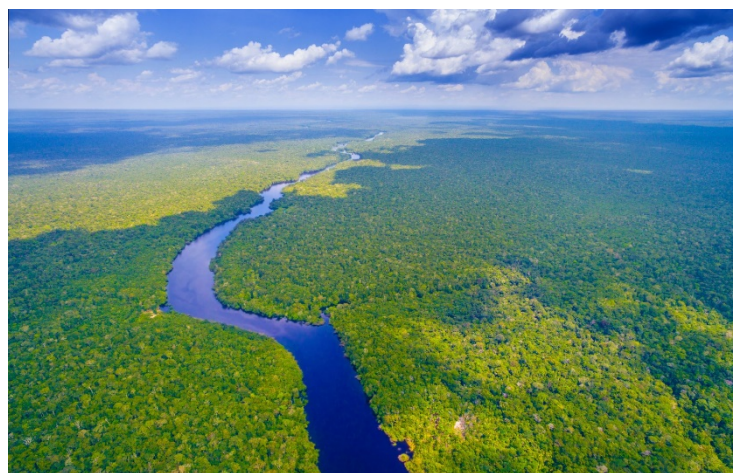


# Challenges for environmental and indigenous peoples' rights in the Amazon region



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## IN-DEPTH ANALYSIS

# Challenges for environmental and indigenous peoples' rights in the Amazon region

### ABSTRACT

The present analysis examines the environmental and human rights challenges in the Amazon region. It finds that the Amazonian countries pursue development policies in the region based on the exploitation on an industrial scale of natural and non-renewable resources that have caused and continue to cause deforestation, loss of biodiversity and engender human rights violations in particular affecting indigenous peoples. The analysis acknowledges the measures taken by the Amazonian countries to establish protected areas and support indigenous territories and their rights but concludes that the laws need strengthening and effective enforcement. The analysis argues that the protection of the Amazon biome is an essential part of the global efforts to reduce greenhouse gases and concurs with the view of some scientists that there is an urgency to stop forest loss. The analysis further notes that the most effective guardians of the Amazonian forest and its biodiversity are its indigenous peoples. The analysis concludes by arguing that the European Union has an interest in contributing to the protection of the Amazon and its indigenous peoples. It recommends, among other things, that the EU strengthen its direct support to Amazonian indigenous peoples and environmental defenders and develop effective measures which target EU-based companies whose activities cause deforestation.

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This paper was requested by the European Parliament's subcommittee on Human Rights  
English-language manuscript was completed on 30 June 2020.

Printed in Belgium.

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This paper will be published on the European Parliament's online database, '[Think tank](#)'.

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ISBN: 978-92-846-6866-3 (pdf)

ISBN: 978-92-846-6867-0 (paper)

doi:10.2861/757 (pdf)

doi:10.2861/297422 (paper)

Catalogue number: QA-01-20-415-EN-N

Catalogue number: QA-01-20-415-EN-C (paper)

## Table of contents

Executive summary	v
Acknowledgements	viii
List of Acronyms	ix
1 Introduction: Background, methodology and sources	1
1.1 Background	1
1.2 Methodology and sources	2
1.3 Structure of in-depth analysis	3
2 Overview: Political, environmental, human rights and indigenous peoples' challenges	3
2.1 Political and economic context	3
2.2 Regional human rights challenges	4
2.3 Indigenous peoples	4
3 The impacts of economic activities on the environment	5
3.1 The Amazon region	5
3.2 Environmental challenges	6
3.3 Unsustainable exploitation of natural resources	6
3.4 Wealth of the Amazon	9
4 Impacts on indigenous peoples and local communities	10
4.1 Lands and resources	11
4.2 Personal security	11
4.3 Violence and criminalisation	12
4.4 Contamination of the environment	12
4.5 Cultural identity	13
5 Legal frameworks: environmental commitments and indigenous peoples' rights	13
5.1 Regional environmental treaties	13
5.2 International framework of environmental rights	14
5.3 National laws and action on the environment	15

5.4	International framework for indigenous peoples' rights	17
5.5	National laws protecting indigenous peoples' rights	17
5.6	The implementation gap	21
6	Role of the EU	22
6.1	Policy framework	22
6.2	Possible conflict of interests in relation to the EU-MERCOSUR FTA	25
6.3	Corporate Social Responsibility and European Businesses	28
6.4	EU Member States	29
6.5	Consumers	29
7	Policy options	30
7.1	Indigenous peoples as forest guardians	30
7.2	Protected areas	30
7.3	The rule of law and human rights defenders	31
7.4	Legal framework for EU-based companies	31
7.5	The right of nature	32
8	Conclusions and recommendations	32
	Bibliography	37
	Annex - List of organisations working in and on the Amazon	43

## Executive summary

The Amazon is the largest rainforest in the world and plays a vital role in absorbing carbon dioxide, reducing greenhouse gases, and maintaining regional and global weather patterns. An estimated 10 % of the planet's biodiversity is found in the region and with nearly 400 distinct ethno-linguistic groups, it is also one of its most culturally diverse. The region is within the territories of nine States, including a French Overseas Department. Nearly two-thirds of the Amazon is in Brazil.

The Amazon is in crisis. Some scientists believe it is 10 years short of reaching a point of no return when it will no longer be absorbing CO<sub>2</sub> but contributing to its generation (Bolle, 2019). Efforts have been made over the last decades by the governments in the region to slow deforestation through new laws, satellite monitoring, policing, and the establishment of protected areas and indigenous territories where forest can be regenerated and sustainably used. These restorative policies, however, face pressures from development activities seeking to extract wealth through mineral, oil, gas and timber extraction, energy generation, agribusiness and ranching, facilitated by ambitious and potentially destructive road-building. The present government of Brazil has made it clear that it will do all it can to open up further the Amazon region to these interests, even to the extent of permitting these developments in protected areas and indigenous territories.

The impacts of these developments fall disproportionately on the indigenous peoples living in the Amazon region. They number about 1.5 million and have recognised land rights over approximately 30 % of the forest (according to Rede Amazonica de Informacao Socioambiental, [RAISG](#)). These lands, however, are tenuously held, largely unprotected by the public authorities and increasingly invaded by outsiders extracting timber, minerals or oil and gas. A climate of violence has established itself in the region as logging and other extractive activities are increasingly undertaken without consultation or the consent of the traditional owners. Threats and violence against indigenous peoples and environmental defenders are rising and the murder of activists opposing these developments and trying to protect the forest have reached an all-time high.

The laws in Amazonian countries and their ratification of international and regional environmental and human rights treaties explicitly commit them to respecting the human rights of indigenous peoples, recognising their lands, territories and resources and their self-determination in setting their development priorities as well as to protect the environment and biodiversity and implement the targets set by the Paris Climate Agreement. All countries fall short in implementing these obligations. Overlapping laws result in contradictory policies so that indigenous lands may be protected in Constitutions and land rights legislation but contradicted by concessions authorizing extractive industries. At present the countries in the region are not on track to comply with commitments made at the Paris Climate Meeting.

The European Parliament (EP) and European Union (EU) have taken strong positions regarding sustainable development and indigenous peoples' rights. In December 2019, the European Commission (EC) announced a region-wide Green Deal. But how do these commitments translate into action and what are the implications for the Amazon of these policy pledges? Europe historically carries a responsibility for the present crisis. The EU's progress towards the Paris Agreement targets is considered insufficient by Climate Action Tracker, an independent scientific body measuring climate action of 32 countries and it recognises it needs to engage further internationally to contribute to the efforts made by other countries to bring down CO<sub>2</sub> emissions.

The present analysis argues that the EU has a legitimate and even self-interested concern about the future of the world's largest carbon sink and a region with such a rich human and biological diversity. It considers that the EU needs to cooperate with the countries in the region to maintain the integrity of the Amazon through funding and technical assistance and particularly through support to the indigenous peoples whose homelands lie within the forest and who have proven its most assiduous defenders. It considers the

EU must implement further changes regarding its trade, finance and development activities to establish a legal framework that prohibits actions that would deliberately or inadvertently undermine the Paris Climate Agreement<sup>1</sup>.

The analysis proposes action by the EU to give further **support to indigenous peoples** in the Amazon who are at risk due to invasive extractive industries and deforestation affecting their lands and livelihoods. The analysis proposes:

- an enhanced and targeted programme on Amazonia under EU budgets for climate change and green development to channel technical assistance and funding that directly reaches indigenous peoples to support self-government, territorial control and management;
- support to sustain forest-related knowledge and pilot alternative sustainable indigenous economic activities including by facilitating access to EU markets, in line with the proposal to redirect finance to support more sustainable land-use practices in the EU communication of July 2019 on stepping up EU action to protect and restore the world's forests;
- support to civil society organisations and academic institutions, cooperating with indigenous peoples, to continue research on the impacts of extractive and development activities on indigenous communities in the Amazon as well as on the root causes and structural problems affecting their human rights;
- support for the implementation of the recommendations issued by the Inter-American Commission on Human Rights (IACHR) in its December 2019 report on the Situation of Human Rights of the Indigenous and Tribal Peoples of the Pan-Amazon Region and in its 2013 report on Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas.

The analysis notes the effectiveness of the measures taken by the Amazonian states to establish Protected Areas in the Amazon region in preserving biodiversity when they are diligently monitored, regulated and sustained. The analysis considers that the EU should continue to assist states in **extending Protected Areas** in the Amazon region and proposes:

- continued support to Amazonian countries to extend and rehabilitate Protected Areas through technical and financial assistance;
- working with the Amazonian countries, the Amazon Cooperation Treaty Organization and the United Nations Educational, Scientific and Cultural Organization (UNESCO), to identify and protect further World Heritage sites containing rich cultural and biological diversity in the region ensuring that, where these areas coincide with indigenous lands, indigenous peoples are active managers;
- support for indigenous initiatives for sustainable forest management in political dialogues with Amazonian countries.

The analysis notes the evidence of growing violence, impunity and organised crime affecting environmental and human rights defenders and indigenous peoples and others living in the Amazon

<sup>1</sup> As the present study moves towards publication, Europe and the rest of the world are in the grip of the Covid-19 pandemic and mostly in lockdown. For the indigenous peoples of the Amazon, the virus is doubly threatening. Environmental protections and law enforcement which were never very strong have been reduced and access to health support is minimal. There are fears also that, with the absence of monitoring, illegal wildfires will be started to clear further forest areas. See Jonathan Watts, 'Brazil: coronavirus fears weaken Amazon protection ahead of fire season', *The Guardian*, 3 April 2020. In April, the first indigenous case of coronavirus in Brazil's Amazon was reported - see: <https://www.reuters.com/article/us-health-coronavirus-brazil-indigenous/brazil-confirms-firstindigenous-coronavirus-case-in-the-amazon-idUSKBN21J66S>.



region. The analysis considers that the EP should continue to give support to measures to **strengthen the rule of law** in the region. In particular, the analysis proposes:

- support to civil society organisations working to protect the environment of the Amazon and human and indigenous peoples' rights;
- EU delegations in the region systematically take up cases of environmental defenders facing threats of violence with the countries concerned;
- the establishment of a specific Amazon programme to promote the rule of law in the region as part of the EU - Latin America and Caribbean relations agreement of May 2019 to promote, inter alia, democracy, the rule of law and human rights, including through technical assistance to support ministries charged with environmental protection and justice in the Amazon;
- collaboration with member states of the Amazonian Cooperation Treaty Organization and indigenous peoples and environmental defenders to develop initiatives to combat organised crime, and illegal land grabs and deforestation in the Amazon.

The analysis recognises that the principal driver of deforestation, loss of biodiversity, pollution of lands and rivers and the source of violations of indigenous peoples' land rights are the activities of extractive industries, such as , mining and oil extraction, as well as large-scale agriculture and logging and associated infrastructure projects. The analysis recognises that while the sovereign states of the Amazon region must determine their own development priorities, European countries can ensure that their own activities and those of businesses operating in the EU region do not contribute to deforestation and human rights violations. It considers that the EU can further strengthen its measures on **business and due diligence** and proposes:

- that implementation of the EU-Mercosur Treaty respects the rights of indigenous peoples including the right to be consulted and to obtain their free and informed consent prior to any development activity affecting their lands, territories and resources;
- an effective, affordable, and culturally accessible grievance mechanism be established where indigenous peoples can address allegations of European corporate violations of their rights, including their decision-making rights over developmental activities in their territories or impacting on their rights;
- support for mandatory due diligence legislation for companies taking into account findings of the EC study on due diligence requirements through the supply chain of January 2020 so that companies based, registered or otherwise having a significant market or administrative presence in the EU are held to account for violations of indigenous peoples' rights in the Pan Amazon region and such due diligence should also be required of investors;
- support for the maintenance of the Soy Moratorium and its extension to the Amazon savannah ('Cerrado') and forest certification schemes to ensure that products and commodities entering the EU market are not sourced from the Amazon where customary land tenure is not respected or where land conflicts are associated with natural resource extraction;
- an EU-initiated multi-stakeholder dialogue on indigenous peoples' rights and business enterprises operating in the Amazon region focused on regulation in accordance with the United Nations Declaration on the Rights of Indigenous Peoples and other relevant international standards, including with businesses from outside the EU area.

The analysis considers that the Amazon is facing a critical future and risks, in a relatively short time, a collapse in its capacity to absorb CO<sub>2</sub> and instead become a contributor to greenhouse gases with impacts on livelihoods locally, regionally and further afield. It also notes that the policies affecting the Amazon of



the present government of Brazil are potentially life-threatening to the indigenous inhabitants, particularly those in voluntary isolation or uncontacted. In an effort to establish a greater **legal protection of the environment**, the analysis proposes that:

- the EP consider the viability and legal implications of alerting the International Criminal Court (ICC) to a possible crime against humanity in Brazil's Amazon affecting the integrity of the Amazon biome, causing the illegal dispossession of indigenous peoples' lands and threatening the lives of indigenous peoples in voluntary isolation<sup>2</sup>.

The EP and the EU have the opportunity to build on the initiatives they have taken on these matters and support the efforts of the Amazonian countries working for a sustainable forest programme, give political and financial backing to the indigenous peoples as forest guardians and establish obligations on its businesses and trade activities so that they do not contribute to deforestation in this unique ecosystem.

Raoni Metuktire, the Kayapo leader in his visit to Europe in September 2019 told us:

*You have to change the way you live because you are lost, you have lost your way. Where you are going is only the way of destruction and of death. To live you must respect the world, the trees, the plants, the animals, the rivers and even the very earth itself. Because all of these things have spirits, all of these things are spirits, and without the spirits the earth will die, the rain will stop and the food plants will wither and die too. We all breathe this one air, we all drink the same water. We all live on this one planet. We need to protect the earth. If we don't, the big winds will come and destroy the forest. Then you will feel the fear we feel.*

## Acknowledgements

The author would like to express appreciation to Merle Kampeter, Cristina Blanco and Jo Morley for their research support. He also would like to thank the following for their advice, comments and contributions: Fanny Gautier, Tom Griffiths, Clotilde Henriot, Genna Naccache, Fiona Watson, Amalia Rodrigues Fajardo and Helle Abelvik-Lawson and acknowledge the support of the Human Rights Consortium, School of Advanced Study, University of London and the Human Rights Centre, University of Essex.

<sup>2</sup> In 2016, the Office of the Prosecutor of the International Criminal Court (ICC) said it would prioritise cases that cause environmental destruction: 'The Office will give particular consideration to prosecuting Rome Statute crimes that are committed by means of, or that result in, inter alia, the destruction of the environment, the illegal exploitation of natural resources or the illegal dispossession of land.' Office of the Prosecutor, 'Policy paper on case selection and prioritisation', International Criminal Court, 2016.

## List of Acronyms

ACTO	Amazon Cooperation Treaty Organization
ARPA	Amazon Region Protected Areas Programme
CIDH	Comisión Interamericana de Derechos Humanos
COHOM	EU Working Party on Human Rights
CONAMA	National Environmental Council of Brazil
CSR	Corporate Social Responsibility
DETER	Real Time Deforestation Detection System of Brazil
EC	European Commission
EP	European Parliament
EU	European Union
FARC	Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia)
FPIC	Free, Prior and Informed Consent
FTA	Free Trade Agreement
FUNAI	Brazil's National Foundation of the Indian (Fundação Nacional do Índio)
G7	Group of Seven
GDP	Gross domestic product
GLEAM	(United Nations) Global Livestock Environmental Assessment Model
GMO	genetically modified organism
GRSB	Global Roundtable for Sustainable Beef
HRW	Human Rights Watch
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
IBAMA	Brazil's Institute of the Environment and Renewable Natural Resources (Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis)
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICMBio	Chico Mendes Institute for the Conservation of Biodiversity (Instituto Chico Mendes de Conservação da Biodiversidade)
IIRSA	Initiative for the Integration of the Regional Infrastructure of South America
ILO	International Labour Organization
IMF	International Monetary Fund
INPE	Brazil's National Institute for Space Research (Instituto Nacional de Pesquisas Espaciais)
IP	Indigenous Peoples
IT	Indigenous Territory

ITTA	International Tropical Timber Agreement
IWGIA	International Work Group for Indigenous Affairs
LSE	London School of Economics
MERCOSUR	South American trade bloc 'Mercado Común del Sur' (Common Market of the South)
NAP	National Action Plan
NGO	Non-governmental organisation
NYDF	New York Declaration on Forests
OAS	Organization of American States
OECD	Organization for Economic Co-operation and Development
OHCHR	(United Nations) Office of the High Commissioner for Human Rights
PA	Protected Area
PNAS	Proceedings of the National Academy of Sciences of the United States of America
PNGATI	Brazil's National Policy on Environmental and Territorial Management of Indigenous Land (Política Nacional de Gestão Ambiental e Territorial em terras indígenas)
REDD+	Reducing Emissions from Deforestation and Forest Degradation and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries
Rio+20	United Nations Conference on Sustainable Development 2012
RSPO	Roundtable on Sustainable Palm Oil
RTRS	Roundtable on Responsible Soy
SDG	Sustainable Development Goals
SEI	Stockholm Environment Institute
SIA	Sustainability Impact Assessment
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TIPNIS	Isiboro Sécore National Park and Indigenous Territory (Territorio Indígena y Parque Nacional Isiboro Sécore), protected area and Native Community Land in Bolivia
UN	United Nations
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNGPs	United Nations Guiding Principles on Business and Human Rights
USA	United States of America
WHO	World Health Organization
WRI	World Resources Institute
WWF	World Wide Fund for Nature

# 1 Introduction: Background, methodology and sources

*For many years, we the indigenous leaders and peoples of the Amazon have been warning you, our brothers, who have brought so much damage to our forests. What you are doing will change the whole world and destroy our home – and it will destroy your home too.* Raoni Matuktire, Kayapo Chief, 2 September 2019

## 1.1 Background

The wildfires that consumed thousands of hectares of forest in Bolivia and Brazil during 2019 brought international attention to the Amazon. The loss of the forest, noted the world's press, is not just the concern of the countries themselves but is a preoccupation of humanity as a whole since it serves as a protection against further catastrophic global warming. The initial rejection by both governments of outside assistance on the basis of national sovereignty and on the grounds that the fires were part of a normal cycle of tropical forestry management only exacerbated the situation. The President of France's call for emergency talks on the Amazon fires at the G7 meeting in August 2019 led to an undiplomatic altercation with President Bolsonaro of Brazil. Others within Brazil including scientists, former ministers, indigenous peoples and non-governmental organisations criticised the stance of the President<sup>3</sup>. Outside of Brazil, criticism and concern was expressed by the scientific community, NGOs actively supporting implementation of the Paris Climate Agreement, Parliamentarians and others including private companies<sup>4</sup>. In the end both Brazil and Bolivia accepted assistance and the worst of the fires were brought under control.

