

ANNEX I

THE 'NETWORK': IN CONTEXT AND IN PRACTICE

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A. Introduction

1. As argued in the main text of this communication (the 'Communication'),¹ an organizational group of actors (the 'Network'), motivated by the rapacious and unfettered economic development of Brazil's Amazon Rainforest (the 'Amazon'), have pursued a **policy to facilitate the dispossession of land, the exploitation of natural resources, and the destruction of the environment, irrespective of the law.**² This policy promoted and/or encouraged the commission of the underlying crimes set out elsewhere in this Communication, which were perpetrated by public and private-sector actors, at the local, state, and federal levels. With deep roots in Brazil's past, the Network embodies one of the competing claims for Brazil's huge land mass—claims that are nearly as old as the country itself.
2. Over the course of centuries, conceptions of how land should be used and distributed became entrenched and, as a matter of course, informed the creation of the Brazil's contemporary legal regime. Within this framework, the precursors to the Network were formulated and their mechanisms (and machinations) were developed. In particular, over the course of the last decade, the Network consolidated its political power—culminating in the current (Bolsonaro) administration and resulting in the criminal activity and environmental destruction described throughout this Communication.³ In short, the Network is steeped in the past and enabled and emboldened by present systems and circumstances.
3. In support of these claims, this Annex: (i) sets out some of the **historical antecedents** of the Network; (ii) outlines the relevant aspects of Brazil's contemporary **domestic legal landscape** and posits how the Network has been able to navigate it to great advantage; (iii) describes how certain government institutions have been **captured by the corporate interests** undergirding the Network; (iv) enumerates the **current (Bolsonaro) administration's various contributions** to the Network; and (v) ultimately **links** the Network to unlawful land grabbing, deforestation, and consequential mass violence in the Amazon.

* * *

¹ This annex supports the 'Article 15 Communication to the Office of the Prosecutor of the International Criminal Court' alleging 'Crimes Against Humanity in Brazil: 2011 to the Present' related to 'Persecution of Rural Populations and Associated Environmental Destruction', filed on 9 November 2022 by Climate Counsel, Greenpeace Brasil, and Observatorio do Clima (the 'Communication'). In particular, it supports Section II ('Contextual Background') and various portions of Section IV ('Legal Framework and Assessment') of the Communication.

² *Nb.* The Network comprises public and private-sector actors from multiple levels of Brazilian society, including federal-level politicians in the executive branch and congress, corporate executives, key industry players and their lobbyists, mid-level business executives, criminal network bosses, and shadow operators and contractors, to name a few. The Network resembles a kind of informal 'deep state' or 'agro-industrial complex', with tacit but clear agreement and understanding among its participants, in which individual actors are well aware of the parts they are expected to play. See Communication, paras 4, 51.

³ See Annex II.

B. Historical Antecedents – Past as Prologue

1. The Colonial Era (1500 to 1822)

4. The Portuguese crown, making the first systematic effort to establish a government in Brazil in 1533, divided its new colony into hereditary captaincies each extending a fixed distance along the coast and an indefinite distance inland. These land grants were distributed to favored persons who became known as *donatários* (donees) and wielded extensive rights and privileges.⁴ Brazil's westward expansion was one of the most significant events of the colonial period, and colonists quickly expanded far beyond previously established lines in three distinct groups: missionaries, cattlemen, and *bandeirantes* (explorers and slave hunters). In the northeast, cattlemen searching for new pastures pushed inland from the sugar-producing zones of Pernambuco and Bahia to the present states of Piauí, Maranhão, and Goiás. Settlers from São Paulo explored the wildernesses of Mato Grosso. Brazil's colonial society and economy were based on agriculture and mining, especially the export-oriented production of sugar and gold. Colonists sought gold from the period of first settlement until 1695, when prospectors discovered large deposits in what is now the state of Minas Gerais. The subsequent gold rush rapidly changed the course of Brazilian settlement as towns sprang up in hitherto unbroken wilderness. Slaves from Brazil's sugar plantations and Africa's gold-working regions were quickly imported.⁵ The Brazilian government was progressively centralized during the final decades of Portuguese rule.⁶

2. Independence and Empire (1822 to 1889)

5. The empire's major social and economic problems during the second half of the 19th Century sprang from slave-based plantation agriculture.⁷ Real political power remained with large rural landholders who controlled sugar production, formed the Brazilian elite class, and stood unrivaled economically. They were also largely insulated from the global antislavery sentiment of the times.⁸ Eventually, the stress placed on the traditional social structure in the late 19th Century—owing to the widening gulf between elites in the neo-feudal countryside and more progressive urban residents and coffee planters—led members of the urban middle class, the military, and the coffee planters to believe that the monarchy represented the past and was too closely tied to the landed elite. They reasoned that a republic better suited the goals of Brazil's emerging capitalist system, which was increasingly based on coffee and industrial production. An 1889 coup d'état sent the emperor into exile.⁹

⁴ See Encyclopedia Britannica, Brazil, History (www.britannica.com/place/Brazil/History).

⁵ See Encyclopedia Britannica, Brazil, History (www.britannica.com/place/Brazil/History).

⁶ See Encyclopedia Britannica, Brazil, History (www.britannica.com/place/Brazil/History).

⁷ See Encyclopedia Britannica, Brazil, History (www.britannica.com/place/Brazil/History).

⁸ See Encyclopedia Britannica, Brazil, History (www.britannica.com/place/Brazil/History).

⁹ See Encyclopedia Britannica, Brazil, History (www.britannica.com/place/Brazil/History).

3. Military Republicanism – The ‘Old Republic’ (1889 to 1930)

6. The country’s successive ‘coffee presidents’ gave Brazil little real democracy: only a select landowning minority was permitted to vote; fraudulent elections were widespread; and regional political and commercial bosses had virtual impunity (in exchange for strict loyalty to the president). At this time, rural lands, including those inhabited by Indigenous and other populations, were considered *terras devolutas* (vacant land) and, as such, were to be transferred to private companies and used for the establishment of new colonies.¹⁰ In any case, a period of intense economic, demographic, cultural, and scientific growth ensued. A notable theme of the day was the pervasive divide between rural and urban traditions: the conflict between the ‘two Brazils’.¹¹ Despite attempts to breach the growing rural-urban divide, in the mid-1920s, local landowners retained control over the rural workers and effectively resisted a failed insurrection. Nationalists increasingly criticized the politics of the ‘coffee governments’, including their selfish tendencies to monopolize power along regional lines, manipulate elections, and resist economic diversification.¹² A precipitous decline in coffee prices (due to the international financial crisis of 1929–30) finally ended the political monopoly of the coffee elites and led to their downfall.¹³

4. The Vargas Era (1930 to 1946) and the Great March to the West

7. Populist leader Getulio Vargas rose to power in 1930, and increasingly shifted state functions to the domain of the national government.¹⁴ He also diversified the agricultural sector, enacted social legislation that benefited the working class, and urged further industrialization.¹⁵ Brazil’s policy of expansionism was exemplified in the 1940s when President Vargas, worried about the dispute between Indigenous peoples, colonizers, and local authorities, decided to launch the ‘Great March to the West’. This involved facilitating and encouraging the settlement of non-Indigenous peoples in the middle and northwest regions.¹⁶ Local authorities and settlers engaged in violent campaigns to dispossess Indigenous peoples of their lands. The federal government supported the campaign,¹⁷ as can be seen from the resolutions and recommendations adopted during official conferences, which stated that this process would ‘favor not only the penetration and the clearing of the Brazilian hinterland, but also the assimilation of our [Indigenous populations] by an acculturation process’.¹⁸ In order to enable its land-grab, the government issued fraudulent declarations attesting to the inexistence of Indigenous populations in the

¹⁰ Patrícia de Menezes Cardoso, ‘Democratização Do Acesso À Propriedade Pública No Brasil: Função Social E Regularização Fundiária’, PUC-SP, 2018.

¹¹ See Encyclopedia Britannica, Brazil, History (www.britannica.com/place/Brazil/History).

¹² See Encyclopedia Britannica, Brazil, History (www.britannica.com/place/Brazil/History).

¹³ See Encyclopedia Britannica, Brazil, History (www.britannica.com/place/Brazil/History).

¹⁴ CIA, World Factbook, Brazil, 2021, Introduction.

¹⁵ See Encyclopedia Britannica, Brazil, History (www.britannica.com/place/Brazil/History).

¹⁶ Comissão Nacional da Verdade, ‘Violações de Direitos Humanos dos Povos Indígenas’, p 214.

¹⁷ Comissão Nacional da Verdade, ‘Violações de Direitos Humanos dos Povos Indígenas’, p 206.

¹⁸ Comissão Nacional da Verdade, ‘Violações de Direitos Humanos dos Povos Indígenas’, p 207 (specifically referring to resolutions and recommendations adopted during the Conferência Brasileira de Imigração e Colonização held in May 1949 in Goiânia by the Conselho de Imigração e Colonização).

targeted areas.¹⁹ Murder, torture, and imprisonment were regularly used to terrorize Indigenous communities and secure their forced removal.²⁰ This sparked a federal inquiry in 1967, which identified widespread land-grabbing, acts described as ‘genocidal’, and associated impunity.²¹

5. Initial Democratization (1946 to 1964)

8. Juscelino Kubitschek de Oliveira took office in January 1956. The new president encouraged a widespread nationalistic spirit by appealing to the popular demand for economic development and to the belief that Brazil was destined to become a great world power. Kubitschek felt that the national government should play a vital role in economic areas that seemed unattractive to private investment. His administration accordingly undertook ambitious programs to construct highways and hydroelectric power projects among other things—including planning, initially constructing, and dedicating the Brazil’s new capital city. Kubitschek wanted Brasília to focus attention on the interior of the country, hasten settlement of the region, and develop its untapped resources.²²

6. Military Dictatorship (1964 to 1985)

9. A dictatorship was established in April 1964, following a coup d’état by the armed forces. The brutal regime lasted for 21 years. Military rule began with a plan for economic development called Operation Amazônia. In the late-1960s, the federal government made a strategic decision to occupy the Amazon with a view to guaranteeing sovereignty over the territory, while reducing pressure for land reform and integrating the country’s remaining frontier region into modern capitalism. A new wave of settlers were enticed with fiscal incentives and new property rules to replace the forest with pasture for livestock. The operation centered around increasing economic capacity for natural resource exploitation in the region, and encouraged immigration and independent investment in infrastructure (especially roads and highways). Deforestation increased faster around newly built roads and dams, as well in areas better connected to consumer markets. The need for occupation of the area was driven not only by economic reasons, but by concerns for the sovereignty of the land on account of its remote location.²³
10. In the 1970s the focus shifted to settlement, and the junta espoused opening up the Amazon region even further, under the slogan ‘land without people, for people without land’. This scheme was known

¹⁹ Comissão Nacional da Verdade, ‘Violações de Direitos Humanos dos Povos Indígenas’, p 207.

²⁰ Comissão Nacional da Verdade, ‘Violações de Direitos Humanos dos Povos Indígenas’, pp 207–228; see also Felipe Canêdo, Relatorio Figueiredo, ‘O Estermínio Documentado’, *Estado de Minas*, 19 April 2013. *Nb.* The effects of this policy of expansionism were particularly severe in Mato Grosso do Sul, where (among other things), the Guarani Kaiowa, Taquara, and Rancho tribes were removed by landowners and rural unionists, often with the support of the federal government. Comissão Nacional da Verdade, ‘Violações de Direitos Humanos dos Povos Indígenas’, p 207. Felipe Canêdo, ‘O Estermínio Documentado’, *op cit.*

²¹ The *Relatorio Figueiredo* (Figueiredo Report) of 1967 detailed the crimes committed by the *Serviço de Proteção ao Índio* (Indigenous Protection Service) against the indigenous people in Brazil.

²² See Encyclopedia Britannica, Brazil, History (www.britannica.com/place/Brazil/History).

²³ Larissa Basso and Cristina Yumie Aoki Inoue, ‘Even if Bolsonaro leaves power, deforestation in Brazil will be hard to stop’, *The Conversation*, 8 July 2021.

as the National Integration Program (PIN), the centerpiece of which was the *Rodovia Transamazônica* (Trans-Amazonian Highway), a 4800 km road along which small-scale agriculture was planned. The goal had been to settle half a million people over five years, however after four years only a small percentage of the anticipated settlers had taken up land. While some smaller farms were sporadically established, a lack of secure titles, their remote location, and too little government support resulted in many of these being bought up by the large ranchers. In many ways, these developments served as catalysts for many of the conflicts over rural land that exist today.²⁴

11. Unsurprisingly, certain policies of discrimination and dispossession continued.²⁵ Indigenous peoples were dispossessed by fraud.²⁶ The junta regarded the Amazon as a population vacuum, ignoring the existence of Indigenous and other traditional peoples.²⁷ As in the past, rural populations were considered obstacles to national development. In 2014, Brazil's National Truth Commission (*Comissão Nacional da Verdade*) detailed thousands of atrocities—including torture, murder, and land theft—carried out with impunity by Brazilian officials against Indigenous peoples during the junta's brutal reign. The Commission concluded that the military governments and their repressive apparatus committed crimes against humanity, such as illegal detentions, torture, extrajudicial executions, and enforced disappearances, and that grave human rights violations by security forces are still ongoing in Brazil.²⁸

7. Return to Democracy (1985 to Present) – Liberalization in the 'New Republic'

12. On the back of a strong Indigenous movement, the still-current 1988 constitution (the 'Constitution') was promulgated with exemplary provisions for the protection and promotion of rights of Indigenous peoples.²⁹ Nevertheless, the pursuit of rapacious economic development—in many cases, at the expense of rural peoples' rights—continued throughout the democratization process.³⁰ The period was marked by several violent episodes.³¹

²⁴ 'Demarcation and Registration of Indigenous Lands in Brazil', Meredith Hutchison, Sue Nichols, Marcelo Santos, Hazel Onsrud, Silvane Paixao, Department of Geodesy and Geomatics Engineering University of New Brunswick, Canada, November 2004.

²⁵ Maria Celina D'Araujo, O AI-5, Centro de Pesquisa e Documentação de História Contemporânea do Brasil, Fundação Getúlio Vargas.

²⁶ The *Superintendência do Desenvolvimento da Amazônia* (Superintendency for the Development of the Amazon) issued a number of 'Negative Certificates of Indigenous Peoples' Existence' in 1969, attesting that no indigenous/traditional peoples were living in particular portions of the Amazon. A 1977 Congressional Inquiry Commission verified that certain certificates had been granted in spite of the presence of indigenous/traditional peoples. CPI FUNAI, pp 14–15.

²⁷ Comissão Nacional da Verdade, Relatório, Volume II, Texto Temático 5, *Violações de Direitos Humanos dos Povos Indígenas*, December 2014, p 209.

²⁸ See *Comissão Nacional da Verdade* website (<http://cnv.memoriasreveladas.gov.br>); Katie Surma, 'Bolsonaro should be tried for crimes against humanity, Indigenous leaders say', *NBC News* (in partnership with Inside Climate News), 24 June 2021 (Brazil instituted a truth commission in 2012 to investigate gross human rights violations perpetrated in the country from 1946 until 1988, but mainly those that occurred after 1964, during the military dictatorship.)

²⁹ UN Human Rights Council, Report of the Special Rapporteur on the Rights of Indigenous Peoples on her mission to Brazil, 8 August 2016, Doc. A/HRC/33/42/Add.1, pp 4–5

³⁰ 1º Relatório do Comitê Estadual da Verdade, O Genocídio do Povo Waimiri-Atroari, Comitê da Verdade do Amazonas, Manaus (2012), pp 26–27.

³¹ Amnesty International Brazil, *'Estrangeiros em Nosso Próprio País': Povos Indígenas do Brasil*, AMR 19/002/2005, paras 63–78; Annual Report of the Inter-American Commission on Human Rights 1999, 13 April 1999, OEA/Ser.L/V/II.106, Chapter V Follow-up on IACHR Recommendations on its Reports on Member States; Ministério Público Federal, Memorial do MPF/RR, Massacre de Haximu; Comissão Nacional da Verdade, Relatório, Volume II, Texto Temático 5, *Violações de Direitos Humanos dos Povos Indígenas*, December 2014, p 232.

13. From 1987 onward, the federal government initiated the *Calha Norte* Project, a program directed at reinforcing security in border areas and one which reduced and divided large areas of Indigenous territory. This accentuated the categorization of Indigenous people living within the borders between *silvicola* (forest people) and 'acculturated', assigning different set of rights to each category.³² According to the Inter-American Commission on Human Rights territory belonging to the Yanomami people was reduced by 70% and fragmented into nineteen isolated pieces.³³ Two-thirds of the original land was opened to mining services, resulting in a gold rush.³⁴
14. Beginning in the mid- to late-1990s, during President Fernando Henrique Cardoso's time in office (1995–2002), significant advances were made regarding both the environment and land rights. Such reforms continued and advanced under the administration of President Luiz Inácio Lula da Silva (2003–2010). The results would come to be known as Brazil's 'mosaic' of protected areas (the 'Mosaic').³⁵ Early in his first term, Mr da Silva ('Lula') initiated the Action Plan for the Prevention and Control of Deforestation in the Legal Amazon (the 'PPCDAm') in 2004. An ambitious and far-reaching program to seriously tackle deforestation in the Amazon region, the PPCDAm ultimately succeeded in reducing deforestation.
15. In 2006, President Lula won a second term as president, and the Brazilian economy continued to grow under his administration. He enacted reforms to increase public investment and control spending. Agricultural and mining operations persistently expanded, and foreign investors and major trading partners showed renewed interest in the country. Brazil also remained embroiled in domestic and international controversies regarding threats to the Amazon and its inhabitants. Landless groups continued to clamor for agrarian reform. In January 2007, the Growth Acceleration Program (*Programa de Aceleração do Crescimento*, PAC), a major infrastructure investment package, was launched in order to spur economic growth in the country.³⁶
16. In June 2009, President Lula signed a bill 'normalizing' the commercial landholdings of nearly one million residents of state-owned land in the Amazon basin. The bill was an effort to control the decades-long land-grabbing situation in the rainforest, wherein settlers and speculators had occupied and exploited a vast area of public land without legal permission. Under the new law,

³² Inter-American Commission on Human Rights, *Report on the Situation of Human Rights in Brazil*, 29 September 1997, OEA/Ser.L/V/II.97, Chapter VI: Human Rights of Indigenous Peoples in Brazil, para 68.

³³ Inter-American Commission on Human Rights, *Report on the Situation of Human Rights in Brazil*, 29 September 1997, OEA/Ser.L/V/II.97, Chapter VI: Human Rights of Indigenous Peoples in Brazil, para 68.

³⁴ Inter-American Commission on Human Rights, *Report on the Situation of Human Rights in Brazil*, 29 September 1997, OEA/Ser.L/V/II.97, Chapter VI: Human Rights of Indigenous Peoples in Brazil, para 68.

³⁵ Sue Branford and Thais Borges, 'Brazil on the precipice: from environmental leader to despoiler (2010–2020)', *Mongabay Series: Amazon Conservation*, 23 December 2019.

³⁶ The PAC was a strategic plan aimed at promoting the planning and execution of major social, urban, logistics and energy infrastructure projects in the country. See, e.g., UN Human Rights Council, Promotion and Protection of all Human Rights, civil, political, economic, social and cultural rights, including the right to development, Report on the situation of human rights of indigenous peoples in Brazil, 26 August 2009, Doc. A/HRC/12/34/Add.2, para 56. *Nb.* The program continued under the Rousseff administration as PAC-2.

farmers, loggers, and other settlers who occupied small areas received the title to their land for free; occupiers of larger parcels of land were required to purchase them.

17. A skilled politician, President Lula was in many ways able to bridge the gap between capital and community.³⁷ Nevertheless, by the end of his second term, certain critics continued to cite perennial concerns: hydroelectric projects were underway; agribusiness, particularly cattle ranching, was eating deeper into the forest; genetically modified crops had been authorized, making it easier to grow soy in extreme tropical conditions, allowing for rapid agricultural expansion; and fewer protected areas were being created. Even so, there was much room for hope—thanks in large part to the PPCDAm. Environmentalists felt encouraged by an annual rate of deforestation in the Brazilian Amazon that had plunged to roughly a quarter of its earlier level—from 27,772 km² in 2004, down to 7000 km² by 2010. The decade ahead, some said, might even hold promise.³⁸
18. President Lula tapped Dilma Rousseff, his former Minister of Mines and Energy and Chief of Staff, as his party's (the PT) ideal successor. Ms Rousseff convincingly won the 2010 election and became Brazil's first female president. The second year of her administration (2012) saw Brazil's lowest deforestation rate ever registered: 4,571 km².³⁹ Her first term was also marked by (among other things) the continuation of the PAC with several infrastructure projects continuing to completion. Lacking the political dynamism of her predecessor and faced with economic factors beyond her control, she nevertheless managed to secure a second term in a closely contested election. In 2016, as the infamous *Operação Lava Jato* (Operation Car Wash)⁴⁰ mushroomed and the Brazilian economy remained mired in its worst recession since the turn of the 20th Century, Ms Rousseff was eventually forced out of her position as president. Following much political jockeying (to put it mildly) by allies of the Network, she was ultimately impeached and permanently removed from office in August 2016.⁴¹ The long-running and much heralded PT era was over.
19. Ms Rousseff's vice president and a skilled establishment politician, Michel Temer, was installed as president—a caretaker role set to end in December 2018. Brazil's new president sought to revive the economy by promoting a variety of pro-market policies. By May 2017, however, his administration was increasingly undermined by growing accusations of his own involvement in *Lavo Jato*.⁴² His short-lived presidency was marked by, among other things, setbacks to indigenous and agrarian policy.

³⁷ Paul Stewart, Brian Garvey, Mauricio Torres, Thais Borges de Farias 'Amazonian destruction, Bolsonaro and COVID-19: Neoliberalism unchained', *Capital & Class*, 2021, Vol 45(2) 173–181.

