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The Impact of Deforestation on Indigenous People: A Case Study of Brazil and Indonesia

*Katie Place**

Abstract (max 300 words):

Since 1970, over 700,000 square kilometres of the Amazon rainforest in Brazil have been destroyed. The Amazon rainforest will be reduced by 40% by 2030 at the current rate. With approximately 2,000 tribes and over 800,000 indigenous people, the Amazon rainforest is in a perilous condition due to illegal logging and agricultural development. Similarly, in Indonesia, a country with over 1,300 ethnic groups, in 1900 the forests represented 84% of the total land area. By 2010, only 52% of the total land area was forested. Between 2001-2016 palm oil plantations accounted for about 23% of deforestation nationwide. In 2017 alone there were more than 650 land-related conflicts affecting over 650,000 households.

This paper examines how deforestation impacts the indigenous and ethnic groups of Brazil and Indonesia, and at what is being done to help these Indigenous Communities. In particular, the paper focuses on whether the current mechanisms are effective and if not, why. The paper concludes with recommendations on what can be done to ensure the mechanisms will work for the future. The mechanisms examined include international instruments such as the UN Declaration on the Rights of Indigenous Peoples (2007) and the UN Framework Convention on Climate Change (1992). National laws, such as 1988 Brazilian Constitution and the Amazon Forest Code as well as the Indonesian Constitution and Forestry Law of 1999, are thoroughly discussed throughout this paper.

Keywords: *deforestation, Indigenous Communities, Brazil, Indonesia*

A. INTRODUCTION: HOW DOES DEFORESATION IMPACT INDIGENOUS COMMUNITIES?

1. What is Deforestation?

Deforestation is defined by the Food and Agricultural Organisation of the United Nations (FAO) as the conversion of forest to other land uses.² Earth's forests and soil absorb about 30% of atmospheric carbon dioxide emissions, from forest growth following wood harvest and agricultural abandonment. Forests play a vital role in stabilising the climate; they regulate ecosystems, protect biodiversity, and support livelihoods. Forests also play a vital role in providing a habitat for a huge array of (often endangered) species.³ Up until recently deforestation was increasing at a rapid rate. According to the FAO an estimated 420 million hectares of forest has been lost worldwide through deforestation since 1990.⁴ Since 2015 global deforestation rates

* Katie Place is an alumnus of the LLM International Human Rights Law & Public Policy programme at UCC The author thoroughly enjoyed her time in UCC and is hopeful that this paper will have a positive impact both within UCC and in the wider world. This research was submitted as an LLM dissertation for the UCC School of Law in September 2022, under the supervision of Dr Henrietta Zeffert, and has been lightly edited and updated to reflect recent developments up to March 2023.

² Collaborative Partnership on Forests, 'Strategic framework for forests and climate change' (2004) 9.

³ UN Framework Convention on Climate Change, 'Into the Woods' (30 April 2021) <<https://unfccc.int/blog/into-the-woods>> accessed 23 March 2023.

⁴ Food and Agriculture Organization, 'A Fresh Perspective, Global Forest Resources Assessment 2020' <<https://www.fao.org/forest-resources-assessment/2020/en/>> accessed 23 March 2023.

have started to reduce. The annual rate of deforestation was estimated at 10 million hectares, down from 12 million hectares in 2010-2015. Despite this improvement much work needs to be done to continue this reduction and to prevent irreparable damage to the planets forests and to all that live in them.

2. Who are Indigenous Communities?

According to the United Nations (UN), Indigenous peoples are inheritors and practitioners of unique cultures and ways of relating to people and the environment. They have maintained social, cultural, economic, and political characteristics that are distinctive compared to societies around them. Indigenous peoples have long sought acknowledgement of their identities, ways of life, and rights to traditional lands, territories, and natural resources, yet their rights have consistently been violated throughout history. Indigenous peoples are currently one of the world's most disadvantaged and vulnerable populations. Particular steps are now needed to protect their rights and preserve their different traditions and way of life, according to the international community.⁵ There are approximately 470 million indigenous people across the globe. Many countries recognize only a percentage of the land occupied by Indigenous Peoples as formally or legally belonging to Indigenous Peoples. Even when Indigenous territories and lands are acknowledged, boundary protections tend to be insufficient whereas natural resources and exploitation are all too frequent. Conflict, environmental degradation, and poor economic and social growth are all caused by insecure land tenure. This endangers cultural survival and important knowledge systems, raising the risks of fragility, biodiversity loss, and the deterioration of ecological and animal health systems, all of which endanger the ecosystem services on which we all rely.⁶ However throughout the past 20 years the rights of indigenous peoples have gradually become more recognised via the adoption of international instruments such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007, the American Declaration on the Rights of Indigenous Peoples in 2016 and the United Nations Permanent Forum on Indigenous Issues (UNPFII).

3. Deforestation in Brazil

Despite the global deforestation rates reducing, it cannot be said the same for Brazil. In 2021 alone deforestation in the Amazon rainforest soared 22% in the past year to the highest level since 2006. The Brazilian Space Research Agency (INPE), recorded 13,235sq km of deforestation in the Amazon in satellite data, the report showed that an area nearly 17 times the size of New York City was deforested. The official deforestation data was from August 2020 through to July 2021.⁷ There are numerous reasons why the deforestation rate in Brazil continues to rise. The most recent reason is the election of former Brazilian President Jair Bolsonaro who recently lost his re-election bid to current President Luiz Inacio Lula da Silva (Lula).

"The synergistic interactions stemming from forest clearing, fragmentation, logging, and fire may eventually force the Amazon into a gradual process of savannization ... indeed, this is the current prognosis, given the Bolsonaro government's policies supporting deforestation."

Bolsonaro's government has backed policies in favour of deforestation including PL 510/21 a bill that if passed would encourage more deforestation on protected lands. It would also legalise the illegal invasion of large

⁵ United Nations Department of Economic and Social Affairs, 'Indigenous Peoples at the United Nations' <<https://www.un.org/development/desa/indigenouspeoples/about-us.html>> accessed 23 March 2023.

⁶ The World Bank, 'Indigenous Peoples' <<https://www.worldbank.org/en/topic/indigenouspeoples#1>> accessed 23 March 2023.

⁷ 'Deforestation in Brazil's Amazon at highest level since 2006', *The Guardian* (19 November 2021) <<https://www.theguardian.com/environment/2021/nov/18/deforestation-in-brazils-amazon-rises-by-more-than-a-fifth-in-a-year>> accessed 23 March 2023.

areas of public land including lands that were occupied back in 2014, and any deforestation within them, thus incentivising both future land grabbing and clearing.⁸ DECREE No. 9,760 OF APRIL 11, 2019 also demonstrated the backing of policies in favour of deforestation by the Bolsonaro government. The decree effectively suspended fines for illegal logging leaving just five cases in which payment is required available.⁹ These are just two of the policies of the Bolsonaro government. However, these policies along with others are only hastening the rate of deforestation in Brazil.

The next reason deforestation continues to rise in Brazil is due to illegal logging and cattle ranches. The cattle ranching industry alone is responsible for 80% of the deforestation in Brazil.

*“Alone, the deforestation caused by cattle ranching is responsible for the release of 340 million tons of carbon to the atmosphere every year; equivalent to 3.4% of current global emissions ... Trends indicate that livestock production is expanding in the Amazon”.*¹⁰

Also, according to a report from Amnesty International data from the state of Rondônia’s animal health control agency, IDARON showed that there was a steep rise in commercial cattle ranching in protected areas, where the practice is illegal. From November 2018 to April 2020, the number of cattle rose by 22%, from over 125,500 to over 153,500.¹¹

4. Deforestation in Indonesia

In 1950 the Indonesian Forest Service conducted a mapping exercise which established that forest cover then totalled 84% of land area in the entire country which was at over 162 million hectares. In 1999, a second effort was conducted to monitor the forest inventory. This was a joint venture between the Indonesian government and the World Bank, and it catalogued¹² the forested area at 100 million hectares. In 2020 Indonesia’s deforestation rate reached a historic low in 2020, with the government crediting its policies, especially its deforestation policies such as its social forestry policy, as well as its prohibition of forest clearing. Other factors include the ongoing La Nina, a weather phenomenon that occurs every 3-5 years has led to more rain which has led to falling palm oil prices. Also due to Covid-19 which resulted in the economy slowing, deforestation was also reduced. The country lost 115,459 hectares of forest cover in 2020, which was a 75% drop from 2019, according to the Ministry of Environment and Forestry.¹³

The main factor that leads to the high rate of deforestation in Indonesia was the oil palm production throughout the 1990s to the 2000s.

⁸ Katie Nelson, ‘Brazil set to vote on controversial land grabbing bill,’ *Greenpeace* (6 May 2021) <<https://www.greenpeace.org/usa/news/brazil-set-to-vote-on-controversial-land-grabbing-bill/>> accessed 23 March 2023.

⁹ [Decree No. 9,760 OF April 11, 2019.](https://www.greenpeace.org/usa/news/brazil-set-to-vote-on-controversial-land-grabbing-bill/)

¹⁰ World Wildlife Fund, ‘Unsustainable Cattle Ranching’ <https://wwf.panda.org/discover/knowledge_hub/where_we_work/amazon/amazon_threats/unsustainable_cattle_ranching/> accessed 23 March 2023.

¹¹ Amnesty International, ‘Brazil: Cattle illegally grazed in the Amazon found in supply chain of leading meat-packer JBS’ (15 July 2020, updated 7 October 2020) <<https://www.amnesty.org/en/latest/news/2020/07/brazil-cattle-illegally-grazed-in-the-amazon-found-in-supply-chain-of-leading-meat-packer-jbs/>> accessed 23 March 2023.

¹² Samiha Shahreen ‘Vanishing Act: Deforestation in Indonesia,’ *Earth.org* (2 February 2022) <<https://earth.org/vanishing-act-deforestation-in-indonesia/>> accessed 23 March 2023.

¹³ UN-REDD Programme, ‘Record low deforestation rates in Indonesia despite ongoing pandemic’ (13 January 2022) <<https://www.un-redd.org/post/record-low-deforestation-rates-indonesia-despite-ongoing-pandemic>> accessed 23 March 2023.

“Much of the research investigating deforestation due to oil palm expansion in Indonesia focused on impacts in the 1990s and 2000s. These studies report that 52%-79% of plantations nationwide ... and 89%-90% of plantations in Kalimantan ... replaced forests.”¹⁴

Despite the prominent level of deforestation, the deforestation rate in Indonesia is reducing. In 2020 the deforestation rate reached a record low of just over 115,000 hectares being deforested, a decrease of 75% from the year before.¹⁵ One of the reasons for this was that all of the palm oil that was traded internationally was controlled by companies that were committed to a zero- deforestation method.

