



REUTERS/Ueslei Marcelino

# ENERGY TRANSITION LEGAL FRAMEWORK IN BRAZIL



# ENERGY TRANSITION LEGAL FRAMEWORK IN BRAZIL







# 1. GENERAL LEGAL FRAMEWORK OF THE STATE

The Federative Republic of Brazil is formed by the union of the States, Municipalities and the Federal District, in accordance with the 1<sup>st</sup> Article of the Constitution of the Federative Republic of Brazil. The Union is an autonomous federative entity in relation to the States, Municipalities and the Federal District; all of them have their administrative and legislative powers determined by the Constitution.

Although States and Municipalities have the authority to legislate on various matters, as long as they are not prohibited by the Federal Constitution, when it comes specifically to the electrical sector, the authority to legislate on electricity and to define the terms of its supply service, including under concession, belongs exclusively to the Federal Government, as stated in Articles 21, XII, b; 22, IV, and 175 of the Constitution.

Regarding the oil, natural gas and other fluid hydrocarbons, the Union also owns the monopoly for developing such economic activities, which may be assigned to public or private companies by means of a public concession, pursuant to Article 177 of the Constitution.

This framework essentially means that the Federal Government regulates matters related to the transition as well.<sup>1</sup> For this reason, the majority of legislation concerning energy is formulated by the National Congress, at the federal level.

The legal framework on energy matters in Brazil consists, at the legislative level, of the Federal Constitution and Statutory Laws. At the infralegal level, it has Decrees, issued by the President of the Republic, which serve to regulate laws, as well as Normative Resolutions issued by the National Electric Energy Agency (ANEEL). There are also norms issued by the National Agency for Petroleum, Natural Gas and Biofuels (ANP).

It is worth noting that some of the subjects herein analysed from the energy transition perspective are addressed in specific legislation, not necessarily linked to the energy transition, but not without legal and practical consequences, since the law must always be considered and interpreted in the context of the entire legal system, not in isolation.

In this sense, gender equality, human rights, labour rights, Indigenous peoples' rights and others may not be inscribed in transition energy legislation, but they are in no way less effective. It is important to keep in mind this concept because in Brazil the legal framework protects these rights often through specific laws, which are not solely directed at the energy transition.

Regarding institutions, specifically within the Federal Government, it is worth noting the Ministry of Mines and Energy (MME), which is part of the Executive Branch and linked to the Presidency of the

<sup>1</sup>Even though the Union could delegate this authority to the federated entities.



Republic. This Ministry includes, within its organizational structure, a department specifically focused on energy transition, the National Secretariat of Energy Transition and Planning.<sup>2</sup>

It is also worth mentioning ANEEL, given the relevance of the electrical sector for the energy transition, which is responsible for the entire regulatory framework of the electric energy sector, overseeing sectoral agents, and resolving conflicts among agents, Granting Authority, and consumers.

Lastly, the Energy Research Company (EPE), a federal public company, is tasked with providing services to the Ministry of Mines and Energy in the area of studies and research aimed at supporting energy sector planning. These studies guide the government's choices to promote efficient public service delivery and effective development of the energy sector, to better serve social welfare, collective interests, and sustainable development.

---

<sup>2</sup> The Secretariat has several responsibilities, including guiding policies and encouraging sustainable energy businesses aligned with the energy transition towards low-carbon systems and developing a national energy transition strategy for efficient use of energy resources and low-carbon sources.

## 2. ANALYSIS OF THE APPLICABLE LEGAL FRAMEWORK TO THE ENERGY TRANSITION

### a. Just Energy Transition Mandate

Before anything else, it is important to highlight that Brazil has always been a reference when it comes to its energy matrix (the combination of energy sources used to supply households, vehicles, industries, etc.) and its electrical matrix (the sources used only for electricity generation).

Due to its abundant water resources, the country historically invested in the implementation of hydroelectric plants, considering them as the main source of generation, which greatly contributed to a matrix composed mostly of clean energy.

Regarding the energy matrix, according to the [Energy Balance of 2023](#), prepared by the Energy Research Company, in 2022, 47.4% of the energy supplied in Brazil came from renewable sources, while 52.6% still came from non-renewable sources.

These numbers show that Brazil's energy matrix is more than three times higher than the global average, which, according to the EPE's study, was 14.1% renewable, with the remaining 85.9% non-renewable, considering data from 2020.

