEs among others.⁵⁷

Box 3.13. Guidance on effective compliance programme pursuant to Federal Decree No. 8,420/2015 (Clean Company Act implementing decree)

Federal Decree No. 8,420/2015 provides guidance on the establishment of effective compliance programme. It establishes 16 parameters against which a compliance programme will be evaluated:

- Explicit and visible support and commitment from senior management to the company's internal controls, ethics and compliance programmes or measures for preventing and detecting corruption;
- Existence of standards of conduct, code of ethics, policies and integrity procedures that apply to all employees and administrators, regardless of their position or role;
- Standards of conduct, code of ethics and integrity policies extended, when necessary, to third parties (e.g., suppliers, service providers, intermediaries and other associates);
- Regular training on the compliance programme;
- Periodic analysis of risks to implement necessary adjustments to the compliance programme;
- Maintaining accounting records that reflect all company's transactions;
- Requirement for companies to keep records that accurately and fairly reflect financial transactions in reasonable detail;
- Specific procedures to prevent fraud and other illicit acts in the context of public tender processes, in the execution of administrative contracts or in any interaction with the public sector;
- Existence of transparency measures surrounding donations to candidates and political parties made by the legal entity.
- Independence of the internal department responsible for enforcing and monitoring the corporate compliance programme;
- Internal channels to report irregularities and mechanisms to protect good-faith whistle-blowers;
- Availability and enforcement of disciplinary measures against corporate employees found to have violated the company's compliance programme;
- Internal rules that assure the immediate suspension of irregularities and the timely remediation of the damages caused;
- Proper due diligence to avoid and address risks of corruption and other illicit acts that may be associated with the legal entity's operations, supply chains and other business relationships;
- Verification, during a merger, acquisition or other corporate restructuring, of irregularities or illicit acts, or the existence of vulnerabilities in the legal entities involved;
- Monitoring of the compliance programme to ensure its effectiveness in preventing, detecting and otherwise addressing wrongful acts described in the Clean Company Act

Source: (Government of Brazil, 2015^[269]; Uelze et al, 2020^[280]).

The CGU has undertaken additional actions to encourage the development of corporate compliance, internal controls and ethics in Brazil's corporate sector. In 2014, the CGU and SEBRAE (Brazilian Support Service for SMEs) signed a partnership to encourage SMEs to develop compliance programmes (OECD, 2017^[281]). In September 2015, the CGU issued Guidance for Private Companies Integrity Programme

(*Programa de Integridade: Diretrizes para Empresas Privadas*-CGU Guidance) aimed at assisting companies develop or improve policies to prevent, detect and remedy wrongful acts committed against the public administration, including bribery of foreign public officials (OECD, 2017^[281]). More recently, in 2019, the Comptroller General and Apex-Brazil, Brazil's Trade and Investment Promotion Agency, published a booklet on promoting integrity for Brazilian companies with a direct reference to the OECD Guidelines (Government of Brazil, 2019^[282]). In its efforts to encourage ethics and integrity in the private sector, the CGU also created the Pro-Ethics (Pró-Ética) programme, an initiative that promotes the adoption of integrity policies by companies.⁵⁸ Through this programme, companies may voluntarily seek certification from the CGU in recognition of their anti-corruption efforts. For the 2010-2021 period, Pro-Ethics has evaluated approximately 800 companies. The work of Pro-Ethics has been noted internationally as good practice recently (Government of Brazil, n.d.^[283]). Some local business organisations, such as the Ethos Institute of Business and Social Responsibility, have also for some years encouraged the adoption by companies of measures such as ethics codes and corporate measures aimed at preventing corruption. The above is in line with good practices in OECD and non-OECD countries which include the distribution to businesses of guidelines drawing the attention of companies to the importance of establishing compliance programmes or the legal requirement for companies to establish internal mechanisms for reporting wrongdoings.

Most Brazilian states have implemented the Anti-Corruption Law through local laws or decrees that benefit the effective application of the Law at the state level. Some states have gone beyond the Clean Company Act, making mandatory the existence of compliance programmes in companies entering into contracts with the state-level administration (Uelze et al, 2020^[280]).⁵⁹ These legislative developments illustrate a trend to impose stricter regulation on companies that want to contract with the government, be at the federal level or at the state level.

In April 2021, Brazil adopted a new Public Procurement Law (see below) (Government of Brazil, 2021^[284]), which requires the adoption of integrity programmes by the successful bidder in contracts with value exceeding 200 million Reals (Article 25, para. 4). Integrity programmes have also been listed by the legislator as a tie-breaker in public bids (Article 60), as a mitigating factor in the application of sanctions for unlawful acts (article 156, para. 1º, V) and as condition for the rehabilitation of companies that have been penalised in the past for the practice of corruption or related acts (Article 163). The new Public Procurement Law is national in scope, applying to federal, state and municipal entities. As a further incentive to firms to adopt compliance programmes, the Clean Company Act has created the National Registry of Punished Companies (*Cadastro Nacional de Empresas Punidas*) and formalised the National Registry of Disreputable and Suspended Companies (*Cadastro Nacional de Empresas Inidôneas e Suspensas*)⁶⁰. It has also introduced leniency agreements into Brazilian law according to which the public administration is allowed to sign leniency agreements with legal entities that violate the law, provided that they effectively collaborate with the investigation, and that such collaboration results in identifying those involved in the violation, when applicable.⁶¹

Under the Clean Company Act, bid-rigging and fraud in public procurement, direct and indirect acts of bribery, and attempted bribery of Brazilian public officials and of foreign public officials are illegal. The Act holds companies liable for the corrupt acts of their employees. Brazilian law makes no distinction between bribes and facilitation payments. Giving gifts is illegal when doing business and establishing relationships.

The Clean Company Act sets out applicable fines, creates the National Registry of Punished Companies⁶² (*Cadastro Nacional de Empresas punida*) and formalises the National Registry of Disreputable and Suspended Companies⁶³ (*Cadastro Nacional de Empresas Inidôneas e Suspensas*). The Clean Company Act also makes corporate compliance programs a mitigating factor for companies facing possible sanctions in case of violation. The Clean Company Act's implementing decree further establishes criteria for evaluating a company's compliance programme when sanctions are imposed and grants a greater percentage of reduction to companies that have and apply for an effective compliance programme.

Rules on integrity programmes are in place. The adoption of integrity programmes by companies and the role such programmes may play when applying sanctions have also encouraged medium and large-sized companies to adopt integrity programmes, though their effectiveness remains limited.

So far mainly large multinational companies operating internationally⁶⁴ but also large and medium Brazilian companies have taken measures to actively promote ethical business internally. Those companies do have systems in place, including corporate codes of conduct, regular ethics training, and hotlines, because of their corporate governance policies, as well as to comply with provisions set in the Clean Company Act. Operation *Lava Jato* ('operation car wash'), which revealed systemic and endemic corruption among companies with integrity programmes and self-described as socially responsible, and the general lack of appropriate processes in place to ensure integrity, especially SMEs which are traditionally at high risk of bribery solicitation by public officials, may additionally have acted as a catalyst for private integrity in the country (see Box 3.14). Given that making anti-corruption compliance part of one's corporate culture is the best way to prevent corrupt acts before they happen, additional training to companies on the adoption and implementation of compliance programmes could further ensure the effectiveness of the Clean Company Act and corresponding legislation at the state level. Additional training by the companies to their employees, as well as by the government, can indeed contribute to the promotion of integrity and prevent corruption. Greater SMEs support in adopting clear and effective anti-corruption programmes and policies could also help these firms to integrate into global value chains.

Box 3.14. Operation *Lava Jato* ('Operation car wash')

Operation *Lava Jato*, in English Operation car wash (because it started with reports of the use of car wash stations for money laundering), started in 2014 as a major anti-corruption and money laundering investigations in Brazil led by the Federal Public Prosecutor's Office. It initially targeted four criminal organisations in Curitiba, but quickly expanded in scope and geographically, notably as it revealed irregularities in Petrobras, the country's largest state-owned company, in relation large public infrastructure contracts, as well as the involvement of high level political figures in Brazil.

Investigations lasted from more than six years until 2021. It led to the arrest of major figures from the political, business and criminal communities in Brazil, and resulted in hundreds of criminal cases, and billions of reals recovered. The Operation was wound down in 2021 and task forces of public prosecutors in the states involved have now been integrated in the Special Action Group to Combat Organized Crime (Gaecos).

Source: (Government of Brazil, n.d._[285]).

As a complement to the mechanisms already in place aimed at preventing corruption, Brazil should take further action, together with business organisations, to encourage Brazilian companies, particularly SMEs, to adopt adequate ethics and compliance measures. Greater support for SMEs in adopting clear and effective programmes and policies could also help these firms integrate into global value chain and guarantee their integrity. Raising awareness of the channels for internal reporting is essential to ensure the effectiveness of any compliance programme. Examples of good practices in OECD and non-OECD countries include the distribution to business organisations of guidelines drawing the attention of companies to the need for training employees on anti-corruption compliance and business ethics. ***Brazil's NCP could play an important role in this endeavour, contributing to the Government's efforts to raise business awareness.*** Brazil could also make use of the OECD Good Practice Guidance on Internal Controls, Ethics, and Compliance to help promote, design and implement strong corporate compliance programmes and internal reporting mechanisms, including for companies of foreign markets (OECD, 2010_[286]).

As highlighted above, the Brazilian Government will need to guide and assist companies in their efforts to prevent and detect irregularities related to corruption or arising from conflicts of interest. In particular, whistle-blower protection remains non-existent for private sector employees who report in good faith and on reasonable grounds suspected acts of corruption committed by other corporate employees, by companies and/or by sub-contractors to the competent authorities, creating a severe impediment to the detection of corruption (OECD, 2017^[281]). ***Brazil should consider developing a framework to ensure that easily accessible channels are in place for the reporting by corporate employees to the competent authorities of suspected acts of corruption committed by other corporate employees, companies and/or subcontractors, and that comprehensive protection from all kinds of retaliation is granted to corporate employees who report such misconduct in good faith and on reasonable grounds.***

Policy recommendations

13. Perfect the public integrity framework by regulating lobbying activities, in particular by increasing transparency and taking into account the need to promote equal public participation, and assist political parties in engaging in preventive efforts against corruption through a requirement for them to have an integrity programme.
14. Perfect the legal framework for whistle-blower protection to ensure that easily accessible channels and protection from retaliation are in place for the reporting by corporate employees to the competent authorities of suspected acts of corruption.
15. Improve awareness among companies throughout Brazil, in particular SMEs, of anti-corruption law and of state-level legislation with respect to the importance of having integrity programmes in place and to advise and assist companies in their efforts to establish such programmes.
16. Proceed with the necessary consultation with state-level authorities to ensure that legislation is in conformity with the Clean Company Act is enacted.

4 Leveraging and incentivising Responsible Business Conduct in Brazil

In addition to regulating and enforcing in support of RBC, governments can promote and enable RBC through the integration of RBC considerations in policy areas that have a bearing on the conduct of businesses. To build an enabling environment for businesses to act responsibly, it is fundamental that governments promote policy coherence and ensure alignment of policies relevant to RBC (OECD, 2015^[1]). Brazil can take steps in this direction by integrating RBC considerations into the Government's operations as an economic actor and in its economic policies that contribute to shape business conduct.

4.1 Exemplifying RBC in the Government's operations as economic actor

4.1.1 *Incorporating RBC considerations in Brazil's public procurement*

Public procurement is a strategic instrument and lever for achieving policy goals. These goals can include stimulating innovation, promoting green public procurement and the circular economy, supporting access to public procurement contracts for small and medium sized enterprises' (SMEs), or promoting RBC. (OECD, 2020^[287])

'Value for money' is a fundamental principle underpinning public procurement. In the context of public procurement, value for money means the 'most advantageous combination of cost, quality and

sustainability to meet defined requirements.’ (MAPS, 2018^[288]) The economic argument has been at the forefront of government considerations given budget pressures and citizens demanding accountability for public spending. However, ‘value’ increasingly includes broader objectives, including environmental and social objectives. (OECD, 2020^[287])

In recent years, there has been growing awareness of the potential risks of human and labour rights abuses in global supply chains, especially risks related to child labour, forced labour or modern slavery and human trafficking. This has resulted in growing calls for governments and business to take greater responsibility for their purchasing decisions and actions. (OECD, 2020^[287])

The 2015 OECD Recommendation of the Council on Public Procurement provides guiding principles for countries on how to strike the right balance for public procurement systems that support both achieving economic goals and furthering environmental and social objectives (OECD, 2015^[289]). The Recommendation identifies the steps to be taken whenever such objectives are pursued (see Box 4.1).

Box 4.1. OECD Recommendation on Public Procurement: The principle of balance

The Council

V. RECOMMENDS that Adherents recognise that any use of the public procurement system to pursue secondary policy objectives should be balanced against the primary procurement objective.

To this end, Adherents should:

- i) Evaluate the use of public procurement as one method of pursuing secondary policy objectives in accordance with clear national priorities, balancing the potential benefits against the need to achieve value for money. Both the capacity of the procurement workforce to support secondary policy objectives and the burden associated with monitoring progress in promoting such objectives should be considered.
- ii) Develop an appropriate strategy for the integration of secondary policy objectives in public procurement systems. For secondary policy objectives that will be supported by public procurement, appropriate planning, baseline analysis, risk assessment and target outcomes should be established as the basis for the development of action plans or guidelines for implementation.
- iii) Employ appropriate impact assessment methodology to measure the effectiveness of procurement in achieving secondary policy objectives. The results of any use of the public procurement system to support secondary policy objectives should be measured according to appropriate milestones to provide policy makers with necessary information regarding the benefits and costs of such use. Effectiveness should be measured both at the level of individual procurements, and against policy objective target outcomes. Additionally, the aggregate effect of pursuing secondary policy objectives on the public procurement system should be periodically assessed to address potential objective overload.

Source: (OECD, 2015^[289]).

Public procurement in Brazil as a lever for RBC

A fundamental concept on public procurement and RBC in Brazil is sustainable development. Federal public procurement law foresees that all procurement procedures are sustainable and support sustainable development of the country. That said, the remit of this goal is focused on Brazil only, and does not necessarily concern issues beyond the country’s borders.

Sustainability in public procurement in Brazil follows a broad definition, aligned with the SDGs. A decree from October 2020 establishes a federal development strategy, ‘defining the long-term vision for the stable and coherent performance of the organs and entities of the direct, municipal and foundational federal public

administration' (Government of Brazil, 2020^[49]). Public procurement has to be aligned with this strategy. The strategy includes sustainability goals, with a focus on environmental aspects. The strategy foresees two contributions for public procurement:

- 'encourage sustainable public procurement for material acquisition and for service and investment contracts' to promote sustainable business opportunities,
- 'facilitate access to credit, capital markets and public procurement for medium, micro and small enterprises' to increase competitiveness of the country.

Additional strategies cover specific areas and mention public procurement as part of that. For example, the state-owned enterprise Empresa de Planejamento e Logística S.A. (EPL) developed the National Logistics Plan, covering a period from 2005 to 2035 (Government of Brazil, 2021^[290]). The plan includes ways to develop the national infrastructure more sustainably. A second example is the Sustainability Agenda by the Ministry of Infrastructure, which also focuses on the sustainability of national infrastructure, covering the period from 2020 to 2022 (Government of Brazil, 2020^[291]).

In conclusion, there is an overarching framework on sustainability that taps into the purchasing power of public procurement. However, the concept of sustainability appears to focus on environmental and integrity aspects (see above), which falls short of the broad conceptualisation of RBC. There is no specific strategy focussing on sustainable public procurement, the integration of RBC in public procurement or risk-based due diligence.

Size of public procurement in Brazil

Public procurement in Brazil has a similar weight in the economy as in OECD countries. In 2016, public procurement accounted for almost 25 percent of general government expenditure and just over 16 percent of GDP in Brazil. In OECD countries, countries spend on average 30 percent of their government expenditure through public procurement (slightly more than in Brazil), and public procurement accounts for almost 13 percent of GDP (slightly less than in Brazil), see Table 4.1 (OECD, 2019^[292]). These figures illustrate the important role public procurement has in Brazil's economy and the potential for supporting RBC through public procurement.

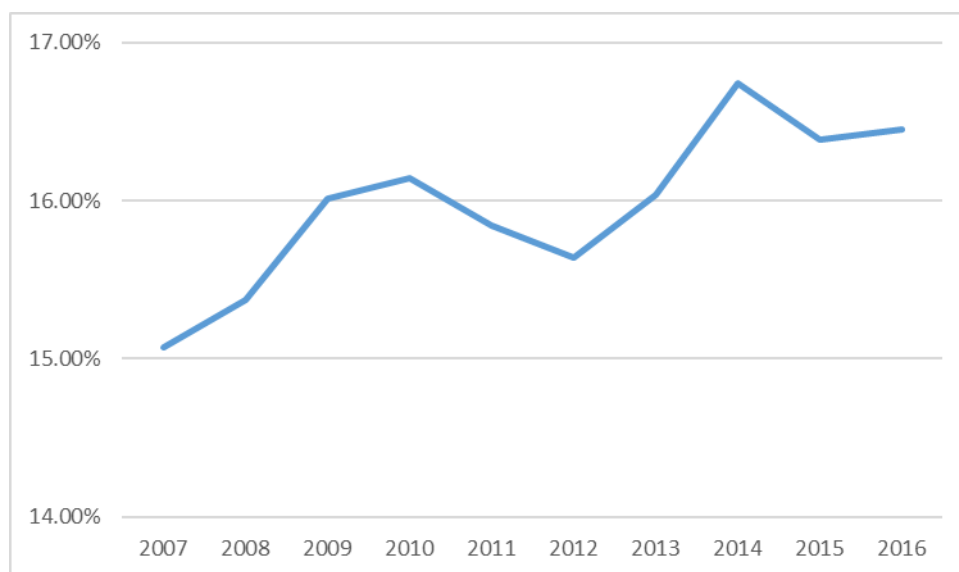
Table 4.1. Comparison: public procurement volume in Brazil and the OECD countries

	OECD average	Brazil, 2016 (most recent figure data)
General government procurement as share of total general government expenditures	29.75	24.7
General government procurement as a percentage of GDP	12.6	16.45

Source: (OECD, 2019^[292]).

The volume of public procurement in Brazil has slightly increased over the last ten years as a share of GDP (see Figure 4.1).

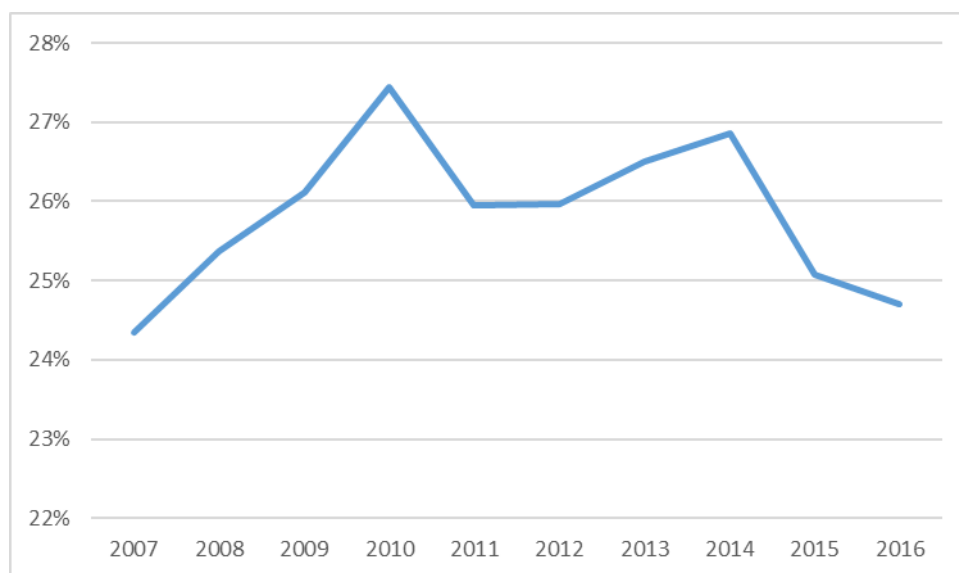
Figure 4.1. General government procurement in Brazil, as a percentage of GDP



Source: (OECD, 2019^[292]).

As a share of government expenditure, Brazil's public procurement volume fluctuated slightly, peaking at over 27 percent in 2010, after the financial crisis. This phenomenon is observed in many countries as countries used public procurement to stimulate the economy following the financial crisis. Since then, the volume of public procurement as a share of government expenditure in Brazil has declined to the same levels 10 years ago, reaching a low of under 25 percent (see Figure 4.2).

Figure 4.2. General government procurement as share of total general government expenditures



Source: (OECD, 2019^[292]).

This buying power provides governments with a strong lever for promoting more responsible production and consumption of goods and services. This, in turn, enables more sustainable growth, ensures value for

money and helps governments meet commitments from the 2030 Agenda for Sustainable Development (OECD, 2020^[287]).

Laws on public procurement in Brazil

Public procurement in Brazil is regulated through the Public Procurement Law (PPL). Analysis in this review is based on the PPL from 1993 in force at the time of review in late 2020 and early 2021 (Government of Brazil, 1993^[271]). This law was amended in 2010 to introduce sustainable public procurement (Government of Brazil, 2010^[293]). On 1 April 2021, Brazil's new PPL entered into force (Government of Brazil, 2021^[284]). Both laws are in force and can be chosen by contracting authorities to conduct public procurement procedures until 4 April 2023. From then onwards, only the new law will remain valid. While introducing the concept of sustainability and strengthening aspects of integrity, the legal changes do not appear to have a substantial bearing on sustainability or responsible business conduct in the broad definition established by the Guidelines. The remainder of this section refers to the 1993 PPL. Please see Box 4.2 for an overview of the most important changes introduced by the new PPL of 2021.

Box 4.2. Brazil's New Public Procurement Law: Noteworthy Changes

Brazil's new public procurement law of 2021 introduced a number of changes to the country's public procurement system. Below are the most relevant changes from the perspective of responsible business conduct:

- The new law states that the tender has to result in the most advantageous selection, which includes a mention of life cycle considerations.
- Public buyers can choose out of five instead of six methods. A new procurement method is the 'competitive dialogue' (*diálogo competitivo*) intended to facilitate complex procurement with a high degree of interaction with a supplier. Two less competitive methods ('price quotation', *tomada de preços* and 'invitation', *convite*) have been abolished.
- The Special Regime for Public Contracting Law, adopted to facilitate procurement in the context of the 2014 Football World Cup and the 2016 Olympics, will end in 2023.
- Contracting authorities can award 'Efficiency Contracts'. These contracts are designed to incentivise and reward suppliers for efficiency gains.
- Alternative Dispute Resolution is now available.

Source: (Government of Brazil, 2021^[284]) ; (Deffenti, n.d.^[294]).

The PPL (both the old and new) applies to entities at federal, state and municipal levels. The states and municipalities can also enact their own public procurement rules, which have to be aligned with the federal public procurement rules. In addition to these overarching laws, specific laws regulate aspects of public procurement, such as reverse auctions⁶⁵ (Government of Brazil, 2002^[295]) or procurement by SOEs (Government of Brazil, 2016^[278]). In addition, contracting authorities have to observe all laws pertaining to the public administration in Brazil during public procurement procedures, such as transparency and corruption laws (see above, Section 3.4.1). Brazil is not yet a signatory to the Agreement on Government Procurement (GPA) regulating cross-border public procurement within the framework of the World Trade Organisation, but is in the process of accession.

Concessions are regulated under specific laws applicable to respective sectors, including the utilities sector (Government of Brazil, 1996^[296]), concessions of public services (Government of Brazil, 1995^[297]) and Public-Private Partnerships (Government of Brazil, 2004^[298]).

The PPL foresees several procurement methods: competitive bid; contest; auction; and reverse auction (regular or electronic); the methods of price quotation and invitation to bid are still permissible under the old PPL until 2023. The new PPL introduces competitive dialogue in addition. Framework agreements⁶⁶ and separation of contracts into lots⁶⁷ are possible. Tender notices are required to be published for five to 45 days, according to the nature and volume of the public contract. Several value thresholds determine admissible tender methods.

Brazil uses electronic public procurement (e-procurement), which enhances transparency and integrity of public procurement. Comprasnet SIASG (Integrated System for Administration of General Services)⁶⁸ is used to conduct public procurement on the federal level. It includes several modules that cover the entire procurement cycle. In addition, electronic reverse auctions are a common method to procure common goods and services, as recommended by the Federal Budget Oversight Board. (ICLG, 2020^[299])

The Brazilian Government is a signatory to the Open Government Partnership (OGP). Public procurement data is part of the information that the Brazilian Government commits to publishing. To comply with its commitments, the Brazilian governments developed several tools for transparency in public procurement, including the government procurement panel⁶⁹ and the price panel⁷⁰.

Frameworks to promote RBC considerations through public procurement

The Brazilian Public Procurement Law 8,666 (1993) includes provisions for a number of RBC considerations. Aspects covered in the public procurement law include environmental objectives, human and labour rights, people with disabilities, long-term unemployed, minority considerations and integrity. (OECD, 2020^[287]) The new PPL of 2021 requires a risk assessment on factors that might compromise the success of the bid or the “good performance” of the contract (Art. 18, X).

The PPL has been requiring the following relating to RBC in public procurement:

- **Labour rights:** public works and services have to be executed under observation of appropriate technical, health and safety standards (Art. 12, inc. VI). As part of the qualification criteria for a bid, interested parties are required to provide a “proof of regular labour”. This means providing a certificate from the Labor Court that the interested party has no defaulted debts (Art. 27, inc. IV). In addition, the contracting authority has to cross-check information with the Federal, State and Municipal Treasury of the jurisdiction of the bidder and establish the bidder is in good standing regarding social charges with the Social Security and the Severance Pay Fund (FGTS).
- **Human rights:** the PPL prohibits including preferences or distinctions based on the naturalness, headquarters or domicile of the bidders in tender notices, contract clauses or conditions (Art. 3, Paragraph 1). When hiring a non-profit association supporting disabled persons, the law grants the possibility to exempt such an organisation from bidding (Art. 24, inc. XX) and contract directly.
- **Integrity / anti-corruption:** the PPL provides for administrative and criminal sanctions for integrity breaches related to public procurement (Chapter IV Arts. 81 to 108). Sanctions include debarment from bidding, imprisonment and fines. The new PPL foresees the implementation or improvement of integrity programmes by sanctioned bidders as a condition of their rehabilitation (Art. 163). Integrity programs can also serve as a “tie-breaker” where two bids score even (article 60 – IV), as a mitigating factor in the application of sanctions for unlawful acts (article 156, § 1º, V) and as condition for the rehabilitation of companies that have been penalized in the past for the practice of corruption or related acts (article 163 – sole paragraph).
- **Environment:** the new PPL requires that technical studies as part of the planning phase describe environmental impacts and mitigation measures, including impacts related to energy consumption and recycling (Art. 18 §1 XII). Contracting authorities can give preference to recycled, recyclable or biodegradable products (Art. 26, II). Environmental aspects can be considered in the award (Art. 34 §1).

Based on previous research and information provided by Brazilian authorities, a large number of additional, separate policy frameworks were identified that have a bearing on aspects of RBC (OECD, 2020_[287]). For one tender, a total of 20 laws and regulations have to be observed and applied by a public buyer, in addition to the public procurement law and any institution-specific rules. Table 4.2 illustrates the number of laws and regulations per RBC objective. A full list is presented in the annex.

Table 4.2. Overview of laws or regulations referencing public procurement and RBC in Brazil

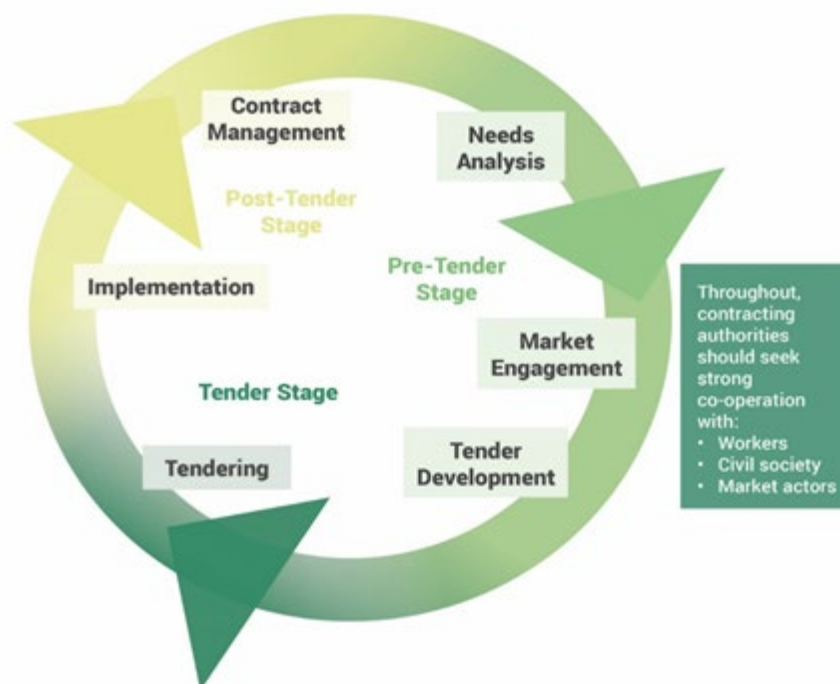
	Applicable laws	Applicable ordinances, decrees, normative instructions and other regulation
Labour Rights	Law No. 13,467 (2017)	Normative Instruction No. 5, 2017, of the MPDG / SG, art. 39
Human Rights	Law No. 13,146 (2015)	Decree No. 9,450 (2018) Ordinance no. 350/2018
SMEs	-	Decree No. 123 (2006) and its reform No. 147 (2014)
Integrity	Law 10.520 (2002), article 7 Law 12.846 (2013) Law No. 8,429 (1992)	Ordinance No. 750 (2016) Title XI (arts. 312 to 359-H) of Decree-Law n° 2,848, 1940 (Penal Code)
Environment / general sustainability	Law No. 12,187 / 2009 Law No. 12.305 / 2010 Law No. 12,349 / 2010	Decree n° 7.746, of 2012, amended by Decree n° 9.178, of 2017 Normative Instruction No. 1, of 2010, of MPOG / SLTI Normative Instruction No. 5 (2017) of the MPDG / SG, art. 1st, inc. II Normative Instruction SLTI / MP No. 01/2010 Decree No. 7.746 / 2012 Normative Instruction SLTI / MP No. 10/2012 Normative Instruction SLTI / MP No. 02/2014
Total	8 laws beyond the public procurement legislation	12 ordinances, decrees, normative instructions and other regulation

Source: Author's visualisation based on (OECD, 2020_[287]) and information provided by Brazilian authorities.

Implementing RBC along the public procurement cycle

To ensure a consistent application of RBC objectives in public procurement, all phases of the public procurement cycle should be covered. Commonly, the public procurement cycle has three main phases: 1) the pre-tender stage, 2) the tender stage and 3) the post-tender stage. The pre-tender stage serves to prepare the tender, i.e. assess needs and determine offer in the market. The tender stage is the competition, i.e. the publication of the tender notice with the requirements and the acceptance and evaluation of bids and award. During the post-tender phase, the contract is implemented and followed by the contracting authority, taking note for future procurements. See Figure 4.3 for an illustration of the public procurement cycle.

Figure 4.3. The Public Procurement Cycle



Source: (OECD, 2020^[287]).

To comply with the principle of sustainable development, all tenders are generally expected to incorporate criteria into the tender that go beyond price. In most cases, sustainability criteria are equivalent to environmental criteria, like requirements on CO₂ emissions or pollution.

Labour standards are considered throughout the public procurement process: both in the pre-bid phase and during the execution of the contract and its closure. Sustainable procurement considerations are mainly applied in the pre-bidding phase, especially for the design of the object to be contracted. They are also considered in the monitoring phase. In the fight against corruption, there are preventive, detective, corrective and punitive forms, applied throughout the process. To ensure compliance with these legal requirements, a series of background checks into bidders is carried out. These checks are automatic and integrated in the e-procurement system. The Ministry of Infrastructure also performs due diligence as part of its public procurement processes. These inquiries are based on risk analysis and focus on integrity risks.

Implementation is supported through a number of measures, including guidance and model documents and clauses. The Ministry of Economy developed a manual to support incorporation of environmental aspects into public procurement. A second manual is the National Guide to Sustainable Bids, made available by the Consultancy Office for the Federal Government, with an ethical content underlying public acts and procedures as promoters of sustainable national development, as provided for in Art. 3 the 1993 PPL. There are no similar manuals on other aspects of sustainability beyond environmental objectives, or on how to balance these different objectives.