“By 2015, more than 96% of internationally traded palm oil was controlled by companies with a commitment to zero-deforestation palm oil sourcing.”¹⁶

5. In What Ways are Indigenous Communities being Impacted in Brazil and Indonesia?

Indigenous communities not just in Brazil and Indonesia but across the globe have faced numerous challenges throughout history. Despite indigenous people making up just 6% of the global population, they account for 19% of those in extreme poverty.¹⁷ One of the key issues for indigenous people is that they often do not have formal recognition of their lands. Even when they do have formal recognition, often the protections in place are inadequate.

“Indigenous Peoples often lack formal recognition over their lands, territories, and natural resources ... Much of the land occupied by Indigenous Peoples is under customary ownership, yet many governments recognize only a fraction of this land as formally or legally belonging to Indigenous Peoples. Even when Indigenous territories and lands are recognized, protection of boundaries or use and exploitation of natural resources are often inadequate.”¹⁸

This applies as well for Brazil and Indonesia. Indigenous communities in Brazil have been victimised from the start of the colonial period up until the present day either directly by governments or those who exploit any inaction from the government.¹⁹ Brazil is also the most dangerous country for environmental activists with a high number of homicides between 2012-2016.

“Furthermore, Brazil is the most lethal country for environmental activists, most of whom are Indigenous: more than 150 environmental activists were murdered in Brazil between 2012 and 2015 ... and, in 2016 alone, 65 human rights activists were murdered.”²⁰

Government inaction and negligence along with exploitative actions from others has played a significant role in impacting the human rights of indigenous communities throughout Brazil. A notable example occurred regarding the Belo-Monte hydroelectric dam. The company responsible, Norte Energia failed to consult indigenous communities who were affected by the construction of the dam. They also failed to invest and

¹⁴ K.G. Austin et al, ‘Shifting patterns of oil palm driven deforestation in Indonesia and implications for zero-deforestation commitments’ (2017) 69 *Land Use Policy* 41.

¹⁵ Ibid 13.

¹⁶ Ibid 14.

¹⁷ World Bank, ‘Indigenous Peoples’ (n.6).

¹⁸ Austin et al (n.14) 18.

¹⁹ Salo de Carvalho, David R. Goyes, & Valeria Vegh Weis, ‘Politics and Indigenous Victimization: The Case of Brazil’ (2021) 61(1) *The British Journal of Criminology* 251-271.

²⁰ Ibid.

implement mandatory safety measures. The company was not penalised for its actions.²¹ Government inaction was also demonstrated in the situations below:

“victimization of Indigenous peoples ... governmental omission. This omission can be seen in two areas: (1) governmental agencies responsible for establishing the boundaries of Indigenous territories and their protection from intrusions lagged in their duties and (2) militarized structures inherited from previous dictatorships were not transformed into human rights institutions guaranteeing the fundamental rights of Indigenous communities, as promised.”²²

The situation for Indigenous Communities has deteriorated further following the election of the right-wing former President Bolsonaro. During his first week in office, Bolsonaro transferred the responsibility of establishing Indigenous zones from the FUNAI (National Indian Foundation) to the Ministry of Agriculture, which therefore prevented further expansion of Indigenous territory.²³ In May 2019, he legalized the ownership of heavy weaponry, enabling rural inhabitants to defend their land from Indigenous ‘threats’.²⁴

“When referring to Indigenous people, he told the members of the Rio de Janeiro Trade Association, ‘They are outcasts and we must treat them like terrorists ... Private property is sacred. We must criminalize the actions of those marginal people as terrorism. If they intrude onto private lands, they will get “lead” [bullets]’ ... Bolsonaro promised ‘as far as I’m concerned, there will no more Indigenous land’.”²⁵

In Indonesia, the deforestation rate has reached a record low. In 2020, Indonesia lost over 115,000 hectares of forest in 2020. That was a 75% decrease from 2019.²⁶ In fact deforestation rates in Indonesia have been on the decline since 2015.

They are numerous reasons for the decline of deforestation in Indonesia. These include a strong response from law enforcement agencies which stems from governmental policy changes and an increased investment.

“Our law enforcement is another policy that shows we take it seriously ... In the country, there are several companies that have been punished or have had a letter from the government, so we are really trying on law enforcement.”²⁷

Efforts to restore over 2 million hectares of degraded peat lands also helped reduce peat land fires, thus lowering deforestation. These efforts included the passing of Regulation No.57/2016, which regulates peat land use based on peat depth and limits the drainage depth to 40cm.²⁸ Another policy that aided in reducing

²¹ Andre Aroeira, ‘Belo Monte Forjou O Massacre De Altamira: Novo Presido Nunca Entregue Era Obrigacao da Norte Energia,’ *The Intercept Brasil* (7 August 2019) <<https://theintercept.com/2019/08/06/belo-monte-forjou-massacre-altamira/>> accessed 23 March 2023. Translated via Google Translate.

²² de Carvalho, Goyes & Weis, ‘Politics and Indigenous Victimization’ (n.19).

²³ ‘Bolsonaro transfere para a Agricultura a demarcação de terras indígenas e quilombolas,’ *Globo.com* (2 January 2019) <<https://g1.globo.com/politica/noticia/2019/01/02/bolsonaro-transfere-para-a-agricultura-as-atribuicoes-sobre-demarcacao-de-terras-indigenas-e-quilombolas.ghtml>> accessed 23 March 2023. Translated via Google Translate.

²⁴ Ibid 20.

²⁵ de Carvalho, Goyes & Weis, ‘Politics and Indigenous Victimization’ (n.19).

²⁶ Hans Nicholas Jong, ‘Deforestation in Indonesia hits record low, but experts fear a rebound,’ *Mongabay* (9 March 2021) <<https://news.mongabay.com/2021/03/2021-deforestation-in-indonesia-hits-record-low-but-experts-fear-a-rebound/>> accessed 23 March 2023.

²⁷ Matt McGrath, ‘Deforestation: Tropical tree losses persist at high levels,’ *BBC News* (25 April 2019) <<https://www.bbc.com/news/science-environment-48037913>> accessed 23 March 2023.

²⁸ Regulation No. 57/2016.

deforestation in Indonesia was the introduction and extension in 2011 of a moratorium seeking to reduce emissions from fires caused by deforestation.²⁹

Despite the positive actions on deforestation, indigenous communities have still faced inequality and prejudice. One of the most controversial regions in this context is West Papua. There has been a conflict between the Indonesian military and separatist forces since the 1960s in this region. The conflict has led to many deaths and displacements among indigenous groups.

“The displacement of Indigenous Peoples continues with the Indonesian military’s more recent efforts to stop the ‘KKB.’ Villagers have been driven out of their territories ... putting Indigenous villagers at risk for their lives and removing them from their livelihood. Thus, robbing them ... safety and freedom, but also their right to food, housing, and education.”³⁰

Government policy has also disadvantaged indigenous groups. The policies in question was the Agreed Map on Forest Functions (TGHK) No.26/1982,19 which was issued alongside the Ministry of Home Affairs Circulation Letter No.522.12/4275/Agr, dated 3rd November 1982. The aim of these policies was to create a map on forest land-use planning. In the resulting map over 7% of Indonesia’s total land area of 192 million hectares was identified as “Forest Estate”. Furthermore, this mapping and classification exercise was conducted without regard to the actual conditions on the ground.³¹

To make matters worse, Indonesia at the time was led by Suharto who many consider to be an autocrat. His autocratic rule led to corruption which included the lack of recognition for indigenous tenurial rights over their forestry lands. Furthermore, Suharto lent out forests as logging and plantation concessions to his family, friends, and business partners as well as key members of the military and political elites to secure their loyalty to him.³²

“Under this forestry governance framework, those who had control over the forests were able to command enormous wealth as well as political and economic influence. This framework was also designed to effectively exclude indigenous communities who had long-term connections to the forests, thus perpetuating their disadvantage, specifically a lack of tenure security over their claim as they had no legal written document recognized by the state.”³³

Despite these apparent failings by both Brazil and Indonesia, both governments have undertaken steps to improve in their treatment of indigenous communities. These steps will be examined in the next section.

²⁹ ‘Indonesia President approves two year extension of forest moratorium,’ *Reuters* (24 May 2017) <<https://www.reuters.com/article/us-indonesia-environment-forests-idUSKBN18K0CV>> accessed 23 March 2023.

³⁰ International Work Group for Indigenous Affairs (IWGIA), ‘Civil Society Condemns Human Rights Violations against Indigenous Peoples in West Papua’ (17 June 2021) <<https://www.iwgia.org/en/indonesia/4415-civil-society-condemns-human-rights-violations-against-indigenous-peoples-in-west-papua.html>> accessed 23 March 2023.

³¹ Laely Nuhidayah, Peter J. Davies & Shawkat Alam, ‘Resolving Land-Use Conflicts over Indonesia’s Customary Forests’ (2020) 42(3) *Contemporary Southeast Asia* 372-397.

³² *Ibid* 376-377.

³³ *Ibid* 377.

B. WHAT IS THE CURRENT LAW AND MECHANISMS THAT HELPS INDIGENOUS COMMUNITIES?

1. International Law

The most notable international law relating to the rights of indigenous communities is the United Nations Declaration on the Rights of Indigenous People (UNDRIP). UNDRIP was adopted by the United Nations General Assembly in 2007 with 143 countries in favour including Brazil and Indonesia. UNDRIP took over two decades of negotiations between government officials and representatives for indigenous communities. UNDRIP is a very comprehensive instrument detailing the rights of indigenous peoples in international law and policy, containing minimum standards for recognising, protecting, and promoting these rights.

“It establishes a universal framework of minimum standards for the survival, dignity, wellbeing and rights of the world's indigenous peoples.”³⁴

UNDRIP addresses both collective and individual rights including cultural rights and identity; rights to education, health, employment, and language. Discrimination is also outlawed. In relation to deforestation Article 29 states that:

“Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.”³⁵

UNDRIP also contains a provision that prohibits the forced removal of indigenous communities from their lands under Article 10.

“Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior, and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.”³⁶

Overall UNDRIP is significant as it establishes a universal framework of minimum standards concerning the rights of indigenous people. However, it is just a basis and is lacking in significant aspects regarding the rights of indigenous communities.

“UNDRIP may be a positive step for human rights initiatives, but it does not address many of the fundamental questions of indigenous rights, and provides a solution that may be ultimately rejected by many indigenous nations.”³⁷

³⁴ United Nations, ‘UN Declaration on the Rights of Indigenous Peoples’ (13 September 2007) <<https://www.ohchr.org/en/indigenous-peoples/un-declaration-rights-indigenous-peoples>> accessed 23 March 2023.

³⁵ Article 29 Declaration on the Rights of Indigenous Peoples, UNGA Res 61/295 (2 October 2007) (adopted by 144 votes with 4 abstentions).

³⁶ Article 10 Declaration on the Rights of Indigenous Peoples, UNGA Res 61/295 (2 October 2007) (adopted by 144 votes with 4 abstentions).

³⁷ Duane Champagne, ‘UNDRIP (United Nations Declaration on the Rights of Indigenous Peoples): Human, Civil, and Indigenous Rights’ (Spring 2013) 28(1) *Wicazo Sa Review* 9-22, p.21.