³⁸ Sue Branford & Thais Borges, 'Brazil on the precipice: from environmental leader to despoiler (2010–2020)', *Mongabay Series: Amazon Conservation*, 23 December 2019.

³⁹ See www.obt.inpe.br/OBT/assuntos/programas/amazonia/prodes; see also, para 68, *infra*.

⁴⁰ Encyclopedia Britannica, Brazil, History (www.britannica.com/place/Brazil/History).

⁴¹ Paul Stewart, Brian Garvey, Mauricio Torres, Thais Borges de Farias 'Amazonian destruction, Bolsonaro and COVID-19: Neoliberalism unchained', *Capital & Class*, 2021, Vol 45(2) 173–181.

⁴² Encyclopedia Britannica, Brazil, History (www.britannica.com/place/Brazil/History).

20. In July 2017, former President Lula was convicted of charges engineered by his opponents (including certain elements of the Network).⁴³ The politically motivated legal saga that ensued ended his bid for reelection. His position as the front-runner was claimed by Jair Bolsonaro, a far-right populist, whose pro-agri-business rhetoric seemed to resonate with much of a Brazilian electorate. The Network had finally found its true champion.⁴⁴ And the rest, as they say, is history.

* * *

C. The Contemporary Domestic Legal Landscape

1. Overview

21. Contemporary Brazil is a giant in terms of land mass, population, and natural resources. At the time of filing, Brazil's population was roughly 213 million, with more than 25 million in the Legal Amazon.⁴⁵ Of the Amazon's inhabitants, well over 2/3 live in urban areas. More than 60% of the country is covered by forest.⁴⁶
22. Brazil is governed by a federal system of 26 states (and one federal district) and adheres to the typical separation-of-powers model of most modern democracies, with nominally independent executive, legislative (bicameral), and judicial branches.⁴⁷ Corruption and graft remain endemic, especially among elected officials.⁴⁸ The largely independent judiciary is overburdened, inefficient, and often subject to intimidation, politicization, and other external influences, especially in rural areas.
23. There is actually 'no lack of legal instruments available to protect [Rural Land Users] and their territories, identities, and ways of life'.⁴⁹ However, there is a vast gulf between the recognition of rights and their enjoyment and/or enforcement. As demonstrated throughout this Communication, the Network pursues its agenda *irrespective of the law*, taking full advantage of the political corruption and over-stretched judicial system.

2. Land and the Environment

a. Bedrock Laws

⁴³ Encyclopedia Britannica, Brazil, History (www.britannica.com/place/Brazil/History).

⁴⁴ See Section E ('Current Administration Actions Promoting and Encouraging the Network'), *infra*.

⁴⁵ See Statista (www.statista.com/statistics/1251314/amazon-population-brazil/). Brazil's so-called Legal Amazon (*Amazônia Legal*) is the largest [socio-geographic division](#) in the country, containing all nine states in the [Amazon basin](#).

⁴⁶ CIA, World Factbook, Brazil, 2021, Geography.

⁴⁷ CIA, World Factbook, Brazil, 2021, Government.

⁴⁸ Heritage Foundation, 2021 Index of Economic Freedom (www.heritage.org/index/country/brazil).

⁴⁹ Aderval Costa *ibid*.

24. Land is a prominent feature of Brazilian law. For example, Indigenous peoples and their territory are robustly protected.⁵⁰ Specifically, the Constitution ‘acknowledged the pre-existing rights of Indigenous people to their traditional lands, and further established that they had usufruct rights to the land, as well as ‘riches of the soil, the rivers, and the lakes existing therein’.⁵¹ Notably, Indigenous people do not have usufruct of the subsoil, and as such do not possess mineral resources on their lands; mineral rights belong to the federal government.⁵² Essentially, the land itself and anything of value underneath it remain vested in the state.⁵³ The rights and interests of Indigenous populations are to be defended by public prosecution.⁵⁴ Cultural rights⁵⁵ and heritage⁵⁶ are enshrined, and demarcation of Indigenous territory is required.⁵⁷
25. Brazil also has a comprehensive legal framework for environmental protection. Chapter VI of the Constitution provides for protection/conservation of ‘The Environment’.⁵⁸ Environmental policy⁵⁹ and the issue of permits and licensing⁶⁰ predate the Constitution, as does civil liability.⁶¹ Criminal⁶² and administrative⁶³ liability would come later. The 1998 Environmental Crime Law establishes criminal and administrative punishment for individuals and companies for harming the environment, such as harvesting timber in government-owned forests and transporting, buying, or selling illegally-harvested timber.⁶⁴ Punishment may include prison sentences for individuals and for companies, suspension of current activities, and a prohibition on signing future contracts with the government. Under the Brazilian Forest Code, private landowners in the Amazon region must maintain 80 percent of the forest on their property as a nature reserve.⁶⁵ Timber may be legally extracted subject to authorization by environmental agencies and commitments to maintain biodiversity, forest cover, and growth of native species.⁶⁶ In addition, forests bordering streams, lakes, and other special geographic areas must be maintained.⁶⁷

⁵⁰ See Constitution, Articles 174, 231.

⁵¹ Constitution, Article 231, para 8.

⁵² Constitution, Article 176.

⁵³ Constitution, Articles 20, 22, 49, 109.

⁵⁴ Constitution, Article 129.

⁵⁵ Constitution, Article 215.

⁵⁶ Constitution, Article 216.

⁵⁷ See Constitution, Article 231; Transitional Constitutional Provisions Act 1988, Article 67. *Nb.* This issue has been addressed and limited by subsequent laws.

⁵⁸ Constitution, Article 225.

⁵⁹ International Comparative Legal Guides, ‘Environment & Climate Change Law 2019’, Global Legal Group Ltd, London and Machado Meyer Advogados, Sao Paulo.

⁶⁰ International Comparative Legal Guides, ‘Environment & Climate Change Law 2019’, Global Legal Group Ltd, London and Machado Meyer Advogados, Sao Paulo; Federal Law No 6938 of 1981.

⁶¹ International Comparative Legal Guides, ‘Environment & Climate Change Law 2019’, Global Legal Group Ltd, London and Machado Meyer Advogados, Sao Paulo.

⁶² International Comparative Legal Guides, ‘Environment & Climate Change Law 2019’, Global Legal Group Ltd, London and Machado Meyer Advogados, Sao Paulo.

⁶³ International Comparative Legal Guides, ‘Environment & Climate Change Law 2019’, Global Legal Group Ltd, London and Machado Meyer Advogados, Sao Paulo.

⁶⁴ Federal Law No 9605 of 1998.

⁶⁵ Federal Law No 12,651 of 2012, Article 12.

⁶⁶ Federal Law No 12,651 of 2012, Articles 17, 20–24.

⁶⁷ Federal Law No 12,651 of 2012, Article 4.

26. Additionally, Brazil is a party to roughly 20 international agreements related to the environment.⁶⁸

b. The 'Mosaic' – A Dizzying Array of Protections

27. On the 'recognition of rights': 'Brazil has the most complex system of forest tenure of all countries, with a total of eight [unique] tenure regimes. These regimes can be classified into three types: (a) community rights to forest resources within conservation unit areas; (b) community rights to forest resources within agrarian reform settlements; and [...] (c) the rights held by Indigenous or *Quilombola* communities.'⁶⁹ All of this is what former president Lula referred to as Brazil's Mosaic.⁷⁰ These territorial regimes are largely (but not exclusively) tied to land in Brazil's Amazon.⁷¹ The generic term commonly used is 'protected areas'.⁷² The eight specific legal structures—sub-divided into three general categories—are governed by a host of laws, regulations, decrees, and normative instructions.⁷³ Additionally, each area falls under the remit of a specific government agency: ICMBio (in the case of Extractive Reserves, Sustainable Development Reserves, and National Forests); INCRA (in the case of Forest Settlement Projects, Sustainable Development Projects, Agro-Extractive Settlement Projects, and *Quilombola* Territories); and FUNAI (in the case of Indigenous Lands).⁷⁴ Notably, unlicensed/unauthorized commercial activity (such as that discussed in greater detail in other parts of this Communication) is illegal in reserves and Indigenous territories.⁷⁵

c. Federal Land Agencies and Other Enforcement Actors

28. The various agencies relevant to the Communication (some noted in the previous paragraph) and their functions are as follows:⁷⁶

- a. FUNAI: The National Indigenous Foundation (*Fundação Nacional do Índio*) is the federal agency that protects and promotes Indigenous rights.⁷⁷ 'It plays a crucial role in environmental enforcement by alerting environmental agencies, police, and prosecutors

⁶⁸ CIA, World Factbook, Brazil, 2021, Environment.

⁶⁹ Rights and Resources, Brazil, May 2012, General Comments. *Nb.* The eight tenure regimes are: Extractive Reserves, Sustainable Development Reserves, National Forests Forest Settlement Projects, Sustainable Development Projects, Agro-Extractive Settlement Projects, *Quilombola* Territories; and Indigenous Lands. *Ibid.*

⁷⁰ See para 14, *supra*. Sue Branford and Thais Borges, 'Brazil on the precipice: from environmental leader to despoiler (2010-2020)', *Mongabay*, 23 December 2019.

⁷¹ Rainforest Mafias, HRW, Glossary ('Brazil's 'Amazon' refers to the area known as the 'Legal Amazon' under Law 1806/1953, that includes the states of Acre, Amapá, Amazonas, Mato Grosso, Pará, Rondônia, Roraima, Tocantins, and the western part of Maranhão.')

⁷² Rainforest Mafias, Protected Areas, Glossary ('[W]e consider protected areas to be conservation reserves and Indigenous territories, as defined by Brazilian law. Legal restrictions on land-use protect the environment in these areas.')

⁷³ See Rights & Resources, *op cit.*

⁷⁴ See Rights & Resources, *op cit.*

⁷⁵ Federal Law 9985 of 2000, Article 18; Constitution, Article 231; Federal Decree 6040 of 2007; see also HRW, Rainforest Mafias, pp 26–27.

⁷⁶ HRW, Rainforest Mafias, p 27.

⁷⁷ HRW, Rainforest Mafias, Glossary.

when loggers encroach onto Indigenous territories.⁷⁸ FUNAI is housed within the Ministry of Justice.⁷⁹

- b. **INCRA**: The National Institute of Colonization and Land Reform (*Instituto Nacional de Colonização e Reforma Agrária*) is the federal agency that carries out land reform by creating rural settlements for poor farmers and establishing land titling and property rights in public lands.⁸⁰ INCRA is housed within the Ministry of Agriculture.⁸¹
 - c. **ICMBio**: The Chico Mendes Institute for the Conservation of Biodiversity (*Instituto Chico Mendes de Conservação da Biodiversidade*) is the federal agency that manages and protects federal conservation reserves. ICMBio agents have authority to conduct civil enforcement of environmental law within federal conservation reserves and the surrounding 'buffer zone'.⁸² ICMBio is housed within the Ministry of the Environment.⁸³
 - d. **IBAMA**: The Brazilian Institute of the Environment and Renewable Natural Resources (*Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis*) is the country's main federal environmental protection agency. It is tasked with civilian enforcement of federal environmental laws throughout Brazil. It can fine violators.⁸⁴ 'It does not have criminal law enforcement authority, although under Brazilian law IBAMA agents—just like all citizens—are legally authorized to detain someone in the act of committing an environmental crime and hand them over to the police.'⁸⁵ IBAMA is housed within the Ministry of the Environment.⁸⁶
 - e. **INPE**: Brazil's National Space Research Agency (*Instituto Nacional de Pesquisas Espaciais*) is a research agency of the Ministry of Science, Technology, and Innovation that provides annual official estimates of deforestation in the Amazon, near real-time deforestation alerts for enforcement purposes, and near real-time forest fire information, among other activities.⁸⁷ INPE is housed within the Ministry of Science, Technology, and Innovation.⁸⁸
29. From a normative perspective, Brazil's domestic legal regime recognizes both environmental crime and infraction.⁸⁹ Relevant criminal/civil law, regulations, and other provisions are enforced by IBAMA and ICMBio at the federal level, and by state and municipal environmental agencies

⁷⁸ HRW, *Rainforest Mafias*, p28

⁷⁹ FUNAI's official website is www.gov.br/funai/pt-br.

⁸⁰ HRW, *Rainforest Mafias*, Glossary.

⁸¹ INCRA's official website is www.gov.br/incra/pt-br.

⁸² HRW, *Rainforest Mafias*, Glossary; *ibid*, p 28.

⁸³ ICMBio's official website is www.gov.br/icmbio/pt-br.

⁸⁴ HRW, *Rainforest Mafias*, Glossary, *ibid*, p 27.

⁸⁵ HRW, *Rainforest Mafias*, p 27 (citing Criminal Procedure Code, Article 301).

⁸⁶ IBAMA's official website is www.gov.br/ibama/pt-br.

⁸⁷ HRW, *Rainforest Mafias*, Glossary.

⁸⁸ INPE's official website is www.gov.br/inpe/pt-br.

⁸⁹ *Rainforest Mafias*, HRW, Glossary ('Under Brazil's 1998 Environmental Crime Law, those crimes include harvesting timber in government-owned forests and transporting, buying, or selling illegally-harvested timber, among other things. Federal and state police enforce environmental criminal law. The same law establishes criminal and administrative punishment for individuals and companies who harm the environment. Decree 6514 [of 2008] details what constitutes administrative and environmental infractions, such as deforesting inside conservation reserves or transporting, buying, or selling illegally-obtained timber, and the corresponding fine.')

at the local level.⁹⁰ 'The Federal Police are in charge of criminal enforcement of environmental laws in federal areas, including Indigenous territories and federal conservation reserves.'⁹¹ The Amazon Task Force—a working group of federal prosecutors specialized in combatting environmental crimes in the Amazon—was established by the attorney-general in 2018.⁹² Official law enforcement efforts are augmented by other informal actors such as the so-called Guardians of the Forest,⁹³ which (should) fall under Brazil's National Program for the Protection of Human Rights Defenders.⁹⁴ A number of enforcement bodies also exist at the state level.⁹⁵

30. In practice, federal agencies have been contending with personnel shortages and lean budgets, which required them to abandon more remote outposts and cut the frequency of visits to the interior.⁹⁶ In 2009, IBAMA employed some 1600 inspectors throughout Brazil, by 2019, it employed 780. Since 2013, FUNAI's budget has been gradually decreased by the federal government.⁹⁷ In 2017 FUNAI's budget had reached its lowest level in the previous 10 years.⁹⁸

⁹⁰ Rainforest Mafias, HRW, Glossary; *ibid*, p 29 ('IBAMA and ICMBio can fine loggers, confiscate equipment used for illegal logging, and, in extreme cases, burn that equipment when its transport is inviable or would put the environment or its agents at risk. IBAMA and ICMBio often conduct joint operations with support from federal and state police. Federal and state police can detain people engaged in illegal logging anywhere.')

⁹¹ Rainforest Mafias, HRW, p 28.

⁹² Rainforest Mafias, HRW, Glossary; *ibid*, p 28 ('The Federal Attorney General's Office, is responsible for prosecuting illegal logging in Indigenous territories, federal conservation reserves, and other federal lands [...]. In 2018, the attorney general created the Amazon Task Force, a group of federal prosecutors specialized in combatting environmental crimes in the Amazon region. The group only has one federal prosecutor working exclusively for the task force, while other prosecutors must fit it in along with their regular duties. Because of limited resources, the Task Force focuses mostly on fighting deforestation in southern Amazonas State.') In February 2020, the Task Force was extended for another year by the Attorney General, ending in February 2021. Currently, as reported in the media, it is awaiting for another renewal (Fabiano Maisonnave, 'Waiting for renewal, Amazon Task Force carried out 19 operations against environmental crimes in 2 years', *Folha de São Paulo*, May 3, 2021).

⁹³ *Human Rights Watch*, 'Brazil's Amazon—and Its Defenders—Are Under Attack From Illegal Loggers', 15 November 2019 (published in *Foreign Policy*) ('The guardians are community members who patrol the land in groups of as many as 15, some equipped with GPS devices so they can identify sites of illegal deforestation.');

Salomé Gómez-Upegui, 'The Amazon rainforest's most dogged defenders are in peril: "We have to sleep in the forest with fear"', *Vox*, 1 September 2021 ('Many guardians are enrolled in a federal Human Rights Defenders Protection Program that promises to protect their safety and arrange monthly financial assistance for rent, food, travel, clothing, and medicine.')

⁹⁴ *Amnesty International*, 'Brazil: Police Killings, Impunity, and Attacks on Defenders', Submission for the UN Universal Periodic Review, 27th Session of the UPR Working Group, May 2017 ('In 2012, the authorities accepted several recommendations to implement the National Program for the Protection of Human Rights Defenders and take steps to effectively protect human rights defenders. Since Brazil's previous review, the government has failed to allocate sufficient resources to implement the Program effectively and high numbers of defenders continue to be threatened or killed. Despite the establishment of a National Program for the Protection of Human Rights Defenders in 2004, shortcomings in its implementation and a lack of resources have meant that high numbers of human rights defenders continue to be killed or threatened (often by gunmen hired by landlords) in the context conflicts over land and natural resources.')

⁹⁵ Rainforest Mafias, HRW, p 29 ('At the state level, the government agencies involved in enforcing environmental laws include: environmental secretariats, which promote environmental protection on state lands, manage state conservation reserves, and carry out environmental licensing at the state level; state military police, which have specialized units that fight environmental crime by conducting patrolling operations in rural areas and detaining any loggers they encounter in the act of destroying the forest; state civil police, which investigates environmental crimes on state, municipal, and private lands; state prosecutors, who prosecute environmental crimes in those same areas.')

⁹⁶ Rainforest Mafias, HRW, pp 29–30 ('While these federal and state agencies were able to make important progress in curbing illegal deforestation prior to 2012, personnel and budget cuts have weakened their capacity to enforce environmental laws. In 2009, IBAMA employed some 1600 inspectors throughout Brazil. By 2019, it employed 780. Only a fraction of these inspectors is devoted to the Amazon region, leaving large swaths of rainforest with limited presence of IBAMA inspectors. For instance, there are just eight IBAMA inspectors for the western half of Pará, an area almost as big as France. Similarly, the number of FUNAI staff has declined by about 30 percent since 2012, from 3111 to 2224 in 2019. The reduction in personnel has taken place in the context of reduced state funding for these agencies. From 2016 to 2018, IBAMA's annual expenditures in real terms—corrected for inflation—fell by eight percent, and FUNAI's by 11 percent.')

⁹⁷ Alessandra Cardoso, 'Orçamento 2018: Funai respira, mas não se recupera', Instituto de Socioeconômicas (INESC), 1 October 2018.

⁹⁸ Bárbara Libório, 'Com orçamento em queda, Funai gasta R\$ 12 por índio em 2017', *Amigos da Terra - Amazonia Brasileira*, 31 October 2017.

In 2017, INCRA saw its budget slashed by 30%⁹⁹ and FUNAI's cut by almost half.¹⁰⁰ In the same year, 'the National Program for the Protection of Human Rights Defenders remain[ed] underfunded, often limiting the protection it provides to telephone calls from officers based far away in Brazil's capital, Brasilia'.¹⁰¹ To make matters worse, FUNAI and INCRA have been hampered by congressional investigations initiated by members of the Network (through a powerful parliamentary caucus—the *Ruralistas*).¹⁰²

31. As set out in a separate section below, Brazil's current president (Bolsonaro) has pursued an administrative and legislative agenda aimed at undermining the Mosaic.¹⁰³ In key ways—most notably with respect to Amazon devastation¹⁰⁴—his efforts have succeeded.

* * *

D. Corporate Capture of Government Institutions by Economic Interests

1. Overview

32. As mentioned in the main text of this Communication, 'corporate capture' is where private industry uses its political influence to take control of the decision-making apparatus of the state. In Brazil, the agribusiness sector has demonstrated its power to shape Brazilian politics (aided by corruption), thereby securing favorable policy-making and political favors. Actors within the agribusiness sector have been instrumental in creating and maintaining the Network, and in promoting its policy.
33. One Brazilian civil society group¹⁰⁵ has neatly exposed 'the existence of a perverse cycle, which despises the interests of different parts of Brazilian society—especially those of rural workers and the city—and further radicalizes our already deep social inequalities'.¹⁰⁶ 'In this game, economic

⁹⁹ 'Relatório sobre o impacto da política econômica de austeridade nos direitos humanos', *Plataforma DHESCA Brasil*, November 2017, p 23; 'Brazil 2017: environmental and indigenous rollbacks, rising violence', *Mongabay*, 27 December 2017.

¹⁰⁰ 'Brazil's indigenous people outraged as agency targeted in conservative-led cuts', *The Guardian*, 10 July 2017; 'Amazon protectors: Brazil's indigenous people struggle to stave off loggers', *Reuters*, 6 June 2017 (The budget of FUNAI, the agency responsible for protecting indigenous peoples' rights, was almost halved, forcing it to close some of its regional offices.')

¹⁰¹ 'At What Cost?: Irresponsible business and the murder of land and environmental defenders in 2017', *Global Witness*, 2018, p 23.

¹⁰² 'At What Cost?: Irresponsible business and the murder of land and environmental defenders in 2017', *Global Witness*, 2018, p 23.

¹⁰³ See Section E ('Current Administration Actions Promoting and Encouraging the Network'), *infra*.

¹⁰⁴ See Annex III.

¹⁰⁵ 'A Privatização da Democracia: Um catálogo da captura corporativa no Brasil', *Vigência*, Organização Gonzalo Berrón e Luz González (eds), August 2016, Presentation, p 4 ('This publication intends to provide an "radiography" of corporate capture in some of the main sectors of the Brazilian economy at the present time: [...] In each of the following articles, we try to identify (a) the mechanisms that companies use to capture political and economic power in different sectors of the Brazilian economy and (b) who are the most affected by this capture. [...] The full text and other up-to-date information on these and other sectors are available on the Vigência website: www.vigencia.org').