For its procurements, several federal institutions have established supplier codes of conduct, such as the National Council of Justice⁷¹ or the Ministry of Human Rights (Government of Brazil, 2019^[63]). These codes of conduct request suppliers of goods and services to observe the main RBC objectives in responding to public contracts, including human and labour rights, environmental and integrity objectives, among others. However, these codes of conduct are only applicable to suppliers to the respective institution issuing it.

The Ministry of Woman, Family and Human Rights has implemented the Manual on Best Anticorruption Practices that inspired a similar Manual implemented by the National Justice Council (Conselho Nacional de Justiça).⁷² The Federal Attorneys Office (Advocacia Geral da União) has developed the Sustainable Procurement Guide.⁷³ Public officials consulted for the purpose of this review have reported further examples. Notably, the Central Bank has used model public procurement contracts. This model contract includes possible sanctions against contractor. Likewise, the Ministry of Mines and Energy has also established concrete examples of social and environmental contract clauses.

Notably in the area of integrity, the Infra+ Integrity Seal⁷⁴ can be mentioned as an initiative of the Ministry of Infrastructure that seeks to encourage the voluntary adoption of integrity measures by companies, through public recognition. The Seal is available specifically to companies that have contracted with the Public Administration in the last five years.

Monitoring of implementation of RBC in public procurement appears to remain limited, as is training. This could be in part attributed to the lack of an overarching, comprehensive strategy that would create the responsibility for advancing or monitoring RBC commitments. In addition, a number of efforts and initiatives are organised by individual entities with the responsibility to monitor organised accordingly.

Brazil should work with its stakeholders to increase awareness of the linkages between RBC and public procurement and to ensure that any strategic public procurement considers all aspects of RBC. The NCP has a key role to play in this area.

Brazil appears to have a scattered approach towards RBC in public procurement. While the legal and regulatory framework for sustainable public procurement has provisions for the inclusion of several RBC objectives in public procurement, these are dispersed over a number of different legal acts. This dispersed legal framework might pose considerable challenges to public buyers to implement RBC objectives efficiently. There is limited overarching guidance for contracting authorities and public procurers towards a consistent, comprehensive promotion of RBC through public procurement. Emphasis is on environmental and integrity aspects, and awareness of RBC or risk-based due diligence in public procurement is low.

As highlighted by the principle of balance in the OECD Recommendation on Public Procurement, different aspects of sustainable public procurement, including RBC, often have to be balanced to achieve successful implementation. With dispersed rules on RBC in public procurement, public buyers will find it challenging to implement the multiple goals of these individual rules. In addition, such a dispersed legal, regulatory and policy framework poses questions with regards to overall policy coherence in the Brazilian government. Brazil's NCP represents a valuable resource that could support shaping an encompassing approach based on awareness with public buyers how RBC is linked to public procurement, and balancing different aspects of sustainability, including sustainability aspects beyond the national realm. New Zealand's strategic approach to public procurement is an example of how an encompassing, overarching strategy can improve the impact of public procurement overall (see Box 4.3).

Box 4.3. The Broader Outcomes Policy Programme in New Zealand

In 2018, the New Zealand Government agreed to a set of priority outcomes for contracting authorities. The government also identified specific contracts and sectors for focus.

New Zealand contracting authorities are expected to focus on four priority outcomes:

- Access for New Zealand businesses – Increase access to government contracts for New Zealand businesses, particularly those less able to access opportunities and those working in priority sectors such as ICT, Maori and Pasifika businesses, and businesses in the regions.
- Construction sector skills and training – Increase the size and skill level of the domestic construction sector workforce and provide employment opportunities to targeted groups.
- Employment standards – Improve conditions for workers and future-proof the ability of New Zealand business to trade.
- Reducing emissions and waste – Support transition to a zero net emissions economy and reduce waste from industry by supporting innovation.

To implement this work, the central purchasing body, New Zealand Government Procurement and Property, committed to:

- Work with agencies and stakeholders to identify the best approach to put each outcome into practice.
- Update the Government Rules of Sourcing, and develop guidance and support for agencies.
- Develop a monitoring and reporting framework to track agency adoption and outcomes achieved. Results will be reported to the Cabinet annually and findings will inform practice improvements.

Source: (New Zealand Government Procurement and Property, 2019^[300]).

Brazil, and in particular the Brazilian NCP, should provide more comprehensive implementation support to contracting authorities in promoting RBC through sustainable public procurement.

Guidance on implementation of individual RBC objectives has been created, but it appears to remain limited with regard to the different areas of RBC. While social aspects like labour and human rights do feature in the legal and regulatory framework, there is limited implementation support. Brazil could focus on existing initiatives to support sustainable public procurement (like manuals and codes of conduct with limited applicability to individual institutions), as well as their experience on specific objectives (like environmental objectives) to increase uptake of RBC in public procurement. Documents that currently apply only to specific institutions could represent the basis to create documents that apply to the entire federal administration. Successful sustainability initiatives, notably in the area of the environment and integrity, could be expanded to cover additional RBC objectives like human and labour rights. In making these changes, the NCP could provide insights and support based on its work focused on RBC objectives specifically.

There is room to expand risk-based due diligence beyond the area of integrity, to cover a comprehensive set of RBC objectives, building on OECD risk-based due diligence guidance instruments. Brazil's NCP could support public procurement policy makers and practitioners in navigating this specific aspect. Two examples of how uptake of RBC in public procurement can be increased with a focus on implementing support (as opposed to a focus on legal frameworks) can be found in the approaches of Norway and the United States. Both countries developed tools that public buyers can use voluntarily, as needed, to support their public procurement decision making (see Box 4.4).

Box 4.4. National tools to assess RBC risks in public procurement

The Norwegian High Risk List

In Norway, contracting authorities are obliged by the Norwegian Procurement Act (§5 LOA) to implement appropriate measures to promote respect for human rights where there is a risk of a negative impact. The Norwegian Digitalisation Agency (DigDir) provides all contracting authorities with information on high risk products such as ICT, textiles, medical consumables, and coffee. This high risk list extends to identifying risks throughout the full supply chain from raw material extraction to component production until finishing assembling.

The US Responsible Sourcing Tool (RST)

The US State Department has a risk assessment tool for contracting authorities and companies to identify, prevent, and address any risks of human trafficking in supply chains. The Responsible Sourcing Tool (RST) assesses country- and sector-based risks of human trafficking. The tool covers a number of categories such as ICT, textiles and apparel, construction and healthcare. It also includes sample vendor agreements and self-assessments for follow-ups (Government of the United States, 2020^[301]).

Source: (OECD, 2020^[287]).

Policy recommendations

17. **Brazil should work with its stakeholders to increase awareness of the linkages between RBC and public procurement and to ensure that any strategic public procurement considers all aspects of RBC. The NCP has a key role to play in this area.**
18. **Brazil, and in particular the Brazilian NCP, should provide more comprehensive implementation support to contracting authorities in promoting RBC through sustainable public procurement.**

4.1.2 Integrating RBC considerations in the functioning of Brazil's State-Owned Enterprises

SOEs' observance of RBC principles and standards as a way to encourage RBC

SOEs can play an important role in the economy (OECD, 2017, p. 7^[302]). In many countries, they are responsible for the provision of essential public services, having a direct impact on citizens' lives (OECD, 2015, p. 7^[303]). In addition, SOEs increasingly engage in trade and investment (OECD, 2016, pp. 13, 20^[304]) and have become important actors in GVCs outside their territories (OECD, 2015, pp. 11-12^[303]). In fact, 132 of the world's largest 500 enterprises are either state-owned or effectively state-controlled (OECD, 2020, p. 148^[305]).

This is the case in Brazil, as some of the Brazilian SOEs are among the largest companies, not only in the country or in the LAC region, but also globally. Brazil has 158 federal fully or majority-owned SOEs, 46 of which are directly owned (Government of Brazil, 2021^[306]). Several of them are of significant economic importance, three of the country's SOEs being ranked among the world's largest 500 enterprises:

Petrobras, Banco do Brasil, and the Caixa Econômica Federal (OECD, 2020, p. 19_[307]; Fortune, 2020_[308]). This is particularly noteworthy as it places Brazil only behind China and India, and in a similar position than France, Russia and the United States (OECD, 2020, p. 19_[307]). In addition, at the end of 2019, the market value of the six SOEs that are listed out of the 46 directly owned Brazilian SOEs reached 126 058 million USD and accounted for around 20.9% of market capitalisation (OECD, 2020, p. 30_[307]). These listed SOEs include Brazil's four main SOE groups, which are not only the largest Brazilian company in their respective sector, but also often one of the biggest companies in their sector either in the LAC region or worldwide, namely: (i) Banco do Brasil, the largest financial institution by assets in the LAC region (OECD, 2020, p. 54_[307]); (ii) the Brazilian National Economic and Social Development Bank (*Banco Nacional de Desenvolvimento Econômico e Social*, BNDES), one of the biggest development banks in the world (OECD, 2020, p. 56_[307]); (iii) Eletrobras, the largest electricity company in LAC, which at the time of writing had not yet been privatised (OECD, 2020, p. 60_[307]); and (iv) Petrobras, one of the main oil and gas companies worldwide (OECD, 2020, pp. 63-64_[307]).

Given SOEs' economic importance and their capacity to impact economic and social development (OECD, 2015, p. 8_[303]), ensuring that they operate in accordance with good governance practices and RBC principles and standards is fundamental to ensure their positive contribution to the economy (OECD, 2015, p. 11_[303]). This is all the more important as SOEs often operate in sectors where RBC risks may be prevalent (OECD, 2019, p. 3_[309]).

In Brazil, Petrobras and Eletrobras have been particularly exposed to such risks, given that the oil and gas and electricity sectors are sectors in which adverse impacts pertaining to several RBC areas – like human rights, anti-corruption and integrity, or the environment – can be widespread. Eletrobras, for instance, was excluded in 2020 from the investment portfolio of Norway's Wealth Fund due to alleged risks of potential association of one of the hydroelectric projects in which it participates with purported human rights violations⁷⁵ (Norges Bank, 2020_[310]; Council on Ethics of the Government Pension fund Global, 2019_[311]).⁷⁶ As regards Petrobras, the company was recently included in the ranking of the twenty oil, natural gas and coal companies that have contributed to a third of all GHG emissions from 1965 to 2018, in twentieth place (Climate Accountability Institute, 2020_[312]; The Guardian, 2019_[313]). It was also at the core of one of the biggest corruption scandals worldwide in recent years: the Operation *Lava Jato* (see above, Box 3.14), which involved several Brazilian SOEs and had serious social, economic, and political consequences in Brazil, but also major political implications in the LAC region and beyond (OECD, 2020, pp. 64, 67_[307]; World Bank, 2020, p. 108_[314]). Additionally, in 2020, a specific instance was submitted before the Brazilian NCP on the basis of Petrobras' alleged non-observance of several chapters of the Guidelines, including the human rights chapter (OECD, 2020_[315]).

However, in the aftermath of Operation *Lava Jato* (see above, Box 3.14), Brazil's four main SOE groups have taken significant steps to address RBC-related risks. Pushed by changes in legislation, over recent years they have designed and adopted a series of instruments, policies and initiatives aimed at assessing and managing potential adverse impacts in various RBC areas, with a focus on anti-corruption, the environment and human rights. As a result of these efforts, in 2020, Petrobras became again a signatory of the World's Economic Forum's Partnering Against Corruption Initiative, which it had left in 2014 following the revelations of Operation Car Wash (Petrobras, 2020_[316]). As to Banco do Brasil, it was recently recognised as one of the most sustainable companies in the world in the framework of the 2020 edition of the Dow Jones Sustainability Index, which assesses companies' performance in terms of economic, environmental and social criteria (Banco do Brasil, 2020_[317]).

Several OECD instruments acknowledge the importance of SOEs observing RBC principles and standards to contribute to sustainable development and identify, prevent and address adverse impacts. The Guidelines apply to all enterprises, regardless of their ownership and legal status.⁷⁷ Adherents are therefore expected to apply them to the SOEs they directly control. In addition, the PFI recognises that governments should ensure that the practices of their SOEs exemplify RBC (OECD, 2015, p. 77_[11]). In the same vein, the OECD Guidelines on Corporate Governance of State-Owned Enterprises⁷⁸ (the SOE

Guidelines) include a chapter on 'Stakeholder relations and responsible business'. This chapter recommends, among others, that SOEs observe high RBC standards. To this effect, governments should disclose their expectations regarding RBC and SOEs in a clear and transparent manner and establish mechanisms for their implementation (OECD, 2015, pp. 23, 60_[303]). The SOE Guidelines also recommend that SOEs observe high standards of transparency and disclose relevant financial and non-financial information⁷⁹ (OECD, 2015, pp. 26, 64_[303]). Additionally, the OECD Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises (the ACI Guidelines) provide specific guidance with respect to the fight against corruption and the promotion of integrity in SOEs (OECD, 2019, p. 10_[309]). They recommend *inter alia* that governments apply high standards of conduct in order to set an example in SOEs and to exhibit integrity to the public. They also call on governments to require that SOEs, in turn, act in accordance with high standards of performance and integrity (OECD, 2019, pp. 17, 20_[309]).⁸⁰

Reinforcing Brazilian SOEs' observance of RBC principles and standards as a way to encourage RBC

Government policies can push SOEs to observe RBC principles and standards and lead by example on RBC, but this is largely determined by the features of the national legal framework pertaining to SOEs and the country's type of ownership model and governance of SOEs.

In Brazil, the SOE Statute (see above, Section 3.4.1) contains the main rules of the legal framework applicable to Brazilian SOEs (Government of Brazil, 2016_[278]). It applies to SOEs and their subsidiaries, at the federal, state and municipal level, which have a business activity for the production or commercialisation of goods and services (even if such activity is under the monopoly of the Government or consists in providing public services) (Government of Brazil, 2016_[278]).⁸¹

Additionally, the ownership function of SOEs is exercised under what can be called a 'dual model'. This means that the Ministry of Economy and the line ministries responsible for individual SOEs hold the SOEs' ownership rights and are represented on their board of directors (OECD, 2020, p. 39_[307]). In particular, the Ministry of Economy is in charge of supervising Brazil's four main SOE groups on its own or, in Petrobras' and Eletrobras' case, together with the Ministry of Mines and Energy (OECD, 2020, p. 39_[307]). As such, it is responsible for providing guidance regarding their governance and of coordinating the financial resources dedicated to them (OECD, 2020, p. 39_[307]). Within the Ministry of Economy, the Secretariat of Coordination and Governance of SOEs (*Secretaria de Coordenação e Governança das Empresas Estatais*, SEST) exercise some ownership rights in SOEs in which the Government owns the majority of the voting capital (OECD, 2020, p. 40_[307]). The SEST's functions include *inter alia*: (i) promoting the coordination and integration of SOEs' policies and providing guidance and recommendations on actions to be taken by SOEs and their boards on policies regarding staff, corporate governance, and budget;⁸² (ii) processing and disclosing SOEs' economic and financial information;⁸³ (iii) providing advice on a series of issues, such as SOE directors' and senior executives' remuneration, SOEs' bylaws and modifications thereto, employment, retirement and health insurance;⁸⁴ (iv) contributing to the enhancement of SOEs' efficiency and transparency (while respecting the administrative autonomy of each SOE in accordance with the provisions of the SOE Statute⁸⁵),⁸⁶ and (v) requesting the elaboration and monitoring the implementation of actions plans aimed at improving SOEs' management and efficiency (Government of Brazil, 2019_[318]).⁸⁷ The SEST also evaluates SOEs' compliance with the legal framework and, in particular the provisions of the SOE Statute, as well as their adoption of good corporate practices, through its Index of Governance (IG-SEST), which is based on a questionnaire completed annually by SOEs (Government of Brazil, n.d._[319]; OECD, 2020, pp. 68, 99_[307]).

In addition, the Office of the Comptroller General (*Controladoria-Geral da União*, CGU), together with the Federal Court of Accounts (*Tribunal de Contas da União*, TCU), is in charge of auditing and controlling Brazilian SOEs (OECD, 2020, pp. 47-48_[307]). CGU's audits notably assess, among others, SOEs' financial and operational performance, the effectiveness of their internal control systems including their integrity

programmes, and their public policy objectives (OECD, 2020, p. 48^[307]). The CGU has also developed a risk matrix for SOEs aimed at evaluating the probability and impact of risks on their objectives to help them plan their own audits (OECD, 2020, p. 48^[307]). Moreover, it provides SOEs with advisory support on different matters, including RBC-related issues such as corruption and, as the Ombudsman of the Brazilian federal administration, it also handles complaints pertaining to SOEs (OECD, 2020, pp. 48-49^[307]).

The SOE Statute, the dual model for SOE ownership, the existence of the SEST, and the CGU's functions relating to SOEs, are all factors that provide an opportunity to promote the integration of a coordinated and coherent RBC approach centred on due diligence in Brazil's four main SOE groups.

Consolidating the adoption of an RBC approach centred on due diligence in Brazil's four main SOE groups

Brazil's current legal framework applicable to SOEs largely emerged from RBC issues and, more precisely, corruption. The SOE Statute and its implementing decree (Government of Brazil, 2019^[318]) were adopted in the aftermath of Operation *Lava Jato* (see above, Box 3.14). They were one of the key political responses to the social pressure arising from the investigations that uncovered a widespread corruption scheme implicating various senior executives of several SOEs, as well as elected politicians and private companies (OECD, 2020, pp. 33, 67^[307]; World Bank, 2020, pp. 109-110^[314]). As a result, the two texts contain several provisions on anti-corruption, which aims at promoting the integration of transparency and integrity considerations in SOEs' policies and management systems in order to prevent the occurrence of corruption acts similar to the ones of Operation *Lava Jato*.

For instance, the detailed provisions on public procurement included in the second part of the SOE Statute aim to prevent corruption issues in public procurement, which was one of the main channels for corruption in Operation *Lava Jato* (OECD, 2020, p. 33^[307]). As to the first part of the Statute, several articles provide that SOEs' bylaws shall comply with rules of corporate governance and transparency and include risk management and internal control practices.⁸⁸ They also set minimum transparency requirements.⁸⁹ According to these requirements, SOEs shall disclose *inter alia*: (i) up-to-date information pertaining to their activities and, in particular, the risks factors associated thereto and (ii) an annual sustainability report.⁹⁰ They shall also adopt a disclosure policy compliant with the relevant legislation and best practices.⁹¹ To encourage and provide guidance on disclosure, the SEST prepared and released a guide on the publication of information by SOEs on the internet (Government of Brazil, n.d.^[320]; OECD, 2020, p. 99^[307]).

In addition, as per Art. 9 of the SOE Statute, SOEs must adopt and implement risk management and internal control policies and practices to prevent and detect corruption and, more broadly, any illegal conduct.⁹² These policies and practices shall include, among others: (i) the establishment of a department in charge of compliance and risk management; (ii) internal auditing; and (iii) the elaboration and dissemination of a Code of Conduct and Integrity. Such Code shall set not only the principles, values and mission of the SOEs, but also guidelines on the prevention of conflicts of interest and the prohibition of corrupt and fraudulent acts. It shall as well establish internal and external reporting mechanisms and protection mechanisms for whistle-blowers, and the sanctions applicable in case of violation of its provisions.⁹³ However, no reference is made in Art. 9 to the conduct of due diligence as a means to identify, prevent and address corruption risks, even though, just before the enactment of the SOE Statute, the CGU had elaborated a Guide on the implementation of integrity programmes in SOEs (*Guia de implantação de programa de integridade nas empresas estatais*), which encouraged SOEs to carry out due diligence before concluding contracts with suppliers or business partners (Government of Brazil, 2015, pp. 61-67^[321]; OECD, 2020, p. 49^[307]). It also included a description of the different steps to carry out due diligence, which seem relatively aligned with the process contained in the Due Diligence Guidance for RBC (Government of Brazil, 2015, pp. 63-65^[321]).

As a result of the above, over recent years, most Brazilian SOEs and, in particular, the four main SOE groups have developed and adopted Codes of Conduct pursuant to Art. 9 of the SOE Statute (OECD, 2020, p. 119^[307]). However, in the majority of the cases, these Codes do not expressly include, among their guidelines, the conduct of due diligence (see Table 4.3). This may be one of the reasons why not all SOEs' integrity programmes are deemed fit to address the risks they actually face in practice, as signalled by the CGU in its audits of the way in which SOEs manage integrity issues and of the mechanisms put in place to this effect, and also reported during the preparation of the OECD Review of the Corporate Governance of State-Owned Enterprises in Brazil (Giuliana Biaggini Diniz Barbosa, 2018^[322]; OECD, 2020, p. 119^[307]).

Table 4.3. Key characteristics of the Codes of Conduct adopted by Brazil's four main SOE groups

	Banco do Brasil	BNDES	Eletrobras ⁹⁴	Petrobras
Title	Code of Ethics (Código de ética)	Code of Ethics of the BNDES System (Código de ética do Sistema BNDES)	Code of Ethical Conduct and Integrity (Código de conduta ética e integridade)	Code of Ethical Conduct (Código de conduta ética)
Date of adoption or last review	2020	2016	2020	2020
Main topics covered	<ul style="list-style-type: none"> • Ethics • Integrity and anti-corruption • Conflicts of interest • Labour rights • Competition • Community relations • Sustainability 	<ul style="list-style-type: none"> • Insider information • Conflicts of interests • Ethics 	<ul style="list-style-type: none"> • Information disclosure • Conflicts of interest • Integrity and anti-corruption • Labour rights • Human rights • Competition • Community relations • Sustainability • Environment protection 	<ul style="list-style-type: none"> • Information disclosure • Integrity and anti-corruption • Conflicts of interest • Human rights • Competition • Community relations • Sustainability • Environment protection
Values enshrined in the Code	<ul style="list-style-type: none"> • Customer focus • Innovation • Ethics • Sense of ownership • Reliability • Efficiency • Public spirit 	<ul style="list-style-type: none"> • Ethics • Respect for life and dignity • Respect, honesty, freedom, justice, cooperation and courtesy • Social justice • Public interest • Sustainable development • Transparency • Legality, impersonality, morality, publicity and efficiency 	<ul style="list-style-type: none"> • Human dignity and respect for people • Integrity • Sustainability • Transparency • Impartiality • Legality • Professionalism 	<ul style="list-style-type: none"> • Respect for life, people and the environment • Ethics and transparency • Outperformance and confidence • Market orientation • Results
Reporting and follow-up mechanisms included in the Code	<ul style="list-style-type: none"> • Ethics Committee • Whistle-blower mechanisms 	<ul style="list-style-type: none"> • Ethics Committee 	<ul style="list-style-type: none"> • Ombudsman's offices • Whistle-blower mechanism 	<ul style="list-style-type: none"> • Ombudsman's office • Whistle-blower mechanisms

	Banco do Brasil	BNDES	Eletrobras ⁹⁴	Petrobras
Application scope	<ul style="list-style-type: none"> • Top management • Employees • Collaborators (including contractors' interns, apprentices, employees and managers) • Individuals or legal entities acting or rendering services on behalf of Banco do Brasil 	<ul style="list-style-type: none"> • Members of the advisory board • Members of the fiscal council • Members of the audit committee • Directors • Permanent and temporary employees • Interns • Service providers • Individuals or legal entities which provides services to the BNDES System 	<ul style="list-style-type: none"> • Members of the board • Members of the executive and audit committees • Members of the statutory committees • Employees • Interns and apprentices • Third parties 	<ul style="list-style-type: none"> • Members of the board of directors • Members of the executive board • Members of the advisory committees • Members of the fiscal council • Employees • Interns • Service providers • Anyone acting on behalf of Petrobras
Reference to due diligence	No	No	No	Yes (but with no specific mention of the concept of "due diligence")

Sources: (Banco do Brasil, 2019^[323]) (BNDES, 2016^[324]) (Eletrobras, 2020^[325]) (Petrobras, 2020^[326]).

It stems from the above that the SOE Statute and its implementing decree, as well as the actions taken by the CGU before the enactment of these two texts, principally focus on anti-corruption. The only other provision pertaining to RBC included in the SOE Statute is Art. 27 on SOEs' social functions, which provides that, in accordance with the law, SOEs shall adopt environmental sustainability and corporate responsibility practices compatible with the markets in which they operate. This seems to imply that, depending on their sector of activities, SOEs must observe the relevant requirements of the Brazilian legal and regulatory framework relating to environmental sustainability and corporate responsibility and, where private competitors have adopted practices that go beyond these requirements, do the same (OECD, 2020, p. 117^[307]). However, neither the SOE Statute nor its implementing decree provide further details on what the expressions 'environmental sustainability' and 'corporate responsibility' entail or on the type of practices SOEs should adopt. In particular, no reference is expressly made to the conduct of due diligence to identify, prevent and address adverse impacts of SOEs' activities, supply chains or business relationships on people, the planet and society. Additionally, no further guidance on this seems to have been developed and issued by the Government. As a result, Brazilian SOEs and, in particular, the four main SOE groups, have adopted a wide array of varying practices pertaining to several areas covered by the Guidelines, which do not appear to be structured in a coherent and coordinated approach and, in most cases, do not include detailed due diligence processes clearly defined as such. This is notably reflected by the various RBC-related instruments, policies and initiatives that they reportedly observe and implement beyond their Codes of Conduct. The following sub-sections briefly review these RBC-related instruments, policies and initiatives at Banco do Brasil, BNDES, Eletrobras, and Petrobras.

Banco do Brasil

Banco do Brasil has developed a Socio-environmental Responsibility Policy (*Política de responsabilidade socioambiental*) aimed at generating value for stakeholders and mitigating the possible adverse impacts of its activities on the environment and society (Banco do Brasil, 2021, p. 172^[327]). Beyond this overarching policy, Banco do Brasil has also adopted additional specific policies to manage socio-environmental risks in its lending activities, such as the Sustainability Credit Guidelines and the Socio-environmental Guidelines – Restrictive list and Exclusion list (Banco do Brasil, 2021, pp. 173, 180^[327]) (see Table 4.4). In 2020, it also reportedly developed a Corporate Socio-environmental Risk Management Manual, which gathers and provides explanations on the initiatives and tools it uses to manage socio-environmental risks, such as media and socio-environmental legislation monitoring, a list of embargoes, a socio-environmental

questionnaire, a socio-environmental rating, etc. (Banco do Brasil, 2021, pp. 173-174^[327]). Banco do Brasil's commitments to manage socio-environmental risks is also reflected by its adherence to several related international initiatives, such as the Principles for Responsible Investment or the Equator Principles (Banco do Brasil, 2021, p. 172^[327]). In particular, as a signatory of the Equator Principles, the Bank integrates socio-environmental considerations in its risk analysis for project financing above a certain threshold by carrying out socio-environmental compliance evaluations (Banco do Brasil, 2021, pp. 173, 241^[327]; 2020^[328]).

Table 4.4. Main RBC-related instruments, policies and initiatives adopted by Banco do Brasil

Title	Date	Areas of the Guidelines covered	Main characteristics	Reference to due diligence
Specific Policy of Prevention and Combat Against Money Laundering, Terrorism Financing and Corruption	2020	<ul style="list-style-type: none"> • Anti-corruption 	<ul style="list-style-type: none"> • Contains Banco do Brasil's commitments to prevent and combat money laundering, terrorism financing and corruption 	Yes
Socio-environmental Responsibility Policy	2020	<ul style="list-style-type: none"> • Disclosure • Human rights • Labour rights • Environment 	<ul style="list-style-type: none"> • Contains Banco do Brasil's commitments on social and environmental aspects to generate value for stakeholders and mitigate possible adverse impacts on the environment and society in particular through the adoption of a risk management framework which purpose is to identify, measure, evaluate, monitor, report on, control and mitigate socio-environmental risks 	Yes (but under the term "risk management framework" and with no specific mention of the concept of "due diligence")
Sustainability Credit Guidelines	2018	<ul style="list-style-type: none"> • Human rights • Labour rights • Environment 	<ul style="list-style-type: none"> • Reflects Banco do Brasil's commitments and practices for ten sectors of the economy to mitigate risks to the environment and society and reduce the impact of its financing and investments, as well as to identify new opportunities for action in the sustainable value chain, in accordance with its principles of socio-environmental responsibility, and contains specific guidelines to this effect for ten specific economic sectors 	Yes (but under a risk management approach and with no specific mention of the concept of "due diligence")
Socio-environmental Guidelines – Restrictive list and exclusion list	N/D	<ul style="list-style-type: none"> • Human rights • Labour rights • Environment 	<ul style="list-style-type: none"> • Reflects Banco do Brasil's practices to grant loans or credits in relation to issues considered controversial due to their characteristics in accordance with its principles of socio-environmental responsibility by defining a list of restricted activities (for which Banco do Brasil will grant loans or credits only under certain conditions) and a list of excluded activities (for which Banco do Brasil will not grant loans or credits) 	Yes (but under the approach of environmental impact or social responsibility assessments and with no specific mention of the concept of "due diligence")
Human Rights Commitment	2021	<ul style="list-style-type: none"> • Human rights • Labour rights 	<ul style="list-style-type: none"> • Reflects Banco do Brasil's commitments to monitor and mitigate the impacts arising from its activities on human rights in accordance with the UNGPs and lists the policies, guidelines, practices, and processes adopted to this effect 	Yes (but only for human rights)
Sustainability Plan – Agenda 30 BB	2021	<ul style="list-style-type: none"> • Disclosure • Human rights • Labour rights • Environment • Anti-corruption 	<ul style="list-style-type: none"> • Reflects Banco do Brasil's ten long-term sustainability commitments (which include sustainable business, responsible investment, and ESG management) and includes its sustainability plan for 2021-2023 	Yes (but only for human rights)
Climate Change Commitment	2019	<ul style="list-style-type: none"> • Environment 	<ul style="list-style-type: none"> • Reflects Banco do Brasil's commitments to contribute to the transition towards a low-carbon economy and lists the policies, guidelines, practices, and processes adopted to this effect 	No
Socio-environmental contractual clauses /	N/D	<ul style="list-style-type: none"> • Human rights • Labour rights 	<ul style="list-style-type: none"> • Clause included in Banco do Brasil's contracts with suppliers through which they undertake <i>inter alia</i> to 	Yes

socio-environmental responsibility statements		<ul style="list-style-type: none"> • Environment • Anti-corruption 	perform their activities in accordance with the applicable legislation (labour, social security, tax), not to have recourse to illegal, forced or child labour or work in degrading conditions, not to discriminate, not to use corrupt or unethical practices, and to protect the environment	
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Sources: (Banco do Brasil, 2021^[327]) (2020^[329]) (2020^[330]) (2020^[331]) (2018^[332]) (n.d.^[333]) (n.d.^[334]) (n.d.^[335]).

BNDES

Likewise, BNDES has elaborated a Corporate Social and Environmental Responsibility Policy (*Política corporativa de responsabilidade socioambiental do Sistema BNDES*) in order to integrate social and environmental considerations in its policies and management systems, and to manage potential adverse impacts on people, the planet and society (BNDES, 2019^[336]). This general policy is accompanied by various specific policies (see Table 4.5) (BNDES, 2021, p. 47^[337]). For instance, the Socio-environmental Policy focuses on socio-environmental risks in the granting of financial assistance and defines the social and environmental criteria to be taken into account, as well as the operational procedures to be applied, for the social and environmental analysis of the projects that apply for financing (BNDES, n.d.^[338]). The Sustainable Purchase Policy, on its end, is aimed at promoting sustainable practices in the Bank's relationships with its suppliers by establishing social and environmental criteria for its purchases of goods and services (BNDES, n.d.^[339]). In line with these undertakings on socio-environmental issues, BNDES reportedly seeks to follow relevant international standards, such as the OECD Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence or the International Finance Corporation's Environmental and Performance Standards. It is also a member of the International Development Finance Club (BNDES, 2021, p. 48^[337]; International Development Finance Club, n.d.^[340]).

