



TECHNICAL SUPPORT



LEGAL LIABILITIES OF AGRICULTURAL TRADERS IN THE SOY SUPPLY CHAIN UNDER BRAZILIAN LAW



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1. INTRODUCTION

The expansion of agribusiness, especially the cultivation and processing of soybeans, has significantly impacted Brazil's natural and social environments, particularly in regions like the Amazon rainforest and the Cerrado tropical savannah. The Amazon is the world's largest rainforest and is vital not only to Brazil and other South American countries, it also impacts the global climate and the circulation of ocean currents¹. The region faces rising pressures from economic activities that often result in deforestation and other forms of environmental degradation. The Cerrado biome is also becoming more vulnerable, with a troubling growth in deforestation over the past two years (Mapbiomas, 2024)². These biomes are essential not only for biodiversity conservation but also in the fight against climate change, due to their function as carbon sinks that remove greenhouse gas emissions from the atmosphere.

Agricultural expansion is causing harm to these vital ecosystems. This raises serious concerns about the alignment of corporate practices with Brazilian public policies and regulations for environmental conservation and sustainable development. It is critical that companies understand and identify environmental and social harms at every stage of their supply chains, in order to comply fully with international norms and Brazilian law. This report details the legal risks associated with the soy supply chain in Brazil and their potential consequences under Brazilian law.

¹https://wwf.panda.org/discover/knowledge_hub/where_we_work/amazon/about_the_amazon/why_amazon_important/
²<https://brasil.mapbiomas.org/2024/05/28/cerrado-lidera-desmatamento-tambem-em-territorios-protegidos/>





2. CONTEXTUALIZATION AND IMPACT: THE DEFORESTATION CRISIS IN BRAZIL

In recent years, Brazil has faced significant land use changes, with deforestation emerging as a major environmental concern. Driven by a combination of economic, political and social factors, deforestation is particularly prominent in the Cerrado and Amazon regions (Pereira Góes 2013). In the Cerrado, the expansion of soybean production and cattle ranching has converted vast areas of native vegetation into agricultural lands (Fearnside 2020). Deforestation in the Amazon is linked not only to agricultural expansion but also illegal logging and the construction of infrastructure such as roads and ports, that facilitate access and colonization of areas that until then maintained their vegetation cover (Arraes Mariano Simonassi 2012).

In this context, the deforestation data from the the federal government show that deforestation in the region of the Brazilian Legal Amazon³ has doubled from 5,012 km² in 2014 to 11,568 km² in 2022, according to official data from the National Institute for Space Research (INPE 2023).⁴ In 2021, the Cerrado registered a cumulative deforestation of 8,531 square kilometers, representing the largest devastation since 2016. This alarming increase is in part due to lack of investment in environmental monitoring and law enforcement (Brazilian Supreme Court Case ADPF 760/DF 2024⁵).

The rise in deforestation during the period from 2018 to 2022 marked a escalation in the devastation of Brazilian native vegetation due to several interconnected factors. Brazil had seen a significant reduction in environmental oversight,

including a decrease in the number of inspectors; and a weakening of the bodies responsible for environmental law enforcement, such as IBAMA. This had given those who deforest illegally a sense of impunity (Werneck Angelo Araújo, 2021). Additionally, many agents of deforestation have operated with the expectation that illegal practices will eventually be legalized, especially after the approval of laws granting amnesties and relaxing environmental regulations (Brazil, 2023).

The Action Plan for Prevention and Control of Deforestation in the Amazon (PPCDAm) has played a fundamental role in combating deforestation and environmental degradation. However, PPCDAm became ineffective in controlling deforestation between 2018 and 2022⁶. The loss of effectiveness is attributable to several factors, among them the suspension of the technical groups and political managers responsible for PPCDAm's operation, which resulted in an alarming increase in deforestation (Werneck Angelo Araújo 2022). In 2023, PPCDAm underwent a renewal process that included an open consultation for contributions from civil society (Brazil, 2023). The renewal of PPCDAm resulted in a significant reduction in deforestation rates in the Amazon in 2023. However, this progress was not seen in other regions, as agricultural intensification continued to drive deforestation in the Cerrado and Pantanal biomes (EJF 2023; Andrade Gomes Dias 2023).⁷

³The "Legal Amazon" (Amazônia Legal) is an administrative region in Brazil. It covers over 5 million square kilometers and encompasses nine states: Acre, Amapá, Amazonas, Pará, Rondônia, Roraima, Tocantins, most of Mato Grosso, and part of Maranhão. This area represents about 61% of Brazil's total land area and is home to approximately 21 million people, which is around 12.4% of the Brazilian population. The region's designation was established by the Brazilian government in 1948 to promote economic development and address regional inequalities. The policies focus on preserving the rich biodiversity and supporting sustainable development practices in the area. Available at <https://www.ibge.gov.br/geociencias/cartas-e-mapas/redes-geograficas/15819-amazonia-legal.html>

⁴Available at https://www.gov.br/inpe/pt-br/assuntos/ultimas-noticias/sei_01340_00984_2022_72_notatecnica_estimativa_prodes_2022_revisada_lu_lm_27_10_rev_la-002.pdf

⁵Available at <https://portal.stf.jus.br/processos/downloadPeca.asp?id=15368120159&ext=.pdf>

⁶<https://imazon.org.br/imprensa/desmatamento-na-amazonia-chega-a-10-781-km%C2%B2-nos-ultimos-12-meses-maior-area-em-15-anos/>

⁷According to Deter (Real-Time Deforestation Detection System) of Inpe (National Institute for Space Research), the rate of deforestation in the Amazon fell by almost 50% while in the Cerrado it increased by 43% between January and December 2023. In March 2024, the rate of vegetation clearing in the Amazon fell by 54% compared to the previous year, while devastation increased in the Cerrado. Available at: <https://climainfo.org.br/2024/04/15/desmatamento-cai-ainda-mais-na-amazonia-mas-resiste-no-cerrado/#:~:text=0%20INPE%20divulgou%20na%20C3%BAltima%206%C2%AA%20feira.ano%20passado%2C%20a%20deavasta%C3%A7%C3%A3o%20aumentou%20no%20Cerrado>



Environmental degradation in Brazil is rooted in interventions that disregard both the eco-socio-cultural history of the region and the human rights of Indigenous and local communities (Costa 2008). In the Amazon, for instance, traditional development policies often promote forms of land occupation that prioritize economic exploitation with low added value and high environmental impact (Loureiro 2022). These policies have resulted in an exploratory use of ecological resources, generating institutional and social tensions (Svampa, 2016). Environmental degradation in the Amazon reflects historical practices that have neglected ecological sustainability and the cultural integrity of the region's Indigenous and traditional communities.

Development policies based on forms of land occupation that have typically ignored the Amazon's eco-socio-cultural uniqueness (Costa, 2008;

Tupiassu et al., 2019) and encouraged capital-intensive extraction of forest goods (Loureiro, 2022), which have proven to be antagonistic to forest maintenance. Since the 1970s, the government policy of population densification has violated Amazonian forest integrity, mainly by deforestation (Castro, 2004). To be clear, economical development is not antagonistic of environmental protection, both can be achieved simultaneously, provided that the development model is compatible with the standing forest.

Since the 1960s, development policies have aimed to incorporate the Amazon into the Brazilian agro-export profile and define it as an immense source of raw materials (Loureiro 2022; Santos Silva Santana 2019; Becker 2005). Operation Amazonia, a government program to propel the development of the area, sought economic development by



subsidizing timber, mining and agriculture (Loureiro 2022). All of these activities require land use and land change of forested areas through logging, extraction, pasture and crop cultivation. Other public policies, such as financing lines and tax incentives, encouraged agricultural activities in the region.

In recent years, soybeans have become an important national commodity in Brazil. Public policies provide incentives for soybean production, including the construction of large infrastructure projects for transportation and export (Wesz Junior 2016; Sauer Leite 2012). The advancement of the deforestation frontier, especially in the Cerrado and Amazon regions, is directly related to economic development programs aimed at the production of soybeans for the international market (Vieira Filho 2016; Sauer Leite 2012).

Soy production began to rise in the region following the 1980s economic crisis. The Brazilian rural sector intensified production of processed agricultural products for export in order to generate foreign exchange credits and pay external debt services (Sauer Leite 2012; Gazzoni Cattelan Nogueira 2019). The incentives led to a global increase in agricultural production, including soybeans (Gazzoni Cattelan Nogueira 2019). Investment from public banks motivated Brazilian producers to explore agricultural activities, especially soy production for the international market (Sauer Leite 2012).

In the context of soy production, it is a complex supply chain involving different stakeholders, actors, and agents. The supply chain involves raw-material suppliers, rural producers, storers, agro-industries, and transport systems (Mello Brum, 2020). As already highlighted, recent research has demonstrated the involvement of large soy agribusiness companies in various phases of production (Domingues Berman, 2012).

The growth in soy production has led to a land rush (Sauer Leite 2012). Producers often begin by logging and replacing native vegetation with pasture for cattle ranching before proceeding with mechanized agriculture focused mainly on soy production (Domingues Berman 2012). In the Amazon region, where most areas have extensive natural forest cover, deforestation and degradation are often necessary precursors to cattle ranching and soy cultivation (Sauer Leite 2012).

Official data from PRODES and MapBiomias shows that the main drivers of deforestation in the Amazon region include cattle ranching and crop cultivation, with large native vegetation areas having been converted into pasture between 2015 and 2022 (INPE, 2023). Thus, a trend converges towards deforestation of native vegetation areas for the economic exploitation of activities based on cattle ranching and subsequently for agricultural production (INPE, 2023).