¹⁰⁶ 'A Privatização da Democracia: Um catálogo da captura corporativa no Brasil', *Vigência*, Organização Gonzalo Berrón e Luz González (eds), August 2016, Introduction, pp 7–8 ('We present this publication in the midst of an intense discussion on the role of economic powers in Brazil and their impact on our democracy. [...] It is a puzzle whose central pieces are: extreme capitalism, which provides the framework for a dynamic scenario in which economic actors—which we generically call here "companies", but which have different morphologies, and include banks and investment funds—they interact with

actors try to “capture” national and supranational institutions of political representation, that is, states and international bodies, in different ways, so that their interests are transformed into public decisions (laws and norms, public policies, government programs, bids, court decisions) that primarily favor the interests of companies.¹⁰⁷ In terms of ‘Capture Mechanisms’, eye-watering financial support for election campaigns is one of the most visible forms.¹⁰⁸ And landowners themselves seek public office.¹⁰⁹

34. The relevant land-related conflicts identified in this Communication are inextricably linked to the Network’s capture of certain government institutions, reflected in the reciprocal relationships that corporate actors and large-scale landowners enjoy with federal, state, and local officials.

2. The Ruralistas – ‘Those Who Never Left’¹¹⁰

35. The parliamentary group *Frente Parlamentar da Agropecuária* (Parliamentary Front for Agriculture and Livestock) (FPA) or simply the *Ruralistas*, is an alliance of lawmakers (deputies and senators) from different political parties representing agri-businesses which prioritize commercial land development and ownership over conservation and environmental

each other, or with States and international organizations, which are none other than the entities that represent popular sovereignty in democratic regimes, and, finally, civil society activists, which participate at the international and domestic levels and also present themselves in multiple forms and with different densities (social, union and political movements, NGOs, networks, base communities, affected people, diverse political formations, etc). [...] Civil society is left with the task of denouncing and counteracting this capture through the dispute over the direction of the State through civil mobilization, campaigns and other activities. It is an unequal game, which translates into: a) growing privatization of democracy—that is, a scenario in which, thanks to different forms of influence, businessmen control central mechanisms of democratic dynamics (elections, parliamentary work, programs, works, judiciary, etc.)—which, in turn, results in b) public policies, laws and international agreements that favor the economic interests of large transnational corporations and result in c) greater economic concentration, which produces d) increasingly powerful economic actors in relation to other spheres of society, whose existence results in e) poorer societies, both in economic terms and in terms of sovereignty.)

¹⁰⁷ ‘A Privatização da Democracia: Um catálogo da captura corporativa no Brasil’, *Vigência*, Organização Gonzalo Berrón e Luz González (eds), August 2016, Introduction, pp 7–8; see *ibid*, pp 9–23 (further introduction of the concept in Brazil).

¹⁰⁸ ‘A Privatização da Democracia: Um catálogo da captura corporativa no Brasil’, *Vigência*, Organização Gonzalo Berrón e Luz González (eds), August 2016, p 40 (‘In the 2014 elections, the largest donor in the country was JBS, which invested R\$ 367 million in campaigns for the most diverse parties. What makes a company like JBS donate millions to the campaign of politicians who will eventually occupy positions in the Executive, Legislative or state-owned companies? The answer does not necessarily involve the ideological affinity between the company and candidates, since the most diverse parties, from left to right, benefited from the donations. The reality is that a company like JBS could only be structured—like others linked to agribusiness—based on interest-bearing loans subsidized by the National Treasury. Between 2005 and 2014, JBS borrowed R\$ 2.5 billion from the National Bank for Economic and Social Development (BNDES), which were released for operations such as export financing and purchase of equipment. It is not clear how and why JBS was one of the companies supported by the BNDES as part of the national champions program, which aimed to structure Brazilian companies to compete in the foreign market. A Parliamentary Inquiry Commission (CPI) was even formed in the Chamber of Deputies to investigate the bank and its loans, but the request that the slaughterhouse owners be called to testify was never approved. (p 39) News published at the time show that the PMDB, the party most benefited by JBS donations, articulated in favor of businessmen, including the president of the Chamber, Eduardo Cunha. The PMDB received R\$ 13.6 million from the company, of which R\$ 6.6 million were directed to the directory of the acronym in Rio de Janeiro. The support of companies in the Food Industry to elect candidates in tune with their interests is not exclusive to JBS. Other slaughterhouses, sugarcane mills and grain processors are traditionally large electoral donors, alongside the banking and civil construction sectors. According to data from the Superior Court, the parties spent a record amount of R\$5.1 billion in the 2014 elections, most of which was financed by private contributions. This financial support for candidates has ensured the growth of the so-called ruralist bench in the National Congress. According to a survey by the Parliamentary Agricultural Front, 263 (51%) of the 513 federal deputies elected in 2014 are linked to the sector. Of this total, 139 (27%) are already members of the parliamentary front and were re-elected; 124 (24%) are new deputies linked to agriculture. In the previous legislature, the ruralist bench had 191 members.’)

¹⁰⁹ ‘A Privatização da Democracia: Um catálogo da captura corporativa no Brasil’, *Vigência*, Organização Gonzalo Berrón e Luz González (eds), August 2016.

¹¹⁰ See Climate Counsel Communication, n 1.

regulation/protection.¹¹¹ Many members are large landowners and receive significant campaign finance from private sector interests linked to their activities.¹¹²

The ruralistas are Brazil's dominant political bloc and their members represent diverse lobbies within the agro-industrial sector. Many ruralista politicians are themselves farmers and ranchers, or come from farming and ranching families, and receive significant campaign finance from private sector interests linked to their activities. In turn they legislate on behalf of their campaign financiers, and at times their own business empires [...]. Members of Brazil's notoriously corrupt political and economic elite, the ruralistas represent 43% of all members of the lower house of Congress currently facing criminal proceedings or investigations. As Brazil's largest congressional bloc, the ruralistas wield substantial power to enact a unified agenda in the government's legislative, judicial, and executive branches.¹¹³

The more radical faction within the *Ruralistas* are key members of the Network, helping to design and promote its criminal policy.

36. To the *Ruralistas*, 'social and environmental land protections represent a barrier to unfettered access'.¹¹⁴ And in their view, traditional peoples have sufficient land already.¹¹⁵ The *Ruralistas* aim to remove barriers to development and consistently flex their 'political muscle toward achieving these ends' at both federal and state level.¹¹⁶ 'While they are principally members of the FPA in both houses of Brazil's Congress, adherence to the ruralista agenda also extends to state assemblies and municipal governments.'¹¹⁷ As the former policy coordinator for Greenpeace Brazil put it 'organized crime groups have operated in Brazil's Amazon, plundering natural resources like precious timber and have grown so powerful they elect their own candidates.'¹¹⁸
37. Individually and as a bloc, the *Ruralistas* have promoted the Network's agenda, directly or indirectly, through supporting pro-commercial legislation,¹¹⁹ expansive global export markets,¹²⁰

¹¹¹ See, e.g., Alceu Luis Castilho, 'A Serpente Fora do Ovo: A Frente do Agronegócio e o Supremacismo Ruralista', 12 *Okara: Geografia em Debate* (2018), pp 699–707.

¹¹² 'Global markets help sustain political power of agribusiness lobby in Brazil's congress', *Earthsight*, 25 September 2018 ('many of whom are large landowners or businessmen, currently represent around 40% of deputies and senators.')

¹¹³ 'Complicity in Destruction: How Northern Consumers and Financiers Sustain the Assault on the Brazilian Amazon and its Peoples', Part I, *Amazon Watch*, 11 September 2018.

¹¹⁴ 'Complicity in Destruction: How Northern Consumers and Financiers Sustain the Assault on the Brazilian Amazon and its Peoples', Part I, *Amazon Watch*, 11 September 2018 ('Brazil's agricultural frontier lies along the Amazon and the Cerrado biomes in its northern and central regions, respectively, where social and environmental land protections represent a barrier to unfettered access.')

¹¹⁵ Sarita Reed & Vinicius Fontana, 'Indigenous land demarcation sparks divisions in Brazil', *DW*, 9 August 2017 ('We are 210 million Brazilians', congressman Nelson Padovani said in a video released by FPA. 'The indigenous people are fewer than 1 million, and yet they hold 13.8 percent of the national territory.' The FPA claims that 8 percent of indigenous lands would be suitable for agricultural development.')

¹¹⁶ 'Complicity in Destruction: How Northern Consumers and Financiers Sustain the Assault on the Brazilian Amazon and its Peoples', Part I, *Amazon Watch*, 11 September 2018.

¹¹⁷ 'Complicity in Destruction: How Northern Consumers and Financiers Sustain the Assault on the Brazilian Amazon and its Peoples', Part I, *Amazon Watch*, 11 September 2018.

¹¹⁸ Sam Cowie, 'Brazil: 2017 one of "bloodiest years" for land conflicts', *Al Jazeera*, 20 April 2018 ('Marcio Astrini, policy coordinator for Greenpeace Brazil, said these measures gave unscrupulous farmers, loggers and land grabbers a heightened sense of impunity. 'What we are seeing now is the direct result of policies that incentivize violence in the countryside', he said. Astrini said that for the past four decades, organized crime groups have operated in Brazil's Amazon, plundering natural resources like precious timber and have grown so powerful they elect their own candidates.')

¹¹⁹ 'Global markets help sustain political power of agribusiness lobby in Brazil's congress', *Earthsight*, 25 September 2018.

¹²⁰ 'Complicity in Destruction: How Northern Consumers and Financiers Sustain the Assault on the Brazilian Amazon and its Peoples', Part I, *Amazon Watch*, 11 September 2018 ('The industry has also led a campaign, enacted by the ruralista bloc, to gain access to arable land to expand farming operations, and to build and upgrade export-related infrastructure to increase profits.')

and liberalization of gun ownership.¹²¹ They vigorously campaign against the work of federal land agencies like FUNAI and INCRA, lobby in favor of amnesties for environmental transgressors,¹²² and actively court traditional leaders who favor the monetary gains that flow from agribusiness.¹²³ As noted elsewhere in this Communication, the *Ruralistas* were instrumental in bringing the current (Bolsonaro) administration to power.¹²⁴

3. Examples of Influence

38. The political influence of the Network at the federal level is matched by similar levels of influence in the state of Mato Grosso. Blairo Maggi, scion of the Amaggi Group (the world's largest soybean producer),¹²⁵ was the Minister of Agriculture in President Michel Temer's cabinet. Before that, he was a Senator from Mato Grosso for five years, during which time he was a member of the *Ruralistas*. His political career started as Governor of Mato Grosso, where he held office from 2003 to 2010. His mandate as governor was marked by corruption¹²⁶ and political capture of state agencies.¹²⁷ While in state office in Mato Grosso, he took a number of steps to decrease anti-deforestation efforts in favor of the agribusiness sector. He was responsible for the construction of Highway MT-235, which cuts through the Utiariti Indigenous lands, in order to have the production of soy transported to the Madeira River.¹²⁸ During his mandate, deforestation in Mato Grosso grew at least 40%,¹²⁹ and former Environment Minister Marina Silva stated that she suffered from political pressure in order to alleviate some measures that were taken in order to stop deforestation in the Amazon.¹³⁰ Agribusiness now dominates Mato Grosso.¹³¹

¹²¹ 'Complicity in Destruction: How Northern Consumers and Financiers Sustain the Assault on the Brazilian Amazon and its Peoples', Part I, *Amazon Watch*, 11 September 2018 ('Additionally, ruralista lawmakers have [...] advocated for the liberalization of gun ownership in rural zones where land conflicts increasingly result in violence [...].')

¹²² 'Complicity in Destruction: How Northern Consumers and Financiers Sustain the Assault on the Brazilian Amazon and its Peoples', Part I, *Amazon Watch*, 11 September 2018 ('[R]uralista lawmakers have [...] used congressional inquiries to undermine the work of FUNAI, the land reform agency INCRA, and organizations and individuals that defend land rights in Brazil. They have also guaranteed that landowners who were fined millions of dollars for illegal deforestation benefit from a state-sponsored amnesty, erasing their debts and responsibility to reforest these areas.')

¹²³ Sarita Reed & Vinicius Fontana, 'Indigenous land demarcation sparks divisions in Brazil', *DW*, 9 August 2017 ('And it insists this would not be contrary to indigenous interests. 'I think the indigenous people should have the priority [on the use of the land]', Nilson Leitão, president of FPA, told DW. 'The choice is theirs.' Leitão says indigenous people should be able to enter into partnerships with firms who can provide technology, equipment and expertise to help them exploit, for example, mineral deposits on their land. 'If Brazilian companies can look for partners, why can't they do the same?' he said. 'What they need is the autonomy to do that, and to profit from it.');

¹²⁴ 'Complicity in Destruction: How Northern Consumers and Financiers Sustain the Assault on the Brazilian Amazon and its Peoples', Part I, *Amazon Watch*, 11 September 2018.

¹²⁴ See para 44, *infra*.

¹²⁵ 'Lula's Comfortable Win', *The Economist*, 30 October 2006.

¹²⁶ 'PGR denuncia ministro Blairo Maggi por corrupção ativa', *G1 Globo*, 2 May 2018.

¹²⁷ Claudio Angelo, 'Agronegócio e corrupção devastam MT', *Folha de São Paulo*, 19 June 2005.

¹²⁸ Sue Branford and Mauricio Torres, 'Getting there: the rush to turn the Amazon into a soy transport corridor', *Mongabay*, 15 February 2017.

¹²⁹ Micheal McCarthy, 'The rape of the rainforest ... and the man behind it', *Independent*, 20 May 2005.

¹³⁰ Marta Salomon, 'Marina rebate Lula e vê risco de retrocesso na Amazônia', *Folha de São Paulo*, 16 May 2008.

¹³¹ Sue Branford, 'A fight for Brazil's Amazon forest', *Financial Times*, 20 September 2017 ('When, last year [2016], I made the same journey as I had made 36 years earlier [...], we rarely saw a tree, just huge plantations of soya, with occasional silos emblazoned with the logos of the grain companies that now dominate the region: Bunge, Archer Daniels Midland (ADM), Cargill and the sole Brazilian company, Amaggi, owned by the family of Brazil's agriculture minister, Blairo Maggi. As agribusiness has become the mainstay of the struggling Brazilian economy, the political power of the rural land-owning class has grown. [...] For years [the *Bancada Ruralista*] has been calling for the paving of the northern stretches of the BR-163 highway, and this work is now under way. [...] The Amazon has long suffered from the curse of new roads that provoke a disorderly population influx. The government promised a different approach with the BR-163 and drew up an ambitious sustainability programme for the road. [...] Local people, both indigenous and riverine communities, have also suffered heavily. Worse may be to come—buoyed by its success in imposing its agenda on the weak Temer government, the rural

39. In December 2013, rural producers in the state of Mato Grosso do Sul held an event to raise money to fight *against* Indigenous land claims. Known as the '*Leilão da Resistência*' ('Resistance Auction'), the event raised some 640,000 Brazilian Reais by selling cattle and grain and was attended by *Ruralista* politicians: Ronaldo Caiado (DEM), Katia Abreu (PSD), Ze Teixeira (DEM), Carlos Marun (MDB), Waldemir Moka (PMDB), Luiz Henrique Mandetta (DEM) (President Bolsonaro's Minister of Health), Reinaldo Azambuja (PSDB), Fabio Trad (PDMB), and Tereza Cristina (DEM) (President Bolsonaro's Minister of Agriculture). According to the organizer, Francisco Maia, president of the State Breeders Association (Acrissul), the objective of the event was to fight *against* Indigenous land claims by funding mobilization actions, logistics, attorneys' fees, publicity, and security.
40. Katia Abreu, one of the attendees of the Resistance Auction, was Minister of Agriculture from 2015 to 2016, under President Rousseff. Ms Abreu's political activity was heavily funded by agribusiness companies such as Fibria Celulose SA and Cooxupe and by companies involved in the construction of hydroelectric projects such as Andrade Gutierrez.¹³² Ms Abreu is on record stating that the issues facing Brazil's Indigenous population are manufactured and manipulated by international organizations opposed to the country's agribusiness sector.¹³³
41. One of the representatives for the state of Mato Grosso do Sul, Jose Roberto Teixeira, is a large landowner in a region of conflict.¹³⁴ According to members of the Guarani-Kaiowa people, Mr Teixeira ordered gunmen to deal with land conflicts in the Guyraroka Indigenous territory, in the municipality of Caarapo, Mato Grosso do Sul, in June 2016.¹³⁵
42. In March 2017, IBAMA agents raided a JBS meat packing facility in Redenção and Santana do Araguaia in the State of Pará, identifying cattle sourced from an area under embargo, due to illegal deforestation in the region. Following the incident ('Operation Cold Meat'), José Sarney Filho, Brazil's Minister of the Environment at the time (during the presidency of Michel Temer), said he did not know about the operation beforehand and that it happened at an 'inopportune moment'.¹³⁶ JBS's practice of buying and selling cattle raised in protected areas is common in

caucus is targeting conservation units and indigenous reserves. It has already forced through congress the declassification of a large area of the national forest of Jamanxim. This forest is part of a mosaic of protected areas and indigenous reserves that were established to protect the forest and its people from the encroaching agricultural frontier, particularly the BR-163.)

¹³² A República dos Ruralistas, Senadora Kátia Abreu, <http://republicadosruralistas.com.br/ruralista/23>.

¹³³ Folha de São Paulo, Causa Inconfessável, UOL, 7 September 2013.

¹³⁴ João Cesar Diaz, 'Ruralist police: disproportionate use of force against the Guarani and Kaiowá', *Repórter Brasil*, 18 October 2018.

¹³⁵ CIMI, Brief report on the violations of the human rights of the indigenous Kaiowá Guarani people in Mato Grosso do Sul – Brazil, 2014; see *also* Communication, Annex II.

¹³⁶ Fabiano Maisonnave, 'Troubled meatpacker JBS sanctioned over Amazon deforestation', *Climate Home News*, 31 March 2017.

the state of Mato Grosso. Locals from one such area claim that one of the landowners is Eliseu Padilha, President Temer's former Chief of Staff.¹³⁷

4. From Rousseff to Temer

43. The *Ruralistas* guided President Michel Temer to power by supporting the impeachment of his predecessor Dilma Rousseff in 2016, and they helped to keep him in office through successive threats of corruption investigations.¹³⁸ Seemingly in exchange for support at his own impeachment proceedings, Mr Temer promoted the *Ruralista* agenda by adopting executive orders normalizing 'irregular rural lands'¹³⁹ and granting deforestation amnesties to rural producers.¹⁴⁰ Funding cuts to FUNAI, IBAMA, and the Ministry of Environment¹⁴¹ all led to further land grabbing and degradation, according to 'analysts'.¹⁴² Mr Temer also nominated key Ruralist figures to positions of influence on the environment, Indigenous affairs, and land policy.¹⁴³ As a pliant president 'whose power emanate[d] entirely from Congress', Mr Temer was essentially required to smooth the way on nearly all Ruralist priorities.¹⁴⁴ Evidence suggests that Mr Temer's

¹³⁷ Jonathan Watts, 'Wild Amazon faces destruction as Brazil's farmers and loggers target national park', *The Guardian*, 28 May 2017; André Campos, 'JBS comprou gado da família do maior desmatador da Amazônia', *Reporter Brasil*, 9 March 2015.

¹³⁸ Sue Branford and Thais Borges, 'Brazil on the precipice: from environmental leader to despoiler (2010–2020)', *Mongabay Series: Amazon Conservation*, 23 December 2019 ('[Rousseff] became widely disliked by conservationists, and also eventually by the Ruralistas, which would be her undoing. [...] It was the *Lava Jato* public outcry against corruption that finally helped lead to the impeachment of Rousseff in August 2016 and her replacement by Michel Temer.');

Bruno Bassi, 'The new face of the Ruralist Caucus', *Heinrich Böll Stiftung*, Rio de Janeiro, 13 November 2019 ('accounting for more than half of the votes that led to the impeachment of former president Dilma Rousseff'); 'Complicity in Destruction: How Northern Consumers and Financiers Sustain the Assault on the Brazilian Amazon and its Peoples', Part I, *Amazon Watch*, 11 September 2018; Alceu Luís Castilho, 'Frente Parlamentar da Agropecuária compôs 50% dos votos do impeachment e 51% dos votos para manter Temer', *Dos Olhos nos Ruralistas*, 25 September 2017; Ricardo Brito and Anthony Boadle, 'Brazil's Temer faces new graft charges over JBS testimony', *Reuters*, 14 September 2017.

¹³⁹ Oswaldo Braga da Souza, 'Michel Temer sanciona "MP da Grilagem"', *Instituto Socioambiental*, 11 July 2017; Medida Provisória (MP) No 759 of 22 December 2016 (the so-called '*MP da Grilagem*' or 'Land Grabbing Executive Order').

¹⁴⁰ Leandro Prazeres and Aiuri Rebello, 'Após anistia de R\$ 8,6 bilhões, 2/3 da bancada ruralista votam a favor de Temer', *Universe Online*, 3 August 2017; 'Global markets help sustain political power of agribusiness lobby in Brazil's congress', *Earthsight*, 25 September 2018 ('In addition, the ruralistas were a major force behind President Michel Temer's decree in 2017 granting amnesty to illegal deforesters and the 2016 decree reducing the size of the Jamanxim National Forest, which also let land grabbers and deforesters off the hook. In March 2018, the ruralistas celebrated a further amnesty, this time granted by a Supreme Court ruling that upheld the 2012 New Forest Code, which essentially pardoned acts of illegal deforestation committed before 2008.')