Table 4.5. Main RBC-related instruments, policies and initiatives adopted by BNDES

Title	Date	Areas of the Guidelines covered	Main characteristics	Reference to due diligence
BNDES System Corporate Integrity Policy	2020	<ul style="list-style-type: none"> • Anti-corruption 	<ul style="list-style-type: none"> • Contains BNDES' guidelines to prevent, detect and remedy corruption, deviation, frauds, irregularities or other illegal acts 	No
Integrity Program	N/D	<ul style="list-style-type: none"> • Anti-corruption 	<ul style="list-style-type: none"> • Contains BNDES' rules and procedures aimed at preventing, detecting, and remedying misappropriation of funds, fraud, irregularities, and wrongdoing, including through corruption, asset misappropriation and financial statement fraud, in accordance with its Code of Ethics and its Corporate Integrity Policy 	Yes (but only in relation to third parties' management and with no specific mention of the concept of "due diligence")
Corporate Social and Environmental Responsibility Policy	2019	<ul style="list-style-type: none"> • Human rights • Environment 	<ul style="list-style-type: none"> • Reaffirms BNDES' commitments to sustainable development and sets the principles and guidelines that guide its actions in order to manage its socio-environmental risks and possible impacts on society, the climate and the environment 	Yes (but under a risk management approach and with no specific mention of the concept of "due diligence")
Socio-environmental Policy	N/D	<ul style="list-style-type: none"> • Human rights • Environment 	<ul style="list-style-type: none"> • Defines BNDES' instruments and guidelines aimed at promoting sustainable development, generate employment and reduce social and regional inequalities, as well as the operating procedures to perform a social and environmental analysis of the projects applying for BNDES financing 	Yes (but under a risk management approach and with no specific mention of the concept of "due diligence")
Sustainable Purchase Policy	2011	<ul style="list-style-type: none"> • Human rights • Environment 	<ul style="list-style-type: none"> • Contains BNDES' principles and guidelines aimed at promoting the adoption of social and environmental sustainability in its process of acquisition of goods and 	No

			services with a view to encouraging the adoption of sustainable practices among its suppliers	
Social Clause	N/D	<ul style="list-style-type: none"> Labour rights 	<ul style="list-style-type: none"> Clause included in BNDES' financing contracts that allows it to suspend the contract or require immediate payment of the disbursements made in case of child or slave labour or discrimination based on race or gender 	No

Sources: (BNDES, 2019^[336]; n.d.^[341]; n.d.^[342]; n.d.^[338]; n.d.^[339]; n.d.^[343]).

Eletrabras⁹⁵

As to Eletrabras, it has also developed a Social Responsibility Policy with the aim to include social responsibility principles in the strategic and operational performance of its companies. A noteworthy aspect of the Policy is that it draws on relevant international standards, including, among others, the Guidelines, the UNGPs, the ILO's Conventions, as well as the UN Global Compact and the SDGs, which are expressly mentioned (Eletrabras, 2018, p. 4^[344]). On this basis, in 2019, Eletrabras started to carry out human rights due diligence of its suppliers and joint ventures, thereby launching the implementation of its human rights due diligence process aimed at preventing and avoiding adverse impacts and violations of human rights (Eletrabras, n.d.^[345]; 2021, pp. 56, 115^[346]). Beyond this overarching Policy, Eletrabras has adopted more targeted policies, such as a Sustainability Policy and an Environmental Policy (see Table 4.6). Pursuant to its Social Responsibility, Sustainability and Environmental Policies, Eletrabras also carries out impact assessments to identify, mitigate and remediate the social and environmental impacts that its activities may have on local communities and, in particular, to protect indigenous peoples' rights (Eletrabras, 2021, pp. 119-123, 128^[346]). In addition, it has adhered to several RBC-related international initiatives, such as the UN Global Compact or the Women Empowerment Principles (Eletrabras, n.d.^[347]; 2021, pp. 59-60^[346]).

Table 4.6. Main RBC-related instruments, policies and initiatives adopted by Eletrabras

Title	Date	Areas of the Guidelines covered	Main characteristics	Reference to due diligence
Anti-corruption Policy of Eletrabras Companies	2018	<ul style="list-style-type: none"> Anti-corruption 	<ul style="list-style-type: none"> Reflects Eletrabras' companies' commitment to ethics and integrity and contains the principles and guidelines aimed at ensuring that their management, employees, representatives and third parties comply with the requirements of the applicable anti-corruption laws and adopt the highest standards of legality and transparency 	Yes (but under a risk analysis approach and with no specific mention of the concept of "due diligence")
Corporate Integrity Program – Eletrabras 5 Dimensions	N/D	<ul style="list-style-type: none"> Anti-corruption 	<ul style="list-style-type: none"> Reflects Eletrabras' companies' commitment to ethics and integrity and contains policies and procedures to improve the prevention, detection and treatment of cases of non-compliance with relevant laws and regulations 	Yes (but only in relation to third parties' management)
Supplier Code of Conduct	2020	<ul style="list-style-type: none"> Anti-corruption Human rights Labour rights Environment Competition 	<ul style="list-style-type: none"> Sets the standards to be adopted by individuals and companies in a business relationship with Eletrabras for the supply of materials and provision of services 	Yes (but in relation to sustainability and integrity, as well as third parties' management)
Social Responsibility Policy of the Eletrabras Companies	2018	<ul style="list-style-type: none"> Anti-corruption Human Rights Labour Rights 	<ul style="list-style-type: none"> Reflects Eletrabras' companies' commitment to sustainable development and contains principles and guidelines aimed at helping them to conduct their activities in a way compatible with sustainable development and taking into account stakeholders' interests 	Yes (but only in relation to human rights and with no specific mention of the concept of "due diligence" but a reference to the Guidelines)
Sustainability Policy of Eletrabras Companies	2019	<ul style="list-style-type: none"> Human rights Labour rights Anti-corruption 	<ul style="list-style-type: none"> Contains the guidelines to be applied by Eletrabras companies regarding the promotion of corporate sustainability, and their contribution to sustainable 	Yes (but under a risk management approach and with

		<ul style="list-style-type: none"> • Environment 	development	no specific mention of the concept of "due diligence")
Eletrobras Companies Environmental Policy	2019	<ul style="list-style-type: none"> • Environment 	<ul style="list-style-type: none"> • Contains the principles and guidelines to be applied by Eletrobras companies regarding the treatment of environmental issues, in line with the principles of sustainability 	Yes (but under an environmental impact assessment approach and with no specific mention of the concept of "due diligence")
Human rights contractual clauses	N/D	<ul style="list-style-type: none"> • Human rights • Labour rights 	<ul style="list-style-type: none"> • Clause included in Eletrobras' contracts with its suppliers to ensure that they respect human and labour rights with the threat of sanctions 	No

Sources: (Eletrobras, 2021^[346]; 2020^[348]; 2019^[349]; 2019^[350]; 2018^[344]; n.d.^[351]).

Petrobras

Petrobras also developed a Social Responsibility Policy in order to integrate social responsibility in its policies and management systems, identify and mitigate social and human rights risks related to its activities, supply chains and partnerships, and address the sustainability challenges of its sector (Petrobras, 2020^[352]). This general policy is complemented by various additional policies addressing specific issues (see Table 4.7). For instance, the Safety, Environment and Health Policy aims to identify, prevent and manage risks to people's security and health, as well as the impacts of Petrobras' projects, processes and products on the environment and local communities (Petrobras, n.d.^[353]). In accordance with these two policies, Petrobras has developed a series of measures to manage the socioeconomic impacts of its investment and divestment projects, as well as of its operations (Petrobras, 2021, pp. 220-229^[354]). For investment projects, these measures include *inter alia* the preparation of technical and economic feasibility studies that integrate a social responsibility report and a health, safety and environment report identifying related risks (Petrobras, 2021, pp. 220-225^[354]). As to the Human Rights Guidelines, pursuant to the UNGPs on which they are based, they seek to ensure that Petrobras' activities respect and promote human rights and that any human rights adverse impact they may cause is identified and addressed through human rights due diligence (Petrobras, n.d.^[355]; 2021, p. 254^[354]). In this regard, in its Strategic Plan for 2021-2025, Petrobras committed to carry out human rights due diligence in 100% of its operations by 2025 (Petrobras, 2021, p. 255^[354]). Additionally, Petrobras, has adhered to various RBC-related international initiatives, including the UN Global Compact and the Women Empowerment Principles (Petrobras, n.d.^[355]; 2021, p. 255^[354]).

Table 4.7. Main RBC-related instruments, policies and initiatives adopted by Petrobras

Title	Date	Areas of the Guidelines covered	Main characteristics	Reference to due diligence
Corruption Prevention Program	2015	<ul style="list-style-type: none"> • Anti-corruption 	<ul style="list-style-type: none"> • Contains Petrobras' commitments, guidelines and actions to prevent, detect and correct acts of fraud, corruption and money laundering in its relationships with a wide array of stakeholders (customers suppliers, investors, partners, public authorities, employees and outsourced service providers) 	Yes (but only in relation to third parties' integrity)
Ethical Conduct Guide for Suppliers	2020	<ul style="list-style-type: none"> • Human rights • Labour rights • Environment • Anti-corruption 	<ul style="list-style-type: none"> • Reflects Petrobras' values and provides guidelines for, and commitments required from, its suppliers on several topics, including ethics and integrity, human rights, labour rights, and the environment 	Yes (but only in relation to integrity)
Social Responsibility Policy	2020	<ul style="list-style-type: none"> • Human rights • Environment 	<ul style="list-style-type: none"> • Reflects Petrobras' commitment to respect human rights and the environment and contains a series of guidelines <i>inter alia</i> to identify, analyse and mitigate social risks, integrate social responsibility in business management and decision-making process, and contribute to 	Yes (but under a risk management approach and with no specific mention of the concept of

			sustainable development and climate change mitigation	"due diligence")
Safety, Environment and Health Policy	N/D	<ul style="list-style-type: none"> • Human rights • Labour rights • Environment 	<ul style="list-style-type: none"> • Contains various principles and guidelines for Petrobras' workforce aimed at preventing and minimizing safety, health and environmental risks linked to operations and integrating safety, health and the environment in the corporate strategy and actions 	Yes (but under a risk management approach and with no specific mention of the concept of "due diligence")
Petrobras Human Rights Guidelines	N/D	<ul style="list-style-type: none"> • Human rights • Labour rights 	<ul style="list-style-type: none"> • Reflects Petrobras' commitment to respect, raise awareness of, and promote, human rights in its activities and to act in accordance with relevant treaties and conventions and contains guidelines based on the UNGPs aimed at incorporating the respect for human rights in all of Petrobras' areas of business and in its relationships with stakeholders 	Yes (but with respect to human rights only)
Petrobras Modern Slavery Statement 2019	2019	<ul style="list-style-type: none"> • Human rights • Labour rights 	<ul style="list-style-type: none"> • Reaffirms Petrobras' commitment to combat degrading or child and slave-like work practices within its supply chain through contractual clauses inserted in (i) its service agreements that require service providers to refrain from using child labour and slave-like labour or degrading working conditions; and (ii) contracts for the construction and assembly of refining process units and civil construction services that require contractors <i>inter alia</i> to declare and ensure that they respect internationally recognised human rights and to refrain from using child labour and slave-like labour or degrading working conditions 	Yes (but under a social responsibility assessment approach and with no specific mention of the concept of "due diligence")
Human rights contractual clauses and social responsibility statements	N/D	<ul style="list-style-type: none"> • Human rights • Labour rights 	<ul style="list-style-type: none"> • Clauses included in Petrobras' standard service agreements to ensure that its service providers do not have recourse to child labour or slave-like labour or degrading working conditions, as well as in its contracts for the construction and assembly of refining process units and civil construction services establishing social responsibility and human rights commitment for its suppliers 	No

Sources: (Petrobras, 2021^[354]) (2020^[356]) (2020^[357]) (2020^[352]) (n.d.^[353]; 2019^[358]; n.d.^[355]).

The above shows that Brazil's four main SOE groups have taken various measures of different kinds to deal with RBC issues in several areas covered by the Guidelines. It can thus be said that they integrate RBC considerations in their policies and management systems and that they attempt to identify, prevent and mitigate adverse impacts. Nevertheless, these attempts do not appear to form part of a structured and comprehensive approach on RBC. Although the different instruments, policies and initiatives developed and adopted by Banco do Brasil, BNDES, Eletrobras and Petrobras pertain to several RBC issues, this does not appear to be done in a transversal and integrated manner and, to date, most of the efforts seem to have been made on anti-corruption. This is most likely because the legal framework applicable to Brazilian SOEs has been primarily designed to address corruption issues in the aftermath of Operation *Lava Jato*. As a result, SOEs do not share a common RBC approach centred on due diligence, or an overarching and coherent strategy to identify, prevent and address on a continued basis their adverse impacts by carrying out due diligence in the different areas covered by the Guidelines in accordance with a detailed and clearly defined process.

Brazil should consider elaborating an overarching strategy to drive the adoption by its SOEs of a common structured and coherent RBC approach, including a detailed and clearly defined process to conduct due diligence in several areas of the Guidelines, and contemplate reflecting such strategy in the legal framework applicable to Brazilian SOEs. The Brazilian NCP should support the elaboration of such a strategy. The Norwegian state ownership policy provides a good example in this regard (see Box 4.5).

Box 4.5. The Norwegian state ownership policy

RBC is at the centre of the recent Norwegian state ownership policy, which introduces clear expectations in this regard. In addition to being sustainable and contributing to long-term value creation, SOEs are expected to: (i) lead by example on RBC; (ii) work to protect human and labour rights, reduce their climate and environmental footprint and prevent economic crime, including corruption and money laundering; (iii) adopt a justified tax policy that is publicly available; (iv) conduct due diligence for RBC based on recognised methods; and (v) be transparent about material areas, goals and measures relating to their work on RBC.¹

This entails that SOEs identify and manage the risks their operations and supply chains pose to society, people and the environment and follow internationally recognised RBC principles and standards, such as the Guidelines and the UNGPs. SOEs' work on RBC must be supported by their boards and incorporated in their goals, strategy and guidelines.² It also implies that SOEs conduct due diligence to identify, manage, report and assess risks and have systems in place for remedying any adverse impact.³ To this effect, SOEs are referred to the Due Diligence Guidance for RBC and the different steps of the due diligence process.⁴

Finally, to lead by example on RBC, SOEs must be transparent and provide information to customers and stakeholders on how they manage material risks and what is their basis for future value creation.⁵

Sources: (OECD, 2020^[305]; Government of Norway, 2019, pp. 63, 68, 88, 90, 91^[359]).

The suggested overarching strategy could apply first to Brazil's four main SOE groups and then be extended progressively to other SOEs. The design and implementation of this strategy would be facilitated by Brazil's dual model for SOE ownership, the SOE Statute and its implementing decree, the existence of the SEST, as well as the CGU's functions relating to SOEs. It could encompass different actions.

First, the overarching strategy could encourage the SEST, including by giving it a specific mandate, to promote the adoption by Brazilian SOEs of a structured and coordinated RBC approach centred on due diligence. As a first step in this direction, the SEST could, in coordination with the line ministries that supervise SOEs, elaborate guidance on Art. 27 of the SOE Statute, which provides that SOEs shall adopt environmental sustainability and corporate responsibility practices. In particular, guidance could be provided on what 'environmental sustainability' and 'corporate responsibility' entail or on the type of practices that SOEs should adopt in this regard. The SEST could also include Art. 27 of the SOE Statute in the fifth evaluation cycle of the IG-SEST to assess how SOEs have implemented this provision so far and the type of measures they have taken to adopt corporate responsibility practices. Additionally, the SEST could develop initiatives to incentivise the exchange of information and peer learning among SOEs on the implementation of Art. 27 of the SOE Statute. The overarching strategy could also consider including the assessment of how Art. 27 is being implemented by SOEs as part of the CGU's audit and control functions.

Later on, as a second step, the SEST could design and put in place policies and initiatives to support the implementation of the overarching strategy and the adoption by Brazilian SOEs of a common structured and coherent RBC approach. Such policies and initiatives could contribute to raise SOEs' awareness about RBC principles and standards and the process of risk-based due diligence. They could also provide guidance to SOEs on how to adopt an RBC approach in practice on the basis of the OECD RBC instruments and, in particular, on how to conduct due diligence in accordance with the Due Diligence Guidance for RBC. The SEST could also take into account the integration of RBC considerations in SOEs' policies and management systems in the next evaluation cycles of the IG-SEST, with a view to gather information on SOEs' RBC practices and, in particular, to determine if and how they carry out due diligence.

The CGU could also intervene to support the implementation of the overarching strategy. Through its advocacy and advisory role, it could elaborate initiatives to incentivise and help SOEs adopt a common structured and coherent RBC approach. For instance, building on the experience of the Guide on the implementation of integrity programmes in SOEs that it released to help SOEs manage corruption-related risks, it could develop guidelines based on the OECD RBC instruments regarding the RBC principles and standards and the due diligence process to be followed by SOEs. Likewise, the CGU could use its audit and control functions to promote the adoption of a structured and coherent RBC approach by Brazilian SOEs. It could, for example, extend its audits on the implementation by SOEs of their codes of conduct and the functioning of their integrity programmes and internal risk management processes to assess whether they have adopted a structured and coherent RBC approach and if they conduct due diligence in accordance with the Due Diligence Guidance for RBC.

Second, the overarching strategy could amend the SOE Statute and its implementing decree to include a reference therein to the observance of RBC principles and standards and the conduct of due diligence by Brazilian SOEs. Both the strategy and the amendments to the legal framework could serve to communicate clearly the expectation that SOEs lead by example on RBC, not only by contributing to economic, social and environmental progress, but also by identifying, preventing and mitigating the real or potential adverse impacts of their activities, supply chains or business relationships through due diligence. By making express reference to the recommendations contained in the Guidelines, they could clarify that an RBC approach has two components and seeks to encompass all areas of potential business responsibility in a comprehensive and integrated manner. They could also include specific requirements that SOEs elaborate and put in place detailed due diligence processes in relation to the areas covered by the Guidelines and provide clear indications in this regard based on the Due Diligence Guidance for RBC.

Lastly, to promote the observance of RBC principles and standards in practice, the overarching strategy could integrate incentives associated with the design and implementation of an RBC approach for SOEs' boards of directors and managers in order to incentivize them to take concrete steps in this direction.

In conclusion, this common structured and comprehensive approach on RBC centred on due diligence (and based on the OECD Due Diligence Guidance) could help Banco do Brasil, BNDES, Eletrobras and Petrobras take concrete measures to abide by their respective commitments to limit adverse impacts and manage risks, including through mapping their supply chains and other business relationships, gaining a better understanding of the broad range of risks and vulnerabilities they entail, and address such risks. Human and labour rights due diligence, in particular, have proven particularly important in the context of the COVID-19 crisis, and hence for any potential future crisis, to manage real and potential adverse impacts on workers' health and labour conditions and the legal, reputational and financial risks associated thereto (OECD, 2020, pp. 9-11^[360]).

Training the officials of Brazil's main SOE groups and of the line ministries supervising such SOEs on RBC and due diligence

To be effective, the elaboration of a strategy to promote the adoption by Brazilian SOEs of an RBC approach centred on due diligence must be accompanied by capacity building and training on RBC for SOE officials, as well as for the officials of the line ministries responsible for supervising SOEs. As regards anti-corruption and integrity, an OECD survey of SOEs in Latin American and OECD countries found that 64% of Latin American SOEs considered that a 'lack of awareness among employees of the need for, or priority placed on, integrity' was an obstacle to integrity (OECD, 2017, p. 17^[361]). Special attention should hence be paid to awareness raising and capacity building of officials working for or dealing with SOEs on RBC in general as well as on due diligence. This is very relevant to the case of Brazil as officials interviewed for the purpose of this review reported that, in general, knowledge about RBC is not widespread in Brazil and that Brazilian SOEs have difficulties in recruiting employees acquainted with RBC-related issues.

Brazil's SOE Statute and its implementing decree contain requirements regarding the training of SOE officials on RBC-related matters. The Statute foresees that, among the risk management and internal control practices that they must adopt, SOEs shall include periodic training, at least annual, on their codes of conduct and integrity for employees and administrators and on their risk management policy for administrators.⁹⁶ The decree further specifies that SOEs' administrators and audit committee members, including employee and minority representatives, must participate, upon taking office and on an annual basis, in specific trainings on various topics that include information disclosure, internal control and the company's code of conduct.

To comply with these requirements, Brazil's main SOE groups have developed trainings on RBC-related issues for their officials. For instance, Banco do Brasil has developed a 'Corporate University' through which it offers training programmes comprised of different learning tools on its Code of Ethics under the 'Ethics Trail', but also on CSR under the 'Sustainability Trail', as well as on human rights issues (Banco do Brasil, 2020, pp. 64, 113, 156^[362]; 2021, pp. 153-154^[327]). It also included several actions and indicators pertaining to the delivery of training on its Code of Ethics and/or sustainable development issues, such as ESG products and/or services, in its Sustainability Plan – Agenda 30 BB for 2021-2023 (Banco do Brasil, 2020, pp. 29-30^[331]). Similarly, BNDES regularly organises trainings for its officials on its Code of Ethics and integrity programme (BNDES, 2021, p. 54^[337]; n.d., p. 5^[363]). In the same vein, one of the five main dimensions of Eletrobras' Corporate Integrity Programme is communication and training, for which it has established a structure that delivers training for employees, among others, on its Code of Ethical Conduct and Integrity (Eletrobras, n.d.^[351]; 2021, pp. 41, 115^[346]). In addition, Eletrobras has also developed a project entitled 'Stakeholders' engagement in the value chain to raise awareness about human rights' (*Engajamento dos Stakeholders da Cadeia de Valor para Sensibilizar sobre o Tema Direitos Humanos*), which is based on the UNGPs and aims to promote awareness raising, training and risk assessment on human rights issues among its employees, suppliers and partners (Eletrobras, 2021, p. 115^[346]). In this context, it provides training on its human rights policies and procedures, with the target of training 100% of its employees on the topic in 2021 (Eletrobras, 2020, pp. 64, 168^[364]; 2021, pp. 56, 115-116^[346]). Finally, in the framework of the Petrobras University, Petrobras has also developed ethics and integrity trainings to help its employees identify, prevent and address fraud and corruption, as well as trainings to support them in the implementation of its Safety, Environment, and Health Policy, and raise their awareness on human rights issues (Petrobras, n.d.^[365]; 2020, p. 21^[356]; n.d.^[353]; 2021, pp. 76-77, 214-215, 256^[354]).

However, to date, Brazil's main SOE groups do not seem to have developed specific capacity building and training for their officials on RBC as a coherent and structured approach, and in particular, on how to limit adverse impacts and manage risks in practice through a clear and detailed due diligence process as conceived in the OECD RBC instruments. In addition, it does not seem that any capacity building and/or training programme on RBC and due diligence has been developed and put in place for the officials of the line ministries responsible for supervising SOEs in Brazil.

Brazil should develop specific capacity building and training programmes for SOE officials, as well as for officials of line ministries responsible for supervising SOEs, in collaboration with the NCP, with a view to increasing their awareness and knowledge about RBC and their capacity to design and implement detailed due diligence processes aligned with the OECD RBC instruments, and consider integrating requirements in this regard in the legal framework applicable to Brazilian SOEs.

It would be key for the programme to include detailed training sessions on risk-based due diligence. These sessions could be based on the Due Diligence Guidance for RBC and the relevant Sector-specific Due Diligence Guidance. They could explain the importance and specificities of the due diligence process, as conceived in the OECD's RBC instruments in comparison to other risk management frameworks, and how such process can be implemented in practice in the different sectors in which Brazilian SOEs operate.

This capacity building and training programme could be designed and delivered in collaboration with the Brazilian NCP as the government expert on RBC and the OECD instruments in the field and/or include trainings offered by the NCP on the Guidelines and the related Due Diligence Guidance. It could also benefit from the experience of private companies operating in similar sectors than that of SOEs that observe RBC principles and standards and have successfully implemented detailed due diligence processes aligned with the OECD RBC instruments.

Policy recommendation

19. Elaborate an overarching strategy for a common structured and coherent RBC and due diligence approach at Brazilian SOEs, and develop specific capacity building and training programmes on RBC and due diligence for SOE and other relevant officials, in collaboration with the NCP.

4.2 Including RBC considerations in Brazil's economic policies that shape business conduct

Beyond leading by example when acting as economic actors, governments can promote and enable responsible business practices by integrating RBC considerations in their economic policies that contribute to shape business conduct. By doing so, governments communicate their RBC expectations to businesses and highlight the RBC principles and standards they should observe. Governments can also create incentives for businesses to abide by such principles and standards, thereby encouraging them to adopt responsible business practices. The Brazilian Government could take additional measures to leverage some of its economic policies to incentivise RBC by further integrating RBC considerations in its investment and trade policies.

4.2.1 Integrating RBC in Brazil's investment policies

Investment can be a conduit for RBC. The PFI recognises that RBC is central to a good investment climate and that RBC considerations should play a part in investment policies (OECD, 2015, pp. 18, 75_[11]). As stated by the PFI, “[a]n investment climate that does not include respect for certain rules of [RBC], including relating to accepted international labour and environmental standards, risks being shunned by international investors and by foreign customers” (OECD, 2015, p. 18_[11]). Conversely, government policies aimed at promoting and facilitating investment, as well as investment treaties, can serve to incentivise foreign investors to abide by RBC principles and standards and promote the adoption of responsible business practices.

Integrating RBC in Brazil's investment promotion and facilitation policies

Investment can be attracted through promotion and facilitation policies. While investment promotion consists in marketing a country or a region as an investment destination, investment facilitation entails making it easier for investors to establish, operate, or expand their investments (OECD, 2018, p. 3_[366]). Investment can be promoted by directing foreign investors to profitable investment opportunities or helping them identify any potential local partners (OECD, 2015, p. 39_[11]).⁹⁷ In turn, investment can be facilitated through a transparent, predictable and efficient regulatory and administrative framework for investment and by reducing the number of obstacles faced by investors that decide to invest in the country (OECD, 2015, p. 39_[11]; 2018, p. 3_[366]).⁹⁸ These different services offered to investors can be used as tools to

encourage the adoption of responsible business practices and thereby promote responsible investments (OECD, 2015, p. 18_[11]).

Over recent years, investment facilitation has been at the core of Brazil's economic and investment policies. Not only did Brazil develop its own model of investment agreement – the Cooperation and Facilitation Investment Agreements (CFIAs) examined below – which focuses on facilitating investments, in addition to providing proper protection to foreign investors. It has also pushed for the development of international frameworks facilitating sustainable investment, notably by submitting two proposals to the World Trade Organization (WTO) on this topic in 2018 and in 2020 (Government of Brazil, 2020_[367]).

At the national level, the Foreign Trade Chamber (*Câmara de Comércio Exterior*, CAMEX) is the lead government entity in charge of formulating, adopting and implementing the policies and initiatives for investment promotion and facilitation in Brazil. Its Council of Ministers – the Trade/Commercial Strategy Council (*Conselho de Estratégia Comercial*) –, which is chaired by the President of the Republic, is the lead deliberative and policymaking entity in the field. The Ministry of Foreign Affairs and the Federal Brazilian Trade and Investment Promotion Agency – Apex-Brasil⁹⁹ – also play important roles in relation to the promotion and facilitation of foreign investments.

Over recent years, CAMEX has sought to improve the investment climate in Brazil notably by creating two entities: the National Investment Committee (*Comitê Nacional de Investimentos*, CONINV) in 2016, (Government of Brazil, 2021_[368]), and the Ombudsman for Direct Investment (*Ombudsman de Investimentos Diretos*, OID) for the purposes of implementing Brazil's CFIAs in 2019 (Government of Brazil, n.d._[369]). The NCP was also incorporated into CAMEX's structure in 2019 (Government of Brazil, 2021_[370]). The CONINV is in charge, among others, of preparing proposals regarding policies to promote and attract FDI and investment guidelines, as well as of coordinating the activities of the other government entities that have competencies related to investment (Government of Brazil, 2021_[368]). The Executive Secretariat of the CONINV and its Technical Group are managed by the Undersecretariat of Foreign Investments (*Subsecretaria de Investimentos Estrangeiros*, SINVE) of CAMEX's Executive Secretariat (*Secretaria-Executiva da Câmara de Comércio Exterior*, SE-CAMEX), which also acts as the OID and coordinates the NCP (Government of Brazil, 2021_[368]; 2019_[371]; 2021_[372]).

In August 2020, the CONINV issued a resolution approving Brazil's National Investment Plan (*Plano Nacional de Investimentos*). This two-year plan aims to reinforce the Brazilian economy following the COVID-19 crisis and also seeks to promote RBC-related policies in Brazil. It is divided into three pillars: (i) governance and transparency; (ii) investment facilitation; and (iii) regulatory improvement (Government of Brazil, 2020_[373]). Under the governance and transparency pillar, the Plan includes the following actions: analysing the Brazilian legislation on investment to determine whether it is in line with OECD recommendations and guidelines in preparation of Brazil's potential accession to the OECD; organising informative meetings between the CONINV and foreign investors; and contributing to the promotion of RBC policies in Brazil in order to attract and retain high quality investment and responsible investors (Government of Brazil, 2020_[373]). Regarding investment facilitation, the Plan provides for the improvement of the communication between the OID and foreign investors and the facilitation of visa processes for foreign workers and investors. Another action foreseen by the Plan is to continue to participate actively in the negotiations of the Investment Facilitation Agreement at the WTO, in an effort to improve institutional governance and the investment environment in Brazil. In line with the Plan, the Ministry of Foreign Affairs has been a strong advocate for the integration of RBC considerations in this Agreement, notably by advocating for the inclusion of a clause encouraging investors to adopt responsible business practices, inspired by the wording of a similar clause contained in Brazil's CFIAs (WTO, 2019_[374]).¹⁰⁰ Finally, under the regulatory improvement pillar, the Plan includes actions such as the preparation of a regulatory agenda for the improvement of the investment environment, aimed to ensure greater transparency, predictability and efficiency in the process of creating regulations on investment-related issues.

For its part, Apex-Brasil, as Brazil's trade and investment promotion agency, is the operating arm in charge of attracting FDI, in addition to promoting Brazilian products and services abroad and the internationalization of Brazilian companies (Government of Brazil, 2021^[375]) (see Section 4.2.2). Apex-Brasil provides services to investors, ranging from promoting investment opportunities for capital investors, offering tailored market and industry information and organising site visits in Brazil. The investors requesting the support of Apex-Brasil undergo a selection process based on a questionnaire completed by the investor regarding the background of the company and the investment project and public information gathered by Apex-Brasil (Government of Brazil, 2021^[376]). However, the observance of RBC principles and standards by investors and/or investment projects is not a requirement to benefit from these services.

For instance, Apex-Brasil participates in the implementation of Brazil's National Strategy for Impact Investments and Businesses (*Estratégia Nacional de Investimentos e Negócios de Impacto*, ENIMPACTO), which aims to promote capital investments in impact businesses, i.e., projects that generate positive socio-environmental effects and financial results in a sustainable manner (Government of Brazil, 2021^[377]). In line with this Strategy, Apex-Brasil has developed a list of capital investment opportunities, which includes projects with positive social effects or that promote sustainability, in order to put prospective foreign investors in contact with potential Brazilian partners. Additionally, Apex-Brasil seeks to attract FDI to priority sectors, such as renewable energy, life sciences and infrastructure, by developing a portfolio of companies in these sectors that can receive capital investment (*Portfólio de Empresas para Projetos de Investimentos*). This portfolio will be presented to prospective foreign investors during trade and investment missions in Brazil and abroad (Government of Brazil, n.d.^[378]). Consistent with ENIMPACTO, Apex-Brasil will select the companies included in the portfolio notably on the basis of their innovation capacity (Government of Brazil, n.d.^[378]) and their potential to develop technologies that generate positive social and/or environmental effects (Government of Brazil, 2021^[377]). Nevertheless, it is not clear whether ENIMPACTO's projects, the companies of Apex-Brasil's portfolio, or the prospective foreign investors, have to abide by RBC standards and principles, as it does not seem to be a requirement to be included in the list of capital investment opportunities or in the portfolio (Government of Brazil, n.d.^[379]).

By contrast, in 2019, Apex-Brasil prepared an Investment Guide to Brazil that is noteworthy because it includes several references to RBC (Government of Brazil, 2019^[380]). The Guide, which provides prospective investors all the essential information needed to invest successfully in Brazil, notably highlights Brazil's efforts in the fight against corruption, in particular with the Anti-Corruption Act of 2013 (Government of Brazil, 2019, pp. 6, 124^[380]). It includes a section on what foreign investors need to know regarding this law, explaining that it establishes direct civil liability of companies for corrupt acts, with sanctions ranging from fines to the compulsory dissolution of the company (Government of Brazil, 2019, p. 125^[380]). Moreover, in its description of the legal framework for investment, the Guide draws investors' attention to the Guidelines and the Brazilian NCP, which are expressly mentioned. It specifies where the NCP is located and explains that its mission is to assist with the observance of the Guidelines and the related Due Diligence Guidance, as well as to handle cases as a non-judicial grievance mechanism (Government of Brazil, 2019, p. 129^[380]). However, the Guide does not refer to any specific requirement related to RBC to receive support from Apex-Brasil or invest in Brazil. Neither does the Legal Certainty Guide of Foreign Investors in Brazil, also prepared by Apex-Brasil, mention the Guidelines nor the NCP (Government of Brazil, 2018^[381]).