The attention given to the wildfires of 2019 raises important questions about the Amazon region, its importance globally, its vulnerability, the lives and well-being of its inhabitants, the threats and challenges to its integrity as a unique eco-system, and indeed its future. The present analysis, commissioned by the EP, seeks to address the issues raised by the events of 2019 and in particular review and understand the challenges for environmental and indigenous peoples' rights in the Amazon. The report provides an overview of present developments in the Latin America region that is believed helpful in understanding the wider context of the Amazon crisis. In general, Latin American countries including those sharing the Amazon have progressive laws regarding environmental protection and indigenous peoples' rights, a consequence of the post-dictatorship Constitutions, public pressure favouring greater environmental protection, national commitments on human rights, measures to recognise indigenous peoples' lands, resources and other rights and ratification of international treaties such as the Paris Climate Agreement and the International Labour Organization's Convention 169 on the rights of indigenous and tribal peoples.

A critical issue is implementation of and respect for these commitments. This coupled with the apparently inexorable decline of forest cover has rightly attracted support from the international community for measures to prevent further loss of this important ecosystem. Notwithstanding, deforestation is, according to specialists, a few years short of the tipping point after which the forest will not be able to recover (Bolle, 2019; Amazon Watch, 2019b).

The present analysis identifies the activities and policies that, deliberately or inadvertently, are impacting the Amazonian environment and the rights of indigenous peoples and local communities. The degradation of this remarkable tropical forest environment, home to fauna, flora and people, is due to multiple factors

<sup>3</sup> Rubens Ricupero and Marina Silva, both former Ministers of the Environment, publicly criticised the government. See *The Guardian*, 25 August 2019.

<sup>4</sup> 'The forest fires in the Amazon region are an urgent global crisis which requires an effective international response. Close cooperation with the countries of the Amazon region is crucial. These countries, such as Brazil, have the full right to lead the response but they need to live up to their commitments', declared the President of the Council of the European Union, 17 September 2019.

such as infrastructure development, mining, hydroelectric projects, large-scale agriculture, ranching, indiscriminate logging, small-scale farming, oil and gas exploitation and organised crime. All of which are contributing to loss of forest cover, pollution of soils and rivers, destruction of biodiversity, disruption of local climate conditions and resulting in devastating impacts on indigenous peoples on their ancestral lands.

The analysis recognises that governments in the Amazon region are the primary entities responsible and capable of ensuring the future of the forest. Nonetheless, Europe also has a responsibility insofar as it can support governments in the region and the peoples' dependent on the forest with measures aimed at reducing harmful impacts and supporting rehabilitation. It has a responsibility to ensure that its actions and those of its companies and citizens do not contribute to further deterioration of the Amazon and it has a role, through membership in multilateral organisations, in proposing and supporting policies and programmes to address the challenges to environmental and indigenous peoples' rights in the region.

The analysis focuses on Bolivia and Brazil which were planned to be visited by Parliamentarians during 2020 subject to a decision by the Committee. At the time of commissioning in autumn 2019, the two countries had contrasting regimes. Bolivia could be characterised as having a left-leaning, pro-indigenous government and Brazil a right-wing, anti-indigenous one. The interim Bolivian government, formed in November 2019, aligns closely with its counterpart in Brazil including in relation to the indigenous population which both appear to believe are obstacles to development. In matters related to indigenous peoples and the Amazon though the contrast is clear. Brazil has a demographically small indigenous population of less than 1 % of its total population, although with more than 170 peoples it is the most ethno-linguistically diverse, and is responsible for over 60 % of the Amazon while Bolivia's indigenous population constitutes more than half the country's inhabitants and occupies less than 10 % of the Amazon.

## 1.2 Methodology and sources

The present analysis is prepared on the basis of a desk review, making use of secondary materials publicly available. It does not include original research that would be gained from field visits and new data collection. The report also draws on the author's contacts with delegations of indigenous peoples from the region traveling to Europe and his contacts in the region and elsewhere who were able to provide insights. Information has been taken into account from indigenous organisations active in the Amazon such as COICA (Coordinadora de las Organizaciones de la Cuenca Amazonica), APIB (Articulacao dos Povos Indigenas do Brasil) and CIDOB (Coordinadora de Pueblos Indigenas del Oriente Boliviano). The analysis has drawn on information from intergovernmental organisations including reports of the United Nations (UN) Special Rapporteur on the Rights of Indigenous Peoples and regional bodies such as the Inter-American Human Rights System. A number of NGO reports have been extremely useful and mention can be made of the reports of Human Rights Watch, WWF, Global Witness and Amazon Watch. Having said that, the Amazon has been extensively researched and there are more scientific articles, governmental data bases, intergovernmental and non-governmental reports and other material than can be reasonably reviewed in a short policy-oriented document. Particular note has been taken of the most recent reports including that of the IACHR and Human Rights Watch of September 2019 (Inter-American Commission on Human Rights, 2019; Human Rights Watch, 2019). The challenge is not the dearth of material but its abundance.

The report covers the nine countries of the Amazon region. These are Bolivia, Brazil, Colombia, Guyana, Ecuador, Peru, Suriname, Venezuela and the French Overseas Department of French Guiana. However, the analysis will focus more deeply on Bolivia and Brazil. While the analysis identifies common factors, there may be differences among the countries with respect to the political context, legal systems, indigenous composition and management of the environment.

## 1.3 Structure of in-depth analysis

The analysis provides (a) a general overview of the Latin American region; (b) an analysis of the environmental crisis in the Amazon including an identification of the causes; (c) a review of the impacts of developments in the region on indigenous peoples, including in relation to their internationally-recognised rights; (d) a section on the legal framework of the countries of the Amazon as well as on their international obligations; (e) an overview of relevant actions, policies and programmes of the EU; (f) policy areas requiring support and strengthening; and (g) conclusions and recommendations for the consideration of the EP. In the light of the possible visit by Parliamentarians to Bolivia and Brazil, the report provides additional information as appropriate.

## 2 Overview: Political, environmental, human rights and indigenous peoples' challenges

### 2.1 Political and economic context

The year 2019 represented a period of significant volatility in the Latin America region. The election of Jair Bolsonaro as President of Brazil and his subsequent accession to office in January 2019 with a populist right-wing message, cut backs of social programmes, the announcement of measures to open the Amazon to further development, the threat to take back indigenous peoples' lands, and references to the benefits of the military dictatorship marked a shift from the so-called pink tide of leftist governments towards an uncompromising pro-business and especially pro-agribusiness agenda. In Bolivia, disputes over the results of the presidential elections and their legitimacy, and subsequent actions of the armed forces seen by some as a coup, forced the incumbent Evo Morales into exile after 14 years in office. At the time of writing, the situation in the country is tense. The interim government has taken controversial measures that go beyond serving as a caretaker administration for the next elections and supporters of the former President consider the present regime illegitimate. Due to the Covid-19 health crisis the elections have been postponed<sup>5</sup>.

In Venezuela the political crisis deepened with the emergence of an opposition alternative president in the form of the leader of Congress Juan Guaido supported by the United States of America (USA) and recognised by the EU and added to the already acute humanitarian emergency. In Ecuador, the government of President Lenin Moreno was obliged to move his government temporarily from the capital to the coastal city of Guayaquil as protesters including indigenous peoples took over Quito to protest rises in fuel price and the government's plans to grant further concessions to extractive industries. In Colombia, demonstrations marked the close of 2019 with hundreds of thousands protesting austerity measures, the lack of implementation of the Peace Accords with the Revolutionary Armed Forces of Colombia (FARC) and the growing violence in rural areas. In Peru, with Alberto Fujimori, the former president, jailed for human rights abuses, his daughter who is leader of the opposition in prison on corruption charges, and the fall-out from the 'car wash' bribery scandal, the country faces profound distrust of its political institutions.

These events and similar crises elsewhere on the continent, point to a high level of public dissatisfaction with governments across the region. By most analyses, the causes are declining living standards, high levels of inequality, corruption, distrust of political institutions, insecurity and deteriorating human rights. These circumstances characterise the Latin American region as a whole. The economy has flattened out after the golden decade of export-led growth which had allowed governments to redistribute the taxes generated from natural and non-renewable resources towards social programmes. This permitted an expansion of a middle class and significant reductions in poverty in all countries. Despite these improvements, however, governments in the region failed to address the underlying causes of extreme

<sup>5</sup> On 2 June 2020, the Supreme Electoral Tribunal (Tribunal Supremo Electoral) of Bolivia announced that elections would be held on 6 September 2020.



levels of inequality in society. Without successfully diversifying their economies and instead relying on non-renewable extractive industries, governments have been negatively affected by the decline of commodity prices, the US-China trade war, the slowdown in growth rates (GDP) and other factors, resulting in declining living standards across all but the most affluent social groups. An analysis in January 2020 expected the Latin American countries to continue to experience unrest in the near future (Blanco, 2020). Due to the Covid-19 crisis Latin American economies are likely to be further negatively affected.

## 2.2 Regional human rights challenges

The Latin America region demonstrates a disturbing environment of growing human rights abuses. The most recent Amnesty International and Human Rights Watch reports on the region confirm this trend<sup>6</sup>. Certain countries in the region, including Brazil, have among the highest homicide rates in the world. Crimes are rarely fully investigated and impunity from prosecution is the standard (Global Impunity Index, 2017). In the absence of a functioning rule of law in many countries in the region, personal security has become one of the major preoccupations of citizens. It is a concern that has been exploited by populist leaders, including President Bolsonaro of Brazil, proposing so-called firm-handed policies and authoritarian measures.

There has been a marked increase in reprisals against human rights and environmental defenders (Ghazoul and Kleinschroth, 2018). States in the region have established anti-terrorist laws that are used indiscriminately against legitimate civil actions and, in some countries, police have used extreme violence to intimidate peaceful demonstrations (Human Right Council, 2018). According to a report by Frontline Defenders more than 300 human rights defenders were killed during 2019, two-thirds of whom were in Latin America. Brazil and Colombia are high on the list of hazardous countries to live if you are defending the environment or human rights (Front Line Defenders, 2020). A report on Colombia by the Office of the United Nations High Commissioner for Human Rights (OHCHR) found that 40 % of those killed worked on land, indigenous peoples and environmental rights<sup>7</sup>. A Global Witness report estimated that 40 % of the 185 human rights defenders killed worldwide were indigenous (Global Witness, 2019). Efforts to protect the Amazon by civil society are increasingly being faced by reprisals, a context which is disturbingly relevant to the present analysis.

## 2.3 Indigenous peoples

Indigenous peoples in the Latin America region comprise a population of 42 million, approximately 8 % of the total population, and represent 17 % of those in extreme poverty (World Bank, 2015). Fifty per cent of indigenous peoples live in urban areas and have less access to jobs, education, health, adequate housing and other economic and social rights than any other group. Despite improvements during the first decade of the millennium, indigenous peoples did not see their situations improve in line with others. Notwithstanding, according to the World Bank, in all countries in the region there has been a reduction of poverty among indigenous peoples, national laws have been introduced to accommodate indigenous peoples' rights including to their lands and resources, and there has been a marked increase in participation at different levels of decision-making. Of the 23 countries that have ratified International Labour Organisation (ILO) Convention 169 on the rights of indigenous and tribal peoples, 15 are from Latin America and the Caribbean.<sup>8</sup>

<sup>6</sup> 'Inequality, corruption, violence, environmental degradation, impunity and the weakening of institutions continued to be a common reality across the Americas, resulting in daily human rights violations for millions of people. The Americas remained the most dangerous region in the world for human rights defenders and journalists.' Amnesty International, 2019.

<sup>7</sup> OHCHR press briefing on Colombia, 14 January 2020: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25461&LangID=E>.

<sup>8</sup> [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300\\_INSTRUMENT\\_ID:312314](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312314), last accessed 26 March 2020.



But while there are certainly improvements to point to, there are multiple conflicts on indigenous peoples' lands. Over the last decades there has been an expansion of extractive industries such as mining, logging, and oil and gas exploitation as well as hydro-electric projects and large-scale agriculture and ranching into areas occupied by indigenous peoples. One study identified 243 conflicts related to mining, many impacting indigenous peoples (Statista, 2019). Despite national laws and international commitments, much of this development takes place without consultation and without the consent of the peoples concerned. Furthermore, the focus of countries in the region on developing their natural resource base inevitably leads to incursions and conflicts over land. The UN Special Rapporteur on indigenous peoples has identified the extractive industries as a main source of conflict and violence on indigenous peoples' territories<sup>9</sup>.

### 3 The impacts of economic activities on the environment

*First, I thought I was fighting to save rubber trees, then I thought I was fighting to save the Amazon rainforest. Now I realize I am fighting for humanity.* Chico Mendes.

#### 3.1 The Amazon region

The Amazon region covers an area of 6.7million square kilometres, 40 % of the land mass of South America<sup>10</sup>. The EU member countries could be fitted into this area one and a half times. The region is within the territories of nine States – Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Suriname, Venezuela and French Guiana, a French Overseas Department and part of the EU. The majority of the Amazon region is in Brazil (61 %) with smaller areas in Colombia (10 %) and Peru (13 %). The Bolivian Amazon extends to over 700 000 square kilometres, 65 % of the national territory.

The Amazon is the world's largest tropical rainforest and represents a vital natural resource for the continuing human occupation of the planet. It effectively draws carbon dioxide from the atmosphere thereby cooling the planet and stores through its 390 billion trees an estimated 300 billion tons of carbon. It is often referred to as the lungs of the planet<sup>11</sup>. It represents over half of the world's remaining tropical forest. It is also and vitally the most biodiverse place on earth, with 16 000 species of tree, more than 1 000 species of bird, 80 000 species of plant and more than 3 000 species of fish (WWF, n.d; Val, 2019). An estimated 10 % of the planet's biodiversity is believed to be found in the region although scientists acknowledge that they have barely scratched the surface of the vast multiplicity of flora and fauna that the forest contains. The Amazon is also a vast river system supplying 20 % of the world's fresh water into the ocean. It recycles half of the rainfall in water vapour creating what have been termed *flying rivers* that sustain agriculture in the Amazon and far beyond. It is above all a complex environment which is largely self-regulating comprising a multitude of different ecosystems forming 'a single ecological functioning entity, in which the many parts depend on the ecological integrity of the whole biome' (WWF, 2014, p. 21). As such it is vulnerable to large-scale human disturbances which have over time disrupted its natural balance.

<sup>9</sup> In her statement to the Human Rights Council in September 2019, Victoria Tauli-Corpuz, UN Special Rapporteur on the rights of indigenous peoples reported that, 'extractive activities within indigenous peoples' lands and territories undertaken without adequate consultation or consent are the main source of serious violations of their human rights, including violence, criminalisation and forced displacement'.

<sup>10</sup> The Amazon Biome is mainly composed of dense moist tropical forest encompassing 6.7m sq. kms and is intersected by savanna, flood plains and grass lands. The Amazon basin watershed expands beyond to adjacent lands of dry forest and tropical savanna. See WWF, n.d.

<sup>11</sup> Although often described as providing 20 % of the world's oxygen, the Amazon is better described as a giant air conditioner writes Coe, 2019.

The Amazon is home to 38 million people, including an indigenous population of 1.5 million, composed of about 385 distinct ethno-linguistic groups. There are also an estimated 200 uncontacted or voluntarily isolated indigenous groups living in the Amazonian region of Bolivia, Brazil, Colombia, Ecuador, Peru and Venezuela (IACHR, RAISG, ACTO<sup>12</sup>). In addition to the indigenous population, there are afro-descendant communities (*Quilombolas* in Brazil) which benefit from a similar status to the indigenous peoples as well as riverine and forest-dwelling communities who gain their livelihoods through low impact subsistence.

There are 522 conservation areas in the Amazon covering 22 % of the region and 3 344 recognised indigenous territories accounting for a further 30 %. Together these lands represent over 50 % of the Amazon that is officially subjected to strict regulations regarding the protection of forestland and biodiversity (Walker, 2020). By far the largest extent of protected areas is in Brazil. Brazil, Bolivia, Venezuela and Ecuador have between 20 % and 30 % and Colombia, Peru and Suriname between 10 % and 20 % of the Amazon biome within protected areas (WWF, 2014). These areas are not always respected in practice, however, and there are cases where, despite having declared them as protected areas, concessions for the exploitation of resources are granted (Walker, 2020).

### 3.2 Environmental challenges

Forest clearance worldwide causes 15 % of greenhouse gases (Ricketts, 2010). As one of the largest carbon stocks, the rate of deforestation in the Amazon is critical. Since 1978, it is estimated that over 750 000 square kilometres of forest have been destroyed in the Amazon (Mongabay, 2018). In Brazil alone, in the period 2012 to 2019, over 500 000 square kilometres of forest were lost.<sup>13</sup> For a few short years, rates of deforestation slowed as a result of tighter environmental laws, forest codes and better implementation but resumed their high levels after 2012<sup>14</sup>. In Brazil deforestation increased again in the months following the election of President Bolsonaro<sup>15</sup>. The wildfires that occurred in 2019 in the Brazilian, Bolivian and other parts of the Amazon reduced forest cover significantly<sup>16</sup>. At one point the Brazilian Space Institute identified 76 000 separate fire incidences in the region<sup>17</sup>. It is estimated that 27 % of the Amazon biome will be without trees by 2030 if the current rate of deforestation is not stopped<sup>18</sup>.

### 3.3 Unsustainable exploitation of natural resources

Small-scale farming developed with the spread of highways through the region in the 1970s bringing colonists ready to clear the forest and make a livelihood and escape poverty and landlessness in other parts of the country. However, it is large-scale mechanised agriculture for the production of soy and other export commodities such as palm oil together with ranching which have been the two principal drivers of the severe deforestation in the Amazon (Piotrowski, 2019). In Brazil, for example, conversion of forest to pasture for cattle ranching is estimated to be responsible for about 80 % of deforestation much of the rest

<sup>12</sup> ACTO: Amazon Cooperation Treaty Organization

<sup>13</sup> 538 000 square kilometres have been deforested according to the PRODES database available at [http://terrabrasilis.dpi.inpe.br/app/dashboard/deforestation/biomes/legal\\_amazon/rates](http://terrabrasilis.dpi.inpe.br/app/dashboard/deforestation/biomes/legal_amazon/rates)

<sup>14</sup> Another view is that the decline in deforestation is due to market forces rather than good governance. 'The decline through 2007 — 70 % of the total through 2012 — is virtually all due to market forces, primarily declining prices of export commodities such as soy and beef. This was exacerbated by an 80 % rise in the value of the Brazilian real relative to the US dollar, making exports less profitable for landowners whose expenses were in Brazilian currency, but whose returns from exports were in dollars.' Fearnside, 2017.

<sup>15</sup> Forest loss in 2019 rose to 9,762 km<sup>2</sup> from 7,536 km<sup>2</sup> in 2018 according to the National Institute for Space Research (INPE). See <http://www.obt.inpe.br/OBT/assuntos/programas/amazonia/prodes>, accessed on 27 March 2020.

<sup>16</sup> The loss of forest cover was particularly high in Bolivia. See Cannon, 2020.

<sup>17</sup> Climate Home News, 21 August 2019. See also European Parliament Briefing, 'Amazon wildfire crisis', November 2019.

<sup>18</sup> See [https://www.panda.org/our\\_work/forests/deforestation\\_fronts2/deforestation\\_in\\_the\\_amazon/](https://www.panda.org/our_work/forests/deforestation_fronts2/deforestation_in_the_amazon/).

is taken up by soy production (Piotrowski, 2019; Sauer, 2018). The country has nearly 25 million hectares devoted to soy production, making it the second largest producer in the world (Global Forest Atlas).