Moreover, when considering solely the electrical matrix, Brazil shows an even greater predominance of renewables, amounting to 87.9%, in 2022, as indicated in the same report. As a reference, in 2022, according to the [Electricity Market Report 2023](#), made by the International Energy Association (IEA), 29% of global power generation was renewables, which keeps Brazil more than three times above the global average.

Due to its current rate of renewable energy, Brazil takes part in the efforts to fight climate change from a different starting point, with some peculiarities: **energy transition in Brazil is more about improving an already relatively clean energy matrix, than decarbonising it.** This comparative advantage also means that further decarbonization may be harder to achieve.

Therefore, it seems that the **Brazilian perspective is oriented toward bringing in new technologies for the improvement of its energy matrix** and simultaneously playing an international role in exporting clean energy, either directly or by means of products made with clean energy.

#### » Constitutional Law

There are no specific constitutional provisions on just energy transition in Brazil. Notwithstanding, the just energy transition is based on values, principles and rights protected by the Federative Constitution, such as the dignity of the human person, citizenship, justice, solidarity, inequality and poverty reduction among others.

» **Statutory Law**

Currently, the single initiative specifically on just energy transition and enacted by law is the [Just Energy Transition Program \(TEJ\)](#), created by [Law No. 14,299/2022](#) and [Decree 11,124/2022](#) to promote energy transition with justice for all stakeholders in the southern region of the State of Santa Catarina, a hub for coal extraction and coal-based power generation, as detailed in the Plan for a Just Transition.

Within this framework, the cessation of coal-based power generation and consequently its extraction are intended to occur by 2040. To illustrate the challenges involved, [the Report presented by Work Group - Santa Catarina \(GT-SC\)](#), coordinated by the MME, estimates that the biggest power plant in Santa Catarina's coal hub sustains directly or indirectly around 110 thousand people on its chain of value.

However advanced, TEJ is a federal policy addressing the chain of value of a specific region of a single State of the Federation and based on a single non-renewable resource: coal. The current framework on just energy transition does not address the issue as a whole, since it does not include the other regions of Brazil, nor the other potential consequences of energy transition in other chains of value, such as those related to power generation based on other fossil fuels, transportation, metallurgy and others.

That being said, although the Brazilian government aims for a just energy transition, as stated on the [Ministry of Mines and Energy website](#), laws and regulations have not yet evolved to the point of incorporating objective criteria that establish such obligations specifically in the implementation of measures aimed at energy transition on a nation-wide scale. However, according to the presentation available as an official document of the Public Consultation No. 163/2024 on developing the National Plan for Energy Transition, the Brazilian Government acknowledges that an integrating action plan is yet to be consolidated.<sup>3</sup>

» **Other Applicable Norms**

The National Congress has been engaged in discussing agendas related to energy transition, and some bills are considered highly relevant in 2024, notably those addressing green hydrogen, biofuels, and offshore wind energy. Additionally, Congress is examining [Bill No. 327/2021](#) to establish an [Acceleration Program for Energy Transition](#).

As is natural in the legislative process, these bills may or may not be approved, and their texts may undergo significant changes. Nonetheless, there is active engagement from both the Executive and Legislative branches to strengthen the legal framework on energy transition. Nonetheless, much remains to be discussed in the Brazilian Congress, considering the narrow scope of current legislation on just energy transition.

Considering the information provided above, it is possible to say that Brazil possesses an institutional arrangement for a just energy transition that is under development, with varied initiatives on fostering clean energy and on other improvements regarding relevant subjects such as technologies, institutions and laws, however with only a small part turned into a law-based policy.<sup>4</sup> Currently, TEJ

<sup>3</sup> Presentation of the National Plan for Energy Transition, April, 2024, available in Public Consultation No<sup>o</sup> 163/2024.

<sup>4</sup> In that sense, policies continue to be developed by the Federal Authorities. See for instance the launch of the National Plan for a Just and Inclusive Energy Transition at the UN.

is the only policy created by a law, that is directly tackling the just energy transition subject, and its scope is very limited since its key elements are the just transition regarding the coal chain of value of the southern region of Santa Catarina State.

There is no specific mention in TEJ of indigenous peoples' rights, although they should be protected in case they are affected by the energy transition within the scope of TEJ. Differently, the protection of labour and environmental rights is expressly encompassed by TEJ.