Building on the inclusion of the promotion of RBC policies as one of the priority actions of its National Investment Plan, Brazil should continue its efforts to include RBC considerations in its investment promotion and facilitation policies and initiatives through concrete measures and ensure that they lead to the uptake of RBC in practice. The support it provides to foreign investors could notably be used to raise awareness about RBC principles and standards and promote their observance through different means. With the support of the NCP, Brazil could contemplate giving priority access to such support to investment projects carried out by foreign investors that observe these principles and standards.

The CONINV, through the implementation of the National Investment Plan, can play an active role in this regard. Building on the fact that this overarching Plan aims to promote RBC policies in Brazil, its implementation could be used as an opportunity to incorporate RBC considerations in Brazil's specific investment promotion and facilitation policies and initiatives through concrete measures that can have tangible effects in practice. This would help Brazil attract and retain high quality and responsible investors, which is key to reduce the risks of adverse impacts linked to investments and promote sustainable development. This, in turn, can contribute to reinforce the investment climate in the country and lead to broader value creation.

Apex-Brasil, as the country's trade and investment promotion agency, is in a privileged position to take concrete steps to reinforce the integration of RBC in Brazil's investment promotion and facilitation efforts (OECD, 2018, p. 102^[382]). Indeed, investment promotion agencies (IPAs) often coordinate many of the services offered to foreign investors and, as a result, are able to more easily link such services to the observance of RBC principles and standards. They can be given the mandate to attract responsible investments and, to that effect, they can integrate RBC considerations in the range of services, tools and mechanisms provided to foreign investors in the different investment phases, including in the framework of aftercare services (OECD, 2018, p. 5^[366]; 2018, p. 102^[382]; Volpe Martincus and Sztajerowska, 2019, p. 81^[383]). IPAs can also prioritise sectors and types of investments on the basis of RBC considerations (Volpe Martincus and Sztajerowska, 2019, p. 77^[383]). In addition, they can contribute to enhancing dialogue on investment between the public and private sectors, as well as with stakeholders, including local communities (OECD, 2018, pp. 89, 94-95^[382]). Likewise, the aftercare services provided by IPAs can also be an opportunity to incentivise established foreign investors to observe RBC standards (OECD, 2018, p. 56^[382]).

As a first step, and building on already existing initiatives, Apex-Brasil could further promote the observance of RBC principles and standards through its Guides for foreign investors. Such Guides could, for instance, expressly state that the Government expects foreign investors to abide by the Guidelines and encourage them to carry out due diligence in accordance with the Due Diligence Guidance for RBC and the sector-specific Due Diligence Guidance.

Taking a step further, Brazil could consider granting Apex-Brasil a mandate focusing on the attraction and prioritisation of responsible investment throughout the different investment stages. RBC considerations could, for instance, be included in the selection process undertaken prior to supporting an investor and/or investment project. On this basis, Apex-Brasil could exclude from its services those that have been identified as having an irresponsible business conduct, as done by the IPAs of certain OECD member countries (OECD, 2018, pp. 65-66^[382]). Apex-Brasil could also consider reinforcing the RBC criteria inserted in the selection process of the projects included in its portfolio of investment projects and using such portfolio to raise awareness among foreign investors about the Guidelines and the related Due Diligence Guidance.

At the post-establishment phase, Apex-Brasil could have recourse to its aftercare activities to incentivise established investors to follow the Guidelines and conduct due diligence on the basis of the process outlined in the various Due Diligence Guidance instruments. It could even consider building on the example of other IPAs that condition their aftercare services to the observance of the Guidelines. For instance, the Swedish IPA requires as a minimum that participants in trade and investment activities strive to adhere to the Guidelines (Business Sweden, n.d.^[384]). Apex-Brasil could also concentrate its aftercare activities, and the services aimed at retaining investments and/or encouraging their expansion, on foreign investors that have demonstrated having an RBC approach. In addition, Apex-Brasil could contemplate adopting measures when being notified that established investors do not abide by RBC principles and standards, like an important number of IPAs in OECD countries currently do (OECD, 2018, p. 82^[382]; Volpe Martincus and Sztajerowska, 2019, p. 108^[383]). This could entail denying support to the foreign investor in question and/or starting legal action (OECD, 2018, p. 82^[382]).

To support these different actions, the cooperation between Apex-Brasil and the Brazilian NCP could be developed, especially since the president of Apex-Brasil is an invited member of the CONINV, which is in charge of supervising the activities of the NCP (Government of Brazil, 2020^[385]; 2019^[57]). The NCP could be attributed a more important role in relation to investment promotion and facilitation policies. As recommended by the Guidelines, it could notably provide information, and in particular the results of any relevant NCP specific instance, to Apex-Brasil, so that the latter can then take it into consideration when selecting the investors or investment projects that may benefit from its services or support (OECD, 2011^[386]).¹⁰¹

Policy recommendation

20. Ensure that the overarching commitment to promote RBC policies enshrined in the National Investment Plan is reflected in continued efforts to include RBC considerations in specific investment promotion and facilitation policies and initiatives with concrete measures that lead to the uptake of RBC in practice.

Integrating RBC in Brazil's investment treaties

Investment treaties are another aspect of investment policy through which governments can leverage RBC and encourage businesses to observe RBC principles and standards. These economic instruments increasingly include considerations of relevance to RBC through different kinds of provisions. The first kind are provisions that deal, directly or indirectly, with areas covered by the Guidelines, such as the respect for human rights, the promotion of labour standards, the protection of the environment, or the fight against corruption and which reflect the signatories' commitments in relation thereto (hereinafter called sustainability provisions). The second kind are clauses through which the signatories commit to encourage businesses to observe internationally recognised RBC principles and standards (hereinafter called RBC clauses). These provisions and clauses can have various effects that contribute to enabling and promoting RBC.¹⁰²

First, sustainability provisions have the potential to support and reinforce governments' policies and legal frameworks in areas covered by the Guidelines by buttressing the adoption of domestic laws and regulations in the human rights, labour, environmental or anti-corruption fields and their enforcement (Gaukrodger, 2021, pp. 10, 84, 86-94^[387]). In this way, they contribute to the development of a legal and regulatory framework that enables RBC. This is notably the case of provisions through which the signatories commit to incorporating and disseminating in their domestic legal frameworks internationally recognised principles and standards in these fields and/or to enforce related domestic laws and regulations. This is also the case of the provisions that seek to preserve the signatories' right to regulate in areas covered by the Guidelines and which protect their policy space by allowing them to adopt new laws, regulations and policies aimed at pursuing public interest objectives without legal risks (Gaukrodger, 2021, pp. 84, 96-100^[387]). Provisions that prohibit the signatories from lowering or weakening their laws and regulations in these same areas to attract investment also help prevent backsliding in these areas. Finally, sustainability provisions can facilitate access to remedy for victims of business-related adverse impacts. By promoting regulatory cooperation and/or intergovernmental consultations on matters arising in areas covered by the Guidelines, they can lead to resolve RBC issues and contribute to remedy such impacts.

Second, RBC clauses can directly promote the observance of RBC principles and standards and the adoption of responsible business practices by 'speaking to business' (Gaukrodger, 2021, pp. 84, 102-108^[387]). These clauses contribute to communicating and clarifying the governments' expectations that businesses adopt responsible business practices. They also often highlight the specific internationally

recognised RBC principles and standards that the latter should observe in general, but also sometimes in relation to due diligence.

For over two decades, Brazil declined to conclude or to ratify traditional bilateral investment treaties (BITs) due to strong political opposition and constitutional concerns (Government of Brazil, 2015^[388]). However, in response to the increasing internationalisation of Brazilian companies and interest in giving additional protection to Brazilian investments abroad, in the 2010s Brazil started developing its own model of cooperation and facilitation investment agreement (CFIA) (see Box 4.6).

Box 4.6. The development of Brazil's model CFIA

Although Brazil signed 14 BITs in the 1990s, these BITs were never ratified by the National Congress, either because they were not submitted to it or because they were withdrawn prior to the voting due to strong political opposition and constitutional concerns. Moreover, no causal link was identified between adopting BITs and attracting FDI given that Brazil, despite not having ratified any BIT, was the leading recipient of FDI in South America.

The debate over investment treaties resurfaced in the early 2010s, with the increasing internationalisation of Brazilian companies. In 2012, CAMEX created the Technical Group for Strategic Studies of Foreign Trade (*Grupo Técnico de Estudos Estratégicos de Comércio Exterior*, GTEX), responsible for conducting studies and preparing proposals on foreign trade policies with a view to enhancing trade and investment. As part of its mandate, the GTEX recommended elaborating a new type of investment agreement that would focus on increasing investment flows between the signatories, which led to the development of a model investment agreement centered on cooperation and investment facilitation, the model Cooperation and Facilitation Investment Agreement (CFIA). This model was designed taking into account discussions on investment treaties held in international organizations and, in particular, at the OECD in the framework of the Investment Committee, the Freedom of Investment Roundtables, and the Working Group on Responsible Business Conduct, as well as extensive consultations with the Brazilian business associations and the academia. It was also inspired by experiences from other countries, such as the South Korean Investment Act. The model CFIA was conceived as an alternative to traditional BITs by protecting the signatories' right to regulate, excluding ISDS to avoid granting preferential treatment to foreign investors, and providing tools for constant coordination between the signatories – thus helping preventing disputes – and for investment facilitation. RBC was also a major component in the development of the model CFIA, the rationale being to facilitate investments while, at the same time, incentivising foreign investors to contribute to the sustainable development of the host country and to adopt responsible business practices. This is reflected in the various sustainability provisions and the detailed RBC clause contained in the model CFIA.

Sources: (Government of Brazil, 2021^[389]; 2015, pp. 5, 6, 7, 11^[388]) (Morosini, F. ; Sanchez Badin, M., 2015^[390]) (Vieira Martins, J., 2017^[391]) (WTO, 2013, p. 37^[392]).

Brazil has now signed multiple investment agreements based on the CFIA model,¹⁰³ including: 13 CFIAs;¹⁰⁴ the Intra-Mercosur Cooperation and Facilitation Investment Protocol signed in 2017 (2017 Intra-Mercosur CFIP); and the Brazil-Peru Economic and Trade Expansion Agreement (ETEA), which includes an investment chapter based on the CFIA model (2016 Brazil-Peru ETEA). Only the 2017 Intra-Mercosur CFIP and the CFIAs signed with Mexico and Angola have entered into force for the moment. The others are currently in the process of being ratified either by Brazil and/or its counterpart.

While none of the BITs signed by Brazil in the 1990s included considerations of relevance to RBC (Gordon, Pohl and Bouchard, 2014, p. 13^[393]), the CFIAs¹⁰⁵ place them at their core through several sustainability provisions and a detailed RBC clause. In addition to recognising in their preamble the essential role of

investment in promoting sustainable development and reaffirming the right of the signatories to regulate, the CFIAs contain various sustainability provisions that can have the effect of reinforcing the signatories' policies and domestic legal frameworks in some of the areas covered by the Guidelines and, thereby contribute to the development of a legal and regulatory framework that enables RBC.

First, the signatories guarantee that they shall not lower their labour, environmental or health legislations to attract and/or retain investment.¹⁰⁶ This provision is further reinforced – except in the 2015 Brazil-Chile CFIA – by the possibility of having government consultations in relation thereto. Thus, if a signatory considers that another signatory has relaxed or weakened its environmental legislation to encourage investments in its territory, they shall engage in consultations to address the situation. These provisions can act as a deterrent and prevent a race to the bottom in areas covered by the Guidelines.

Moreover, almost all of the CFIAs preserve the signatories' right to regulate by providing that nothing in the agreement should prevent them from adopting or enforcing non-discriminatory measures aimed at ensuring that investment activities are undertaken in accordance with their environmental, health and labour legislations, provided such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction.¹⁰⁷ These provisions, albeit in a limited manner, contribute to protecting policy space and ensuring that new laws, regulations, and policies aimed at pursuing public welfare objectives can be adopted by the signatories without legal risks.

To further protect the signatories' policy space, the CFIAs exclude certain controversial provisions present in traditional BITs, such as those on fair and equitable treatment or indirect expropriation. These provisions are increasingly used by investors to challenge non-discriminatory regulatory measures through ISDS claims (Gaukrodger, 2017, pp. 16-17_[394]), and have hence been perceived as affecting the signatories' right to regulate in the public interest. Instead, the CFIA provisions regarding the treatment of investments are strictly limited to due process and protections against direct expropriation, discrimination and denial of justice. Thus, under the CFIAs, non-discriminatory regulatory measures adopted to protect legitimate public interest or public purpose objectives such as public health and the environment cannot be considered as a violation of the fair and equitable treatment standard or being tantamount to expropriation, as further clarified through an express mention in the 2019 Brazil-United Arab Emirates CFIA¹⁰⁸ and the 2020 India-Brazil CFIA,¹⁰⁹ respectively.

In an effort to comply with the United Nations Convention against Corruption and the Inter-American Convention against Corruption (Government of Brazil, 2018, p. 19_[381]), most of the CFIAs also include specific provisions aimed to combat corruption. These provisions require the signatories to adopt or maintain measures to prevent and fight corruption, money laundering and terrorism financing.¹¹⁰ In a similar logic, only licit investments are considered protected investments.¹¹¹

In addition to these sustainability provisions, the CFIAs also include an RBC clause to encourage investors to adopt responsible business practices. This clause is structured in two parts. It first affirms that investors and their investments shall make their best efforts to maximise their contribution to the sustainable development of the host state and the local communities by adopting a high level of socially responsible practices, based on RBC principles and standards.¹¹² The RBC clause then lists these principles and standards¹¹³ – with some expressly referring to the Guidelines¹¹⁴ –, which include, among others: promoting economic, social and environmental progress in order to achieve sustainable development; respecting the human rights of the persons involved in the company's activity; strengthening local capacity building through close cooperation with local communities; adopting and implementing good corporate governance practices; encouraging, when possible, business partners, including direct providers and subcontractors, to apply RBC principles; etc.¹¹⁵

The CFIAs are also noteworthy because the dual institutional governance structure they create to promote cooperation and communication between the signatories could potentially be used to contribute to prevent business-related adverse impacts and/or facilitate access to remedy for victims of such impacts. This structure is comprised of two institutions: the Ombudsman (or Focal Point) and the Joint Committee. In

Brazil, the OID was created to act as the Ombudsman for the purposes of CFIAAs.¹¹⁶ The OID is thus the first respondent for foreign investors under the CFIAAs,¹¹⁷ acting as a “single window” for information and assistance and as communication channel between the signatories and the private sector (Government of Brazil, n.d.^[369]; 2018, p. 29^[381]). It is in charge, among others, of providing support and guidance to investors from the other signatory and of working with the Joint Committee to prevent investment disputes and address investors’ complaints in an expeditious manner.¹¹⁸ The CFIAAs also provide that the OID interact with the relevant government authorities at the federal, state and municipal levels to assess requests and inquiries received from the authorities and investors of the other signatory about foreign investment, and recommend actions to improve the investment environment through amendments of legislations or administrative procedures.¹¹⁹ The OID is also responsible for dealing with Brazilian investors’ inquiries regarding their investments in the territory of the other signatory. For its part, the Joint Committee, composed of representatives of the signatories, is in charge of monitoring the implementation and execution of the CFIAA and coordinating the implementation of the mutually agreed cooperation and facilitation agendas foreseen under the agreement.¹²⁰ It is also responsible for addressing any matter concerning protected investments in an amicable manner through the participation in its relevant meetings of the investor and the governmental and non-governmental entities involved in the matter.¹²¹ However, to date, the concrete functioning of this dual institutional governance and its potential effects in practice still remain to be seen. The OID was only created recently in 2019 and, as just three CFIAAs are currently in force, the Joint Committees that have been established so far are, for the time being, in the process of elaborating their respective internal regulations and have not yet started operating.

Overall, Brazil’s investment treaty network is remarkable in terms of inclusion of considerations relevant to RBC, as it was one of the main elements taken into consideration during the development of the model CFIAA. The rationale was to have recourse to the services granted to the investors through the CFIAAs, especially in relation to investment facilitation, to encourage them to adopt responsible business practices and contribute to the sustainable development of the host country. However, while Brazil’s CFIAAs include considerations of relevance to RBC through various sustainability provisions and an RBC clause, these provisions and clause are not subject to dispute resolution mechanisms. The large majority of CFIAAs explicitly exclude them from SSDS, which is the formal dispute resolution mechanism foreseen under the CFIAAs (as ISDS is not included). The CFIAAs signed with Mexico and Morocco are the only agreements that do not explicitly exclude the sustainability provisions from the scope of SSDS. This exclusion is, nonetheless, consistent with the CFIAAs’ alternative approach to traditional BITs (Government of Brazil, 2015, p. 11^[388]). Indeed, Brazil’s model CFIAA introduces important changes, such as rebalancing investors’ and States’ rights and obligations and preserving the State’s right to regulate, but only through sustainability provisions or RBC clauses which cannot be enforced through SSDS (Government of Brazil, 2015, p. 11^[388]).

Moreover, some CFIAAs include less considerations of relevance to RBC than others do. For instance, the 2015 Brazil-Mexico CFIAA does not guarantee that the signatories will not lower their labour, environmental or health legislations to attract and/or retain investment. Likewise, the 2019 Brazil-UAE CFIAA excludes investments in natural resources of its scope,¹²² despite the environmental concerns that those investments may raise. Moreover, only a few CFIAAs include specific provisions aimed to fight corruption and only three CFIAAs include express references to the Guidelines, while none of them mentions the Brazilian NCP. In fact, the role played by the Brazilian NCP in the institutional governance established by the CFIAAs remains uncertain, although it is housed by CAMEX, which also houses the OID.

Brazil should consider reinforcing the integration of considerations that contribute to enabling and promoting RBC in its investment policies, including by continuing its efforts to systematically insert sustainability provisions and RBC clauses in its CFIAAs during negotiations. The cooperation and facilitation agendas foreseen under the CFIAAs could also be used as a means to promote the development of government policies that enable responsible business practices among investment partners, with the support of the NCP. In addition, Brazil should seek to develop ways

to ensure that the CFIA and their RBC clauses are implemented and to monitor such implementation to encourage the observance by investors of the RBC principles and standards enshrined in the OECD's RBC instruments and assess the uptake of these principles and standards in practice, with the support of the NCP.

The systematic inclusion of considerations relevant to RBC in Brazil's investment agreements can contribute to reinforcing the policies and domestic legal frameworks of the signatories in the areas covered by the Guidelines and thereby the development of legal and regulatory frameworks that enable RBC. The agendas for further cooperation and facilitation foreseen under the CFIA – which are intended to be living and dynamic documents with commitments that will evolve along with the signatories' common development strategies (Government of Brazil, 2015, p. 11^[388]) – could be used in this sense. The signatories could, for instance, include initiatives to promote the adoption of government policies underpinning RBC in such agendas and the NCP could bring support in this regard.

The CFIA, via an explicit reference in their RBC clauses, could also be used to bring investors' attention to the Guidelines and encourage them to observe their recommendations, in particular when Brazil's counterpart has adhered to the Declaration on International Investment and Multinational Enterprises. They could also serve to raise their awareness about the OECD Due Diligence Guidance for RBC and the sector-specific due diligence guidance through express mentions and incentivise investors to follow the different steps of the due diligence process as conceived in the OECD's RBC instruments. For this purpose, ensuring that the CFIA and their RBC clauses are implemented would be key, as well as developing ways to monitor how the RBC clauses promote the uptake of RBC principles and standards among investors in practice.

Additionally, the dual institutional governance structure of the CFIA could serve to prevent potential business-related adverse impacts or facilitate access to remedy for victims of adverse impacts. On the one hand, building on its communication function, the OID could be used to allow government authorities and foreign investors to communicate on potential adverse impacts and thereby find solutions to prevent them from occurring. It could also be envisaged that the OID, with the support of the NCP, formulate recommendations to highlight RBC-related issues and encourage the observance of the RBC clause by foreign investors. On the other, the proceedings before the Joint Committee could be used to address RBC-related matters. Indeed, the Joint Committee may address any issue of interest to a specific investor submitted by a signatory¹²³ and, unlike for SSDS, sustainability provisions are not excluded from the scope of these proceedings. This means that, via the Joint Committee, the signatories can potentially consult on all issues related to the observance of these provisions and take any necessary measures. It could therefore be contemplated that, through these high-level consultations, the Joint Committee work to resolve any RBC-related issue and prevent potential adverse impacts or facilitate access to remedy for victims of real adverse impacts.

Finally, the implementation of the CFIA could be used to reinforce the role of the Brazilian NCP. In light of its other responsibilities with respect to investment, the NCP could assume a key function in the institutional governance structure of the CFIA. For instance, it could work with the OID to identify whether investors seeking the support of the OID have adopted responsible business practices. Given that the communication channels established between the private sector and the domestic authorities under the CFIA could be crucial to prevent business-related adverse impacts, the NCP could also participate in this structure to provide the Joint Committee with relevant information on RBC-related issues. This seems even more necessary given that said structure does not integrate a channel of communication with civil society and that the NCP could provide valuable information on any grievances concerning investors.

Policy recommendation

21. Reinforce the integration of considerations that can contribute to enable and promote RBC in Brazil's investment policies, including by systematically inserting, implementing and monitoring sustainability provisions and RBC clauses in CFIA, and use the cooperation and facilitation agendas foreseen under the CFIA to promote RBC among investment partners, with the support of the NCP.

4.2.2 Integrating RBC in Brazil's trade policies

Trade policies are another type of economic policies that can leverage RBC. As for investment, through their internal policies aimed at promoting trade and the trade agreements they conclude, governments can encourage their national exporters or the companies that carry out trade activities in relation to their territories to observe RBC principles and standards and adopt responsible business practices.

Integrating RBC in Brazil's trade promotion policies

Governments can promote trade and exports in many different ways. They can provide financial support to national exporters competing in international markets through Export Credit Agencies (ECAs). They can organise trade missions, which allow representatives of domestic firms wishing to export to travel overseas with government officials to promote their businesses. They can also carry out capacity building activities and enhance access to information and networks through embassies (OECD, 2018, p. 55^[395]). These different types of support that governments bring to exporters can constitute as many avenues to incentivise businesses to abide by RBC principles and standards (OECD, 2018, p. 56^[395]).

In Brazil, several entities, including CAMEX, provide financial support to Brazilian exporters, while Apex-Brasil assists them in developing their activities abroad through non-financial support.

RBC in Brazil's financial support to trade activities

The types of projects supported by ECAs can sometimes entail risks of corruption and bribery, as well as of potential social and environmental adverse impacts. It is therefore important that they take the necessary measures to mitigate these risks, notably by including RBC considerations in their policies and practices.

In Brazil, CAMEX is responsible for establishing policies to promote exports through export credit support, which is provided in the form of export credit financing (i.e., direct lending) and/or coverage of the risks of the operations (i.e., export credit insurance) (Government of Brazil, 2021^[396]). Direct lending can be provided either through the Export Financing Program (*Programa de Financiamento às Exportações*, PROEX) of the National Treasury (*Secretaria do Tesouro Nacional*, STN), operated by the Bank of Brazil (*Banco do Brasil*), or through lines of credit of the Brazilian Development Bank (*Banco Nacional do Desenvolvimento*, BNDES). Since March 2021, all operations under the PROEX are assessed and approved by Banco do Brasil (Government of Brazil, 2021^[397]). The Export Finance and Guarantee Committee (*Comitê de Financiamento e Garantia das Exportações*, COFIG) monitors the PROEX and its overall performance under the supervision of CAMEX (Government of Brazil, 2021^[398]). In turn, export credit insurance (*Seguro de Crédito à Exportação*, SCE), which is funded by the Export Guarantee Fund (*Fundo de Garantia à Exportação*, FGE), is provided by the Ministry of Economy through the Brazilian Guarantees and Fund Managements Agency (*Agência Brasileira Gestora de Fundos Garantidores e Garantias*, ABGF). The latter operates the SCE in accordance with the Ministry of Economy's guidelines, with whom it is under contract. Export credit insurance operations under the SCE are assessed by ABGF,

and approved by COFIG or SE-CAMEX, for operations of less than USD 20 million (Government of Brazil, 2021_[396]).

The OECD Recommendation of the Council on Bribery and Officially Supported Export Credits (the Recommendation on Bribery and Officially Supported Export Credits) encourages its Adherents to implement measures to deter bribery in the export transactions that they support (OECD, 2019_[399]). Brazil is an Adherent to this instrument, as it was to the preceding Recommendation, which it adhered to in 2015. In that year, Brazil created an Anti-Corruption Working Group within COFIG to develop compliance guidelines and procedures for official export credits or export credit insurance (Government of Brazil, 2018, p. 6_[400]).

In 2018, COFIG's Anti-Corruption Working Group issued a Manual on Compliance Procedures for the Official Support System for Exports (*Manual de Procedimentos de Compliance para o Sistema de Apoio Oficial à Exportação*) (Government of Brazil, 2018_[400]), detailing the due diligence that must be undertaken prior to providing export credit support. These guidelines and procedures are to be observed by SE-CAMEX, Banco do Brasil, the ABGF, and the STN when granting export credits or export credit insurance (Government of Brazil, 2018, p. 6_[400]).

The due diligence process developed by COFIG's Anti-Corruption Working Group applies to both export credit financing (in the framework of the PROEX) and insurance (under the SCE), although some steps differ depending on the type of operations. In both cases, the process begins with a verification of whether the exporter is listed on the Registry of Ineligible and Suspended Companies (*Cadastro de Empresas Inidôneas e Suspensas*, CEIS) or the National Registry of Punished Companies (*Cadastro Nacional das Empresas Punidas*, CNEP), which includes companies that have been sanctioned under Brazil's anti-corruption laws (Government of Brazil, 2018, p. 21_[400]) (see above, section 3.4.2). Should the exporter be listed in either of these registries, the request for official export support is automatically denied by the responsible entity, without any further review (Government of Brazil, 2018, p. 22_[400]).

Following this first verification, the requesting exporter has to then sign the Exporter's Declaration of Commitment (*Declaração de Compromisso do Exportador*), which refers expressly to the OECD Anti-Bribery Convention and to the Recommendation of the Council on Bribery and Officially Supported Export Credits (Government of Brazil, 2021_[401]). The exporter declares that it has not and will not engage in any corrupt practices, that it will communicate any supervening fact that may compromise this statement, and that it is aware of the potential consequences should any illicit activity be found, including the interruption of the support, the obligation to reimburse the amounts received and not being able to obtain further support (Government of Brazil, 2021_[401]). The exporter then also has to fill out a Compliance Form (*Formulário do Exportador*), used to verify whether there are any red flags regarding the company and/or the operation for which support is requested (Government of Brazil, 2021_[401]). For export credit financing in the framework of the PROEX, this form is required for all operations using the interest rate support scheme, as well as for operations over USD 2 million with public debtors (Government of Brazil, 2018_[400]). Depending on the answers provided by the exporter in the Compliance Form, it may have to complete other additional forms, such as a conflict of interest form (*Formulário sobre Conflito de Interesses*) (Government of Brazil, 2021_[401]).

For all requests of export credit financing in the framework of the PROEX, given that the program is operated by Banco do Brasil on behalf of the STN, exporters are treated as customers of the bank and subject to its compliance policies. The information provided by the exporter in the Declaration of Commitment and the Compliance Form is therefore analysed by Banco do Brasil following its own compliance policy (see above). Likewise, should an exporter seek direct lending from BNDES, its regular compliance policies apply (see above). As to the requests for export credit insurance under the SCE, the ABGF is in charge of assessing the information provided by the exporter in the Compliance Form. To do it relies on a risk matrix for anti-corruption and seeks information from external sources, such as the ESG Index, Transparency International's Corruption Perception Index, as well as listings of ineligible firms from

international financial institutions, and other databases in order to gather relevant information on the exporter, its shareholders and administrators, commercial agents, buyers, suppliers and affiliated companies (Government of Brazil, 2018, p. 25^[400]). The results of this integrity due diligence for SCE operations are then submitted to SE-CAMEX. Based on this results and its own analysis, SE-CAMEX determines whether (i) there is no compliance impediment to proceed with the transaction; (ii) the transaction should be conditioned to the adoption of risk mitigating measures and monitoring; (iii) the transaction should not be granted support due to the findings of illicit actions and/or high compliance or reputational risks; or (iv) whether enhanced due diligence is required prior to a final decision (Government of Brazil, 2018, p. 27^[400]; Government of Brazil, 2018^[402]). It then transmits its conclusions to ABGF, which completes the analysis of the operation, including the technical analysis of the risk/price, and forwards it for final assessment to COFIG, or SE-CAMEX again in the case of operations with a value of less than USD 20 million. Following their approval, all official export credit support operations (either through direct lending or insurance) continue to be monitored. Should there be any corrupt acts related to these operations, the support can be withdrawn and exporters subject to fines (Government of Brazil, 2018, p. 28^[400]).

The OECD Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence (the Common Approaches) encourages its Adherents to mitigate the risks of social and environmental adverse impacts including by promoting the Guidelines via their ECAs and taking the outcomes of NCP cases into consideration during project reviews (OECD, 2016^[403]). Although Brazil has not adhered to the Common Approaches, it has already taken some steps to begin implementing it. According to the Brazilian Government, it has been following the discussions of the Working Party on Export Credits and Credit Guarantees (the 'Export Credits Group' or ECG) and aims to implement the Common Approaches in the coming years.

For the time being, Banco do Brasil and BNDES have developed their own policies and guidelines to address social and environmental risks, which they apply when providing official export credit financing through direct lending. As explained above, Banco do Brasil observes the Equator Principles and undertakes socio-environmental compliance evaluations as part of its risk analysis for project financing above a certain threshold (Banco do Brasil, 2021, pp. 173, 241^[327]; 2020^[328]). In turn, BNDES categorises all projects exceeding R\$10 million based on their potential socio-environmental risks. Unless the project presents minimal environmental risks, BNDES requires that an environmental and social due diligence study be carried out to determine whether it can provide financing (BNDES, n.d.^[338]) (see above). This departs from the practices for export credit insurance under the SCE, for which beyond the thorough integrity due diligence described above, no social or environmental due diligence is carried out prior to approval. A common point between these practices, however, is that, at this stage, none of the Brazilian ECAs takes into account the outcomes of NCP cases during their project review, even though the NCP is located within CAMEX.

Brazil should consider reinforcing the inclusion of RBC considerations in the financial support granted to trade activities, notably to mitigate the potential environmental and social risks that might be attached to such operations. In particular, Brazil could contemplate adhering to the Common Approaches and extending the due diligence undertaken prior to providing official export support to also cover other areas of the Guidelines beyond integrity. The financial support granted to exporters could also be used by Brazil to promote RBC principles and standards among Brazilian exporters, for instance by prioritising or conditioning such support to the compliance with these principles and standards, with the support of the NCP.

The Recommendation on Bribery and Officially Supported Export Credits encourages its Adherents to promote RBC among the parties involved in the process of official export credit support (OECD, 2019^[399]). Brazil could consider including more RBC considerations in its official export support policies, for instance, by including references to the Guidelines, the Due Diligence Guidance for RBC and the sector-specific Due Diligence Guidance, in the documentation provided to exporters seeking official export support.

Moreover, Brazil could consider continuing its efforts to work towards the implementation of the Common Approaches and following the work of the ECG to reinforce its due diligence process prior to providing official export credit support by extending it to other areas covered by the Guidelines, notably to mitigate potential environmental and social risks. Brazil could also consider taking a step further by adhering to the Common Approaches, which would entail, for example, taking into consideration any statements or reports from the Brazilian NCP in the framework of export credit support. To this effect, Brazil could contemplate consulting or involving the NCP in the due diligence process carried out prior to granting any official export support. In this regard, it could follow the example of other ECAs that work closely with the NCP, in particular by exchanging information about ongoing or future projects (OECD, 2017, p. 20^[404]).

Policy recommendation

22. Reinforce the inclusion of RBC considerations in Brazil's financial support to trade activities by adhering to the Common Approaches, and leverage the financial support granted to Brazilian exporters to promote RBC, in cooperation with the NCP.

RBC in Brazil's non-financial support to trade activities

Non-financial support granted by governments to exports can also be used to promote RBC standards with domestic businesses wishing to export abroad and encourage them to adopt responsible businesses practices. Apex-Brasil is the Brazilian government entity in charge of granting non-financial support to national exporters and promoting the internationalisation of Brazilian companies.

