
Q.1. *How can States better advance human rights-compatible energy transition laws and policies that ensure responsible business conduct in all aspects of energy transition efforts and programs (e.g., including, but not limited to, design, approval, financing, implementation, and reporting of energy transition programs)?*

Here are some specific guidelines for the Brazilian context:

1. **Social Participation:** States should promote the active participation of different stakeholders, such as civil society organizations, indigenous communities, local communities, and affected individuals. This can be done through public consultations, hearings, and dialogue mechanisms to engage stakeholders in decision-making processes related to energy transition. This participation contributes to including diverse perspectives and helps identify and address potential human rights impacts throughout the process.
2. **Environmental and Social Impact Assessment:** In Brazil, Environmental Impact Assessment (EIA) is a mandatory legal instrument for large-scale projects. It is important to expand the EIA to include the assessment of social and human rights impacts of energy transition programs. This should involve identifying and assessing potential human rights impacts in all phases of the program, as well as proposing appropriate mitigation measures.
3. **Legal and Regulatory Framework:** Brazilian states should establish clear and comprehensive legal and regulatory frameworks that incorporate human rights considerations into energy transition efforts. This includes protecting the rights of affected communities, defining clear standards for responsible business conduct, and promoting transparency and accountability in the energy sector.
4. **Monitoring and Reporting:** States should implement robust monitoring and reporting mechanisms to assess the implementation of energy transition programs and their human rights impacts. This may involve establishing monitoring bodies or mechanisms to regularly assess progress, identify deficiencies, and address human rights violations or non-compliance. Regular disclosure of human rights indicators can increase transparency and accountability.
5. **Capacity Building:** It is crucial to invest in capacity building for relevant stakeholders, such as government authorities, regulators, and businesses, to ensure they have the knowledge and skills necessary to implement and protect human rights in the energy transition. This can include training programs,

workshops, and sharing best practices to enhance understanding and compliance with human rights standards.

6. International Cooperation: Brazil can seek cooperation with international organizations, other countries, and experts to share experiences, best practices, and lessons learned in developing and implementing human rights-compatible energy transition laws and policies.

By adopting these strategies, Brazilian states can promote a human rights-centered approach to the energy transition, ensuring that responsible business conduct and the protection of human rights are integral components of their energy policies and programs.

Q.6. *What are the gaps in the development and implementation of existing National Action Plans, legislation, and domestic, regional, or international frameworks (e.g., the Paris Agreement or climate change laws) on business and human rights, particularly about the extractive sector, which if addressed will advance a just and human rights-based energy transition?*

I. Legislative and regulatory reality in Brazil regarding Human Rights and Business.

Regarding the regulation and legislation on Human Rights and Business and the gaps in the development and implementation of current National Action Plans and existing legislation, we assess that Brazil has been making timid but consistent progress, and there are legal gaps that need to be overcome.

The Brazilian government endorsed this commitment in the National Human Rights Program (PNDH-3), established by Decree No. 7,037/2009 and updated by Decree No. 7,177/2010, which included the topic of human rights and corporate responsibilities on the national agenda, and Decree No. 9,571/2018, which establishes the National Guidelines on Business and Human Rights for medium and large companies, including multinational companies operating in the country.

The Organization for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises (Guidelines) are the main instrument aimed at promoting the adoption of responsible business conduct (RBC) practices by companies. The Guidelines are government recommendations to businesses on how to act responsibly and cover all potential areas of corporate responsibility, including human rights.

Adherents to the Guidelines have a legal obligation to establish a National Contact Point (NCP) to promote their implementation. The Brazilian NCP was established in 2003 and recently had its structure revised by Decree No. 11,105, dated June 27, 2022.

I.I. Decree 9,571/2018 and its gaps.

Initially, it is worth noting that Decree 9,571/2018 is the regulatory framework for Human Rights and Business in Brazil and stipulates that national and foreign companies must follow its guidelines.

However, it was enacted during the government of President Michel Temer, which furthered a corporate and neoliberal agenda. This government became known for its widespread precariousness and commodification of workers' rights.