Another issue with UNDRIP is that it was adopted by the General Assembly which unlike the legally binding Security Council, is not legally binding in nature, instead it is highly persuasive. Some of its main aspects include for indigenous communities not to be forcibly removed from lands which is stated in Article 10 and a prohibition on military action and consultations with indigenous communities which is stated in Article 30.

UNDRIP remains a core framework for the treatment of indigenous people across the globe but they have been issues with individual member states failing to uphold the principles inscribed by it. The next section will look at the current national laws in place in Brazil and Indonesia that helps protect the rights to indigenous communities.

2. Brazilian Law

The Brazilian Constitution of 1988 has an article focusing on the protections and rights of indigenous communities. Article 231 specifically focuses on the rights of indigenous people including their customs, languages, traditions, and land rights.

“Indians shall have their social organization, customs, languages, creeds and traditions recognized, as well as their original rights to the lands they traditionally The Social Order 153 occupy, it being incumbent upon the Union to demarcate them, protect and ensure respect for all of their property.”³⁸

Article 231 goes even further when highlighting the land rights of indigenous people. The article contains six paragraphs detailing the land rights. Paragraph one defines what can be constituted as indigenous lands as:

“Lands traditionally occupied by Indians are those on which they live on a permanent basis, those used for their productive activities, those indispensable to the preservation of the environmental resources necessary for their well-being and for their physical and cultural reproduction, according to their uses, customs and traditions.”³⁹

Paragraph three stated that any hydric and mineral resources can only be used with the permission of the Brazilian National Congress.⁴⁰ Paragraph five stated that the removal of indigenous peoples from their lands is forbidden except for the intervention of the National Congress under specific scenarios such as natural disasters, epidemics and anything risking the indigenous population or sovereignty of the country.⁴¹

Article 232 gives a further protection to indigenous communities. It allows indigenous peoples to sue to defend their rights if at stake.

“The Indians, their communities and organizations have standing under the law to sue to defend their rights and interests, the Public Prosecution intervening in all the procedural acts.”⁴²

Before the 1988 Constitution came into force, the Law protecting indigenous communities was the LAW No. 6001(1973) also known as the Indian Statute. The Indian Statute was like the 1988 constitution as it laid out the rights and rules towards indigenous communities. Despite the similarities, they were some key differences. One of the main differences was that the 1988 constitution recognises indigenous peoples as the original inhabitants of Brazil and recognizes their cultural and land rights, whereas the Indian Statute of

³⁸ 1988 Constitution of Brazil Article 231.

³⁹ 1988 Constitution of Brazil Article 231.1°.

⁴⁰ 1988 Constitution of Brazil Article 231.3°.

⁴¹ 1988 Constitution of Brazil Article 231.5°.

⁴² 1988 Constitution of Brazil Article 232.

1973, which dictates the organisational structure of the federal indigenous protection agency FUNAI and other aspects of indigenous policy, treats indigenous peoples as wards of the state who cannot fend for themselves.

According to the 1973 statute, tribes must get permission from FUNAI for everything from constructing roads, to selling seeds gathered in the forest, to importing cattle onto their land. Funds from the sales of forest produce or development project reimbursements are kept in accounts controlled by FUNAI. In almost every aspect of the policy, indigenous people are treated as if they are incapable of making choices to determine their own future.⁴³ Despite the 1988 constitution coming into force, the 1973 statute remains active as it has never been replaced or revised, thus meaning that it still acts as a fallback for policies concerning indigenous peoples.

The final Brazilian law to be discussed is the Elite Pressures and Decree 1775.

Land security is vital to indigenous peoples in Brazil; however, it is also of great interest to businesses and investors. Article 20 of the constitution gives the Brazilian government control over indigenous lands to protect indigenous interests. This means that the government is required by the constitution to make the territorial boundaries of these lands known, to defend the boundaries, and to uphold the cultures of the indigenous groups who live within these lands.⁴⁴

However, in 1996 the government implemented Decree 1775, stating that any party wishing to contest the demarcation of indigenous lands could do so up to 90 days after that territory had been reviewed by FUNAI and published in the Union's Official Journal. The decree applied to all lands that had been reviewed previously but which had not completed the full demarcation process.

The decree put 125 million acres of land at risk, and led over 1,000 retroactive claims by corporations, landowners, and government entities such as the Brazilian Environmental Protection. Most of the retroactive claims were dismissed as invalid but a few led to lengthy court proceedings in which indigenous peoples had little voice.

The entire demarcation process only includes indigenous input in just one out of six steps, when indigenous peoples make claims to the FUNAI border reviewers stating how and why an area of land is their native territory. Furthermore, indigenous peoples are not invited to court hearings in which landowners or corporations protest indigenous land borders under Decree 1775. This further demonstrates the harm of the tutelage concept as discussed when mentioning the 1973 statute, which sees indigenous peoples as incapable of participating in the legal system.

Decree 1775 also makes FUNAI subject to partisan politics and pressures. With the passage of Decree 1775, former President Fernando Henrique Cardoso demonstrated the government's vulnerability by succumbing to pressure by elite landowners and corporate interests. In addition, the decree put FUNAI under the control of the Brazilian Ministry of Justice, a government branch that historically has supported business interests.⁴⁵

⁴³ Sara Johnson-Steffey, 'Still Waiting: After Winning Recognition in 1988, Decade was Dismal for Brazil's Indigenous' (2004) 28(3) *Cultural Survival Quarterly* <<https://www.culturalsurvival.org/publications/cultural-survival-quarterly/still-waiting-after-winning-recognition-1988-decade-was>> accessed 23 March 2023.

⁴⁴ 1988 Constitution of Brazil Article 20.2°.

⁴⁵ Johnson-Steffey, 'Still Waiting' (n.43).

Decree 1775 has received negative reviews both nationally and internationally and from indigenous rights groups who claim that the decree will only hasten the deterioration of the rights of indigenous people. The decree has even been referred to as 'Genocide Decree'.

*"Thus, the enactment of Decree 1775, widely referred to in the media and literature as the 'Genocide Decree,' has provoked national and international outrage ... Indigenous rights advocates argue that Decree 1775 is part of a larger trend toward the progressive elimination of indigenous rights in Brazil."*⁴⁶

However, the Brazilian government have justified the decree by stating that Decree 1775 will protect indigenous communities from any potential future challenges as once the demarcation process is completed, it cannot be taken to court based on being unconstitutional. The government go on to state that the decree will assure the legality of indigenous lands by allowing outside actors to counter claim the lands in question.

*"The Brazilian government's rationale for enacting Decree 1775 is that reform is necessary to protect indigenous lands from future challenges. This measure supposedly will guarantee that the demarcation process, once completed, cannot be challenged on grounds of unconstitutionality."*⁴⁷

Despite the positive reforms with the 1988 Constitution, more still needs to be done to improve the situation in Brazil. The current legal framework in place is either a framework or is in fact aiding with the deterioration of relations between indigenous communities and the Brazilian government. The situation in Brazil is worsening due to policies implemented by Bolsonaro. One of these policies is PL 490/2007 which if signed into law would lead to the cancellation of legal protections of Indigenous territories.⁴⁸ Bolsonaro has further weakened relations between the government and indigenous communities by scaling back the enforcement of environmental laws, weakened federal environmental agencies, and harshly criticised organizations and individuals working to preserve and protect the Amazon rainforest.⁴⁹

Illegal mining companies have become even more emboldened due to Bolsonaro's policies even going as far as to invade multiple indigenous territories in one month.

*"Community leaders in two regions of Pará state told Human Rights Watch that they used to see trucks removing illegally harvested timber from the forest only at night, but since Bolsonaro's election, the trucks also pass in unprecedentedly large numbers and in broad daylight. Just in January, loggers invaded at least four Indigenous territories."*⁵⁰

The impact on the rainforest has also increased significantly. During Bolsonaro's first eight months in office, deforestation almost doubled compared to the same period in 2018, according to preliminary official data.

⁴⁶ Sara Gavney Moore & Maria Carmen Lemos, 'Indigenous Policy in Brazil: The Development of Decree 1775 and the Proposed Raposa/Serra do Sol Reserve, Roraima, Brazil' (1999) 21(2) *Human Rights Quarterly* 446.

⁴⁷ Ibid 446.

⁴⁸ Michael Fox, 'We will not leave Brasilia defeated: Brazilian indigenous groups mobilize to defend land rights,' *The World* (22 June 2021) <<https://theworld.org/stories/2021-06-22/we-will-not-leave-brasilia-defeated-brazilian-indigenous-groups-mobilize-defend>> accessed 23 March 2023.

⁴⁹ Human Rights Watch, 'Rainforest Mafias: How Violence and Impunity Fuel Deforestation in Brazil's Amazon: Summary' (17 September 2019) <<https://www.hrw.org/report/2019/09/17/rainforest-mafias/how-violence-and-impunity-fuel-deforestation-brazils-amazon>> accessed 23 March 2023.

⁵⁰ Ibid.

By August 2019, forest fires linked to deforestation were raging throughout the Amazon on a scale that had not been seen since 2010.⁵¹

3. Indonesian Law

The Constitution of Indonesia contains a framework with how indigenous communities are treated. Article 18 (b) (2) states that:

“The State recognises and respects traditional communities along with their traditional customary rights as long as these remain in existence and are in accordance with the societal development and the principles of the Unitary State of the Republic of Indonesia, and shall be regulated by law.”⁵²

The Constitution also states that the cultural rights and identities of indigenous communities must be respected.

“The cultural identities and rights of traditional communities shall be respected in accordance with the development of times and civilisations”⁵³

In Article 6 of Law No.39 Year 1999 which concerns human rights, it states that the differences and needs of indigenous people must be protected to uphold human rights and development in Indonesia.

“Article 6 (1) In the interests of upholding human rights, the differences and needs of indigenous peoples must be taken into consideration and protected by the law, the public and the Government. (2) The cultural identity of indigenous peoples, including indigenous land rights, must be upheld, in accordance with the development of the times.”⁵⁴

Although Indonesia is a signatory to UNDRIP, government officials often argue that the concept of Indigenous Peoples is not applicable, since almost all are Indigenous and have the right to the same rights. As a result, the government has rejected calls for the specific needs of groups that identify themselves as Indigenous. Despite the lack of official recognition towards specific indigenous groups, the government has implemented rules regarding the rights of indigenous communities. Under the 1999 Forestry Law, indigenous communities are listed as ‘customary law communities’. The 1999 Forestry Law stipulates that a customary law community has clear customary boundaries in place, has a prevailing system of laws that is abided by its members and still utilises forest areas to meet daily needs.

Article 67 states what activities are allowed to be conducted by members of a customary law community, this includes carrying out forest management and collecting forest products for their needs.

*“a. Collecting forest products for daily needs of concerned communities;
b. Conducting forest management based on prevailing customary laws which are not contradictory to laws; and
c. Being empowered for improving their welfare”⁵⁵*

⁵¹ Thais Borges & Sue Branford, ‘Bolsonaro expresses love for Amazon as it burns, offers no policy shift,’ *Mongabay* (26 August 2019) <<https://news.mongabay.com/2019/08/bolsonaro-expresses-love-for-amazon-as-it-burns-offers-no-policy-shift/>> accessed 23 March 2023.