Apex-Brasil provides a wide range of services to Brazilian companies, including access to international fairs, trade missions and marketing in large retail chains abroad (Government of Brazil, n.d.^[405]). It also constitutes a valuable source of information that helps them promote their commercial activities abroad and identify business opportunities and trends in global markets (Government of Brazil, n.d.^[406]). Apex-Brasil also offers Brazilian companies an Export Qualification Program (*Programa de Qualificação para Exportação*, PEIEX) to help them launch their export activities and guide them through the process (Government of Brazil, Apex-Brasil, n.d.^[407]). The only prerequisite to participate in these trade promotion actions is to already have an export activity. Apex-Brasil does not include any requirements pertaining to RBC in the support granted to exporters (Government of Brazil, n.d.^[405]).

Notwithstanding the above, Apex-Brasil has entered into cooperation agreements with other state entities such as the CGU to combat corruption, bribery and extortion in export activities. As a result of this cooperation, Apex-Brasil and the CGU have published guides on 'Brazilian Companies Abroad – Relationships with Foreign Public Officials' (*Empresas Brasileiras no Exterior: relacionamento com a Administração Pública Estrangeira*) (Government of Brazil, 2015^[408]) and 'Brazilian Companies Abroad – Aiming at Integrity in the Business Environment' (*Empresas Brasileiras no Exterior: em pro da integridade no ambiente empresarial*) (Government of Brazil, 2019^[282]), which promotes the development and implementation of compliance programs by Brazilian companies operating abroad. Both of these guides expressly refer to the Guidelines as well as to the OECD Recommendation on Bribery and Officially Supported Export Credits and highlight the importance of adopting compliance programmes to prevent bribery and corrupt practices (Government of Brazil, 2019, p. 10^[282]).

In addition, Apex-Brasil adhered to the UN Global Compact in 2018 in an effort to reinforce Brazil's image abroad in matters of sustainability and CSR (Government of Brazil, 2019^[409]). Apex-Brasil also launched its compliance program in 2019, which submits its partners to an integrity due diligence that can determine the continuity of the relationship if it is not satisfactory (Government of Brazil, 2019, p. 12^[410]). However, for the moment, there have been limited concrete actions taken as a result of the programme, which is still at its early stages of implementation.

Conscious of the importance of sustainability in global markets, Apex-Brasil has also developed initiatives to promote sustainability in Brazilian companies to further increase their attractiveness. For instance, the project ‘Innovative and Sustainable Business in Global Value Chains’ was developed with the Brazilian Centre for Sustainability Studies to help Brazilian SMEs in their internationalisation efforts by promoting their sustainable products and services with high added value in foreign markets (Government of Brazil, n.d.^[411]).

However, beyond these initiatives on compliance and sustainability, Apex-Brasil’s activities are rarely focused on promoting RBC practices and standards.

Brazil should consider developing a strategy to place RBC considerations at the centre of Apex-Brasil’s activities. The non-financial support granted to exporters could be used to promote their adoption of responsible business practices. Brazil could also consider enhancing the cooperation between the NCP and Apex-Brasil.

Brazil could consider promoting RBC through the non-financial support it gives to companies wishing to export. It could, for instance, bring the Guidelines to exporters’ attention when they participate in Apex-Brasil’s trade promotion activities. In Germany, for example, the registration form to participate in high-level trade missions refers expressly to the Guidelines and reaffirms the Federal Government’s expectation that German companies acting abroad respect responsible business conduct (OECD, 2018, p. 19^[412]). Brazil could also consider going a step further, as the Netherlands has done, by requiring exporters to observe the Guidelines in order to have access to non-financial support. This could entail reserving trade missions, or the access to information and/or networks, to companies that have adopted responsible business practices. In the case of the Netherlands, companies are required to demonstrate adherence to the Guidelines in order to participate in trade missions (Government of the Netherlands, 2020^[413]). Apex-Brasil could also continue its efforts of promoting compliance programs in Brazilian companies abroad and extend its internal compliance program for it to apply to all companies that benefit from its services.

The coordination between Apex-Brasil and the NCP could also be developed. The information provided by the NCP – as well as the results of any relevant NCP specific instance – could also be taken into consideration in the selection process of the companies that benefit from this non-financial support. A number of countries already do so and Brazil could follow their examples. For instance, in 2020, 15 Adherents to the Guidelines reported having communicated about NCP specific instances to officials responsible for trade missions.

Policy recommendation

23. Develop a strategy to place RBC considerations at the centre of Apex-Brasil’s activities, notably through enhanced cooperation between the NCP and Apex-Brasil.

Integrating RBC in Brazil’s trade agreements

Trade agreements are another component of trade policy through which governments can incentivise businesses to adopt responsible business practices. Like investment treaties (see Section 4.2.1), these economic instruments increasingly include sustainability provisions (i.e., provisions that deal, directly or indirectly, with areas covered by the Guidelines, such as the respect for human rights, the promotion of labour standards, the protection of the environment, or the fight against corruption and reflect the signatories’ commitments in relation thereto), as well as RBC clauses (i.e., clauses through which the signatories commit to encourage businesses to observe internationally recognised RBC principles and standards). These provisions and clauses can have various effects that contribute to enabling and promoting RBC, as explained above in relation to investment treaties (see Section 4.2.1).

The above is of particular relevance for Brazil as it seeks to further insert itself in international trade, with the objective of increasing the productivity and competitiveness of its economy (Government of Brazil, 2021^[414]). As Brazil is currently looking to expand its network of free trade agreements (FTAs) and is engaged in negotiations to this effect (Government of Brazil, 2021^[414]), seeking to integrate considerations of relevance to RBC in these future trade agreements is key. It can contribute to the construction of an enabling environment for RBC in the country, which would in turn help position Brazil as a safe place to source from, thereby facilitating the insertion of Brazilian companies in GVCs. This is all the more important in a global economic context marked by the COVID-19-crisis and related supply chains disruptions, and in which Brazil's trade partners are paying increased attention to RBC-related issues.

As of June 2021, Brazil had concluded around 20 trade agreements¹²⁴ – mostly with member countries of the Latin American Association for Integration (*Asociación Latino-Americana de Integración*, ALADI) and in the framework of the Southern Common Market (*Mercado Común del Sur*, MERCOSUR). It was also in the process of concluding some additional agreements with LAC partners, as well as with countries from other parts of the world (Government of Brazil, 2021^[414]; n.d.^[415]; 2020^[416]).¹²⁵ In line with a general trend (Gaukrodger, 2021, pp. 85-94^[387]), the incorporation of sustainability provisions and RBC clauses in Brazil's trade agreements has progressed with the passing of time, but it varies between agreements as regards nature, scope, and binding effects. Brazil's trade agreements network includes both partial scope and more comprehensive trade agreements, with varying degrees of integration of sustainability provisions and RBC clauses. The first group corresponds to the trade agreements concluded by Brazil in the framework of the ALADI and the MERCOSUR, which are currently in force. The second consists of comprehensive free trade agreements (FTAs) negotiated recently by Brazil, be it bilaterally or as a member of the MERCOSUR, and which had not yet entered into force at the time of writing (see Box 4.7).

Box 4.7. Evolution over time of the inclusion of considerations relevant to RBC in Brazil's trade agreements

Up until recently, Brazil had only concluded trade agreements in the framework of the ALADI and the MERCOSUR. The ALADI is an intergovernmental organisation created in 1980 and comprised of thirteen LAC countries.¹ It has created a zone of economic preferences through different types of trade agreements, the ultimate goal being to establish a Latin-American common market. As to the MERCOSUR, it is a regional integration process launched in 1991 by Argentina, Brazil, Paraguay and Uruguay, and subsequently joined by Venezuela and Bolivia.² It has established a common market whose main objective is to generate business and investment opportunities through trade agreements. The trade agreements concluded by Brazil as a member of the ALADI and the MERCOSUR are mainly partial scope agreements (termed economic complementation agreements), which cover specific trade matters but do not include all trade disciplines. As such, they contain very few sustainability provisions and no RBC clauses at all. The absence of considerations relevant to RBC in Brazil's trade agreements will most likely change in the near future. As a result of the country's strategy to extend its insertion in international trade, Brazil has recently entered into the negotiation of several FTAs, either bilaterally or in the framework of the MERCOSUR, with various LAC countries, the European Union and the European Free Trade Association, as well as with Canada and Singapore. These comprehensive trade agreements mark a shift in the inclusion of sustainability provisions and RBC clauses in Brazil's network of trade agreements. If they are signed and ratified, detailed sustainability provisions, as well as RBC clauses, will make their appearance in this network for the first time.

Notes:

¹ Argentina, Bolivia, Brasil, Chile, Colombia, Cuba, Ecuador, México, Panamá, Paraguay, Perú, Uruguay y Venezuela.

² Venezuela is currently suspended in all the rights and obligations inherent to its status as a member country of the MERCOSUR and Bolivia is still in the process of accession.

Sources: (ALADI, n.d.^[417]) (Government of Brazil, 2021^[414]) (MERCOSUR, n.d.^[418]; n.d.^[419]).

RBC in Brazil's trade agreements in force

Brazil's trade agreements concluded in the framework of the ALADI and the MERCOSUR and currently in force almost do not integrate considerations of relevance for RBC, even under the form of preamble aspirational declarations (see Table 4.8).¹²⁶ The only relevant provision that can be found in the trade agreements belonging to this first group is not a detailed one.¹²⁷ It is a direct or indirect reference to Article XX of the General Agreement on Tariffs and Trade (GATT),¹²⁸ which allows the signatories to enforce measures necessary to protect human, animal or plant life or health and/or relating to the conservation of exhaustible natural resources. By doing so, this provision seeks to protect the signatories' right to regulate in the public interest and can contribute to reinforce their domestic legal frameworks in areas covered by the Guidelines, including by protecting their policy space and ensuring that new laws and regulations in these areas can be adopted without legal risks.

RBC in Brazil's trade agreements not yet in force

By contrast, the few FTAs negotiated recently by Brazil, which have not yet entered into force, almost all contain considerations of relevance for RBC.¹²⁹ It is with the ratification of the first agreement of this second group that sustainability provisions and RBC clauses will actually start to be included in Brazil's trade agreements network, albeit still in a limited fashion (see Table 4.8).

The Brazil-Peru Economic and Trade Expansion Agreement

The 2016 Brazil-Peru Economic and Trade Expansion Agreement (ETEA), which is in the process of ratification, will include two sustainability provisions, but pertaining to a single area of the Guidelines, anti-corruption. Although these provisions will contain commitments between governments, they have the potential – through their effects on the signatories' anti-corruption policies and domestic legal frameworks – to reinforce said policies and frameworks, which, in turn, can contribute to incentivise responsible business practices. Through the first one, contained in the chapter on trade in services, the signatories will affirm that they can adopt measures to prevent and combat corruption and money laundering.¹³⁰ With the second one, included in the public procurement chapter, they will commit to establish proceedings to declare ineligible to participate in public tenders suppliers involved in illegal or fraudulent activities.¹³¹

Thus, detailed sustainability provisions pertaining to several areas of the Guidelines and RBC clauses will only be inserted in Brazil's trade agreements network with the ratification of the rest of the FTAs comprising the second group: the agreements negotiated recently with Chile on a bilateral basis, and with the European Union and the European Free Trade Association (EFTA) in the framework of the MERCOSUR (see Table 4.8).

Table 4.8. Inclusion of sustainability provisions and RBC clauses in Brazil's trade agreements

Parties to the trade agreement	Date of signature	Status	Inclusion of sustainability provisions (Yes/No) and areas of the Guidelines covered by the provisions	Inclusion of an RBC clause (Yes/No) and areas of the Guidelines covered by the clause	Reference to internationally-recognised RBC instruments (Yes/No)	Sustainability provisions or RBC clause subject to dispute settlement (Yes/No)
Mercosur-EFTA	Not signed	Not yet in force	Yes: full detailed chapter dedicated to trade and sustainable development (TSD Chapter) reportedly dealing with labour rights and the environment	Yet unknown	Yet unknown	Yet unknown
Mercosur-EU	Not signed	Not yet in	Yes: full detailed TSD	Yes: detailed RBC	Yes: ILO MNE	Yes: specific

Parties to the trade agreement	Date of signature	Status	Inclusion of sustainability provisions (Yes/No) and areas of the Guidelines covered by the provisions	Inclusion of an RBC clause (Yes/No) and areas of the Guidelines covered by the clause	Reference to internationally-recognised RBC instruments (Yes/No)	Sustainability provisions or RBC clause subject to dispute settlement (Yes/No)
		force	Chapter dealing with labour rights and the environment; some provisions on consumer interests; and a general exceptions provision containing human rights and environmental considerations (exception provision)	clause of a general nature	Declaration; UN Global Compact; UNGPs; OECD Guidelines; and OECD Due Diligence Guidance for responsible supply chains of minerals from conflict-affected and high-risk areas	dispute settlement mechanism for TSD Chapter, which is not subject to the general dispute settlement mechanism
Brazil-Paraguay (ACE-74)	11-02-2020	In force	No	No	No	N/A
Brazil-Chile	21-11-2018	Not yet in force	Yes: full detailed chapters dedicated to labour rights, environment and anti-corruption; some provisions on consumer interests; and an exception provision	Yes: two specific RBC clauses on labour and environmental matters	Yes: UNGPs	Yes: specific dispute settlement mechanisms for labour and environment chapters, which are not subject to the general dispute settlement mechanism (like the anti-corruption chapter)
Brazil - Peru	29-04-2016	Not yet in force	Yes: two provisions relating to anti-corruption and an exception provision	No	No	N/A
Mercosur-Palestine	01-12-2011	Not yet in force	No	No	No	N/A
Mercosur-Egypt	01-08-2010	In force	No	No	No	N/A
Mercosur-SACU	03-04-2009	In force	No, except for an exception provision	No	No	N/A
Mercosur-Israel	18-12-2007	In force	No	No	No	N/A
Mercosur-India	25-01-2004	In force	No, except for an exception provision	No	No	N/A
Mercosur-Cuba (ACE-62)	21-07-2006	In force	No, except for an exception provision	No	No	N/A
Mercosur-Colombia (ACE-72)	21-07-2017	In force	No, except for an exception provision	No	No	N/A
Brazil-Venezuela (ACE-69)	26-12-2012	In force	No	No	No	N/A
Brazil-Suriname (ACE-41)	21-04-2005	In force	No	No	No	N/A
Brazil-Guiana, Saint Kitts and Nevis (AAP.A25TM 38)	27-06-2001	In force	No, except for an exception provision	No	No	N/A
Mercosur-Colombia, Ecuador and	18-10-2004	In force	No, except for an exception provision	No	No	N/A

Parties to the trade agreement	Date of signature	Status	Inclusion of sustainability provisions (Yes/No) and areas of the Guidelines covered by the provisions	Inclusion of an RBC clause (Yes/No) and areas of the Guidelines covered by the clause	Reference to internationally-recognised RBC instruments (Yes/No)	Sustainability provisions or RBC clause subject to dispute settlement (Yes/No)
Venezuela (ACE-59)						
Mercosur–Peru (ACE-58)	30-11-2005	In force	No, except for an exception provision	No	No	N/A
Automotive Mercosur–México (ACE-55)	27-09-2002	In force	No	No	No	N/A
Mercosur–México (ACE-54)	05-07-2002	In force	No	No	No	N/A
Brazil–Mexico (ACE-53)	03-07-2002	In force	No	No	No	N/A
Mercosur–Bolivia (ACE-36)	17-12-1996	In force	No, except for an exception provision	No	No	N/A
Mercosur–Chile (ACE-35)	25-06-1996	In force	No, except for an exception provision	No	No	N/A
Mercosur (ACE-18)	29-11-1991	In force	No	No	No	N/A
Brazil–Argentina (ACE-14)	20-12-1990	In force	No	No	No	N/A
Brazil–Uruguay (ACE-02)	20-12-1982	In force	No	No	No	N/A
Cultural Goods Agreement between ALADI Members (AR-07)	27-10-1988	In force	No	No	No	N/A
Agreement on Seeds between ALADI Members (AG-02)	22-11-1991	In force	No	No	No	N/A
Regional Tariff Preferences between ALADI Members (PTR-04)	27-04-1984	In force	No	No	No	N/A

The Brazil-Chile FTA

The Brazil-Chile FTA was signed in November 2018¹³² but had not yet been ratified at the time of writing.¹³³ This FTA is notable because it will include, in addition to a preamble reference to the signatories' commitment to human rights and fundamental freedoms, detailed sustainability chapters pertaining to several areas of the Guidelines and other issues, which can have several effects that contribute to enabling and promoting RBC.

The chapters dedicated to labour,¹³⁴ the environment¹³⁵ and anti-corruption,¹³⁶ as well as to gender,¹³⁷ can all reinforce the policies and the domestic legal frameworks of the signatories in these fields and thereby contribute to the development of legal and regulatory frameworks that enable RBC.

For example, the labour chapter contains provisions through which the signatories will commit not to lower their labour standards to attract trade and investment.¹³⁸ It also includes articles in which, while recognising their right to modify their labour legislations,¹³⁹ they will undertake to ensure that such legislations are consistent with internally recognised labour rights,¹⁴⁰ and to implement the rights enshrined in the ILO

Declaration on Fundamental Rights at Work.¹⁴¹ Additionally, in this chapter, the signatories will commit to regulate working conditions (minimum wages, work hours, and occupational health and safety)¹⁴² and to make efforts to adopt policies that eliminate the obstacles to the full participation of women and vulnerable groups in the labour market.¹⁴³ They will also commit to cooperate and exchange information and good practices on forced and child labour.¹⁴⁴

Likewise, the environment chapter includes provisions in which the signatories will commit not to lower their environmental standards to attract trade and investment.¹⁴⁵ It also contains provisions in which, while recognising their right to regulate in the environmental field,¹⁴⁶ they will undertake to maintain high levels of environmental protection aligned with multilateral environmental agreements. In this chapter, the signatories will also commit to cooperate and exchange information and good practices on various environmental topics, such as biological diversity,¹⁴⁷ climate change,¹⁴⁸ sustainable agriculture,¹⁴⁹ and the participation of local and indigenous communities in environmental management and trade.¹⁵⁰

In a similar fashion, the transparency chapter contains provisions through which the signatories will commit to adopt measures to effectively combat corruption and comply with the international conventions to which they are parties (including the Anti-Bribery Convention),¹⁵¹ to investigate and sanction corrupt practices,¹⁵² as well as to promote public officials' integrity,¹⁵³ and the participation of the private sector and civil society in the fight against corruption.¹⁵⁴

In relation to consumers' interests, through several provisions of the e-commerce chapter the signatories will commit, among others, to adopt laws prohibiting fraudulent and deceptive business practices that cause or could cause harm to online consumers,¹⁵⁵ as well as protecting the personal data of e-commerce users.¹⁵⁶

Finally, with respect to gender issues, through the provisions of the chapter on trade and gender, the signatories – beyond referring to the SDG 5 and reaffirming the importance of promoting gender equality¹⁵⁷ – will commit to adopt and implement efficiently their laws, regulations, policies and good practices pertaining to gender equality.¹⁵⁸ They will also commit to cooperate and exchange information and good practices on the enhancement of the capacity and conditions of women (including workers, businesswomen, and small business owners).¹⁵⁹

It should be noted that the potential reinforcing effect of the above-mentioned provisions on the signatories' policies and legal frameworks could be hindered by the fact that the labour, environment, transparency and gender chapters are not subject to the general dispute resolution mechanism of the FTA.¹⁶⁰ Any matter arising under the labour and environment chapters will have to be solved through intergovernmental dialogue, consultations or cooperation, or if it cannot be solved this way, by the Labour and Environment Committees established under the FTA or, in case these Committees cannot resolve the issue, by the Commission in charge of administering the agreement.¹⁶¹ As to the matters arising under the transparency and gender chapters, they will have to be solved exclusively through intergovernmental dialogue, consultations and cooperation.¹⁶²

In addition to reinforcing the signatories' policies and domestic legal frameworks, the labour¹⁶³ and environment chapters¹⁶⁴ of the Brazil-Chile FTA can also directly incentivise businesses to adopt responsible business practices. Through the RBC clauses inserted in these two chapters, the signatories will commit to incentivise companies to incorporate in their internal policies RBC principles and standards aligned with internationally recognised guidelines in the field.¹⁶⁵ In this respect, it is worth noting that these clauses do not make specific reference to the Guidelines, but that the UNGPs are expressly mentioned in a provision of the labour chapter in which the signatories will commit to promote their implementation.¹⁶⁶

Finally, the labour and environment chapters can also potentially facilitate access to remedy for victims of business-related adverse impacts. For instance, through provisions on procedural safeguards for labour matters¹⁶⁷ and access to justice for environmental issues,¹⁶⁸ the signatories will commit to ensure access to fair, impartial and independent courts for matters related to the enforcement of their labour or

environmental legislations,¹⁶⁹ but also that the parties can exercise their right of appeal for labour law issues.¹⁷⁰ They will also undertake to put in place proceedings to enforce courts' decisions in labour and environmental matters.¹⁷¹ These articles, which are aimed at enhancing access to remedy in the signatories' respective jurisdictions, can help victims of labour or environmental rights' violations caused by companies to have access to justice and hence contribute to increase businesses' accountability. Beyond this, the two chapters will also create a new way to obtain remedy. They indeed foresee the possibility for the public to file public communications¹⁷² or requests for information.¹⁷³ If the FTA is ratified, this will entitle Brazilian and Chilean citizens and/or CSOs to file written submissions if they deem that one of the two countries is not implementing its labour or environmental chapters. Such submissions will then be considered and answered in writing by the country at stake.¹⁷⁴

The MERCOSUR-European Union Trade Agreement

The MERCOSUR and the European Union reached an agreement on a comprehensive trade agreement in June 2019 (European Commission, 2019_[420]). The draft texts of the agreement contain a trade and sustainable development chapter (TSD Chapter) with several sustainability provisions and an RBC clause, as well as a few additional sustainability provisions in other chapters (European Commission, 2019_[421]). If the agreement is signed and ratified, these provisions could have several effects that contribute to enabling and promoting RBC.

The principal effect that the TSD Chapter and the other sustainability provisions could have is to reinforce the signatories' policies and domestic legal frameworks in various areas of the Guidelines and hence contribute to the development of legal and regulatory frameworks that enable RBC.

According to its draft text, the TSD Chapter will include several provisions containing a number of undertakings to protect labour rights and the environment. The signatories will, for instance, commit to strive to ensure high and effective levels of labour and environmental protection, while recognising their right to regulate in these fields.¹⁷⁵ They will also undertake not to weaken, waive or derogate, from such levels of protection, nor to fail to effectively enforce their labour or environmental legislations, to encourage trade and investment.¹⁷⁶ In addition, they will commit to effectively implement, with respect to labour rights, the internationally recognised core labour standards and the ILO Conventions that they have ratified¹⁷⁷ and, in relation to the environment, the multilateral environmental agreements to which they are parties¹⁷⁸ and, in particular, the UNFCCC and the Paris Agreement.¹⁷⁹ With respect to the environment, they will also specifically undertake to implement measures *inter alia* to reduce illegal trade in wildlife,¹⁸⁰ combat illegal logging and related trade,¹⁸¹ conserve and sustainably manage marine living resources, and combat illegal, unregulated and unrecorded fishing.¹⁸² Finally, they will commit to cooperate and exchange good practices on various labour and environmental matters such as: the implementation of the ILO Conventions, the ILO Decent Work Agenda (including core labour standards, decent work, social protection and inclusion, social dialogue, gender equality, etc.),¹⁸³ the multilateral environmental agreements and especially the Paris Agreement;¹⁸⁴ the sound management of chemicals and waste;¹⁸⁵ climate change;¹⁸⁶ biodiversity;¹⁸⁷ sustainable forest management and the conservation of forest cover;¹⁸⁸ private and public initiatives contributing to halt deforestation;¹⁸⁹ or sustainable fishing practices.¹⁹⁰

Additionally, the chapter on trade in services and establishment contains a few provisions including a commitment to protect consumers' interest.¹⁹¹ The signatories will notably undertake to adopt measures to proscribe fraudulent and deceptive commercial practices, which shall *inter alia* provide for the right of consumers to clear and thorough information and the obligations of traders to act in good faith and abide by honest market practices.¹⁹²

Beyond these three specific areas of the Guidelines, the RBC clause of the TSD Chapter could also reinforce the signatories' policies and domestic legal frameworks more broadly with respect to RBC in general and contribute to the creation of an enabling policy environment for RBC. Pursuant to this clause – entitled “Trade and Responsible Management of Supply Chains” –, the signatories will undertake to provide

a supportive policy framework for the effective implementation of the international guidelines and principles on RBC.¹⁹³ This is particularly notable given that, in general, RBC clauses only reflect the signatories' commitment to promote the uptake of RBC by businesses, but do not refer to the role that governments can play with respect to RBC. Yet, with this RBC clause, the signatories will not only acknowledge the importance of the existence of a supportive policy framework for RBC, but they will also undertake to take action in this regard.

Although the general dispute settlement mechanism of the agreement is not applicable to the TSD Chapter,¹⁹⁴ the potential reinforcing effect of the above-mentioned provisions is heightened by the fact that they will be subject to a specific multi-tier dispute resolution process, which can contribute to their implementation. The process to address disagreements on the interpretation or implementation of the TSD chapter will include a first phase of intergovernmental consultations, following which the dispute can be brought before a sub-committee on trade and sustainable development established under the agreement,¹⁹⁵ if a signatory considers that the matter needs further discussion.¹⁹⁶ If the consultation facilitated by the sub-committee does not lead to a mutually satisfactory resolution, the signatories will then have the possibility to bring the matter before a panel of experts.¹⁹⁷ This panel of experts will have the task of issuing a final report containing recommendations for the resolution of the matter, which will be made public.¹⁹⁸ Following the issuance of the report, the signatories will discuss the appropriate measures to be implemented in light of the report and the recommendations and the signatory at stake will inform the other signatories and civil society of the measures it will implement.¹⁹⁹ The sub-committee will be in charge of monitoring the follow-up to the report and its recommendations²⁰⁰ and civil society will be entitled to submit observations in this regard.²⁰¹

Another effect that the RBC clause of TSD Chapter could have is to encourage directly the observance of RBC principles and standards by businesses. Through this clause, the signatories will commit to supporting the dissemination and use of international instruments on RBC, such as the Guidelines, the UNGPs and the ILO Tripartite Declaration, which are expressly mentioned, as well as to promote the voluntary uptake by businesses of RBC practices consistent with such instruments.²⁰² In addition, they will undertake to promote joint work on RBC sector-specific guidelines and to promote the uptake of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, which is also explicitly mentioned.²⁰³

Finally, some of the sustainability provisions of the TSD Chapter and, more broadly, certain general institutional provisions of the agreement, could also contribute to facilitate access to remedy for victims of business-related adverse impacts and increase businesses' accountability. This is notably the case of the article of the TSD Chapter in which the signatories will undertake to ensure that administrative and judicial proceedings are available and accessible in case of labour rights' infringements.²⁰⁴ Beyond this, the civil society consultation mechanisms that will be included in the agreement under the form of civil society domestic advisory groups²⁰⁵ could also create a new avenue for victims of adverse impacts to access remedy. However, detailed information on the functioning of such mechanisms was not available at the time of writing, as the chapter containing the general institutional provisions had not been released and their mention in the TSD chapter was made in between brackets.²⁰⁶

The MERCOSUR-EFTA FTA

The negotiations of the MERCOSUR-EFTA FTA were concluded shortly after those of the MERCOSUR-EU Trade Agreement in August 2019 (EFTA, 2019_[422]).²⁰⁷ However, as of June 2021, it had not been signed yet and its full text had not been made public. Nevertheless, the Note released by the EFTA Secretariat on the conclusion in substance of the EFTA-MERCOSUR free trade negotiations indicate that the FTA will contain several sustainability provisions and most likely an RBC clause, which can potentially have noteworthy effects that contribute to enabling and promoting RBC.

According to the Note of the EFTA Secretariat, the preamble of the FTA will reflect the signatories' common principles, such as their 'commitment to democracy, the rule of law, human rights and fundamental freedoms, environmental protection, combat corruption, good corporate governance and corporate social responsibility' (EFTA, 2019, p. 1_[423]). Beyond this preamble declaration, the FTA will include a chapter on trade and sustainable development (TSD Chapter) with several provisions that could reinforce the signatories' policies and legal domestic frameworks and contribute to the development of legal and regulatory frameworks that enable RBC in two areas covered by the Guidelines, namely labour rights and the environment (EFTA, 2019, p. 6_[423]). Through these provisions, the signatories will reaffirm their obligations to implement effectively their international obligations under multilateral environmental or labour agreements and will commit to uphold their levels of environmental and labour protection, while recognising their right to regulate in this regard (EFTA, 2019, p. 6_[423]). They will also undertake to develop measures to ensure decent working conditions, occupational safety and health, labour inspection and non-discrimination, and assume commitments in relation to the sustainable management of forests (EFTA, 2019, p. 6_[423]). In addition, through specific provisions on trade and climate change and cooperation on trade and sustainable development, the signatories will commit to implement effectively the UNFCCC and the Paris Agreement, as well as to cooperate on several trade and sustainable development issues, such as the promotion of sustainable agriculture, biological diversity, or the sustainable management of fisheries (EFTA, 2019, p. 6_[423]).

The Note of the EFTA Secretariat, however, does not allow inferring if the MERCOSUR-EFTA FTA will include an RBC clause that could directly incentivise businesses to adopt responsible business practices or provisions that could facilitate access to remedy for victims of business-related adverse impacts.

Continuing to include considerations of relevance to RBC in Brazil's trade strategy as a conduit to promote RBC

For the time being, Brazil's network of trade agreements in force hardly include any sustainability provisions dealing with the areas covered by the Guidelines and no RBC clauses. However, this state of affairs will change in the years to come if the trade agreements that Brazil recently concluded with Peru and Chile on a bilateral basis and negotiated with the European Union and the EFTA in the framework of the MERCOSUR are ratified. These future agreements will all contain detailed sustainability provisions and the ones with Chile and the European Union will also include RBC clauses.

This considerable change in the inclusion of considerations relevant to RBC in Brazil's trade agreements can be explained by different factors. The general evolution of treaty practice and the fact that sustainability provisions are increasingly included in trade agreements may have played a role. The practices of Brazil's trade partners in this regard may also have been a driver towards such inclusion. However, it may as well be linked to Brazil's strategy to expand its insertion in global trade through the conclusion of trade agreements and to the fact that, in this endeavour, Brazil's trade negotiators have built on the country's practice to design and negotiate investment agreements in which considerations of relevance to RBC have a central place. Since the elaboration of the model CFIA in 2015 and the subsequent conclusion of several agreements based on this model, Brazil has gained significant experience in including such considerations in economic policy instruments (see Section 4.2.1).

Building on this experience, and as part of its strategy to further its integration into global trade, Brazil should continue to integrate considerations that contribute to enabling and promoting RBC in such strategy, including in its future or renegotiated trade agreements, in order to progressively adopt a coherent and consistent approach in this regard. In particular, with the support of the NCP, Brazil could clarify and make this approach public, and including it as a component of its National Plan on RBC, so that the insertion of sustainability provisions dealing with areas covered by the Guidelines and RBC clauses making reference to the OECD's RBC instruments in its trade agreements becomes as systematic as the inclusion of RBC clauses in its CFIA's.

Continuing to integrate sustainability provisions in trade agreements, and considering such integration as a core component of Brazil's strategy to further expand its insertion in international trade, can serve to reinforce not only Brazil's policies and domestic legal framework in areas covered by the Guidelines, but also that of its trade partners, and contribute to the development of legal and regulatory frameworks that enable RBC. Additionally, it can contribute to encourage Brazilian companies, as well as companies trading with Brazil, to adopt RBC approaches by signalling the RBC principles and standards they should follow. It can also help victims of business-related adverse impacts to access remedy more easily through additional procedural safeguards or the creation of new ways to do so. Finally, the integration of considerations relevant to RBC in trade agreements is a means to raise awareness among public officials, businesses and other stakeholders about the need to adopt responsible business practices while trading.

To make progress in this direction, Brazil could first determine its approach regarding the inclusion of considerations that contribute to enabling and promoting RBC in its trade strategy and define the sustainability provisions and RBC clauses that it will consistently try to insert in its trade agreements. Then, building on its experience with the development of the model CFIA, it could develop model sustainability provisions and RBC clauses for its trade agreements. As a further step, and again learning from the negotiations of the various CFIA's it has concluded to date, Brazil could try, ahead of its future trade negotiations, to gain insights on the views of its counterparts on the inclusion of considerations of relevance to RBC in order to adjust its negotiating strategy accordingly and get around possible diverging positions on the matter. In particular, when negotiating with other Adherents to the Declaration on International Investment and Multinational Enterprises, Brazil could advocate that mentions to the OECD's RBC instruments be inserted, like in the RBC clause of the draft MERCOSUR-European Union trade agreement, which makes express reference not only to the Guidelines, but also to the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. The NCP could bring valuable support in this regard. On the one hand, it could act as a repository of information on the insertion of sustainability provisions and RBC clauses in Brazil's trade agreements. On the other, it could raise awareness of, and provide training and capacity-building to, public officials (and, in particular, trade negotiators), as well as to businesses and civil society on, the importance of including considerations that contribute to enabling and promoting RBC in trade. Engaging and consulting with a wide range of stakeholders throughout this entire process would be fundamental, as engagement and consultation have become key for successful and efficient trade policy-making (OECD, 2019^[424]).