As well as industrialised agriculture, the region is affected by the expansion of mining and oil and gas extraction. There are significant reserves of copper, iron ore, nickel, manganese, tin, bauxite, gold as well as diamonds<sup>19</sup>. While the extractive industries such as oil, gas and mining are generally seen as less destructive of the forest, their environmental footprint expands well beyond the immediate area of their operations. According to one study, mining-induced deforestation accounted for as much as 9 % of Amazon deforestation in the period 2005-2015 due to roads, railways and other infrastructure<sup>20</sup>. Mining consumes large quantities of water and brings high risks of contamination of rivers, soils and air affecting communities and habitats far outside the concession area<sup>21</sup>.

In addition to authorised mining, the Amazon region has been impacted by illegal mining especially of gold. A map prepared by an environmental network in 2018 shows 2 312 illegal mining sites in 245 areas in six countries mostly carrying out artisanal goldmining<sup>22</sup>. The activities are highly damaging with forests turned into lifeless moonscapes and rivers poisoned with mercury. They have had devastating effects on indigenous communities whose resistance is met with threats, violence and sometimes murder. The most long-lasting struggle against illegal mining has been on the Yanomami reserve in Brazil whose members have died from diseases carried by invading miners for which they have no immunity. Despite some 20 000 illegal miners (*garimpeiros*) within a protected indigenous territory, highly dangerous to the indigenous owners and causing irredeemable damage to the environment, the government of President Bolsonaro has not taken steps to remove them.

There are also oil and gas exploration and exploitation concessions throughout the Amazon. Many have been established over decades and have generated conflicts with indigenous and local communities and caused widespread environmental damage. Demand for oil and gas in the last decades, facilitated by improved technical capacity, has given a new boost to exploration in the Amazon, known to have significant reserves. A leap in concessions has occurred in Colombia, Ecuador, Peru and Brazil. A report of 2018 shows that 68 % of the region's protected areas and indigenous territories overlap with planned or existing oil and gas, mining, hydro-electric and road-building projects<sup>23</sup>.

In 2007 former President Rafael Correa of Ecuador offered to desist permanently from exploiting oil in the Yasuni National Park in exchange for funds of USD 3.6 billion from the international community. The so-called Yasuni-ITT initiative was abandoned after less than 10 % of the target was received<sup>24</sup>. Since 2018, the

<sup>19</sup> The discovery of diamonds on indigenous lands has been disruptive see - <https://www.climatechangenews.com/2017/09/26/forest-diamonds/>. See also Sauer, 2018 on soy expansion.

<sup>20</sup> Mining Technology, 12 February 2018 - <https://www.mining-technology.com/features/minings-big-environmental-footprint-amazon/>.

<sup>21</sup> See, for example the serious harmful social, cultural and environmental impacts of gold mining on the traditional lands, waters and forests of the Wapichan people in southern Guyana – SRDC (2018) *Wapichan Environmental Monitoring Report* SRDC, Georgetown, <http://wapichanao.communitylands.org/1548691773093-wapichan-environmental-monitoring-report-2018-v2.pdf>.

<sup>22</sup> In 37 cases, illegal mining was taking place on indigenous lands and in 78 cases nearby and affecting indigenous reserves and a further 55 in nature reserves. See <https://www.amazoniasocioambiental.org/en/radar/illegal-mining-in-amazon-rainforest-has-become-an-epidemic/>.

<sup>23</sup> Information from RAISG: <https://crossroads.amazoniasocioambiental.org/story>.

<sup>24</sup> In 2013, the National Assembly of Ecuador declared oil and gas exploration in Blocks 31 and 43, situated in the Yasuni Park, to be in the national interest. In a February 2018 consultation, it was recommended that the areas in the Park available for exploration be reduced and in May 2019 the off-limits zone was increased to 818,502 hectares. In July 2019, however, authorisation was given for oil platforms to be built in the buffer zone that had previously been forbidden. See 'Ecuador: crece polemica por actividad petrolera en zona intangible de Parque Nacional Yasuni', Mongabay, 30 May 2019 and 'Heart of Ecuador's Yasuni's, home of uncontacted tribes, open for oil drilling', Mongabay, 5 July 2019.

government has re-opened the Yasuni reserve up to further oil extraction including in areas where voluntarily isolated indigenous peoples live. The human and environmental damage of these activities is recognised. In Peru's western Amazon, for example, decades of pouring waste into rivers or leaking open pits and pipelines have infiltrated water supplies with heavy metals which have moved up the food chain affecting animals and people<sup>25</sup>. In Peru, companies involved often threaten communities with job losses or other retribution for objecting to the environmental impacts or else leaders are co-opted by bribes (Gonzalez, 2019).

Critical to the industrialisation of the Amazon and its deforestation, have been the extensive highways and energy infrastructure that has been developed. The first major highways were constructed in the 1970s. In Brazil, BR 230 cut east – west and BR 163 cut north – south. Initially developed to open up the region for economic development, they were also part of a massive resettlement programme offering land and loans to poor landless peasants. Funded by the World Bank, the programme turned out to be a failure as small farmers were soon unable to make a living on the thin exhausted soils. Large-scale ranching and soy plantations incorporated these small farms and further cut back the forest. The highway network facilitates the access of these commodities to foreign markets. The highways helped create the conditions for a multitude of roads to be constructed off them, many unauthorised. They have become conduits for further incomers, loggers and miners and resulting deforestation. An estimated 85 % of deforestation takes place within 50 kilometres from a road and nearly all is illegal<sup>26</sup>. The Interoceanic highway linking Brazil to the Peru's Pacific ports and running through both country's tropical forest has caused increased deforestation<sup>27</sup>. The regional infrastructure project involving 12 countries, the Initiative for the Integration of the Regional Infrastructure of South America (IIRSA), if previous experiences are any guide, may put further pressures on the Amazon<sup>28</sup>. Some projects under the auspices of IIRSA have already generated resistance from indigenous peoples and local communities as was the case with the Jirau and Santo Antonio dams on the Madeiro River in Brazil or the highway through an indigenous territory and conservation area in Bolivia (TIPNIS). A study suggests that 1 347 indigenous and local communities are affected<sup>29</sup>.

Development in the Amazon on the scale that is currently taking place and planned requires major multi-dimensional projects involving transport infrastructure, energy projects, ports, dredging or rerouting of rivers, and extractive industries. These are often referred to as mega-projects due to their size, cost and impact. Dams are an integral part of these large-scale economic activities as energy production is required to feed into mining projects. More than 140 large dams are in operation or planned across the region<sup>30</sup>. They have often been resisted by indigenous and river-based communities as was the case of the Belo Monte dam in Brazil or the hydro-electric project on the Tapajos because they destroy indigenous villages

<sup>25</sup> See <https://www.livescience.com/46319-oil-drilling-contaminated-amazon.html>.

<sup>26</sup> See <https://globalforestatlas.yale.edu/amazon/land-use/roads-amazon-basin>.

<sup>27</sup> Bart Crezee, 'Interoceanic Highway incites deforestation in Peru', Mongabay, 1 November 2017. The Baron of Rio Branco Project in Brazil and the proposed highway through TIPNIS conservation area and indigenous territory in Bolivia, for example, were strongly resisted by indigenous peoples.

<sup>28</sup> The USD 37.4 billion project consists of 335 projects including dams, roads, waterways and ports to help to increase exports. The impacts on indigenous peoples and local communities and the environment for those projects planned in the Amazon have not been evaluated. See <https://www.internationalrivers.org/campaigns/initiative-for-the-integration-of-regional-infrastructure-in-south-america>.

<sup>29</sup> A Laboratory for the Study of Social Movements and Territorialities (Universidade Federal Fluminense) survey shows that there are 1,347 territorialised populations along IIRSA axes: 664 indigenous communities, 247 *campesino* communities, 146 communities of African descent, 139 traditional communities (fishermen, shellfish collectors, *junqueros*), 60 social organisations (of the homeless or unemployed), and 59 environmental organisations. Cited in: <https://upsidedownworld.org/archives/international/interconnection-without-integration-in-south-america-15-years-of-iirsa/>.

<sup>30</sup> <https://www.internationalrivers.org/resources/new-online-map-plots-140-large-dams-planned-for-the-amazon-3752>.

and lands and means of subsistence<sup>31</sup>. Dams bring well-documented environmental disturbances such as deforestation, biodiversity loss, increased mosquito-borne diseases, greenhouse gases, and disruptions to aquifers, rivers and fish populations (Tucker et al, 2016).

Illegal timber extraction is widespread in the Amazon. It infringes on officially protected areas and indigenous peoples' lands and is undertaken without authorisation or with permits obtained through bribery and corruption (Human Rights Watch, 2019, pp. 30-32). Up to 95 % of deforestation in the region is illegal and 80 % of it becomes pasture for cattle (Leahy, 2018). A 2012 World Bank report on the Amazon found that 80 % of timber was illegally produced (World Bank, 2012). High value hard woods are culled from the forest leaving enough forest cover to avoid notice by satellite monitoring, meaning that it is often difficult to detect this surreptitious forest loss. A 2019 Human Rights Watch report maintains that the logging is carried out by well-connected and sophisticated criminal gangs able to export with falsified provenance certificates. The criminal networks are armed and terrorise local and indigenous communities as well as officials and the violence they have engendered has resulted in the murder of environmental defenders.

### 3.4 Wealth of the Amazon

The Amazon is a source of wealth for all of the nine countries. It provides energy to feed the national grids - more than a third in the case of Bolivia and Ecuador. It contributes to exports through the production of oil and gas, much of which is derived from the Amazon. The Amazon is a source of wealth in the form of its mineral exports and the region's abundant natural resources are currently being exploited on an industrial scale. The economic development in the Amazon region varies greatly among the countries of the region. It is, however, estimated that overall, the Amazon regional GDP reaches USD 330 billion per year, of which the Brazilian portion accounts for more than 70 % (WWF, 2014). The annual average GDP per capita for the region is USD 5 500.

The wealth generated by the abundant resources of the Amazon are a vital part of the economies of the countries in the region. In Brazil, for example, agribusiness contributes to 42 % of the country's exports, according to a government research institute (Leahy & Schipani, 2018). In Ecuador, oil extracted from the Amazon is its top export. In the case of Bolivia, 45 % of the country's exports are derived from oil and gas mostly situated in the Amazon. Economic opportunities have attracted more people to the region. The Amazonian population has grown from some 5 million in the 1970s to over 30 million today. This represents 11 % of the total population of the Amazonian countries. Over 60 % live in large and growing cities such as Manaus in Brazil and Iquitos in Peru.

The potential to harness the resources of the Amazon to address perceived national needs has meant that all governments have taken measures to facilitate exploitation. The economies in the region have grown on the back of that wealth. In some countries this has been returned to the wider population through increased education, health and housing services, anti-poverty programmes, and improved infrastructure. It has equally enriched the elites benefiting from Amazonian development. Nowhere is this more clearly illustrated than in Brazil where the so-called *bancada ruralista* - the owners and representatives of agribusinesses - dominates Congress. It has been calculated the *ruralista* bloc has 228 lawmakers, or 44 % of the lower house of Congress, and more than a quarter of the Senate. This group represents a powerful lobby and one that certainly has provided the impetus for the more aggressive Amazonian policies of the former president Michel Temer (2016-2018) and of President Bolsonaro. Among the most controversial of the measures taken as a result of the agribusiness lobby was Provisional Measure (MP) 759 signed into law

<sup>31</sup> See, for example, the petition of the Kayapo chief, Raoni Metuktire, at <http://raoni.com/belo-monte-en.php>. On the Tapajos project see <https://www.theguardian.com/world/2017/oct/05/brazil-amazon-tapajos-hydrovia-scheme>.



in 2017 which effectively allows those who have illegally cleared areas of public land in the Amazon to legalise their landholdings. It has been dubbed a land-grabbers charter<sup>32</sup>. President Bolsonaro greatly weakened the environmental ministry in 2019 by cutting its budget by 25 %, a decision which led to the suspension of contributions by Norway, Germany and other states to the Amazon Fund, a mechanism to raise funds to support action to prevent deforestation in the Brazilian Amazon.

The production of soy, ranching and timber and mineral extraction are driven by an apparently insatiable market demand. While most of the beef, especially in Brazil, is taken up by the internal market, soy is exported mostly to China. In the case of the Amazonian countries palm oil, cocoa, oil and minerals are in high demand on the world market. Trade and investment agreements, while providing opportunities for the Amazonian countries to have privileged access to global markets and benefit from foreign direct investment, also create the conditions for accelerating the extraction of non-renewable resources and spur expansion of export commodities.

## 4 Impacts on indigenous peoples and local communities

*Serious impacts have been observed that result from several factors: the impact produced by legal provisions, public policies, and practices geared to the extraction and exploitation of natural resources, as well as the development infrastructure megaprojects or investments without consultation and without free, prior, and informed consent. These impacts endanger these peoples' physical and cultural survival, as well as the environment. IACHR, Indigenous and Tribal Peoples of the Pan-Amazon, September 2019.*

The indigenous peoples of the Amazon were mostly spared the genocidal impacts of the first wave of colonisation due to the region's vast impenetrable forests. But it was always the land of dreams for outsiders, hiding an El Dorado of treasures within it. A first era of wealth extraction occurred with the rubber boom of the late 19<sup>th</sup> century and early 20<sup>th</sup> and the exploitation and even enslavement of the indigenous populations for its profitable extraction. In the early part of the 20<sup>th</sup> century, oil was discovered in the Amazon and the forest and its peoples were further disturbed by these new, polluting industries. It was in the 1960s and 1970s, however, with the building of the first major highways across the region that access was provided for mining, logging, dam-building, ranching and large-scale agriculture beginning a process of industrialisation, colonisation and deforestation that has hardly been interrupted since. It was the era of military rule and exploitation of the riches of the Amazon was seen as the economic future. Development in the region attracted investment from international companies and mega-projects were underwritten by the World Bank and other development banks. It was the age of the miracle but a miracle that brought many victims (Davis, 1977)<sup>33</sup>.

Indigenous peoples bore the brunt of this invasive development as their lands were forcibly acquired and their lives upturned. At that time, there was little visibility of indigenous peoples in the Amazon or in other regions and there was almost no national or international recognition of their rights. The violence of this sudden development on indigenous peoples' lands gave rise to a reinvigorated indigenous movement both nationally and internationally, the creation of international NGOs to support their initiatives and a change in policy at the World Bank to monitor the social impacts including on indigenous peoples in their loans to States.<sup>34</sup> Today's environmental and human crisis in the Amazon is part of a longer history of

<sup>32</sup> See for example <https://news.mongabay.com/2017/07/temer-signs-law-that-could-see-millions-of-acres-lost-in-the-amazon/>.

<sup>33</sup> The disastrous impacts of these mega-projects on the indigenous population was meticulously laid bare in Shelton Davis' book *Victims of the miracle: development and the Indians of Brazil*, Cambridge University Press, Cambridge, 1977.

<sup>34</sup> The first contemporary indigenous organisation in Brazil Uniao das Nacoes Indigenas (UNI) was founded in 1980. Many of today's most active NGOs working on indigenous peoples, including Survival International, IWGIA and Cultural Survival were founded in

economic exploitation of the region's resources and they have always brought disruption, often accompanied by violence, to the indigenous populations and other local communities dependent on the forest<sup>35</sup>. The difference is that today the Amazon is also facing a challenge to its vital role as a bulwark against global warming and to the survival of its indigenous peoples.

Indigenous peoples have been subjected to assimilation, exclusion and dispossession over time and today face renewed threats to their ways of life from prevailing economic activities. Indigenous peoples face numerous challenges including lack of recognition and protection of their lands and natural resources; the negative impacts of extractive industries and development projects operating on their traditional territories; illegal activities, violence and the criminalisation of legitimate protest; the negative effects on the environment on which they depend as a result of deforestation, pollution, and loss of biodiversity; and the potential loss of cultural identity and integrity as distinct peoples are forced from their lands and lose their ways of life.

## 4.1 Lands and resources

While indigenous peoples' right to lands and resources is generally recognised in the Amazon countries, there are ongoing delays in legal recognition and demarcation, the unlawful appropriation of indigenous territories by State or third parties, and lack of monitoring by State authorities to prevent incursions by unauthorised outsiders (IACHR, 2019, paras.53, 138-139). There are also overlapping laws and jurisdictions. Indigenous peoples' lands may be protected in law, but ministries of mining, energy or agriculture have authorised developments on indigenous peoples' lands notwithstanding. Concessions to oil and mining operations, for example, are estimated to overlap as much as 24 % of indigenous peoples' territories (Wayne Walker, 2020). The conflicts that these activities engender, sometimes leading to formal complaints to the authorities, the intervention of national courts or international bodies, and civil disobedience should in the Amazonian countries be regulated through the consultative procedures established under ILO Convention 169. Indigenous peoples have a right to be consulted in order to obtain their free and informed consent prior to the development of activities that may affect their lands and resources. In practice, this is not always the case, as noted by the UN Special Rapporteur on the Rights of Indigenous Peoples and the ILO (see also below)<sup>36</sup>.

Hydroelectric dams have had damaging impacts on indigenous peoples. In Brazil, the water level on the Xingu River has fallen as a result of the construction of the Belo Monte hydroelectric project, which has in turn impacted the region's ecosystems and the survival of local communities (IACHR, 2019, para. 83). The Bala-Chepete Project in the Madidi Park, Bolivia, will potentially affect four indigenous territories and it is estimated that at least 49 communities would be flooded (IACHR, 2019, para.82). The oil and gas sector has also important impacts in the Amazon region. For every hectare allocated for conservation in the region, there are around 2.5 hectares on which the petroleum industry has a concession (Quintero et al, 2017). In many cases they are situated near to or overlap with natural parks, forest reserves, and indigenous lands.

## 4.2 Personal security

The Amazon region is characterised by remote forests which challenge States' abilities to oversee the activities that may affect human rights, making it difficult to intervene in cases of para-military activity, drug trafficking, trafficking in persons, forced labour, and new forms of slavery. Indigenous peoples are

this period in reaction to the violence against indigenous peoples of the Amazon. The World Bank's first indigenous peoples' policy was adopted in 1982.

<sup>35</sup> While the focus of the report is on the indigenous peoples of the Amazon, it is important to recognise there are others living in the Amazon in a self-sustaining and harmonious way and who are active in defending the integrity of the forest. The best-known example from one of these communities is the rubber-tapper Chico Mendes who was assassinated in 1988 for defending the forest.

<sup>36</sup> See UN Special Rapporteur report on Brazil, UN Doc. A/HRC/33/42/Add.1. For the overlap of laws see ILO complaints mechanism at [https://www.ilo.org/dyn/normlex/en/f?p=1000:13101:0::NO:13101:P13101\\_COMMENT\\_ID:4024557](https://www.ilo.org/dyn/normlex/en/f?p=1000:13101:0::NO:13101:P13101_COMMENT_ID:4024557).



vulnerable to these illegal activities taking place on their lands (IACHR, 2019, para. 202). In the Venezuelan Amazon region, for example, there are ongoing instances of violence against peoples and communities perpetrated by illegal miners, especially in the States of Amazonas, Bolívar, and Delta Amacuro. There are reports of attacks by miners and the raping of women in the Yanomami people's communities, where illegal mining is practiced. In relation to drug trafficking, in Colombia, coca growing has reportedly increased in Guaviare and Caquetá. According to the IACHR, numerous indigenous persons have been forced to serve the interests of drug traffickers and armed non-state actors (IACHR, 2019, para. 208-219).