Although an important legal statute, Decree 9,571/2018 still needs to pass the test of constitutionality to determine whether it will effectively promote not only the guidelines but also a culture where the relationship between human rights and business is established, or if it will be just another piece of rhetoric without legal and/or practical effects for the actors involved. In this regard, the provision in Article 1, paragraph 2, stating that the adoption of the national guidelines on human rights and business will be implemented voluntarily by companies, appears unconstitutional to us.

We disagree with this guidance in the Decree. The implementation of the guidelines, in our view, should be mandatory for all companies.

This is because Article 4, Clause II of the Brazilian Federal Constitution establishes Brazil's commitment to the prevalence of human rights internationally. Also, the Brazilian Supreme Court has established judicial decisions affirming the primacy of human rights in disputes involving human dignity, enshrining what is called the "principle of maximum effectiveness of human rights". If there is a practical conflict that puts property rights against human rights, the decision should lean in favor of the latter.

There are still few companies that incorporate the discussion of Human Rights and Business. Most companies that have statements on the topic are large conglomerates like Microsoft, which have a tradition of addressing the issue globally.

Therefore, although commendable, the Decree will need to be improved and even pass the test of constitutionality.

In conclusion, the election of a new government that took office in January of this year, and the work being done by the current Minister of Human Rights and Citizenship, will certainly contribute to the improvement of the human rights and business agenda, as Minister Sílvio de Almeida has already stated in his inaugural speech.

I.II. Environment and Human Rights.

On May 11th, President Luís Inácio Lula da Silva submitted to the National Congress the ratification text of the Escazú Agreement, an important international treaty that Brazil will finally ratify. The Escazú Agreement strengthens the connection between human rights and environmental protection, imposing requirements on Member States regarding the rights of environmental defenders.

Additionally, it aims to provide full public access to environmental information, participation in environmental decision-making, and legal protection and remedies related to environmental issues. It also recognizes the right of current and future generations to a healthy environment and sustainable development.

The Escazú Agreement is the first regional treaty in Latin America and the Caribbean to include provisions on the rights of environmental defenders. The Agreement is directly related to Principle 10 of the Rio Declaration on Environment and Development, which deals with public participation in environmental matters.

In this way, the inter-American system for the protection of human rights, based on the Pact of San José, Costa Rica, will also serve to discuss the killing and persecution of indigenous and environmental leaders, ensuring access to international justice through the possibility of action in the Inter-American Court of Human Rights.

The following legislative advancements are highlighted in the Escazú Agreement:

a.) Access to information (Articles 5 and 6) b.) Participation in environmental decision-making (Article 7) c.) Protection for Environmental Defenders (Article 9)

The effects of this International Agreement will only be felt in practice after it enters into force.

However, it represents a significant advance and, above all, an important commitment by Brazil to all those who care about the environment but face persecution from economic power holders who exploit natural resources in an outdated manner and degrade the environment to maintain their businesses, even resorting to the assassination of activists and the decimation of indigenous and riverside populations.

III. Conclusions.

a) Lack of comprehensive legislation: While Brazil has made progress in recognizing the importance of business and human rights through initiatives such as the National Action Plan on Business and Human Rights, there is still a need for comprehensive legislation specifically addressing the extractive sector. Existing laws often focus on environmental regulations and do not adequately address the social and human rights impacts of extractive activities.

b) Inadequate enforcement mechanisms: Even when regulations exist, enforcement mechanisms may be weak or ineffective, leading to a lack of accountability for human rights violations committed by businesses in the extractive sector. This gap hinders the promotion of responsible business conduct and the protection of human rights.

c) Limited stakeholder engagement: The participation of affected communities, civil society organizations, and other relevant stakeholders in the development and implementation of policies and frameworks is crucial for a just and human rights-based energy transition. However, there is often a lack of meaningful engagement, limiting the effectiveness and inclusiveness of these initiatives.

d) Insufficient monitoring and reporting mechanisms: There is a need for robust monitoring and reporting mechanisms to track the compliance of businesses' compliance with human rights standards and regulations in the extractive sector. Without adequate monitoring and reporting, it becomes challenging to assess the impact of these activities on human rights and identify areas for improvement.

e) Limited access to remedy: Access to effective remedies for individuals and communities affected by human rights violations in the extractive sector is essential. However, there are often barriers to accessing justice, including high costs, procedural complexities, and power imbalances, which limit the ability of affected parties to seek redress for the harm caused.