⁵² Constitution of Indonesia Article 18(b)(2).

⁵³ Constitution of Indonesia Article 28(1)(3).

⁵⁴ Article 6 (1) (2) Law No. 39 of 1999 on Human Rights.

⁵⁵ Article 67(1) Law No.41 of 1999 re Forestry Affairs.

Article 4 of the 1999 Forestry Law also states that the forest control by the State shall respect the right of customary law community, as far as they still exist, and their existence is recognised and not contradictory to national interests.⁵⁶ In the most recent legislation, there is an implicit recognition of some rights of the peoples known as Masyarakat adat or Masyarakat hukum adat, which include Law No.5/1960 on Basic Agrarian Regulation, Law No. 39/1999 on Human Rights which states:

“The Agrarian law which applies to the earth, water and air space is Adat- Law as Far as it is not in conflict with the National and State's interests based on the unity of the Nation.”⁵⁷

Article 1(33) of Law No.27/2007 on Coastal and Small Islands Management defines *Masyarakat Adat* as a group of communities living traditionally in a specific geographic area because of binding in origin of ancestor, strong relation with the environment as well as system of values determining economic, political, social, and legal structures.

“... is a group of Coastal area Society which as hereditary stay at certain geography because the existence of bond at ancestor beginning, strong connection with Coastal area Resource and Little Islands, also result system which is determining economy institution, politic, society, and legal.”⁵⁸

It is also important to note that Indonesia requires companies in particular palm oil companies to follow certain laws when setting up palm oil plantations, Indonesian law requires that a company obtain a series of government permits from different departments. These include a location permit, which the governor of a region is supposed to give once the reviewing process of the ownership and any competing rights over the land has been thoroughly looked at. These laws include Regulation No.14 of 2018 on Location Permits and Regulation No.17 of 2019 New Location Permit Regulation with the latter replacing the former.

Before starting its plantation operations, the company should also conduct an environmental and social impact assessment and receive additional permits such as the environment permit from the district or provincial authorities, a plantation permit at the district or provincial level and a forest conversion permit from Ministry of Forestry.

There is a global palm oil certification standard – the Roundtable on Sustainable Palm Oil (RSPO). Many palm oil-producing countries, including Indonesia, also have a national standard. The national version of the RSPO in Indonesia is known as the Indonesian Sustainable Palm Oil (ISPO) The ISPO supplements the many laws that govern land acquisition and palm oil cultivation. The certification mechanism aims to improve the competitiveness of Indonesian palm oil in the global market, support commitments to reduce greenhouse gas emissions, and improve sustainability. It accredits oil palm plantations that comply with Indonesian local laws and principles of social responsibility.

The ISPO certification is mandatory for all large oil palm plantation business actors in Indonesia with compliance dates and requirements varying on size of operations. Government authorities can downgrade and revoke the business license of plantation companies that are not ISPO certified.⁵⁹ However, the ISPO has not escaped criticism and several NGOs have criticized the ISPO for its inadequate environmental protections,

⁵⁶ Article 4 Law No.41 of 1999 re Forestry Affairs.

⁵⁷ Article 5(4) Law No. 5 of 1960 Agrarian Principles.

⁵⁸ Article 1(33) Law No. 27 of 2007 re Management of Coastal Areas and Isles.

⁵⁹ Regulation of the Minister of Agriculture No. 19/Permentan/OT/140/3/2011.

neglecting human rights, weak monitoring, and oversight such as having no existing grievance mechanisms, and poor enforcement.⁶⁰

Despite the laws in place, many problems have arisen regarding the treatment of indigenous people especially relating to the palm oil trade by both the Indonesian government and by companies. The next Section will focus on how the laws in both Indonesia and Brazil are insufficient in protecting the rights of their respective indigenous populations.

C. IS LAW EFFECTIVE?

1. International Law

Over the years, international law has become increasingly progressive in championing human rights. This can be seen with the UN implementing conventions such as the Convention on the Elimination of All Forms of Racial Discrimination in 1965 and Convention on the Rights of Persons with Disabilities in 2006, as well as implementing declarations such as the Universal Declaration of Human Rights in 1948 and of course UNDRIP in 2007. The main obstacle with international law is that a lot of the time it is not binding. Instead, international law is highly persuasive the most part. Even when international law is legally binding, it is only usually binding when a state has signed up or ratified to it.

“Even multilateral treaties do not apply to all states, but only to those which have consented to be so bound, by signing and ratifying or acceding to them.”⁶¹

International Law also is difficult to enforce. Enforcement bodies such as the UN Security Council need the support from the 5 permanent members (France, USA, UK, Russia, and China) which has become difficult to obtain in recent years due to the souring of relations between the West, China, and Russia.

“It is possible that the window of opportunity for Council dynamism on human rights issues will close at some point and revert to the Cold War pattern. Russian and Western governments display much friction on a variety of issues. The same is true for China and Western governments, and already a kind of cyber war was evident between the two with much mutual hacking into governmental and private Internet connections.”⁶²

Another issue with international law is that a lot of the time it is not legally binding. Even UNDRIP is not legally binding since it was adopted by the General Assembly (a persuasive but non-binding body). This means that sometimes international law can be ineffective as countries may fail to follow certain rules or just disagree to a certain treaty/provision.

⁶⁰ Forest Peoples Programme, ‘A Comparison Leading Palm Oil Certification Standards’ (no date) <http://www.forestpeoples.org/sites/default/files/documents/Palm%20Oil%20Certification%20Standards_lowres_spr_eads.pdf> accessed 23 March 2023.

⁶¹ Department of Foreign Affairs, ‘How International Law Works?’ <<https://www.dfa.ie/our-role-policies/international-priorities/international-law/how-international-law-works/>> accessed 23 March 2023.

⁶² David P. Forsythe, ‘The UN Security Council and Human Rights: Promising Developments, Persistent Problems’ (2014), 13(2) *Journal of Human Rights* 139.

2. Brazil – Violence in the Amazon: A Case Study on Illegal Deforestation

The situation in Brazil regarding deforestation and how it impacted was already concerning. However, the situation in Brazil is further deteriorating due to policies implemented by Bolsonaro such as the aforementioned PL 490/2007 which if signed into law would lead to the cancellation of legal protections of Indigenous territories. Bolsonaro has further weakened relations between the government and indigenous communities by going as far as to scale back the enforcement of environmental laws as well as to weaken federal environmental agencies and to harshly criticise organisations and individuals working to preserve and protect the Amazon rainforest. During Bolsonaro's tenure as President, illegal deforestation has risen to its worst level since 2012.

“Between August 2020 and July 2021, the rainforest lost 10,476 square kilometres – an area nearly seven times bigger than greater London and 13 times the size of New York City ... The figure is 57% higher than in the previous year and is the worst since 2012.”⁶³

Violence linked to illegal deforestation has also plagued the Amazon rainforest long before Bolsonaro came to power. According to a report by Human Rights Watch, interviews conducted by numerous federal and state officials involved in environmental or criminal law enforcement in the Amazon region, as well as of the local Indigenous populations came to the broad consensus that violence in the Amazon has been widespread for many years.⁶⁴

The report goes on to state that more than 300 people have been killed during the last decade in the context of conflicts over the use of land and resources in the Amazon. Many of these deaths were caused by those involved in illegal logging. This is according to the Pastoral Land Commission (PLC), a non-profit organisation associated with the Catholic Church. The PLC keeps a detailed registry of cases based on information gathered by its lawyers, who monitor cases of rural violence throughout the country. Unfortunately, there are no comparable statistics compiled by the various government agencies of Brazil.⁶⁵

In the Human Rights Watch report, 28 of the 300 killings were discussed in detail along with four attempted killings and over 40 death threats. Those who were killed or attacked were often leaders of indigenous communities, members of local authorities, environmental defenders and sometimes even concerned residents. All had a common goal which was to try and stop further illegal deforestation. The violence in the Amazon has been steadily increasing for a multitude of reasons. The reasons include there been inadequate protections in place for forest defenders and the anti-environmental policies implemented by the Bolsonaro government.

One of the protections in place for environmental defenders including Indigenous communities is the Protection of Human Rights Defenders (Programa Nacional de Proteção aos Defensores de Direitos Humanos or PPDDH) which was created in 2004. They are over 400 people currently enrolled in the programme across Brazil, with most of them been defenders of Indigenous rights, rights to land and environmental rights. The PPDDH aims to provide numerous protection measures to those in the programme, such as visits conducted by members of the PPDDH to the human rights defenders, maintaining phone contact, giving visibility to their work, and encouraging other institutions to provide protections. Its mandate also includes developing

⁶³ Flávia Milhorange, 'Deforestation in Brazilian Amazon hits highest annual level in a decade,' *The Guardian* (20 August 2021) <<https://www.theguardian.com/environment/2021/aug/20/brazil-amazon-deforestation-report-bolsonaro-climate>> accessed 23 March 2023.

⁶⁴ Human Rights Watch, 'Rainforest Mafias' (n.49).

⁶⁵ *Ibid* 63.

“institutional strategies” to address the root causes of risk or vulnerability for those under protection.⁶⁶ However Human Rights Watch concluded that in practice PPDDH only offers minor protections. Government officials and forest defenders were interviewed by Human Rights Watch; they agreed that most of the time the only protections carried out by the PPDDH were occasional phone calls to check in on defenders.⁶⁷

In 2015 in the state of Pará, the federal and state prosecutors’ offices filed a joint lawsuit against the federal and state governments after finding that the PPDDH was completely ineffective in that state. The case ended up in court in 2019, where it was held that five defenders who were been threatened by illegal loggers and whose cases prosecutors explicitly mentioned in their petitions were “risking their lives and the lives of their relatives for the protection of their communities and the environment.” The judge found “irrefutable evidence” that they needed more effective protection and ordered the federal and state governments to deploy periodic police patrols around their homes, install security cameras, and provide them with psychological and medical care.⁶⁸ According to Human Rights Watch, the authorities had only partially implemented the ruling by conducting periodical police patrols and medical checks but failing to install security cameras.⁶⁹

Between 2004-2012 Brazil had reduced overall deforestation in the Amazon by almost 75 percent, from almost 15,000 kilometres of forest destroyed in 2006 to just over 6,000 in 2011.⁷⁰ Unfortunately, the decreasing deforestation rates ended from 2012 onwards. Between 2020-2021 was estimated that up to 13,235 square kilometres of Amazon rainforest was lost, this was the second highest rate since 2006.⁷¹

Brazil’s previous success in curbing deforestation prior to 2012 was in part a result of the use of near real-time satellite imagery to locate and shut down illegal logging sites. It was also due to the creation of protected areas – conservation reserves and Indigenous territories which huge swathes of land throughout the Amazon region, where special legal restrictions on land-use protect the forest.