Finally, considering Brazil's aims for a general just transition, but currently only managed to create a policy very narrow in scope, there is, on one side, a general concept, as present in the [Plan for a Just Transition](#) itself, that encompasses social, environmental, economic, and political aspects related to the shift in energy sources and its impact on people, aiming for a fair and inclusive approach that considers multiple dimensions and stakeholders, and, on the other side, a specific concept in TEJ, related to only a region of Brazil and a single source of greenhouse gases (coal). Up to date, only this specific concept has been enacted by law as a public policy.

**b. Specific Rights Established in the Applicable Laws**

» **Constitutional Law**

The Brazilian Constitution establishes, in Article 1, the right to human dignity. Further on, Article 6, sets out social rights, including the rights to housing, health, leisure, food, education, and profession.

Although the Constitution does not expressly mention a right to energy, the Supreme Federal Court, primarily responsible for guarding the Constitution as defined in Article 102 of the Constitution, has on more than one occasion recognized that a systematic interpretation of the aforementioned rights leads to the conclusion that the provision of energy is also a fundamental right, without which the others would not be possible.<sup>5</sup>

» **Statutory Law**

Besides the Constitution, some already enacted laws address issues related to: (i) ensuring society's participation in the process of establishing norms on energy; (ii) democratizing access to energy; and (iii) the inherent problems in the energy transition; as explained below.

[Law 13,848/2019](#), applicable to ANEEL and known as the "Law of the Regulatory Agencies" establishes in its Article 9 the requirement to previously submit to public consultation "*the drafts and proposals for modification of normative acts of general interest to economic agents, consumers, or users of the services provided.*"

Public consultation is a decision-making support instrument through which society is consulted in advance by submitting criticisms, suggestions and contributions from any interested parties regarding a proposed regulatory norm made by ANEEL.

In other words, the law allows all social groups, individually or collectively, to participate in the decision-making process for normative changes, thereby enabling them to claim their rights, including within the regulation of issues related to energy transition.

<sup>5</sup> See Direct Action of Unconstitutionality No. 6432 and Extraordinary Appeal No. 714139 in the annex of laws.

It is worth noting the same law defines, in Article 6, the need for the Regulatory Agency to prepare a Regulatory Impact Analysis (AIR), before the public consultation. This analysis must consider, as defined in [Decree No. 10,411/2020](#), among other aspects, the potential impacts that normative changes will have on public health, safety, environmental, economic, or social policies.

Brazil also has the Social Tariff Law, created in 2002 by [Law No. 10,438](#), intended to guarantee access to energy for low-income families. The benefit's regulations were established through [Law No. 12,212/2010](#) and [Decree No. 7,583/2011](#). This initiative is implemented and regulated by the National Electric Energy Agency and benefits families with consumption of up to 220 kWh per month.

The program aims to reduce energy costs, facilitating access and improving the quality of life for this segment of the population. Thus, depending on the family's consumption, the benefit changes, starting from a 10% discount for families with higher consumption, and going up to a 65% discount for families with lower monthly consumption.<sup>6</sup>

Another relevant legislation is the Legal Framework for Distributed Generation ([Law No. 14,300/2022](#)), recently enacted. This law addresses a modality that allows energy generation close to the consumption site, which represents a significant advancement in expanding renewable energy sources, especially solar energy. Specifically concerning the most vulnerable population, this law implemented the Social Renewable Energy Program (PERS). This program is designed to enable investments in the installation of photovoltaic systems and other renewable sources for the benefit of low-income consumers.

» **Other Applicable Norms**

Finally, the "Light for All" Program, was established by [Decree No. 4,873/2003](#). The program was conceived as a tool for development and social inclusion because, according to the census by the Brazilian Institute of Geography and Statistics (IBGE), in 2000, there were two million rural households without access to electricity services.

Initially projected to last until 2008, the program has been extended several times due to the ongoing challenges faced by the Federal Government in achieving universal access to electricity in Brazil. These challenges were mainly about logistical difficulties in implementing projects located in the Northern and Northeastern regions of the country, areas that concentrate a significant portion of the Quilombola population, Indigenous communities, as well as communities located in Conservation Units.

Recently, with the aim of completing the process of universalizing electricity access in Brazil, the "Light for All" Program was relaunched by [Decree No. 11,628](#) on August 4, 2023. The relaunch includes changes aimed at addressing all challenges for serving the rural population and residents in remote areas of the Legal Amazon that lack access to the public electricity distribution service.

In addition to democratizing access and use of electricity in remote areas of the Legal Amazon, the "Light for All" Program considers sustainability and continuity in providing the public electricity distribution service in remote areas, the use of clean and renewable energy sources for electricity generation, and the preservation of the Amazon biome.