Addressing these gaps in the development and implementation of National Action Plans, legislation, and frameworks is crucial for advancing a just and human rights-based energy transition in Brazil's extractive sector.

It requires strengthening legislation, enhancing enforcement mechanisms, promoting meaningful stakeholder engagement, establishing robust monitoring, and reporting mechanisms, and ensuring access to effective remedies for affected communities and individuals.

Suggested actions for furthering this agenda: I) Extensive campaign to educate and raise awareness among the population about the importance of human rights and their impact on daily life; II) Engagement of business leaders and workers on the topic, with a special focus on ethics in business and human rights, and how this understanding should shape internal, B2B, and B2C relationships; III) Campaign to clarify the importance of human rights in schools and their practical application in our daily lives; IV) Expand existing programs and public policies that promote a culture of human rights within companies, communicating them clearly and directly to engage entrepreneurs, workers, and society as a whole; V) Provide accountability to society regarding the effectiveness of government-created public policies, with an emphasis on the effectiveness of these rights and the resulting improvement in people's lives; VI) Through campaigns, clarify the effects of climate change and how it translates into human rights violations; VII) Work with companies to develop solutions to tackle global warming and end social inequality; VIII) Deepen collaborative efforts between human

rights and business groups and the environment; IX) Enable the carbon offset market to benefit local populations, fair trade, and, above all, the planet

Q. 15 *Please provide examples of steps taken by States to investigate, punish and redress business-related human rights abuses related to the extractive sector in the context of energy transition projects. Are the steps and redress mechanisms effective in terms of both process and remedial outcomes?*

From a Brazilian perspective, both from a legal standpoint and based on information available in the media, it is possible to identify some steps taken by States to investigate, punish, and redress business-related human rights abuses related to the extractive sector in the context of energy transition projects. However, it is important to note that the effectiveness of these steps may vary and is subject to debate.

1. Investigation and accountability: In some cases, Brazilian authorities have conducted investigations into human rights violations in the extractive sector. These investigations may involve cases of forced labor, environmental violations, conflicts with indigenous communities, the killing of human rights and environment activists along with other human rights abuses. Companies are subject to legal proceedings and, in some cases, may be fined, have their activities suspended, or even lose concessions.
2. Public civil actions: In Brazil, public civil actions are an important mechanism for holding companies accountable for human rights violations. Civil society organizations, prosecutors, and other entities can file lawsuits on behalf of victims seeking compensation and other forms of redress.
3. Dialogue and negotiation: In certain cases, dialogue is established between the parties involved, including affected communities, companies, and government authorities. These negotiations can lead to the implementation of reparations measures, such as compensation programs, resettlement of affected communities, and improvements in working conditions.
4. Complaint mechanisms and ombudsmen: Some energy transition projects involve the creation of complaint mechanisms and ombudsmen, where communities and stakeholders can register complaints and seek solutions to the issues they face. These mechanisms aim to provide communication channels and ensure the participation of affected parties in project-related decisions.

However, it is important to note that the effectiveness of these measures may be questioned in terms of both the process and the outcomes of redress. Critics argue that the punishments imposed on companies are not always proportionate to the violations committed and that legal proceedings can be lengthy and complex. Additionally, concerns exist regarding the lack of effective access to justice for affected communities, as well as the insufficiency of redress measures for the damages caused.

Therefore, while steps have been taken to investigate, punish, and redress human rights abuses related to the extractive sector in the context of energy transition in Brazil, significant challenges remain to ensure that these measures are effective in terms of both the process and the outcomes of redress.

Q.19. *Please provide examples of good practices regarding the integration of human rights issues in the extractive sector in the context of the energy transition.*

Recently, there has been a weakening with opposition interference in the management and structuring of the Ministry of Environment and the Ministry of Indigenous Peoples.

The Ministry of Environment, led by Marina Silva, lost control of the Rural Environmental Registry (CAR) to the Ministry of Management, as well as the National Water and Basic Sanitation Agency (ANA) to the Ministry of Regional Development.

These issues were seen as crucial to reorganizing a department that was completely neglected in the previous government.