But several recent developments have led to the reversal of this progress. Among them, loggers turned increasingly to techniques for removing trees that make it more difficult for satellite surveillance to detect the scope of the deforestation that is occurring. While the loggers were hiding the actual damages, at the same time, the country’s federal environmental enforcement agencies suffered from budget cuts and job losses which have led to the reduction of the number of field inspectors available to conduct deforestation-monitoring operations.

Indigenous communities and other residents have long played a significant role in Brazil’s efforts in preventing deforestation. They have often alerted authorities to illegal logging activities that might otherwise go unnoticed. Several studies have demonstrated that deforestation is much lower in land securely held by Indigenous communities which indicates that Indigenous territories are particularly effective as barriers against illegal logging and deforestation.

⁶⁶ [Decree No. 6044](#) (2007).

⁶⁷ Human Rights Watch, ‘Rainforest Mafias’ (n.49).

⁶⁸ Judicial decision by federal judge Sandra Maria Correia da Silva, April 1, 2019, case number 0002184-49.2015.4.01.3908 Itaituba, Pará State, p. 13.

⁶⁹ Human Rights Watch, ‘Rainforest Mafias’ (n.49).

⁷⁰ Jonathan Watts, ‘Amazon deforestation at record low, data shows,’ *The Guardian* (7 June 2012) <<https://www.theguardian.com/environment/2012/jun/07/amazon-deforestation-illegal-logging-brazil>> accessed 23 March 2023.

⁷¹ Chloe Taylor, ‘Deforestation in Brazil’s Amazon rainforest hits 15-year high, data shows,’ *CNBC* (19 November 2021) <<https://www.cnb.com/2021/11/19/deforestation-in-brazils-amazon-rainforest-hits-15-year-high.html>> accessed 23 March 2023.

“Our results suggest that not only do indigenous territories serve a human rights role, but they are a cost-effective way for governments to preserve their forested areas. First, obtaining full property rights is crucial to recognize indigenous peoples’ original right to land and protect their territories from illegal deforestation. Second, when implemented, indigenous property rights create sustainable areas in the Amazon rainforest ... Our findings suggest that, if ... indigenous peoples are provided property rights over their land, they can better manage their land and protect it from external threats.”⁷²

This contribution has become even more important in recent years given the diminished ability of Brazil’s environmental agencies to deploy inspectors to monitor what is happening on the ground. For example, in the state of Maranhão which has seen the capacity of federal government agencies to enforce environmental laws diminishing, members of four Indigenous communities have decided to organise “forest guardians.” The “guardians” patrol their territories and report any illegal logging they encounter to authorities. These “forest guardians” have been critical in bringing about enforcement operations on illegal logging sites on some occasions. However, the patrols have come with significant risks and dangers and have resulted in community members being threatened, attacked, and according to community leaders, killed by loggers. Simultaneously, the failure to investigate these fatal and non-fatal attacks allows the violence and intimidation by loggers to go on without checks and balances. This fuels a climate of fear that will inevitably reduce or limit the likelihood that more people, both Indigenous people and residents, will take that risk of becoming a “forest guardian.” This thereby deprives Brazil’s environmental agencies of local support that is vital for their efforts to fight illegal deforestation.⁷³

To fulfil its commitment under the Paris Agreement which is to end illegal deforestation and reduce greenhouse gas emissions, Brazil needs a government that promises to uphold the rule of law in the Amazon. This means taking a clear position to protect national forest advocate and defenders, including both environmental enforcement officers and indigenous peoples and members of other local communities, who are trying to contain the criminal networks and bad actors involved in illegal logging. Instead, Brazil has a leader who seems determined to do precisely the opposite. President Jair Bolsonaro appointed foreign minister Ernesto Araujo who has made statements denying that there is a climate change emergency and who accused international efforts to address climate change as being politically alarmist.

“There is no climate change catastrophe,” Araujo said in a talk at Washington’s Heritage Foundation ... Araujo, who argued that there was a lack of scientific proof over the causes of global warming, said climate change advocates were stirring up alarmism for political ends as part of a leftist conspiracy against the United States and Brazil, whose sovereignty is under attack?”⁷⁴

Bolsonaro also appointed an environment minister who was forced to resign after he was under investigation for illegal logging.

⁷² Kathryn Baragwanath & Ella Bayi, ‘Collective property rights reduce deforestation in the Brazilian Amazon’ (2020) 117 (34) *Proceedings of the National Academy of Sciences of the United States of America* <<https://www.pnas.org/ucc.idm.oclc.org/doi/full/10.1073/pnas.1917874117>> accessed 23 March 2023.

⁷³ Manuella Libardi, ‘Amazon heroes who don’t give up,’ *Open Democracy* (16 September 2020) <<https://www.opendemocracy.net/en/democraciaabierta/guardians-of-the-forest-heroes-who-dont-give-up/>> accessed 23 March 2023.

⁷⁴ ‘Brazil foreign minister says, “there is no climate change catastrophe,”’ *Reuters* (11 September 2019) <<https://www.reuters.com/article/us-brazil-environment-araujo-idUSKCN1VW2S2>> accessed 23 March 2023.

“Ricardo Salles quit on another turbulent day in the capital Brasília ... The investigation followed a tip-off from US officials who suspected corrupt Brazilian officials were providing falsified paperwork for illegally felled Amazonian hardwoods being exported to the US.”⁷⁵

The Bolsonaro administration has moved aggressively to curtail the country’s capacity to enforce its environmental laws. It slashed the discretionary budget of the Ministry of the Environment by 24 percent. He even done so just a day after key climate talks with the United States in which Bolsonaro pledged to double the budget for environmental enforcement and end illegal deforestation by 2030.⁷⁶ This meant that funds that were destined for enforcement efforts and for fighting fires in the Amazon were now eliminated. And on a single day in February, it fired 21 regional directors of the Brazilian Institute of the Environment and Renewable Natural Resources (IBAMA) out of 27 in total responsible for approving anti-logging operations.⁷⁷ The Bolsonaro administration then proceeded to fill the vacant IBAMA positions with members of the armed forces and military police.

“The Bolsonaro administration is also militarizing the government’s environmental bodies, say critics. Key positions in the Environment Ministry, IBAMA and ICMBio are now in the hands of officers from the Armed Forces and Military Police.”⁷⁸

The administration then enacted policies that effectively sabotage the work of the enforcement agents who remain. One is dismantling the department that coordinated major anti-deforestation operations by involving various federal agencies and the armed forces. Another is a requirement – verbally communicated to agents but not written – that agents leave intact the vehicles and equipment they find at remote illegal logging sites, rather than destroying them as they are not authorised to do by Brazilian law. Agents now must remove that equipment through the rainforest, making them vulnerable to ambushes by loggers trying to retrieve it.

The administration has moved to minimize the consequences and punitive measures faced by those caught engaging in illegal logging. During the year 2020 the number of fines for infractions related to deforestation issued by IBAMA fell by 20 percent compared to the same period the year before.⁷⁹ The federal agency gave out 9,516 fines in 2020 compared with 11,914 in 2019. Also, in April 2019 the government signed Decree No. 9,760 into law which stated that all environmental fines must be reviewed at a “conciliation” hearing by a panel presided over by someone who is not associated with any environmental agencies. The panel can offer discounts or eliminate the fine altogether, and while the hearings are pending, the payment deadlines are suspended.⁸⁰ It is important to note though that many of the policies in Decree No. 9,760 were actually reversed in a later amendment known as Decree No. 11,080.

⁷⁵ Tom Hennigan, ‘Brazil’s environment minister Salles resigns over illegal logging in Amazon investigation,’ *The Irish Times* (24 June 2021) <<https://www.irishtimes.com/news/world/brazil-s-environment-minister-salles-resigns-over-illegal-logging-in-amazon-investigation-1.4602618>> accessed 23 March 2023.

⁷⁶ ‘Bolsonaro slashes Brazil’s environment budget, day after climate talks pledge,’ *The Guardian* (24 April 2021) <<https://www.theguardian.com/world/2021/apr/24/bolsonaro-slashes-brazils-environment-budget-day-after-climate-talks-pledge>> accessed 23 March 2023.

⁷⁷ Sue Branford & Thais Borges, ‘Dismantling of Brazilian environmental protections gains pace,’ *Mongabay* (8 May 2019) <<https://news.mongabay.com/2019/05/dismantling-of-brazilian-environmental-protections-gains-pace/>> accessed 23 March 2023.

⁷⁸ Ibid.

⁷⁹ ‘Brazil environmental fines fall 20% as deforestation soars,’ *Reuters* (12 January 2021) <<https://www.reuters.com/article/us-brazil-environment-idUSKBN29H1Q7>> accessed 23 March 2023.

⁸⁰ [Decree No. 9,760, \(2019\)](#).

According to Suely Araújo, who was president of IBAMA until December 2018, the requirement of a conciliation hearing will cripple IBAMA's ability to sanction environmental violations by delaying proceedings that already take years to complete.⁸¹

To briefly summarise, the Amazon rainforest has always faced challenges relating to illegal deforestation such as the persecution of those protecting the rainforest. Even very recently, British journalist Dom Phillips and indigenous expert Bruno Pereira were unlawfully killed after receiving death threats for helping to protect the indigenous peoples from illegal drug traffickers, miners, loggers, and hunters.⁸² The situation has only deteriorated further following Bolsonaro's election win which led to the implementation of policies contrary to combating illegal logging. Many environmental agencies also went through mass firings with either military or pro-government officials being installed. Criminal networks have also further increased feeling emboldened by Bolsonaro and his policies. However, measures are being undertaken to combat all these setbacks.

3. Indonesia's Palm Oil Expansion: A Case Study on Illegal Deforestation

Despite progress in recent years by the Indonesian government, there have been many issues. The most notable one is the palm oil industry especially with how the palm oil trade has led to a worsening in the situation for the forest covered peat lands of Indonesia. Peat lands in Indonesia are of particular importance as they provide the world with a significant amount of carbon.

"Peat lands in Indonesia store an estimated 80 billion tons of carbon, equivalent to approximately 5 percent of all carbon stored in soil globally ... housed approximately 50 percent of the world's total tropical peat lands, but that is rapidly diminishing as large-scale cultivation of these lands for oil palm plantations increases."⁸³

Palm oil plantations have been expanding in Indonesia in recent years, undermining the rights to an adequate standard of living, property, and other human rights of rural and indigenous communities living on or close to land converted to use for palm oil plantations.

The harm of expanding palm oil plantations does not harm just those living in local communities, it also causes serious harm to the global climate and it only accelerates climate change. The lack of protection of land rights of local communities who use the peat land for their livelihoods while leaving it intact, allows large-scale commercial agriculture to contribute to serious harms to the global climate. As peat land is converted to use in commercial agriculture, Indonesia is permitting the wide scale destruction of one of the most important carbon sinks in the world, which only reduces and prevents carbon emissions to avert the worst-case scenarios of climate change across the globe.