### 4.3 Violence and criminalisation

Intimidation, violence and murders of indigenous leaders and activists are increasingly prevalent. Altogether, registered murders, attempted murders, and death threats against leaders and members of indigenous communities and peoples in the Brazilian Amazon totalled at least 235 cases between 2007 and 2018. Those cases were reportedly associated with territorial conflicts or the defence of land ownership (IACHR, 2019, para. 165). In several cases, the crimes are not investigated with due diligence and most perpetrators stay unpunished (IACHR, 2019, para. 161). Likewise, there is a pattern of criminalisation of demonstrations or social protests (IACHR, 2019, para. 194-195). Indigenous women are particularly affected by the climate of violence. Mining and other operations bring large numbers of males into the local area and cases of sexual harassment of indigenous women are prevalent. Contamination of rivers can mean that women often have to travel further to find uncontaminated water. Indigenous women leaders have also been victims of the spate of killings of environmental defenders<sup>37</sup>.

The multiple obstacles to access to justice faced by indigenous peoples are often a result of the lack of funds needed to hire a lawyer, language barriers, ignorance of their human rights or the absence of an intercultural approach by the justice system operators. Those initiating a lawsuit encounter a very high burden of proof to make a case of environmental damage (high costs of technical tests and scientific or expert opinion) and face constant threats. Moreover, the companies or business groups they are up against are typically powerful economic agents in the countries in which they operate, above all in economies that are highly dependent on extractive industries, so that there is little political willingness to guarantee due access to justice. These circumstances have forced indigenous peoples to seek justice in countries where the companies are registered, with only limited success (IACHR, 2019, para. 188-189).

### 4.4 Contamination of the environment

Indigenous peoples have a right to a safe and healthy environment but increasingly they are victims of poisoned lands and rivers. The contamination problems faced by Amazonian indigenous peoples are a growing concern. The quality of river and other ground water on indigenous territories has deteriorated affecting the health of communities, particularly those dependent on fishing and hunting (IACHR, 2019, para. 93). In the case of mining, mercury is one of the most widely used substances in mineral processing and has frequent and devastating effects on water sources in the Amazon, and consequently, on the traditional fish-based diet of many communities. The IACHR reports that high levels of mercury are found among indigenous and riverine communities in Bolivia, Colombia, Peru and Venezuela (IACHR, 2019, para. 95-104). A study in Colombia found that the mercury levels in some communities were above levels considered safe by the World Health Organization (WHO)<sup>38</sup>. As will be further discussed below, the

<sup>37</sup> See, for example 'Women at the frontline of climate change', UNEP 2011; 'Indigenous women and their human rights in the Americas', IACHR, 2017.

<sup>38</sup> In Colombia, a 2015 study by the Ministry of Health of hair and blood samples from 202 people in 15 communities that live by the Rivers Inírida, Atabapoe, and Guanía showed that the people examined had between 60 and 109 times the WHO-recommended safe levels of mercury in their bodies because of the enormous amount of chemicals illegal miners use to extract

Amazonian States (except for Venezuela) have ratified or accessed to the *Minamata Convention on Mercury*<sup>39</sup>. Farmland expansion into the Amazon region has brought a significant increase in the use of pesticides and herbicides, particularly in relation to agroindustry (large-scale soy cultivation). The use of aircraft to spray large quantities of these chemicals, which are then carried into the human food chain by various water courses, have led to problems of poisoning of indigenous communities (IACHR, 2019, para. 105).

Contamination of soils and water is mostly associated with the oil industry with spills, leaking tailings ponds and a general negligence in health and safety standards common. Plaintiffs including indigenous peoples argued to the Ecuadorean courts that 18 billion gallons of toxic wastewater and 17 million gallons of crude oil, had been leaked into the Amazonian forest over the 25 years of operation by oil companies<sup>40</sup>. In the Peruvian Amazon there have been more than 40 oil spills from the North Peruvian Oil Pipeline in the regions of Loreto and Amazonas between 2014 and 2018<sup>41</sup>.

## 4.5 Cultural identity

The identity and cultural integrity of Amazonian peoples is intimately related to their homelands and its biodiversity. Indigenous peoples have a spiritual connection with the natural elements in their territories, which define their unique concept of life and death. The relentless pressure to which indigenous peoples' territories are subjected causes grave harm to the cultural integrity of its members. It has direct repercussions on the exercise of their cultural and spiritual practices, which includes traditional medicine, whose disappearance could jeopardise the very existence of the community as a distinct group. The negative impacts on territories are also typically accompanied by community fragmentation processes (IACHR, 2019, para. 142 and 173).

# 5 Legal frameworks: environmental commitments and indigenous peoples' rights

## 5.1 Regional environmental treaties

All Amazonian States (apart from French Guiana) are members of the Amazon Cooperation Treaty Organization (ACTO) with a mandate to promote sustainable development in the Amazon basin. Founded in 1978, with the aim of balancing economic development with conservation while respecting national sovereignty, it is a space for soft diplomacy rather than dynamic action in the face of the disasters now impacting the Amazon. By way of strengthening cooperation in the region and prompted by the wildfires crisis, Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru and Suriname signed the Leticia Pact (Pacto de Leticia por la Amazonía) in September 2019 with the aim of tackling deforestation and forest degradation of the Amazon. While the pact is based on the implementation of national policies, the aim is to exchange information and establish regional cooperation mechanisms in order to fight illegal activities that are

gold. Ministry of Health and Social Protection of Colombia, Programa territorial de reorganización, diseño y modernización de las redes de prestación de servicios de salud de acuerdo al nuevo modelo intercultural del departamento de Guainia, Inirida, November 2015, p. 14.

<sup>39</sup> Secretariat of the Minamata Convention, Parties and Signatories, Available at: <http://www.mercuryconvention.org/Countries/Parties/tabid/3428/language/en-US/Default.aspx>.

<sup>40</sup> BBC, 8 September 2018.

<sup>41</sup> Instituto Chaikuni and OPIO, *La serpiente negra de la Amazonía peruana: El Oleoducto Nor peruano*, Lima, 2018, p. 7.

threatening the conservation of the Amazon. In paragraph 12, particular emphasis is placed on indigenous peoples' participation 'acknowledging their fundamental role in the conservation of the region'<sup>42</sup>.

Of particular relevance for the Amazon area is the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (2018), also known as Escazú Agreement, which has been signed by all Amazonian countries apart from Venezuela and Suriname, and has been ratified by Bolivia and Guyana<sup>43</sup>. The agreement aims to strengthen the cooperation between Latin American countries in order to secure the implementation of environmental rights and public participation in the process. Its goal is to protect the right to a healthy environment for both present and the future generations. It is the first regional environmental agreement in Latin America and the only binding agreement stemming from the UN Conference on Sustainable Development (Rio+20). Acknowledging the human rights violations and threats against environmental activists in Latin America, it is the first environmental agreement that includes specific provisions on environmental human rights defenders<sup>44</sup>. In 2011, the IACHR appointed a Rapporteur on Human Rights Defenders<sup>45</sup>.

## 5.2 International framework of environmental rights

The significance of the biodiverse Amazon forest has been acknowledged by the UNESCO which declared National Parks in seven Amazonian countries (Brazil, Bolivia, Colombia, Ecuador, Peru, Suriname and Venezuela) as *world heritage sites* meaning that these sites need conservation and protection. Of particular relevance for the Amazon biosystem is the Convention on Biological Diversity (1992) and the resulting legally binding Cartagena Protocol on Biosafety (2000) as well as the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation to the Convention on Biological Diversity (2010). While the former has been ratified by all countries of the Amazon region, the Nagoya Protocol has been ratified by Bolivia, Ecuador, Guyana, Peru, Venezuela and France, signed but not ratified by Brazil and Colombia, and not signed at all by Suriname. With the exception of Bolivia, all other countries in the region have also ratified the third and latest International Tropical Timber Agreement (ITTA) by the International Tropical Timber Organization, which was adopted in 2006 and promotes the trade of sustainably and legally harvested timber, and the conservation of tropical forests. All countries but Venezuela, which has only signed the treaty, have also ratified the UN Minamata Convention on Mercury with its aim to phase out the manufacturing as well as the export and import of products containing mercury by 2020. Given the detrimental effects of the mercury used in gold mining and the resulting pollution of the Amazon basin, this commitment is of particular importance in order to protect a healthy environment (WWF, 2018).

The Amazonian countries, with the exception of Guyana, are States Parties to the American Convention on Human Rights and have, apart from Venezuela, also ratified its Additional Protocol on Human Rights in the Area of Economic, Social and Cultural Rights, also known as 'Protocol of San Salvador' which in Art. 11 guarantees the right to a healthy environment and declares States parties as responsible to 'promote the protection, preservation, and improvement of the environment' (Art. 11.2). All countries have ratified the Paris Agreement and have thus obligated themselves to limit the global temperature rise to below 2 degrees Celsius before industrial levels and aim to keep the increase at 1.5 degrees Celsius.

<sup>42</sup> Not all commentators are positive about the Pact. See Johan Ramirez, 'Opinion: Amazon Leticia Pact was a wasted opportunity', DW, 9 September 2019: <https://www.dw.com/en/opinion-amazon-leticia-pact-was-a-wasted-opportunity/a-50362482>.

<sup>43</sup> As of 4 March 2020, 22 countries have signed the Agreement, six have ratified it and 11 have completed the internal processes prior to ratification. The Agreement needs 11 ratifications to enter into force. The text of the Agreement is available at [https://repositorio.cepal.org/bitstream/handle/11362/43583/1/S1800428\\_en.pdf](https://repositorio.cepal.org/bitstream/handle/11362/43583/1/S1800428_en.pdf).

<sup>44</sup> See <https://www.cepal.org/en/pressreleases/first-regional-agreement-environmental-matters-latin-america-and-caribbean-will-open>.

<sup>45</sup> Information on the IACHR Rapporteur on Human Rights Defenders is available at <https://www.oas.org/en/iachr/defenders/default.asp>.

In 2017, the Inter-American Court of Human Rights (IACtHR) issued a landmark advisory opinion (OC-23/17) stating that a healthy environment is the basis of human life and affirming that it considers this right to be protected by the American Convention on Human Rights. The Court emphasised that States have extraterritorial as well as intergenerational obligations to protect a healthy environment, stating that a healthy environment should be protected across borders as well as guaranteed for future generations, which makes it a collective right. In its General Comment on the right to life (2018), the International Covenant on Civil and Political Rights (ICCPR) monitoring body Human Rights Committee (HRC) established that the right to life 'depends [...] on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors' (para. 62). Such measures, the Committee emphasised, include the implementation of substantive environmental standards as well as environmental impact assessments and a sustainable use of natural resources.

### 5.3 National laws and action on the environment

All countries of the region have adopted national laws on the protection of the environment and forests as well as legislation concerning mining, hydrocarbon and other development activities. All States in the region require environmental impact assessments prior to the implementation of a development project having a potential impact on the environment and the communities falling within the ambit of the project. The Amazonian States have created more than 500 protected areas for the long-term conservation of nature and the ecosystem.

While the present review is not able to enter into details of national laws, there are some developments of relevance to the overall future protection of the Amazon biome. The 2008 Constitution of **Ecuador**<sup>46</sup>, for example, is the first Constitution worldwide, to recognise the rights of nature itself in Article 275. Article 407 of the Constitution bans the extraction of non-renewable natural resources in protected areas and in areas declared intangible assets unless there is a 'declaration of national interest' issued by the National Assembly. Moreover, Ecuador has enacted its now third National Plan of Living Well (Plan Toda una Vida 2017-2021) with its objective 3 'guaranteeing the rights of nature to the present and future generation'<sup>47</sup>. In order to do so, the plan emphasises the sustainable use of natural resources in a way that allows their regeneration (Plan Nacional 2017: 55)<sup>48</sup>.

Similarly, in 2018 the Supreme Court of **Colombia** issued a decision (STC 4360-2018)<sup>49</sup> in which it recognised the Amazon Basin as a subject of rights and asked the government for a short-, medium- and long-term national action plan to reduce deforestation in the Colombian Amazon. The judgment also recognised the rights of future generations. Worth noting is that 80 % of the Colombian Amazon has the legal status of an indigenous reserve or natural park (International Center for Comparative Environmental Law, 2019). As a result of the Paris Climate Summit, Colombia signed a declaration with the initial aim to reach zero net deforestation in the Amazon by 2020 in cooperation with Norway, Germany and the United Kingdom who agreed to support Colombia's efforts with USD 300 million. Despite not having reached that

<sup>46</sup> *Constitution of the Republic of Ecuador (Constitución de la República de Ecuador)*, 2008, available at [https://www.oas.org/juridico/pdfs/mesicic4\\_ecu\\_const.pdf](https://www.oas.org/juridico/pdfs/mesicic4_ecu_const.pdf), unofficial translation available at <https://pdba.georgetown.edu/Constitutions/Ecuador/english08.html>.

<sup>47</sup> Government of Ecuador, 2017 – 2021 National Development Plan 'One Whole Life' (Plan Nacional de Desarrollo 2017-2021 'Toda una Vida'), 2017, available at [https://www.planificacion.gob.ec/wp-content/uploads/downloads/2017/10/PNBV-26-OCT-FINAL\\_0K.compressed1.pdf](https://www.planificacion.gob.ec/wp-content/uploads/downloads/2017/10/PNBV-26-OCT-FINAL_0K.compressed1.pdf).

<sup>48</sup> Government of Ecuador, 2017 – 2021 National Development Plan 'One Whole Life' (Plan Nacional de Desarrollo 2017-2021 'Toda una Vida'), 2017, available at [https://www.planificacion.gob.ec/wp-content/uploads/downloads/2017/10/PNBV-26-OCT-FINAL\\_0K.compressed1.pdf](https://www.planificacion.gob.ec/wp-content/uploads/downloads/2017/10/PNBV-26-OCT-FINAL_0K.compressed1.pdf).

<sup>49</sup> Supreme Court of Colombia, *Supreme Court Decision*, STC4360-2018, 2018, available at <https://observatoriop10.cepal.org/sites/default/files/documents/stc4360-2018.pdf>.

goal and with USD 180 million invested so far<sup>50</sup>, in 2019 the declaration was renewed and the three donor countries agreed to pay up to USD 366 million until 2025 (Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, 2019).

The **Bolivian** Constitution<sup>51</sup>, as that of Ecuador, was elaborated through a consultative Constituent Assembly including a significant participation by indigenous peoples. Article 8 of the Constitution establishes the ethical base of the State drawing on moral principles drawn from indigenous culture<sup>52</sup>. It recognises the right of all to a healthy environment for present and future generations (article 33). The State is given a central role in managing the natural resources (article 346) and is committed to conserve, protect and use natural resources in a sustainable manner (article 342). The population has the right to be consulted prior to decisions that could affect the quality of the environment (article 343). A 2010 Law on Mother Earth (Ley de Derechos de la Madre Tierra) gives legal personality to nature and creates an Ombudsperson (Defensoria de la Madre Tierra) charged with monitoring and promoting the rights of nature.<sup>53</sup> The 2012 Framework Law on Mother Earth (La Ley Marco de la Madre Tierra y Desarrollo Integral para Vivir Bien) with the purpose of harmonising national development plans with the principles of “buen vivir” (living well) and respect for nature (“madre tierra”).<sup>54</sup> The Law on the Environment (Ley del Medio Ambiente) of 1992 regulates environmental matters in Bolivia<sup>55</sup> and Supreme Decree 24781 approves regulations on Protected Areas.<sup>56</sup>

**Brazil**, as the country with the largest area of the Amazon under its jurisdiction, has introduced a number of laws and measures to reduce deforestation and protect biodiversity. In 2004, it established the Action Plan for the Prevention and Control of Deforestation in the Legal Amazon to reduce deforestation rates continuously and bring about conditions for a sustainable development model<sup>57</sup>. The Amazon Regional Protected Areas Programme (ARPA), established in 2002, is a joint initiative by the government and non-governmental organisations to expand protection of the Amazon<sup>58</sup>. The Amazon Fund is a REDD+ mechanism to raise and invest money to combat deforestation and promote sustainable use of the forest<sup>59</sup>. In addition, Brazil has a number of environmental agencies such as the Brazilian Institute of the

<sup>50</sup> Reuters, *Colombia's Amazon forest gets boost with USD 366 million protection fund*, 2019, Available at: <https://www.reuters.com/article/us-colombia-forests-climate-trfn/colombias-amazon-forest-gets-boost-with-366-million-protection-fund-idUSKBN1YF2BD>.

<sup>51</sup> *Bolivia (Plurinational State of)'s Constitution (Constitución del Estado Plurinacional de Bolivia)*, 2009, available at [https://www.oas.org/dil/esp/Constitucion\\_Bolivia.pdf](https://www.oas.org/dil/esp/Constitucion_Bolivia.pdf), unofficial translation available at [https://www.constituteproject.org/constitution/Bolivia\\_2009.pdf](https://www.constituteproject.org/constitution/Bolivia_2009.pdf), special focus on Chapter VII.

<sup>52</sup> Article 8 (1) reads: 'The State adopts and promotes the following as ethical, moral principles of the plural society: ama qhilla, ama llulla, ama suwa (do not be lazy, do not be a liar or a thief), suma qamaña (live well), ñandereko (live harmoniously), teko kavi (good life), ivi maraei (land without evil) and qhapaj ñan (noble path or life)'.

<sup>53</sup> *Law of the Rights of Mother Earth, Law 071 of 2010 (Ley de Derechos de la Madre Tierra, Ley 071 of 2010)*, 2010, available at <https://bolivia.infoleyes.com/norma/2689/ley-de-derechos-de-la-madre-tierra-071>.

<sup>54</sup> *Framework Law on Mother Earth, Law 300 of October 2012 (La Ley Marco de la Madre Tierra y Desarrollo Integral para Vivir Bien Ley 300 of October 2012)*, 2012, available at <https://plataformacelac.org/ley/154>. To date, an institution has not been established to implement the Law on Mother Earth.

<sup>55</sup> *Law on the Environment 1333/1992 (Ley de Medio Ambiente 1333/1992)*, 1992 available at <https://bolivia.infoleyes.com/norma/2173/ley-de-medio-ambiente-1333>

<sup>56</sup> *1997 General Regulation on Protected Areas (Reglamento General de Areas Protegidos of 1997)*, 1997, available at <https://bolivia.infoleyes.com/norma/2273/reglamento-general-de-areas-protegidas-rgap>

<sup>57</sup> *Action Plan for the Prevention and Control of Deforestation in the Legal Amazon (Plano de acao para prevencao e controle do desmatamento na Amazonia legal)*, 2004, available at: <https://www.mma.gov.br/informma/item/616-preven%C3%A7%C3%A3o-e-controle-do-desmatamento-na-amaz%C3%B4nia>.

<sup>58</sup> The ARPA is led by the Ministry of the Environment and funded by the Global Environmental Facility (GEF), Germany and the WWF with the goal of protecting 60 million hectares of forest: <http://arpa.mma.gov.br/en/what-is-arpa-3/>.

<sup>59</sup> The Amazon Fund became operational in 2009 and has disbursed nearly USD 500 million in project grants and support. See <http://www.amazonfund.gov.br/en/home/>.



Environment and Renewable Natural Resources (Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais, IBAMA), the Chico Mendes Institute for the Conservation of Biodiversity (Instituto Chico Mendes de Conservação da Biodiversidade, ICMBio), a National Environment Council (Conselho Nacional do Meio Ambiente, CONAMA) and a National Space Research Agency (Instituto Nacional de Pesquisas Espaciais, INPE) providing annual official estimates of deforestation in the Amazon and forest fire information. Notwithstanding, the policies of the current Brazilian government have seriously weakened environmental controls and weakened the institutions responsible for monitoring deforestation.<sup>60</sup> In February 2020, President Bolsonaro introduced a Bill (Provisional Measure 910)<sup>61</sup> to facilitate the legalization of lands obtained through illegal land invasions. In May, 2020, the Provisional Measure expired and the bill was presented to Congress as Provisional Law 2633/20<sup>62</sup>.