<sup>6</sup> For up to 30 kWh per month, families pay 65% less on their electricity bill. The second discount tier is 40% and can be applied to those consuming from 31 kWh up to 100 kWh per month. The third discount tier is for consumption from 101 kWh to 220 kWh monthly, with a 10% reduction.

According to [Decree No. 11,628](#) of August 4, 2023, some of the objectives of the "Light for All" Program are:

- i) democratize and enable access and use of electricity for the rural population, primarily through extending electricity distribution networks, and in remote areas of the Legal Amazon, through isolated systems for electricity generation.
- ii) reduce social and regional inequalities in the country, promote social and productive inclusion of vulnerable communities, and enhance citizenship and quality of life in rural areas and remote regions of the Amazon, by combating energy poverty.
- iii) value and respect the culture of Indigenous peoples, Quilombola communities, and traditional communities, prioritizing their inclusion in the programme.
- iv) encourage the energy decarbonization of the Legal Amazon through the use of clean and renewable energy sources for electricity generation.

**c. Rights of Indigenous Peoples**

» **International Law**

Internationally, Brazil ratified the International Labour Organization Convention 169 on Indigenous and Tribal Peoples through Legislative [Decree No. 143/2002](#), which came into effect on July 25, 2003. Currently, the convention is in force in Brazil under [Decree No. 10,088](#) of November 5, 2009. Through this instrument, Brazil has committed to incorporating into its legislation the recognition and protection of the social, cultural, religious, and spiritual values and practices of these peoples.

» **Constitutional Law**

Indigenous peoples are also recognized in the Brazilian Constitution, which has a chapter dedicated to indigenous peoples (articles 231 and 232), along with other provisions throughout the constitution. They are recognized by the Federal Constitution for *"their social organization, customs, languages, beliefs, and traditions, and their original rights over the lands they traditionally occupy, with the responsibility of the Union to demarcate, protect, and ensure respect for all their assets."*

Additionally, the Constitution recognizes as *"lands traditionally occupied by indigenous peoples"* those inhabited by them permanently, those used for their productive activities, those essential for preserving the environmental resources necessary for their well-being, and those necessary for their physical and cultural reproduction, according to their customs, traditions, and practices. These lands, according to the Constitution, *"are intended for their permanent possession, with exclusive usufruct of the riches of the soil, rivers, and lakes therein."*

Regarding the energy exploration of these lands, the Constitution establishes that *"the exploitation of water resources, including energy potentials, can only be carried out with the authorization of the National Congress, after consulting the affected communities, ensuring their participation in the results of the exploitation, as provided by law."*

» **Statutory Law**

At the infraconstitutional level, Brazil also has [Law No. 6,001/1973](#) (Statute of the Indian), which regulates the legal situation of indigenous peoples and communities, with the purpose of preserving their culture and integrating them into the national community.

The mentioned law determines that it is the responsibility of the Union, States, and Municipalities, as well as the bodies of their respective indirect administrations, within the limits of their jurisdiction, to protect Indigenous communities and preserve their rights among which are:

- i) respecting, when providing means for the development of Indigenous peoples, the peculiarities inherent in their condition.
- ii) guaranteeing Indigenous peoples' voluntary permanence in their habitat.
- iii) providing resources for their development and progress; executing, whenever possible with the collaboration of Indigenous peoples, programs and projects aimed at benefiting Indigenous communities.
- iv) guaranteeing Indigenous peoples and communities, in accordance with the Federal Constitution, permanent possession of the lands traditionally occupied, recognizing their exclusive usufruct of the natural riches and all utilities existing in those lands.

Moreover, [Law No. 5,371/1967](#) authorized the Federal Government to establish the National Indian Foundation (FUNAI), which aims to establish guidelines and ensure compliance with indigenous policy.

Concerning energy matters, indigenous peoples also benefit from programs mentioned above, such as "Light for All" and the Social Tariff. In the latter case, there are specific and better conditions for Indigenous families.<sup>7</sup>

Although these policies were not specifically developed in the context of the energy transition, they seem to adequately address and recognize the rights of Indigenous peoples and are sufficient, from a legal standpoint, to safeguard them from potential impacts caused by the energy transition, especially when considered together with the country's environmental policies.

However, it should be noted that, although there is legal protection, there are conflicts of interest and various problems related to indigenous issues and the impacts that energy generation projects may have on their territories.