As for the Ministry of Indigenous Peoples, under the leadership of Sonia Guajajara, it will no longer manage the demarcation of indigenous lands, which will now be the responsibility of the Ministry of Justice, another department neglected by the previous government, which was responsible not only for the Yanomami genocide but also for the murder of indigenous leaders and environmental activists. There has been an escalation in armed conflict between illegal miners, and land invaders, against indigenous communities in the past six (06) years, and tension remains in the region.

All of this is the result of political interventions sponsored by the opposition to the Lula government, which are sympathetic forces to former President Jair Bolsonaro, whose views on human rights and the environment, especially indigenous land demarcation, are opposed.

There is also a discussion between IBAMA and PETROBRAS regarding the feasibility of exploring an oil well in the Amazon basin, and despite public opinion being against it, senators who are part of the opposition, especially those from the northern region of Brazil, are enthusiastic about this venture.

In the realm of good practices, the current federal government has taken a series of measures to combat deforestation in the Amazon, resolve land conflicts in the region, protect indigenous peoples, and shut down illegal mining operations.

In this regard, they have been focused on restructuring public agencies such as FUNAI - National Indian Foundation, IBAMA - Brazilian Institute of the Environment, and the Ministry of Human Rights and Citizenship.

Similarly, private entities are seeking to combat global warming within their areas of operation.

The country's main banks have committed to only granting loans to meatpacking plants and slaughterhouses that have implemented supply chain tracking systems to prove that they do not purchase cattle from illegally deforested areas in the Amazon and States of Tocantins and Maranhão, starting in 2026.

This is a self-regulatory norm established by Febraban - Brazilian Federation of Banks, and it has defined a minimum set of information that must be included in the tracking systems, such as embargoes, overlaps with protected areas, identification of deforestation polygons, vegetation suppression authorizations, and the Rural Environmental Registry (CAR) of the originating properties.

The requirement is for the tracking systems to be implemented by December 2025.

The entity stated that, initially, monitoring will be required for direct suppliers and the first level of indirect suppliers, which, in their view, would already cover 80% of deforestation in the Amazon biome. Additionally, there will be alternative control mechanisms for small-scale meatpacking plants.

Although adherence to this norm by a bank is voluntary, it has been adopted by the largest banks operating in Brazil.

With these initial political panoramas, under the Brazilian context, here are examples of good practices regarding the integration of human rights issues in the extractive sector within the context of the energy transition:

1. Consultation with Indigenous Communities: Ensuring meaningful and inclusive consultations with Indigenous communities, respecting their rights to Free, Prior, and Informed Consent (FPIC) regarding extractive projects. This includes engaging in dialogue, providing adequate information, and respecting the autonomy and self-determination of indigenous peoples.

2. Environmental and Social Impact Assessments (ESIA): Conduct thorough ESIA studies that assess the potential social and environmental impacts of extractive projects. These assessments should consider human rights implications, including impacts on indigenous lands, local communities, and vulnerable populations, and consider their concerns and traditional knowledge.
3. Benefit Sharing and Compensation: Implementing mechanisms for fair and equitable benefit sharing, ensuring that local communities and affected groups receive adequate compensation for any negative impacts resulting from extractive activities. This includes establishing transparent revenue-sharing mechanisms and promoting the socio-economic development of affected communities.
4. Transparency and Accountability: Promoting transparency in the extractive sector by disclosing relevant information, such as project contracts, environmental licenses, and social impact assessments. Holding companies accountable for their actions and ensuring that they comply with national legislation and international human rights standards.
5. Strengthening Grievance Mechanisms: Enhancing the effectiveness of grievance mechanisms available to affected communities, including strengthening national human rights institutions and national contact points. Ensuring that these mechanisms are accessible, independent, and capable of providing remedies to address human rights abuses related to the extractive sector.
6. Capacity Building and Training: Investing in capacity-building programs to enhance the knowledge and understanding of human rights among government officials, industry stakeholders, and local communities. Providing training on human rights principles, indigenous rights, and sustainable practices to promote responsible business conduct in the extractive sector.

These examples reflect some of the good practices that can contribute to integrating human rights issues in the extractive sector within the context of the energy transition in Brazil. However, it is important to recognize that there are ongoing challenges and areas for improvement in effectively implementing and ensuring respect for human rights in the extractive sector.