¹⁴¹ 'Global markets help sustain political power of agribusiness lobby in Brazil's congress', *Earthsight*, 25 September 2018 ('The agribusiness lobby has also been successful in its push for drastic cuts to Brazil's environmental budget, with resources destined to FUNAI, IBAMA—the country's environmental law enforcement agency—and the Environment Ministry cut by over 40 percent over the past two years.')

¹⁴² 'Complicity in Destruction: How Northern Consumers and Financiers Sustain the Assault on the Brazilian Amazon and its Peoples', Part I, *Amazon Watch*, 11 September 2018 ('The Temer government's transparent anti-environmental stance shows through efforts to dismember protections on Amazonian forests. President Temer also enacted legislation— spearheaded by ruralistas vying for vast tracts of land in Brazil's Amazon [...]—which essentially sanctions land grabbing.31'); 'Global markets help sustain political power of agribusiness lobby in Brazil's congress', *Earthsight*, 25 September 2018 ('Analysts have linked recent increases in deforestation in the Brazilian Amazon to the legislative and policy victories secured by the agribusiness lobby. [...] According to Amazon Watch, these examples illustrate how global markets help sustain the economic and political power of agribusinesses accused of illegalities and their political patrons in Brazil's congress, many of whom act in clear-cut conflicts of interest as they stand to profit from their own legislative agenda.')

¹⁴³ Ranier Bragon, Angela Boldrini, Natália Cancian, and Rubens Valente, 'Pautas de viés conservador avançam na gestão de Michel Temer', *Folha de São Paulo*, 24 September 2017.

¹⁴⁴ Sarita Reed & Vinícius Fontana, 'Indigenous land demarcation sparks divisions in Brazil', *DW*, 9 August 2017 ('Márcio Santilli is founder of the Socio-Environmental Institute and former president of FUNAI, the official Brazilian government indigenous rights agency. 'There has been a series of decisions made by the current [Temer] government favoring ruralista lawmakers' propositions on the environmental and indigenous agendas', Santilli told DW. Heading up a precarious coalition government, President Temer depends on support from the FPA. 'There is an extremely weak president who was not elected for that position', Santilli says. 'He is a person whose power emanates entirely from Congress.' In return for FPA backing, the president has supported several of its initiatives, including a binding legal opinion that indigenous peoples only have

close connection to the *Ruralistas*¹⁴⁵ led to the implementation of 'policies that incentivize[d] violence in the countryside'.¹⁴⁶ Emboldened by their success, the *Ruralistas* stepped up violent attacks in remote areas. In 2017, Brazil became the most dangerous country in the world for social and environmental activists, with 57 assassinations as a result of land conflict.¹⁴⁷

5. The Rise of Bolsonaro

44. In October 2018, thanks largely to the *Ruralistas*, the Network consolidated its already significant hold on Brazil's political system by firmly backing the country's current president (Bolsonaro). In unprecedented fashion, since early 2019, the *Ruralista* bloc has operated two major levers of power: a near-majority of congress and a president whose extreme policies even make some in agribusiness uncomfortable. The populist Mr Bolsonaro is openly hostile toward Rural Land Users and Defenders and encourages landowners to use lethal force against those who reject their rapacious claims. Tellingly, he gazes back wistfully at Brazil's brutal military dictatorship.¹⁴⁸

* * *

E. Current Administration Actions Supporting the Network

1. The President, His Toxic Rhetoric, and an Anti-Rights Agenda

45. Brazil's sitting president, Jair Bolsonaro, previously a long-standing member of congress and former army captain, was elected in October 2018. As a candidate, he expressed controversial admiration for Brazil's past military rulers, increased deforestation of the Amazon Rainforest in favor of unrestrained commercial activity, and vowed (among other things) not to demarcate any additional Indigenous territory. In other words, he promoted the Network's policy.

rights to land they inhabited at the time the constitution came into force in 1988. Ruralista lawmakers also initiated a parliamentary commission to investigate alleged wrongdoings within FUNAI. Its final report, released in May, recommended the criminal prosecution of 67 people—including archaeologists, federal prosecutors and indigenous leaders—for falsifying technical reports in order to push through demarcation of indigenous lands.)

¹⁴⁵ Sue Branford and Thais Borges, 'Brazil on the precipice: from environmental leader to despoiler (2010–2020)', Mongabay Series: Amazon Conservation, 23 December 2019 ('Under Temer, an unpopular president whose approval rating never rose above the single digits, was someone the Ruralistas were able to easily dominate. By mid-2017, they were largely calling the shots, with Temer requiring their support to prevent Congress from impeaching him for corruption connected to JBS, Brazil's giant meatpacking firm. The Ruralistas leveraged their power to boost agribusiness, and chip away at environmental advances, with a particular determination to undermine indigenous land rights. The Ruralistas had longed complained of Brazil's indigenous peoples occupying 12 percent of Brazilian territory while making up only 0.5% of the population. Ignoring the key role that indigenous communities play in protecting forests, they asserted time and again that this was grossly unfair. But over time it became increasingly clear that what was driving the Ruralistas was desire for these lands. So the first priority of Ruralistas under Temer was to stop the slow and meticulous indigenous reserve demarcation process, underway since the implementation of the progressive 1988 Constitution, by which indigenous groups gained formal recognition of the land they occupy. [...] Temer did much else: he introduced an amnesty erasing up to \$2.1 billion in unpaid environmental fines, especially for illegal deforestation.)

¹⁴⁶ Sam Cowie, 'Brazil: 2017 one of "bloodiest years" for land conflicts', *Al Jazeera*, 20 April 2018 ('Temer, who took power in 2016 in a controversial impeachment process, is allied to a powerful conservative agricultural caucus that holds around two-fifths of seats in the lower house. The block has pressured to give amnesty to land grabbers, roll back indigenous and forest protections [...].')

¹⁴⁷ Sue Branford and Thais Borges, 'Brazil on the precipice: from environmental leader to despoiler (2010–2020)'.

¹⁴⁸ Sue Branford and Thais Borges, 'Brazil on the precipice: from environmental leader to despoiler (2010–2020)'.

46. A deliberately provocative and polarizing figure, Mr Bolsonaro assumed his official duties in January 2019. From the outset, his presidency has elicited near-constant opposition from many quarters, especially Brazilian citizens and organizations attempting to resist the dispossession of land, the exploitation of natural resources, and the destruction of the environment.¹⁴⁹ Like his predecessors, Mr Bolsonaro came to power with support from the *Ruralistas*.¹⁵⁰ However, unlike the others (who had more nuanced political relationships with the powerful caucus), the *Ruralistas* finally found their true champion in Mr Bolsonaro—a man said to have ‘heard the necessities’ of agribusiness.¹⁵¹
47. Previously-filed communications have cataloged Mr Bolsonaro’s incendiary rhetoric (both prior and following his election to the presidency).¹⁵² Among other verbal salvos, the president has called NGOs working in the Amazon a ‘cancer’ that he ‘can’t kill’, and wrongly accused them of being responsible for the destruction of the rainforest.¹⁵³ Mr Bolsonaro’s conception of what it means to be a ‘Brazilian’ in contemporary society is patently anti-Indigenous. Shortly after taking office, he reinstated a commemoration of the violent 1964 coup that deposed a democratically-

¹⁴⁹ Human Rights Watch, World Report 2019, Brazil, Events of 2018; *Human Rights Watch*, ‘Remove Miners from Indigenous Amazon Territory’, 12 April 2021; see also www.britannica.com/place/Brazil/History.

¹⁵⁰ See Bruno Bassi, ‘The new face of the Ruralist Caucus’, *Heinrich Böll Stiftung*, Rio de Janeiro, 13 November 2019 (‘While receiving candidates at the entity’s headquarters, in a mansion on Lago Sul in Brasília, Deputy Tereza Cristina (DEM-MS), then president of the FPA, forged an alliance with Jair Bolsonaro (PSL), [...] that would become decisive for the victory of the candidate of the extreme right.’); Ernesto Londoño, ‘Jair Bolsonaro, on Day 1, Undermines Indigenous Brazilians’ Rights’, *New York Times*, 2 January 2019 (‘As a candidate, Mr Bolsonaro appealed to conservative groups, including the powerful agricultural lobby [...] by promising to boost economic growth by rolling back regulatory burdens and enforcement of environmental protections. This right-wing coalition helped him crush the once-dominant Workers Party [PT] at the polls, giving him a strong mandate to bring about the changes he promised and elevating his small party to the second-largest in Congress.’); ‘Complicity in Destruction: How Northern Consumers and Financiers Sustain the Assault on the Brazilian Amazon and its Peoples’, Part II, *Amazon Watch*, 25 April 2019 (Empowered by an electoral mandate and the legislative muscle to attempt to implement it, the Bolsonaro administration moved to cement a significant rollback on ‘ecological protections led by cabinet members serving as political operatives for the country’s agribusiness and mining sectors’. The Ruralistas are the ‘principal actors driving this regressive agenda’. Criminal actors operating in the Amazon ‘see Bolsonaro’s policies and toxic rhetoric as a signal that their actions will go unpunished’. Ruralist lawmakers and their allies in the mining lobby are pushing to open territories to industrial agriculture and mining. Plans ‘to alter Brazilian legislation to permit industrial activities in indigenous territories’. Efforts to undermine FUNAI’s credibility, mandate, and budget to advocate on behalf of native communities are part of this aggressive campaign.)

¹⁵¹ Silvano Mendes, “Bolsonaro ouviu nossas necessidades” dizem representantes do agronegócio’, *RFI*, 23 October 2018.

¹⁵² See, e.g., All Rise Communication, para 269 (listing numerous statements made by Mr Bolsonaro) (‘The Brazilian cavalry was very incompetent. Competent, yes, was the American cavalry that decimated its Indians in the past and nowadays does not have this problem in their country.’ (from 1998) ‘There is no indigenous territory where there aren’t minerals. Gold, tin and magnesium are in these lands, especially in the Amazon, the richest area in the world. I’m not getting into this nonsense of defending land for Indians.’ (from April 2015) ‘We’re going to give all the planters and rancher’s weapons and guns.’ (from July 2016) ‘If it’s up to me, every citizen will have a firearm in the house. There will not be a centimetre more demarcated for Indigenous territories or *Quilombolas*.’ (from April 2017) ‘We are going to integrate [Indigenous Peoples] into Society. Just like the Military regime which did a great job of this, incorporating the Indians into the armed forces.’ (from August 2018) ‘If elected, I will slash away at FUNAI with a sickle, scything across its throat. There is no other way. It is no longer useful.’ (from October 2018) ‘If it depends on me, [large scale] farmers are going to receive the [Landless Workers Movement] by discharging the cartridge of a 762. If you ask if this means I want to kill these layabouts, yes I do.’ (from 2018) ‘Any [IBAMA agent] who wants to hinder progress will hinder at Ponta da Praia [a Navy Base during the Military dictatorship notorious for political executions].’ (from November 2019). [My objective for Brazil is to] go back to what it was 40 or 50 years ago.’ (from January 2019) (citing ‘What Brazil’s President, Jair Bolsonaro, has said about Brazil’s Indigenous Peoples’, Survival International).

¹⁵³ Human Rights Watch, World Report 2021, Brazil, Events of 2020; Human Rights Watch, World Report 2020, Brazil, Events of 2019; see also Human Rights Watch, Brazil: Bolsonaro Should Address Crime Lawfully, 17 January 2019 (‘On his first day in office, on January 1, 2019, Bolsonaro issued an executive order for the governmental affairs minister to ‘supervise, coordinate, monitor, and accompany the activities’ of nongovernmental organizations.’)

elected president and imposed a military regime that lasted until 1985, committing mass crimes against Rural Land Users and Defenders.¹⁵⁴

48. Mr Bolsonaro has promoted the Network's policy, thus putting Rural Land Users and Defenders and Brazil's Amazon environment at greater risk. Human Rights Watch ('HRW') credits the Bolsonaro administration with the following 'anti-environmental policies': ignoring climate change, weakening environmental agencies, threatening protected areas, undercutting environmental law enforcement, and harassment of civil society groups.¹⁵⁵ HRW notes that '[criminal] groups involved in illegal deforestation have taken President Bolsonaro's statements and policies weakening environmental law enforcement as a **green light** to destroy the forest and attack forest defenders [...].'¹⁵⁶ HRW's 'green light' argument has gained much traction among various observers and representatives.¹⁵⁷ As noted by Marcio Astrini of Brazil's *Observatorio do Clima*: 'In acts and speeches, [Mr Bolsonaro is] incentivizing land grabbers, illegal loggers, and illegal miners to invade [protected] areas, causing violence and deforestation. He is putting [rural] communities and lives at risk.'¹⁵⁸

2. Personnel, Policies, and Proposals

a. Pro-Agribusiness Cabinet Appointments and Legislators

49. Following Mr Bolsonaro's election, the expected political *quid pro quo* ensued.¹⁵⁹ Seven *Ruralistas* were given top positions, including: then-president of the FPA, Tereza Cristina, as

¹⁵⁴ Human Rights Watch, 'Brazil: Bolsonaro Celebrates Brutal Dictatorship', 27 March 2019; Human Rights Watch, 'Brazil's Bolsonaro Attempts to Rewrite History', 1 April 2019. (In doing so, he reversed a policy established in 2011 by President Dilma Rousseff, a survivor of torture herself, who ordered the armed forces to end any celebration of the coup.)

¹⁵⁵ Human Rights Watch, 'Rainforest Mafias: How Violence and Impunity Fuel Deforestation in Brazil's Amazon', 17 September 2019.

¹⁵⁶ Human Rights Watch, 'Rainforest Mafias: How Violence and Impunity Fuel Deforestation in Brazil's Amazon', 17 September 2019 (emphasis added).

¹⁵⁷ See, e.g., Human Rights Watch, World Report 2021, Brazil, Events of 2020; Human Rights Watch, World Report 2020, Brazil, Events of 2019; Human Rights Watch, 'Brazil's Amazon—and Its Defenders—Are Under Attack From Illegal Loggers', 15 November 2019 (published in *Foreign Policy*); Human Rights Watch, 'One Year of Ruinous Anti-Rights Policies in Brazil', 15 January 2020 (published in *Folha de Sao Paulo*); Human Rights Watch, 'Rainforest Destruction in Brazil's Amazon Is a Public Security Emergency', 4 February 2020 (published in *Fonte Segura*); Human Rights Watch, 'Bolsonaro's Plan to Legalize Crimes Against Indigenous Peoples', 1 March 2020 (published in *UOL Noticias*); Brian Garvey & Mauricio Torres, 'Brazil's Jair Bolsonaro is devastating indigenous lands, with the world distracted', *The Conversation*, 30 May 2020; Ernesto Londoño, Manuela Andreoni, and Leticia Casado, 'Amazon Deforestation Soars as Pandemic Hobbles Enforcement', *New York Times*, 6 June 2020; Global Witness, 'Defending Tomorrow: The climate crisis and threats against land and environmental defenders', July 2020; Sue Branford & Thais Borges, 'Brazil on the precipice: from environmental leader to despoiler (2010–2020)', *Mongabay Series: Amazon Conservation*, 23 December 2019.

¹⁵⁸ Katie Surma, 'Bolsonaro should be tried for crimes against humanity, Indigenous leaders say', *NBC News* (in partnership with Inside Climate News), 24 June 2021 (quoting Mr Astrini).

¹⁵⁹ Bruno Bassi, 'The new face of the Ruralist Caucus', *Heinrich Böll Stiftung*, Rio de Janeiro, 13 November 2019 ('In return, Bolsonaro appointed seven ruralist parliamentarians at the top of the government, including Tereza Cristina as minister of Agriculture, and four other ministers: Onyx Lorenzoni (DEM-RS) in the Civil House, Luiz Henrique Mandetta (DEM-MS) in Health, Osmar Terra (MDB-RS) in Citizenship, and Marcelo Álvaro Antônio (PSL-MG) in Tourism. The proximity to the government also helped in the restoration of the FPA, victim of the record renewal rate registered in the last elections, which reduced acronyms traditionally linked to the ruralist caucus, such as MDB, PP, DEM, and PR. Of the 213 deputies that made up the group, only 96 managed to be reelected. In the Senate, the front lost 10 of the 28 seats it occupied. But, in return, it received a generous contribution from the PSL of Bolsonaro. Of the 167 parliamentarians who joined the organization in 2019, 25 belong to the president's party, the one that most fattened the ranks of the FPA. Among them, only senators Soraya Thronicke (MS) and Selma Arruda (MT), and Deputy Nelson Barbudo (MT) [...] have a closer connection to the agricultural sector. The rest of the "Bolsonarists" includes names linked to the bullet bench, such as Eduardo Bolsonaro (SP), Major Vitor Hugo (GO), Daniel Silveira (RJ), General Girão (RN), and Colonel Chrisóstomo (RO), as well as media

Minister of Agriculture;¹⁶⁰ former FPA legal director Ricardo Salles, as Minister of the Environment;¹⁶¹ and rural caucus member Valdir Colatto, as Chief of Brazil's Forest Service.¹⁶² By 2019, the FPA had 225 of the 513 deputies in the house, and 32 of the 81 seats in the senate.¹⁶³ (Few of the 2019 caucus members declared their ownership of rural properties.¹⁶⁴) Moreover, [d]irect articulation with the Executive, especially with Minister Cristina, also helped in winning key positions in the permanent committees, where the bills that go to the Chamber's

characters, such as the former government leader in the Chamber, Joice Hasselmann (SP), coordinator for the Front's Supply Policy.'). 'Complicity in Destruction: How Northern Consumers and Financiers Sustain the Assault on the Brazilian Amazon and its Peoples', Part II, *Amazon Watch*, 25 April 2019 ('Bolsonaro's ascension to Brazil's presidency would not have been possible without the staunch support of Brazil's agribusiness sector, particularly the industry's hard right wing ruralista political caucus. In naming members of his cabinet, Bolsonaro returned the favor, appointing seven ruralista representatives to key posts, including his Chief of Staff.').

¹⁶⁰ 'Complicity in Destruction: How Northern Consumers and Financiers Sustain the Assault on the Brazilian Amazon and its Peoples', Part II, *Amazon Watch*, 25 April 2019 ('Meanwhile, Bolsonaro's Minister of Agriculture Tereza Cristina has a long history of conflict with indigenous communities, whose lands her family fraudulently occupied to build immense wealth and political influence. Nowhere is the influence of Brazil's agro-industrial sector more apparent than in Bolsonaro's selection of Tereza Cristina Corrêa da Costa Dias to run the Ministry of Agriculture. Ms Dias is among Brazil's most influential ruralistas, having headed the powerful Parliamentary Farming Front (FPA) prior to her appointment to the Ministry of Agriculture. As such, her tenure is defined by unwavering support for interests behind cattle ranching and industrial farming of export commodities, which tend to be resolutely opposed to Brazil's socio-environmental protections. Heiress to one of the most powerful and influential families in Mato Grosso do Sul, Tereza Cristina (as she is known in Brazil) began her political trajectory in the state, which was notable for various conflicts of interests surrounding her business interests. The Corrêa da Costa family has a long history of violence against indigenous peoples and traditional communities, environmental devastation, and the invasion and privatization of public lands. Her family background helps to explain the Minister's open animosity toward indigenous land rights and ecological protections, which have defined her political career. First elected Federal Deputy in 2014, Tereza Cristina defined her mandate by attacking Brazil's indigenous movement and its allies through spearheading a dubious parliamentary inquiry committee (CPI) into supposed irregularities committed by FUNAI. She also supported President Michel Temer's 2017 "Land Grabbing Decree"—endorsed by fellow ruralistas vying for vast tracts of land in Brazil's Amazon and Cerrado regions—which sanctions land grabbing and associated deforestation. Tereza Cristina is perhaps best known for her strident efforts to approve of a range of pesticides for use in Brazil, many of which are banned internationally, efforts that won her the nickname "Muse of Poison." Namely, while leading the FPA she was among the leading voices for legislation known as the "Poisoned Package," fueled by heavy spending from the pesticide industry. While this bill failed to win approval in 2018, the Agriculture Ministry dispensed with congressional oversight and approved 152 new pesticides in the first 100 days of the Bolsonaro government. Tereza Cristina is also among the leading ruralistas calling for indigenous lands to be opened to agribusiness and mining. Such practices are currently illegal under the 1988 Brazilian Constitution, however she claims that legislation is being prepared to facilitate the entry of highly destructive industrial activities in native lands.')

¹⁶¹ 'Complicity in Destruction: How Northern Consumers and Financiers Sustain the Assault on the Brazilian Amazon and its Peoples', Part II, *Amazon Watch*, 25 April 2019 ('Brazil's Environment Minister Ricardo Salles, for example, is a convicted environmental criminal who has moved to curtail the ability of the federal agency IBAMA to enforce environmental law while easing regulations to favor industry, particularly agribusiness and mining. He has also proposed dissolving Brazil's multi-stakeholder National Environmental Council CONAMA to replace it with a small industry-friendly panel, and is overseeing a project to pardon past environmental crimes. His efforts as Minister have positioned his office in diametric opposition to his official role as the country's institutional environmental steward.'): Sue Branford & Thais Borges, 'Brazil on the precipice: from environmental leader to despoiler (2010–2020)', *Mongabay Series: Amazon Conservation*, 23 December 2019 ('The journalist Bernardo Mello Franco, who writes for Brazil's influential O Globo newspaper, called Bolsonaro's environment minister Ricardo Salles, himself under investigation for environmental crime, an "anti-minister, who is doing all he can to destroy what he should be protecting" and who is turning "his ministry into a playground for the Ruralistas".'); Anna Jean Kaiser, 'Brazil environment chief accused of "war on NGOs" as partnership paused', *The Guardian*, 17 January 2019.

¹⁶² Jenny Gonzales, 'New appointments, new policies don't bode well for Brazilian Amazon', *Mongabay*, 4 February 2019.