Policy recommendation

24. Consistently integrate considerations that contribute to enabling and promoting RBC in trade agreements, and with the support of the NCP, clarify and make this approach public.

5 The role of the Brazilian NCP to promote policy coherence for Responsible Business Conduct

Many recommendations of the review are addressed to the NCP directly, or will require the active involvement of the NCP to be implemented. This is in line with the role of NCPs as agents of policy coherence and as promoters of RBC across government. This section summarises the recommendations from Sections 3 and 4 to provide a complete overview of the actions to be undertaken by the NCP. Where available, they are illustrated by specific good practice examples from NCPs in other countries.

Regulating business conduct in areas covered by the Guidelines and ensuring compliance with regulations and policies enacted in these areas is key to design and implement a strong RBC policy framework. Enacting policies and regulations that facilitate or incentivise business compliance with the Guidelines through the integration of RBC principles and standards in policy areas that have a bearing on businesses such as public procurement, SOEs and trade and investment policies, is also fundamental in this regard (see Section 4). To support Brazil in the design and implementation of an enabling environment for responsible business practices, this RBC Policy Review formulates a number of policy recommendations in both areas.

Based on their dual mandate to promote the Guidelines and act as a non-judicial grievance mechanism, NCPs can play an active role in promoting RBC across government agencies and seeking policy coherence. As part of their promotional activities and expertise on the Guidelines and the related Due Diligence Guidance, NCPs are uniquely placed to advise on RBC-related policies within government. Many NCPs already actively engage on this by participating in inter-departmental committees dealing with sustainability issues, or business responsibility, through engaging bilaterally with other relevant agencies

(e.g. environment, labour, trade, investment etc.) and providing input into RBC-related policy processes to ensure alignment with the recommendations of the Guidelines, and through participating in multilateral processes to ensure RBC issues feature in international commitments.²⁰⁸ NCPs can also promote policy coherence on RBC within government through their remedy role, by informing other government agencies of the findings from their statements when relevant to these agencies policies and programmes, as encouraged by the Guidelines.²⁰⁹

NCPs are also becoming increasingly involved in contributing to policy coherence across government through National Action Plans on Business and Human Rights (NAPs). By providing an overarching policy framework for RBC, NAPs may strengthen coordination and coherence within the government among all relevant policies relating to RBC (including investment, procurement, and export credits, among others). To date, all 24 NAPs adopted by Adherents reference the NCP in some role or function; many recognise NCPs as a key mechanism in promoting access to remedy. Beyond this, many NCPs have taken part in the respective design and development of NAPs.²¹⁰

Accordingly, the present RBC Policy Review highlights a number of areas and concrete actions where the Brazilian NCP could play a role to promote policy coherence and coordinate on RBC across government. In this regard, the membership of most relevant ministries and government departments in the NCP's inter-governmental working group, such as the Ministries of Woman, Family and Human Rights, Labour and Social Security, Environment, Economy, or the Comptroller General of the Union, ideally place the NCP in the position of acting as an effective agent of policy coherence.

5.1 Human rights

- **The Ministry of Woman, Family and Human Rights and the Ministry of Economy should closely collaborate in the development of their respective plans to avoid duplication, confusion or inconsistencies. To reduce these risks, and also in recognition of the many links that exist between human rights and other issues such as environment, labour or corruption, they could consider merging the processes and each contribute within their competences, to the development of a single ambitious and comprehensive plan. Additionally, a clear, transparent and inclusive process for stakeholder participation should accompany the development of the plan(s). Joint membership of both ministries in the NCP is an opportunity in this regard.**

NCPs are frequently involved in the development of NAPs, and regularly are referenced in NAPs, in various capacities. For example, in 2017, the United States launched a National Action Plan (NAP) on Responsible Business Conduct. This was the first NAP to be developed explicitly on RBC going beyond human rights issues and making a clear link to expectations under the Guidelines. The US NCP was part of the core team working on the NAP under the leadership of the White House (OECD, 2019^[425]).

Consistent with the Guidance developed by the UNWG on developing NAPs (UN Working Group on Business and Human Rights, 2014^[426]), the US NCP contributed to a strong stakeholder consultation process to inform the NAP, notably through the drafting of a comprehensive baseline assessment.

- **The NCP and the CNDH should continue and deepen their collaboration, and ensure that they can mutually reinforce their contribution to RBC, for example through regular exchanges of information, provision of investigation services by the CNDH to the NCP, or inclusion of the CNDH in the inter-ministerial committee of the NCP.**

In light of their partly overlapping mandates and potential synergies, NCPs increasingly seek to collaborate with NHRIs and other national human rights bodies, notably through inclusion in their structures. For example, the Moroccan *Conseil national des droits de l'homme* (National Council for Human Rights,

Morocco's A-rated NHRI), is a full member of the NCP, alongside other relevant ministries and public bodies.²¹¹

5.2 Labour rights

- **Brazil should continue to ensure effective and affordable access to remedy to victims of labour rights violations. It should notably ensure that the NCP continues to be adequately resourced and constantly build further capacity in respect of labour issues.**

It is crucial for NCPs to be adequately prepared to handle specific instances related to labour rights violations, as specific instances filed under Chapter V of the Guidelines account for 39% of all submissions since 2011. Moreover, many cases involving labour rights are also filed under Chapter IV of the Guidelines on human rights, which is the most frequently raised chapter of the Guidelines with 52% of all cases since 2011. To build capacity in the field of labour rights, NCPs from many countries, including Brazil, have notably followed dedicated trainings, such as those organised by the ILO and funded by the EU in 2019 and 2021.

- **Brazil should continue to implement its ambitious policy of combating slave-like labour and should complement it with a dimension of inciting companies to combat slave-like labour along supply chains by encouraging due diligence based on the OECD Guidelines and due diligence guidance. The NCP should play a central role developing this due diligence dimension.**
- **Brazil should complement its successful strategy on combating child labour with a due diligence component, encouraging companies to identify and address child labour in their operations and their supply chains, based on relevant OECD sectoral due diligence guidances. The NCP should play a key role in this regard.**
- **Brazil should continue to prioritise the formalisation of the economy as a way to better ensure effective enjoyment of labour rights and to spur its contribution to the SDGs. It should also complement its current strategy with a strong RBC and due diligence component to leverage action by companies in their supply chains in combating informality, based on OECD due diligence guidance. The NCP has an important role to play in this regard.**

Promoting the Guidelines is a key part of the NCP mandate, and this includes promoting the related OECD general and sector-specific due diligence Guidance, and advising government as to how due diligence can support public policies such as the fight against forced labour, child labour, or informality. Illustratively, the UK NCP is specifically made responsible for working with other government departments in the context of the 2015 UK Modern Slavery Act to enhance transparency in supply chains with regard to the presence of modern slavery. As part of that obligation, the UK NCP has reported regularly meeting with other government departments to discuss this contribution.²¹²

5.3 Environment

- **Further to the above, in addressing recent regulatory amendments related to environmental protection, Brazil should provide clarity to business and industry on the integral nature of environmental considerations as part of RBC, and strengthen the integration of OECD due diligence guidance as a means to ensure business is addressing adverse impacts and risks related to the environment. In this regard, Brazil should strengthen the capacity of relevant agencies to enforce environmental regulations, incentivise, and raise awareness of, RBC related to environmental risk and adverse impacts - with a particular focus on climate**

change, biodiversity loss and deforestation. In this regard, the NCP also has a key role to play in promoting RBC in relation to environmental impacts.

- **Brazil should support business in integrating remediation measures into their environmental risk management processes, as recommended by OECD Due Diligence Guidance. In addition, Brazil should ensure effective access to remedy for environmental impacts, notably through the NCP.**
- **Brazil should seek to further integrate SMEs into business coalitions and multi-stakeholder partnerships to ensure more diverse and representative participation across both sectors. There is an important role for the Government, and particularly the Brazilian NCP, to support and incentivise participation in such initiatives as well as use of, and integration of, OECD RBC standards, where appropriate and in the context of encouraging environmentally sustainable business behaviour.**

The environment chapter of the Guidelines, as well as all sectoral and general due diligence guidances are relevant to the most pressing environmental challenges of the day, such as climate change. In recognition of this, NCPs routinely provide guidance to companies on how to conduct due diligence in respect of environmental risks. For example, the Norwegian NCP has developed a self-assessment tool that allows companies to evaluate their due diligence practices, including specifically on environment and climate.²¹³

The increased salience of environmental risks and the need for due diligence has also been reflected in NCP case activity, as several high profile environmental cases have been handled by NCPs in the last few years, leading to drastic changes in the approach of the concerned companies to these risks (see Box 5.1).

Box 5.1. Case of ING Bank and NGOs concerning climate policy (Dutch NCP, 2017)

On 8 May 2017 Oxfam Novib, Greenpeace, BankTrack and Friends of the Earth Netherlands (Milieudefensie) submitted a specific instance to the Dutch NCP asking them to examine ING's climate policy and to urge ING to align its climate and other policies with the Guidelines. The NCP accepted the case and oversaw a dialogue between the parties resulting in agreement. As part of the agreement the parties agreed that the methodology employed by ING for measuring, target setting and steering the bank's climate impact is a positive development. The parties also agreed to jointly call on the Dutch Government to request the International Energy Agency to develop two 1.5 degrees scenarios, one with and one without the use of Carbon Capture and Storage (CCS).

Source: (OECD, 2017_[427]).

5.4 Anti-corruption

- **Brazil should take further action, together with business organisations, to encourage Brazilian companies, particularly SMEs, to adopt adequate ethics and compliance measures. Greater support for SMEs in adopting clear and effective programmes and policies could also help these firms integrate into global value chain and guarantee their integrity. Raising awareness of the channels for internal reporting is essential to ensure the effectiveness of any compliance programme. Brazil's NCP could play an important role in this endeavour, contributing to the Government's efforts to raise business awareness.**

As part of its 2019 promotional plan, the Chilean NCP had specifically identified anti-corruption as an area of the Guidelines on which more promotional effort was needed. In support of this objective, the Chilean NCP actively sought to inform businesses and other government departments of the recommendations of the Guidelines in this regard (NCP of Chile, 2021_[428]). It notably joined the Chilean Anticorruption Alliance,

which is a working group gathering representatives of government, stakeholders and academia to promote the implementation of the UN Convention against Corruption.²¹⁴ Likewise, other NCPs include the government departments responsible for anti-corruption in their structure. For example, the Argentinian Anti-Corruption Office is a member of the Argentinian NCP's advisory council. In Brazil, the Comptroller General of the Union's membership in the NCP accordingly reflects good practice in this regard.

5.5 Public procurement

- **Brazil should work with its stakeholders to increase awareness of the linkages between RBC and public procurement and to ensure that any strategic public procurement considers all aspects of RBC. The NCP has a key role to play in this area.**
- **Brazil, and in particular the Brazilian NCP, should provide more comprehensive implementation support to contracting authorities in promoting RBC through sustainable public procurement.**

NCPs can support the inclusion of RBC considerations in public procurement and contribute to public procurement policy-makers' and practitioners' training and capacity building on RBC and, in particular, on the Guidelines and the related Due Diligence guidance. A recent report showed that a little over a third of OECD countries had consulted their NCP when developing public procurement frameworks linked to RBC objectives, showing that there are still opportunities to strengthen the links between NCPs and the public procurement community (OECD, 2020_[287]). As an example of activities that could be organised in Brazil for that purpose, in 2018 the French NCP organised a series of conferences aimed at raising awareness of the Guidelines and the OECD Due Diligence Guidance among public procurement practitioners and businesses, and works in close collaboration with the French public procurement agency the *Direction des Achats de l'État*.

5.6 SOEs

- **Brazil should consider elaborating an overarching strategy to drive the adoption by its SOEs of a common structured and coherent RBC approach, including a detailed and clearly defined process to conduct due diligence in several areas of the Guidelines, and contemplate reflecting such strategy in the legal framework applicable to Brazilian SOEs. The Brazilian NCP should support the elaboration of such a strategy.**
- **Brazil should develop specific capacity building and training programmes for SOE officials, as well as for officials of line ministries responsible for supervising SOEs, in collaboration with the NCP, with a view to increasing their awareness and knowledge about RBC and their capacity to design and implement detailed due diligence processes aligned with the OECD RBC instruments, and consider integrating requirements in this regard in the legal framework applicable to Brazilian SOEs.**

5.7 Trade and investment

- **Building on the inclusion of the promotion of RBC policies as one of the priority actions of its National Investment Plan, Brazil should continue its efforts to include RBC considerations in its investment promotion and facilitation policies and initiatives through concrete measures and ensure that they lead to the uptake of RBC in practice. The support it provides to foreign investors could notably be used to raise awareness about RBC principles and standards and promote their observance through different means. With the**

support of the NCP, Brazil could contemplate giving priority access to such support to investment projects carried out by foreign investors that observe these principles and standards.

- **Brazil should consider reinforcing the integration of considerations that contribute to enabling and promoting RBC in its investment policies, including by continuing its efforts to systematically insert sustainability provisions and RBC clauses in its CFIA during negotiations. The cooperation and facilitation agendas foreseen under the CFIA could also be used as a means to promote the development of government policies that enable responsible business practices among investment partners, with the support of the NCP. In addition, Brazil should seek to develop ways to ensure that the CFIA and their RBC clauses are implemented and to monitor such implementation to encourage the observance by investors of the RBC principles and standards enshrined in the OECD's RBC instruments and assess the uptake of these principles and standards in practice, with the support of the NCP.**
- **Brazil should consider reinforcing the inclusion of RBC considerations in the financial support granted to trade activities, notably to mitigate the potential environmental and social risks that might be attached to such operations. In particular, Brazil could contemplate adhering to the Common Approaches and extending the due diligence undertaken prior to providing official export support to also cover other areas of the Guidelines beyond integrity. The financial support granted to exporters could also be used by Brazil to promote RBC principles and standards among Brazilian exporters, for instance by prioritising or conditioning such support to the compliance with these principles and standards, with the support of the NCP.**
- **Brazil should consider developing a strategy to place RBC considerations at the centre of Apex-Brasil's activities. The non-financial support granted to exporters could be used to promote their adoption of responsible business practices. Brazil could also consider enhancing the cooperation between the NCP and Apex-Brasil.**

Collaboration between NCPs and trade and investment promotion agencies, as well as export credit agencies, has been one of the pioneering avenues for policy coherence for RBC. There are various examples among Guidelines adherents of organic links between NCPs and these bodies. For example, the Canadian NCP can recommend denial or withdrawal of Government of Canada trade advocacy support to companies that do not engage in good faith in the specific instance process.²¹⁵ Likewise, several Export Credit Agencies (ECA) collaborate with the NCP in reviewing export credit applications and will notably consider NCP cases, or more generally RBC issues, such as the Swiss Export Risk Insurance, which specifically requires that '[a]ll projects must consider any OECD National Contact Points reports within the scope of the [OECD Guidelines for Multinational Enterprises] when performing a review' (SERV, 2017^[429]). Other NCPs, like for example the Australian NCP,²¹⁶ include their country's ECA in their advisory body.

- **Brazil should consider reinforcing the integration of considerations that contribute to enabling and promoting RBC in its investment policies, including by seeking to systematically insert sustainability provisions and RBC clauses in its CFIA during negotiations. The cooperation and facilitation agendas foreseen under the CFIA could also be used as a means to promote the development of government policies that enable responsible business practices among investment partners, with the support of the NCP. In addition, Brazil should seek to develop ways to ensure that the CFIA and their RBC clauses are implemented and to monitor such implementation to encourage the observance by investors of the RBC principles and standards enshrined in the OECD's RBC instruments and assess the uptake of these principles and standards in practice, with the support of the NCP**

- **Building on this experience, and as part of its strategy to further its integration into global trade, Brazil should continue to integrate considerations that contribute to enabling and promoting RBC in such strategy, including in its future or renegotiated trade agreements, in order to progressively adopt a coherent and consistent approach in this regard. In particular, with the support of the NCP, Brazil could clarify and make this approach public, and including it as a component of its National Plan on RBC, so that the insertion of sustainability provisions dealing with areas covered by the Guidelines and RBC clauses making reference to the OECD's RBC instruments in its trade agreements becomes as systematic as the inclusion of RBC clauses in its CFAs.**

For example, Costa Rica has a policy of integrating strong sustainability and RBC provisions in its trade and investment agreements. To support this policy, the NCP of Costa Rica, which is located in the Ministry of External Trade (COMEX) has developed a strategy of creating liaisons between the NCP and the other teams of the ministry in charge of negotiating and implementing sustainability chapters of trade and investment agreements. As a result, the NCP officials will consistently be consulted by the negotiating teams and provide input on any draft text to ensure that it is consistent with Costa Rica's commitment to implement the Guidelines. Likewise, the NCP will assist with implementation, for example providing advice in dispute settlement as regards such provisions. The location of the Brazilian NCP in CAMEX and its being overseen by CONINV are another opportunity for the NCP to ensure coherence between RBC and the Brazilian investment policy.

As can be seen from the above, there is ample opportunity for the NCP to contribute to policy coherence for RBC in Brazil. The NCP's leadership in developing the PACER is expected to be the lynchpin of this contribution in the coming months. There are however a number of attention points which Brazil should consider in ensuring that its NCP can maximise this contribution.

- On **staff and resources**, with four staff members, the NCP is one of the best resourced NCPs in the network, and its staff is regarded as competent and reactive. However, supporting the development of the PACER may place a significant strain on the resources of the NCP. It is therefore crucial that Brazil maintain or even increase the staff resources available to the NCP. Likewise, turnover has affected the Brazilian NCP in the last few years, and the stabilisation of the team for the past year should continue.
- On **visibility**, the interviews conducted in the preparation of this review have revealed that more could be done to ensure visibility of the NCP both across government and with stakeholders. Increasing visibility will be essential in ensuring that the NCP can become a go-to resource on RBC in Brazil and fully play its role as an agent of RBC policy coherence. In particular, only 27% of Brazilian respondents to the OECD 2020 Responsible Business Conduct Survey in LAC reported having knowledge of the NCP, and rated 3.1 out of 10 their experience of dealing with the NCP. It will be important for the NCP to investigate the causes of these low scores and to take dedicated action to improve them.
- On **location and structure**, the NCP underwent reforms in 2018 and 2019, which made it better connected to the rest of government. Its location in the Ministry of Economy presents an opportunity to build leverage and gain traction with business, but also a risk that it might be perceived as lacking impartiality by other stakeholders. However, the NCP's set up as an inter-ministerial working group also ensures balance in viewpoints represented in the NCP, although it does not include stakeholders. Adding a stakeholder advisory body may increase the perception of impartiality of the NCP, its access to expertise, and its ability to foster stakeholder engagement in relation to RBC issues, not least in the context of the PACER.

To help build capacity along those lines, the NCP, together with the OECD, has set up a roadmap of capacity-building activities to be conducted by end of 2022 and which relate to institutional arrangements, promotion and specific instances. It should also be noted that the OECD Ministerial Council Meeting of

2017 committed to having all NCPs peer reviewed by 2023 (OECD, 2017^[430]). NCP peer reviews are the main mechanism whereby individual NCPs can assess their performance and receive recommendations to improve their structure and the delivery of their mandate to promote the Guidelines and handle specific instances. Peer reviews have in this regard been shown to be the main lever for change as regards institutional arrangements and resources at individual NCPs. NCPs also report that peer reviews are an excellent opportunity to increase the profile and visibility of the NCP within government and with stakeholders. In October 2021, Brazil has made a commitment to have its NCP peer reviewed by 2023, and this will help its NCP contribute decisively to building an enabling environment for RBC in Brazil.

Policy recommendation

25. Brazil should ensure that its NCP's staff resources are at least maintained at their current level and that it is not subject to excessive turnover. Brazil could also consider adding a stakeholder advisory body to increase its visibility, impartiality, and ability to foster stakeholder engagement, in particular in relation to the PACER.

6 Moving towards an enabling environment for Responsible Business Conduct in Brazil

Building an enabling environment for RBC in Brazil presents a wide array of opportunities for the country. First and foremost, the OECD has shown that strengthening and incentivising RBC could help countries recover from the COVID-19 crisis in a faster, more durable and more sustainable way. Given that Brazil is one of the countries most severely affected by COVID-19, fostering RBC should be a central pillar of Brazil's strategy to tackle the crisis, and would ensure that businesses are well-equipped to reduce the immediate risks of contamination, that they are well-prepared to face future similar contingencies, and that they address vulnerabilities in their operations and supply chains exposed by the pandemic (OECD, 2020^[360]).

Second, RBC could play a major role in Brazil's ambition to further its inclusion in global trade and the insertion of its companies in global value chains. Multinational enterprises are expected to observe RBC principles and standards and to carry out due diligence to analyse country and supplier risks and prevent the adverse impacts that their operations, supply chains, and business relationships may cause on people, the planet, and society. As a result, companies operating globally increasingly decide to do business in countries that present lower risks of adverse impacts and/or with suppliers that abide by internationally recognised environmental and social standards (OECD, 2016^[2]). Similarly, investors generally base their decisions to invest on countries' domestic legal and regulatory frameworks and whether they incorporate internationally recognised RBC principles and standards (OECD, 2016^[2]). These considerations have become even more important in the context of the COVID-19 pandemic, with an important number of public and private actors calling to build back better, more responsibly and sustainably, and to adopt responsible business practices going forward, including during crises.

Consequently, an RBC approach could spur the integration of Brazilian companies in global value chains, as it is weaker than that of comparable economies. It should be noted that some of Brazil's most important partner economies are starting to pay increased attention to RBC issues. For example, the European Union has introduced or is in the process of adopting mandatory legislations on due diligence for certain sectors or on certain issues. A strong enabling environment for RBC in Brazil will therefore reinforce the country's image as a reliable and safe place to source from, trade with, and/or invest in. It will also encourage Brazilian businesses to observe RBC principles and standards, which can increase their opportunities to engage in business with multinational enterprises, reinforce their access to export markets, and further advance their integration into GVCs, and more generally contribute to their profitability by diminishing their operational, reputational, legal and financial risks.

This review also shows that building an enabling environment for RBC in Brazil can be key to address many of the challenges facing the Brazilian economy, including a fragile recovery from a recent recession, threatened by the impact of the COVID-19 pandemic, but also weaknesses in the labour market, characterised by high unemployment, inequalities and a large degree of informality. A stronger focus on RBC could thus usefully underpin the Government's development objectives and plans, as a way to foster

the country's contribution to the SDGs. As acknowledged by the 2030 Agenda, businesses have a role to play in sustainable development and they should participate in the implementation of the SDGs. However, in the last years, it has become apparent that businesses' contribution to solve sustainable development challenges needs to be enhanced. In Brazil, the 2020-2023 Multiannual Plan, or of the Federal Strategic Development Plan for 2020–2031, do not include specific considerations regarding the role of business to promote social or environmental development beyond economic growth. Additionally, Brazil's ranking in global indices reflect that its performance on a range of economic, social and environmental indicators could still significantly improve, including by better including RBC considerations in public policies.

6.1 Seizing the opportunities and addressing the challenges to build an enabling environment for RBC

Over the last years, efforts have been made to promote and enable responsible business practices in Brazil, where businesses and, in particular, large companies have a certain degree of awareness and understanding of RBC and have developed policies on RBC. The country is a party to the main international instruments of relevance to RBC and, as an OECD Key Partner, has adhered to the Guidelines and the related Due Diligence Guidance. It has also enacted legislation and regulations to govern business conduct and prevent the occurrence of RBC issues in several areas of the Guidelines, in particular regarding anti-corruption. In addition, recent government policies and initiatives have been developed specifically to encourage responsible business practices, including the National Guidelines on Business and Human Rights, efforts by the Central Bank and other financial market regulators to increase ESG performance in the banking sector, or the inclusion of an RBC clause in CFAs.

Most recently, the decision to develop an Action Plan on RBC with the support of the NCP, and the announcement regarding the development of a NAP on business and human rights by the Ministry of Women, Family and Human Rights, are major developments and constitute important opportunities to create an enabling environment for RBC in the country. This will however require that both plans can be developed in a joint, consistent and mutually reinforcing manner, and include a solid stakeholder consultation component. The objective of this review is also to feed into these processes.

Notwithstanding the above, important challenges remain in Brazil to ensure responsible conduct by all enterprises, and in particular high risk sectors such as mining or agriculture. For example, in the area of human rights, significant gaps remain to ensure that companies respect the rights of indigenous, afro-descendant and other local communities, in particular their land rights and their right to FPIC. Related to this, human rights and environmental defenders continue to face serious threats in Brazil. In the environmental area, Brazil is in a privileged position to help tackle global challenges such as climate change and biodiversity loss, as it is home to the largest rain forest in the world and is considered the most biologically diverse country in the world. However, deforestation rates have started rising again in recent years, and Brazil's important new ambitions on climate change mitigation still need to be turned into action. More generally, stakeholders report challenges with regard to social dialogue and participation in areas of relevance to RBC, including reduced access to government, or changes to the composition of collegiate consultative bodies active on key RBC issues as per a new government policy, that has resulted in decreased stakeholder representativeness in these bodies.

Stepping up Brazil's efforts to create an enabling environment for RBC will require increasing the awareness of RBC of both government officials and businesses, particularly SMEs. The Brazilian NCP is ideally placed for this purpose, with its location in CAMEX, its being overseen by CONINV, and its structure as an inter-ministerial committee composed of all relevant ministries. The NCP's leadership in developing the Brazilian Action Plan on RBC (PACER) is also a unique opportunity in this regard. However, maximising the NCP's ability to act as an agent of policy coherence in Brazil will require to maintain its currently high level of staffing, to increase its relations and confidence with stakeholders, for example with the addition

of a stakeholder advisory body, and more generally to increase its visibility across government and with businesses, notably as only 27% of respondents to the OECD 2020 Responsible Business Survey reported being aware of the existence of the NCP.

6.2 Policy recommendations to build an enabling environment for RBC

Beyond these general considerations, the construction of an enabling policy and regulatory environment to drive, support and promote responsible business practices in Brazil can concretely be achieved through two main policy orientations:

- On the one hand, it is essential that the Government regulate business conduct and prevent the occurrence of RBC issues in the areas covered by the Guidelines through adequate legislations, regulations and policies, and ensure their enforcement.
- On the other, it is equally important that the Government leverage RBC and incentivise the observance of RBC principles and standards by businesses, either by leading by example in its role as economic actor or by including RBC considerations in other relevant policy areas that can shape business conduct.

The present RBC Policy Review formulates a series of concrete and actionable recommendations aimed at providing support to the Brazilian Government in the progressive implementation of these two policy orientations, in addition to maintaining NCP resources and improving its structure and performance where relevant.

Policy recommendations

Human rights

1. Ensure coherent, clear, transparent, inclusive and participatory processes for the development of the PACER and the NAP, if possible by merging the two processes.
2. Strengthen collaboration between the NCP and the CNDH.
3. Protect the land rights of indigenous, afro-descendant and other local communities, notably through demarcation, and ensure that consultation processes related to business operations – in particular large industrial projects – on indigenous land are systematically carried out and meet the FPIC standard, and effectively protect human rights and environmental defenders.

Labour rights

4. Ensure that regulatory initiatives include strong participation and social dialogue, in particular for initiatives that touch upon social and environmental impacts of business; and effective and affordable access to remedy to victims of labour rights violations, notably by building further capacity at the Brazilian NCP.
5. Continue to invest in strong labour inspection, to ensure that its elaborate system of labour protection is as effective as possible.
6. Complement existing policies on combating slave-like and child labour by inciting companies to conduct due diligence throughout their supply chain in respect of these risks, with the NCP in the lead.
7. Continue to prioritise the formalisation of the economy as a way to better ensure effective enjoyment of labour rights and to contribute to the SDGs, and leverage company action in this regard through due diligence, with the NCP in the lead.

Environment

8. Improve policy coherence and enable a whole-of-government approach to sustainable development and RBC, and ensure that any revisions to environmental regulation look to strengthen the rule of environmental law, and ensure meaningful participation and representation environmental decision-making and consultative bodies. To that effect, prioritise ratification of the Escazú Agreement.
9. Address gaps in EIA regulation to ensure a strong regulatory and enforcement framework in preventing and addressing adverse environmental impacts by business.
10. Support the development of strong environmental due diligence by businesses notably through improved access, transparency and reporting of environmental information, as well as better integration of remediation measures into environmental risk management processes, and as recommended by OECD Due Diligence Guidance, with the NCP in the lead.
11. Ensure that measures to implement key commitments under the current NDC are aligned with recent commitments to raise ambition, the targets of the Paris Agreement, and that the Government supports the private sector, in particular SMEs, in implementing RBC aligned climate action
12. Include forest protection and deforestation objectives as part of Brazil's broader climate objectives and support business in integrating deforestation and forest degradation considerations into their risk management processes, in alignment with OECD due diligence guidance, particularly in sectors with a high risk of deforestation.

Anti-corruption

13. Perfect the public integrity framework by regulating lobbying activities, in particular by increasing transparency and taking into account the need to promote equal public participation, and assist political parties in engaging in preventive efforts against corruption through a requirement for them to have an integrity programme.
14. Perfect the legal framework for whistle-blower protection to ensure that easily accessible channels and protection from retaliation are in place for the reporting by corporate employees to the competent authorities of suspected acts of corruption.
15. Improve awareness among companies throughout Brazil, in particular SMEs, of anti-corruption law and of state-level legislation with respect to the importance of having integrity programmes in place and to advise and assist companies in their efforts to establish such programmes.
16. Proceed with the necessary consultation with state-level authorities to ensure that legislation is in conformity with the Clean Company Act is enacted.

Public procurement

17. Brazil should work with its stakeholders to increase awareness of the linkages between RBC and public procurement and to ensure that any strategic public procurement considers all aspects of RBC. The NCP has a key role to play in this area.
18. Brazil, and in particular the Brazilian NCP, should provide more comprehensive implementation support to contracting authorities in promoting RBC through sustainable public procurement.

State-owned enterprises

19. Elaborate an overarching strategy for a common structured and coherent RBC and due diligence approach at Brazilian SOEs, and develop specific capacity building and training programmes on RBC and due diligence for SOE and other relevant officials, in collaboration with the NCP.

Trade and investment

20. Ensure that the overarching commitment to promote RBC policies enshrined in the National Investment Plan is reflected in continued efforts to include RBC considerations in specific investment promotion and facilitation policies and initiatives with concrete measures that lead to the uptake of RBC in practice.
21. Reinforce the integration of considerations that can contribute to enable and promote RBC in Brazil's investment policies, including by systematically inserting, implementing and monitoring sustainability provisions and RBC clauses in CFIA, and use the cooperation and facilitation agendas foreseen under the CFIA to promote RBC among investment partners, with the support of the NCP.
22. Reinforce the inclusion of RBC considerations in Brazil's financial support to trade activities by adhering to the Common Approaches, and leverage the financial support granted to Brazilian exporters to promote RBC, in cooperation with the NCP.
23. Develop a strategy to place RBC considerations at the centre of Apex-Brasil's activities, notably through enhanced cooperation between the NCP and Apex-Brasil.
24. Consistently integrate considerations that contribute to enabling and promoting RBC in trade agreements, and with the support of the NCP, clarify and make this approach public.

Role of the NCP

25. Ensure that NCP staff resources are at least maintained at their current level and that it is not subject to excessive turnover. Brazil could also consider adding a stakeholder advisory body to increase its visibility, impartiality, and ability to foster stakeholder engagement, in particular in relation to the PACER.