There are also discussions related to land demarcation and even some groups of interest that consider some of the Indigenous peoples' rights excessive in some areas, as, simultaneously, many other actors consider such rights are, in fact, less than those necessary. Adding to the current unsolved issues, new issues may arise in the context of the energy transition, leading to debates about the need for future legislative changes.

<sup>7</sup> For consumption up to 50 kWh per month, there is a 100% discount on the energy bill. For consumption between 51 kWh and 100 kWh per month, the discount is 40%. Finally, there is a 10% discount for consumption between 101 kWh and 220 kWh per month.

**d.**  
**Gender**  
**Equality**

» **International Law**

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was ratified by Brazil under [Decree 4,377](#) of 2002.

» **Constitutional Law**

CEDAW article 3 recommends that countries must take action in various spheres, such as political, social, economic and cultural, including legislative measures, to ensure the full development and advancement of women, with a view to ensuring that they enjoy the same human rights and fundamental freedoms as men, on an equal basis.

In this sense, the Brazilian Federal Constitution states in Article 5, I, that everyone must be treated equally before the law, guaranteeing that men and women have the same rights and responsibilities.

Additionally, Article 7 of the Constitution, clauses XX and XXX, provides for the protection of women in the labour market through specific incentives, as stipulated by law, and prohibits wage differences, differences in job functions, and criteria for hiring based on sex, age, colour, or marital status.

» **Statutory Law**

None of the Brazilian statutory laws related to the energy transition directly covers this discussion. Therefore, when addressing the intersection between energy transition and gender equality in Brazil, it becomes necessary to analyse the laws in a systemic way, considering not only the specific provisions related to energy but also the broader issues of gender equity present in the country's legal framework, given that these legislations will, in any case, impact the energy transition.

In this respect, Brazil has legislation that favours equal pay, which includes [Law No. 14.611/2023](#), [Decree No. 11.795/2023](#) and [Ordinance No. 3.714/2023](#). This instrument aims to combat the disparity in pay between men and women in the labour market, establishing the fundamental principle that men and women should receive similar salaries for similar jobs.

Furthermore, a legal framework that supports women's rights is a crucial element in the quest for gender equality in various spheres of society, including political participation. An emblematic example of this legal support is found in [Law No. 9.504/1997](#), in Article 10, paragraph 3. This legal provision establishes that Brazilian political parties must guarantee that at least 30% of their candidacies are female, encouraging the importance of women's participation in spheres of political debate. The law seeks to promote inclusion in electoral processes, allowing women's perspectives to be duly considered in the formulation of public policies and in shaping the country's destiny, contributing to a more equitable and diverse society in all aspects, in this case, related to the energy transition.

Note that CEDAW recognizes women's right to participate fully in political and public life, including decision-making on issues affecting the environment and energy. It is therefore Brazil's duty to ensure that women are represented in the development of energy policies, in order to guarantee that their needs and views are taken into account.

» **Other Applicable Norms**

ANEEL recently launched a public consultation on a new normative resolution aimed at promoting greater female representation in the governance of CCEE, the Electric Energy Trading Chamber, a

non-profit civil association governed by private law, regulated and supervised by ANEEL, which plays a crucial role in the Brazilian electricity sector.

The proposal suggested that the Chamber's Board of Directors should be made up of at least two women from a group of eight members and that the Executive Board should have at least one woman member.

At the end of the consultation, this topic received a total of 14 contributions, with a good number of contributors signalling the relevance of the discussion. However, it was pointed out that such a debate should take place in the entity's Bylaws and, furthermore, one comment pointed out that there is no legal basis to support this regulatory determination.

Finally, ANEEL understood it lacked competent jurisdiction to regulate the implementation of quotas for women in positions at the CCEE, indicating that the Chamber, as a private entity, can voluntarily adopt measures to promote gender equality and others. The provisions were rejected in their entirety and the resolution was approved without the items that set quotas for women in the chamber.

However, even though the aforementioned items have been removed from the resolution, it is important to note that this decision is mostly related to issues of competence of the regulatory bodies themselves, thus not removing the relevance of the discussion of gender equality in the sphere of the Brazilian electricity sector.

In addition, corroborating the commitment to achieve gender equality, the Ministry of Mines and Energy has a Gender Committee, which has established partnerships with companies in the electricity, energy and minerals sectors, with the aim of guaranteeing gender equality in the companies and encouraging discussion on the issue.