¹⁶³ Bruno Bassi, 'The new face of the Ruralist Caucus', *Heinrich Böll Stiftung*, Rio de Janeiro, 13 November 2019; 'Complicity in Destruction: How Northern Consumers and Financiers Sustain the Assault on the Brazilian Amazon and its Peoples', Part II, *Amazon Watch*, 25 April 2019 ('The largest bloc in Brazil's Congress, the ruralista Parliamentary Farming Front (FPA) control 225 seats of 517 in the House of Representatives and 32 seats of 81 in the Senate.')

¹⁶⁴ Bruno Bassi, 'The new face of the Ruralist Caucus', *Heinrich Böll Stiftung*, Rio de Janeiro, 13 November 2019 ('An unprecedented survey carried out by the observatory *De Olho nos Ruralistas*, mapping the lands of parliamentarians, showed that half of the FPA board did not declare rural properties to the Electoral Justice.')

plenary are discussed'.¹⁶⁵ As noted elsewhere in this Communication, the capture was all but complete, consolidating the power and influence of the Network.¹⁶⁶

50. According to one study, from his inauguration through September 2020, Mr Bolsonaro oversaw at least 57 acts that have weakened environmental protections in Brazil in some way.¹⁶⁷

b. Anti-Land and Anti-Environmental Executive Efforts

i. FUNAI Budget Cuts and Attempted Reorganization

51. Within days and weeks of taking office, the administration moved to freeze certain budgets, including that of FUNAI.¹⁶⁸ In 2019, Mr Bolsonaro attempted (but so far failed) to move FUNAI from the Ministry of Justice to the Ministry of Agriculture, where critics said the agribusiness lobby would exert more influence.¹⁶⁹

ii. Limiting Fines Imposed by IBAMA

52. Mr Bolsonaro has obstructed Brazil's system of environmental fines, one of the main instruments for punishing those who illegally deforest the Amazon. After attacking IBAMA for having created an 'industry of fines', the administration cut its budget and created procedures that would delay payment of fines by those found responsible for illegal deforestation—undermining the intended preventative effect of the fines and thereby offering the *Ruralistas* a freehand.¹⁷⁰ 'I will not allow

¹⁶⁵ Bruno Bassi, 'The new face of the Ruralist Caucus', *Heinrich Böll Stiftung*, Rio de Janeiro, 13 November 2019 ('In addition to the Committee on Agriculture, Livestock, Supply and Rural Development (CAPADR), FPA also heads the Committees on Science and Technology, Communication and Information Technology (CCTCI), Finance and Taxation (CFT), Economic Development, Industry, Trade and Services (CDEICS) and National Integration, Regional and Amazon Development (CINDRA). In the Senate, Ruralistas head the committees on Constitution, Justice and Citizenship (CCJ), Agriculture and Agrarian Reform (CRA) and Infrastructure Services (CI), in addition to the Permanent Mixed Committee on Climate Change (CMMC), which brings together deputies and senators to debate the implementation of the National Policy on Climate Change.')

¹⁶⁶ See para 44, *supra*.

¹⁶⁷ Katie Surma, 'Bolsonaro should be tried for crimes against humanity, Indigenous leaders say', *NBC News* (in partnership with Inside Climate News), 24 June 2021; Mariana Valea, Erika Berenguerd, Marcio Argollo de Menezesf, Ernesto Viveiros de Castro, Ludmila Pugliese de Siqueira, Rita de Cassia Portela, 'The COVID-19 pandemic as an opportunity to weaken environmental protection in Brazil', *Biological Conservation*, 2021.

¹⁶⁸ Arns Commission Communication, para 33; All Rise Communication, paras 387, 388 and n 445.

¹⁶⁹ US Department of State, Human Rights Report, Brazil 2019, Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Abuses of Human Rights ('President Bolsonaro, through the use of executive orders, moved the National Indian Foundation (FUNAI) from the Ministry of Justice to the Ministry of Women, Family, and Human Rights, and he placed FUNAI's indigenous land demarcation function within the Ministry of Agriculture. Many human rights organizations criticized the move, alleging it catered to the interests of the agrobusiness lobby and threatened indigenous communities' land rights. In June [2019] President Bolsonaro reissued the executive order after Congress denied the measure. On August 1 [2019], the Supreme Court determined that issuing the same executive order twice in the same legislative session was unconstitutional and allowed FUNAI to remain under the Ministry of Justice [...] until at least 2020.')

¹⁷⁰ *Human Rights Watch*, 'Rainforest Destruction in Brazil's Amazon Is a Public Security Emergency', 4 February 2020 (published in *Fonte Segura*) (IBAMA, the country's main federal environmental agency, reported imposing 25 percent fewer fines for illegal deforestation and related infractions from January through September of 2019 than in the same period in 2018.); *Human Rights Watch*, 'Brazil's Own Data Shows Amazon Fines Unenforced', 22 May 2020 ('Human Rights Watch also interviewed two IBAMA field agents, an IBAMA official involved in processing fines, and two former IBAMA officials. They corroborated the official information provided by IBAMA and the Human Rights Watch conclusion about the failures in the conciliation hearings system. IBAMA agents continue to issue fines for illegal deforestation and other environmental infringements in the Amazon and elsewhere in Brazil. Yet, because conciliation hearings are not occurring, people and companies that receive those fines do not have an obligation to pay them.');

Human Rights Watch, 'Amazon Penalties Suspended Since October', 20 May 2020 ('Federal enforcement agents have issued thousands of fines for illegal

for IBAMA to go out fining people left and right, nor ICMBio. The party is over', he said shortly after his election.¹⁷¹

53. In February 2019, 21 of the 27 IBAMA superintendents were dismissed.¹⁷² On 1 November 2019, Mr Bolsonaro suggested that IBAMA agents 'who block progress' should be sent to a military base - notorious during Brazil's military dictatorship as a place where security forces summarily executed political prisoners.¹⁷³ Environmental agents have issued thousands of fines since then, but only five hearings had been held as of August 2020.¹⁷⁴ Undermining law enforcement has helped to facilitate the dispossession of land, the exploitation of natural resources, and the destruction of the environment.

iii. Restructuring of CONAMA and Stymying the PPCDAm

54. A presidential decree issued on 29 May 2019 restructured the National Environment Council (CONAMA). The move significantly diminished CONAMA membership from 96 to 23, adversely affected the participation of most states, and substantially curtailed the presence of municipalities and civil-society groups. Notably, council members representing civil society were reduced to only four from a previous level of 22 seats.¹⁷⁵ And from 2020 onwards, the administration has engaged in multiple actions and omissions (including the restructuring of certain federal agencies) aimed at rendering implementation of the PPCDAm unfeasible, leading to its virtual extinction.¹⁷⁶

iv. Defunding and Debasing the Ministry of Environment

deforestation and other environmental infringements in the Amazon and elsewhere in Brazil since October. Yet due to new procedures put in place by the Environment Ministry that month, based on a decree issued by President Jair Bolsonaro last April, lawbreakers have been required to pay in no more than five of these cases, according to official information obtained by Human Rights Watch. "Federal agents are working hard to enforce the rule of law, in this case Brazil's environmental laws—often at considerable personal risk—only to have their efforts sabotaged by the Bolsonaro administration," said Maria Laura Canineu, Brazil director at Human Rights Watch. "The violent criminal networks destroying the Amazon rainforest and Brazilians' enjoyment of a healthy environment aren't going to be deterred by fines they don't have to pay." [...] The effective suspension of fines is one of several steps the Bolsonaro administration has taken in Brazil to undercut the enforcement of environmental laws and protection of the environment in Brazil. Others include the removal of senior environmental officials in apparent retaliation for a successful operation against large-scale illegal mining and deforestation in the Amazon. In October, the Bolsonaro administration implemented new procedures establishing that environmental fines should be reviewed at "conciliation hearings," in which a commission can offer discounts or eliminate the fine altogether. The Environment Ministry suspended all deadlines to pay those fines until a "conciliation" hearing could be held. Only five such hearings have been held nationwide since October 8, when the procedure went into effect, the Brazilian Institute of the Environment and Renewable Natural Resources (IBAMA), Brazil's main environmental law enforcement agency, told Human Rights Watch. [...] Since Bolsonaro took office, he has lambasted the government's own environmental protection agencies, which he calls "industries of fines," and has vowed to end their "festival" of sanctions for environmental crimes. [...] In April, Minister Salles fired the director of environmental enforcement at the agency after a news program showed an operation against large-scale illegal logging and mining in Indigenous territories in the state of Pará. In a letter, 16 IBAMA agents said that they feared the top 2 enforcement agents, who are career officers, could also be removed in retaliation for the operation. After the letter became public, the government did remove those two agents, without any justification. Federal prosecutors have opened an investigation into those decisions.'

¹⁷¹ Jake Spring, 'Brazil's Bolsonaro obstructs environmental fines key to protecting Amazon', *Reuters*, 2 July 2021.

¹⁷² Arns Commission Communication, para 34.

¹⁷³ Human Rights Watch, 'Brazil's Amazon—and Its Defenders—Are Under Attack From Illegal Loggers, 15 November 2019 (published in *Foreign Policy*).

¹⁷⁴ Human Rights Watch, *World Report 2021, Brazil, Events of 2020*.

¹⁷⁵ Arns Commission Communication, para 37 (referring to Presidential Decree No 9806/2019).

¹⁷⁶ See *Distribuição urgente e por dependência à Excelentíssima Senhora Ministra Rosa Weber – ADO no 59, ADPF no 747 e ADPF no 755, paras 99–102*.

55. In May 2019, discretionary funding allocated to the Ministry of the Environment was significantly curtailed. Programs adversely affected included those related to climate-change policies, forest fire prevention and control, federal environmental licensing activities, and conservation support.¹⁷⁷
56. Mr Bolsonaro's first Environment Minister, Ricardo Salles, said in late-April 2020 that he saw the Coronavirus pandemic as an opportunity to reduce environmental restrictions while attention was focused elsewhere.¹⁷⁸ In the same month, Mr Salles sacked Olivaldi Azevedo as director of IBAMA, the federal environmental inspection agency. Mr Azevedo's dismissal was thought to be linked to his unwillingness to stop an anti-mining operation on Indigenous lands in Pará State.¹⁷⁹ In October 2020, Mr Salles filed a petition asking a judge to require the executive secretary of the Climate Observatory, Marcio Astrini, to explain statements critical of government policy that he made in a media interview,¹⁸⁰ a measure seemingly intended to intimidate Mr Astrini.¹⁸¹
57. In June 2021, Mr Salles resigned, weeks after he was targeted by federal police as part of an investigation into alleged illegal logging in the Amazon.¹⁸² Deforestation had risen sharply under

¹⁷⁷ Arns Commission Communication, para 38.

¹⁷⁸ Ernesto Londoño, Manuela Andreoni and Letícia Casado, Amazon Deforestation Soars as Pandemic Hobbles Enforcement, *New York Times*, 6 June 2020 ("We need to make an effort here during this period of calm in terms of press coverage because people are only talking about Covid", he said during an April 22 cabinet meeting. A video of the meeting was made public. The remarks, which Mr Salles later said referred to his efforts to streamline red tape, led federal prosecutors to call for an investigation into what they said amounted to dereliction of duty. The association that represents government environmental workers issued a statement calling Mr Salles a "criminal" who has been "hollowing out" his own ministry.); Katie Surma, 'Bolsonaro should be tried for crimes against humanity, Indigenous leaders say', *NBC News* (in partnership with Inside Climate News), 24 June 2021 ('In May 2020, Salles was captured on video advising Bolsonaro to take advantage of the media's fixation on the Covid-19 pandemic to 'push through' environmental rollbacks.')

¹⁷⁹ Brian Garvey & Mauricio Torres, 'Brazil's Jair Bolsonaro is devastating indigenous lands, with the world distracted', *The Conversation*, 30 May 2020.

¹⁸⁰ Human Rights Watch, 'Stop Harassing Environmental Defenders', 16 October 2020 ('The Climate Observatory is a coalition of Brazilian civil society organizations working on climate-related issues. "Minister Salles should be protecting civil society instead of trying to silence it," said Maria Laura Canineu, Brazil director at Human Rights Watch. "At a time when Brazil is facing an environmental crisis, the environment minister should concentrate his efforts, as well as public resources, on fighting deforestation and fires that are devastating the Amazon and the Pantanal biomes." At a meeting of the cabinet with President Jair Bolsonaro on April 22, Salles said that the government should take advantage of the fact that the media were distracted with the Covid-19 pandemic to push through environmental deregulation. The statement was recorded and released on May 22 by the Federal Supreme Court. Commenting on Salles' statements at that meeting, Astrini expressed concern that Minister Salles was proposing "a task force for environmental destruction." Human Rights Watch, as have many other civil society organizations, also criticized minister Salles' statements. At the time, Human Rights Watch said it was "extremely concerning" to use the pandemic as a "smokescreen" and that changes to public policies and regulations must be carried out in a transparent way that allows for broad public debate.')

¹⁸¹ Human Rights Watch, *World Report 2021, Brazil, Events of 2020*.

¹⁸² Samantha Pearson, 'Brazilian Environment Minister Ricardo Salles Steps Down Amid Illegal Logging Probe', *Wall Street Journal*, 23 June 2021 ('The departing minister had led Brazil's recent efforts to try to persuade the US to pay the South American country \$1 billion to finance sustainable development in the region in exchange for sharply reducing deforestation. Those plans were thrown into disarray last month when federal police raided properties linked to Mr Salles as part of a wide-ranging probe into alleged illegal chopping of trees for export. The Supreme Court earlier this month gave authorities approval to open a criminal investigation into the then-minister. Mr Salles has publicly said the accusations against him are unfounded. "Not a moment too soon!" Marina Silva, a former presidential candidate and environmental activist, said of Mr. Salles's resignation. "The exit of Ricardo Salles is a victory for society," she said on her Twitter account. She also called for Mr Salles to face punishment for what she considers his mishandling of the Amazon under President Jair Bolsonaro. [...] However, environmental activists raised concerns that the appointment of Mr Leite would do little to change the direction of Mr Bolsonaro's government, a steadfast ally of agricultural interests. Ranchers and soybean farmers operating illegally are blamed for much of the deforestation of the Amazon. Before joining the ministry as secretary of the Amazon and Environmental Service, Mr Leite was known as one of the longest-serving advisers to the Brazilian Rural Society, a century-old group that advocates for farmers. Since Mr Bolsonaro took office in January 2019, his government has been criticized by European governments and activists because of his vocal support for development in the Amazon and policies that trimmed funds for environmental protection. As the government's face for the environment, Mr Salles was a lightning rod for such criticism. [...] Mr Bolsonaro reiterated his support for Mr Salles, one of his closest ideological allies. The president

his watch.¹⁸³ Mr Salles was replaced by Joaquim Alvaro Pereira Leite. An Environment Ministry official previously in charge of monitoring the Amazon, Mr Leite is linked to Brazil's agribusiness lobby.¹⁸⁴

58. In May 2020, the government transferred oversight of national forest concessions from the Ministry of the Environment to the Ministry of Agriculture, paving the way for commercial development in protected areas.¹⁸⁵ In the same month, the government transferred responsibility for leading anti-deforestation efforts in the Amazon from environmental agencies to the armed forces, a move criticized due to the military's lack of expertise and training.¹⁸⁶

c. Legislation Pushed and Pursued

i. Bill on Mining on Indigenous Territory

59. In February 2020, Mr Bolsonaro sent a bill to Congress that would open Indigenous territories to mining, dam construction, and other projects with heavy environmental impacts. The bill was still pending at time of filing.¹⁸⁷

¹⁸³ Bryan Harris & Michael Pooler, 'Resignation of Brazil environment minister cheered by activists', *Financial Times*, 23 June 2021 ('Nicknamed Brazil's "anti-environment minister" by opponents, Salles presided over a sharp rise in deforestation in the Amazon rainforest over the past two years. Salles was considered one of President Jair Bolsonaro's closest ideological allies and rarely diverged from him in rhetoric or ideas. Alongside the president, Salles, a former lawyer, was widely perceived as sympathetic to the legions of illegal loggers and wildcat gold miners that permeate the rainforest. "[Salles] oversaw the weakening of environmental agencies that protect the Amazon. He sought to exploit the pandemic to relax environmental rules. He obstructed investigations on illegal logging.')

¹⁸⁴ Oliver Stuenkel, 'Bolsonaro's Turmoil Could Be the Amazon's Gain', *Americas Quarterly*, 1 July 2021 ('For starters, Salles' successor, Joaquim Álvaro Pereira Leite, possesses strong ties to Brazil's farming lobby. For over two decades, Leite advised the Brazilian Rural Society, a cattle farmers' lobby group which strongly supported Salles' controversial policies. Breaking his campaign promise of facilitating deforestation could cost Bolsonaro the support of an important part of his electorate, including ranchers, farmers, loggers and miners—groups represented by the powerful "cattle caucus" in Brazil's Congress.')

¹⁸⁵ Ernesto Londoño, Manuela Andreoni, and Letícia Casado, 'Amazon Deforestation Soars as Pandemic Hobbles Enforcement', *New York Times*, 6 June 2020.

¹⁸⁶ Human Rights Watch, *World Report 2021, Brazil, Events of 2020*; US Department of State, *Human Rights Report, Brazil 2020*, Section 6. Discrimination, Societal Abuses, and Trafficking in Persons: Indigenous People ('In May the government launched the second phase of Operation Green Brazil to eradicate forest fires and deter criminal activity by making arrests, issuing fines, and confiscating illegally logged wood. Nevertheless, NGOs claimed the lack of regulation along with impunity in cases of illegal land invasions resulted in illegal exploitation of natural resources. The NGO Instituto Socioambiental (ISA) reported there were more than 20,000 miners illegally extracting gold from the Yanomami indigenous lands in Roraima State.');

¹⁸⁷ Ernesto Londoño, Manuela Andreoni, and Letícia Casado, *Amazon Deforestation Soars as Pandemic Hobbles Enforcement*, *New York Times*, 6 June 2020 ('Fearing a new wave of international condemnation, the Bolsonaro administration in May dispatched a few thousand troops to the Amazon and tasked them with preventing environmental crimes for 30 days. [...] Environmental activists say they welcome any increase in enforcement, but most see the military operation as a public relations ploy that will not change the trajectory of deforestation or lead to punishment for the key people driving the destruction.')

¹⁸⁷ Human Rights Watch, *World Report 2021, Brazil, Events of 2020*; *Human Rights Watch*, 'Bolsonaro's Plan to Legalize Crimes Against Indigenous Peoples', 1 March 2020 (published in *UOL Notícias*) ('When President Jair Bolsonaro presented a draft bill to Congress, on February 5 [2020], to regulate mining, hydroelectric power projects, and other commercial enterprises in Indigenous territories, he recognized that it would "face pressure from environmentalists." And so it should. [...] The bill comes as no surprise, given that Bolsonaro has scaled back environmental protections and has been dismissive about both the environment and Indigenous rights. [...] The new bill comes at a time when FUNAI, the federal agency tasked with defending Indigenous rights, is severely weakened and in many areas of the Amazon incapable of carrying out its mandate.');

¹⁸⁷ *Amazon Watch*, 17 June 2021; 'Forests & Finance Coalition warns foreign investors about the risk of the anti-environment agenda in the Brazilian Congress', APIB, 19 August 2021 ('In February 2020, President Bolsonaro sent a bill to Congress to open indigenous territories to mining, dams, industrial agriculture and ranching, and other projects with heavy environmental impacts. The bill was still pending at time of writing. The bill sets conditions for mining in protected lands and stipulates that indigenous peoples should be compensated and consulted before the start of activities, but give them no veto power. But the Bolsonaro administration's push to open up Indigenous territories for mining hasn't been limited to rhetoric.

ii. Bill on Land Regularization

60. In December 2019, the president signed a bill on regularizing private occupation of public land. The proposed legislation appears designed in part to make illegally appropriated land the official property of occupiers. Criticized as the 'Land-Grabbing Bill' (*PL da Grilagem*), it introduces significant changes to existing land regularization legislation—for example, allowing public lands to be sold to third parties.¹⁸⁸ Two versions of the bill were still pending in the house and senate at the time of filing.

iii. Previous Bills Revived

61. First drafted under prior administrations, Mr Bolsonaro has pushed for renewed passage of a proposal to loosen the rules for environmental licensing¹⁸⁹ and a bill which could significantly limit

In February [2020], the government presented legislation to congress, Bill 191/2020, that would permit such activity. [...] Bill 191/2020 aims to establish conditions for industrial and artisanal mining, hydroelectric generation, oil and gas exploration, and large-scale agriculture on Indigenous lands. [According to APIB], [t]he proposal, if approved, will lead to increased deforestation, invasions of Indigenous lands, and violence against these peoples.)