Annex A: Virtual meetings with Government entities, business associations and stakeholders

During the virtual fact-finding mission for the preparation of the RBC Policy Review, the OECD met with representatives of the following government entities, business associations and stakeholders:

Government of Brazil
Ministry of Economy (National Contact Point for Responsible Business Conduct)
Ministry of Women, Family and Human Rights
Ministry of Justice and Public Security
Attorney general of the Union: Human Rights Department
National Human Rights Council (NHRI)
Comptroller General of the Union
Attorney General of the Union: Department of Public Integrity
Ministry of Agriculture, Livestock, and Supply
Ministry of Environment
Ministry of Mines and Energy
Attorney General of the Union: Labour Rights Department
Ministry of Foreign Affairs: Secretariat for National Sovereignty Affairs and Citizenship (Department of Human Rights and Citizenship)
Ministry of Economy: Special Secretariat for Social Security and Labor (SEPRT)
"Ministry of Economy: Special Secretariat for Productivity, Employment and Competitiveness (Sepec) (Secretariat for the Development of Industry, Commerce, Services and Innovation (SDIC))
Ministry of Economy: Secretariat of Coordination and Governance of State-owned Enterprises (SEST-SEDDM)
Ministry of Economy: Executive Secretariat of the International Chamber of Commerce (CAMEX) (Subsecretariat for Foreign Investment (Sinve) and Subsecretariat for Foreign Trade Finance (Sucex))
Ministry of Foreign Affairs: Secretariat for Foreign Trade and Economic Affairs
Ministry of Economy (Special Secretariat for Foreign Trade and International Affairs (Secint), Secretariat for International Economic Affairs (Sain) and Secretariat of Foreign Trade (Secex))
Ministry of Infrastructure
Ministry of Economy: Secretariat for Public Procurement (SEGES-SEDGG)

Business Associations

ABVTEX - Associação Brasileira do Varejo Têxtil

CNI – Confederação Nacional da Indústria

ABIT – Associação Brasileira da Indústria Têxtil e de Confecção

Global Compact Network Brazil

TRADE UNIONS

Central Única de Trabajadores, CUT

Fuerza Sindical, FS

OECD Trade Union Advisory Committee

CIVIL SOCIETY ORGANISATIONS

Conectas

FIDH

International Rivers Brazil

Observatorio do Clima

Articulação dos Povos Indígenas do Brasil

Comissão Pastoral da Terra

Articulação dos Empregados Rurais de Minas Gerais

Instituto Socio-Ambiental (ISA)

Instituto de Pesquisa Ambiental da Amazônia (IPAM)

FERN

Rainforest Foundation Norway

Society for Threatened Peoples (STP)

Public defender's office of the State of Pará (accompanying several Quilombola communities that have suffered from human rights violations by several multinational companies).

INDIGENOUS PEOPLES' ORGANISATIONS

Articulação dos Povos Indígenas do Brasil (APIB)

Instituto de Pesquisa e Formação Indígena (IEPE)

Annex B: Full list of laws and regulations applying to public procurement

Labour rights

- Law No. 13,467 (2017) applies to contracts by the Federal Public Administration. It establishes, among others, legal working hours, night and day shifts and rest days.
- Normative Instruction No. 5, 2017, of the MPDG / SG, art. 39 establishes that the contractor's compliance with labour obligations has to be verified during contractual execution, as part of the contract management and inspection activities.

Human rights

- Law No. 13,146 (2015) establishes measures to include people with disabilities into society, and has a bearing on government contracts.
- Decree No. 9,450 (2018) covers social inclusion of current and ex-convicts.
- Ordinance no. 350/2018, of the Ministry of Human Rights establishes a Code of Conduct and requirements for suppliers of the Ministry to respect human rights. The Code of Conduct includes principles, guidelines and responsibilities which have to be reflected in procurement notices and procurement contracts. Among the expected good practice is that contracting authorities engage their suppliers to promote responsible business conduct and respect for human rights, through the creation of incentives.

SMES

- Decree No. 123 (2006) and its reform No. 147 (2014) determines how contracting authorities should ease the public procurement procedures so that SMES can participate and enhance their economic and social development.

Integrity

- Law 10.520 (2002), article 7, establishes sanctions against irregularities related to bidding. According to these provisions, bidders who do not enter into the contract, commit fraud related to the bidding documents, contract execution or taxes, are debarred for up to five years.
- Ordinance No. 750 (2016) creates the Integrity Program of the Comptroller General of the Union. This strategic management program intends to strengthen the Brazilian integrity bodies and to adequately address the possible risks to the body's integrity. In addition, the National Strategy to Combat Corruption and Money Laundering (ENCCLA) addresses integrity in Public Procurement.
- Law 12.846 (2013) establishes administrative and civil liability of legal entities for acts against the public administration, including sanctions; this includes a specific section on tenders and contracts (art. 5th, inc. IV).
- Law No. 8,429 (1992) provides for sanctions applicable to public agents in cases of unlawful enrichment in the exercise of mandate, position, employment or function in the direct, indirect or foundational public administration.

- Title XI (arts. 312 to 359-H) of Decree-Law n° 2,848, 1940 (Penal Code) lists crimes against the public administration, such as passive corruption (art. 317), violation of confidentiality competition proposal (art. 326) and active corruption (art. 333), including the respective penalties.

Environment and sustainability in general

- Decree n° 7.746, of 2012, amended by Decree n° 9.178, of 2017, establishes criteria and practices for the promotion of sustainable national development in public procurement carried out by the federal public administration and SOEs. This decree also establishes the Interministerial Commission for Sustainability in Public Administration (CISAP). Examples of criteria for sustainable purchases are greater efficiency in the use of natural resources such as water and energy; longer useful life and lower maintenance cost of the asset and the work; use of innovations that reduce pressure on natural resources; use of timber and non-timber forest products originating from sustainable forest management or reforestation (art. 4, Decreto 1.746 / 2012).
- Normative Instruction No. 1 (2010) of MPOG / SLTI establishes the criteria of environmental sustainability in the public procurement of goods, contracting services or works by the federal public administration;
- Law No. 12,187 / 2009 - National Policy on Climate Change: preference in tenders for proposals that save natural resources and reduce greenhouse gases and waste (art. 5)
- Law No. 12.305 / 2010 - National Solid Waste Policy: priority for recycled and recyclable products and socially and environmentally sustainable consumption patterns (art. 7). The Government grants financial incentives to companies that adopt RBC. Contracting authorities are required to prioritize recycled and recyclable products, and those goods, services and works that are compatible with socially and environmentally sustainable consumption (Article 7, XI).
- Law No. 12,349 / 2010 - Amends Law No. 8,666 / 1983: makes changes in legislation compatible to cover the concept of PSC - "The bidding process aims to ensure compliance with the constitutional principle of isonomy, the selection of the most advantageous proposal for the administration and promotion of sustainable national development "(art. 3)
- Normative Instruction No. 5 (2017) of the MPDG / SG, art. 1st, inc. II determines that the hiring of services for the performance of executive tasks under the indirect execution regime, by bodies or entities of the direct, autarchic and foundational federal public administration, must observe, where applicable, the criteria and practices of sustainability.
- Normative Instruction SLTI / MP No. 01/2010: provides for the criteria of environmental sustainability in the acquisition of goods, contracting services or works by the Federal Public Administration. Its observance is mandatory for works ("shall") and indicative ("may") for goods and services
- Decree No. 7.746 / 2012 - Regulates art. 3 of Law No. 8,666 / 1993: establishes guidelines for sustainable development in federal contracts, creates the Inter-ministerial Commission on Sustainability in Public Administration and defines the mandatory elaboration of Sustainable Management Plans
- Normative Instruction SLTI / MP No. 10/2012 provides for Sustainable Logistics Management plans
- Normative Instruction SLTI / MP No. 02/2014 provides for rules for the purchase or rental of energy-consuming machines and devices by the direct, autonomous and foundational Federal Public Administration, as well as for the use of the National Energy Conservation Label (ENCE) in the projects and the respective federal public buildings that are new or that receive retrofits.

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Notes

¹ United Nations (2015), *Transforming our world: the 2030 Agenda for Sustainable Development*, paras. 39, 60, 67, <https://sdgs.un.org/2030agenda>.

² See, for instance, Sustainable Development Goals (SDGs) No. 8 “Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all”, No. 12 “Ensure sustainable consumption and production patterns” or No. 16 “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”. See United Nations (2015), *Transforming our world: the 2030 Agenda for Sustainable Development*.

³ United Nations (2015), *Transforming our world: the 2030 Agenda for Sustainable Development*, paras. 41, 67, <https://sdgs.un.org/2030agenda>.

⁴ The text of the OECD Policy Framework for Investment (PFI) is available in English and Spanish on the OECD’s website at: <http://www.oecd.org/investment/pfi.htm>.

⁵ OECD (2015), *Policy Framework for Investment 2015 Edition*, Chapter 7, <http://dx.doi.org/10.1787/9789264208667-en>.

⁶ More information on the RBC-LAC Project is available on the OECD’s website at: <https://mneguidelines.oecd.org/rbclac.htm>.

⁷ The activities of the OECD pertaining to the NCPs under the RBC-LAC Project consist in providing tailored capacity-building to the seven NCPs in the LAC region. In this context, the OECD Secretariat and the Government of Mexico have defined a roadmap of actions aimed at strengthening the Mexican NCP. The implementation of this roadmap and of the recommendations contained in the present RBC Policy Review are complementary and both aim to strengthen the NCP so that it can perform its functions and exercise its role as an agent of policy coherence on RBC.

⁸ Delegations from the following EU and OECD Members participated in the consultation meeting held virtually on 16 October 2020: Colombia, France, Germany, Romania, Slovakia, Spain, Sweden, and Switzerland.

⁹ The OECD Guidelines for Multinational Enterprises are part of the OECD Declaration on International Investment and Multinational Enterprises [OECD/LEGAL/144]. The text of the Declaration, including the Guidelines, is available on the OECD's website at <http://mneguidelines.oecd.org/mneguidelines/>.

¹⁰ The 50 Adherents to the Guidelines are: Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, Colombia, Costa Rica, Croatia, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Jordan, Kazakhstan, Korea, Latvia, Lithuania, Luxembourg, Mexico, Morocco, Netherlands, New Zealand, Norway, Peru, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Tunisia, Turkey, Ukraine, United Kingdom, the United States and Uruguay.

¹¹ In 2015, the PFI became the subject of an OECD Council Recommendation [OECD/LEGAL/0412], which recommends that OECD Members and non-Members adhering to the Recommendation use, as appropriate, the PFI, in particular to facilitate coherence at all levels of government for better policy formulation and implementation. The text of the OECD Council Recommendation is available on the [Compendium of OECD Legal Instruments](https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0412) at: <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0412>.

¹² Brazil adhered to the OECD Council Recommendation on Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas on xxx 25 May 2011 [OECD/LEGAL/0386]. The text of the Recommendation is available on the [Compendium of OECD Legal Instruments](https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0386) at: <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0386>.

¹³ Brazil adhered to the OECD Council Recommendation on Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector on 16 November 2017 [OECD/LEGAL/0427]. The text of the Recommendation is available on the [Compendium of OECD Legal Instruments](https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0427) at <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0427>.

¹⁴ Brazil adhered to the OECD Council Recommendation on the OECD-FAO Guidance for Responsible Agricultural Supply Chains on 2 October 2019 [OECD/LEGAL/0428]. The text of the Recommendation is available on the [Compendium of OECD Legal Instruments](https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-048) at: <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-048>.

¹⁵ Brazil adhered to the OECD Council Recommendation on the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector on 17 May 2017 [OECD/LEGAL/0437]. The text of the Recommendation is available on the [Compendium of OECD Legal Instruments](https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0437) at: <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0437>.

¹⁶ Brazil adhered to the OECD Council Recommendation on the OECD Due Diligence Guidance for RBC [OECD/LEGAL/0433] on 30 May 2018. The text of the Recommendation is available on the [Compendium of OECD Legal Instruments](https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0443) at: <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0443>.

¹⁷ See Resolution N° 4.327, Article 6.

¹⁸ CEBDS brings together about 60 of the largest business groups in the country, with revenues equivalent to about 45% of GDP and responsible for more than 1 million direct jobs, see <https://cebds.org/quem-somos/>.

¹⁹ See Step 1 "Identifying the SDGs" and Step 2 "Defining Priorities".

²⁰ Global Compact Brazil is the third largest network in the world, with more than 800 members. Rede Brasil chairs the Local Networks Council in Latin America and the Global Local Networks Council. It's also the only member of the Global Compact network to be part of the Global Compact Board, the highest level of the organization, see <https://www.pactoglobal.org.br/no-brasil>.

²¹ See for example <https://www.abvtex.org.br/noticias/reuniao-com-ponto-de-contato-nacional-pcn-brasil-da-ocde-ministerio-da-economia/>.

²² The NCP in partnership with the World Bank, has held for example eight roadshows to promote the OECD Guidelines and its activities in 8 States (MG, SP, PR, SC, CE, RJ, BA and RS).

²³ In its Report 1/2020 to the National Investment Committee (CONINV), the NCP informed about strengthening partnerships to promote RBC policies, particularly the OECD Guidelines and the role of the NCPs, through partnerships with CVM and CNI, as well as with Human Rights Clinics at PUC Paraná and CEUB.

²⁴ Including HOMA - Center for Human and Business Rights and the FES - Friedrich Ebert Foundation.

²⁵ As per Article 3 of Decree No. 9.874, the NCP is composed of 3 representatives of the Ministry of Economy, and 1 representative each from the Ministry of Justice and Public Safety, the Ministry of Foreign Affairs, the Ministry of Mines and Energy, the Ministry of Environment, the Comptroller General of the Union, the Ministry of Women, Family and Human Rights, and the Central Bank of Brazil. Since July 2021 and the reinstatement of the Ministry of Labour and Social Security (Government of Brazil, 2021^[58]), the Special Secretariat of Labour, which was one of the three members of the NCP from the Ministry of Economy, is now replaced by the Ministry of Labour and Social Security.

²⁶ The United Nations Guiding Principles on Business and Human Rights (UNGPs) are a set of 31 principles for States and businesses to prevent, address and remedy business-related human rights abuses. They are built upon three pillars: (i) the State responsibility to protect human rights against violations by business; (ii) the responsibility of businesses to respect human rights; and (iii) access to remedy for violations of human rights by businesses. They were endorsed in 2011 by the United Nations Human Rights Council.

²⁷ For the status of ratification of ILO Conventions by Brazil, see next section.

²⁸ Brazil has detailed legislation about the protection of the rights of migrant and refugees, which notably seek to facilitate the process of applying for documents and regularising their situation in the country (Government of Brazil, 2017^[499]; Ribeiro de Oliveira, 2017^[500]).

²⁹ The human rights instruments of the Inter-American System include the different declarations, conventions, and protocols that define the mandate and functions of its two organs, the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (Inter-American Court), which monitor compliance by the Member States of the Organization of American States (OAS) with their obligations in the human rights field. For more information on the Inter-American human rights instruments, consult IACHR's Database at: http://www.oas.org/en/iachr/mandate/basic_documents.asp.

³⁰ Art. 5, para. 3, Constitution of Brazil 1988.

³¹ See <https://promocaodedireitoshumanos.dpu.def.br/comite-tematico-especializado-altamira/>.

³² See <https://promocaodedireitoshumanos.dpu.def.br/comite-tematico-especializado-rio-doce-brumadinho/>.

³³ See <http://www.consumidor.gov.br>.

³⁴ According to data from civil society and FUNAI, there are currently 680 demarcation processes, whereby 434 out of the 1,290 indigenous lands have been fully demarcated (Government of Brazil, 2021^[479]; International Work Group for Indigenous Affairs, 2021^[494]).

³⁵ According to the Reports on Violence against Indigenous Peoples in Brazil published annually by the NGO Conselho Indigenista Misionario (CIMI), there had been 11 conflicts related to land demarcation in Brazil in 2018, 35 in 2019, and 96 in 2020 (Conselho Indigenista Missionario, 2019^[475]; Conselho Indigenista Missionario, 2020^[476]; Conselho Indigenista Missionario, 2021^[477]).

³⁶ In its General Recommendation No. 34, the UN Committee on the Elimination of Racial Discrimination notably clarified that peoples of African descent notably enjoyed ‘[t]he right to property and to the use, conservation and protection of lands traditionally occupied by them and to natural resources in cases where their ways of life and culture are linked to their utilization of lands and resources’ and ‘[t]he right to prior consultation with respect to decisions which may affect their rights, in accordance with international standards.’ (UN Committee on the Elimination of Racial Discrimination, 2011^[497]).

³⁷ See <https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2236765>.

³⁸ See the ILO statistics at <https://ilostat.ilo.org/fr/topics/collective-bargaining/>.

³⁹ See Brazil’s page on the ILO’s website at <https://www.ilo.org/dyn/normlex/en/f?p=1000:11110:::NO>.

⁴⁰ Fazenda; Planejamento, Desenvolvimento e Gestão; Indústria, Comércio Exterior e Serviços; e Trabalho.

⁴¹ As at 2016, 18.9% of employees were union members, or the 8th highest rate in the region. See <https://ilostat.ilo.org/topics/union-membership/#>.

⁴² Brazil NCP (2013), [Financial and insurance sector in Brazil](#).

⁴³ See <https://sit.trabalho.gov.br/radar/>.

⁴⁴ In target 8.7 of the SDGs, leaders committed to ‘Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms’.

⁴⁵ In 2018, the CEACR has commended Brazil for progress in this regard, however still flagging, in relation to ILO Convention No. 182 (Worst forms of Child Labour), the issue of sexual exploitation and trafficking of children and child domestic workers, and in relation to ILO Convention No. 138 (Minimum Age), the need to strengthen the capacity and expand the reach of the labour inspectorate services to combat child labour effectively, particularly in the informal economy (ILO, 2018^[121]).

⁴⁶ See <https://ilostat.ilo.org/topics/informality/#>.

⁴⁷ Constitution of Brazil, Art. 225, Para. 2, 5 October 1988.

⁴⁸ See Brazilian NCP (2015), [Van Oord Marine Operations Services, and Forum Suape Environmental Association, Conectas Human Rights, Fishermen colony of the city of Cabo de Santo Agostinho, and Both ENDS \(Dutch NGO\)](#).

⁴⁹ See <https://www.camara.leg.br/propostas-legislativas/2270639>.

⁵⁰ According to the Inter-Governmental Panel on Climate Change (IPCC)’s 2014 climate change report, the sectors most responsible for GHG direct emissions were electricity and heat production (25%), agriculture, forestry and other land use (24%), industry (21%), and transport (14%) (IPCC, 2014^[434]).

⁵¹ The OECD and FAO are in the process of developing a Practical Business Tool on Deforestation, Forest Degradation and Due Diligence in Agricultural Supply Chains that will build on the recommendations of the OECD-FAO Guidance for Responsible Agricultural Supply Chains and explain how business can implement the 5-step due diligence framework to consider the specificities of deforestation and forest degradation in agricultural supply chains.

⁵² In the 2020 Capacity to Combat Corruption Index, published by the Americas Society/Council of the Americas (AS/COA), Brazil received the highest score in the ‘‘Legal Capacity’’ sub-category, driven by factors such as the independence of its judicial system and anti-corruption agencies, the level of expertise in tackling white-collar crimes, the established channels for international cooperation and the

use of plea bargain and leniency instruments. See www.americasquarterly.org/wp-content/uploads/2020/05/CCC_Report2019.pdf

⁵³ Available at http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/decreto/D10153.htm.

⁵⁴ See <https://falabr.cgu.gov.br/publico/Manifestacao/SelecionarTipoManifestacao.aspx?ReturnUrl=%2f>

⁵⁵ See <http://paineis.cgu.gov.br/resolveu/index.htm>.

⁵⁶ The parameters of reduction are established under the LAC's implementing decree (Government of Brazil, 2015^[269]), which grants a higher percentage of reduction to companies that have and apply an effective compliance programme, which can result in a decrease of up to 4% in the calculation of the fine to be applied. The decree provides guidance on what can be considered an effective compliance programme.

⁵⁷ See <https://www.gov.br/cgu/pt-br/centrais-de-conteudo/publicacoes/integridade/colecao-programa-de-integridade>, <https://www.gov.br/cgu/pt-br/centrais-de-conteudo/publicacoes/integridade/arquivos/integrity-program.pdf>.

⁵⁸ Pró-Ética is an initiative that seeks to encourage the voluntary adoption of integrity policies by companies, <https://www.gov.br/cgu/pt-br/assuntos/etica-e-integridade/empresa-pro-etica/historico>.

⁵⁹ For example, the states of Rio de Janeiro (State Law No. 7,753/2017), Rio Grande do Sul (State Law No. 15,228/2018), Amazonas (State Law No. 4,370/2018) and Goiás (State Law No. 20,489/2019).

⁶⁰ The Registry of Ineligible and Suspended Companies (CEIS, in its acronym in Portuguese) publishes sanctions which lead to the prohibition of participation in public bidding processes or of entering into contracts with the public administration.

⁶¹ Leniency agreements can result in fine reductions of up to two thirds of the total fine and may exempt the legal entity from making the conviction public and from the prohibition to receive incentives, subsidies, grants, donations or loans from public agencies or other entities from one to five years. Several agreements of this kind were signed throughout Operation Carwash. See: <https://fr.reuters.com/article/idUSKBN1310YV>.

⁶² The Office of the Comptroller General of Brazil has made the National Registry of Punished Companies (CNEP, in its acronym in Portuguese) available for public consultation. This is a database, published in the Brazilian Transparency Portal, which will consolidate the list of legal persons punished under the Corporate Liability Law (Government of Brazil, 2012^[498]). CNEP will also make available leniency agreements that are signed under the Corporate Liability Law.

⁶³ The Registry of Ineligible and Suspended Companies (CEIS, in its acronym in Portuguese), which publishes sanctions which lead to the prohibition of participation in public bidding processes or of entering into contracts with the Public Administration.

⁶⁴ See <https://www.sanofi.com/-/media/Project/One-Sanofi-Web/Websites/Global/Sanofi-COM/Home/common/docs/download-center/CSR-Report-Sanofi-Brazil-2017.pdf?la=en>.

⁶⁵ A competition focussing on price, where bidders – like in an auction – submit decreasing prices, with the award won by the bidder offering the lowest price.

⁶⁶ A contract type where a contracting authority closes a contract with several suppliers to provide a good or service as needed over a given period of time.

⁶⁷ Possibility to bid for a part of a tender, e.g. for cleaning services.

⁶⁸ See <https://www.comprasgovernamental.gov.br/index.php/comprasnet-siasg>.

⁶⁹ <http://painelcompras.planejamento.gov.br>.

⁷⁰ <http://paineldepocos.planejamento.gov.br>.

⁷¹ <https://atos.cnj.jus.br/atos/detalhar/3180>.

⁷² <https://www.mdh.gov.br/todas-as-noticias/2020-2/fevereiro/ministerio-publica-portaria-de-boas-praticas-anticorruptao>.

⁷³ <http://cpsustentaveis.planejamento.gov.br/assets/conteudo/uploads/guianacionaldelicitacoessustentaveis.pdf>.

⁷⁴ See <https://www.gov.br/infraestrutura/pt-br/selo-integridade>.

⁷⁵ The recommendation for exclusion of the Council of Ethics of Norway's Wealth Fund is frased as follows: "The Council on Ethics recommends that Centrais Elétricas Brasileiras SA (Eletrobras) be excluded from investment by the Government Pension Fund Global due to an unacceptable risk that the company is contributing to serious or systematic human rights violations. Eletrobras is a Brazilian energy company engaged in a number of hydroelectric power projects. The assessment is to a large extent based on Eletrobras's role in the construction of the Belo Monte power plant. Many indigenous territories are severely affected by the project. The project has led to increased pressure on indigenous lands, the disintegration of indigenous peoples' social structures and the deterioration of their livelihoods. The project has also resulted in the displacement of at least 20,000 individuals, including people with a traditional way of life who used to have their homes on islands and riverbanks that are now submerged. The Council on Ethics also gives weight to the fact that Eletrobras has recently been involved in other hydroelectric projects which have been criticised for human rights violations, and that it intends to participate in new hydroelectric projects." See Council on Ethics of the Government Pension Fund Global (2020), Centrais Elétricas Brasileiras SA (Eletrobras), <https://etikkradet.no/centrais-electricas-brasileiras-sa-eletrobras-eng/>.

⁷⁶ Eletrobras denies firmly these allegations, explaining that Norway's Wealth Fund's exclusion decision was made on the basis of information dating back from 2015 and without taking into consideration the clarifications and updated information it had provided on the matter. See Eletrobras (2020), Comunicado ao Mercado, <https://acionista.com.br/wp-content/uploads/2020/05/eletrobras-norges-bank.pdf>.

⁷⁷ This is also the case of the UNGPs, which provide that "States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence." See UNGPs, Principle 4.

⁷⁸ It should be noted that this section does not assess Brazil's implementation of the SOE Guidelines or of the OECD Guidelines on Anti-Corruption and Integrity in SOEs, which are subject to separate OECD review processes, but seeks to highlight the relevance of their recommendations with respect to achieving RBC objectives.

⁷⁹ This includes information on any material foreseeable risks incurred in their operations, in particular financial and operational risks, but also human rights, labour, environment, corruption and tax-related risks, as well as the measures taken to manage such risks.

⁸⁰ The ACI Guidelines recommend, to this effect, that governments ensure clarity in the legal and regulatory framework regarding the operation and accountability of SOEs and in their expectations for anti-corruption and integrity. They also recommend that governments encourage SOEs to develop a risk management system and integrity mechanisms – that is, internal controls and ethics and compliance measures – to prevent, detect and mitigate corruption-related risks. These integrity mechanisms should work to ensure that SOEs cannot seek or accept exemptions, not previously contemplated, related to human rights, environment, health, safety, labour, taxation and financial incentives. Moreover, they recommend that governments establish accountability and review mechanisms for SOEs and actively seek to improve public knowledge about SOEs. See OECD (2019), OECD Guidelines on Anti-Corruption

and Integrity in State-Owned Enterprises, pp. 20, 22, 24, 27, 29, <https://www.oecd.org/daf/ca/Guidelines-Anti-Corruption-Integrity-State-Owned-Enterprises.pdf>.

⁸¹ SOE Statute, Art. 1, http://www.planalto.gov.br/ccivil_03/ato2015-2018/2016/lei/l13303.htm.

⁸² Decree No. 9.745 of 2019, Art. 98, para. III, http://www.planalto.gov.br/ccivil_03/ato2019-2022/2019/decreto/D9745.htm.

⁸³ *Id.*, Art. 98, para. IV.

⁸⁴ *Id.*, Art. 98, para. VI.

⁸⁵ SOE Statute, Art. 89 and 90.

⁸⁶ Decree No. 9.745 of 2019, Art. 98, para. X.

⁸⁷ Decree No. 9.745 of 2019, Art. 98, para. XIII.

⁸⁸ SOE Statute, Art. 6.

⁸⁹ SOE Statute, Art. 7.

⁹⁰ SOE Statute, Art. 8; Decree No. 8.945 of 2016 on SOEs, Art. 13, http://www.planalto.gov.br/ccivil_03/ato2015-2018/2016/decreto/d8945.htm.

⁹¹ SOE Statute, Art. 8, para. IV.

⁹² SOE Statute, Art. 9.

⁹³ SOE Statute, Art. 9; Decree No. 8.945 of 2016 on SOEs, Art. 15.

⁹⁴ Given that, at the time of writing, Eletrobras had not been privatised yet, it was deemed relevant to include in the analysis, as one of Brazil's main SOE groups.

⁹⁵ Given that, at the time of writing, Eletrobras had not been privatised yet, it was deemed relevant to include in the analysis, as one of Brazil's main SOE groups.

⁹⁶ SOE Statute, Article 9, para. VI.

⁹⁷ Investment promotion can be achieved through image building, which aims at promoting the positive image of a country and branding it as a profitable investment destination, and investment generation, which consists in marketing techniques aimed at specific industries, activities and markets. See OECD (2018), Investment Insights – Towards an International Framework for Investment Facilitation, p. 3, <https://www.oecd.org/investment/Towards-an-international-framework-for-investment-facilitation.pdf>; Volpe Martincus, Ch.; Sztajerowska, M. (2019), How to solve the investment promotion puzzle: a mapping of investment, p. 56, <http://dx.doi.org/10.18235/0001767>.

⁹⁸ Investment facilitation activities include investor servicing, which aims at providing support to prospective investors in order to facilitate their establishment, but also aftercare, which consists in assisting established investors with post-establishment challenges so as to retain them and encourage their expansion. See OECD (2018), Investment Insights – Towards an International Framework for Investment Facilitation, pp. 3-4, <https://www.oecd.org/investment/Towards-an-international-framework-for-investment-facilitation.pdf>.

⁹⁹ As a federal State, Brazil also has subnational investment promotion agencies (IPAs) that operate in larger cities, such as “Invest SP” in São Paulo or “Rio Negócios” in Rio de Janeiro. See Invest SP (n.d.), Website: About Investe SP, <https://www.en.investe.sp.gov.br/about-investe-sp/>; Rio Negócios (n.d.), Website: Home, <http://rio-negocios.com/home-en/>. Although the present Review focuses on activities and actions at the national level, the recommendations formulated herein can also be of relevance to subnational IPAs.

¹⁰⁰ Beyond negotiating agreements and policies on investment in international fora and promoting RBC principles and standards in these international negotiations, the Ministry of Foreign Affairs also supports

the attraction of foreign investments in Brazil, notably in the framework of the Investment Partnerships Program (*Programa de Parcerias de Investimentos*, PPI). In coordination with Apex-Brasil and the Special Secretariat of the Investments Partnerships Program (*Secretaria Especial do Programa de Parcerias de Investimentos*) of the Ministry of Economy, it participates in the organisation of investment attraction missions, seminars and roundtables, contacting potential investors and monitoring the demands of foreign companies involved in PPI projects. See Government of Brazil (2021), Investment Partnerships Program, <https://www.gov.br/mre/en/subjects/economic-and-commercial-foreign-policy/international-trade/investment-partnerships-program>.

¹⁰¹ Guidelines, Commentary on the Procedural Guidance for NCPs, para. 37, <https://www.oecd.org/daf/inv/mne/48004323.pdf>.

¹⁰² It should be noted that, as far as investment treaties are concerned, other kinds of provisions can also potentially have a bearing on RBC. This is, in particular, the case of provisions requiring that investments be made in accordance with domestic law in order to benefit from treaty coverage. General protections, such as provisions on granting “fair and equitable treatment” to covered foreign investors, can affect policy space to regulate business. However, as these provisions do not expressly refer to sustainability issues, such as respect for human rights, the promotion of labour standards, the protection of the environment, or the fight against corruption, or contain an express mention of RBC or CSR, they are not included in the present analysis. For a discussion of these provisions, see Gaukrodger, D. (2021), “Business responsibilities and investment treaties”, *OECD Working Papers on International Investment*, No. 2021/02, OECD Publishing, Paris, <https://doi.org/10.1787/4a6f4f17-en>; Gaukrodger, D. (2017), Addressing the balance of interests in investment treaties: The limitation of fair and equitable treatment provisions to the minimum standard of treatment under customary international law, *OECD Working Papers on International Investment*, 2017/03, <https://www.oecd-ilibrary.org/docserver/0a62034b-en.pdf?expires=1614962636&id=id&accname=ocid84004878&checksum=99194E7B92808FC3B402529A24670527>. See also Pohl, J. (2018), Societal benefits and costs of International Investment Agreements: A critical review of aspects and available empirical evidence, *OECD Working Papers on International Investment*, No. 2018/01, OECD Publishing, Paris, <https://doi.org/10.1787/e5f85c3d-en>; Dolzer, R. (2005), *The Impact of International Investment Treaties on Domestic Administrative Law*, New York University Journal of International Law and Policy 37, No. 4, pp. 953-971, <https://www.iijl.org/wp-content/uploads/2016/08/Dolzer-The-Impact-of-International-Investment-Treaties-on-Domestic-Administrative-Law-2005.pdf>.

¹⁰³ According to the Government of Brazil, the trade agreement between Mercosur and the EFTA is the first extra-regional agreement in which Mercosur “adopts rules related to the facilitation of investments, with procedures for institutional dialogue between governments and the private sector of both parties in the identification of business opportunities, clarification on regulatory requirements and overcoming bureaucratic obstacles for the establishment and operation of companies” (See <http://siscomex.gov.br/acordos-comerciais/mercosul-efta/>). It is, therefore, possible that the investment chapter could have been prepared on the basis of the CFIA. However, although the negotiations concluded in August 2019, the agreement has not been signed and, thus, has not been made public.

¹⁰⁴ 2020 Brazil-India CFIA; 2019 Brazil-Ecuador CFIA; 2019 Brazil-Morocco CFIA; 2019 Brazil-United Arab Emirates CFIA; 2018 Brazil-Guyana CFIA; 2018 Brazil- Suriname CFIA; 2018 Brazil-Ethiopia CFIA; 2015 Brazil-Mexico CFIA; 2015 Brazil- Colombia CFIA; 2015 Brazil-Chile CFIA; 2015 Brazil- Malawi CFIA; 2015 Brazil-Mozambique CFIA; 2015 Angola-Brazil CFIA.