## 5.4 International framework for indigenous peoples' rights

All Amazonian States with the exception of Suriname and French Guiana have ratified ILO Convention 169 on indigenous and tribal peoples. The States in the region voted in favour of the adoption of the 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)<sup>63</sup>. The Amazonian States have also endorsed the 2016 American Declaration on the Rights of Indigenous Peoples<sup>64</sup>. These documents establish the rights of indigenous peoples to their traditional lands, territories and resources, to determine their development priorities, and to free, prior and informed consultation to obtain consent regarding activities on their lands. Indigenous peoples have a right to protection of their means of subsistence, ways of life, cultures, decision-making bodies and legal systems.

With regard to indigenous peoples' rights in the Amazon, the IACtHR's judgments on the *Saramaka People v. Suriname* (2007) as well as the *Pueblo Indígena Kichwa de Sarayaku v. Ecuador* (2012) have contributed to a jurisprudence on the indigenous peoples' right to self-determination regarding their development as well as their right to free prior and informed consent (FPIC). In *Saramaka v. Suriname* the IACtHR decided that a State's failure to conduct a social and environmental impact assessment before granting a project constitutes a violation of Art. 21, the right to property, of the American Convention on Human Rights (para. 156). The same decision required the state to obtain the free and informed consent of the indigenous peoples concerned prior to large-scale project affecting their cultures and livelihoods (para. 134).

## 5.5 National laws protecting indigenous peoples' rights

The Constitutions and national laws of the Amazonian States protect indigenous' rights to their lands, recognise and commit to the protection of their distinct cultures and acknowledge their right to be

<sup>60</sup> The Ministry of the Environment is headed by Ricardo Salles close to agribusiness interests, 21 of the 27 state directors of IBAMA, Brazil's body for the protection of the environment and natural resources, have been fired. See also Ferrante, L. & Fearnside, P. 'Brazil's new President and *ruralistas* threaten Amazonia's environment, traditional peoples and the global climate', *Environmental Conservation* vol 46 Issue 4, December 2019.

<sup>61</sup> *Provisional Law 2633/2020 (Projeto de Lei Nº2633/2020)*, 2020, available at [https://www.camara.leg.br/proposicoesWeb/prop\\_mostrarintegra;jsessionid=14CE61CC39BD244EF33B3B22C8554A19.proposicoesWebExterno2?codteor=1893531&filename=PL+2633/2020](https://www.camara.leg.br/proposicoesWeb/prop_mostrarintegra;jsessionid=14CE61CC39BD244EF33B3B22C8554A19.proposicoesWebExterno2?codteor=1893531&filename=PL+2633/2020).

<sup>62</sup> At the time of drafting the present report, no decision has been taken by the Brazilian Congress. The draft law generated widespread protests and in the UK supermarkets threatened to boycott Brazilian produce - see <https://www.retail-insight-network.com/features/uk-supermarkets-urge-brazil-to-reject-harmful-forest-law/>.

<sup>63</sup> Colombia abstained at the GA in 2007 but subsequently endorsed the Declaration.

<sup>64</sup> The American Declaration on the Rights of Indigenous Peoples is adopted by the Organization of American States and includes the right to protection of a healthy environment (Art. XIX), protection of indigenous peoples in voluntary isolation or initial contact, and the right to 'maintain and determine their own priorities with respect to their political, economic, social, and cultural development in conformity with their own cosmovision' as well as to the principle of free, prior and informed consent (Art. XXIX.4).

consulted in relation to projects that may impact their communities. States have also taken specific measures to protect uncontacted indigenous peoples or those in voluntary isolation.

The 2009 Constitution of **Bolivia**<sup>65</sup> adopts the status of a plurinational State recognizing all indigenous nations as well as the Afro-Bolivian community. More than 30 indigenous languages are recognised including as official languages. A series of laws are in place to recognise indigenous peoples' lands and territories<sup>66</sup>. The government has also adopted the UNDRIP as law - the only State to have done so. The Constitution includes a chapter on the rights of indigenous peoples including the rights to prior obligatory consultation by the State with respect to the exploitation of resources in their territories (Art. 30.11.15) and the right to autonomy and exclusive use of renewable natural resources on their lands (Art. 30.11.17). The government of Evo Morales (2006-2019) achieved significant improvements to the socio-economic conditions of the majority indigenous peoples, including by reducing levels of poverty and extreme poverty. As the country's first indigenous President, he was a defender of indigenous peoples internationally and integrated indigenous peoples, including women, into his cabinet. A tension existed, however, within the government's programme between the highland indigenous peoples and the smaller population of lowland indigenous people, many living in the Bolivian Amazon. The lowlands being the zone richest in hydro-carbons were often affected by the impacts of oil and gas exploitation. The decision to build a trans-Amazonian highway through a Protected Area and Indigenous Territory in the lowlands in 2011 and the subsequent violently repressed indigenous protests became emblematic of the contradiction within the government between a development model based on extractive industries and its avowed commitment to indigenous peoples' lands and cultures<sup>67</sup>. In July 2019, laws to permit ranching in forested areas and encouragement to speed up forest clearance with slash-and-burn struck a further blow to indigenous peoples who are dependent on the Amazon and the loss of 700 000 hectares of protected areas<sup>68</sup>.

Article 231 of the **Brazilian** Constitution<sup>69</sup> recognises indigenous peoples' rights to their traditional lands and requires the government to demarcate and protect them. It notes that the lands of Brazil's indigenous peoples are destined for their permanent possession and gives them 'exclusive usufruct of the riches of the soil, rivers and lakes therein' (Article 231, para. 2). The same article forbids the removal of indigenous peoples from their lands except by a decision of the National Congress. Approximately 13 % of Brazilian territory is designated for indigenous peoples<sup>70</sup>. The establishment of legally enforceable land rights for indigenous peoples when they are confirmed through a Presidential decree is preceded by several stages including their identification and physical demarcation. More than 40 million hectares of land were formally recognised (homologated) under the President Cardoso (1995-2002), a further 20 million hectares under the governments of Lula da Silva and Rousseff (2003-2016), and 19 000 hectares since May 2016 under President Temer and Bolsonaro (May 2016 to present)<sup>71</sup>. Brazil adopted a National Policy on

<sup>65</sup> *Bolivia (Plurinational State of)'s Constitution (Constitución del Estado Plurinacional de Bolivia)*, 2009, available at [https://www.oas.org/dil/esp/Constitucion\\_Bolivia.pdf](https://www.oas.org/dil/esp/Constitucion_Bolivia.pdf), unofficial translation available at [https://www.constituteproject.org/constitution/Bolivia\\_2009.pdf](https://www.constituteproject.org/constitution/Bolivia_2009.pdf).

<sup>66</sup> For example, the Native Community Lands Supreme Decree N° 727, from 6 December de 2010 [Decreto Supremo N° 727 sobre *Tierras Comunitarias de Origen* del 6 de diciembre de 2010], 2010, available at <https://www.lexivox.org/norms/BO-DS-N727.html>

<sup>67</sup> The so-called TIPNIS crisis was precipitated by the decision to build a road through the Isiboro Secure National Park and Indigenous Territory (TIPNIS) to improve links with Brazil. Protests were repressed leading to the death of four people.

<sup>68</sup> 'As Bolivian forest burns, Evo's bet on big farming comes under fire', *Reuters*, 9 September 2019. Decree 3973 of 19 July 2019 authorizes controlled fires in the Departments of Beni and Santa Cruz.

<sup>69</sup> *Constitution of Brazil, (Constituição da República Federativa do Brasil)*, 1988, available at [http://www.planalto.gov.br/ccivil\\_03/constitucao/constitucao.htm](http://www.planalto.gov.br/ccivil_03/constitucao/constitucao.htm), unofficial translation in English available at [https://www.constituteproject.org/constitution/Brazil\\_2017.pdf?lang=en](https://www.constituteproject.org/constitution/Brazil_2017.pdf?lang=en)

<sup>70</sup> *Povos Indigenas do Brasil, Instituto Socioambiental*: indigenous territories cover 1 174 273 sq kms, 13.8 % of the national territory.

<sup>71</sup> Information from *Povos Indigenas do Brasil*. See <https://pib.socioambiental.org/en/Demarcation>.



Environmental and Territorial Management of Indigenous Land (Política Nacional de Gestão Ambiental e Territorial em terras indígenas, PNGATI) in 2012 aimed at rehabilitating and conserving indigenous lands and natural resources<sup>72</sup>. The National Indian Foundation (Fundação Nacional do Índio, FUNAI) is responsible for identifying, approving and physically demarcating indigenous peoples' territories and protecting them from third party interference. It has also developed protocols on voluntarily isolated and uncontacted indigenous peoples. However, the Bolsonaro government has not concealed its hostility to indigenous peoples' land rights and any further demarcation<sup>73</sup>. In 2004, Brazil established a Human Rights Defenders Protection Programme (Programa de Proteção aos Defensores de Direitos Humanos) and in 2009, a National Policy for Human Rights Defenders (Política Nacional de Proteção aos Defensores dos Direitos Humanos)<sup>74</sup> but the country remains one of the most dangerous for defenders of the environment, human rights and indigenous peoples' rights.<sup>75</sup> According to Amnesty International, the human rights defenders' programme has several weaknesses. Its report notes, among other things, that only 8 of Brazil's 26 states fully cooperate in the programme, there is a lack of funding and personnel and various subsequent measures have reduced the role of civil society (Amnesty International, 2018).

**Colombia** enacted a law and regulation on indigenous reserves in 1994<sup>76</sup> and 1995<sup>77</sup>, respectively. In 1998, the State passed a regulation (Decree 1320) on prior consultation of indigenous and black communities<sup>78</sup>. In 2018, the Colombian government enacted Decree No. 1232<sup>79</sup> which regulates Law 21 of 1991<sup>80</sup> and establishes the National System for Prevention and Protection of the Rights of Indigenous Peoples in Isolation or a Natural State. Resolution 0156 of 2018 of the government includes guidelines for the management of protected areas in the Natural National Park System that have a presence or indications of a presence of peoples living in isolation<sup>81</sup>.

The **Ecuadorian** State grants extensive rights to indigenous peoples in its 2008 Constitution<sup>82</sup>, including rights over their ancestral territories and the use and conservation of natural resources located within their lands, as well as the principle of free, prior and informed consultation (Art. 57). Art. 57 declares the

<sup>72</sup> Available at <http://www.fundoamazonia.gov.br/en/projeto/Strengthening-Territorial-and-Environmental-Management-of-Indigenous-Lands-in-the-Amazon/>.

<sup>73</sup> Bolsonaro is quoted as saying that if he became President, he would not give another centimetre of land to indigenous peoples. See Survival International at <https://www.survivalinternational.org/articles/3540-Bolsonaro>.

<sup>74</sup> More information available at <https://www.gov.br/mdh/pt-br/navegue-por-temas/programas-de-protecao/ppddh-1/sobre-o-ppddh>.

<sup>75</sup> See Front Line Defenders, <https://www.frontlinedefenders.org/en/location/brazil>.

<sup>76</sup> Law 160 of 1994 through which the National System of Agrarian Reform and Rural Peasant Development is created, a subsidy for the acquisition of land, is established, the Colombian Institute of Agrarian Reform is reformed and other provisions are issued [Ley 160 de 1994 por la cual se crea el Sistema Nacional de Reforma Agraria y Desarrollo Rural Campesino, se establece un subsidio para la adquisición de tierras, se reforma el Instituto Colombiano de la Reforma Agraria y se dictan otras disposiciones], 1994, available at <https://www.unidadvictimas.gov.co/sites/default/files/documentosbiblioteca/ley-160-de-1994.pdf>.

<sup>77</sup> Decree 2164 of 1995 through which Chapter XIV of Law 160 of 1994 in relation to the endowment and titling of lands to indigenous communities for the constitution, restructuring, expansion and renovation of Indigenous Reserves in the national territory is partially regulated [Decreto 2165 de 1995 por el cual se reglamenta parcialmente el Capítulo XIV de la Ley 160 de 1994 en lo relacionado con la dotación y titulación de tierras a las comunidades indígenas para la constitución, reestructuración, ampliación y saneamiento de los Resguardos Indígenas en el territorio nacional], 1995, available at [https://www.defensoria.gov.co/public/Normograma%202013.html/Normas/Decreto\\_2164\\_1995.pdf](https://www.defensoria.gov.co/public/Normograma%202013.html/Normas/Decreto_2164_1995.pdf).

<sup>78</sup> Available at <https://www.mininterior.gov.co/la-institucion/normatividad/decreto-1320-de-1998>.

<sup>79</sup> Decree 1232 of 2018 (Decreto 1232 de 2018), 2018, available at <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=87539>.

<sup>80</sup> Law 21 of 1991 passes into law ILO Convention 169 on tribal and indigenous peoples (Ley 21 de 1991 por medio de la cual se aprueba el Convenio número 169 sobre pueblos indígenas y tribales en países independientes), 1991, available at [https://www.mininterior.gov.co/sites/default/files/5\\_ley\\_21\\_de\\_1991.pdf](https://www.mininterior.gov.co/sites/default/files/5_ley_21_de_1991.pdf).

<sup>81</sup> Available at <https://storage.googleapis.com/pnn-web/uploads/2018/05/diario-oficial-50604.pdf>.

<sup>82</sup> Constitution of the Republic of Ecuador (Constitución de la República de Ecuador), 2008, available at [https://www.oas.org/juridico/pdfs/mesicic4\\_ecu\\_const.pdf](https://www.oas.org/juridico/pdfs/mesicic4_ecu_const.pdf), unofficial translation available at <https://pdpa.georgetown.edu/Constitutions/Ecuador/english08.html>, special focus on Arts. 250 and 259.

territories of peoples living in voluntary isolation as ‘an irreducible and intangible ancestral possession’ and considers all forms of extractive activities within these lands forbidden. The violation of indigenous peoples’ rights to life, to self-determination and to remain in voluntary isolation constitutes a crime of ethnocide, as Art. 57 points out. Out of all countries in the Amazon area, Ecuador has the most extensive legislative framework regarding both indigenous peoples as well as environmental rights.

**Guyana** grants communal land rights to ‘Amerindians’ and the protection of such rights in its Amerindian Act 2006<sup>83</sup>. The act also guarantees rights to intellectual property and traditional knowledge as well as environmental protection. However, legislation considers communal property title a state grant and not a recognition of indigenous traditional property. At the same time, UN human rights bodies have found that the current Act is discriminatory and is not aligned with UNDRIP<sup>84</sup>. The government has pledged to review and upgrade the Act to bring it into line with international norms and the obligations of Guyana under human rights treaties it has ratified. Despite this important promise, the law is yet to be amended.

In 1974, **Peru** passed Law Decree No. 20653 of Native Communities and Promotion of Agriculture in the Lower and Upper Rainforests<sup>85</sup> which was Peru’s first legislation recognising indigenous peoples’ collective land rights and established their legal protection. In 1978, Peru then adopted the Law of Native Communities and Agrarian Development in the Lower and Upper Rainforests (Law Decree No 22175)<sup>86</sup>. In 2006, Peru enacted Law 28736 on the Protection of Indigenous Peoples in Voluntary Isolation or Initial Contact<sup>87</sup>, and in 2011 Law 29785 on prior consent<sup>88</sup>. In 2018, the government passed the Legislative Decree No. 1374<sup>89</sup> which establishes sanctions for non-compliance with provisions of Law 28736<sup>90</sup> including the extraction of natural resources in indigenous territories. Under the Agrarian Reform legislation, however, indigenous lands had to be worked to come under protection which severely limited recognition of Amazonian indigenous peoples with different land use systems (IACHR, 2019, paras. 65-67).

**Suriname**, on the contrary, lags behind other countries in the region and only started to officially protect indigenous peoples’ land rights with a 2017 amendment to the Domain Land Law of 1982. As the International Work Group for Indigenous Affairs (IWGIA)<sup>91</sup> points out, however, indigenous peoples have

<sup>83</sup> Amerindian Act 2006, 2006, available at [http://parliament.gov.gy/documents/acts/4680-act\\_no\\_6\\_of\\_2006.pdf](http://parliament.gov.gy/documents/acts/4680-act_no_6_of_2006.pdf).

<sup>84</sup> See <https://www.refworld.org/docid/4537797711.html>.

<sup>85</sup> Law Decree No. 20653 of Native Communities and Promotion of Agriculture in the Lower and Upper Rainforests (Decreto Ley N° 20653 - Ley de Comunidades Nativas y de Promoción Agropecuaria de Regiones de Selva y Ceja de Selva.), 1974, available at <http://extwprlegs1.fao.org/docs/pdf/per124296.pdf>.

<sup>86</sup> Law of Native Communities and Agrarian Development in the Lower and Upper Rainforests, Decree 22175 of 1978 (Ley de Comunidades Nativas y de Desarrollo Agrario de la Selva y de Ceja de Selva, decreto no. 22175 de 1978), 1978 available at [http://www2.congreso.gob.pe/sicr/cendocbib/con3\\_uibd.nsf/0D41EC1170BDE30A052578F70059D913/\\$FILE/\(1\)leydecomunidadesnativasley22175.pdf](http://www2.congreso.gob.pe/sicr/cendocbib/con3_uibd.nsf/0D41EC1170BDE30A052578F70059D913/$FILE/(1)leydecomunidadesnativasley22175.pdf).

<sup>87</sup> Law 28736 of 2006 on the Protection of Indigenous Peoples in Voluntary Isolation or Initial Contact (Ley 28736 de 2006 para la protección de pueblos indígenas u originarios en situación de aislamiento y en situación de contacto inicial), 2006, available at [http://www4.congreso.gob.pe/comisiones/2010/CEM\\_Problematica\\_indigena\\_documentos/leyes%20de%20comunidades/\(6\)ley\\_protecciondepueblosindigenas28736.pdf](http://www4.congreso.gob.pe/comisiones/2010/CEM_Problematica_indigena_documentos/leyes%20de%20comunidades/(6)ley_protecciondepueblosindigenas28736.pdf).

<sup>88</sup> Law 29785 of 2011 on prior consultation to indigenous peoples (Ley del derecho a la consulta previa a los pueblos indígenas u originarios, ley 29785 de 2011), available at [http://www.leyes.congreso.gob.pe/Documentos/ExpVirPal/Normas\\_Legales/29785-LEY.pdf](http://www.leyes.congreso.gob.pe/Documentos/ExpVirPal/Normas_Legales/29785-LEY.pdf).

<sup>89</sup> Legislative Decree No. 1374 of 2018 which establishes sanctions for non-compliance with provisions of Law 28736 (Decreto Legislativo N° 1374 - Establece el Régimen Sancionador por incumplimiento de las disposiciones de la Ley N° 28736, Ley para la protección de pueblos indígenas u originarios en situación de aislamiento y en situación de contacto inicial), 2018, available at <http://extwprlegs1.fao.org/docs/pdf/per189543.pdf>.

<sup>90</sup> Law 28736 of 2006 on the Protection of Indigenous Peoples in Voluntary Isolation or Initial Contact (Ley 28736 de 2006 para la protección de pueblos indígenas u originarios en situación de aislamiento y en situación de contacto inicial), 2006, available at [http://www4.congreso.gob.pe/comisiones/2010/CEM\\_Problematica\\_indigena\\_documentos/leyes%20de%20comunidades/\(6\)ley\\_protecciondepueblosindigenas28736.pdf](http://www4.congreso.gob.pe/comisiones/2010/CEM_Problematica_indigena_documentos/leyes%20de%20comunidades/(6)ley_protecciondepueblosindigenas28736.pdf).