In fact, Eletrobras, one of the companies that make up this committee, recently promoted applications for the [Social Acceleration Program](#), which was designed to benefit NGOs working in the fields of Women's Empowerment, Income Generation and Education.

In this same line of action by companies, it is possible to observe several cases of actions taken within entities in the electricity sector to qualify female groups, such as the case made at the Belo Monte Hydroelectric Complex, Brazil's largest hydroelectric plant, in which women were trained to work in the areas of operation, maintenance and the entire safety part of the complex, which increased the female workforce by 17% between 2022 and 2023.<sup>8</sup>

Despite these efforts, according to the Brazilian Institute of Geography and Statistics (IBGE), women represent 51.5% of the country's resident population. However, according to research carried out by ANEEL in 2023, female participation in the electricity sector is only 20%, which shows a significantly reduced proportion of women in the area, compared to the amount they hold in the Brazilian population.

In conclusion, an effective energy transition requires a general approach that considers not only the technical and economic dimensions but also the social and gender equality aspects. In Brazil, although the laws related to the energy transition do not directly address the issue of gender equality, there is legislation aimed at promoting female participation in politics and equal pay, which have an indirect impact on the energy sector.

<sup>8</sup> "Mão de Obra Feminina cresce 17% em Belo Monte em 2023". Canal Energia. Accessed April 4, 2024. <https://www.canalenergia.com.br/noticias/53272715/mao-de-obra-feminina-cresce-17-em-belo-monte-em-2023>

However, it is crucial to recognize that women face specific challenges, such as energy poverty and a lack of representation in the sector's decision-making that still need to be addressed by the legislation to ensure human dignity and equal rights.

## e. Human Rights Due Diligence of Non-State Actors

### » Constitutional Law

Initiatives for directly addressing human rights due diligence of non-state actors are still under discussion in Congress. However, Brazil has a relatively robust system for the protection of human rights, which relates to the historical context where the Constitution of the Federative Republic of Brazil was enacted, in 1988, under the influence of a national movement for democratization after around 21 years of military government initiated with a coup d'état in 1964.<sup>9</sup>

According to the 1<sup>st</sup> and 4<sup>th</sup> Articles of the Constitution, respectively, the principle of dignity of the human person is a foundation of the Republic and its international relations are based on the principle of prevalence of human rights, among others. There is also a vast list of fundamental rights inscribed in the 5<sup>th</sup> Article of the Constitution, with a specific provision for the inclusion of other rights and guarantees arising from the constitutional regime and from its principles or arising from international treaties that Brazil may join as a party.

### » International Law

Additionally, there is a provision for considering as amendments to the very Constitution, any human rights treaties and conventions in case they are approved by the two houses of the Congress. Those provisions are evidence that Brazilian legislation is protective of human rights and that the notion adopted for human rights encompasses new forms or new understandings of human rights, despite not being written in the Constitution.

Furthermore, under the Constitution enacted in 1988, Brazil ratified some of the most relevant human rights treaties, such as the Convention Against Torture, the Convention on the Rights of the Child, the International Pact on Civil and Political Rights, the American Convention on Human Rights, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, as well as accepting the jurisdiction of the Inter-American Court of Human Rights.<sup>10</sup>

### » Statutory Law

With respect to the federal legislation on human rights, [Law No. 12,986/2014](#), transformed the Council for the Defence of Rights of the Human Person into the National Council of Human Rights (CNDH), whose purpose is to promote and defend human rights through preventive, protective, reparative, and sanctioning actions against conduct and situations that threaten or violate these rights.

The CNDH is responsible for ensuring the effective respect for human rights by public powers, by those rendering services of public relevance, and by private actors. The transformation into CNDH

<sup>9</sup> "Direitos fundamentais e humanos marcam texto constitucional de 1988". Brasil. Accessed April 26, 2024. <https://www.gov.br/pt-br/constituicao-30-anos/textos/direitos-fundamentais-e-humanos-marcam-texto-constitucional-de-1988>

<sup>10</sup> "Tratados internacionais de proteção dos direitos humanos e a Constituição Federal de 1988" in "Curso de Direitos Fundamentais - Ed. 2022". Piovezan, Flávia. Accessed April 27, 2024.



was not merely a naming issue, it was rather a change of perspective and attributions oriented to an up-to-date concept of human rights. This new perspective is evidenced by the rights protected by the CNDH, which include fundamental, individual, collective, or social rights provided for in the Federal Constitution and provided in international treaties ratified by the Republic.