¹⁸⁸ 'Forests & Finance Coalition warns foreign investors about the risk of the anti-environment agenda in the Brazilian Congress', *APIB*, 19 August 2021; Fernanda Wenzel, 'Bills before Brazil Congress slammed for rewarding Amazon land grabbers', *Mongabay*, 15 April 2021 ('Imagine you have invaded a public land in the middle of the Amazon Rainforest, cut the forest down and, after all that, you get the papers that certify you as the rightful owner of that area. According to experts, that's what's going to happen with the passage of two bills currently before the Brazilian Congress. Both proposals have a common root: Executive Order 910, known as MP 910 or MP of *Grilagem*, from the local term for a land grabber. The executive order was signed in 2019 by far-right President Jair Bolsonaro. As it wasn't approved on time by Congress, however, the rule expired in May last year. Legislators came up with two new pieces of legislation to replace it: bills 2633 and 510. The new legislation would apply to so-called federal public forests, areas that belong to the Union and haven't been designated. According to IPAM, the Amazon Environmental Research Institute, almost 19 million hectares (47 million acres) of land in the Amazon fits this description. According to Philip Fearnside, an ecologist at the National Institute for Research in Amazonia (INPA), this is the first step toward legalizing land invasions. "These are illegal operators who claim large areas of usually government land and then, by various means, often illegal, they manage to get the title to it. And whether or not they get the title, they subdivide and sell the land to ranchers, migrants or whoever is interested in buying it," he said. Usually, these lands are deforested to clear pasture for livestock. Senate bill PL 510, from Senator Irajá Silvestre Filho, is almost as permissive as the executive order it derives from. It would allow the regularization of lands up to 2,500 hectares (6,180 acres) occupied until 2014; under the current law, the cutoff is 2011. To receive the title to the land, there wouldn't even need to be an on-site inspection; the verification would be made only through satellite imagery. Under the current law, such an exemption of on- the ground inspections only applies to areas smaller than 400 hectares (990 acres). The other bill, PL 2633, is before the lower house of Congress, known as the Chamber of Deputies. Proposed by Federal Deputy José Silva Soares, better known as Zé Silva, it's a bit less generous with land invaders. It would maintain the current cutoff time for regularizing occupied land but raise the maximum area for exemption of on-site inspection to properties up to 600 hectares (1480 acres). "The difference from our project to MP 910 is clear as oil and water. We are giving a new message for ourselves and for the international market that it is not worthy to occupy public land in Brazil, as we are keeping the temporal milestone," Silva told Mongabay. The most contentious parts of the bills, however, concern areas that don't meet titling requirements. The evaluation is from Brenda Brito, a researcher from Imazon that is among the largest specialists in the Amazonian land situation. Both bills state that properties occupied after a certain cutoff date (2011 for PL 2633, and 2014 for PL 510) may be put up for sale by the government. In Irajá's proposal, the invader of the area would be given preference to buy the land. "Why should this land stop being public, if it was illegally occupied?" said Brenda Brito from Imazon, a leading research institute on the Amazon. She said that besides favoring privatization as the means for resolving the status of these areas—rather than conservation units or Indigenous territories, for example—the bills open space to the legalization of areas invaded after the cutoff dates. "We are not talking about lands invaded in the past, but about lands invaded now and in the future. It will force the areas that are being illegally occupied to be put for sale. If it happens, we can say goodbye to public forests," Brito said. The easing of rules to legalize invasions of public lands in Brazil isn't a recent phenomenon. It started in 2005, [...] deepened [...] in 2017, and has taken a more urgent turn under Bolsonaro. "We have these successive flexibilizations. It's endless. The end is when we don't have more forest to be cut," Brito said. "It is like drawing a line in the sand," Fearnside said. "If you are a land grabber it means that you rather grab your land now and wait a few years until the line moves and you can legalize it." Increasing the size of the areas eligible for legalization without an on-site inspection, as proposed in the bills, may trigger new conflicts in a country where land grabbing already drives a litany of crimes.) Since December 2021, under discussion at two different Senate commissions.

¹⁸⁹ Renata Ruaro, Lucas Ferrante, Philip Fearnside, Letter: 'Brazil's doomed environmental licensing', *Science*, 4 June 2021 ('On 13 May 2021, Brazil's Chamber of Deputies approved bill 3729/2004, which essentially abolishes environmental licensing. The procedural changes outlined by the bill will have catastrophic effects on Brazil's environment. The February

additional demarcation of Indigenous territory and threaten those already in place (the so-called 'marco temporal' issue).¹⁹⁰ Both are currently awaiting consideration in the both houses of the Congress.

3. Conclusion

62. To summarize, Mr Bolsonaro has supported commercial development at all costs, dismantled environmental checks, weakened federal agencies overseeing the Amazon, and presided over a rise in wildcat mining, deforestation, and destruction. Demarcation of Indigenous territories has remained paralyzed, leaving tracts open to disputes and communities susceptible to violence. Many Brazilian legislators and environmental activists agree that the rise in deforestation is being driven by a prevailing sense among illegal loggers and miners that tearing down the rainforest carries minimal risk of punishment and yields significant payoff. Where opposition lawmakers

2021 takeover of both houses of Congress by a coalition of parties supporting President Jair Bolsonaro's positions on the environment practically guarantees that the bill will soon be approved by the Federal Senate and then signed by Bolsonaro. Nevertheless, efforts to influence the Senate vote, in addition to legal challenges, can and must continue. The bill creates a new "general law for environmental licensing" that allows any project, including highways, ports, railways, and large dams, to be built under a kind of self-licensing by means of a mere "declaration of adherence and commitment" by the proponent affirming intention to abide by requirements established by the licensing authority. This means that licenses will be issued automatically without any analysis by technical staff in the environmental agencies. For some types of projects, even this token declaration will be unnecessary, including projects for agriculture (and biofuels), cattle ranching, low-voltage electricity distribution, and water and sewage treatment systems. The bill essentially eliminates public participation in the process, as well as the roles of agencies such as the Chico Mendes Institute of Biodiversity Conservation and the National Foundation of the Indian, which are responsible, respectively, for conservation units (protected areas for biodiversity) and for guaranteeing rights of Indigenous peoples. [...] The vice-president of Brazil's Senate has announced the intention to hold public hearings before the vote on the bill. The Federal Public Ministry (a public prosecutor's office for defending the rights of the people) has analyzed the bill and considers it unconstitutional. This is important in both the legislative and the legal battles but is no guarantee of the bill's defeat in either the legislature or the courts.); 'Forests & Finance Coalition warns foreign investors about the risk of the anti-environment agenda in the Brazilian Congress', *AP/B*, 19 August 2021 ('Among the legislative threats [...] are [...] Bill 3729/2004, which loosens the rules for environmental licensing [...].'); João Marcos Rodrigues Dutra, 'PL 3729 of 2004 and the Destruction of Environmental Licensing in Brazil', *MAB*, 13 May 2021 ('Under the influence of business lobbies, the House of Representatives approved the basic text of the bill that radically changes the rules of environmental licensing in Brazil, ending the compulsory licensing for various types of enterprises [...].'); 'After voting on the project highlights, which happens today, the bill now goes to vote in the Senate'. 'Brazil: New Bill threatens existing environmental protections and rights of communities', *Article 19*, 15 December 2016 ('A new bill currently before the Brazilian Congress will create far greater flexibility regarding existing rules for environmental permits. The new bill if it is passed will reduce social participation and weaken access to public information at a time when environmental protections are needed more than ever. The bill proposes to end mandatory public hearings during the preparation of environmental impact studies. These are currently provided for under Brazilian law in situations where business interests have the potential to degrade the environment. For Paula Martins, Director of ARTICLE 19 Brazil, Bill 3729/2004 has the potential to make transparency in environmental issues far more difficult to realize. [...] The bill has been presented by deputy Mauro Pereira and poses serious risks to the environment if it is approved. One of the aspects of the bill that concerns ARTICLE 19 is that it intends, among other things, to make exemptions for specific polluting activities and also allow environmental permits to be validated without the supervision of the public agencies responsible.')

¹⁹⁰ 'Brazil: Reject Anti-Indigenous Rights Bill', *Human Rights Watch*, 19 August 2021 ('On August 25, 2021, the Supreme Court is scheduled to start ruling on the legality of the 1988 cut-off date, known in Brazil as the "time frame" argument, although justices can ask for a postponement. The court will rule on a case brought by Santa Catarina state, which is using the "time frame" argument to oppose recognition of traditional land claimed by the Xokleng Indigenous people. The court has established that its decision in this case will apply to all similar cases. While the case was pending before the Supreme Court, the bill moved forward in Congress. A key congressional committee passed the latest draft of the bill in June. If approved by the full Chamber of Deputies, it would go to the Senate. Brazil is in the process of examining 237 Indigenous lands for demarcation. Under Brazilian law, demarcation sets out clearly what land belongs to Indigenous peoples, and provides them with secure collective legal rights over that land. Many demarcation requests have been pending for decades. The bill expressly states that its provisions would apply to all those cases, which could delay them even more or impede demarcation altogether. In 2017, the federal government under President Michel Temer adopted the 1988 cut-off date, and the administration of President Jair Bolsonaro has continued it. The Bolsonaro administration has effectively suspended the demarcation of 27 Indigenous territories based on this policy, according to the Indigenous Missionary Council (CIMI, in Portuguese), an Indigenous rights group. If approved, the bill would turn that policy into law. [...] The bill had been lingering in Congress since 2007 but gained new strength after President Bolsonaro took office. Bolsonaro, who has made offensive remarks about Indigenous people since he was a member of congress, vowed during the presidential campaign not to demarcate "one centimeter" of Indigenous land. Since he took office in January 2019, he has not approved any demarcations.')

have blocked legislation that would legalize deforestation, the administration has resorted to other means at its disposal.¹⁹¹ Undoubtedly, the Network has prospered under Mr Bolsonaro's watch.

63. Many observers note a significant link between criminal activity in the Amazon and Mr Bolsonaro's words and deeds. According to ethnographer Sydney Possuelo, '[I]oggers, miners, hunters, fishermen who invade reservations think the president is on their side now'.¹⁹² UN High Commissioner for Human Rights Michelle Bachelet asserted that the administration's push to open the Amazon up to mining could lead to 'incidents of violence, intimidation, and killings'.¹⁹³ And, as many others have pointed out, the president's attitudes toward Indigenous people and their lands are similar to those of the military dictatorship that ruled Brazil from 1964 to 1985, during which time thousands of tribespeople were killed and thousands more driven from their lands to make way for large agribusiness and infrastructure projects.¹⁹⁴
64. The words and deeds of Mr Bolsonaro and his administration have considerably strengthened the Network's hand and supported its criminal policy, namely, to facilitate the dispossession of land, the exploitation of natural resources, and the destruction of the environment, irrespective of the law.

* * *

F. The Network's Link to Land Grabbing, Deforestation, and Related Violence

1. Overview

65. The Brazilian Amazon has long been a target of economic development.¹⁹⁵ Overzealous economic activity has resulted in a significant amount of deforestation over the years.

¹⁹¹ Clara Ferreira Marques, 'Brazil's Top Court Can Stop Bolsonaro's Unjust Land Grab', *Bloomberg*, 27 August 2021; Larissa Basso & Cristina Yumie Aoki Inoue, 'Even if Bolsonaro leaves power, deforestation in Brazil will be hard to stop', *The Conversation*, 8 July 2021 ('Bolsonaro was elected and he appointed people aligned to his anti-environment rhetoric to key positions in the ministries and governmental agencies. They defunded deforestation monitoring, halted deforestation law enforcement and left offenders unpunished, arguing that it had created an "industry of fines". Bolsonaro and his appointees acted continuously to revoke environmental protection policies, including those for indigenous land. In 2019, the amount of deforestation reached 10,000km² and remains high. The number of fires has also increased, and in 2021 is expected to be the highest since 2007.');

Katie Surma, 'Bolsonaro should be tried for crimes against humanity, Indigenous leaders say', *NBC News* (in partnership with Inside Climate News), 24 June 2021; Ernesto Londoño, Manuela Andreoni, and Leticia Casado, 'Amazon Deforestation Soars as Pandemic Hobbles Enforcement', *New York Times*, 6 June 2020 ('In 2019, Ibama reported 128 instances of environmental crimes, a 55 percent decrease from the year before. The amount of illegally logged timber seized by the agency fell by nearly 64 percent from 2018 to 2019, according to the document.');

Larissa Basso & Cristina Yumie Aoki Inoue, 'Even if Bolsonaro leaves power, deforestation in Brazil will be hard to stop', *The Conversation*, 8 July 2021; Larissa Basso & Cristina Yumie Aoki Inoue, 'Even if Bolsonaro leaves power, deforestation in Brazil will be hard to stop', *The Conversation*, 8 July 2021; Jan Walter, 'Brazil: Who can still save the world's green lung?', *DW*, 12 September 2021; Paul Stewart, Brian Garvey, Mauricio Torres, Thais Borges de Farias 'Amazonian destruction, Bolsonaro and COVID-19: Neoliberalism unchained', *Capital & Class*, 2021, Vol 45(2) 173–181; Diego Gonzaga, 'Bolsonaro is a catastrophe for the environment', *Greenpeace International*, 26 January 2022; Marcondes Geraldo Coelho-Junior et al 2022 *Environ. Res. Lett.* in press (<https://doi.org/10.1088/1748-9326/ac5193>).

¹⁹² Emma Snaith, 'Armed men emboldened by Bolsonaro invade indigenous tribe's lands', *Independent*, 4 March 2019.

¹⁹³ 'Murder of Brazilian indigenous leader a 'worrying symptom' of land invasion', *UN News*, 29 July 2019.

¹⁹⁴ Sam Cowie, 'Jair Bolsonaro Praised the Genocide of Indigenous People. Now He's Emboldening Attackers of Brazil's Amazonian Communities', *The Intercept*, 16 February 2019.

¹⁹⁵ Laura Bridgeman, 'Amazon Deforestation: Causes, Effects, Facts, and How to Stop It', *Sentient Media*, 4 November 2020 ('The Amazon Rainforest has long been a target of modern-day development. The canopy is ripped apart for timber, the

Deforestation rates in the Amazon peaked in the mid/late-1990s through early/mid-2000s, with the worst years (1995 and 2004) registering nearly 30,000 km² razed.¹⁹⁶ Between 1988 and 2004, an average of 20,000 km² of forest was cut each year.¹⁹⁷ A significant and consistent decline began only towards the end of Lula's second term in office (2009);¹⁹⁸ and this general decrease (under 10,000 km² annually) remained nearly constant until 2018.¹⁹⁹ But creeping annual deforestation was already on the rise from 2013.²⁰⁰ In any case, by 2018, it is estimated that some 17% of the Amazon had been lost.²⁰¹ Rates again topped 10,000 km² annually during the first two years of the Bolsonaro administration (an increase of more than 30%).²⁰² Since January 2019, when President Bolsonaro took office, the situation has worsened in terms of 'land invasion' and deforestation.²⁰³ Recent data indicates that '[d]eforestation in the Brazilian Amazon is hovering near a 12-year high, edging down by less than 1% through September [2021] compared to the first nine months of 2020'.²⁰⁴

earth scoured for minerals, and the land scorched to make way for ranching. Around 1.5 million square miles of the Amazon Rainforest lie within Brazil's borders, making up a majority of the forest. Over the last decade, protections were put into place which curbed the rate of deforestation in the Amazon. However, things changed in 2018, following the election of Brazil's president Jair Bolsonaro. The Bolsonaro administration scrambled to loosen environmental protections, empowering ranchers and loggers to increase the pace of development in the forest, bringing them into direct conflict with indigenous people who live in and around the forest and depend upon it for survival. As long as [...] Brazil push[es] a pro-development agenda, deforestation in the Amazon will likely continue.')

¹⁹⁶ Laura Bridgeman, 'Amazon Deforestation: Causes, Effects, Facts, and How to Stop It', *Sentient Media*, 4 November 2020 (citing www.nationalgeographic.com/environment/2019/08/amazon-fires-cause-deforestation-graphic-map/).

¹⁹⁷ Larissa Basso and Cristina Yumie Aoki Inoue, 'Even if Bolsonaro leaves power, deforestation in Brazil will be hard to stop', *The Conversation*, 8 July 2021.

¹⁹⁸ Larissa Basso and Cristina Yumie Aoki Inoue, 'Even if Bolsonaro leaves power, deforestation in Brazil will be hard to stop', *The Conversation*, 8 July 2021 ('In the mid-2000s, a new federal administration, led in the ministry of the environment by ex-rubber tapper Marina Silva, took office, with a different agenda for the forest. It created new conservation areas and strengthened law enforcement. Transnational initiatives such as the soy moratorium, the UN's REDD (reducing emissions from deforestation and forest degradation) program and the Amazon Fund added incentives to keep the forest standing.');

Lorenzo Morales, 'Mighty Agro-lobby Threatens Reforestation of Amazon', *Our World*, UN University, 14 May 2012 ('[Lula's government] began to enforce long-neglected forest laws. This allowed him to withhold money from states which failed to prevent deforestation, and to ban the sale of products grown in illegally deforested areas. The government used satellite imagery to monitor lawbreakers, sent in police to raid illegal loggers, and black-listed municipalities with the worst deforestation record. The strategy paid off: in six years the rate of deforestation had fallen by 70 percent.')

¹⁹⁹ Larissa Basso and Cristina Yumie Aoki Inoue, 'Even if Bolsonaro leaves power, deforestation in Brazil will be hard to stop', *The Conversation*, 8 July 2021 ('By the end of the 2000s, the amount of deforestation had substantially declined, reaching its lowest point of 4571 km² in 2012. Deforestation numbers start to increase again by 2015, partly because a rising economic crisis and the Car Wash corruption scandal meant there were different domestic priorities.');

see para 68, *infra*.

²⁰⁰ Jeff Tollefson, 'Illegal mining in the Amazon hits record high amid Indigenous protests', *Nature*, 30 September 2021 ('Brazil earned recognition as a leader in sustainable development during the 2000s. Former president Luiz Inácio 'Lula' da Silva and his Workers' Party [PT] put in place policies that helped to curb deforestation in the Amazon by more than 80% between 2004 and 2012. [...] In 2012, the increasingly conservative Brazilian Congress weakened a once-vaunted forest-protection law. With each successive government, funding for the country's main environmental enforcement agency, the Institute of Environment and Renewable Natural Resources (IBAMA), has decreased: IBAMA had 1500 enforcement agents in 2012, compared with just 600 today, says Suely Araújo, a political scientist in Brasília who spent nearly three decades working in the Brazilian Congress and led IBAMA from 2016 to 2018. The rate of deforestation in the Amazon, which includes land converted for mining, agriculture and other development, began rising anew after 2012 and shot up by 44% during Bolsonaro's first two years in office, according to INPE.');

Larissa Basso and Cristina Yumie Aoki Inoue, 'Even if Bolsonaro leaves power, deforestation in Brazil will be hard to stop', *The Conversation*, 8 July 2021 (Between 2004 and 2012, multiple policies contributed to one of the great conservation successes of the twenty-first century—an 84% decrease in the rate of Brazilian Amazon deforestation. Among the most prominent of these policies is the Amazon Soy Moratorium (ASM), an agreement by grain traders not to purchase soy grown on recently deforested land. The ASM inspired widespread adoption of similar zero-deforestation commitments, but its impact is poorly understood [...].')

²⁰¹ Laura Bridgeman, 'Amazon Deforestation: Causes, Effects, Facts, and How to Stop It', *Sentient Media*, 4 November 2020.

²⁰² Laura Bridgeman, 'Amazon Deforestation: Causes, Effects, Facts, and How to Stop It', *Sentient Media*, 4 November 2020 ('Because the Amazon Rainforest is enduring a near-constant onslaught from ranchers, farmers, loggers, and land-grabbers, it's impossible to pin down a precise figure of just how much has been lost to date. In 2019 the National Institute for Space Research (NISR) revealed that 3769 square miles were destroyed during a 12 month period, marking a 30 percent increase during the previous yearlong period.') (internal citations omitted). *Nb.* The average for the last decade is roughly 7000 km². See para 68, *infra*.

²⁰³ See para 68, *infra*; Communication, Annex II.

²⁰⁴ Anthony Boadle, 'Brazil to step up its climate goals at COP26, says negotiator', *Reuters*, 26 October 2021.

66. In the face of sustained pressure from various quarters, the Bolsonaro administration has claimed a commitment to end illegal deforestation in the Amazon.²⁰⁵ However, many are skeptical of such rhetoric, which they see as a superficial attempt to bolster the country's environmental credentials internationally.²⁰⁶
67. The direct drivers of Amazon deforestation in Brazil are well known. The primary causes are: cattle ranching; small- and industrial-scale agriculture; fires (lit to make way for ranch or crop land); logging; and mining. Some of this activity is legal and conducted in accordance with Brazil's byzantine environmental protection system. However, a significant amount of this activity is illicit, much of it connected with illegal land-grabbing.
68. Brazil's annual record of deforestation in the current century is listed, as follows, according to corresponding presidential administrations:²⁰⁷
- a. Luiz Inácio Lula da Silva (2003–2010)
- | | |
|------|------------------------|
| 2003 | 25,396 km ² |
| 2004 | 27,772 km ² |
| 2005 | 19,014 km ² |
| 2006 | 14,286 km ² |
| 2007 | 11,651 km ² |
| 2008 | 12,911 km ² |
| 2009 | 7,464 km ² |
| 2010 | 7,000 km ² |
- b. Dilma Rousseff (2011–2016)
- | | |
|------|-----------------------|
| 2011 | 6,418 km ² |
| 2012 | 4,571 km ² |
| 2013 | 5,891 km ² |
| 2014 | 5,012 km ² |
| 2015 | 6,207 km ² |
| 2016 | 7,893 km ² |
- c. Michel Temer (2016–2018)
- | | |
|------|-----------------------|
| 2017 | 6,947 km ² |
| 2018 | 7,536 km ² |
- d. Jair Bolsonaro (2019–present)
- | | |
|------|------------------------|
| 2019 | 10,129 km ² |
| 2020 | 10,851 km ² |

²⁰⁵ Anthony Boadle, 'Brazil to step up its climate goals at COP26, says negotiator', *Reuters*, 26 October 2021; Jose Fernandez, Virtual Meeting, 'A Conversation With Vice President of Brazil Hamilton Mourão', *Council on Foreign Relations*, 16 November 2020.

²⁰⁶ See, e.g., Jenny Gonzales, 'Brazil Bows to Pressure From Business, Decrees 120-Day Amazon Fire Ban', *Mongabay*, 8 July 2020 ('Despite [Vice President] Mourão's statement [on addressing deforestation, etc], Marcio Astrini, executive secretary of the Climate Observatory, an NGO that is a coalition of 50 organizations that analyzes climate change in the Brazilian context, expressed his scepticism about the new initiative to Mongabay. "The decree does not even get close to bringing any type of solution to the fires situation. It is a symbolic gesture, as it has no practical effect," said Astrini.')