<sup>91</sup> See <https://www.iwgia.org/en/suriname>.

not been involved in the drafting process, and the State remains the decisive authority over all land and still upholds third-party rights.

**Venezuela's** Constitution<sup>92</sup> includes a chapter on the rights of native people and States that their collective land rights 'shall be inalienable, not subject to the law of limitations or distraint, and non-transferable' (Art. 119). Art. 120 of the Constitution allows for the State's exploitation of natural resources in native lands, but points out that such exploitation 'shall be carried out without harming the cultural, social and economic integrity of such habitats, and likewise [shall be] subject to prior information and consultation with the native communities concerned'. Indigenous peoples' collective intellectual property rights of knowledge, technologies and innovations are guaranteed in Art. 124 which prohibits patents on ancestral knowledge. Venezuela also recognises indigenous peoples' land rights in its Law on Demarcation and Guarantee of Habitat and Lands of Indigenous Peoples (2001)<sup>93</sup> and passed an Organic Law of Indigenous Peoples and Communities in 2005.<sup>94</sup>

## 5.6 The implementation gap

Despite the ratification of international treaties concerning environmental and indigenous peoples' rights as well as extensive national legislation and decisions binding on States made by the IACtHR, implementation in the Amazonian States is generally weak. One reason for the lack of implementation is that States have contradictory laws in place that undermine efforts to protect the environment and indigenous peoples' lands. In Bolivia, for instance, the 2014 mining law granted preferential rights to miners to encourage the expansion of mining areas throughout the national territory, including the Amazon region, and protected areas in which mining was hitherto prohibited<sup>95</sup>. The mining law also undermines the right to consultation of indigenous peoples (Eichler, 2018).

When governments do implement environmental laws and indigenous peoples' land rights, there are marked improvements. In Brazil, during the presidencies of Lula da Silva and Dilma Rousseff, deforestation was reduced by 70 % in the period 2005 to 2014 mostly by enforcing existing policies (Nepstad et al., 2014). The present President of Brazil has made his animosity to the restraints imposed by environmental laws and indigenous peoples' territories explicit (Ferrante and Fearnside, 2014; Hope, 2019). He has weakened the government agency FUNAI by significantly reducing its budget and experienced staff, taking it out of the Ministry of Justice where it had the power to arrest and prosecute parties that illegally entered indigenous peoples' lands, and placed a former police officer with links to agri-business as its new director<sup>96</sup>. The draft bill 191/20 of February 2020<sup>97</sup> (see above) presented to Congress by Brazil's President Bolsonaro, it is claimed will regulate research and exploitation on indigenous peoples' lands. Indigenous peoples and civil society, however, fear that it will open up the Amazon for mining, agribusiness, logging and energy development and describe it as neo-colonial, violent, racist and genocidal<sup>98</sup>. The UN Special

<sup>92</sup> *Venezuela (Bolivarian Republic of) Constitution (Constitucion de la República Bolivariana de Venezuela)*, 1999, available at [https://www.oas.org/dil/esp/constitucion\\_venezuela.pdf](https://www.oas.org/dil/esp/constitucion_venezuela.pdf), unofficial translation available at [https://www.constituteproject.org/constitution/Venezuela\\_2009.pdf?lang=en](https://www.constituteproject.org/constitution/Venezuela_2009.pdf?lang=en).

<sup>93</sup> *Law on Demarcation and Guarantee of Habitat and Lands of Indigenous Peoples (Ley de Demarcacion y Garantia del Habitat y Tierras de los Pueblos Indigenas)*, 2001, available at [https://www.acnur.org/fileadmin/Documentos/Pueblos\\_indigenas/ley\\_habitat\\_tierras\\_indigenas\\_ven.pdf](https://www.acnur.org/fileadmin/Documentos/Pueblos_indigenas/ley_habitat_tierras_indigenas_ven.pdf)

<sup>94</sup> *Organic Law of Indigenous Peoples and Communities (Ley Organica de Pueblos y Comunidades Indigenas)*, 2005, available at [https://acnur.org/fileadmin/Documentos/Pueblos\\_indigenas/ley\\_organica\\_indigena\\_ven.pdf](https://acnur.org/fileadmin/Documentos/Pueblos_indigenas/ley_organica_indigena_ven.pdf).

<sup>95</sup> Mining Law (*Ley de Minería y Metalurgia*), 2 June 2014. For comments on the consultation process see IACHR, 2019, para. 256.

<sup>96</sup> The Guardian, 21 July 2019.

<sup>97</sup> *Draft Bill 191/20 (Projeto de lei 191/20)*, 2020, available at [https://www.camara.leg.br/proposicoesWeb/prop\\_mostrarintegra;jsessionid=90D79509B77B6CB7EB5011CF666EE06C.proposicoesWebExterno1?codteor=1855498&filename=PL+191/2020](https://www.camara.leg.br/proposicoesWeb/prop_mostrarintegra;jsessionid=90D79509B77B6CB7EB5011CF666EE06C.proposicoesWebExterno1?codteor=1855498&filename=PL+191/2020).

<sup>98</sup> APIB Statement of 12 February 2020 - <http://apib.info/2020/02/12/statement-in-condemnation-of-draft-law-no-19120-on-the-exploration-of-natural-resources-on-indigenous-lands/?lang=en>.

Rapporteur on indigenous peoples stated that the decision had ‘the potential to cause genocide of isolated indigenous peoples’<sup>99</sup>.

Regarding prior, free and informed consent processes, there are reports that note that some extractive activities or development projects of the Amazon have been granted without meeting the international standards in this regard (IACHR, 2019, para.256). On the contrary, some States have adopted norms to increase the flexibility of the parameters, criteria, and mechanisms governing environmental protection and consultation of indigenous peoples in a variety of sectors<sup>100</sup>. There are several cases where prior consent just focuses on establishing compensation measures but it is not about whether a project goes ahead or terms governing it (IACHR, 2019, para. 255-257).

## 6 Role of the EU

### 6.1 Policy framework

In recent years, the EU has expressed its commitment to secure indigenous peoples’ rights as well as to ensure sustainable development and the protection of the environment. The principles the EU was founded on include respect for human dignity and human rights, including the rights of persons belonging to minorities<sup>101</sup>. In Art. 3 of the *Treaty on the European Union* (TEU) the EU pledges to contribute to the protection of human rights in its relations with the wider world. In Art. 21 of the TEU the EU acknowledges that its external action shall be guided by its founding principles including ‘the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Charter and international law’, which is reiterated in Art. 205 of the *Treaty on the Functioning of the European Union* (TFEU). The 2015 - 2019 EU Action Plan on Human Rights includes policies on indigenous peoples in action points 9, 16 and 17 including the commitment to develop EU policy in line with the UNDRIP.<sup>102</sup> The proposed 2020 - 2024 EU Action Plan on Human Rights and Democracy commits to supporting indigenous peoples including “by upholding the principle of free, prior and informed consent in all decisions affecting them”.<sup>103</sup> The EU Guidelines on Human Rights Defenders set out EU commitments to protect human rights defenders including by calling upon EU Missions to be proactive through practical actions.<sup>104</sup>

In 2017, the EU and its member states adopted the new *European Consensus on Development*, as part of its response to the UN 2030 Agenda for Sustainable Development. The document emphasises the economic, social, and environmental dimensions of sustainable development and addresses the links between sustainable development and other EU policies<sup>105</sup>. The EU and its Member States commit to ‘support improvements in governance relating to sustainable forest management, participatory rangeland management, and to equitable access to land tenure, particularly for women, respecting the rights of local populations and of indigenous peoples, including customary land use and access to water’. (Para.55) The EU’s *Trade for All* strategy (2015) commits to using trade agreements and trade preference programmes as levers to promote values like sustainable development, human rights and fair and ethical trade. The *Action*

<sup>99</sup> Cited in The Guardian, 5 February 2020.

<sup>100</sup> In Bolivia, for instance, in relation to the 2014 mining law. The law has a section specifically devoted to consultation containing several provisions that run counter to the right to consultation of indigenous peoples nationwide and in the Amazon region. *Ibid.*, para. 256.

<sup>101</sup> Treaty on European Union (TEU), Art. 2.

<sup>102</sup> See [https://www.consilium.europa.eu/media/30003/web\\_en\\_actionplanhumanrights.pdf](https://www.consilium.europa.eu/media/30003/web_en_actionplanhumanrights.pdf)

<sup>103</sup> EU Action Plan on Human Rights and Democracy, 2020-2024, 1.B. available at <https://ec.europa.eu/transparency/regdoc/rep/10101/2020/EN/JOIN-2020-5-F1-EN-ANNEX-1-PART-1.PDF>The Euro

<sup>104</sup> [https://eeas.europa.eu/sites/eeas/files/eu\\_guidelines\\_hrd\\_en.pdf](https://eeas.europa.eu/sites/eeas/files/eu_guidelines_hrd_en.pdf).

<sup>105</sup> [https://ec.europa.eu/international-partnerships/european-consensus-development\\_en](https://ec.europa.eu/international-partnerships/european-consensus-development_en).

*Plan for the Sendai Framework for Disaster Risk Reduction 2015-2030*<sup>106</sup> provides for the protection of biodiversity and ecosystems in the EU's external relations. Both the European Council's new strategic agenda for 2019-2024<sup>107</sup> and the European Commission's *European Green Deal* (2019)<sup>108</sup> stress that the EU ensures that all its policies are consistent with the Paris Climate Agreement and the 2030 Agenda, and therefore promote sustainable agriculture and contribute to the climate neutrality objective.

The EU's policy framework on indigenous peoples' specifically has been developing since the late 1990, reflecting standard setting processes at the international level. The latest Joint Staff Working Document *Implementing EU External Policy on Indigenous Peoples* by the EEAS and the European Commission from 2016 points out ways to support and protect indigenous peoples through existing policies and financing. The Council adopted conclusions on indigenous peoples<sup>109</sup> in 2017, stressing the importance of including indigenous peoples at all levels of EU cooperation and to take action against discrimination and violence against indigenous peoples. The European Instrument for Democracy and Human Rights (EIDHR) Emergency Fund for the period 2014-2020 is one of the main tools in this context. It has provided grants to indigenous human rights defenders at risk in Latin America, Asia and Africa in order to ensure their safety by covering expenses for legal representation and medical assistance, inter alia (European Commission, 2016). The EU has provided financial support to projects addressing land-grabbing. The 2018 EU Report on Human Rights and Democracy refers to support relating to strengthening land governance in 40 countries with a budget of 240 million Euros. A further 5 million Euros was provided in grants to support human rights defenders and organizations working on land-grabbing, climate change and indigenous peoples' rights.<sup>110</sup> The 2018 EU Report on Human Rights and Democracy Country Updates indicates that in Bolivia indigenous peoples is one of the three focal areas and in Brazil human rights defenders including indigenous leaders are supported through grants.<sup>111</sup> Under the Development Cooperation Instrument's Global Public Goods and Challenges Thematic Programme related to the environment and climate change component 2 focuses on valuing, protecting, improving and sustainably managing ecosystems, including forest and water basins which would be relevant for indigenous peoples of the Amazon region sustainably managing the natural resources on their territories<sup>112</sup>.

In the last six years, the EU has published several studies and reports on indigenous peoples and the environment. In 2014, the EU contributed to the Outcome Document of the World Conference on Indigenous Peoples. In the same year, the European Parliament published a study on *Indigenous Peoples, extractive industries and human rights* which recommended that the European Union develop a region-wide framework for extractive industries which would sanction companies violating human rights and provide legal redress to indigenous peoples whose rights have been violated

The EP has been a major supporter of comprehensive EU action to promote indigenous rights. In 2018, the European Parliament adopted the *Resolution on violation of the rights of indigenous peoples in the world* which emphasises that 'all its development, investment and trade policies respect the human rights of indigenous peoples as enshrined in human rights treaties and conventions' (para. 2). It also recognises the issue of land grabbing and requests the 'disclosure of land acquisitions involving EU-based corporations and actors of EU-funded development projects in order to increase the transparency and accountability of those acquisitions' (para. 34). The resolution furthermore points out that human rights impact assessments

<sup>106</sup> [https://ec.europa.eu/echo/sites/echo-site/files/1\\_en\\_document\\_travail\\_service\\_part1\\_v2.pdf](https://ec.europa.eu/echo/sites/echo-site/files/1_en_document_travail_service_part1_v2.pdf)

<sup>107</sup> <https://www.consilium.europa.eu/en/eu-strategic-agenda-2019-2024/>.

<sup>108</sup> [https://ec.europa.eu/info/sites/info/files/european-green-deal-communication\\_en.pdf](https://ec.europa.eu/info/sites/info/files/european-green-deal-communication_en.pdf).

<sup>109</sup> <http://data.consilium.europa.eu/doc/document/ST-8814-2017-INIT/en/pdf>.

<sup>110</sup> EU Annual Report on Human Rights and Democracy, 2018, p.75 available at [https://eeas.europa.eu/sites/eeas/files/2018\\_annual\\_report\\_on\\_hr\\_e-version.pdf](https://eeas.europa.eu/sites/eeas/files/2018_annual_report_on_hr_e-version.pdf)

<sup>111</sup> EU Annual Report on Human Rights and Democracy in the World, 2018 Country Updates, pp. 273 -275 available at [https://eeas.europa.eu/sites/eeas/files/eu\\_country\\_updates\\_on\\_human\\_rights\\_and\\_democracy\\_in\\_the\\_world\\_2018.pdf](https://eeas.europa.eu/sites/eeas/files/eu_country_updates_on_human_rights_and_democracy_in_the_world_2018.pdf)

<sup>112</sup> Guide to EuropeAid funding instruments, 2014-2020, Concord, p. 19, Available at [https://concordeurope.org/wp-content/uploads/2016/08/guide\\_to\\_europeaid\\_funding\\_instruments\\_2014-2020.pdf](https://concordeurope.org/wp-content/uploads/2016/08/guide_to_europeaid_funding_instruments_2014-2020.pdf).



of new activities in the mining, oil and gas extraction sectors shall be mandatory prior to their commencement and that indigenous peoples shall be consulted on matters that might be affecting them and take part in decision-making processes in order to include their strategies to tackle climate change. The resolution also calls upon the EU and its Member States to engage in negotiations on a UN treaty on transnational corporations and in particular their responsibility to respect the rights of indigenous peoples as well as to develop a regional action plan for business and human rights and to hold multinational corporations accountable to their impact on indigenous peoples' human rights and environmental rights. The EP asks the European Union to conduct independent impact assessments prior to the conclusion of trade agreements, to provide for an effective complaint mechanism for victims of human rights violations and to appoint a standing rapporteur on the rights of indigenous peoples, who will monitor the human rights situation of indigenous peoples and the implementation of UNDRIP and ILO Convention 169. Many of these recommendations remain relevant in today's context.

With regard to the EU's trade initiatives and their impacts on ecosystems like the Amazon, the EP adopted the *Resolution on transparent and accountable management of natural resources in developing countries: the case of forests* (2018). The resolution recognises that forests are often the traditional territories of indigenous peoples, who are thus particularly affected by forest destruction and land grabs for the expansion of plantations. The resolution points out that indigenous peoples have a crucial role in the sustainable management of natural resources and forest conservation, and, addressing the EU's responsibility to protect forests in partner countries, it suggests a complaint mechanism which gives special consideration to the rights of indigenous peoples. Moreover, based on its *Forest Law Enforcement, Governance and Trade* (FLEGT) Action Plan 2003, the EU created the *EU Timber Regulation* which came into force in March 2013<sup>113</sup>. The Regulation aims to reduce illegal logging by ensuring that illegally harvested timber cannot be sold on the EU market<sup>114</sup>. On 23 July 2019, the European Commission adopted an *EU Communication on Stepping up EU Action to Protect and Restore the World's Forests*, acknowledging that 'threats to the world's forests are one of the biggest sustainability challenges of our time' (European Commission, 2019). The Communication has the objective of reducing deforestation and protecting existing forests by encouraging deforestation-free supply chains in the EU, working in partnership with producer countries and strengthening international cooperation to halt forest degradation and encourage forest restoration. Particular reference is made to primary forests and the special attention they require since they are 'unique and irreplaceable'.

On 28 November 2019, just before the Madrid UN Climate Change Conference, the European Parliament declared a global climate and environmental emergency (European Parliament, 2019). Climate change affects the rights of indigenous peoples living in the Amazonia region, including their right to health, given the recognition by experts that degraded habitats coupled with a warming climate may encourage higher risks of disease transmission. EU policy frameworks addressing the climate emergency are of particular relevance, including in particular the Renewed Sustainable Finance Strategy, on which a consultation was launched in 2020. The proposed strategy identifies the need for climate and environmental risks to be fully managed by financial institutions<sup>115</sup>.

The regional and bilateral cooperation framework between the EU and Latin America also provides important entry points for the EU. In May 2019, the EU - Latin America and Caribbean relations agreement was adopted, aiming to promote, inter alia, democracy, the rule of law and human rights, including

<sup>113</sup> <http://www.euflegt.efi.int/eutr>.

<sup>114</sup> 'Legal' timber is defined as timber produced in compliance with the laws of the country where it is harvested.

<sup>115</sup> The Consultation on the Renewed Sustainable Finance Strategy is due to be concluded in July 2020 and is available at [https://ec.europa.eu/info/sites/info/files/business\\_economy\\_euro/banking\\_and\\_finance/documents/2020-sustainable-finance-strategy-consultation-document\\_en.pdf](https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/2020-sustainable-finance-strategy-consultation-document_en.pdf)

cooperation to address environmental degradation and protect biodiversity, providing a framework to address environmental and indigenous peoples' rights challenges in Amazonia (Council of the European Union, 2019)<sup>116</sup>. Among the regional cooperation programmes, of particular importance is the Euroclimaplus programme, which supports environmental sustainability and climate change in Latin America, including projects in the Amazon.<sup>117</sup> In the interest of space the present analysis cannot provide an in-depth analysis of all programmes and tools of relevance to the subject under review. It concludes, however, that the EP and EU have taken a number of policy initiatives in relation to indigenous peoples and environmental protection in the Amazon region, including funding for projects, support to regional and international initiatives, bilateral actions and trade measures relating to timber<sup>118</sup>.

## 6.2 Possible conflict of interests in relation to the EU-MERCOSUR FTA

On 28 June 2019, after 20 years of negotiations, the EU and the MERCOSUR bloc reached a political agreement on the trade pillar of an association agreement between the two regions. While Brazil, together with Argentina, Paraguay and Uruguay, is the only 'full' Amazonian member of the Mercosur, the other Amazonian countries with the exception of French Guyana are all 'associate countries' of the trade union and are therefore also likely to be affected by its impacts. By removing tariffs and allowing certain quotas of duty-free MERCOSUR exports such as ethanol, beef, soy, sugar, and poultry as well as of EU exports such as dairy products like cheese and skim milk powder, the production of these commodities and their impact on climate change is likely to increase<sup>119</sup>.

The agreement is the largest trade agreement the European Union has ever concluded which led to Jean-Claude Juncker's public statement that the conclusion of the deal was a 'historical moment'<sup>120</sup> and that it will have positive outcomes for the environment and consumers in both regions. Indeed, the European Commission argues that provisions of the agreement will protect the environment by combatting climate change and deforestation in the MERCOSUR region<sup>121</sup>. The Commission points out that environmental standards and labour rights shall not be lowered under the agreement and that both sides are obliged to secure the implementation of environmental laws by neither derogating from laws nor by failing to enforce their implementation. Moreover, the agreement 'will also open opportunities for supply chains of products that are produced in a way that helps conserve the environment' as the Commission points out<sup>122</sup>.