The impacts of this degradation are not only environmental but also social. When producers arrive in the Amazon in search of land to grow soybeans and other commodities, they encounter traditional communities already inhabiting the region. Rubber tappers, Indigenous Peoples, and quilombola communities have historically used forested areas of the Amazon for subsistence. These groups play a fundamental role in the environmental conservation of the region and ensure the permanence of ecosystem services (Tupiassu et al. 2019). Deforestation has therefore generated socio-environmental conflicts, including territorial and resource disputes that sometimes result in armed conflicts (Ananias Santos 2021). These conflicts demonstrate the rarity of development projects that value the socio-ecological systems of the region (Davidson-Hunt; Berkes 2003).





3. SOCIOECONOMIC IMPACTS OF ENVIRONMENTAL DEGRADATION THROUGH SOY PRODUCTION AND LAND USE PRACTICES

Soy production in Brazil is a complex system involving different actors from rural producers to the final consumers. Starting with input suppliers who provide essential items such as fertilizers, seeds, fuels, machinery and equipment (Gomes et al. 2022). Producers are responsible for soil preparation, planting and harvesting the soybeans on their farms or production units (Domingues Berman 2021). After harvesting, soybeans are sent to storage units where they are cleaned, dried and stored before going to processing facilities or ports for export (Gomes et al., 2022). Export agents send soybeans to external end consumers.

Currently, most complaints in the soy production chain are directed at rural producers and involve environmental, social and land issues.⁹ It is crucial to recognize, however, that the actions of any agent in the supply chain can result in accountability for agents in other stages. In the Brazilian jurisdiction, responsibility for deforestation can also fall on commercial agents and export companies that finance or acquire products from deforested areas. Local producers are also frequently encouraged to expand production by large, multinational corporations with verticalized supply chains and outflow structures for the global market. These companies often determine the supply of inputs such as seeds and pesticides and control the construction of and access to ports, roads and railways. (Domingues Berman 2012; Wesz Junior 2016).

Since the 2000s, large companies have established themselves in the Amazon region with vertical supply chains. Control over infrastructure has made it easier for large companies to consolidate their presence in the region and expand activities. For example, the Northern Arch region long posed logistical problems for soy agribusiness due to the

poor quality of infrastructure and transportation. Since 2014, there has been a significant increase in soybean export capacity through the Northern Arch outflow infrastructure (Caldeira Lopes Gasques 2023).

Major multinational soy industry companies have driven much of the development and agricultural expansion in the Amazon region. These companies often control everything from the supply of inputs such as seeds and pesticides to the construction of ports, roads, and railways (Domingues Berman, 2012; Wesz Junior, 2016).

3.1. The Impact of Built Infrastructure for Agribusiness in Local Communities

In the northern region of Brazil, where difficult access has inhibited economic development, the construction of productive infrastructure generates immediate socioeconomic impacts. Roads and ports increase land values and promote the expansion of agricultural activities, especially soy cultivation, by facilitating transportation and making possible the export of products (Caldeira Lopes Gasques 2023).

The arrival of soy production also generates negative environmental impacts. The ease of transportation and export, combined with land appreciation and increased agricultural production, lead to deforestation. Data show that deforestation is more prevalent around major highways (Domingues Berman 2012). The construction of a port affects the entire infrastructure network, including roads, railways and waterways for

⁹Available at: <https://nacla.org/news/comercio-internacional-graos-amazonia-brasileira> ; <https://www.globalwitness.org/en/campaigns/environmental-activists/global-commodity-traders-are-fuelling-land-conflicts-in-brazils-cerrado/> ; <https://www.earthrights.org.uk/news/US-agribusiness-soy-linked-to-stolen-indigenous-land>;



production outflow. A study of supply chain data indicated that one company's soy production chain is directly linked to the risk of deforestation of about 20,000 hectares per ton of export (Trase 2018). Other studies corroborate this trend, highlighting not only an increase in deforestation associated with soy supply chains but also the emergence of socio-environmental conflicts (Paixão Jr. 2012).

3.2. Complaints of Violence and Intimidation Against Indigenous Lands and Traditional and Local Communities

Corporate policies often neglect the socio-environmental impacts of their activities, particularly those linked to the rights of traditional peoples and communities. Article 14 §1 of Law 6.938/1981 establishes that *"Without obstructing the application of the penalties provided for in this article, the polluter is obliged, regardless of the existence of fault, to indemnify or repair the damages caused to the environment and to third parties affected by its activity."* Furthermore, §2 IV of Law 6.938/1981 defines the polluter as: *"the natural or legal person, public or private, responsible directly or indirectly for an activity causing environmental degradation."*⁹

Thus, repairing damages, including any moral and material damages, is the responsibility of a company as long as direct or indirect responsibility is proven, regardless of fault or negligence.

This section will explore complaints of socio-environmental damage that could generate responsibilities for agribusiness companies in regions with significant soy production. If these practices are confirmed, they can result in legal liability for actors throughout the soy supply chain, including producers, indirect suppliers and subsidiaries.

In Capão do Modesto, Correntina, in the state of Bahia,¹⁰ agricultural producers have been accused of illegally appropriating public areas historically occupied by traditional communities and intimidating these communities with threats of

death and property destruction. These allegations have legal implications related to land grabbing (Article 20 of Law 4.947/1966); environmental degradation (Article 50 of Law 9.605/1998); and threat and material damages (Articles 147 and 163 of Decree-Law 2.848/1940). Penalties for these offenses are imprisonment and an obligation to indemnify and repair material and moral damages. Additionally, companies that do business with the accused producers in the supply chain could also be held responsible for socio-environmental damages. In Mato Grosso, the intrusion of soy farms onto Indigenous territories has also raised concerns about the region's production chain, especially the availability of soy products originating from local producers accused of grabbing land illegally from Indigenous territories. According to recent complaints,¹¹ soy farms illegally located on Guarani Kaiowá Indigenous Territories were supplying major distributors. These producers are accused of armed violence against Indigenous people, as well as land grabbing. This example suggests that large agribusiness companies are failing to vet and monitor suppliers, producers and users of ports and other infrastructure.

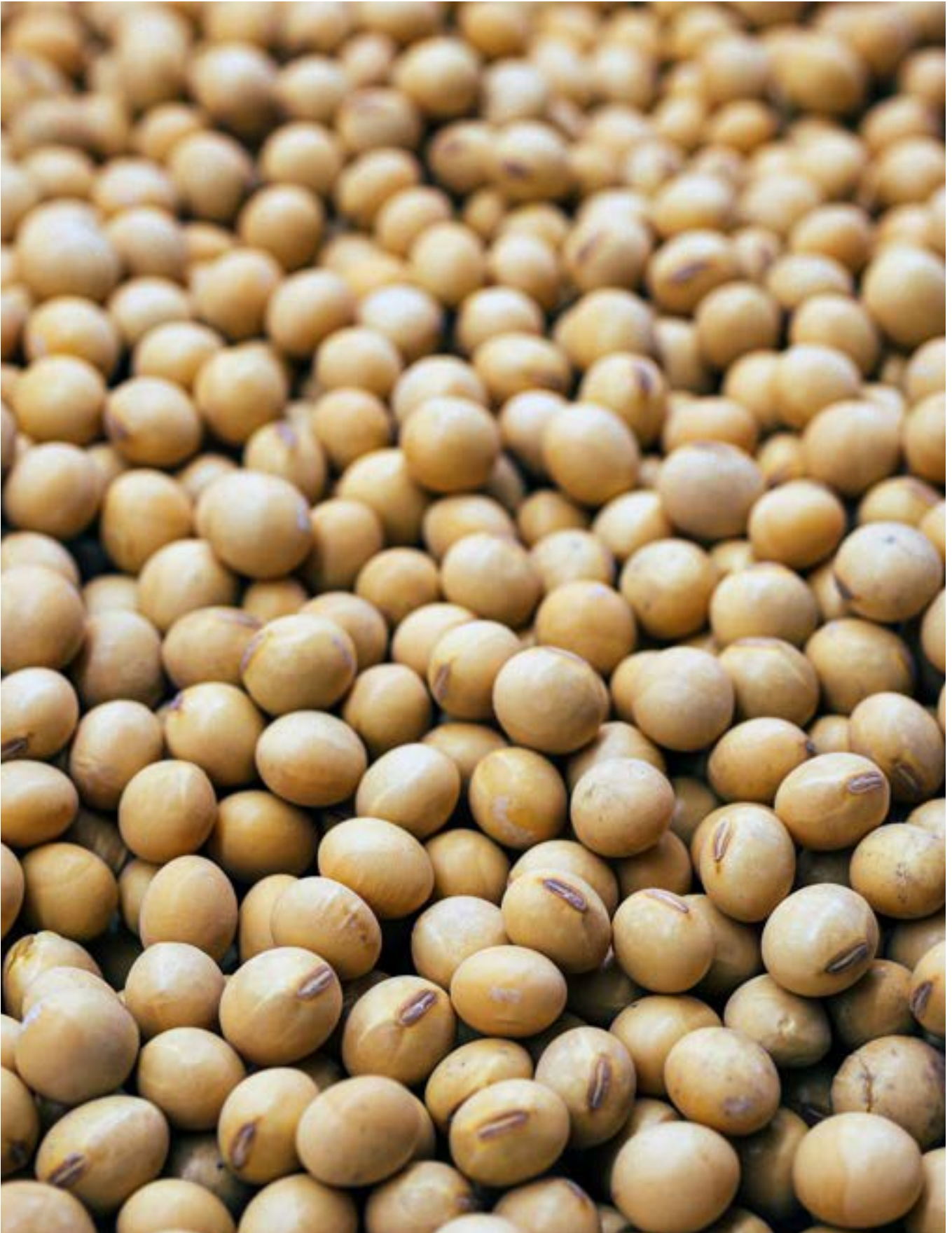
In a similar vein, soy production near Indigenous territories in Santarém, Pará has generated conflicts with local communities and negative impacts on the environment. The use of pesticides in soy farms has contaminated water bodies and impacted the health of residents of the Mundurucu Indigenous Territory. Threats and intimidation have exacerbated territorial conflict and violated the rights of traditional communities in the region. Even though the territory has not been formally demarcated, parties can still be held responsible for human rights violations and environmental degradation under Article 50 of Law 9.605/1998, and Articles 147 and 163 of Decree-Law 2.848/1940.