²⁰⁷ Juanita Rico, 'Bolsonaro's empty climate promises for Brazil', *Open Democracy*, 23 October 2021.

2021 13,235 km²

From an all-time low of 4571 km² in 2012 to nearly triple that amount last year, the numbers speak for themselves.

2. Contemporary Commercial Sectors as Drivers of Deforestation

69. Contemporary Brazil—among the world’s ten largest economies, the second largest in the Americas, and the largest in Latin America—is notable for its vast land mass, huge (mostly coastal) population, the mighty Amazon River, and the world’s largest rain forest. Commercial agriculture, logging, and mining (spanning a wide range of commodities) are chief sectors of the national economy.²⁰⁸ The value and volume of Brazil’s agriculture and mining exports account for some 40% of the country’s commodity exports.²⁰⁹ Brazil’s major export partners are China and the United States.²¹⁰
70. Accounting for most of the commercial activity in the Amazon are a number of players: multinational agribusiness and smaller-scale farmers;²¹¹ large-scale cattle ranches (*latifundios*), some with their own private security details;²¹² large-scale mining companies and small-scale surface miners (*garimpeiros*);²¹³ A variety of factors—including new commercial technologies, increased infrastructure, readily available financing, rising global commodity prices, etc—coalesced in the early part of the 21st Century to drive commercial expansion in the Amazon.²¹⁴

²⁰⁸ 'On Dangerous Ground: 2015's Deadly Environment: The Killing and Criminalization of Land and Environmental Defenders Worldwide', Global Witness, June 2016 ('In 2013, the last time a global assessment was made, Brazil accounted for 25% of the world's illegal timber. Brazil is the second largest producer and consumer of tropical logs and a leading producer of wood-based products. The majority of those exports comprised pulp and paper whose main destinations are the EU, China, the US and Japan. Brazil is also the world's second largest agricultural exporter and the biggest supplier of sugar and coffee. Exports by agribusiness industries totaled over US\$86 billion in 2013, accounting for 36% of the country's total. Multinational trading companies—Archer Daniel Midlands (ADM), Bunge, Cargill and Louis Dreyfus—have traditionally dominated the market, riding the wave of rapid expansion in soybean and grain production in frontier regions such as Mato Grosso. Brazil's crop sector is expected to continue growing on the basis of yield growth and increase in agricultural area.')

²⁰⁹ Deloitte Insights, 'Brazil: Recovery in Sight', 27 September 2021.

²¹⁰ CIA, World Factbook, Brazil, 2021, Economy.

²¹¹ 'Participação do agronegócio no PIB é a maior em 13 anos, estima CNA', *G1 Globo*, 5 December 2017; 'Pecuária e Abastecimento, Agropecuária puxa o PIB de 2017', *Ministério da Agricultura*, 4 December 2017; Luis Nassif, GGN - O Jornal de Todos os Brasis, O poder político do agronegócio, 4 October 2011.

²¹² 'Demarcation and Registration of Indigenous Lands in Brazil', Meredith Hutchison, Sue Nichols, Marcelo Santos, Hazel Onsrud, Silvane Paixao, Department of Geodesy and Geomatics Engineering University of New Brunswick, Canada, May 2006 ('One of the most controversial interests in land within the Amazon is large scale cattle ranching. These properties, known as latifundios, are often enormous in size, (up to 2.4 million acres for a single property owner [Le Breton, 1993]) being the product of many smaller farms that have failed as a result of poor appreciation for the limitations of agriculture in the Amazon. Some latifundios are alleged to have their own militias to ensure the large landholdings are secure. Many of these allegations have been made by indigenous people who have been threatened or forced off their land by violence. In the 1980's, when Brazil's inflation was rampant, holding onto land appeared to be a sound investment. That the new roads gave the opportunity to gather such land with relative ease, only encouraged large multinational corporations and experienced ranchers to occupy as much land as was possible [Wright & Wolford, 2003].')

²¹³ 'Demarcation and Registration of Indigenous Lands in Brazil', Meredith Hutchison, Sue Nichols, Marcelo Santos, Hazel Onsrud, Silvane Paixao, Department of Geodesy and Geomatics Engineering University of New Brunswick, Canada, May 2006 ('In the 1980's new problems arose for indigenous groups with the discovery of gold deposits. Landless workers turned to gold for income and their livelihood; some becoming small-scale surface miners, or *garimpeiros* [Schmink and Wood, 1992]. Confrontations arose between the *garimpeiros*, large-scale mining corporations with exploitation rights to state lands, and the Indians who had rights to reservation lands. The *garimpeiros* grew both in number and in political and economic power.')

²¹⁴ *Center for International Forestry Research (CIFOR)*, Working Paper 171, 'Land-use trends and environmental governance policies in Brazil: Paths forward for sustainability', 2014 ('The expansion of mining and agricultural activities over the past 10 years [from 2014] has [...] become a driver of deforestation [...] in the Amazon [due to] a shift from natural to planted

Many of these trends can be linked to both global economic factors as well as domestic political policies—enacted by successive administrations and enabled by the Network and associated lobbying groups.²¹⁵ It is elementary that such conditions have created irresistible incentives for commercial development and encouraged participation by a full spectrum of actors: large and small, legal and illegal.

71. Many of these individuals commit environmental offences: illegal ranching, farming, logging, mining—nearly all of it facilitated by illegal land-grabbing (*grilagem*). Worse still, a significant number engage in violent crime and human rights abuses—including murder, persecution, and other inhuman acts—against Rural Land Users and Defenders.²¹⁶ In other words, significant segments of these otherwise legitimate industries are riven by external forces of greed, brutality, and illegality.

3. Structural Issues: Land Grabbing, Land Invasion, Land-Tenure Insecurity

72. The decades-long economic bonanza described above has resulted in the persistent problem of land grabbing. Traditionally-held and federally-protected regions are frequently invaded by wild-cat ranchers, loggers, and other land grabbers (often armed)—known as *grileiros*—some of whom work for sophisticated criminal organizations that extract resources and violently defend their interests. Significant portions of Amazon deforestation is believed to be ‘rooted in such illegal land grabbing’.²¹⁷
73. **Land grabbing** or *grilagem* is not just the illegal occupation and use of public lands; it also includes settlement with the intention of facilitating ownership by subterfuge (e.g. deliberately falsifying land-title documents).²¹⁸ It is often accompanied by the forceful and violent expulsion of informal smallholders or traditional peoples. A highly lucrative business in the Amazon, *grilagem*

pastures and intensification in the ranching sector, investments in large-scale transport and energy projects, financing for agriculture has also grown substantially through low-interest credit lines, with USD 51 billion going to agribusiness compared to USD 7.08 billion for family farming in 2013.’)

²¹⁵ ‘Complicity in Destruction: How Northern Consumers and Financiers Sustain the Assault on the Brazilian Amazon and its Peoples’, Part I, *Amazon Watch*, 11 September 2018.

²¹⁶ See paras 77–82, *infra*; Communication, Annex II.

²¹⁷ Salomé Gómez-Upegui, ‘The Amazon rainforest’s most dogged defenders are in peril: “We have to sleep in the forest with fear”’, *Vox*, 1 September 2021 (‘What’s more, data released in June by the MapBiomas Project (a group of nonprofits, universities, and technology firms that tracks land use) shows that nearly 99 percent of deforestation in Brazil had “indications of illegality”.’)

²¹⁸ See Diana Aguiar and Mauricio Torres, ‘Deforestation as an instrument of land grabbing: enclosures along the expansion of the agricultural frontier in Brazil’, *Agro é Fogo*; All Rise Communication, n 53 (The word ‘*grileiro*’ (land-grabber) comes from the Portuguese word for cricket (*grilo*), because previously the land-grabbers would stuff false documents (land titles) into a box with crickets and the insect droppings would quickly make the papers look aged. Thus, the *grileiro* could go to a land titling office and claim to have a very old title that needs to be “transformed” into a modern, valid document. Today more sophisticated methods for the falsification of land titles are applied and it is carried out by an informal alliance of *grileiros*, logging companies, ranchers, miners, and other businessmen, backed [in some cases] by private militias and gunmen and with the compliance of local real estate registry offices. Fraud, violence, and corruption, such as the bribing of local officials, are used to ensure ownership of huge areas public lands.); see also ‘Fence Off and Bring Cattle: Illegal Cattle Farming in Brazil’s Amazon’, *Amnesty International*, 2019.

is sometimes prosecuted as a federal crime.²¹⁹ And it typically occurs in conjunction with the domestic crimes of embezzlement, criminal organization, invasion of public land, money laundering, and deforestation of native forest.²²⁰ Once the inhabitants are (illegally and) forcibly evicted from the ‘grabbed’ land, it is either sold to other commercial operators or directly developed.

74. **Land invasion**, a far more expansive concept, is a term much used but one without a technical definition. Roughly speaking, it is the illegal or contested occupation (by force or otherwise) of public or disputed land by any actor (large or small) intending to use the land for commercial purposes. As broadly conceived, it is not necessarily a crime or an administrative offence, but it most often is. It is also the subject of decades of legislation (in place and proposed) aimed at normalizing/regularizing long-standing land claims. Per CPT’s formulation, all violence against persons and/or property is land invasion, but not all land invasion is violent.²²¹
75. **Land tenure insecurity** is a major obstacle to more sustainable land use, especially in the Amazon, where about 94 million hectares are still considered to have unclear tenure status.²²² ‘Brazil’s land ownership patterns [...] are among the most concentrated and unequal in the world.’²²³ And rather than advancing progressive policies, protections are often rolled back.²²⁴ It

²¹⁹ See ACS, ‘Grilagem’, Tribunal de Justicia do Distrito Federal e dos Territórios (2017); Law No 6766 1979.

²²⁰ See Claudia Azevedo-Ramos et al, ‘Lawless Land in No Man’s Land: The Undesignated Public Forests in the Brazilian Amazon’ (2020) Vol 99 Land Use Policy 104863.

²²¹ See Communication, Annex II.

²²² *Center for International Forestry Research (CIFOR)*, Working Paper 171, ‘Land-use trends and environmental governance policies in Brazil: Paths forward for sustainability’, 2014.

²²³ ‘Deadly Environment: The Rise in Killings of Environmental and Land Defenders: 1 January 2002 to 31 December 2013’, *Global Witness*, 2014 (‘In many parts of the Brazilian Amazon, legal title for lands on which communities have lived on for generations is unclear or non-existent. There are also serious gaps in the rule of law and a weak state presence in remote territories often covering many hundreds of miles. [...] In part, this can be attributed to Brazil’s land ownership patterns, which are among the most concentrated and unequal in the world. Despite strong overall economic growth driven by agribusiness exports, much of Brazil’s population remains poor and the bulk of their food is produced on small and medium-sized farms. This brings subsistence farmers and indigenous groups into conflict with powerful, well-connected landowners over who has the legal right to forests and land. [...] Dr Clifford Welch, Professor of the Contemporary History of Brazil from the University of California, says: “The main model of land usage values commodity production and large land holdings, and devalues nature, devalues forest. It devalues the people who already live there, and tends to then push them out of the way.” These land conflicts in Brazil are also closely linked to deforestation in the Amazon, which accounted for 68 per cent of all murders linked to land disputes in Brazil in 2012. Many of these take place in recently logged forest areas, which are then opened up to further commercial uses such as cattle farming and soya plantations.’)

²²⁴ ‘At What Cost?: Irresponsible business and the murder of land and environmental defenders in 2017’, *Global Witness*, 2018 (‘Rather than taking steps to crack down on these attacks, President Michel Temer and the Brazilian legislature are actively weakening the laws and institutions designed to protect land rights and indigenous peoples. At the same time, they have set about making it easier for big business—apparently unperturbed by the devastating human and environmental cost of their activities—to accelerate their exploitation of fragile ecosystems. Linked to the spike in agribusiness-related deaths, Global Witness observed a rise in multiple killings (7 incidents in total) of land and environmental defenders, many of whom were disputing large-scale agriculture projects. President Temer systematically weakened the legislation, institutions and budgets that could support indigenous people, prevent land conflicts, and protect human rights defenders. He skewed the balance of power even further in favor of big business, and left activists more vulnerable than ever. [...] Massive budget cuts to key government agencies responsible for protecting human rights and the environment mean defenders are more at risk than ever. In 2017, INCRA—the state body responsible for redistributing land to small-scale farmers and Afro-descendants—saw its budget slashed by 30%. The budget of FUNAI, the agency responsible for protecting indigenous peoples’ rights, was almost halved, forcing it to close some of its regional offices. [...] Meanwhile, the National Program for the Protection of Human Rights Defenders remains underfunded, often limiting the protection it provides to telephone calls from officers based far away in Brazil’s capital, Brasilia. What’s more, the mechanism that allows serious human rights violations—including killings of land and environmental defenders—to be investigated and tried at the Federal level, instead of at the local level, has been underused. ‘Federalization’, as this mechanism is known, allows the Federal Prosecutor’s Office to request a change of jurisdiction when there is evidence that state level institutions are unable to adequately investigate and try a serious human rights violation, due to inaction, negligence, lack of political will or scarce human and material resources. As well as having their budgets cut, FUNAI and INCRA also had their reputations battered by a

must be noted that the federal government has extremely broad and deep authority when it comes to protected land. A July 2012 decree by the Attorney General demonstrates the degree to which the government can legally lay claim to economic development in the national interest.²²⁵

76. In addition to the more strident NGOs, the US Department of State's Bureau of Democracy, Human Rights, and Labor has painted a fairly consistent picture over the course of the last decade.²²⁶ Of many perennial concerns has been the issue of Indigenous and *Quilombola* land rights, which are emblematic of larger rural land issues. According to the US State Department, an ongoing problem is the fact that '[d]espite several proposals, [Brazil's] congress ha[s] not approved specific regulations on how to develop natural resources on Indigenous territory, rendering any development of natural resources on Indigenous territory technically illegal'.²²⁷ This compounds the problem and appears to open up much space for associated crime.²²⁸ Additional persistent issues include: targeting of particular groups and/or territories;²²⁹ executive cuts to and reorganization of FUNAI;²³⁰ Indigenous displacement/shrinkage of territory;²³¹ the slow pace of

congressional commission created to investigate irregularities in land demarcations—the way in which land has been officially allocated to the indigenous peoples, Afro-descendants and small-scale farmers who already inhabit it. The commission's final report accused FUNAI and INCRA officials of backing fraudulent land claims, and requested the indictment of 67 people. [...] Th[e country's] power imbalance will be exacerbated by a series of environmentally regressive laws currently working their way through Congress. The government—which is mired in one of the largest corruption scandals in history—has apparently done nothing to slow these initiatives. Among them is a draft law designed to help foreign investors buy up huge areas of land, inevitably allowing large-scale agriculture to encroach deeper onto indigenous lands. Another draft law aims to convert an area of the Amazon three times the size of Hong Kong into a different classification of forest which would allow for future exploitation by large-scale agriculture, mining and logging. If the Brazilian government continues to favor the interests of big business over those of small-scale farmers and indigenous peoples, then environmental destruction and conflicts over land will increase.); 'Defenders of the Earth: Global Killings of Land and Environmental Defenders in 2016', Global Witness, 2017 ('Despite the shocking and growing number of murders, the Brazilian government is actually rolling back protection for environmental defenders. Almost as soon as it came into power in August last year, Michel Temer's administration dismantled the Ministry for Human Rights. A national program for the protection of human rights defenders is under-resourced and ineffective. [...] [CPT] ascribes this [violence] to the aggressive and state-backed advance of business projects—including agribusiness, mining and energy companies—over indigenous, traditional and small-scale farming communities, which have organized a growing collective resistance to tackle the problem. According to CPT, the roots of conflict are to be found in Brazil's history of colonialism and slavery, and the fact the government has never resolved the structural problems of its agrarian sector. This is why many organizations suggest the conflict can only be resolved through the implementation of the agrarian reform policy set forth in the Brazilian Constitution. However, the strong influence of the rural elite over national politics, which has deepened with the current political crisis, has so far prevented this from happening. [...] It's clear that, to stem the tide of killings, the Brazilian government must beef up its support for environmental and land defenders, especially in the most remote parts of the country.')

²²⁵ US Department of State, Human Rights Report, Brazil 2012, Section 6. Discrimination, Societal Abuses, and Trafficking in Persons: Indigenous People.

²²⁶ See generally US Department of State, Bureau of Democracy, Human Rights, Country Reports on Human Rights Practices.

²²⁷ US Department of State, Human Rights Report, Brazil 2020, Section 6. Discrimination, Societal Abuses, and Trafficking in Persons: Indigenous People. The same point has been made as far back as 2010. US Department of State, Human Rights Report, Brazil 2010, Section 6. Discrimination, Societal Abuses, and Trafficking in Persons: Indigenous People.

²²⁸ See Communication, Annex II.

²²⁹ US Department of State, Human Rights Report, Brazil 2011, Section 6. Discrimination, Societal Abuses, and Trafficking in Persons: Indigenous People.

²³⁰ US Department of State, Human Rights Report, Brazil 2016, Section 6. Discrimination, Societal Abuses, and Trafficking in Persons: Indigenous People; US Department of State, Human Rights Report, Brazil 2015, Section 6. Discrimination, Societal Abuses, and Trafficking in Persons: Indigenous People; US Department of State, Human Rights Report, Brazil 2013, Section 6. Discrimination, Societal Abuses, and Trafficking in Persons: Indigenous People; US Department of State, Human Rights Report, Brazil 2010, Section 6. Discrimination, Societal Abuses, and Trafficking in Persons: Indigenous People.

²³¹ US Department of State, Human Rights Report, Brazil 2018, Section 6. Discrimination, Societal Abuses, and Trafficking in Persons: Indigenous People; US Department of State, Human Rights Report, Brazil 2017, Section 6. Discrimination, Societal Abuses, and Trafficking in Persons: Indigenous People; US Department of State, Human Rights Report, Brazil 2016, Section 6. Discrimination, Societal Abuses, and Trafficking in Persons: Indigenous People; US Department of State, Human Rights Report, Brazil 2015, Section 6. Discrimination, Societal Abuses, and Trafficking in Persons: Indigenous People; US Department of State, Human Rights Report, Brazil 2014, Section 6. Discrimination, Societal Abuses, and Trafficking in Persons: Indigenous People.

demarcation;²³² and lack of consultation re infrastructure projects.²³³ Like Indigenous peoples, *Quilombola* communities have long faced similar issues.²³⁴ Complaints dating back as far as 2002 still resonate today.²³⁵

4. Consequential Crime²³⁶

77. The Network's policy has promoted or encouraged the commission of significant and sustained amount of violence and threats associated with land ownership and resource exploitation (ranching, farming, mining).²³⁷ According to Global Witness (which has been tracking the matter for well over a decade), the main driver of violence in the Amazon is land conflict (disputes over land rights) and illegal commercial activity, mainly logging (also mining/extractive); the main direct perpetrators are landowners and loggers.²³⁸

²³² US Department of State, Human Rights Report, Brazil 2020, Section 6. Discrimination, Societal Abuses, and Trafficking in Persons: Indigenous People; US Department of State, Human Rights Report, Brazil 2017, Section 6. Discrimination, Societal Abuses, and Trafficking in Persons: Indigenous People; US Department of State, Human Rights Report, Brazil 2016, Section 6. Discrimination, Societal Abuses, and Trafficking in Persons: Indigenous People; US Department of State, Human Rights Report, Brazil 2014, Section 6. Discrimination, Societal Abuses, and Trafficking in Persons: Indigenous People; US Department of State, Human Rights Report, Brazil 2011, Section 6. Discrimination, Societal Abuses, and Trafficking in Persons: Indigenous People; US Department of State, Human Rights Report, Brazil 2010, Section 6. Discrimination, Societal Abuses, and Trafficking in Persons: Indigenous People.

²³³ US Department of State, Human Rights Report, Brazil 2014, Section 6. Discrimination, Societal Abuses, and Trafficking in Persons: Indigenous People; US Department of State, Human Rights Report, Brazil 2013, Section 6. Discrimination, Societal Abuses, and Trafficking in Persons: Indigenous People.

²³⁴ US Department of State, Human Rights Report, Brazil 2020, Section 6. Discrimination, Societal Abuses, and Trafficking in Persons: Indigenous People; US Department of State, Human Rights Report, Brazil 2018, Section 6. Discrimination, Societal Abuses, and Trafficking in Persons: Indigenous People; US Department of State, Human Rights Report, Brazil 2018, Section 6. Discrimination, Societal Abuses, and Trafficking in Persons: Indigenous People.

²³⁵ US Department of State, Human Rights Report, Brazil 2002, Section 5. Discrimination Based on Race, Sex, Disability, Language, or Social Status: Indigenous People.

²³⁶ *Nb.* This section of this Annex describes only general patterns of criminality linked to various economic sectors. Specific instances of Article 7 crimes are separately detailed at Annex II of the Communication.

²³⁷ US Department of State, Human Rights Reports, Brazil 2013, Section 6. Discrimination, Societal Abuses, and Trafficking in Persons: Indigenous People; US Department of State, Human Rights Report, Brazil 2012, Section 6. Discrimination, Societal Abuses, and Trafficking in Persons: Indigenous People; US Department of State, Human Rights Report, Brazil 2010, Section 6. Discrimination, Societal Abuses, and Trafficking in Persons: Indigenous People.