The reason for the expansion of the palm oil trade is due to how widespread the use of palm oil is. Palm oil is found in a wide variety of day-to-day goods including frozen foods, desserts, makeup, and vehicles.

⁸¹ Human Rights Watch, 'Rainforest Mafias' (n.49).

⁸² Juliana Koch & Marcia Reverdosa, 'British journalist and Brazilian indigenous affairs expert missing in the Amazon,' *CNN* (8 June 2022) <<https://edition.cnn.com/2022/06/06/americas/dom-phillips-brazil-bruno-arajo-pereira-intl-latam/index.html>> accessed 23 March 2023.

⁸³ Human Rights Watch, 'Why Our Land? Oil Palm Expansion in Indonesia Risks Peatlands and Livelihoods' (3 June 2021) <<https://www.hrw.org/report/2021/06/03/why-our-land/oil-palm-expansion-indonesia-risks-peatlands-and-livelihoods>> accessed 23 March 2023.

“Palm oil derivatives make their way into many grocery store products including frozen pizzas, chocolate and hazelnut spreads, cookies, and margarine...lotions and creams, soaps, makeup, candles, and detergent ... biodiesel blend used in vehicles and industrial machinery.”⁸⁴

In the Human Rights Watch report, the plantation operations of two companies, PT Ledo Lestari in Bengkayang regency of West Kalimantan province, and PT Sari Aditya Loka 1 in Sarolangun regency of Jambi province were both focused on. These two oil palm plantations have had a negative result on the rights of two groups of Indigenous peoples: the Ibans who are indigenous to Borneo and the Orang Rimbas a semi-nomadic, forest-dependent Indigenous people in central Sumatra. This Section will be focusing on PT Ledo Lestari.

A multitude of factors have led to this situation. These include national and regional laws that are too weak to enforce and palm oil companies failing to abide by moral standards. International governments also have played an active role in destabilising the indigenous communities of Indonesia by been too heavily reliant on palm oil.

An array of weak laws only hastened by poor government oversight along with the failure of palm oil companies to fulfil their human rights due diligence responsibilities, have led to the loss of land and livelihood opportunities for Indigenous people in the West Kalimantan and Jambi provinces. Indonesia’s constitution under Article 18(b) and other laws as discussed in Section 2 recognise that *adat* (custom or tradition) communities exist and affirm their communal rights to land. However, in practice for these rights to be realised, they are lengthy processes in which Indigenous groups must prove their existence and register their land rights. Without legal recognition, any group that self-identifies as Indigenous cannot register collective rights to land.⁸⁵

To get legal recognition for collective right to land indigenous communities must apply to be legally recognised. The main barrier to this is that most districts have not established recognition procedures.⁸⁶ In areas and provinces in which procedures have already been established, the regulations set numerous different criteria that need to be met for collective recognition to land rights are to be satisfied.⁸⁷

“Currently, there are only 34 districts and provinces that have issued local legal products that are related to the recognition and protection of indigenous peoples. There are only about 15 draft regional regulations that are still being discussed or included in the provincial or district and city legislation program.”⁸⁸

⁸⁴ Human Rights Watch, ‘When We Lost the Forest, We Lost Everything: Oil Palm Plantations and Rights Violations in Indonesia’ (22 September 2019) <<https://www.hrw.org/report/2019/09/23/when-we-lost-forest-we-lost-everything/oil-palm-plantations-and-rights-violations>> accessed 23 March 2023.

⁸⁵ Ibid.

⁸⁶ Lusia Arumingtyas, ‘Percepat Pengakuan Hutan Adat, Pemerintah Daerah Harus Proaktif,’ *Mongabay* (11 February 2018) <<https://www.mongabay.co.id/2018/02/11/percepat-pengakuan-hutan-adat-pemerintah-daerah-harus-proaktif/>> accessed 23 March 2023. Translated via Google Translate.

⁸⁷ Kasmita Widodo, ‘Opini: Menagih Janji Perlindungan Hutan Adat,’ *Mongabay* (25 June 2018) <<https://www.mongabay.co.id/2018/06/25/opini-menagih-janji-perlindungan-hutan-adat/>> accessed 23 March 2023.

⁸⁸ D.A.A. Sari, A. Mayastuti, A. Rianto & Lutfiyah, ‘Indigenous people’s forest management to support REDD program and Indonesia one map policy’ (2018) 200 (012048) *Earth and Environmental Science* 6.

Authorities also can take years to process applications: local NGOs such as Badan Registrasi Wilayah Adat (BRWA), said Indigenous peoples that filed applications all the way in 2012 and 2013 are still waiting to be officially recognised.⁸⁹

Despite the vast number of Indigenous territories that have been mapped by the Indonesian government under laws such as the 1999 Forestry Law, local NGOs say very few have been legally recognized. Local NGO BRWA has mapped out almost 1,600 Indigenous territories as of August 2022. Out of this almost 1,600 figure, 149 of these areas have been verified and just 47 have been certified by the government.⁹⁰ According to an interview conducted by Human Rights Watch and The Alliance of Indigenous Peoples of the Archipelago (AMAN), an NGO focusing on Indigenous people in West Kalimantan, only two Indigenous groups were able to register their communal rights in West Kalimantan in 2018.⁹¹

In May 2013, the Indonesian Constitutional Court handed down a landmark judgment in Case No.35/PUU-X/20 that granted Indigenous people rights to their customary forests. Before this decision, all forests (including customary) were legally considered a part of state-owned forests in which authorities granted Indigenous communities living in and around these forests limited use rights.⁹²

Article 4 of the 1999 Forestry Law even states that:

“All forests within the territory of the Republic of Indonesia including all the natural wealth contained therein shall be under the state’s control for people’s maximum welfare.”⁹³

The court decision prevents government authorities from issuing permits for land-based investments on adat forests without considering the rights of Indigenous people who live in and around it.⁹⁴ However, several years after the case was upheld, it was found that little was done to implement the change necessary with even the UN getting involved.

“Victoria Tauli-Corpuz, the UN Special Rapporteur on the Rights of Indigenous People, said the Indonesian government still lacked commitment to indigenous peoples ... Tauli-Corpuz also said the government should accelerate the process of the indigenous people’s law and establish a special body that ensured the delivery of the rights of indigenous people.”⁹⁵

The next legal and policy developments that aimed to recognise the rights of Indigenous people came in 2015. The Ministry of Environment and Forestry required local governments to demarcate and protect customary forests. The same year, the government’s National Medium-Term Development Plan 2015-2019

⁸⁹ BRWA, ‘Index’ <[https://brwa.or.id/wa/index/0/20/32?q=0&p=0&k=0&s\[\]=1](https://brwa.or.id/wa/index/0/20/32?q=0&p=0&k=0&s[]=1)> accessed 23 March 2023.

⁹⁰ BRWA, ‘Statistics’ <<https://www.brwa.or.id/stats>> accessed 23 March 2023.

⁹¹ Human Rights Watch, ‘When We Lost the Forest’ (n.84).

⁹² Forest Peoples Programme, ‘Constitutional Court ruling restores indigenous peoples’ rights to their customary forests in Indonesia’ (16 May 2013) <<http://www.forestpeoples.org/index.php/en/topics/rights-land-natural-resources/news/2013/05/constitutional-court-ruling-restores-indigenous-pe>> accessed 23 March 2023.

⁹³ Article 4 Law No.41 of 1999 re Forestry Affairs.

⁹⁴ Library of Congress, ‘Indonesia: Forest Rights of Indigenous Peoples Affirmed’ (3 June 2013) <<https://www.loc.gov/item/global-legal-monitor/2013-06-03/indonesia-forest-rights-of-indigenous-peoples-affirmed/>> accessed 23 March 2023.

⁹⁵ Adisti Sukma Sawitri, ‘Indonesia still behind in indigenous peoples land recognition,’ *The Jakarta Post* (12 September 2018) <<https://www.thejakartapost.com/news/2018/09/11/indonesia-still-behind-in-indigenous-peoples-land-recognition.html>> accessed 23 March 2023.

set a target to map out and establish community forests on more than five million hectares of customary forest.⁹⁶

Despite this ambitious plan, government authorities have so far done little to identify and protect Indigenous people's customary forests. At one point, President Joko Widodo (Jokowi) established over 49 customary forests with approximately 30,000 hectares to nine Indigenous communities. This contrasts with the palm oil industry which had planted nearly 2 million hectares in 2013 alone.

"That movement still has a long way to go. The nine "customary forests" ... a total of 13,100 hectares (32,370 acres) ... By point of comparison, Indonesia's nine biggest oil palm firms in 2013 had planted nearly 2 million hectares."⁹⁷

Another cause for concern is that businesses more often or not do not follow the legislation and recommendations in place. This can be seen in the case of PT Ledo Lestari, an Indonesian palm oil company which started its operations in 2004 in the West Kalimantan province. Some of the rules and policies that PT Ledo Lestari failed to include failing to engage in was consulting local communities in particular the Iban Dayaks, an indigenous community whose entire existence is linked to the surrounding nature and land.⁹⁸ Members of the Iban Dayak group said that PT Ledo Lestari had failed to consult with them before it commenced operations, which would have been in violation of several Indonesian laws such as the Head of the National Land Agency Regulation on Location Permits, No.2 of 1999, Article 8 which states that consultation with the community is done during a land suitability survey conducted by the company and relevant agencies to enable input from the community in relation to the planned investment in their land and the surroundings.⁹⁹

According to the Human Rights Watch report more than two dozen Iban Dayak members stated that neither the company nor the government gave them prior information about developing palm oil plantations on their land and forests. The locals only discovered operations were about to begin in the area when they saw building equipment and machinery including bulldozers in 2004.¹⁰⁰

Another area of failure for PT Ledo Lestari was that it failed to provide adequate compensation and failed to fulfil rehabilitation promises towards to Iban Dayaks. One of these promises the company made was to provide a financial incentive for locals who agreed to sell their land to the company. Many of the promises were conducted orally and included land titles, benefits from a "plasma" plantation, health clinics and schools. PT Ledo Lestari failed to compensate all affected families in the area. It only compensated a handful of residents for their loss of land cultivated with rubber trees and other crops such as rice paddies. Those who received compensation reported receiving between IDR 1 million and 2 million which is equivalent to about \$70 to \$140 US dollars per hectare per family.¹⁰¹

⁹⁶ Republik Indonesia, 'RencanaA PEembangunan Jangka Menengah Nasional 2015-2019' (2014) <<https://policy.asiapacificenergy.org/sites/default/files/Medium-Term%20National%20Development%20Plan%20%28RPJMN%29%202015%E2%80%932019.pdf>> accessed 23 March 2023. Translated by Google Translate.

⁹⁷ 'Jokowi grants first-ever indigenous land rights to 9 communities,' *Mongabay* (4 January 2017) <<https://news.mongabay.com/2017/01/jokowi-grants-first-ever-indigenous-land-rights-to-9-communities/>> accessed 23 March 2023.

⁹⁸ Human Rights Watch, 'When We Lost the Forest' (n.84).