Thus, considering that the agribusiness value chain is vulnerable to illegalities, due to the causes, both historical and current, listed above, companies would benefit from approaches that actively prevent environmental and human rights violations, as well as securing a system that provides verifiable information on suppliers and indirect vendors, regarding these alleged violations.

⁹Translated by the author.

¹⁰<https://reporterbrasil.org.br/2023/09/pge-aponta-grilagem-verde-em-area-onde-vive-comunidade-capao-do-modesto/>

¹¹<https://www.earthrights.org.uk/news/US-agribusiness-soy-linked-to-stolen-indigenous-land>; <https://www.earthrights.org.uk/news/therewillbeblood>





4. LEGAL AND REGULATORY FRAMEWORKS

This chapter examines possible vulnerabilities for environmental damages from Brazil's soy production chain that could lead to actionable behavior. It highlights the potential liability of major agribusinesses for environmental harms, given their substantial influence and involvement at various stages of soy production; and discusses the laws and regulations distributing responsibility across the chain and aiming to enhance sustainability and accountability in the soy industry.

Brazilian legislation is both stringent and broad. All actors along the supply chain can face civil and potentially criminal liability for environmental damages. This includes both direct agents and indirect enablers of deforestation and other environmentally harmful practices. Moreover, European regulations and OECD guidelines have recently introduced stricter compliance and diligence requirements to curtail environmental degradation from agroforestry products, with a specific focus on mitigating deforestation risks.

4.1. Responsibility for Environmental Damage

The production and export of soy in Brazil comprises a complex system with a variety of actors along the value chain. They include suppliers of seeds, fertilizers and other agricultural inputs; rural producers growing soybeans; transport and storage; and companies responsible for commercial marketing of the final product (Mello Brum 2020). Large soy agribusiness companies are involved in many stages of this production chain, including the commercialization of seeds and pesticides, direct transport, and the drying and handling of soybeans before marketing (Domingues Berman 2021).

Large companies exercise considerable influence over rural producers and other actors to coordinate activities along the entire soy production chain. Brazilian law considers both direct and indirect risks related to environmental damages, spreading liability among all parties in the production chain. According to legal provisions, such as Article 225 § 3 of the Federal Constitution and Article 404 of the Brazilian Civil Code, civil liability is objective in

nature, meaning that a polluter can be held liable for environmental damage regardless of a causal link between the damage and the conduct of the polluter. Environmental damage is defined as an alteration of the essential properties of the environment. Furthermore, Law 6.938/1981 establishes objective and joint environmental liability, implying that all participants in the production chain can be held responsible for environmental violations. Therefore, business must ensure the integrity of the entire soy production chain to reduce the risks of liability.

Brazilian legislation provides for both civil and criminal liability for environmental damages from illegal deforestation and other damages during soy production. According to Summary 623 of the Superior Court of Justice (STJ), the obligation to repair environmental damages is *Propter Rem*, implying that both the current and previous landowner can be liable for environmental damages even if they were not the direct cause of illegal deforestation. Additionally, Law 9.605/98, known as the Environmental Crimes Law, establishes criminal and administrative sanctions for conduct and activities harmful to the environment. This includes fines, suspension of activities, embargoes and the loss of business assets in cases of illegal deforestation or environmental degradation.

The act of deforesting or economically exploiting or degrading forests on public or vacant lands without authorization from the competent authority violates Article 50-A of Law 9.605/1998. Additionally, Article 38 of the same law outlaws the destruction or damage of permanent preservation forests or the use of them in violation of protection norms. Those responsible for the management and decision-making of a company whose activities violate these laws may face penalties ranging from fines to imprisonment, depending on the severity of the infraction. Additionally, civil liability for environmental damages was established in Law 6.938/1981, which defines a polluter as any natural or legal person, public or private, responsible directly or indirectly for an activity causing environmental degradation. Civil offenses can result in significant legal consequences for companies, including the loss of business assets, embargoes, and suspension of activities.



Companies also face liability for transactions with producers who commit these crimes. Article 180 of the Brazilian Penal Code defines “reception” as acquiring, receiving, transporting, conducting or concealing, for one’s own benefit or another’s, a thing known to be the product of a crime, or influencing a third party in good faith to acquire, receive or conceal it. In environmental law, reception may occur when individuals acquire, receive, transport or conceal forest products, wild animals or other natural resources extracted illegally from protected areas, such as nature reserves or Indigenous lands, as per Article 46 of Law 9.605/1998 (Ghignone 2007).

The reception of products originating from land grabbing may constitute a criminal practice under this definition. Land grabbing constitutes a specific form of fraud. Any products resulting from land that has been obtained fraudulently may be considered products of criminal origin (Ghignone 2007; Souza, 2022), including soybeans grown in areas with environmental irregularities or obtained through fraudulent practices. By acquiring soy from these areas, buyers may be benefiting from products obtained criminally. If a company acquires soy from a region without adequately investigating the legal origin of the property, it is potentially involving itself in a criminal practice.

Recent complaints of land grabbing and intrusion of soybean farms onto public or collective areas of traditional peoples and communities¹² have raised questions about the integrity of the production chain. If soy is sourced to areas with land grabbing and other legal violations, then all those involved in the production chain can be held responsible for the crime, as per Article 180 of Decree-Law 2.848/1940. Penalties include imprisonment of one to four years, in addition to possible civil and administrative consequences.

4.1.1. International Frameworks

As an international commodity, Brazilian soy needs to be manufactured in accordance with compliance requirements of foreign markets. The European market is one of the consumers of Brazilian soy (Caldeira Lopes Gasques 2023). Recent European

initiatives like the Dialogue Roadmap for Action on Forest Agriculture and Commodity Trade and the Glasgow Leaders’ Declaration on Forests and Land Use have led European countries to adopt regulations to exclude agroforestry products connected to environmental degradation.

The Organization for Economic Cooperation and Development (OECD) established specific guidelines and criteria in 2023 to screen for and limit forest degradation in agricultural production chains (OECD FAO 2023). The OECD emphasized the importance of reducing risks in local production chains and the responsibility of companies to act directly to reduce or mitigate the risks of environmental degradation and deforestation along their entire production chains. The OECD Regulation for Responsible Agricultural Supply Chains, established in 2021, promotes greater accountability for corporate conduct (OECD FAO 2023). It requires companies to conduct adequate diligence to identify, prevent, mitigate and account for the risks and adverse impacts on the environment before marketing their products. Additionally, companies are advised to develop a comprehensive corporate policy that addresses issues such as human rights, labor rights, health and public safety, food security and nutrition, property rights and access to natural resources, environmental protection and sustainable use of natural resources (OECD FAO 2023). Developing such a policy entails the identification and mitigation of risk areas in agricultural supply chains.

The OECD Regulation for Responsible Agricultural Supply Chains also establishes the responsibility of companies to determine the environmental impacts of their operations. A company’s liability is determined by the causal link between its business activities and negative environmental outcomes. A company can be held liable when its operations contribute directly to adverse environmental impacts anywhere in the production chain, whether through its own actions or by facilitating, encouraging or benefiting from others’ harmful activities. Companies that acquire soy from suppliers known for deforestation are responsible for this activity even if they are not carrying it out directly. This clarity promotes a more transparent and responsible approach regarding the environmental impacts of business activities.

¹²<https://www.earthsight.org.uk/news/US-agribusiness-soy-linked-to-stolen-indigenous-land>



OECD regulations imply that any agent in the production chain, from a farmer operating in illegal areas to the final consumer who acquires a finished soy product, can be held liable for environmental damages resulting from illegal deforestation, even if these agents were not its direct cause. They could theoretically be held liable for material damages from environmental degradation and bear the costs of restoration and compensation for moral damages to communities.

Recent complaints point to a possible involvement of companies in the commercialization of soy originating from deforested areas¹³, both through a direct relationship with rural producers involved in illegal deforestation activities and due to problems in tracking the production chain.

¹³<https://www.globalwitness.org/en/campaigns/environmental-activists/global-commodity-traders-are-fuelling-land-conflicts-in-brazils-cerrado/>; <https://www.earthsight.org.uk/news/US-agribusiness-soy-linked-to-stolen-indigenous-land>



4.2. Licensing

Environmental licensing is the process by which activities or enterprises that use environmental resources are licensed, as established in Item IV of Article 9 of Law 6.938/1981. This practice is one of the main instruments of Brazil's national environmental policy. It is a mechanism to ensure that human activities are carried out sustainably, minimizing negative impacts on the environment and people's quality of life (Trennepohl 2022). It entails an assessment of the enterprise's environmental impacts, the identification of measures to mitigate and control these impacts, and the issuance of an environmental license that authorizes the enterprise's operations within acceptable environmental parameters.