²³⁸ 'Deadly Environment: The Rise in Killings of Environmental and Land Defenders: 1 January 2002 to 31 December 2013', *Global Witness*, 2014 ('Conflict over land and forest rights is the main driver of defender killings in Brazil, with the Amazon being the frontier of the struggle over indigenous and environmental rights. Driven by the powerful agricultural interests at the heart of Brazil's export-focused economy, farms push ever deeper into the forest and spawn many conflicts. Natalia Viana, of the Brazilian investigative NGO Publica, has looked at this issue over time: "The most conflicted areas are those where there is recent deforestation. First the illegal loggers come and take out the wood. Then the second industry is cattle, and then some soy. This is the natural cycle of the Amazon frontier." [...] Industrial logging in untouched tropical forests paves the way for plantations and other commercial activity, triggering a cycle of decline that brings few lasting benefits to communities and spells the beginning of the end for the forest.'). *ibid* ('Meanwhile, logging and agricultural business interests hold enormous influence in regions where killings have been perpetrated against activists. In Mato Grosso do Sul province, for example, the political class has long been dominated by agribusiness interests including beef, soya and sugar cane. [...] [An] uptick in violence against the Guarani and Kaiowa in the last 10 years [...] coincides very much with the pressure to produce agrofuels [...]. You can practically map the deaths with that new demand, particularly in the center-west region where the indigenous population density is higher and sugarcane and soybean agribusiness interests have come to predominate the political and judicial power structure of the states of Mato Grosso and Mato Grosso do Sul' [said a commentator].'); 'How Many More?: 2014's deadly environment: the killing and intimidation of environmental and land activists, with a spotlight on Honduras', *Global Witness*, April 2015 ('Globally, disputes over the ownership, control and use of land were an underlying factor in almost all killings of environmental and land defenders documented in this report. Lack of formal land title for indigenous peoples and local communities was also a complicating factor. Land rights often play a role in combination with conflicts over agribusiness, mining, hydropower dams and industrial logging. In many cases from 2014, the killings were linked to large landowners—like in the case of Brazil [...].'); 'On Dangerous Ground: 2015's Deadly Environment: The Killing and Criminalization of Land and Environmental Defenders Worldwide', *Global Witness*, June 2016 ('The rainforest has given way to thousands of illegal logging camps whilst the agricultural frontier is pushing further into previously untouched indigenous reserves. It's estimated that 80% of timber from Brazil is illegal, and accounts for 25% of illegal wood on global markets. [...] Large-scale agribusiness plantations were linked to [many] cases, especially in [...] Brazil. [...] Large ranches for breeding livestock were also linked to several cases in Brazil where gunmen hired by landowners were suspected of killing land and environmental defenders.'). *ibid* ('Most of the murders took place in the

a. *Illegal Logging Driving Crimes*

78. Criminal gangs engaging knowingly in criminal conduct envisaged by the Network's policy are largely driving illegal deforestation in the Amazon and continue to threaten and even kill Rural Land Users and Defenders (including public officials).²³⁹ To protect their profits, they have repeatedly threatened, attacked, and even killed those who try to stop them, including rural populations, small farmers, and enforcement agents.²⁴⁰ According to research published by HRW in 2019: (a) illegal deforestation in the Amazon is a multimillion dollar business that involves illegal logging, illegal deforestation, and illegal occupation of public land; (b) deforestation in the Amazon is driven largely by criminal networks engaged in large-scale and often illegal logging (extraction, processing, and sale of timber) that use armed violence and intimidation, and in some cases murder, against those who try to stop them; (c) there were 28 documented killings (most from years 2014–2019)—plus 4 attempted killings and over 40 cases of death threats—in which there was credible evidence that those responsible were engaged in illegal deforestation and saw their victims as obstacles to their criminal enterprise; (d) victims included environmental enforcement agents, members of Indigenous communities (majority), and other forest residents; (e) police failure to properly/competently investigate and prosecute these crimes means those responsible for the violence are rarely brought to justice.²⁴¹
79. A number of key findings from the HRW report²⁴² merit mention here:
- a. Forest defenders—public officials who work for the country's environmental agencies, police officers who fight environmental crime, small farmers who report incidents and individuals to the authorities, and Indigenous/traditional people who patrol their territory—are at risk.

Amazon states of Maranhão, Pará, and Rondônia which has seen a surge in violence linked to large ranches and plantations taking over land where rural communities lack rights, despite promises from the authorities. Agribusiness companies, loggers and landowners are hiring hitmen to silence local opposition to their projects.'). *ibid* ('Mining companies are increasing production in order to make up for the loss in profits from the fall in commodity prices—causing environmental damage in the process and conflicts with communities. [...] The upsurge in mining activity has been coupled with weakening of regulations by governments eager to spur new mining investments, meaning riskier projects are approved that impact on communities.'). *ibid* ('In 2015, 15 killings of land and environmental defenders were linked to the logging industry. [...] The logging trade operates in remote areas with weak law enforcement and often works hand in hand with corrupt local officials. Loggers are encroaching into previously untouched areas in the search for high-value timber and coming into conflict with local communities. Rates of deforestation increased last year in key countries, notably Brazil, with illegal logging a main driver in forest loss. This rise in illegal logging is leading to violence against land and environmental defenders.')

²³⁹ Human Rights Watch, World Report 2021, Brazil, Events of 2020; Human Rights Watch, World Report 2020, Brazil, Events of 2019; see also Human Rights Watch, 'Criminal Networks Driving Deforestation in Brazil: Daily Brief', 17 September 2019 ('A rainforest mafia is driving deforestation in the Brazilian Amazon using violence and intimidation against forest defenders, a new Human Rights Watch report found. President Jair Bolsonaro has made the situation even worse by scaling back enforcement of environmental laws, and weakening federal environmental agencies.')

²⁴⁰ Human Rights Watch, 'Brazil's Amazon—and Its Defenders—Are Under Attack From Illegal Loggers, 15 November 2019 (published in *Foreign Policy*).

²⁴¹ Human Rights Watch, Press Release, 'Brazil: Criminal Networks Target Rainforest Defenders', 17 September 2019 ('HRW interviewed more than 170 people, including 60 members of Indigenous communities, and other local residents in the states of Maranhão, Pará, and Rondônia. Researchers also interviewed dozens of government officials in Brasília and throughout the Amazon region, including many who provided inside accounts of how President Jair Bolsonaro's policies are undermining enforcement efforts.')

²⁴² Human Rights Watch, 'Rainforest Mafias: How Violence and Impunity Fuel Deforestation in Brazil's Amazon', 17 September 2019 (section on 'Violence Linked to Illegal Deforestation').

- b. A typical goal of the criminal networks is to clear the forest to make room for cattle or crops.
- c. Such violence has been a widespread problem in the region for years.
- d. More than 300 people have been killed during the last decade in the context of conflicts over the use of land and resources in the Amazon—many of them by people involved in illegal logging. (CPT's numbers are higher.)
- e. Perpetrators are rarely brought to justice.
- f. At the same time that loggers turned to increasingly sophisticated evasion techniques, federal environmental enforcement agencies suffered budget and personnel cuts that have reduced the number of field inspectors available to conduct monitoring operations.
- g. According to former Prosecutor-General Raquel Dodge: 'Organized crime is responsible for deforestation in the Amazon.'
- h. Criminal networks provide the capital required for large-scale operations and hire workers or facilitate the hiring of workers through associate *fazendeiros* (ranchers, large farmers). Once denuded, loggers cut and burn remaining vegetation; the land is then often turned into pasture land for cattle, while less often it is used for crops. The criminal networks may keep those lands, dividing them into smaller plots and fabricating titles to the name of frontmen. Or they may raise cattle there for a few years, when the land is most productive, and then sell it, again with fabricated titles, a practice known as *grilagem* (land grabbing). For this, they count on other actors in the criminal networks: experts in geoprocessing who forge land surveys to register lands occupied by *fazendeiros*.
- i. Some networks are also involved in illegal mining in the areas they control.
- j. To protect and further their business, they regularly bribe public officials and police.
- k. A crucial part of the networks is the armed men who protect their illegal activities. 'They are very similar to militias', said Diego Rodrigues Costa, a Mato Grosso public defender (referring to the violent criminal organizations that operate in Rio de Janeiro and other urban centers). Marco Paulo Froes Schettinto, executive secretary of the Indigenous rights unit at the Attorney-General's office, concurred that some *fazendeiros* involved in illegal logging are forming 'rural militias'.
- l. *Fazendeiros* employ armed men to protect their activities and intimidate and kill those who obstruct their activities, community leaders reported.
- m. Loggers employ armed men who operate as a militia and are apparently responsible for threatening residents who have threatened their interests.

- n. Like the urban militias, the networks wield considerable economic power, which they use to influence or control local politics. State and federal officials said it is common for members of the crime groups involved in logging to assume positions as council members, mayors, and state representatives.
- o. Loggers then launder timber that ends up in domestic and international markets. For that, they work through companies engaged in fraudulent practices. IBAMA officials said that in 2017 most of the logging permits in the Amazon region of In Maranhão State were based on fraudulent information.
- p. *Fazendeiros* raising cattle in illegally deforested and occupied land in the Amazon escape controls by similarly fraudulent means. For example, *fazendeiros* had five IBAMBA employees on their payroll, including the director of IBAMA in Acre State.

Specific cases illustrative of these general findings are set out in detail at Annex II.

b. Illegal Cattle Farming Driving Crimes

- 80. Illegal cattle farming (related to illegal logging) is another main driver of deforestation and violent crime with actors engaging knowingly in criminal conduct envisaged by the Network's policy. According to a 2019 report by Amnesty International:²⁴³
 - a. Although there were various contributing factors, most Amazon fires have been part of a broader process whereby rainforest is illegally converted into land for cattle grazing. According to government data, 63% of the area deforested in Brazil's Amazon from 1988 to 2014 has become pasture for cattle.
 - b. The conversion of tropical rainforest into pasture in Brazil's Amazon often follows a broad pattern, whereby plots of land in the forest are identified, trees are cut down and cleared, then fires are lit (often repeatedly in the same area), before grass is planted, and finally cattle introduced. This process is often performed by cattle farmers, *grileiros*—private individuals

²⁴³ 'Fence Off and Bring Cattle: Illegal Cattle Farming in Brazil's Amazon', Amnesty International, 2019 ('Between April and August 2019, Amnesty International researchers visited five sites: the Karipuna and Uru-Eu-Wau-Wau Indigenous territories and the Rio Ouro Preto and Rio Jacy-Paraná Reserves (in Rondônia state), and the Manoki Indigenous territory (in Mato Grosso state). In total, Amnesty International interviewed 29 Indigenous people and residents of Reserves. Amnesty International also interviewed 22 experts, including public prosecutors, government officials and representatives of non-governmental organizations. To protect the confidentiality and safety of interviewees, names and other identifying information have been withheld. [...] The term 'Amazon region' refers to the Legal Amazon area as defined by Brazilian legislation, which comprises the states of Acre, Amapá, Amazonas, Pará, Rondônia, Roraima, Mato Grosso, Tocantins, and part of Maranhão state. The Portuguese term '*grileiros*' refers to people who illegally seize land. They generally either use the land for themselves or sell on to other persons. The term 'Reserves' (*Reserva Extrativista*) refers to a type of environmentally protected area. The purpose of creating such Reserves is to protect the livelihoods and culture of these populations and ensure the sustainable use of the natural resources in the protected area. Residents of these Reserves are referred to as 'traditional residents'. Traditional residents live mostly on sustainable activities such as rubber-tapping and the harvesting of natural resources, including wild fruits. Brazil's Constitution protects traditional residents, their traditional way of life and their rights to their land, its use and natural resources. Traditional residents of the Reserves visited by Amnesty International do not consider themselves Indigenous people.'

who illegally seize land which they either keep for themselves or sell to others for profit—or people hired by either.

- c. Cattle ranching in protected areas is illegal under Brazil's laws.
- d. In four of the five sites visited by Amnesty International, illegal land seizures were accompanied by threats and acts of intimidation against those opposed to the illegal land seizures, including Indigenous peoples, residents of Reserves, and government officials in charge of protecting the environment and Indigenous territories.
- e. Agencies of the state governments of Mato Grosso and Rondônia have full knowledge that some farmers graze cattle on properties located in Reserves and Indigenous territories.
- f. In four sites (Manoki, Karipuna, and Uru-Eu-Wau-Wau Indigenous territories, and Rio Ouro Preto Reserve) visited by Amnesty International, a total of 10 Indigenous leaders, residents of Reserves and Federal environmental agents told Amnesty International they had received threats and/or suffered acts of intimidation in 2019.

While nearly all such activity is carried out by the Network's private-sector organizational actors, the Network's 'captured' state institutions help facilitate the process.²⁴⁴

c. *Illegal Mining Driving Crimes*

- 81. Areas occupied by illicit/illegal mining (*garimpo*) grew more than six times between 1985 and 2020.²⁴⁵ Similarly, the actors appear to engage knowingly in criminal conduct envisaged by the Network's policy. Among Amazonian states, Pará stands out as a hub for violent conflicts and not by chance, in 2020 it was the state with the most mineral exports in all of Brazil, according to the Mineral Industries Union of Pará (Simineral). It is precisely in the southwest of Pará that the

²⁴⁴ 'Fence Off and Bring Cattle: Illegal Cattle Farming in Brazil's Amazon', Amnesty International, 2019 ('State Governments' Role in Enabling Illegal Cattle Farming').

²⁴⁵ See MapBiomass Brazil ('Between 1985 and 2020 the area mined in Brazil grew six times, according to the most recent temporal analysis of the Brazilian territory made by MapBiomas. The data, which results from the analysis of satellite images with the aid of artificial intelligence, shows a jump from 31 thousand hectares in 1985 to a total of 206 thousand hectares last year. A good part of this growth was due to expansion in the Amazon forest. By 2020, three out of every four hectares mined in Brazil were in the Amazon. The biome concentrates 72.5% of the entire area, including industrial mining and gold mining. [...] Almost all (93.7%) of Brazil's *garimpo* is concentrated in the Amazon. In the case of industrial mining, the biome accounts for practically half (49.2%) of the area occupied by this activity in the country. [...] In total area mined, the three largest states are Pará (110,209 ha), Minas Gerais (33,432 ha), and Mato Grosso (25,495 ha). In the case of Pará, most of this area is occupied by *garimpo* (76,514 ha, against 33,695 ha of industrial mining). In Minas Gerais, almost all of it is occupied by industrial mining (32,785 ha). Mato Grosso repeats the pattern of Pará, with predominance of mining (22,987 ha.); Jeff Tollefson, 'Illegal mining in the Amazon hits record high amid Indigenous protests', *Nature*, 30 September 2021 ('Indigenous territories, long a bulwark against deforestation in the Amazon, are under increasing threat in Brazil, according to an analysis of 36 years' worth of satellite imagery [by MapBiomas]. The data show that illicit mining operations on Indigenous lands and in other areas formally protected by law have hit a record high in the past few years, under the administration of President Jair Bolsonaro, underscoring fears that his policies and rhetoric are undermining both human rights and environmental protection across the world's largest rainforest. These operations strip the land of vegetation and pollute waterways with mercury. [...] Over the past decade, illegal mining incursions—mostly small-scale gold extraction operations—have increased fivefold on Indigenous lands and threefold in other protected areas of Brazil such as parks, the data show [...]. The findings agree broadly with reports from Brazil's National Institute for Space Research (INPE) [...], which monitors the country's forests and has been issuing alerts about mining incursions for several years.')

Munduruku Indigenous Land is located, which is home to around 145 villages existing amid a complex problem of illegal gold mining on the banks of the Tapajós River.

82. Munduruku Indigenous people in the Tapajós basin—an epicenter of illegal gold mining in the Amazon rainforest—in southwestern Pará State have reported increasing encroachments upon their lands and violent acts by armed ‘wildcat’ miners known as ‘*garimpeiros*’ since March 2021.²⁴⁶ Again, in May 2021, attacks were perpetrated by groups involved in illegal mining against Munduruku Indigenous leaders in Pará.²⁴⁷ A recent government crackdown has been dismissed as part of a larger ‘public relations blitz’ on the eve of last year’s COP26 conference.²⁴⁸

²⁴⁶ Human Rights Watch, ‘Remove Miners from Indigenous Amazon Territory’, 12 April 2021 (‘The Federal Prosecutor’s Office has warned of a potential for violence between local residents and the miners and urged the deployment of the federal police and other authorities to remove the trespassers. But the government has yet to act. The tension has escalated in recent weeks after a group of miners brought equipment to the area. “Indigenous people in the Munduruku territory are facing land invasions, environmental destruction, and serious threats by criminal groups involved in illegal mining,” said Maria Laura Canineu, Brazil director at HRW. “Unless the government takes decisive action to enforce the law and expel the invaders, the situation will only get more dangerous.” Illegal mining causes significant deforestation in the Brazilian Amazon [...]. The Munduruku Indigenous Territory has long suffered from encroachments by miners, but the situation has “clearly worsened” under the Bolsonaro administration and reflected a broader upsurge in illegal mining in the region, a federal prosecutor told HRW. [...] The Bolsonaro administration has weakened the agencies tasked with protecting the environment, effectively emboldening criminal networks involved in illegal logging and mining [...] in the Amazon.’)

²⁴⁷ Human Rights Watch, ‘Human Rights Watch statement on attacks against Munduruku indigenous leaders’, 26 May 2021 (‘According to the Federal Prosecutor’s Office (MPF), armed miners operating in the region raided the Fazenda Tapajós village in Jacareacanga and set several houses on fire. One of them belonged to Maria Leusa Munduruku, a prominent opponent of illegal mining and coordinator of the Wakoborün Munduruku Women’s Association. Local Indigenous leaders informed the MPF that a group of miners was preparing to attack other villages. Several leaders have also received threats, a local source told Human Rights Watch. The attacks against Indigenous leaders are taking place as miners also seek to obstruct a major deployment of police, agents from the federal environmental enforcement agency IBAMA and the National Force to curb illegal mining in the Indigenous territories Munduruku and Sai Cinza. Local authorities reportedly supported miners’ efforts to undermine law enforcement. [...] It is extremely concerning that groups involved in illegal mining are emboldened to use violence even with a major deployment of law enforcement in the region. Since taking office in January 2019, the government of President Jair Bolsonaro has sabotaged environmental law enforcement, enabling widespread impunity for environmental infractions. His actions and words effectively gave a green light to criminal groups driving illegal logging and deforestation in the Amazon.’)

²⁴⁸ Tom Phillips, “‘Everyone’s fleeing’: Brazil cracks down on illegal mining in Amazon—for now”, *The Guardian*, 15 September 2021 (‘In the four decades since he helped found the Garden of Gold, Fernando Viana has had a front-row seat to the chaotic scramble for precious metals in the Brazilian Amazon. Cutthroat squabbles over the jungle mines sprinkled around this riverside outpost. Lead-riddled corpses dumped outside the rowdy wooden bordellos he once ran. “Stabbings. Bullets. Shooting everywhere. So much shooting. It was wonderful, mate. A blast!” chuckled the puckish former police chief, who for years laid down the law in this corner of Brazil’s wild west with his .38 revolver. In recent months, however, an unusual calm has descended on Jardim do Ouro after troops rolled into town, as part of a crackdown designed to convince the world that Jair Bolsonaro’s Brazil is cleaning up its environmental act. [...] The mission, which began in July and ends this week, has been accompanied by a public relations blitz in which Bolsonaro’s administration claims: “It’s in our nature to preserve.” [...] Activists are skeptical the clampdown, which comes on the eve of November’s Cop26 climate summit in Glasgow, will have any meaningful long-term impact while Bolsonaro remains in power. Deforestation has soared to a 12-year high under a leader who critics claim has emboldened Amazon outlaws with his anti-environmental words and deeds. “This softening of the rhetoric doesn’t convince me [and] I really don’t think the world will buy this so easily,” said Suely Araújo, the former head of Brazil’s environmental agency IBAMA. Araújo, now a public policy specialist for the environmental group Observatório do Clima, said Brazil’s government had clearly grasped COP26’s importance “and decided to see if this [green makeover] will stick”. Bolsonaro’s controversial environment minister, Ricardo Salles, was recently forced from government in what some saw as a bid to placate the international community after he was linked to an illegal logging racket. “But the boss is still there. It’s the president who’s in charge and he has a crude, 50-years out-of-date vision of environmental policy as if development meant knocking down the forest and replacing it with goldmines,” Araújo said. [...] Signs of the devastation wrought by decades of rampant exploitation are everywhere in Jardim do Ouro and the surrounding state of Pará [...]. The Jamanxim River, which meanders past Viana’s waterside bungalow, runs a disturbing milky brown: the result, locals say, of mining pollution. When Viana arrived in 1981, the region’s rainforests were largely untouched. Forty years later, like much of the Amazon, they have been replaced by a sprawling patchwork of dirt tracks and cattle ranches—and the destruction continues. Twenty miles upriver, in a supposedly protected area near the Jamanxim national forest, the hum of a chainsaw could be heard despite the army’s presence. The machine fell silent as the Guardian’s reporters approached, but huge damage had already been done. Satellite imagery showed a 541-hectare strip of jungle was felled here in recent months—the equivalent of some 650 football pitches. At least 4147 km² of forest were destroyed in Pará state between August 2020 and this July—an area more than 2.5 times larger than Greater London. Araújo, the former IBAMA chief, said army operations might temporarily slow such destruction but would never solve the problem on their own, especially given Bolsonaro’s “program of destruction”. “As soon as they leave, everything goes back to how it was,” she said.’)

G. Conclusion

83. As demonstrated in this annex and throughout this Communication, an organizational policy exists in Brazil to facilitate the dispossession of land, the exploitation of natural resources, and the destruction of the environment, irrespective of the law. In a variety of ways over the course of the last decade, this policy has promoted and/or encouraged the commission of mass crimes against Rural Land Users and Defenders (amounting to crimes against humanity). Such crimes have likely been perpetrated by public and private-sector actors at the local, state, and federal levels. In order to truly understand this complex criminal web—the Network, its policy, its membership, its mechanics, and its deadly effect—a proper investigation backed by the necessary resources is required. Having provided a roadmap marked with demonstrable factual signposts, the Filing Parties hereby urge the OTP to embark on a preliminary examination of the situation.

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