¹⁰⁵ For clarity purposes, the term “CFIAs” in the present Review covers all investment agreements that are based on the CFIA model.

¹⁰⁶ 2020 Brazil-India CFIA, Article 22 (Provisions on Investment and Environment, Labor Affairs and Health), para. 2; 2019 Brazil-Ecuador CFIA, Article 22 (Provisions on Investment and Environment, Labor Affairs and Health), para. 2; 2019 Brazil-United Arab Emirates CFIA, Article 17 (Provisions on Investment and Environment, Labor Affairs and Health), para. 2; 2018 Brazil-Guyana CFIA, Article 17 (Provisions on Investment and Environment, Labor Affairs and Health), para. 2; 2018 Brazil- Suriname CFIA, Article 17 (Provisions on Investment and Environment, Labor Affairs and Health), para. 2; 2018 Brazil-Ethiopia CFIA, Article 16 (Provisions on Investment and Environment, Labor Affairs and Health), para. 2; 2015 Brazil- Colombia CFIA, Article 15 (Provisions on Investment and Environment, Labor

Affairs, Health and Safety), para. 2; 2015 Brazil-Chile CFIA, Article 17 (Provisions on Investment and Environment, Labor Affairs and Health), para 2; 2017 Intra-Mercosur CFIP, Article 16 (Provisions on Investment and Environment, Labor Affairs and Health), para. 2; 2016 Brazil-Peru ETEA, Article 2.12 (Investment and measures of Health, Environment and other regulatory objectives in social matters), para. 2.

¹⁰⁷ 2020 Brazil-India CFIA, Article 22 (Provisions on Investment and Environment, Labor Affairs and Health), para. 1; 2019 Brazil-Ecuador CFIA, Article 22 (Provisions on Investment and Environment, Labor Affairs and Health), para. 1; 2019 Brazil-United Arab Emirates CFIA, Article 17 (Provisions on Investment and Environment, Labor Affairs and Health), para. 1; 2018 Brazil-Guyana CFIA, Article 17 (Provisions on Investment and Environment, Labor Affairs and Health), para. 1; 2018 Brazil- Suriname CFIA, Article 17 (Provisions on Investment and Environment, Labor Affairs and Health), para. 1; 2018 Brazil-Ethiopia CFIA, Article 16 (Provisions on Investment and Environment, Labor Affairs and Health), para. 1; 2015 Brazil- Colombia CFIA, Article 15 (Provisions on Investment and Environment, Labor Affairs, Health and Safety), para. 1; 2015 Brazil-Chile CFIA, Article 17 (Provisions on Investment and Environment, Labor Affairs and Health), para 1; 2019 Brazil-Morocco CFIA, Article 4 (Promotion and Admission); 2017 Intra-Mercosur CFIP, Article 16 (Provisions on Investment and Environment, Labor Affairs and Health), para. 1; 2016 Brazil-Peru ETEA, Article 2.12 (Investment and measures of Health, Environment and other regulatory objectives in social matters), para. 1.

¹⁰⁸ 2019 Brazil-United Arab Emirates CFIA, Article 4 (Treatment), para 3.

¹⁰⁹ 2020 India-Brazil CFIA, Article 6 (Direct Expropriation), para. 4.

¹¹⁰ 2020 Brazil-India CFIA, Article 10 (Investment Measures and Combating Corruption and Illegality), para 1; 2019 Brazil-Ecuador CFIA, Article 16 (Investment Measures and Combating Corruption and Illegality), para 1; 2019 Brazil-United Arab Emirates CFIA, Article 16 (Investment Measures and Combating Corruption and Illegality), para 1; 2018 Brazil-Guyana CFIA, Article 16 (Investment Measures and Combating Corruption and Illegality), para 1; 2018 Brazil- Suriname CFIA, Article 16 (Investment Measures and Combating Corruption and Illegality), para 1; 2018 Brazil-Ethiopia CFIA, Article 15 (Investment Measures and Combating Corruption and Illegality), para 1; 2017 Intra-Mercosur CFIP, Article 15 (Investment Measures and Combating Corruption and Illegality), para 1; 2016 Brazil-Peru ETEA, Article 2.14 (Investment Measures and Combating Corruption and Illegality), para 1; 2015 Brazil-Colombia CFIA, Article 14 (Investment Measures and Combating Corruption and Illegality), para 1; 2015 Brazil-Chile CFIA, Article 16 (Investment Measures and Combating Corruption and Illegality), para 1.

¹¹¹ 2020 Brazil-India CFIA, Article 10 (Investment Measures and Combating Corruption and Illegality), para 2; 2019 Brazil-Ecuador CFIA, Article 16 (Investment Measures and Combating Corruption and Illegality), para 2; 2019 Brazil-United Arab Emirates CFIA, Article 16 (Investment Measures and Combating Corruption and Illegality), para 2; 2018 Brazil-Guyana CFIA, Article 16 (Investment Measures and Combating Corruption and Illegality), para 2; 2018 Brazil- Suriname CFIA, Article 16 (Investment Measures and Combating Corruption and Illegality), para 2; 2018 Brazil-Ethiopia CFIA, Article 15 (Investment Measures and Combating Corruption and Illegality), para 2; 2017 Intra-Mercosur CFIP, Article 15 (Investment Measures and Combating Corruption and Illegality), para 2; 2016 Brazil-Peru ETEA, Article 2.14 (Investment Measures and Combating Corruption and Illegality), para 2; 2015 Brazil-Colombia CFIA, Article 14 (Investment Measures and Combating Corruption and Illegality), para 2; 2015 Brazil-Chile CFIA, Article 16 (Investment Measures and Combating Corruption and Illegality), para 2.

¹¹² 2020 Brazil-India CFIA, Article 12 (Corporate Social Responsibility), para. 1; 2019 Brazil-Ecuador CFIA, Article 14 (Corporate Social Responsibility), para. 1; 2019 Brazil-Morocco CFIA, Article 13 (Corporate Social Responsibility), para. 1; 2019 Brazil-United Arab Emirates CFIA, Article 15 (Corporate Social Responsibility), para. 1; 2018 Brazil-Guyana CFIA, Article 15 (Corporate Social Responsibility), para. 1; 2018 Brazil- Suriname CFIA, Article 15 (Corporate Social Responsibility), para. 1; 2018 Brazil-Ethiopia CFIA, Article 14 (Corporate Social Responsibility), para. 1; 2017 Intra-Mercosur CFIP, Article 14 (Corporate Social Responsibility), para. 1; 2016 Brazil-Peru ETEA, Article 2.13 (Corporate Social Responsibility), para. 1; 2015 Brazil-Mexico CFIA, Article 13 (Corporate Social Responsibility), para. 1;

2015 Brazil- Colombia CFIA, Article 13 (Corporate Social Responsibility), para. 1; 2015 Brazil-Chile CFIA, Article 15 (Corporate Social Responsibility), para. 1; 2015 Brazil- Malawi CFIA, Article 15 (Corporate Social Responsibility), para. 1; 2015 Brazil-Mozambique CFIA, Article 10 (Corporate Social Responsibility); 2015 Angola-Brazil CFIA, Article 10 (Corporate Social Responsibility).

¹¹³ Although in the first CFIA, signed with Angola and Mozambique, these standards and principles were detailed in an annex, in all subsequent CFIA they are part of the core of the text. The list of principles and standards is almost exactly the same in all of Brazil's CFIA, to the exception of some that include principles related to the fight against corruption. Some CFIA go a step further and include a provision on investors' obligation to comply with domestic laws, stressing that investors shall not commit any act of corruption.

¹¹⁴ 2015 Brazil-Chile CFIA, Article 15 (Corporate Social Responsibility), para. 2; 2019 Brazil-United Arab Emirates CFIA Article 15 (Corporate Social Responsibility), para. 1; 2018 Brazil-Ethiopia CFIA, Article 14 (Corporate Social Responsibility), para. 1.

¹¹⁵ 2020 Brazil-India CFIA, Article 12 (Corporate Social Responsibility), para. 2; 2019 Brazil-Ecuador CFIA, Article 14 (Corporate Social Responsibility), para. 2; 2019 Brazil-Morocco CFIA, Article 13 (Corporate Social Responsibility), para. 2; 2019 Brazil-United Arab Emirates CFIA, Article 15 (Corporate Social Responsibility), para. 2; 2018 Brazil-Guyana CFIA, Article 15 (Corporate Social Responsibility), para. 2; 2018 Brazil- Suriname CFIA, Article 15 (Corporate Social Responsibility), para. 2; 2018 Brazil-Ethiopia CFIA, Article 14 (Corporate Social Responsibility), para.1; 2017 Intra-Mercosur CFIP, Article 14 (Corporate Social Responsibility), para. 2; 2016 Brazil-Peru ETEA, Article 2.13 (Corporate Social Responsibility), para. 2; 2015 Brazil-Mexico CFIA, Article 13 (Corporate Social Responsibility), para. 2; 2015 Brazil- Colombia CFIA, Article 13 (Corporate Social Responsibility), para. 2; 2015 Brazil-Chile CFIA, Article 15 (Corporate Social Responsibility), para. 2; 2015 Brazil- Malawi CFIA, Article 15 (Corporate Social Responsibility), para. 2; 2015 Brazil-Mozambique CFIA, Annex II (Corporate Social Responsibility); 2015 Angola-Brazil CFIA, Annex II (Corporate Social Responsibility).

¹¹⁶ The OID is comprised of: (i) SECAMEX, (ii) a secretariat in charge of supporting SECAMEX in its functions related to the OID; (iii) an Advisory Group – chaired by SECAMEX and composed of representatives of the Ministries that compose CAMEX – in charge of monitoring and guiding the work of the OID; and (iv) a Network of Focal Points, comprised of focal points of the bodies and entities of the public administration (see Government of Brazil, Direct Investments Ombudsman - OID, <http://oid.economia.gov.br/pt/menus/8>). Since April 2019, the OID is open to investors from all countries irrespective of whether their country of origin has concluded is a CFIA with Brazil (Government of Brazil, Decreto n° 9.770, 22 April 2019, http://www.planalto.gov.br/ccivil_03/ Ato2019-2022/2019/Decreto/D9770.html).

¹¹⁷ The OID is comprised of: (i) SECAMEX, (ii) a secretariat in charge of supporting SECAMEX in its functions related to the OID; (iii) an Advisory Group – chaired by SECAMEX and composed of representatives of the Ministries that compose CAMEX – in charge of monitoring and guiding the work of the OID; and (iv) a Network of Focal Points, comprised of focal points of the bodies and entities of the public administration (see Government of Brazil, Direct Investments Ombudsman - OID, <http://oid.economia.gov.br/pt/menus/8>). Since April 2019, the OID is open to investors from all countries irrespective of whether their country of origin has concluded is a CFIA with Brazil (Government of Brazil, Decreto n° 9.770, 22 April 2019, http://www.planalto.gov.br/ccivil_03/ Ato2019-2022/2019/Decreto/D9770.html).

¹¹⁸ 2020 Brazil-India CFIA, Article 14 (National Focal Points or Ombudsmen), para. 1 and para. 4; 2019 Brazil-Ecuador CFIA; 2019 Brazil-Morocco CFIA; 2019 Brazil-United Arab Emirates CFIA; 2018 Brazil-Guyana CFIA; 2018 Brazil- Suriname CFIA; 2018 Brazil-Ethiopia CFIA; 2017 Intra-Mercosur CFIP; 2016

Brazil-Peru ETEA; 2015 Brazil-Mexico CFIA; 2015 Brazil- Colombia CFIA; 2015 Brazil-Chile CFIA; 2015 Brazil- Malawi CFIA; 2015 Brazil-Mozambique CFIA; 2015 Angola-Brazil CFIA.

¹¹⁹ 2020 Brazil-India CFIA, Article 14 (National Focal Points or Ombudsmen), para. 4 (c); 2019 Brazil-Ecuador CFIA; 2019 Brazil-Morocco CFIA; 2019 Brazil-United Arab Emirates CFIA; 2018 Brazil-Guyana CFIA; 2018 Brazil- Suriname CFIA; 2018 Brazil-Ethiopia CFIA; 2017 Intra-Mercosur CFIP; 2016 Brazil-Peru ETEA; 2015 Brazil-Mexico CFIA; 2015 Brazil- Colombia CFIA; 2015 Brazil-Chile CFIA; 2015 Brazil- Malawi CFIA; 2015 Brazil-Mozambique CFIA; 2015 Angola-Brazil CFIA.

¹²⁰ 2020 Brazil-India CFIA, Article 13 (Joint Committee); 2019 Brazil-Ecuador CFIA; 2019 Brazil-Morocco CFIA; 2019 Brazil-United Arab Emirates CFIA; 2018 Brazil-Guyana CFIA; 2018 Brazil- Suriname CFIA; 2018 Brazil-Ethiopia CFIA; 2017 Intra-Mercosur CFIP; 2016 Brazil-Peru ETEA; 2015 Brazil-Mexico CFIA; 2015 Brazil- Colombia CFIA; 2015 Brazil-Chile CFIA; 2015 Brazil- Malawi CFIA; 2015 Brazil- Mozambique CFIA; 2015 Angola-Brazil CFIA.

¹²¹ 2020 Brazil-India CFIA, Article 13 (Joint Committee); 2019 Brazil-Ecuador CFIA; 2019 Brazil-Morocco CFIA; 2019 Brazil-United Arab Emirates CFIA; 2018 Brazil-Guyana CFIA; 2018 Brazil- Suriname CFIA; 2018 Brazil-Ethiopia CFIA; 2017 Intra-Mercosur CFIP; 2016 Brazil-Peru ETEA; 2015 Brazil-Mexico CFIA; 2015 Brazil- Colombia CFIA; 2015 Brazil-Chile CFIA; 2015 Brazil- Malawi CFIA; 2015 Brazil- Mozambique CFIA; 2015 Angola-Brazil CFIA.

¹²² 2019 Brazil-United Arab Emirates CFIA, Article 2 (Scope).

¹²³ 2020 Brazil-India CFIA, Article 18 (Dispute Prevention); 2019 Brazil-Ecuador CFIA; 2019 Brazil- Morocco CFIA; 2019 Brazil-United Arab Emirates CFIA; 2018 Brazil-Guyana CFIA; 2018 Brazil- Suriname CFIA; 2018 Brazil-Ethiopia CFIA; 2017 Intra-Mercosur CFIP; 2016 Brazil-Peru ETEA; 2015 Brazil-Mexico CFIA; 2015 Brazil- Colombia CFIA; 2015 Brazil-Chile CFIA; 2015 Brazil- Malawi CFIA; 2015 Brazil-Mozambique CFIA; 2015 Angola-Brazil CFIA.

¹²⁴ The expression 'trade agreements' in the present Review covers bilateral and regional trade agreements of different types, including customs unions, economic partnerships agreements, and comprehensive trade agreements with investment chapters. However, for the purposes of the present analysis, the provisions of these investment chapters are analysed in the following subsection.

¹²⁵ Government of Brazil (2021), Website: Sistema de Comércio Exterior – Acordos Comerciais, <http://siscomex.gov.br/acordos-comerciais/>; Government of Brazil (2020), Website: Acordos dos quais o Brasil é Parte, <https://www.gov.br/produtividade-e-comercio-exterior/pt-br/assuntos/comercio-exterior/negociacoes-internacionais/acordos-dos-quais-o-brasil-e-parte>; Government of Brazil (n.d.), Website: Acordos de Comércio, <http://www.camex.gov.br/negociacoes-comerciais-internacionais/acordos-de-comercio>.

¹²⁶ Except for the 2010 MERCOSUR-Egypt FTA, which does refer to sustainable development in its preamble. See 2010 MERCOSUR – Egypt FTA, Preamble, http://www.mdic.gov.br/arquivos/dwnl_1281650824.doc.

¹²⁷ See, for instance, 1996 MERCOSUR-Chile Economic Complementation Agreement (ACE No. 35), Article 49; 1996 MERCOSUR-Bolivia Economic Complementation Agreement (ACE No. 36), Article 10; 2001 MERCOSUR-Guyane, St Kitts and Nevis Economic Complementation Agreement of Partial Scope (AAP.A25TM N°38), Article 6; 2004 MERCOSUR-India Preferential Trade Agreement, Chapter III (General Exceptions), Article 9; 2005 MERCOSUR-Peru Economic Complementation Agreement (ACE No. 58), Article 10; 2006 MERCOSUR-Cuba Economic Complementation Agreement (ACE No. 62), Article 8; 2009 MERCOSUR-Southern African Customs Union Preferential Trade Agreement, Chapter IV (General Exceptions), Article 13; 2017 MERCOSUR-Colombia Economic Complementation Agreement (ACE No. 72), Article 10.

¹²⁸ WTO (2019), General Agreement on Tariffs and Trade, Article XX (General Exceptions), https://www.wto.org/english/res_e/booksp_e/gatt_ai_e/art20_e.pdf; WTO (2019). General Agreement on Trade in Services. Article XIV (General Exceptions), https://www.wto.org/english/docs_e/legal_e/26-gats_01_e.htm#articleXIV.

¹²⁹ A few trade agreements recently negotiated by Brazil that have not been signed and/or ratified yet do not include detailed sustainability provisions nor RBC clauses. This is notably the case of the Free Trade Agreement concluded with Palestine in 2011 in the framework of the MERCOSUR and of the Economic Complementation Agreement concluded with Paraguay in 2020 in the framework of the ALADI. See 2011 MERCOSUR-Palestine FTA; 2020 Brazil-Paraguay Economic Complementation Agreement (ACE No. 74).

¹³⁰ 2016 Brazil-Peru ETEA, Chapter 3 (Trade in Services), Article 3.11.

¹³¹ 2016 Brazil-Peru ETEA, Chapter 4 (Public Procurement), Article 4.18.

¹³² Government of Chile (2018), Press release: Canciller Ampuero firma acuerdo comercial con Brasil y destaca anuncio de Presidente Temer para beneficiar a pensionados chilenos, <https://minrel.gob.cl/minrel/noticias-antecedentes/canciller-ampuero-firma-acuerdo-comercial-con-brasil-y-destaca-anuncio>.

¹³³ Government of Brazil (n.d.), Siscomex – Mercosul-Chile (ACE 35) – Textos e outros documentos do Acordo, <http://siscomex.gov.br/acordos-comerciais/mercosul-chile-ace-35>.

¹³⁴ 2018 Brazil-Chile FTA, Chapter 16 (Trade and Labour issues).

¹³⁵ 2018 Brazil-Chile FTA, Chapter 17 (Trade and Environment).

¹³⁶ 2018 Brazil-Chile FTA, Chapter 20 (Transparency), Section B (Anti-corruption).

¹³⁷ 2018 Brazil-Chile FTA, Chapter 18 (Trade and Gender).

¹³⁸ 2018 Brazil-Chile FTA, Chapter 16 (Trade and Labour issues), Article 16.5 (No derogation).

¹³⁹ 2018 Brazil-Chile FTA, Chapter 16 (Trade and Labour issues), Articles 16.3 (Shared Commitments), 16.4 (Labour Rights).

¹⁴⁰ 2018 Brazil-Chile FTA, Chapter 16 (Trade and Labour issues), Article 16.3 (Shared Commitments), para. 2.

¹⁴¹ 2018 Brazil-Chile FTA, Chapter 16 (Trade and Labour issues), Article 16.4 (Labour Rights).

¹⁴² 2018 Brazil-Chile FTA, Chapter 16 (Trade and Labour issues), Article 16.4 (Labour Rights).

¹⁴³ 2018 Brazil-Chile FTA, Chapter 16 (Trade and Labour issues), Article 16.3 (Shared Commitments), para. 5.

¹⁴⁴ 2018 Brazil-Chile FTA, Chapter 16 (Trade and Labour issues), Article 16.7 (Forced labour).

¹⁴⁵ 2018 Brazil-Chile FTA, Chapter 17 (Trade and Environment), Article 17.3 (General Commitments).

¹⁴⁶ 2018 Brazil-Chile FTA, Chapter 17 (Trade and Environment), Article 17.2 (Right to Regulate for Environmental Matters).

¹⁴⁷ 2018 Brazil-Chile FTA, Chapter 17 (Trade and Environment), Article 17.9 (Trade and Biodiversity), para. 6.

¹⁴⁸ 2018 Brazil-Chile FTA, Chapter 17 (Trade and Environment), Article 17.14 (Trade and Climate Change), paras. 3-4.

¹⁴⁹ 2018 Brazil-Chile FTA, Chapter 17 (Trade and Environment), Article 17.13 (Sustainable Agriculture), para. 3.

¹⁵⁰ 2018 Brazil-Chile FTA, Chapter 17 (Trade and Environment), Article 17.15 (Indigenous and Local Communities), para. 2.

¹⁵¹ 2018 Brazil-Chile FTA, Chapter 20 (Transparency), Section B (Anti-corruption), Article 20.7 (Measures to Combat Bribery and Corruption).

¹⁵² 2018 Brazil-Chile FTA, Chapter 20 (Transparency), Section B (Anti-corruption), Article 20.7 (Measures to Combat Bribery and Corruption).

¹⁵³ 2018 Brazil-Chile FTA, Chapter 20 (Transparency), Section B (Anti-corruption), Article 20.9 (Promotion of Public Officials' Integrity).

- ¹⁵⁴ 2018 Brazil-Chile FTA, Chapter 20 (Transparency), Section B (Anti-corruption), Article 20.10 (Participation of the Private Sector and Civil Society).
- ¹⁵⁵ 2018 Brazil-Chile FTA, Chapter 10 (E-commerce), Article 10.7 (Protection of the Online Consumer).
- ¹⁵⁶ 2018 Brazil-Chile FTA, Chapter 10 (E-commerce), Article 10.8 (Personal Data Protection).
- ¹⁵⁷ 2018 Brazil-Chile FTA, Chapter 18 (Trade and Gender), Article 18.1 (General Provisions).
- ¹⁵⁸ 2018 Brazil-Chile FTA, Chapter 18 (Trade and Gender), Article 18.1 (General Provisions).
- ¹⁵⁹ 2018 Brazil-Chile FTA, Chapter 18 (Trade and Gender), Article 18.3 (Cooperation Activities).
- ¹⁶⁰ 2018 Brazil-Chile FTA, Chapter 16 (Trade and Labour issues), Article 16.15 (Non-Application of Dispute Resolution); Chapter 17 (Trade and Environment), Article 17.19 (Non-Application of Dispute Resolution); Chapter 18 (Trade and Gender), Article 18.7 (Non-Application of Dispute Resolution); Chapter 20 (Transparency), Article 20.15 (Non-application of Dispute Resolution).
- ¹⁶¹ 2018 Brazil-Chile FTA, Chapter 16 (Trade and Labour issues), Article 16.14 (Dialogue on Trade and Labour Issues); Chapter 17 (Trade and Environment), Article 17.18 (Dialogue on Trade and Environment).
- ¹⁶² 2018 Brazil-Chile FTA, Chapter 18 (Trade and Gender), Article 18.5 (Dialogue on Trade and Gender); Chapter 20 (Transparency), Section C (General Provisions), Article 20.13 (Contact Points).
- ¹⁶³ 2018 Brazil-Chile FTA, Chapter 16 (Trade and Labour issues), Article 16.8 (Responsible Business Conduct).
- ¹⁶⁴ 2018 Brazil-Chile FTA, Chapter 17 (Trade and Environment), Article 17.6 (Responsible Business Conduct).
- ¹⁶⁵ 2018 Brazil-Chile FTA, Chapter 16 (Trade and Labour issues), Article 16.8 (Responsible Business Conduct); Chapter 17 (Trade and Environment), Article 17.6 (Responsible Business Conduct).
- ¹⁶⁶ 2018 Brazil-Chile FTA, Chapter 16 (Trade and Labour issues), Article 16.3 (Cooperation Activities).
- ¹⁶⁷ 2018 Brazil-Chile FTA, Chapter 16 (Trade and Labour issues), Article 16.3 (Public Awareness and Procedural Safeguards).
- ¹⁶⁸ 2018 Brazil-Chile FTA, Chapter 17 (Trade and Environment), Article 17.5 (Access to Justice, Information and Participation in Environmental Matters).
- ¹⁶⁹ 2018 Brazil-Chile FTA, Chapter 16 (Trade and Labour issues), Article 15.3 (Public Awareness and Procedural Safeguards), para. 2; Chapter 17 (Trade and Environment), Article 17.5 (Access to Justice, Information and Participation in Environmental Matters), para. 5.
- ¹⁷⁰ 2018 Brazil-Chile FTA, Chapter 16 (Trade and Labour issues), Article 16.3 (Public Awareness and Procedural Safeguards), para. 4.
- ¹⁷¹ 2018 Brazil-Chile FTA, Chapter 16 (Trade and Labour issues), Article 16.3 (Public Awareness and Procedural Safeguards), para. 5; Chapter 17 (Trade and Environment), Article 17.5 (Access to Justice, Information and Participation in Environmental Matters), para. 6.
- ¹⁷² 2018 Brazil-Chile FTA, Chapter 16 (Trade and Labour issues), Article 16.11 (Public Communications);
- ¹⁷³ 2018 Brazil-Chile FTA, Chapter 17 (Trade and Environment), Article 17.5 (Access to Justice, Information and Participation in Environmental Matters), para. 7.
- ¹⁷⁴ 2018 Brazil-Chile FTA, Chapter 16 (Trade and Labour issues), Article 16.11 (Public Communications), paras. 2-3; Article 17.5 (Access to Justice, Information and Participation in Environmental Matters), para. 7.
- ¹⁷⁵ MERCOSUR-EU FTA (Draft text), Chapter on Trade and Sustainable Development, Article 2 (Right to regulate and levels of protection), paras. 1-2.
- ¹⁷⁶ MERCOSUR-EU FTA (Draft text), Chapter on Trade and Sustainable Development, Article 2 (Right to regulate and levels of protection), paras. 3-5.

- ¹⁷⁷ MERCOSUR-EU FTA (Draft text), Chapter on Trade and Sustainable Development, Article 4 (Multilateral Labour Standards and Agreements), paras. 3,7.
- ¹⁷⁸ MERCOSUR-EU FTA (Draft text), Chapter on Trade and Sustainable Development, Article 5 (Multilateral Environmental Agreements), para. 3.
- ¹⁷⁹ MERCOSUR-EU FTA (Draft text), Chapter on Trade and Sustainable Development, Article 6 (Trade and Climate Change), para. 2(a).
- ¹⁸⁰ MERCOSUR-EU FTA (Draft text), Chapter on Trade and Sustainable Development, Article 7 (Trade and Biodiversity), para. 2(b).
- ¹⁸¹ MERCOSUR-EU FTA (Draft text), Chapter on Trade and Sustainable Development, Article 8 (Trade and Sustainable Management of Forests), para. 2(c).
- ¹⁸² MERCOSUR-EU FTA (Draft text), Chapter on Trade and Sustainable Development, Article 9 (Trade and Sustainable Management of Fisheries and Aquaculture), paras. 2(a), (d).
- ¹⁸³ MERCOSUR-EU FTA (Draft text), Chapter on Trade and Sustainable Development, Article 13 (Working Together on Trade and Sustainable Development).
- ¹⁸⁴ MERCOSUR-EU FTA (Draft text), Chapter on Trade and Sustainable Development, Article 13 (Working Together on Trade and Sustainable Development).
- ¹⁸⁵ MERCOSUR-EU FTA (Draft text), Chapter on Trade and Sustainable Development, Article 13 (Working Together on Trade and Sustainable Development).
- ¹⁸⁶ MERCOSUR-EU FTA (Draft text), Chapter on Trade and Sustainable Development, Article 6 (Trade and Climate Change), para. 3; Article 13 (Working Together on Trade and Sustainable Development).
- ¹⁸⁷ MERCOSUR-EU FTA (Draft text), Chapter on Trade and Sustainable Development, Article 7 (Trade and Biodiversity), para. 3; Article 13 (Working Together on Trade and Sustainable Development).
- ¹⁸⁸ MERCOSUR-EU FTA (Draft text), Chapter on Trade and Sustainable Development, Article 8 (Trade and Sustainable Management of Forests), para. 3; Article 13 (Working Together on Trade and Sustainable Development).
- ¹⁸⁹ MERCOSUR-EU FTA (Draft text), Chapter on Trade and Sustainable Development, Article 13 (Working Together on Trade and Sustainable Development).
- ¹⁹⁰ MERCOSUR-EU FTA (Draft text), Chapter on Trade and Sustainable Development, Article 13 (Working Together on Trade and Sustainable Development).
- ¹⁹¹ MERCOSUR-EU FTA (Draft text), Chapter on Trade in Services and Establishment, Article 49 (Consumer Protection).
- ¹⁹² MERCOSUR-EU FTA (Draft text), Chapter on Trade in Services and Establishment, Article 49 (Consumer Protection).
- ¹⁹³ MERCOSUR-EU FTA (Draft text), Chapter on Trade and Sustainable Development, Article 11 (Trade and Responsible Management of Supply Chains), para. 2(c).
- ¹⁹⁴ MERCOSUR-EU FTA (Draft text), Chapter on Trade and Sustainable Development, Article 15 (Dispute Resolution).
- ¹⁹⁵ MERCOSUR-EU FTA (Draft text), Chapter on Trade and Sustainable Development, Article 14 (Sub-Committee on Trade and Sustainable Development and Contact Points).
- ¹⁹⁶ MERCOSUR-EU FTA (Draft text), Chapter on Trade and Sustainable Development, Article 16 (Consultations).
- ¹⁹⁷ MERCOSUR-EU FTA (Draft text), Chapter on Trade and Sustainable Development, Article 17 (Panel of Experts), para. 1.
- ¹⁹⁸ MERCOSUR-EU FTA (Draft text), Chapter on Trade and Sustainable Development, Article 17 (Panel of Experts), para. 10.

¹⁹⁹ MERCOSUR-EU FTA (Draft text), Chapter on Trade and Sustainable Development, Article 17 (Panel of Experts), para. 11.

²⁰⁰ MERCOSUR-EU FTA (Draft text), Chapter on Trade and Sustainable Development, Article 17 (Panel of Experts), para. 11.

²⁰¹ MERCOSUR-EU FTA (Draft text), Chapter on Trade and Sustainable Development, Article 17 (Panel of Experts), para. 11.

²⁰² MERCOSUR-EU FTA (Draft text), Chapter on Trade and Sustainable Development, Article 11 (Trade and Responsible Management of Supply Chains), para. 2(a).

²⁰³ MERCOSUR-EU FTA (Draft text), Chapter on Trade and Sustainable Development, Article 11 (Trade and Responsible Management of Supply Chains), para 3.

²⁰⁴ MERCOSUR-EU FTA (Draft text), Chapter on Trade and Sustainable Development, Article 4 (Multilateral Labour Standards and Agreements), para. 11.

²⁰⁵ See mention of such mechanisms in brackets in Article 17 of the TSD Chapter. See MERCOSUR-EU FTA (Draft text), Chapter on Trade and Sustainable Development, Article 17 (Panel of Experts), para. 11.

²⁰⁶ MERCOSUR-EU FTA (Draft text), Chapter on Trade and Sustainable Development, Article 17 (Panel of Experts), para. 11.

²⁰⁷ The negotiations of the MERCOSUR-EFTA FTA were carried out in light of the negotiations of the MERCOSUR-EU FTA due to the very close relationship between the EFTA and the EU market.

²⁰⁸ OECD (2019), Action Plan to Strengthen National Contact Points for Responsible Business Conduct 2019 – 2021, Track four: promoting policy coherence; <http://mneguidelines.oecd.org/Action-Plan-to-Strengthen-National-Contact-Points-for-Responsible-Business-Conduct-2019-2021.pdf>

²⁰⁹ See Procedural Guidance, paragraph 37 in OECD (2011), *OECD Guidelines for Multinational Enterprises*, OECD

Publishing, <http://dx.doi.org/10.1787/9789264115415-en>

²¹⁰ OECD (2020), National Contact Points for Responsible Business Conduct, Providing Access to remedy – twenty years and the road ahead, p. 26 <http://mneguidelines.oecd.org/NCPs-for-RBC-providing-access-to-remedy-20-years-and-the-road-ahead.pdf>

²¹¹ See <https://pcnmaroc.ma/en/about/>

²¹² See <https://www.gov.uk/government/organisations/uk-national-contact-point/about>

²¹³ See <https://www.responsiblebusiness.no/news/the-rbc-compass-new-tool/>

²¹⁴ See <https://www.alianzaanticorruccion.cl/AnticorruccionUNCAC/quienes-somos/>

²¹⁵ See Art. 14.4 of the Canadian NCP's [rules of procedure](#).

²¹⁶ See <https://ausncp.gov.au/about/governance-and-advisory-board>

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