In Brazil, the environmental license is, in most cases, a triple license, divided into three distinct stages: Preliminary Licence (LP), Installation Licence (LI) and Operating Licence (LO). The Preliminary Licence anticipates the installation of the potentially polluting installation or activity and is accompanied by technical and environmental studies. The most common ones are the environmental impact assessment (EIA) and the environmental impact report (RIMA), that summarizes the EIA. These studies require environmental impact studies and the consultation of different interested parties (Trennepohl 2022). The National Environmental Council (CONAMA) established the general regulation of environmental licensing with Resolution No. 237/1997. The procedure, as described in Article 10 of the resolution, includes the definition of projects and environmental studies, the license application with necessary documentation, the analysis of the presented data, requests for clarifications and completions, public hearings and a conclusive technical opinion and legal opinion, culminating in the granting or denial of the license.

Associated with this regulation is Resolution No. 1/1986 of CONAMA, which requires an EIA and RIMA and the fulfillment of specific requirements.¹⁴ It applies to a wide range of enterprises, including ports, terminals, railways and agricultural projects; and establishes basic criteria and general guidelines

for an impact assessment of any human activity that modifies environmental characteristics (Trennepohl 2022). The assessment will often require the study of the geological, ecological and socioeconomic characters of an area and the evaluation of alternatives to the proposed activity.

The environmental licensing process requires the applicant to assess impacts and their reversibility through different stages of the project, to propose mitigation measures and to develop a program for monitoring and follow-up. This information will be included in an environmental impact report (RIMA), which also includes the objectives and justifications of the project and recommendations on alternatives (Trennepohl 2022). The studies necessary for licensing must be carried out by qualified professionals, ensuring the quality and accuracy of environmental analyses.

Complementary Law 140/2011 also establishes specific guidelines for environmental licensing, outlining circumstances in which other federal agencies and entities may participate or influence licensing. According to Article 40 of this law, intervention is allowed when activities affect lands with homologated demarcation or subject to an ordinance, areas titled to remnants of Quilombola communities, culturally significant or protected assets, and conservation units and their buffer zones. These provisions aim to ensure a comprehensive and integrated approach in environmental licensing, considering not only direct environmental impacts but also their effect on sensitive areas with historical and cultural value (Trennepohl 2022).

Complementary Law 140/2011 gives the public agencies responsible for representation or territorial management a role in the environmental licensing process. For example, the National Indian Foundation (FUNAI) may intervene in Indigenous territories, while the Palmares Cultural Foundation may intervene in Quilombola territories. Local territorial managers may participate in licensing in conservation areas, depending on the type of conservation unit in question (Trennepohl 2022). Public participation plays a crucial role in the environmental licensing process.

¹⁴There are other types of environmental studies, for example, Resolution CONAMA n. 279 from 2001, establishes the simplified environmental licensing process, which requires simplified environmental studies (RAS).



According to §2 of Article 11 of Resolution No.1/1986, Articles 3 and 10, Item V of Resolution No.237/1997, and Article 2 of Resolution 009/1987, public hearings must be held during environmental licensing. These hearings not only disclose activities for public knowledge but also ensure access to information for local populations potentially affected by licensed activities (Trennepohl 2022). Public hearings are convened by the competent environmental agency or requested by civil associations, the Public Ministry or any group with at least 50 citizens. A failure to conduct public hearings can invalidate a license, even after it has been issued.

Agricultural activities that make intensive use of natural resources are subject to licensing to ensure that they are carried out sustainably and in compliance with current environmental regulations (Trennepohl 2022). Environmental licensing protects against significant environmental damages like soil erosion, water contamination and the degradation of natural ecosystems. Licensing may require an environmental impact assessment to identify and mitigate possible damages to the environment, as well as the adoption of sustainable agricultural practices such as soil conservation techniques, integrated pest management and responsible use of agrochemicals.

Other stages of the soy production chain are also subject to environmental licensing, from transport and storage to industrial processing. The transport of soy, whether by roads, railways or waterways, requires environmental licensing to ensure that logistical operations do not harm the environment (Trennepohl 2022). Leaks of fuels or chemicals from vehicles can contaminate soil and water, and inadequate roads can lead to soil erosion (Tiecher 2017). Road and rail construction can also fragment natural habitats. In ports, the risks include water contamination from chemicals during the loading or unloading of ships, as well as impacts on aquatic ecosystems due to dredging to maintain access channels to ports (Sinhor Kitzman Henkes 2018).

Storage facilities, such as silos and warehouses, are also subject to licensing to ensure that they operate according to environmental and safety standards. They risk air pollution from dust in the handling of soybeans, as well as leakages of agrochemicals used for pest and disease control (Tiecher, 2017). In port activities, risks include water contamination due to the spillage of chemicals during the loading or unloading of ships, in addition to the risk of

impacts on aquatic ecosystems due to dredging for the maintenance of access channels to ports (Sinhor Kitzman Henkes, 2018).

As a result, companies that participate in any stage of the soy production chain need to comply with all the legal requirements of licensing. A soy transport company may be subject to fines and administrative sanctions if caught dumping chemicals on the soil during refueling of its vehicles. Similarly, a grain warehouse may face sanctions or even shutdown if it does not adopt adequate dust-control and agrochemical-storage measures. A port terminal may suffer financial penalties and reputational damage if it allows oil to leak during ship-loading operations.

Fines are one of the most common forms of penalty for environmental infractions and are determined based on the severity of the infraction and the potential harm to the environment. As established by Article 72 of Law 9,605/1998, the application and amount of a fine varies according to the type of infraction. In the case of non-compliance with environmental licensing regulations, the penalty will vary according to the size of the company and the environmental impact of the infraction.

Embargos are another possible consequence of environmental licensing violations. An embargo is a temporary suspension of a company's activities by the competent authority as a form of punishment for non-compliance with environmental regulations. An embargo can be imposed based on Article 72 of Law 9,605/1998, which establishes the penalties for environmental infractions. If a company does not comply with environmental licensing regulations and fails to conduct the required environmental impact studies, then environmental authorities can embargo its activities until it acts in accordance with environmental law.

Companies that do not meet the legal requirements for obtaining or maintaining an environmental license can also have their licenses revoked. The competent authorities have the power to revoke a license based on Article 19 of Complementary Law 140/2011, which deals with the competence of federal entities for environmental licensing. A company accused of negative environmental actions in judicial proceedings may lose the right to carry out activities, resulting in the cessation of operations until the irregularities are corrected and the license is restored.



According to Article 14 of Law 6,938/1981, which establishes civil liability for damages to the environment, any agent that causes damages to the environment or local communities due to non-compliance with environmental norms can be required to repair these damages. This can include the restoration of degraded areas, payments to repair environmental impacts, and compensation to affected communities.

Criminal liability is also a possible consequence in cases of serious environmental violations according to Law 9,605/1998, known as the Environmental Crimes Law. Employees of a company who act deliberately or negligently without the required environmental impact studies may be criminally prosecuted. If found guilty, they could face not only substantial fines but also prison sentences, according to Articles 54 to 60 of the aforementioned law.

Finally, the suspension of tax benefits is a possible consequence for companies that violate environmental laws. In Brazil, the government can suspend benefits granted to a company based on Article 70 of Law 9,605/1998, which concerns criminal and administrative sanctions for harmful conduct to the environment. Operating without proper licensing can result in the loss of tax benefits, such as tax incentives, as a form of punishment for non-compliance with environmental norms.

4.3. Indigenous Territories, Traditional and Local Communities

This section discusses the complex legal and ethical issues concerning land use and community rights related to the soy production chain in Brazil, particularly focusing on its impact on traditional and Indigenous communities. The growth of the soy production chain has brought agribusiness into conflict with communities practicing traditional ways of life and underscores the need for lawful and ethical operations that respect the rights and territories of Indigenous and traditional communities.

A major issue is the practice of invasion by rural producers, who often illegally occupy lands designated for Indigenous and traditional communities. This practice raises serious concerns about acknowledging and respecting the collective ownership rights of these communities; and adhering to both Brazilian law and international conventions.





4.3.1. Cases of land grabbing related to traditional peoples and communities

In Brazil, rural producers seeking to expand their agricultural operations to new areas often illegally occupy public or unclaimed lands (Statssart et al. 2021). There are numerous complaints against suppliers and subsidiaries of large agribusiness companies, alleging that they are operating in areas belonging to traditional peoples, especially Indigenous peoples.¹⁵

Agents who illegally occupy public lands and acquire property through fraud in express violation of Article 3 of Law 11.952/2009 may be criminally liable according to Article 50 of Law 6.766/1979. Penalties can include both fines and imprisonment, as well as administrative measures and civil liability. Fraudulent property titles will be invalidated and returned to their rightful holders, who are also entitled to compensation for material damages under Article 932 of Law 10.406/2002.

Companies that seek undue influence over public agents in the licensing process can also be investigated for corruption, such as the issuance of multiple public property titles for a single area. According to Article 5 of Law 12.846/2013, possible sanctions and liabilities include the payment of compensation to legitimate owners, administrative fines, suspension on participation in public tenders and a prohibition on contracting with public agencies for a determined period. Also possible is criminal prosecution for crimes related to corruption, collusion, fraud, influence trafficking and others, resulting in prison sentences and fines.

4.3.2. Free, Prior, and Informed Consent

Free, Prior, and Informed Consent (FPIC) recognizes the right of Indigenous and tribal peoples to participate in decisions that impact their lands and ways of life (Yamada & Oliveira 2013). This right is explicitly defined in Article 6, letter A, of ILO Convention 169, which establishes the need for

prior consultation with these peoples in a free and informed manner before any such decision is made. Their consent must be obtained without coercion or external influence and with full access to relevant information about the implications of the proposed activity (Mebratu-Tsegaye & Kazemi 2020).