Despite the conclusion of the FTA, it is still subject to a final transcription and the ratification of all Member States of the European Union and the MERCOSUR. So far, based on the negotiations only the 'agreement in principle' and some preliminary chapters have been made public. The agreement in principle acknowledges that 'increased trade should not come at the expense of the environment or labour conditions' and states that the agreement shall in fact promote sustainable development<sup>123</sup>. Moreover, it

<sup>116</sup> <https://www.consilium.europa.eu/media/39346/eu-lac.pdf>. For perspectives on EU-Brazil relations see Gomes Saraiva, Miriam, 'The Brazil-European Union strategic partnership, from Lula to Dilma Rousseff: a shift of focus', *Revista Brasileira de Política Internacional* 60.1 (2017) and Gratius, Susanne, 'Brazil and the European Union: from liberal inter-regionalism to realist bilateralism', *Revista Brasileira de Política Internacional* 61.1 (2018) and Pasquariello Mariano, Karina L. and Bruno Theodoro Luciano, 'The parliamentarization of EU trade policy: unveiling the European Parliament's involvement in EU-MERCOSUR trade negotiations', *European Politics and Society* 20.5 2019, pp. 591-608.

<sup>117</sup> See for example the project on the Amazonian forests and climate change available at <https://euroclimaplus.org/en/projects-forest/amazonian-forests-and-climate-change>

<sup>118</sup> For a recent overview of the EU response to the Amazonian wildfire crisis and the EU policy and cooperation tools which can be used to support the protection of forests see [https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/644198/EPRS\\_BRI\(2019\)644198\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/644198/EPRS_BRI(2019)644198_EN.pdf)

<sup>119</sup> <https://www.grain.org/en/article/6355-eu-mercrosur-trade-deal-will-intensify-the-climate-crisis-from-agriculture>.

<sup>120</sup> <https://twitter.com/junckereu/status/1144659407973863427>.

<sup>121</sup> <https://ec.europa.eu/trade/policy/in-focus/eu-mercrosur-association-agreement/agreement-explained/>.

<sup>122</sup> Ibid. The EU-Mercosur agreement is reviewed in Bianculli, Andrea C, 'Politicization and Regional Integration in Latin America: Implications for EU-MERCOSUR Negotiations?' *Politics and Governance* 8.1 2020, pp. 254-265.

<sup>123</sup> <http://trade.ec.europa.eu/doclib/press/index.cfm?id=2048>.



points out that the final agreement will include commitments regarding the sustainable management of forests, including the fight against illegal logging, in order to maintain biodiversity. The document also highlights the importance of responsible business conduct and 'safeguards relevant initiatives on sustainable agriculture, including EU private sector actions on zero deforestation supply chains and producer-led initiatives, such as the soy moratorium in Brazil to limit the expansion of soy plantations in forestland'. The agreement also makes reference to the Sustainability Impact Assessment (SIA) and states that the outcomes of consultations with civil society and other stakeholders have shaped the negotiation process of the trade agreement.

The first impact assessment, prepared by the University of Manchester in 2009, already drew attention to impacts of the FTA on the environment and in particular a potential loss of biodiversity due to increased agricultural production in the MERCOSUR region. The 2018 *Inception Report* on the FTA, conducted by the London School of Economics (LSE), constitutes a literature-based impact assessment. The report recognises possible human rights impacts in the MERCOSUR region such as land conflicts, exposure to pesticides, inadequate work conditions and the exclusion of vulnerable populations in negotiations. However, the final LSE Sustainability Impact Assessment (SIA) was only published in October 2019, three months after the negotiations had already ended and therefore was not taken into consideration during the negotiations<sup>124</sup>.

The FTA not only has been criticised in a joint letter of 340 NGOs<sup>125</sup>, but also by over 600 scientists<sup>126</sup> as well as 67 members of the European Parliament, who wrote a letter to the Commission addressing their concern over President Bolsonaro's public statements on climate change, the rights of indigenous peoples and his plans of turning ancestral lands of indigenous peoples into land for industrial farming<sup>127</sup>. The MEP's letter furthermore addresses the use of pesticides in Brazil that are forbidden in the EU, the questionable effectiveness of the chapter on sustainable development, and the 'overall reliability of the potential partner governments'. Fern, a non-governmental organization working on environmental issues argues that the agreement opens EU markets to more beef imports from the MERCOSUR region while cattle is known to be the main cause for deforestation in the Amazon<sup>128</sup>. The question of beef imports, however, is subject to discussion as some note that the additional quotas are lower than existing imports.<sup>129</sup> When deforestation in the Amazon increased by 84 % in just one year in August 2019 (BBC, August 2019) and President Bolsonaro declared his intentions of withdrawing from the Paris Agreement, the French President and Irish Prime Minister threatened to block the FTA if Bolsonaro's government would not stop the deforestation in the Amazon (Borger, 2019), a statement that later was also backed by the government of Luxembourg and Austria. While the FTA's preliminary chapter on Trade and Sustainable Development (TSD) makes reference to the effective implementation of the Paris Agreement, the chapter does not include legal enforcement mechanisms or the possibility of sanctions<sup>130</sup>. On the other hand, parties to the agreement shall 'encourage trade in products from sustainably managed forests' and 'promote, as appropriate and with their prior

<sup>124</sup> <https://www.annacavazzini.eu/wp-content/uploads/2020/01/Study-on-the-EU-Mercosur-agreement-09.01.2020-1.pdf>.

<sup>125</sup> <http://s2bnetwork.org/letter-brasil-bolsonaro-eu-mercosur/>.

<sup>126</sup> [https://laurakehoe.weebly.com/uploads/9/6/1/9/96198238/kehoe\\_science\\_2019.pdf](https://laurakehoe.weebly.com/uploads/9/6/1/9/96198238/kehoe_science_2019.pdf).

<sup>127</sup> <https://www.guengl.eu/content/uploads/2019/07/20190620-Letter-suspend-concluding-of-Mercosur-Agreement-EN-final-vers.pdf>.

<sup>128</sup> <https://www.fern.org/news-resources/eu-mercosur-deal-sacrifices-forests-and-rights-on-the-altar-of-trade-1986/>

<sup>129</sup> See for example [http://bruegel.org/reader/The\\_European\\_Union-Mercosur\\_Free\\_Trade\\_Agreement#the-eu-s-concessions-on-sensitive-products-mercosur-tariff-savings-and-prices-in-the-eu](http://bruegel.org/reader/The_European_Union-Mercosur_Free_Trade_Agreement#the-eu-s-concessions-on-sensitive-products-mercosur-tariff-savings-and-prices-in-the-eu)

<sup>130</sup> [https://trade.ec.europa.eu/doclib/docs/2019/july/tradoc\\_158166.%20Trade%20and%20Sustainable%20Development.pdf](https://trade.ec.europa.eu/doclib/docs/2019/july/tradoc_158166.%20Trade%20and%20Sustainable%20Development.pdf). A specific dispute settlement procedure exists although it falls short of an enforcement measure. If the EU or Mercosur consider that the other side is not following the rules, it can ask for formal governmental consultations. If the situation cannot be resolved, an independent panel of experts can be asked to examine the matter and draw up a report with recommendations, which must be made public.

informed consent, the inclusion of forest based local communities and indigenous peoples in sustainable supply chains of timber and non-timber forest products, as a means of enhancing their livelihoods and of promoting the conservation and sustainable use of forests'.<sup>131</sup> In September 2019, the European Parliament held a plenary debate on the Amazon wildfires with some Parliamentarians claiming that the EU-Mercosur agreement did not have sufficient safeguards to ensure it did not contribute to deforestation.

The extensive use of pesticides in agriculture in the MERCOSUR region, especially in Brazil, does not align with the EU's own guidelines. Bolsonaro's government approved almost 300 new agrochemicals over the course of seven months between January and July 2019 and now allows the use of 500 pesticides, 150 of which are banned in the EU<sup>132</sup>. Not only do these pesticides pose a threat to biodiversity as many of them are developed for GMO crops, they also pose a threat to the health and lives of peoples living in proximity to areas where pesticides are used in large quantities. Last year, the issue of toxic pesticides in Brazil was addressed in a Human Rights Watch report, which pointed out that national regulation like the prohibition of spraying highly hazardous pesticides within 500 metres of inhabited lands is often ignored<sup>133</sup>. In August 2019, the UN Human Rights Committee issued a landmark decision on a case concerning the use of toxic agrochemicals in the soybean cultivation in Paraguay (*Portillo Caceres v. Paraguay*). For the first time, the Committee found that a State's failure to protect from environmental harm may result in the violation of its obligation to protect the right to life of its citizens.

According to a report by GRAIN<sup>134</sup>, the emissions from increased trade of farm products will rise by one third (34 %) compared to current levels of emissions from these products, whereby beef exports from MERCOSUR to the EU will make up the biggest source of new emissions with 82 %. By analysing the provisions of the FTA that are setting quotas for specific farm products, GRAIN assessed the emissions of the agriculture sector, estimating that the emissions of these products will lead to an additional almost 9 million tonnes of greenhouse gas emissions per year. Since the FTA has not set quotas for soybeans so far, their impacts were left out in the GRAIN calculations. Notwithstanding, due to the reduction of tariffs the production of soybeans is likely to increase. GRAIN makes reference to the 2018 report *Soy trade from Brazil's Cerrado driving climate emissions* by the Stockholm Environment Institute (SEI), stating that soybeans are a big contributor to climate emissions. GRAIN moreover points out that using the United Nation's Gleam (Global Livestock Environmental Assessment Model) methodology it comes to the conclusion that while almost 30 % of new emissions will be due to changes of land use, including deforestation, two-thirds of emissions will be directly produced on the farm, for example, through the use of fertilisers and manure. GRAIN and several other NGOs have also claimed that the EU's increased imports of ethanol as well as soy in order to meet the Union's own 'green' targets for transportation are likely to lead to further deforestation and land grabbing in countries like Brazil<sup>135</sup>. The supply chain maps by Trase<sup>136</sup> demonstrate that while to date European countries import smaller amounts of soy than Brazil's still biggest import partner for soy, China, they import soy with a higher deforestation risk per ton since some traders are linked to higher deforestation rates than others (Trase, 2018b).

<sup>131</sup> Article 8 of the Chapter on Trade and Development of the EU-Mercosur Agreement available at [https://trade.ec.europa.eu/doclib/docs/2019/july/tradoc\\_158166.%20Trade%20and%20Sustainable%20Development.pdf](https://trade.ec.europa.eu/doclib/docs/2019/july/tradoc_158166.%20Trade%20and%20Sustainable%20Development.pdf)

<sup>132</sup> <https://www.annacavazzini.eu/wp-content/uploads/2020/01/Study-on-the-EU-Mercosur-agreement-09.01.2020-1.pdf>.

<sup>133</sup> <https://www.hrw.org/news/2019/07/26/brazils-dangerous-open-door-toxic-pesticides>.

<sup>134</sup> <https://www.grain.org/en/article/6355-eu-mercrosur-trade-deal-will-intensify-the-climate-crisis-from-agriculture>.

<sup>135</sup> <https://www.transportenvironment.org/news/mercrosur-deal-opens-door-south-american-biofuels-while-palm-oil-biodiesel-use-reaches-record>, also referenced in the GRAIN (2019) report.

<sup>136</sup> Trase is a partnership between the Stockholm Environment Institute and the NGO global canopy.

## 6.3 Corporate Social Responsibility and European Businesses

The international community has a common interest in preserving the world's forests, and their ability to absorb carbon dioxide and release oxygen back into the air, in order to reduce the impacts of climate change. Moreover, the very causes for deforestation and human rights violations in the Amazon have increasingly been linked to operations of European companies and the globally rising demand for commodities like soy and beef (Amazon Watch, 2019 (a)). To date, there is no international legally binding treaty on the responsibilities of businesses across borders, although the UN is currently drafting such a treaty. While repeatedly addressing the responsibility of corporations to respect human rights within supply chains, the EU has so far been largely relying on voluntary commitments of businesses, known as CSR and Responsible Business Conduct<sup>137</sup>. There are, however, some exceptions such as the conflict minerals regulation and the timber regulation.<sup>138</sup>

In 2019, the NGO Amazon Watch published a report on the complicity of Northern consumers and financiers in the destruction of the Amazon. The report makes explicit reference to the biggest financiers of international soy and cattle companies like Louis Dreyfus, Bunge, ADM and Cargill and Brazil's biggest beef importer JBS, which are known to be linked to deforestation in the Amazon and the Cerrado (Amazon Watch, 2019c). Financiers include European banks such as HSBC (UK), Barclays (UK), Deutsche Bank (Germany), Commerzbank (Germany) and Santander (Spain). The report points out that while European companies are mostly not directly participating in deforestation in the Amazon, they nonetheless import products from companies linked to deforestation and illegal logging. Amazon Watch makes explicit reference to European companies from Belgium, the Netherlands, Denmark, France, Germany and the United Kingdom that were importing unsustainably sourced commodities such as soy, beef, leather, timber or sugar.

Of particular relevance for CSR initiatives are the UN Guiding Principles on Business and Human Rights (UNGPs), which were also endorsed in the EU's 2015 Action Plan on Human Rights and Democracy. Moreover, the OECD has adopted Guidelines for Multinational Enterprises which constitute a framework for responsible business conduct in transnational supply chains. The EU, as well as many corporations<sup>139</sup>, also supports the Agenda 2030 and the Sustainable Development Goals (SDGs), stating that it 'will pursue this goal through sustainable consumption and production, sustainably managing its natural resources, ensuring just transition and economic viability, and taking urgent action on climate change'<sup>140</sup>. In this context, sustainable development has been defined as 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs'<sup>141</sup>.

Given the public attention towards unsustainable production of commodities like palm oil, soy, beef or timber, many international companies have started to commit themselves to promote more sustainable models of agriculture as well as to prevent human rights violations in supply chains. The UN Global Compact initiative is the largest corporate sustainability initiative in the world with over 10 400 companies pledging 'to align strategies and operations with universal principles on human rights, labour, environment and anti-corruption, and take actions that advance societal goals'<sup>142</sup>. Member companies of

<sup>137</sup> The OECD has coined the term 'Responsible Business Conduct'. The EU uses both terms interchangeably.

<sup>138</sup> The Conflict Minerals Regulation will come into force in January 2021 and aims to stem trade in tin, tantalum, tungsten and gold when it is used to fund armed conflict or involves forced labour. The Timber Regulation adopted in October 2010 prohibits illegally harvested timber on the EU market. For further information see: [https://ec.europa.eu/trade/policy/in-focus/conflict-minerals-regulation/regulation-explained/index\\_en.htm](https://ec.europa.eu/trade/policy/in-focus/conflict-minerals-regulation/regulation-explained/index_en.htm), and [https://ec.europa.eu/environment/forests/timber\\_regulation.htm](https://ec.europa.eu/environment/forests/timber_regulation.htm).

<sup>139</sup> <http://www.businessfor2030.org/#>.

<sup>140</sup> [https://ec.europa.eu/info/strategy/international-strategies/sustainable-development-goals\\_de](https://ec.europa.eu/info/strategy/international-strategies/sustainable-development-goals_de).

<sup>141</sup> <https://www.un.org/sustainabledevelopment/development-agenda/>.

<sup>142</sup> <https://www.unglobalcompact.org/what-is-gc>.

the Consumer Goods Forum, established in 2010, pledge to source commodities like soy, palm oil, paper and cattle sustainably and achieve zero net deforestation by the end of 2020<sup>143</sup>. Other CSR Initiatives that promote the sustainable production of export commodities include certification schemes such as the Roundtable on Sustainable Palm Oil (RSPO), the Roundtable on Responsible Soy (RTRS), the Global Roundtable for Sustainable Beef (GRSB) and the Soy Buyers Coalition. These initiatives ensure that signatories, inter alia, do not deforest land for their plantations or cattle ranches. Several European businesses have also signed the 2017 Cerrado Manifesto, declaring their commitment to not contribute to deforestation in the savannah (cerrado) of Brazil<sup>144</sup>.

## 6.4 EU Member States

Nationally, France was the first EU Member State to pass a *Corporate Duty of Vigilance Law* in 2017 which addresses the impacts of multinational companies on human rights and the environment and requires companies to implement vigilance plans to which they can be held responsible. Several EU Member States have established national action plans (NAPs) to implement the UN Guiding Principles on Business and Human Rights. In regards to environmental protection, Germany and Norway were the biggest donors of the Amazon Fund in order to support Brazil with the protection of the Amazon.

In 2014, the New York Declaration on Forests (NYDF), a voluntary and non-binding declaration with the aim to halt global deforestation, was endorsed at the UN Climate Summit. It now has over 200 supporters including Governments, multi-national companies, NGOs and groups representing indigenous communities<sup>145</sup>. In 2015, building on the NYDF and in the context of the Paris Climate Agreement, the Amsterdam Declarations Partnership, with the purpose of ensuring deforestation-free, sustainable commodities, was entered into by Denmark, France, Germany, Italy, The Netherlands, Norway and the United Kingdom<sup>146</sup>. The overall aim of the declarations is to ensure the production of deforestation-free and sustainable commodities through the cooperation with the private sector and with producer countries and their respective initiatives.

## 6.5 Consumers

In recent years, there have also been increased efforts to label products that are fair trade and deforestation-free, giving consumers the opportunity to make smart choices and support sustainable companies. Such labels are Fairtrade International, the UTZ Rainforest Alliance and Fair for Life. However, it is not always clear to consumers on which criteria these labels are based and whether the initiative includes commitments to zero-deforestation or is promoting indigenous peoples' rights or gender equality<sup>147</sup>. While labeling is a good start to raise awareness on human rights and environmental issues in supply chains, it lacks enforceability.

<sup>143</sup> <https://www.theconsumergoodsforum.com/initiatives/environmental-sustainability/key-projects/deforestation/>.

<sup>144</sup> On the Cerrado Manifesto see: <https://cerradostatement.fairr.org/>.

<sup>145</sup> <https://forestdeclaration.org/about>.

<sup>146</sup> <https://ad-partnership.org/about>. Since 1. February 2020 the UK is no longer a member state to the EU.

<sup>147</sup> On this see e.g. 'International Guide to Fair Trade Labels' [https://www.forum-fairer-handel.de/fileadmin/user\\_upload/dateien/publikationen/materialien\\_des\\_ffh/2019\\_International-Label-Guide\\_eng.pdf](https://www.forum-fairer-handel.de/fileadmin/user_upload/dateien/publikationen/materialien_des_ffh/2019_International-Label-Guide_eng.pdf).

## 7 Policy options

The present section sets out four policy options that constitute together a framework for further action by the European Union to address deforestation, biodiversity loss and human rights violations in the Amazon.

### 7.1 Indigenous peoples as forest guardians

Indigenous peoples claim that their stewardship of their ancestral lands respects nature and is sustainable. The underlying understanding draws from indigenous peoples' philosophy or cosmology that places humans as part of nature with responsibilities to maintain their lands and resources for future generations. So long as they are not subjected to outside pressures, indigenous peoples argue that their way of life, culture and spiritual relationship with the natural world provide the framework for a holistic and sustainable land use. The forest far from being untended and under-exploited, is carefully and scientifically managed, rehabilitated and nurtured by indigenous peoples<sup>148</sup>. Recent studies increasingly validate this<sup>149</sup>. Indigenous peoples have knowledge and practices that are responsive and adaptive to the local environment. In terms of management - not a word used by indigenous peoples - they are more successful and adept at stewardship of the forests that are their ancestral domain than outsiders (Schiffman and Richard, 2018).