» **Other Applicable Norms**

Concerning specifically the subject of human rights and companies, [Decree No. 11,772/2023](#) established the Interministerial Working Group to develop a proposal for the National Policy on Human Rights and Companies. The group's tasks include conducting studies on national and international legal systems for the protection of human rights in relation to business activity; proposing measures to improve the effectiveness of public policies aimed at regulating companies' actions on human rights promotion; monitoring and repairing human rights violations; and implementing business policies in line with national and international normative guidelines.

As per the guidelines for developing the National Policy on Human Rights and Companies, the policy should promote the improvement of the effectiveness of current policies on human rights in the business context, foster business mechanisms to prevent human rights violations, promote oversight mechanisms to ensure compliance and be in line with the United Nations Sustainable Development Goals.

Simultaneously, Congress is evaluating [Bill No. 572/2022](#), which proposes a national framework law on human rights and companies and proposes guidelines for public policies on the subject, including mechanisms for prevention, monitoring, and repairing any harm to human rights related to the business environment. Under this draft and in accordance with international standards, companies and the Brazilian State would be obliged, together, to abstain from violating human rights, as well as to collaborate with anyone who violates human rights. In case of violations, they should seek full reparation, ensure complete access to any information useful for repairing such violations, as well as do not allow further or new violations and cooperate for preventing violations and repairing any damages to those affected.

With respect to the companies' obligations, [Bill No. 572/2022](#) proposes that companies domiciled or just operating in Brazil should be responsible for any direct or indirect violations of human rights, that the responsibility comprehends all the production chain, economic groups, investors, contractors, and other parties that may be related to the violation or the violators of human rights, including those outside the Brazilian territory. According to the proposed bill, the mentioned actors should be jointly liable for any offences to the human rights arising from or in connection to the economic activity of the company.

[Bill No. 572/2022](#) also provides that companies should be obliged to adopt mechanisms to control, prevent and remedy human rights violations arising from their activities, without prejudice to their civil, administrative and criminal liability if such violations occur. For example, companies should carry out due diligence to this end and consider within the scope of protecting human rights the protection of social, labour and environmental rights.

In conclusion, despite that some companies operating in Brazil are already promoting human rights due diligence according to the UN standards, such as Eletrobras<sup>11</sup> and CEMIG,<sup>12</sup> Brazil is actively working to approve legislation on the matter, and, outside Congress, there are initiatives to advance the awareness, policies and initiatives on the matter.

It is relevant to mention that the current legal framework already addresses human rights violations that may be caused by any actors, either private or governmental. However, currently, there is no mandatory provision in force for the companies to proceed with due diligence on human rights regarding their activities, therefore there are opportunities to improve the Brazilian legal framework on this matter.

**f.**  
**Impact Assessments**

» **Constitutional Law**

Brazilian legislation provides for some mechanisms for assessing the impact of economic activities and projects on the environment and communities. Pursuant to Article 225, first paragraph, IV of the Federal Constitution, the installation of projects or activities which may cause significant environmental impact must be preceded by an environmental impact study with measures to make it known to the public.

» **Statutory Law**

A relevant legislation related to impact assessment is [Law No. 12,334/2010](#), which establishes the National Policy on Dam Safety. This law imposes strict obligations on sector agents operating dams in the electricity and mining sectors. It also requires entrepreneurs to formulate a safety plan for the dam, which must be discussed and debated directly with the affected population.

The legislation also includes provisions for the establishment of an education and communication program on dam safety, aiming to raise awareness in society about the importance of dam safety and to develop a culture of accident and disaster prevention. This program should also include a Dam Safety Plan and a yearly Dam Safety Report, as well as an Emergency Action Plan in case of contingencies.

However, despite the existence of provisions for impact assessment of economic activities, there are several reports of conflicts between communities and entrepreneurs, as well as reports of environmental damages caused by projects many of them related to renewable energy power plants. This may be evidence that current provisions for assessing impacts would require further improvements.<sup>13</sup>

There is also the National Environmental Policy, established by [Law No. 6938/1981](#). According to the Environmental Policy, any ventures or activities that use natural resources, that cause or that

<sup>11</sup> "Direitos Humanos". Eletrobras. Accessed April 28, 2024. <https://eletrobras.com/pt/Paginas/Direitos-Humanos.aspx>