In the Brazilian context, the implementation of FPIC is associated with Articles 231 and 232 of the Federal Constitution, which guarantee the right to self-determination of Indigenous peoples and traditional communities (FGV 2023). Before starting a project involving the exploitation of natural resources on or near Indigenous lands, government authorities must consult the affected communities (Garzón, Yamada, & Oliveira 2016). During this consultation, the government must explain the details of the project and its potential impacts, and provide opportunities for communities to ask questions, express their opinions and make an informed decision about the project (Mebratu-Tsegaye & Kazemi 2020).

FPIC was incorporated into Brazil's legal system through Decree No. 10.088/2019, recognizing it as a right that goes beyond a simple public hearing, being fundamental to ensuring the effective involvement of traditional peoples and communities (Garzón, Yamada, & Oliveira 2016). Consultation must be conducted in a format decided by the affected communities themselves (FGV 2023). Moreover, free consent implies the right to reject a project. Any project rejected by a community should not be implemented (Mebratu-Tsegaye & Kazemi 2020).

Soy production often occurs in or near areas with Indigenous Territories (IT) and traditional communities. FPIC should be applied to all stages of the soy production chain, from cultivation to commercialization, ensuring the involvement of traditional communities and respect for their territorial rights and ways of life (Garzón, Yamada, & Oliveira 2016). Through FPIC, these communities should have the opportunity to consent to or reject agricultural activities.

¹⁵<https://www.globalwitness.org/en/campaigns/environmental-activists/global-commodity-traders-are-fuelling-land-conflicts-in-brazils-cerrado/>; <https://www.earthrights.org.uk/news/US-agribusiness-soy-linked-to-stolen-indigenous-land>



If a company proceeds without FPIC, it can face liabilities and sanctions under Brazilian law. The non-observance of FPIC is an administrative infraction under Article 4 of Decree 10.088/2019 and subject to administrative sanctions including simple fines, daily fines and embargos according to Articles 6 and 7 of the same decree. Moreover, the absence of FPIC may violate fundamental rights and entail civil liability under Article 5, paragraph X, of the Federal Constitution, possibly requiring compensation for moral and material damages to the affected communities.

Failure to conduct FPIC may also lead to the suspension of an enterprise's operational license, in addition to administrative sanctions such as fines. It could also constitute an environmental crime under Law 9,605/1998 and be punishable with criminal sanctions such as a fine, partial or total suspension of activities and imprisonment. Finally, the absence or illegitimacy of FPIC may signify the nullity of all illegitimate acts resulting from a defect of will due to error or coercion under Article 171 of the Civil Code. Non-compliance with FPIC can also result in complaints and liabilities at the international level by the competent authorities before the ILO.

4.4. Corporate and Financial Disclosure Regulations

This section unpacks corporate regulatory norms and transparency practices within Brazil's financial and environmental sectors, emphasizing the critical role of oversight bodies like the Securities and Exchange Commission (CVM), the National Monetary Council (CMN) and the Central Bank of Brazil (BC). These institutions enforce resolutions and policies to ensure that companies maintain transparency in their socio-environmental and financial dealings.

Also notable are initiatives such as the Global Reporting Initiative, the Corporate Sustainability Index and the Freedom of Information Act, which foster transparency and corporate responsibility; and specific legislative and policy measures to enhance environmental accountability and risk management, such as the mandatory reporting of sustainability

practices by 2026 and financial restrictions based on environmental criteria. Companies can face severe financial, administrative and reputational damages for failing to adhere to established norms.

4.4.1. Corporate Disclosures – Securities and Exchange Commission, National Monetary Council, Central Bank of Brazil.

Corporate socio-environmental transparency in Brazil is promoted through various norms, practices and legislative requirements. The Global Reporting Initiative (GRI) and the Corporate Sustainability Index (ISE)¹⁶ stand out. The GRI is a nonprofit international organization that pioneered the development of a sustainable reporting framework to assist companies in publicly disclosing the socio-environmental impacts of their activities (GSSB 2022). The ISE is an index of B3, the São Paulo Stock Exchange, that assesses the performance of listed companies in terms of sustainability. Both GRI and ISE promote norms and practices that are fundamental to transparency, corporate responsibility and stakeholder engagement on socio-environmental issues in Brazilian companies.

In Brazil, the CVM plays a key role in promoting transparency and supervising investors and companies, especially on socio-environmental criteria. Through resolutions such as Resolution No. 59, the CVM establishes the obligation of companies to act transparently and provide information on environmental, social and corporate governance. Resolution No. 80/2022 of the CVM requires companies to adopt principles from the Brazilian corporate governance code and implement general governance practices, including risk management policies and mechanisms for monitoring corporate impacts. Resolution No. 193/2023 of the CVM mandates the adoption of the International Sustainability Standards Board's norms for the preparation and disclosure of financial sustainability information, mandatory starting in 2026. Various other initiatives contribute significantly to transparency and socio-environmental responsibility in the national financial system (Borges 2024).

¹⁶<https://iseb3.com.br/o-que-e-o-ise>



Resolution 4,944/2021 of the CMN enhances the rules for managing social, environmental and climate risks. Resolution 4,945/2021 establishes guidelines for the Social, Environmental and Climate Responsibility Policy. Additionally, the Resolutions of the Central Bank of Brazil 153/2021 and 139/2021 define standard requirements for the disclosure of social, environmental and climate risks and opportunities. Finally, the resolution of the Central Bank 4,327/2014 imposes financial restrictions for granting credit based on environmental criteria.

In practice, compliance with regulatory requirements enables the identification of irregularities and establishes the liability of companies based on guidelines from Brazilian legislation (Borges 2024). For example, Law 6,404/1976, in Articles 153 and 158, establishes the obligations of companies and managers and the liability of directors for damages caused from negligence, intention or violation of the law or the bylaws. Similarly, Law 9,605/1998 dictates that directors, administrators and board members can be administratively, civilly and criminally liable for environmental crimes, subjecting them to fines, imprisonment and the duty to repair damages. These legal provisions establish clear consequences for negligence or violation of the established norms.

Brazilian legislation also establishes guidelines to ensure compliance with environmental and financial standards, promoting a comprehensive approach to corporate sustainability (Borges, 2024). For example, Article 78-A of Law 12,651/2012 restricts the granting of agricultural credit only to rural owners who are registered in CAR, a mandatory tool for environmental regulation of private properties. The regulations of the CVM, in conjunction with Law 6,404/1976, establish requirements for the disclosure of information in compliance with socio-environmental criteria in the production chain. Although Resolution 193/2023 of the CVM, which will make these requirements mandatory, does not take effect until 2026, non-compliance with these norms can still presently lead to legal consequences. For example, investors can file lawsuits against listed companies that do not disclose relevant financial information, violating the corporate governance and disclosure rules required by the CVM. These actions can result in financial penalties, reputational damage and civil liability for companies and their managers.

4.4.2. Sustainability Disclosures

As emphasized sustainability reports play a crucial role in promoting transparency and socio-environmental responsibility. It is essential that such reports follow established norms and provide transparent data about the environmental, social and governance dimensions of the company's activities.

Despite regulations and legal requirements to ensure corporate compliance, sustainability reports still reveal significant shortcomings in socio-environmental criteria, especially regarding transparency in the disclosure of essential information. In Brazil, companies rely on instruments such as the Amazon Soy Moratorium and Rural Environmental Registry (CAR). But both the Soy Moratorium and CAR have limited capacity to adequately ensure legal compliance.

The Amazon Soy Moratorium was established in 2006 as a joint voluntary agreement among agribusiness companies with the goal of monitoring and not marketing soybeans from deforested areas (ABIOVE 2017) within in the Legal Amazon region, covering the entire Amazon biome and transitional areas with the Cerrado biome. It includes planning and monitoring strategies such as audits, inspections and compliance with Forest Code requirements like the CAR and the Environmental Regularization Plan (PRA).

Recently, the Amazon Soy Moratorium has been challenged regarding its application of production tracking. The monitoring of soy production is restricted to municipalities covered by the Legal Amazon Deforestation Monitoring Project by Satellite (Prodes) with more than 5,000 hectares of soy cultivation (Junqueira 2021). The exclusion of municipalities with fewer than 5,000 hectares of cultivation leaves a gap that can be exploited by producers. Moreover, the Soy Moratorium does not monitor indirect suppliers, including outsourced contractors and subsidiaries. This allows indirect suppliers to sell to direct suppliers and insert soy from deforested areas into the production chain, (Junqueira et al. 2021).

These gaps raise questions about Soy Moratorium's effectiveness in ensuring corporate sustainability. Although the moratorium is an important milestone, it should be only one part of a comprehensive strategy for compliance and socio-environmental responsibility. Ultimately, adherence to the moratorium should be integrated into a broader set of initiatives and policies to promote sustainability in the soy supply chain.



Another regulatory instrument is the Rural Environmental Registry (CAR) established by Law 12,651/2012. The CAR is a national electronic register for all rural properties with integrated, georeferenced environmental information. The CAR contains detailed information about permanent preservation areas, restricted use areas, consolidated areas, legal reserves, remnants of native vegetation, servitude areas and areas designated for environmental recovery, compensation or restoration (Lima & Gomes 2022). The CAR does not confer titles for the recognition of property.

CAR is self-declaratory. Users register new properties themselves, followed by an on-site verification. In some cases, the delimitation of the property area has been inadequate, including instances where users register areas without possessing the property title (Lima & Gomes 2022). Users have also provided invalid or inadequate documents to prove property or possession, contributing directly to overlaps and conflicts in the records and actually abetting land grabbing and fraud in some regions of the country.