⁹⁹ Article 8 of the National Land Agency Regulation on Location Permits, No.2 of 1999.

¹⁰⁰ Human Rights Watch, 'When We Lost the Forest' (n.84).

¹⁰¹ *Ibid.*

Families said that they did not know how this loss was quantified. According to the affected families, the company did not systematically document each affected family's losses to arrive at a negotiated settlement. The company also failed to compensate the community for the loss of their Indigenous culture, which was inextricably linked with the forest and farming.

The company was also quite hostile to locals who were resettled. The families were resettled in the middle of the palm plantation. They were given restricted access to land for gardening. This is in stark contrast to what the company claimed to the locals before the resettlement. The company made oral promises to families that they could continue to harvest in the yard of their new house; but when the locals did harvest from their gardens they subsequently found themselves labelled as "thieves" when they attempted to harvest anything within the small area. One particular resident said he was arrested in 2018 and that plantation security guards interrogated him for harvesting palm nuts from a tree in his own garden to get fuel for a fire. The guards reported him to the plantation manager and detained him for "theft." The resident in question was eventually released but other residents saw the action as a warning that the land on which they live is not their own.¹⁰² The actions of this company have led to many negative impacts for the local community. These include a loss of livelihood, a lack of access to food and water and a loss of the identity and culture of the community.

Conflicts related to land have frequently been linked to palm oil plantations. Indonesia had about 14 million hectares of land planted with palm oil in 2020.¹⁰³ There is no clear estimate of the number of land disputes that exist and there is no official data available for the number of households that have been displaced or lost access to their customary forests and lands, including farmland, due to oil palm plantation expansion into their villages. Konsorsium Pembaruan Agraria (Consortium for Agrarian Reform, KPA), an Indonesian NGO, documented more than 650 land-related conflicts affecting over 650,000 households in 2017.¹⁰⁴

Deforestation on a scale like this has had numerous negative impacts. These impacts include threatening the wellbeing and culture of the Indigenous population, but another impact is that it is very globally significant, contributing to carbon emissions and heightened concerns around climate change.

Without needed government reforms and interventions both legislative and oversight Indigenous communities will continue to endure the most of palm oil plantations' impact, and risk losing their distinct identity. Indigenous peoples have an inextricably linked relationship with their environments. The environments in which they live in are intricately linked with their traditions, knowledge, and cultural identity. Any disruptions and issues to their natural habitat, as in the case of the Iban Dayaks can have an adverse effect on their culture, languages, knowledge, and unique traditions. Successive governments in Indonesia have ignored widespread forest clearance, facilitating the proliferation of palm oil plantations.

The mistreatment of specific indigenous groups in Indonesia has persisted throughout Indonesia particularly by companies and individuals illegally carrying out deforestation as seen in the case of PT Ledo Lestari. Another notable example occurred when Greenpeace severed ties with Indonesian conglomerate Sinar Mas for violations towards the Adat community.

¹⁰² Ibid.

¹⁰³ 'Total land area of oil palm plantations in Indonesia from 2011 to 2020' (Statista) <<https://www.statista.com/statistics/971424/total-area-of-oil-palm-plantations-indonesia/>> accessed 23 March 2023.

¹⁰⁴ Langit Rinesti, 'Indigenous people of Indonesia: Fight for their way,' *Climate Tracker.Asia* (18 January 2022) <<https://climatetracker.asia/fact-sheets/indigenous-people-of-indonesia-fight-for-their-way/>> accessed 23 March 2023.

“NGOs, like the Anti Forest Mafia Coalition, have prepared numerous reports on illegality in the commercial agriculture sectors, and in 2018, Greenpeace severed its five-year relationship with Sinar Mas/Asia Pulp & Paper due to concern about fires in oil palm and pulp plantations. Indigenous Adat communities report widespread violations of legal requirements for compensation and benefits sharing, not to mention FPIC (free, prior, and informed consent).”¹⁰⁵

To further highlight the situation for the indigenous communities of Indonesia, a national inquiry was released in 2016. This inquiry showed that complaints made by indigenous groups had increased by almost one hundred in the space of two years.

“In a national inquiry released in March 2016, the National Commission on Human Rights (Komnas HAM) reported that the number of complaints it received from indigenous people reached 117 in 2012, 113 in 2013 and 213 in 2014. The inquiry said most of the cases were related to welfare, including the right to a livelihood and a place to live.”¹⁰⁶

However, it is important to end this Section on a positive. In 2018, President Joko Widodo, popularly known as Jokowi, announced a moratorium on new permits to palm oil plantations. This is a step in the right direction. However additional reforms are long overdue. President Jokowi has a renewed mandate to enact and implement reforms that protect right of Indigenous peoples to be recognised and to enjoy their community rights to land and forests. Indonesia has also improved their situation as in recent years the deforestation rates have reduced. In 2020 the deforestation rate reached a record low of just over 115,000 hectares being deforested, a decrease of 75% from the year before.¹⁰⁷ One of the reasons for this was that almost all of the palm oil that was traded internationally was controlled by companies that were committed to a zero- deforestation method. Indonesia is also a signatory to the UNFCCC and has also become a partner country to the UN Programme on Reducing Emissions from Deforestation and Forest Degradation (UN-REDD), having released their national strategy in 2012. UN-REDD is a collaborative programme of the Food and Agriculture Organization of the United Nations (FAO), the UN Development Programme (UNDP) and the UN Environment Programme (UNEP). To summarise like Brazil, Indonesia has faced numerous obstacles in combating deforestation which has impacted their indigenous populations. However, measures are ongoing in combating deforestation. These measures along with further will be looked at in the next Section.

D. WHAT CAN BE DONE TO IMPROVE THE CURRENT FRAMEWORK FOR INDIGENOUS PEOPLE?

1. International Law

There is not much that can be done to improve the current international framework towards indigenous communities. This is due to a multitude of reasons. One of these reasons is that international law is difficult to enforce given that every country has their own sovereignty and that when international can be enforced

¹⁰⁵ Cassie Dummett & Arthur Blundell, 'Illicit Harvest, Complicit Goods: The State of Illegal Deforestation for Agriculture' (2021) *Forest Policy Trade and Finance Initiative* 42.

¹⁰⁶ Moses Ompusunggu, "'Adat' communities want their own special law: Why?,' *The Jakarta Post* (11 May 2018) <<https://www.thejakartapost.com/news/2018/05/11/adat-communities-want-their-own-special-law-why.html>> accessed 23 March 2023.

¹⁰⁷ UN-REDD Programme, 'Record low deforestation rates in Indonesia despite ongoing pandemic' (13 January 2022) <<https://www.un-redd.org/post/record-low-deforestation-rates-indonesia-despite-ongoing-pandemic>> accessed 23 March 2023.

such as in the case when a country breaches a treaty that they have signed up to, the punitive measures against the state often are not strong enough to act as a deterrence. A prime example of this is economic sanctions which often take too long to work and only seem to be successful around 40% of the time.

“Yet, the consensus in academic literature is that conventional trade and financial sanctions result in some meaningful behavioural change in the targeted, or sanctioned, country about 40 percent of the time.”¹⁰⁸

It is even more difficult to enforce international law within the borders of individual countries for numerous reasons including that international lacks the enforcement mechanisms that is seen in individual, sovereign states.

“The most obvious limitation of international law is the lack of an international ‘sovereign’ – some form of international government. ‘Domestic national or local laws ...have a clear set of rules created by a parliament or congress, and police forces, courts, and prisons to ensure compliance. International law is different from municipal criminal law. The rules are often unclear, there is no international parliament or congress, no international police force (INTERPOL is an information-sharing organisation rather than an enforcement one), the international courts are weaker than domestic courts, and there is hardly any system to enforce compliance with judicial decisions.”¹⁰⁹

Another reason not much can be done to improve the current international framework is that the current framework already aims for consensus and dialogue by having a rule-based system which allows members to focus in on any disagreements which also enables them to produce potential solutions. By having mechanisms that allow members to voice their discontent and to demand change, it has the potential to implement rules and actions peacefully and meaningfully. International Law also provides tools for compromise when countries have disagreements about certain aspects.

“actors who engage with international law have diverse, sometimes incompatible views on how best to organize themselves. These actors at times find ways to compromise. But other times, reconciliation seems too costly, and separation is infeasible.”¹¹⁰

Despite the perceived weakness in enforcing international law, it has a good record on compliance. It is only when something goes wrong, then international law is all over the news such as in the case with Russia’s invasion of Ukraine. However, it is important to note that international law is working for most of the time and that would be the key reason the international system does not need to be changed.

“The mass media tend to focus on examples where international law is broken...and assume that chaos is the international norm. But when a country’s law of murder is broken, no one claims that somehow there is no law against murder or that it is pointless having such a law – instead, attention is given to seeing what else needs to be done to make that law more effective and to track down the criminal in the meantime. If international law did not exist, we would notice it immediately... we could not fly or sail overseas, we would be unable to telephone overseas ... we would not be able to export

¹⁰⁸ Dursun Peksen, ‘When do Economic Sanctions Work Best?’, *Centre for a New American Security* (10 June 2019) <<https://www.cnas.org/publications/commentary/when-do-economic-sanctions-work-best>> accessed 23 March 2023.

¹⁰⁹ Keith Suter, ‘The Successes and Limitations of International Law and the International Court of Justice’ (October-December 2004) 20(4) *Medicine, Conflict and Survival* 344-354.

¹¹⁰ Monica Hakimi, ‘Constructing an International Community’ (2017) 111(2) *American Journal of International Law* 329.

or import goods. There would be international chaos. In fact, a great deal of international law is working a great deal of the time."¹¹¹

Regarding the protections in place for indigenous communities, the most notable international mechanism is UNDRIP. It consists of 46 articles ratified by the United Nations, recognising the basic human rights of Indigenous people along with their rights to self-determination. The declaration includes articles affirming the right of Indigenous people to create their own education systems, receive restitution for stolen lands, and participate in all decision-making that affects their interests. UNDRIP establishes a universal framework of minimum standards for the survival, dignity, and well-being of the indigenous peoples of the world and it elaborates on existing human rights standards and fundamental freedoms as they apply to the specific situation of indigenous peoples.¹¹²

To conclude, the international mechanisms in place for indigenous people especially UNDRIP do not need any changing, as it aims to establish a universal framework of minimum standards. It is up to the countries who are signatory to UNDRIP to implement it and to seek to improve relations with their own indigenous populations.

2. Brazil

In the Human Rights Watch report, several areas were recommended as areas of reform. These included ending impunity for violence relating to illegal deforestation in the Amazon, supporting environmental defenders and strengthening environmental protections. In regards to ending impunity for violence relating to illegal deforestation in the Amazon, the report recommended that the following actors and parties undertake measures to improve the situation. Here are just some of the recommendations from the report. The author will be adding additional recommendations as well in the Section.