Rates of deforestation in the Amazon are lower where indigenous peoples have secure tenure to their lands.<sup>150</sup> A Proceedings of the National Academy of Sciences (PNAS) study finds that indigenous territories play a role in maintaining forest cover, reducing carbon emissions and mitigating climate change (Walker et al, 2020). Indigenous Territories and Protected Areas store 58 % of the region's above-ground carbon and ITs alone store 34%.The study concurs with indigenous peoples' own claim that indigenous land tenure and management of vulnerable ecosystems are key to safeguarding Amazonian forests as the region faces increasing demands for land, energy and mineral resources.

The role indigenous territories and local traditional communities play in protecting the forest and thereby maintaining carbon stocks has been evaluated economically. A World Resources Institute (WRI) study quantifies the financial gain in securing indigenous territories. It estimates that ITs in Bolivia, Brazil, and Colombia, prevent the release of up to 59 Mega-tonnes of CO<sub>2</sub> amounting to a total value of USD 25–34 billion over 20 years. The contribution of indigenous territories to local and regional ecosystem-service benefits, it states, includes regulation of local climate and water recycling, hydrological services, pollination, nutrient retention, and recreation and tourism. These activities are estimated to bring benefits of between USD 679 and USD 1 530 billion over the next 20 years. Whether such evaluations are further substantiated through new quantifiable research, will not detract from an increasingly clear conclusion that the best and most practical policy for keeping the Amazon intact is to place it in the hands of its historical owners.

### 7.2 Protected areas

As noted, great efforts have been made over the last decades to protect the Amazon forest and its biodiversity through the establishment of protected areas. About 20 % of the region is protected through these nature reserves and the data available shows they are effective barriers against deforestation and

<sup>148</sup> Indigenous peoples agro-forestry skills were recognised in the pioneering studies of Darrell Posey on the Kayapo in the 1980s.

<sup>149</sup> 'Special report on climate change and land', *Intergovernmental Panel on Climate Change (IPCC)*, January 2020, para. C.4.3. For an overview of the role of indigenous peoples and environmental management see Resources and Rights Initiative, 'A global baseline of carbon storage in collective lands', September 2018, available at [https://rightsandresources.org/wp-content/uploads/2018/09/A-Global-Baseline\\_RRI\\_Sept-2018.pdf](https://rightsandresources.org/wp-content/uploads/2018/09/A-Global-Baseline_RRI_Sept-2018.pdf).

<sup>150</sup> World Resources Institute, *Climate benefits, tenure costs: the economic case for securing indigenous land rights in the Amazon*, 2016.



biodiversity loss (Walker et al., 2020). They also provide spaces for scientific study as well as opportunities for diverse forest to be replanted and restored. Amazonian States are committed to extending these conservation areas. Unfortunately, some protected areas and proposals for biological corridors in the Amazon are still made without proper involvement of indigenous peoples and their traditional authorities on the ground. Such conservation proposals still often lack proper safeguards for free, prior and informed consent (FPIC)<sup>151</sup>. Conservation should not be used to dispossess indigenous peoples of their traditional homelands or to deny them entry for activities related to their cultures. As noted above, indigenous peoples bring the knowledge and experience to maintain and rehabilitate forest lands. Given the rates of deforestation and biodiversity degradation over the last decades, there is an urgent need to extend these protected areas.

### 7.3 The rule of law and human rights defenders

It is the States of the Amazon region which will determine the future survival of the Amazon and its people. Although the continuing high rates of deforestation point to an impending environmental crisis if action is not taken, there is nonetheless more than 50 % of the Amazon area under the protection of conservation areas or within indigenous territories<sup>152</sup>. The present analysis, however, has stressed the growing concern with the illegal expansion of the agribusiness frontier and unauthorised mining and logging. In Brazil, as noted by the indigenous peoples, the Amazon is becoming a lawless place where violence goes unchecked and unpunished and their rights are not respected. It is self-evident that if the government is itself unwilling to reinforce the public bodies set up to guarantee the rule of law in the region, there will continue to be further accelerating forest loss. It is critical that the efforts being made by indigenous peoples and more generally by civil society, often at great personal risk, to ensure the application of the law, respect for environmental protection and protection of indigenous territories is supported by the international community. Any policy aimed at reducing deforestation in the Amazon requires also a programme of political, financial and technical support to those at the frontline of the efforts to defend the forest, its biodiversity and the livelihoods and lands of indigenous peoples and local communities.

### 7.4 Legal framework for EU-based companies

The threats to the Amazon have caught the imagination and stirred action among a wider public more than other equally vulnerable and deteriorating ecological zones. It points to an understanding that the economic activities that are so destructive of the forest, will eventually impact all of our lives and eventually and distantly may even be triggered by our actions. The pressure on companies to source their products sustainably has come from an active consumer base. The Soy Moratorium, an agreement by transnational grain companies to stop sourcing soy from deforested lands was a result of consumer and NGO pressure. Launched in 2006, it resulted in an almost entire halt to deforesting by soy producers while reaching higher productivity on existing land<sup>153</sup>. A similar, if less successful programme, has been the timber certification which permits sustainable and community forestry. Industry initiatives such as the Extractive Industries Transparency Initiative (EITI) and the Rainforest Alliance Certification Schemes do show recognition of the need to address the negative impacts of natural resource exploitation on the environment and inhabitants

<sup>151</sup> See, for example, <https://www.forestpeoples.org/en/node/50234>.

<sup>152</sup> RAISG estimates that 23.4 % of Amazonia is within Protected Natural Areas and 28 % is established as Indigenous Territories. There is approximately 5 % of overlap so that the total of Amazonia protected through Protected Areas and Indigenous Territories is 3,898,764 Km<sup>2</sup> or 46 % of Amazonia. See <https://www.amazoniasocioambiental.org/en/maps/>.

<sup>153</sup> See, for example, Greenpeace evaluation available at <https://www.greenpeace.org/usa/victories/amazon-rainforest-deforestation-soy-moratorium-success/>. One concern, however, is that the Moratorium operates only in the moist tropical forest and not the drier cerrado (savanna) where land clearing is still active. See Mongabay, 8 March 2017 - <https://news.mongabay.com/2017/03/amazon-soy-moratorium-defeating-deforestation-or-greenwash-diversion/>.



of the Amazon. Public pressure may also have been responsible for the Investor Statement on deforestation and forest fires in the Amazon signed by 230 investor companies in September 2019 as well as the perceived risks to their portfolios calling for companies to ensure their operations do not contribute to deforestation. Notwithstanding, many EU-based companies continue to source commodities from the Amazon contributing to further deforestation.<sup>154</sup> In line with public pressure, further action is required to ensure that Europe and Europeans do not directly or indirectly contribute to deforestation in the Amazon through the actions of companies based or operating in the EU. There exist tested mechanisms such as labelling, effective monitoring, prohibitions and sanctions which can be further developed (see recommendations below).

## 7.5 The right of nature

The decision to give nature a legal personality in the Constitution of Ecuador reflecting indigenous peoples of that country's spiritual relationship with the natural world has an echo in other parts of the world. The Maori of New Zealand have seen the Whanganui River recognised as a person in law raising the possibility that nature might effectively sue if it is damaged by humans. The idea that nature has rights and that these should be enforceable constitutes a balance in a prevailing economic model in which it is subordinated to humans. It is placing the law on the side of nature and reflects an emerging area of legal discussion that the wilful destruction of the environment on which people depend for their survival could constitute a crime against humanity<sup>155</sup>. The Amazon is a unique ecosystem and plays a life-giving role by cooling the planet and maintaining climate patterns on which millions depend. It is reasonable to argue that damage to its integrity and survival constitutes a crime against humanity.

## 8 Conclusions and recommendations

The Intergovernmental Panel on Climate Change (IPCC) has identified a 10-year window, from 2020 to 2030, to address the climate crisis before there is irredeemable disruption to human life on the planet.<sup>156</sup> By 2030, countries need to reduce greenhouse gases significantly and stabilise temperatures at 2 °C and ideally 1.5 °C above pre-industrial levels. These targets were agreed at the climate talks held in Paris 2015. In the efforts to reach these targets, the Amazon will play an essential role. As the world's biggest rainforest, it stores hundreds of millions of tonnes of CO<sub>2</sub>.

The integrity of this unique biome is not just a responsibility of the nine states whose national boundaries it finds itself. The future of the Amazon is rightly the concern of the international community including the European countries committed also to implement the Paris Agreement. Europe has an obligation to ensure it takes no actions that knowingly or inadvertently contribute to the diminishment of the Amazon and cooperate with the host states to assist their efforts to bring deforestation under control at sustainable levels.

<sup>154</sup> Amazon Watch, *Complicity in destruction: how northern consumers and financiers enable Bolsonaro's assault on the Brazilian Amazon*, April 2019.

<sup>155</sup> The late Polly Higgins was instrumental in arguing for the recognition of ecocide in international law. See, for example, Higgins, P, 'Earth is our business', *Shepherd-Walwyn*, 2012 and Higgins, P, D.Short and N.South 'Protecting the planet: a proposal for a law of ecocide', *Crime, law and social change* 59 (3), 2013. Vanuatu and the Maldives have called on the International Criminal Court to declare ecocide an international crime. See 'Vulnerable nations call for ecocide to be recognised as an international crime', *Climate Liability News*, 6 December 2019.

<sup>156</sup> 'We have 12 years to limit climate change catastrophe, warns UN', *The Guardian*, 8 October 2018. UNEP, *Emissions Gap Report 2019*, Executive Summary, p. x: 'Had serious climate action begun in 2010, the cuts required per year to meet the projected emissions levels for 2°C and 1.5°C would only have been 0.7 % and 3.3 % per year on average. However, since this did not happen, the required cuts in emissions are now 2.7 % per year from 2020 for the 2°C goal and 7.6 % per year on average for the 1.5°C goal. Evidently, greater cuts will be required the longer that action is delayed.'

The Amazon is also home to hundreds of distinct indigenous peoples. Historically, this region is their ancestral homeland. It has always been so, despite the incursion of others. Over time, countless indigenous cultures have disappeared through assimilation, disease or genocidal removal policies. Such colonial practices have no place in today's Amazon. Indigenous peoples of the region have a right to live on their lands, determine their own development and live according to their customs, traditions and cultures. These rights are recognised in the laws of the countries of the region as well as in international commitments the Amazonian Governments and the international community have made to respect the self-determination of indigenous peoples.

Indigenous peoples, despite contributing little towards global warming, are affected disproportionately by its effects. They are, however, the historic managers and caretakers of the forest. They have proven success. Their practical experience, scientific knowledge and the underlying philosophy that places the human as a part of nature rather than its master, are essential contributors to any collaboration to protect and nurture the forest. Their future and their rights must be recognised in all actions affecting the Amazon.

Protected areas, indigenous territories and policies and programmes to use the forest sustainably and reforest have shown their effectiveness when they are monitored and implemented through dedicated and well-resourced public institutions. That is not necessarily the case at this time as noted in this report.

The European Parliament has adopted a far-reaching resolution on indigenous peoples that can be further implemented and the EU itself is committed to a zero-carbon future. The recommendations that follow are in the spirit of these initiatives and focus on the following policy areas: (a) supporting indigenous peoples and other communities living sustainably and playing an essential role in forest maintenance and rehabilitation; (b) supporting efforts in the countries concerned to reduce deforestation and loss of biodiversity; (c) supporting efforts by the countries concerned in implementing human rights and environmental standards and combating illegal deforestation; (d) ensuring that the actions of the EU do not inadvertently through its policies, or those of its citizens and companies do not contribute to further degradation of the Amazon; (e) consider strengthening the legal protection of the environment and nature.

### **The European Parliament could:**

#### **Indigenous peoples**

1. Use its budgetary and scrutiny competences to enhance support for civil society organisations and academic institutions, in cooperation with indigenous peoples, to continue research on the impacts of extractive and development activities on indigenous communities in the Amazon as well as on the root causes and structural problems affecting their human rights.
2. Recommend a specific targeted programme on Amazonia under EU budgets for climate change and green development, such as the Euroclima+ programme, to channel technical assistance that directly reaches indigenous peoples to support self-government, territorial control and management.
3. Recommend that the above-mentioned programme include support to sustain forest-related knowledge and pilot alternative sustainable indigenous economic activities including by facilitating access to EU markets, in line with the proposal to redirect finance to support more sustainable land-use practices in the EU communication of July 2019 on stepping up EU action to protect and restore the world's forests.
4. Call for continued support for capacity-building of indigenous peoples in relation to human rights including on businesses and their responsibility to respect human and indigenous peoples' rights.

5. Support Amazonian indigenous peoples and other indigenous peoples to secure a dedicated funding window under the UN's Green Climate Fund (GCF) for indigenous climate change mitigation and adaptation initiatives.
6. Recommend to EU member states that they scrutinize the implementation of World Bank and other international financial institutions, including the European Investment Bank, where they are shareholders, to ensure that lending policies respect the rights established in the United Nations Declaration on the Rights of Indigenous Peoples and ILO Convention 169 on indigenous and tribal peoples, in particular the right to self-determination and the principle of free, prior and informed consent which should be a requirement in the event of large-scale projects likely to affect indigenous peoples.
7. Call for continued support to the United Nations mechanisms including the Special Rapporteur on Indigenous Peoples, the Expert Mechanism on the Rights of Indigenous Peoples and the Permanent Forum on Indigenous Issues and call their attention to the specific situation of Amazon indigenous peoples, especially to those living in voluntary isolation and initial contact.
8. Examine ways and means of supporting the implementation of the recommendations issued by the IACHR in its 2019 report on the Situation of Human Rights of the Indigenous and Tribal Peoples of the Pan-Amazon Region and in its 2013 report on Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas.
9. Recommend that EU Member States which have not done so ratify International Labour Organization Convention 169 on indigenous and tribal peoples.

#### **Protected areas and indigenous territories**

10. Call for support to efforts by Amazonian countries to extend and rehabilitate Protected Areas through technical and financial assistance.
11. Invite the Commission and EEAS to consider working with the Amazonian countries, including the Amazon Cooperation Treaty Organization and UNESCO, to identify and protect further World Heritage sites containing rich cultural and biological diversity in the region ensuring that, where these areas coincide with indigenous lands, indigenous peoples are active managers.
12. Request that Indigenous Amazonian proposals for community conserved forest areas be endorsed and supported in EU communications and indigenous initiatives for sustainable forest management be supported in political dialogues with Amazonian countries.

#### **Rule of law and human rights defenders**

13. Call for a programme to support civil society organizations working to protect the environment of the Amazon and human and indigenous peoples including by allocating specific funds under the EU human rights defenders programme to climate activists and environmental defenders in line with the commitments of the proposed EU Action Plan on Human Rights and Democracy, 2020 - 2024.
14. Request EU delegations to continue to take up systematically cases of environmental defenders facing threats of violence with the countries concerned in line with paragraph 10 of the EU Guidelines on Human Rights Defenders.
15. Recommend the enhancement of programmes to promote the rule of law in the Amazon region, in line with the EU - Latin America and Caribbean relations agreement of May 2019 to promote, inter alia, democracy, the rule of law and human rights. The programme could include technical assistance to support ministries charged with environmental protection and justice in the Amazon.

16. Propose that the EU institutions work with member states of the Amazonian Cooperation Treaty Organization and indigenous peoples and environmental defenders to develop initiatives to combat organised crime, and illegal land grabs and deforestation in the Amazon.

### **Business and due diligence**

17. Ensure that implementation of the EU - Mercosur Treaty respects the rights of indigenous peoples under ILO Convention 169 which Mercosur states have ratified<sup>157</sup>, the United Nations Declaration on the Rights of Indigenous Peoples, the American Declaration on the Rights of Indigenous Peoples and relevant jurisprudence of the Inter-American Human Rights System, including the right to be consulted and to obtain their free and informed consent prior to any development activity affecting their lands, territories and resources.
18. Call for the establishment by the EU of an effective, affordable, and culturally accessible grievance mechanism where indigenous peoples can address allegations of European corporate violations of their rights, including their decision-making rights over developmental activities in their territories or impacting on their rights.
19. Recommend that the EU and EU Member States include reference to indigenous peoples and the rights contained in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in the relevant and emerging frameworks for due diligence and/or duty of vigilance, and in Business and Human Rights National Action Plans, especially when activities might affect peoples in voluntary isolation and initial contact.
20. Recommend that EU Member States harmonise their OECD National Contact Points processes to facilitate access by indigenous communities and improve mediation and public determinations of the allegations raised, including to complaints related to indigenous peoples in the Amazon region, especially to those that include areas where peoples in isolation or initial contact live.
21. Ensure that companies based, registered or otherwise having a significant market or administrative presence in the EU are held to account for violations of indigenous peoples' rights in the Pan Amazon region, taking the decisive steps to allow that companies responsible of those violations can be accountable of their acts and repair the consequences. To this end the EP should urgently endorse the findings of the EC study on due diligence requirements through the supply chain of January 2020 and support mandatory due diligence legislation for companies and investors.
22. Explore demand-side initiatives at the EU level that guarantee human rights monitoring and due diligence, with an associated enforcement and sanctions regime, to ensure that products and commodities entering the EU market are not sourced from areas in which customary land tenure regimes are not recognised or respected in practice, or where land conflicts are associated with natural resource extraction. In this respect support the maintenance of the Soy Moratorium and its extension to the Amazon savannah ('cerrado').
23. Support further discussion under the auspices of the UN Forum on Business and Human Rights on ways and means of strengthening protection of indigenous peoples' rights in the Amazon region. This should include the promotion of discussions and specific standards for the protection of indigenous peoples, with particular attention to peoples in isolation and initial contact.
24. Continue to push the EU and Member States to engage in the discussions of the Open-ended Intergovernmental Working Group on Transnational Corporations and other business enterprises with respect to human rights regarding a proposed treaty on business and human rights as a means

<sup>157</sup> Uruguay has not ratified ILO Convention 169.

of preventing the most egregious violations of human rights of indigenous peoples arising from certain practices by governments and business enterprises.

25. Propose an EU-initiated multi-stakeholder dialogue on indigenous peoples' rights and business enterprises operating in the Amazon region focused on regulation in accordance with the Declaration on the Rights of Indigenous Peoples and other relevant international standards. Such a multi-stakeholder dialogue should include businesses from outside the EU area.
26. Recommend that EU-based companies provide disclosures on land acquisitions in the Amazon region.

#### **The right of nature**

27. Consider the viability and legal implications of alerting the International Criminal Court (ICC) to a possible crime against humanity in Brazil's Amazon affecting the integrity of the Amazon biome, causing the illegal dispossession of indigenous peoples' lands, and the threatening the lives of indigenous peoples in voluntary isolation in line with the ICC's 2016 Policy Paper<sup>158</sup>.
28. Consider a study to examine the case for giving legal personality to nature, thereby strengthening the legal protection of the environment and criminalizing actions wilfully threatening biodiversity.

<sup>158</sup> See footnote 2.

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## Annex - List of organisations working in and on the Amazon

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CONFENIAE – <https://conaie.org/>.

IWGIA – <https://www.iwgia.org/en/>.

RAISG – <https://www.amazoniasocioambiental.org/en/>.

Survival International – <https://www.survivalinternational.org>.



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PE 603.488  
EP/EXPO/DROI/FWC/2019-01/LOT6/1/C/03

Print ISBN 978-92-846-6867-0 | doi:10.2861/297422 | QA-01-20-415-EN-C  
PDF ISBN 978-92-846-6866-3 | doi:10.2861/757 | QA-01-20-415-EN-N