Although it is an important tool, the self-declaratory criterion of the CAR can create opportunities for fraudulent practices, such as the inadequate delimitation of areas or the use of questionable rural property documents. These deficiencies are evidenced by the situation in the State of Pará, about 108,000 of 150,000 registrations in the CAR show overlap with other properties (IPAM 2014). Approximately 1,540 registrations coincide with environmental protection areas, and 20 registrations have been approved on Indigenous lands (Lima & Gomes 2022). Only 20 percent of the registrations have been verified on-site, with the other 80 percent still awaiting verification. According to Law 12,651/2012, the CAR does not prove any real rights over lands, whether possession, property or domain. The CAR is meant to integrate information of rural properties and possessions in a database that can be used for control, environmental and economic planning, and combating deforestation (Article 29, Law 12,651/2012). Registration on CAR does not absolve a contractor of their responsibility to verify the dominial chain of the rural property and determine its regularity.

Using CAR to track activities in soy production exposes the value chain to significant risks of illegalities. The lack of transparency and absence of adequate validation make CAR ineffective for

determining eligibility, environmental compliance and legality in the supply chain. Corporate buyers could be vulnerable to lawsuits for environmental law violations committed by their suppliers, subsidiaries, outsourced contractors and other agents in the production chains. This could expose them to liability for environmental damages, compensation for damages and even criminal charges, depending on the environmental or land irregularity. CAR should only be used to verify the legality of areas of agricultural production if it includes on-site verification by the competent environmental agency. Exclusive reliance on the Amazon Soy Moratorium and CAR for sustainable policy is inadequate, given the deficiencies of these instruments and the fraudulent practices associated with their application. Companies that rely on them without implementing additional procedures to select producers, track soy and disclose socio-environmental criteria could directly violate Resolution 59 of the CVM, which establishes the obligation for companies to act with transparency and provide information on environmental, social and governance aspects. Non-compliance could also violate the principles of the Brazilian corporate governance code as required by Resolution 80/2022 of the CVM.

In legal terms, this lack of compliance can lead to lawsuits from investors based on Law 6,404/1976, which establishes the liability of directors for material damages caused by negligence, intention or violation of the law or bylaws. The lack of transparency may also constitute a violation of Resolution 193/2023 of the CVM, which mandates the adoption of the International Sustainability Standards Board's norms for the preparation and disclosure of financial sustainability information, resulting in possible administrative and civil sanctions such as financial penalties, damage repair, reputational damage and suspension of access to financial credit.



4.5. Financial Crimes

Article 19 of Law 7,492/1986 makes it a crime to obtain financing from a financial institution through fraud. Any deceptive, cunning or illegal action taken with the intention of obtaining financial advantage falls under the category of fraud. Fraudulent practices include document forgery, false statements about the destination of resources and the use of false information to secure loan approval (Pimentel, 2020). In the agricultural input production chain, fraud is potentially committed with forged documents, such as land purchase and sale contracts or income statements. For example, someone might forge land purchase contracts in order to obtain agricultural loans.

Land grabbing has emerged as one of the main forms of fraud associated with the agribusiness production chain (Statssart et al. 2021). Land grabbing consists of the illegal appropriation of lands, whether public or private, through the forgery of documents and records. The crime usually involves the identification of land that is unoccupied or has irregular documentation, followed by the forgery of fraudulent documents such as deeds, property titles or land registers (Statssart et al. 2021). In the Amazon region, land grabbing is linked to the expansion of agriculture into frontier areas with high demand for land for cultivation (Statssart et al. 2021).



Criminal organizations involved in land grabbing have a significant social and environmental impact on local communities and the environment. They deforest extensive areas for timber and then convert these areas into pastures, resulting in irreversible environmental damages, contributing to biodiversity loss and the degradation of natural ecosystems (Statssart et al. 2021). Such organizations illegally appropriate public or community lands and often rely on threats and violence to intimidate the legitimate occupants. They also frequently engage in corruption of local police officers and extort the affected communities (Statssart et al. 2021). These practices violate the rights of local communities and contribute to social destabilization and agrarian conflicts in rural areas.

Obtaining agricultural financing through land grabbing represents one of the most common forms of fraud in the agricultural production chain. Complaints recently revealed that soy producers were presenting fraudulent documents to obtain bank loans.¹⁷ Should they be found guilty, the responsible producers will face prison sentences of two to six years as well as fines pursuant to Article 19 Law 7,492/1986 (Pimentel 2020). Additionally, they may also face civil and administrative proceedings, depending on the specific circumstances of the case.

Brazilian law implicates liability for all the actors in the soy production chain. If it is proven that the buyers were aware, or should have been aware, of the possible illegal origin of products due to fraud in property records, they could be considered accomplices or beneficiaries of the crime of obtaining financing through fraud as established in Article 19 of Law 7,492/1986 (Pimentel 2020). Additionally, if land grabbing is proven, the false and fraudulent property titles must be canceled.

Another relevant crime is fraudulent financing. Per Article 20 of Law 7,492/1986, fraudulent financing consists of spending financing from an official or accredited financial institution for a purpose other than that specified in law or contract. It generally occurs by obtaining loans for the purchase of

agricultural inputs, such as seeds and fertilizers, to expand production; and then diverting part or all of the money to activities unrelated to agriculture, such as the acquisition of personal assets or investments in other sectors (Pimentel 2020). Fraudulent financing can result in various legal consequences for the farmer and other beneficiaries. It can lead to the disqualification of the financing transaction, exposing the producer to higher interest rates and penalties. Additionally, the producer and other beneficiaries may be subject to the criminal penalties established in Article 20 of Law 7,492/1986, which include two to six years imprisonment and fines. Tax evasion is another illicit activity that has been observed in the agricultural input production chain. According to Law 4,729/1965, tax evasion is the false provision or omission of information that should be provided to internal public legal entities or persons, aiming to exempt oneself from the payment of taxes, fees and additional amounts established by law. In practice, all activities that evade or avoid paying taxes are punishable. An example of this is Operation Dagon,¹⁸ in which rural producers created fictitious companies to issue false electronic invoices for agricultural inputs to avoid paying the taxes due on their agricultural production. According to Brazilian law, these practices can result in imprisonment and fines as established in Law 4,729/1965.

4.6. Anti-Corruption Law

The Anti-Corruption Law aims to prevent, detect, and punish corrupt practices. This law, also known as Law 12.846/2013, establishes the administrative and civil liability of legal entities for acts against national or foreign public administration. It defines mechanisms and procedures for auditing and reporting irregularities, in addition to promoting a culture of integrity in the organizational environment (Zimmer 2019).

The law stipulates that legal entities can be held liable both administratively and civilly for acts of corruption committed in their name or in their interest.

¹⁷<https://ojoioetrigo.com.br/2023/07/fundo-do-agro-impulsiona-desmatamento/>; <https://www.intercept.com.br/2023/07/20/fundos-agro-impulsionam-empresas-com-historico-de-trabalho-escravo-grilagem-desmatamento/>; <https://g1.globo.com/to/tocantins/noticia/2021/11/30/pf-faz-operacao-contra-fazendeiros-suspeitos-de-desviar-r-10-milhoes-com-fraudes-no-pronaf.ghtml>; <https://www.gov.br/pf/pt-br/assuntos/noticias/2021/11/operacao-coro-apura-crime-de-fraudes-na-obtencao-do-pronaf-na-cidade-de-campos-lindos-to>

¹⁸https://agenciabrasil.ebc.com.br/economia/noticia/2024_03/operacao-dagon-receita-investiga-fraudes-fiscais-no-agronegocio



This means that companies involved in bribery, fraud in bidding or any other form of corruption can face sanctions including fines, forfeiture of assets, suspension of activities and compulsory dissolution (Zimmer 2019). The Anti-Corruption Law also establishes the need for corporate Integrity Programs (Carvalhosa 2015). These include the creation of codes of ethics and conduct, clear policies and guidelines, regular training for employees, and secure and confidential reporting channels, as well as effective internal and external auditing processes.

The application of the Anti-Corruption Law in the soy production chain aims to ensure integrity and transparency, from planting to the commercialization of derived products. The Anti-Corruption Law requires that all companies involved, from rural producers to distributors and exporters, implement effective Integrity Programs (Compliance).¹⁹ This means establishing clear anti-corruption policies, conducting regular training for employees and suppliers, maintaining transparent accounting records and creating reporting channels to report possible irregularities (Carvalhosa 2015). Additionally, the law provides for severe sanctions for companies that do not comply with these measures, including fines, suspension of activities and the dissolution of the legal entity in severe cases of systemic corruption (Zimmer 2019).

The Anti-Corruption Law requires that companies not only implement internal integrity measures but also ensure the compliance of their suppliers and contractors (Zimmer 2019). This means that companies must establish due diligence policies to evaluate the integrity of their business partners, verifying whether they are in compliance with anti-corruption laws and whether they adopt effective anti-corruption measures in their own operations (Carvalhosa 2015).

The implementation of a robust Integrity Program is an essential task for all companies to avoid corrupt practices and ensure sustainability and transparency. Non-compliance can result in significant legal implications under the Anti-Corruption Law. Articles 5, 6, and 7 list possible sanctions, including forfeiture of assets obtained from the infraction, suspension or partial

interruption of activities, compulsory dissolution of the legal entity and prohibition from receiving public incentives. Additionally, companies may suffer reputational damage, lose customers and business partners and face legal and administrative proceedings, resulting in fines, compensation and other penalties.