(a) Ending immunity for violence relating to illegal deforestation

Minister of Justice: The report recommended that the Minister of Justice must ensure that federal and state law enforcement authorities such as prosecutors, police, and environmental agents need to draft and implement a plan of action. To draft and implement this plan, the report suggested that the authorities receive significant input from many individuals and groups from a wide array of civil society organisations, including Indigenous people, local farmers, and women to address the acts of violence against forest defenders, and to destroy the criminal networks involved in illegal deforestation in the Amazon region.¹¹³

Bolsonaro Administration: The report recommended that the Bolsonaro administration should express support for those who uphold the law and defend the forest, including Indigenous peoples, local communities, and environmental agents. The administration must also demonstrate its commitment to both dismantling criminal networks involved in illegal logging and holding those responsible for their crimes. Adequate funding to the federal programme to protect human rights defenders along with the transfer of sufficient resources to state programs must also be carried out so that they can strengthen protection of environmental defenders.

Federal and State Police: The author would like to recommend that state police should conduct quick, impartial, and thorough investigations into all cases of threats and violence against people who report illegal

¹¹¹ Ibid 108.

¹¹² UN, 'UNDRIP' (n.34).

¹¹³ Human Rights Watch, 'Rainforest Mafias' (n.49).

deforestation and their communities. Federal police should investigate all cases of threats and violence against Indigenous forest defenders and act in cooperation with state police.

Federal and State Prosecutors: The author would also like to recommend that federal and state prosecutors should ensure that police and other law enforcement agencies who fail to carry out their duties to conduct quick, impartial, and thorough investigations to be brought to account. This applies to officers engaging in corruption and other illegal conduct. Even the UN Special Rapporteurs recommended that the Brazilian government must ensure that ongoing investigations by the police must be effectively and independently investigated.¹¹⁴

Federal and State Governments: Another recommendation from the author would be to allocate necessary funds and personnel to strengthen the police presence in areas where illegal deforestation and violence by criminal groups are widespread. Some of the areas that the Federal and State government should allocate funding to include a public defenders' office focusing on Indigenous people's issues and the design of public security plans for Indigenous territories.

(b) Supporting Forest Defenders

Federal and State Governments, and the Attorney Generals: Establish a mechanism whereby federal and state police, prosecutors, FUNAI, and environmental agencies meet regularly and maintain direct channels of communication with communities and individual forest defenders, so that they can report illegal deforestation and any threat or violence against them.

Federal Human Rights Defenders Protection Program: The author would recommend more funding needs to go into the Federal Human Rights Defenders Protection Program. The program aims to protect the safety, supply financial aid along with other essentials such as food and water for environmental defenders. However, the program has not been able to complete its aims due to the current government slashing its financing.¹¹⁵

(c) Strengthen Environmental Protection

Bolsonaro Administration: Send a message of support to the public servants fighting illegal deforestation in the Amazon. Stop verbal attacks on NGOs, as well as efforts to diminish their ability to promote human rights and environmental protection. Maintain and expand, rather than reduce, protected areas in the Amazon region, including by resuming demarcation of Indigenous territories. The administration must provide adequate funding and human resources to federal agencies such as FUNAI to help these agencies carry out essential tasks.

It does appear though that Bolsonaro administration has started to take some positive steps regarding climate action. Federal Decree No. 11,075/2022 was signed into law in 2022. This decree establishes higher fines for activities such as deforestation, illegal logging, burning, fishing, and hunting. It also introduces higher fines on repeat offenders, and changes the rules for "reconciliation" hearings between offenders and

¹¹⁴ UN Office of the High Commissioner for Human Rights, 'Brazil: UN experts decry acts of racialised police brutality' (6 July 2022) <<https://www.ohchr.org/en/press-releases/2022/07/brazil-un-experts-decry-acts-racialised-police-brutality>> accessed 23 March 2023.

¹¹⁵ 'National Program for the Protection of Human Rights Defenders,' *The Journalists Protection Wiki* <<https://journalistsprotection.org/en/mechanism/pndddhh>> accessed 23 March 2023.

environmental agencies by placing a time limit on an offender's ability to engage with the process before proceeding with a judicial hearing.¹¹⁶

Brazilian and Foreign Companies: The author is of the belief both Brazilian and foreign companies must ensure that timber, cattle, meat, or agricultural products from Brazil were not illegally deforested or originated from illegally occupied areas in the Amazon. Companies also need to actively campaign for sustainable people, where companies should be consulting with locals, indigenous groups, and other environmental experts with how they can conduct their business but in a more sustainable manner.¹¹⁷

3. Indonesia

Below are some recommendations for the main parties involved in improving the situation for the indigenous community of Indonesia.

(a) Indonesian Government

The Indonesian government must recognise and protect Indigenous Peoples and their Community Rights to Land and Forests. There are several ways in which this can be implemented. One of these methods is to create a common standard for "consultations" with communities that own, occupy, or use the land proposed to be acquired for plantations, including oil palm plantations. These standards should be applied to all processes involved in acquiring government permits, and should include environment and social impact assessments for the local community.¹¹⁸

The government should also ensure that companies are responsible to provide restitution or a reasonable and just compensation, with detailed guidelines on how such compensation packages should be developed. The government need to reinforce the moratorium on government issuing new oil palm plantation permits to avoid any new forest clearance. The government had a moratorium in place since 2018 but it was lifted in 2021 due to a change of law.¹¹⁹

The Indonesian Sustainable Palm Oil (ISPO) certification also needs to be revised as it was deemed the weakest certification standards in terms of safeguarding human rights in a comparative study conducted by the Forest Peoples Program.¹²⁰ The government should try to ensure that the ISPO is a transparent, accessible, and effective grievance mechanism based on other, more successful international standards such as the RSPO. The government must also make sure that ISPO is accessible to all affected communities, including in remote villages.

¹¹⁶ Federal Decree No. 11,075/2022.

¹¹⁷ Carolina Genin et al, 'How Can Brazil Protect the Amazon and Advance Climate Action?,' *World Resources Institute* (3 September 2021) <<https://www.wri.org/insights/strategies-amazon-rainforest-climate-action-brazil>> accessed 23 March 2023.

¹¹⁸ Human Rights Watch, 'Why Our Land?' (n.83).

¹¹⁹ Gayatri Suroyo & Bernadette Christinan, 'Explainer: What next after Indonesia ends freeze on palm permits?,' *Reuters* (29 October 2021) <<https://www.reuters.com/business/cop/what-next-after-indonesia-ends-freeze-palm-permits-2021-10-29/>> accessed 23 March 2023.

¹²⁰ Forest Peoples Programme, 'Comparison' (n.60).

(b) *National police*

The police should ensure that any law enforcement related to land disputes is impartial and transparent. They can do this by developing internal guidelines for concerning land disputes between Indigenous peoples and companies, including oil palm plantations.

(c) *To oil palm plantation companies operating in Indonesia*

Companies should be mediating with affected communities and Indigenous peoples to resolve any issues. Companies could review their past practices and offer compensation or remediation to the Indigenous peoples that were impacted.

There needs to be ongoing consultations with all communities, including Indigenous people who are impacted by their operations, to discuss and adopt solutions to mitigate any ongoing harm. Agreements should be both written and oral. This should be done in a manner that is best suits the UNDRIP.

Several Indonesian companies are taking effective action. The firm Asian Agri conducted measures including setting up a technical committee (TC) consisting of scientists to determine what constituted a High Carbon Stock forest. The company also accepted responsibility in maintaining a High Conservation Value (HCV) which refers to the biological, ecological, social, or cultural values that are considered necessary at national, regional, or global levels. The company state that they are committed to using licensed HCV assessors accredited by the HCVRN's Assessor Licensing Scheme (ALS).¹²¹

Another palm oil company that insists to be combating deforestation is Smart Tbk, also a palm oil company. Several tools have been implemented by the company to assist sustainability and the human rights of indigenous groups. These include fulfilling Free, Prior and Informed Consent (FPIC) requirements before commencing any development of land.

Participatory Mapping (PM) and Participatory Conservation Planning (PCP) have been carried out by the company and with the consultation of locals. They also carry out Environmental and Social Impact Assessments prior to developing an estate. The company states that they learn about the needs, wants and aspirations of the local communities. The results are then integrated into the PM and PCP approaches. The PM and PCP approach are working as the following has been achieved:

"158 villages have taken part in PM. As a result, we have secured agreements with around 22 villages to protect more than 4,300 hectares of forest."¹²²

(d) *For companies operating in Indonesia*

Companies should carry out robust human rights due diligence on the impacts of proposed, and ongoing expansion and operations of oil palm plantations to provide just, fair, and equitable compensation in accordance with international human rights standards.

¹²¹ Asian Agri, 'Zero Deforestation' (no date) <<https://www.asianagri.com/en/sustainability/sustainability-policy/zero-deforestation/>> accessed 23 March 2023.

¹²² Smart Agribusiness and Food, 'Community Engagement' (no date) <<https://www.smart-tbk.com/en/berkelanjutan/keberperanan-komunitas/>> accessed 23 March 2023.

(e) *Palm oil importing countries*

Countries that import palm oil should enact laws or regulations requiring companies to be clear and concise about their palm oil supply chains. The countries should also restrict any imports from companies that have not carried out human rights due diligence on their palm oil supply chains. Importing countries must also stress to exporting countries to strengthen environment and land acquisition safeguards to protect local communities impacted by palm oil companies.

E. CONCLUSION

The author has discussed the laws protecting indigenous groups throughout this paper. It was demonstrated that more needs to be done as the current framework is not working. Several recommendations were made regarding all affected parties such as government officials, local authorities, indigenous and activist groups as well as individual companies.

This paper explored how the current framework and mechanisms supported the rights of indigenous communities dealing with the threat of deforestation. This paper also looked at the how the current framework and mechanisms failed to provide adequate protections towards indigenous communities. The methodology in this paper was a comparative study which focused on Brazilian and Indonesian laws, but the international framework was also focused on with an emphasis on the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

This work has challenged the current legal framework about the protections towards indigenous groups by aiming to see what else needed to be done and by who to understand how the current legal framework can be further improved. In doing so, this paper revises the ways in which those involved further improve the situation regarding indigenous communities. Specific recommendations were made to a variety of actors ranging from government officials all the way down to local communities and indigenous activists.

Yet, this topic only scratches the surface. There are many more indigenous groups across the world, each with their own challenges. It is promising to see that countries such as Indonesia are starting to act against those who cause deforestation and harm indigenous groups. Despite this more should have been done a long time ago. As in the case of Brazil, it will be particularly interesting to see what happens as elections were recently held. Bolsonaro was defeated and the new president has already promised to help the environmental situation. Whatever the case is, the new President of Brazil (Lula da Silva) has a lot of work to do to reduce deforestation and protect the rights of Indigenous Communities. Finally, if this topic were to be researched further, it would be worth considering looking into the companies who use the rainforests of Brazil and Indonesia. It would be interesting to do a comparative study with what the companies claim to do versus what is going on and to look at the government response to these companies. Indeed, as the ongoing climate crisis only worsens, it would be wise to think about the relationship between the numerous companies and politics in relation to the rainforests of Brazil and Indonesia.