Transparency throughout the soy supply chain is essential for the effective application of the Anti-Corruption Law. Companies must ensure transparency at all stages of the process, from the origin of the seeds to the production of the final product (Zimmer 2019). This can be achieved with measures such as traceability, which allows a product to be tracked along the chain; independent audits to verify compliance with ethical and legal standards; and the full disclosure of ethical and sustainable practices. By promoting transparency, companies not only demonstrate their commitment to integrity but also contribute to the prevention and detection of corrupt practices along the soy supply chain.

Non-compliance with norms regarding transparency and legality in contracting and bidding processes may result in severe legal implications for companies under the Anti-Corruption Law. According to Articles 9 and 10, companies may be held liable for participating or facilitating corrupt practices in contracting and bidding processes. Similarly Articles 7 and 8 establish the administrative and civil liability of legal entities for acts against public administration, including those related to the lack of transparency and integrity in the supply chain.

When companies in the soy production chain deal with government bodies to obtain licenses, authorizations or regulations, it is essential that all interactions are conducted ethically and in full compliance with anti-corruption laws. They must refrain from corrupt practices such as bribery, illegal lobbying or any other attempt to obtain illicit advantages from government bodies. By maintaining integrity and transparent conduct in these interactions, companies in the soy production chain not only comply with their legal responsibilities but also contribute to a more ethical and fair business environment.

¹⁹Established by article 45 of the Decree 11,129/2022, Integrity Programs are required if a company commits an illegal act against Federal Administration.



Companies in the soy production chain that violate anti-corruption laws may face serious legal implications. Articles 7 and 9 of the Anti-Corruption Law establish the administrative and civil responsibility of legal entities for acts against public administration, including corrupt practices involving government bodies. Sanctions for corrupt practices such as bribery and illegal lobbying may include forfeiture of the assets obtained from the infraction, partial suspension of its activities, compulsory dissolution and prohibition of receiving public incentives.

Conduct violating Article 5 of the Anti-Corruption Law, which deals with harmful acts to public administration, and Article 7, which lists the sanctions applicable to offending companies, can trigger penalties for companies along the supply chain including fines up to 20 percent of gross revenue, forfeiture of assets, suspension of activities and prohibition from receiving public incentives. Additionally, obstructing an investigation by the competent authority, as detailed in Article 27, can also result in administrative accountability.

4.7. Money Laundering

The Money Laundering Law, officially known as Law 9,613, aims to combat the practice of hiding or disguising the illicit origin of goods, rights and values. This law is essential to preventing resources obtained through criminal activities, such as drug trafficking, corruption and financial crimes, from being reintegrated into the economy legally (Badaró 2022). The law establishes obligations and procedures for identifying and reporting suspicious activities, as well as penalties for non-compliance. It is used by competent authorities such as the Council for Control of Financial Activities (COAF) in Brazil to monitor financial transactions, investigate signs of money laundering and take legal action against those responsible.

In the soy supply chain, it is crucial to ensure that companies, from producers to exporters, are not directly or indirectly involved in illicit activities such as financing drug trafficking or slave labor, both endemic in the Amazon region, which constitute money laundering (Badaró 2022). Article 9 of the Money Laundering Law establishes the obligations of individuals and legal entities and requires the identification and reporting of suspicious financial operations to the COAF.

Additionally, Article 11 requires companies along the supply chain to pay special attention to operations that may indicate money laundering crimes and report them to COAF within an established deadline.

It is essential that companies along the soy supply chain are aware of their legal responsibilities, and adopt effective measures to detect and prevent illicit activities that may constitute money laundering. Traceability and transparency systems play a fundamental role in mitigating the risks of violating the law. They include adequate documentation of financial transactions and monitoring labor and environmental practices (Badaró 2022). Article 10 of the Money Laundering Law establishes the obligation to identify customers and keep records of all financial transactions that exceed limits set by the competent authority. Furthermore, Article 11 imposes on companies the responsibility to report to COAF within 24 hours all transactions suspected of involvement in illicit activities.

The absence of effective traceability and transparency systems can expose companies to significant risks, including pecuniary fines, temporary disqualification for holding administrative positions and suspension or revocation of authorization for commercial activities, as detailed in Articles 12 and 12-A of the Money Laundering Law (Badaró 2023). Additionally, a lack of transparency can adversely affect the reputation of companies, resulting in loss of investor and consumer trust and potential legal proceedings for non-compliance with the legislation.

4.8. Violation of Fundamental and Labor Rights

The Brazilian Federal Constitution of 1988 establishes a broad and robust set of fundamental rights for Brazilian society. From the preamble to the specific provisions of different articles, the Constitution guarantees essential rights such as the right to life, freedom, equality, dignity, education, health, decent work and the freedoms of expression and association. It also recognizes the rights of specific groups such as Indigenous peoples, quilombolas and traditional communities and ensures the protection of their lands, cultures and ways of life. These rights are crucial for promoting a just, inclusive and respectful society.



The constitutional text establishes a series of guarantees and fundamental rights related to work, aiming to ensure dignified and fair conditions for workers. Since its adoption in 1988, the Federal Constitution has established important norms that seek to protect workers' rights, such as the right to equal pay, a decent work schedule and paid weekly rest. Moreover, the Magna Carta also provides protection against discrimination in the workplace on the basis of gender, race, religion or sexual orientation, reinforcing the Brazilian state's commitment to the principles of equality and human dignity.

4.8.1. Work Analogous to Slavery

The agriculture sector in Brazil has been particularly vulnerable to links to violations of human rights and labor issues. According to data from the Labor Inspection Information and Statistic Panel, 49 percent of workers rescued from conditions to slavery over the last five years were general agricultural workers, with an additional 13.7 percent classified as itinerant agricultural workers,²⁰ 2.72 percent of workers rescued from conditions similar to slavery were rescued on properties linked to soy production.²¹

Most of this abuse is linked not to activities like soybean processing, transport and storage but mainly to the primary operations of soy farmers themselves. On soy farms, workers are frequently exploited due to the demand for cheap labor and may end up living in conditions analogous to slavery, with little or no freedom and inadequate remuneration (Silva Costa 2022). Workers rescued from situations analogous to slavery on properties related to soy production have reported inhumane working conditions, including unhealthy accommodations, inadequate food, non-payment or retention of wages and sexual harassment.²²

²⁰Brazil's Slave Labor Digital Observatory, 2024 Available at: <https://smartlabbr.org/trabalhoescravolocalidade/1507300?dimensao=perfilCasosTrabalhoEscravo>

²¹<https://sit.trabalho.gov.br/radar/>

²²<https://g1.globo.com/ba/bahia/noticia/2023/09/27/empresa-e-condenada-em-r-600-mil-por-permitir-trabalho-infantil-e-em-condicoes-de-escravidao-em-producao-de-cacau-na-bahia.ghtml>; <https://reporterbrasil.org.br/wp-content/uploads/2022/03/2220309-Monitor-McDonalds-PT-13.pdf>; <https://www.earthsight.org.uk/news/therewillbeblood>





These recent complaints reveal an alarming situation of violation of human and fundamental rights and labor rights along the productive chain of the agricultural sector in Brazil, especially related to soy production. In this context, ILO Conventions 29 and 105 play a crucial role in remedying violations of human and labor rights in the agricultural sector in Brazil. Convention 29 defines forced labor as any work demanded under the threat of punishment without the voluntary consent of the worker (Brazil 2019). Convention 105 deals with the abolition of forced labor in all its forms (Brazil 2019).

Brazilian legislation, especially Article 149 of the Penal Code, defines more broadly a condition analogous to slavery. Its definition includes not only the absence of freedom but also degrading work conditions and exhausting or debt-induced work hours. Recent complaints against companies in the soy production chain allege violations of these legal provisions.²³ Such conduct is illegal and prohibited by Brazilian law.

The accountability of agents in the soy production chain for the practice of slave-like work or forced labor is established in the Federal Constitution, the Consolidation of Labor Laws (CLT), the Penal Code and international conventions ratified by Brazil. Law 13,467/2017 of the CLT establishes the practice of work analogous to slavery as a very serious infraction that subjects the offender to fines and other penalties. Moreover, the Brazilian Penal Code (Article 149) provides for prison sentences from two to eight years, in addition to fines and civil liability for damages caused.

Accountability for the practice of slave-like work or forced labor may extend to all agents in the soy production chain, including the owners of soy farms and the traders who purchase their products. According to Brazilian jurisprudence and legislation,

all those who directly or indirectly benefit from work performed under these conditions can be considered responsible for the violation of human rights and labor rights (Nagahiro Meller 2015). All agents involved in a production chain must jointly answer for labor obligations. Not only farm owners (rural producers) directly linked to the practices but also intermediaries, the buyers of agricultural products and the companies that market final soy products can be criminally and civilly charged for slave labor.

Those responsible can be prosecuted and convicted under the Brazilian Penal Code (Article 149), which imposes prison sentences of two to eight years, in addition to fines for anyone who reduces someone to a condition analogous to that of a slave (Haddad 2013). On the civil side, those responsible can be obliged to compensate the affected workers and even society for moral and material damages (Nagahiro Meller 2015). Companies may also face administrative sanctions, such as the prohibition of contracting with the public power, loss of tax benefits and judicial interventions in management (Nagahiro Meller 2015).

The Brazilian Government maintains a database of companies involved in slave labor, known as the "Dirty List." This register is maintained by the Ministry of Labor and is used to prevent access to public financing and commercial transactions by companies linked to slave labor.^{24,25} NGOs, the ILO and private banks also agree not to do business with companies on the "Dirty List."^{26,27}

An example is a case from 2023, a company was sentenced for the first time by the Regional Labor Court of the 5th Region for practices of child labor and slave labor in the State of Bahia. Three investigations and audits found conditions similar to slave labor in its subsidiaries and suppliers.²⁸

²³<https://reporterbrasil.org.br/2022/03/exclusivo-mcdonalds-tem-fornecedores-ligados-a-desmatamento-ilegal-e-trabalho-https://reporterbrasil.org.br/2022/03/exclusivo-mcdonalds-tem-fornecedores-ligados-a-desmatamento-ilegal-e-trabalho-escravo/#~:text=Eles%20incluem%20as%20opera%C3%A7%C3%B5es%20de,an%C3%A1logas%20%C3%A%20escravid%C3%A3o%20no%20local;https://nacla.org/news/comercio-international-graos-amazonia-brasileira;https://reporterbrasil.org.br/wp-content/uploads/2022/03/2220309-Monitor-McDonalds-PT-13.pdf;https://www.earthsight.org.uk/news/therewillbeblood>

²⁴https://www.gov.br/trabalho-e-emprego/pt-br/assuntos/inspecao-do-trabalho/areas-de-atuacao/cadastro_de_empregadores.pdf

²⁵<https://ipe.sit.trabalho.gov.br/#/>

²⁶<https://www.ethos.org.br/conteudo/apoiados/pacto-nacional-pela-erradicacao-do-trabalho-escravo/>

²⁷<https://inpacto.org.br/>

²⁸<https://mpt.mp.br/planejamento-gestao-estrategica/gestao-estrategica/gt-cadeia-produtiva-de-cacau-chocolate-encerrado/#~:text=Ajuizamento%20de%2003%20a%C3%A7%C3%B5es%20civis,das%20referidas%20a%C3%A7%C3%B5es%20civis%20p%C3%BAlicas.>



As a penalty, the company was ordered to pay compensation of BRL 600,000, implement corrective measures, formalize contracts with suppliers observing Brazilian labor legislation, carry out campaigns against slave labor, and contribute to the investigation of crimes in the agricultural production chain. The sentence was appealed and is currently awaiting resolution.²⁹

In conclusion, the alarming instances of slave labor within Brazil's agricultural sector, particularly in soy production, highlight the critical need for companies to adopt proactive measures to ensure compliance with labor laws across their supply chains. The exploitation of workers under slavery-like conditions is not only a severe violation of human rights but also poses significant legal and reputational risks for businesses. To prevent such abuses, it is essential for companies to rigorously vet and monitor their suppliers and partners, ensuring they adhere to both Brazilian legislation and international labor standards. Proactive engagement, including regular audits, transparent contracts, and a commitment to ethical practices, is vital to safeguarding workers' rights and maintaining the integrity of the entire production chain. By taking these steps, companies can help eradicate forced labor, uphold labor laws, and contribute to a more just and equitable agricultural sector.

4.8.2. Labor Law

The segmented nature of the soy production chain, where the product goes through many stages involving different contracted companies, leaves the industry vulnerable to labor violations, especially in the transport, storage, treatment and commercialization of soybeans by outsourced contractors and subsidiaries. In this context, health and safety norms are relevant.

One example of potentially liable situation is that the soybeans are stored and handled by workers in confined spaces, which is any area or environment not designed for continuous human occupation, with limited means of entry and exit, whose existing

ventilation is insufficient to remove contaminants or where oxygen deficiency or enrichment may exist³⁰. The norms on safety and health at work in confined spaces is established by Regulatory Standard n° 33, which determines the minimum requirements for identifying confined spaces and recognising, assessing, monitoring and controlling existing risks, in order to permanently guarantee the safety and health of workers who interact directly or indirectly in these spaces.

Other risks include irregular outsourcing of labor, hiring intermediaries who subcontract workers under precarious conditions, lack of adequate supervision of working conditions on supplier farms, and pressure for productivity that leads to the exploitation of workers who can face various risks, such as exposure to chemical substances and adverse physical conditions. There are also reports of inadequate responses to work accidents and injuries in ports.³¹ These allegations indicate possible irregularities and non-compliance with Brazilian labor norms and international labor conventions.

The Consolidation of Labor Laws (CLT) addresses labor violations. Article 7 deals with the rights of urban and rural workers, and Article 157 establishes an employer's obligation to provide safe and hygienic working conditions. Failure to comply with these norms can violate Law 8.213/1991, which details the Plans of Benefits of Social Security, especially regarding the prevention of work accidents and the guarantee of assistance to injured workers.

Irregularities in the agribusiness supply chain may entail violations of fundamental provisions of Brazilian labor legislation, both for subsidiaries and contractors as well as for the main company. The main company can be held jointly liable for labor violations committed by its subsidiaries and contractors, especially if there is subordination, supervision or economic benefit between the parties, as established in Articles 2 and 3 of the CLT, as well as in Article 942 of the Civil Code (Nagahiro Meller 2015). Possible sanctions include administrative fines, labor indemnities and moral damages.

²⁹<https://g1.globo.com/ba/bahia/noticia/2023/09/27/empresa-e-condenada-em-r-600-mil-por-permitir-trabalho-infantil-e-em-condicoes-de-escravidao-em-producao-de-cacau-na-bahia.ghtml>

³⁰Available at: https://crpsc.org.br/ckfinder/userfiles/files/NR_33_espaco_confinado.

³¹<https://mapadeconflitos.ensp.fiocruz.br/conflito/ms-inseguranca-do-trabalho-na-industria-da-alimentacao/>



4.8.3. Health

The soy production chain presents various chemical, physical and biological hazards to the health of workers, especially port workers and people living near port facilities. Port workers involved in the handling and transportation of soybeans face several occupational risks, including exposure to pesticides and chemicals used in crop treatment; injuries resulting from accidents during the handling of heavy loads; exposure to adverse environmental conditions such as extreme temperatures and humidity; and biological risks due to possible contamination by microorganisms present in the soybeans (Gelati et al. 2017).

Port activities can also create air and water pollution that affects the health of nearby communities. Residents close to port facilities may be exposed to atmospheric pollutants such as dust containing pesticides and fine particles, which can cause respiratory problems and allergies (Gelati et al. 2017). Port workers who load and unload soybeans may be exposed to residues of pesticides applied during cultivation, which can cause acute or chronic intoxications (Gelati et al. 2017). The handling of soy sacks in humid and hot environments can favor the growth of fungi and bacteria, increasing the risk

of respiratory and dermatological diseases among workers and people residing near the port installation (Gelati et al. 2017).

Brazilian labor legislation addresses workers' health through various legal provisions such as the Consolidation of Labor Laws (CLT) and regulatory standards (NRs) issued by the Ministry of Labor and Employment (Batista 2024). These provisions establish specific guidelines to ensure safe and healthy working conditions and prevent occupational diseases and work accidents. Article 7 of the CLT establishes workers' rights to health and physical integrity, making the employer responsible for any health damage resulting from an inadequate work environment. Article 157 of the CLT establishes the employer's obligation to provide safe and hygienic working conditions, including protection against harmful chemical substances and adverse physical conditions. Moreover, regulatory norms like NR-15 (Unhealthy Activities and Operations) and NR-9 (Program for the Prevention of Environmental Risks) establish specific guidelines to protect workers against health risks in the work environment (Batista 2024). Negligence or non-compliance with these protective measures can result in fines, lawsuits for moral and material damages to the affected workers, including the imposition of indemnities.







5. CONCLUSION

This analysis makes it evident that the Brazilian agribusiness sector, particularly the soy supply chain, faces significant legal liabilities and environmental challenges. The expansion of soy production has resulted in extensive deforestation and socio-environmental conflicts, primarily in the Amazon and Cerrado regions. These activities have severe implications for biodiversity, climate change and the rights of Indigenous and traditional communities.

The legal framework governing environmental protection in Brazil includes stringent regulations and responsibilities for environmental damage. The Federal Constitution, the Brazilian Civil Code and Law 6.938/1981 establish the basis for environmental liability, emphasizing the importance of mitigating environmental impacts and ensuring sustainable practices. However, the enforcement of these regulations has been inconsistent, leading to continued deforestation and environmental degradation, due in part to the lack of monitoring and tracking land grabbing and other illegalities.

Moreover, the soy production chain's complexity, involving multiple stakeholders from input suppliers to exporters, requires traceability systems that can ensure compliance with environmental laws. Otherwise there is a risk of exposure to fraud and other illegal practices.

The tools used by corporations to ensure compliance, namely the Soy Moratorium and the Rural Environmental Registry (CAR), were not designed to be indicators of compliance, but were implemented as measures to curb deforestation. As such, these instruments have limitations when it comes to legal compliance.

The socio-economic impacts of soy production include land grabbing, violence and intimidation against Indigenous and traditional communities. These issues highlight the need for robust legal and regulatory frameworks, as well as stricter corporate practices, that protect the rights of these communities and ensure their participation in decision-making processes, as mandated by international agreements such as ILO Convention 169.

The regulatory oversight by bodies such as the Securities and Exchange Commission (CVM), the National Monetary Council (CMN), and the Central Bank of Brazil is crucial in promoting transparency and accountability.

In conclusion, the legal liabilities in Brazil's agribusiness sector, particularly the soy supply chain, necessitate a multifaceted approach to enhance sustainability and legal compliance. This includes strengthening regulatory frameworks, improving enforcement mechanisms, and ensuring the active participation of indigenous and traditional communities in environmental governance. Addressing these challenges is essential for the goals of sustainable economic growth, environmental preservation and social equity, and moreover to reduce the risk of illegalities in the sector.





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TECHNICAL SUPPORT