<sup>12</sup> "Cemig reforça compromisso com os direitos humanos". CEMIG. Accessed April 28, 2024. <https://www.cemig.com.br/programa-sustentabilidade/Cemig-reforca-compromisso-com-os-direitos-humanos/>

<sup>13</sup> "Por que a produção de energia renovável precisa estar alinhada com a garantia de direitos humanos". Accessed April 29, 2024. <https://www.conectas.org/noticias/por-que-a-producao-de-energia-renovavel-precisa-estar-alinhada-com-a-garantia-de-direitos-humanos/>

could cause pollution or that are in any other way capable of environmental harm must be preceded by prior environmental licensing.<sup>14</sup>

In general, the environmental licencing procedures, from the most complex to the simplified ones, involve environmental studies and are aimed at mitigating environmental and social impacts arising from all stages of the undertaking. Normally, the environmental licencing procedure has three stages, related to the undertaking: previous licence, installation licence, and operational licence.

Federal Supplementary Law No. 140/2011 regulated the common competence of the federal entities (the Union, States, Federal District and Municipalities) defining cooperation rules, reducing overlaps and conflicts of action, and consequently making the environmental licensing process less costly and bureaucratic.<sup>15</sup>

Despite the existence of some common environmental studies required in most states, the content and the moment to present environmental studies can vary from state to state, since they share common competence on environmental matters. In many states, the environmental study could be replaced by the presentation of some documents, as requested by the competent environmental authority, according to the activity to be developed and the size of such undertaking.<sup>16</sup>

#### » **Other Applicable Norm**

Common to all states and regulated by CONAMA Resolution 001/1986, the Environmental Impact Study (EIA) and Environmental Impact Report (RIMA) are required in the environmental licensing of undertakings and activities that may cause significant environmental impacts. It is worth mentioning that, due to this requirement, EIA/RIMA is applicable to the most environmentally sensitive undertakings, and the majority of the projects in the power industry usually follow other less complex procedures.

EIAs deal with the technical aspects needed to assess the environmental impacts expected from the project under study and must be carried out by a multidisciplinary technical team qualified to carry out an environmental diagnosis of the project's area of influence, considering the physical, biological and socio-economic environments. The EIAs must also analyse the environmental impacts and possible alternatives, considering positive and negative impacts, whether they are temporary or permanent, whether they are reversible and other aspects, as well as mitigating measures and measures to monitor these impacts. The RIMA must report the project studied in an objective, clear and appropriate way so that the information obtained can be passed on to interested parties, especially so that the population understands the characteristics of the project, the environmental impacts and mitigation measures, in accessible language and with maps, tables, graphs etc. In addition to all the other relevant information, the RIMA will present the program for monitoring the project's impacts.

<sup>14</sup> "O que é licenciamento ambiental?". Ministério do Meio Ambiente e Mudança do Clima. Accessed April 28, 2024. <https://pnla.mma.gov.br/o-que-e-licenciamento-ambiental>

<sup>15</sup> "Competências para o licenciamento ambiental". Ministério do Meio Ambiente e Mudança do Clima. Accessed April 28, 2024. <https://pnla.mma.gov.br/competencias-para-o-licenciamento-ambiental>

<sup>16</sup> "Estudos ambientais". Ministério do Meio Ambiente e Mudança do Clima. Accessed April 28, 2024. <https://pnla.mma.gov.br/estudos-ambientais>

## 3. CONCLUSION

As we can see, Brazil's legal framework for energy transition is still evolving and being developed. However, there are several laws, although not specifically aimed at energy transition, that focus on ensuring human rights, indigenous rights, and gender equality in various ways – and are applicable to issues related to energy transition.

Nevertheless, Brazilian authorities seem to be aware that the tools available to the government so far are still not sufficient, and there are several relevant discussions that need to be addressed in the coming years. An example of this is a recent statement by ANEEL Director Ricardo Tili, who mentioned understanding that the tariff model practised in Brazil is socially unjust.<sup>17</sup>

Brazil faces this and other dilemmas. The fact is, while the energy transition represents a positive step towards a more sustainable energy system, there is also a tendency to generate socio-economic disparities, thus hindering a just and equitable energy transition.

For these and other reasons, it is hoped that the bills currently under discussion in the National Congress can address well the situations that demand greater attention and expand the legal treatment of sensitive issues, such as those addressed in this study.

<sup>17</sup> "Para Diretor Da Aneel Modelo Tarifário Brasileiro é Socialmente Injusto". Canal Energia. March 13, 2024. <https://www.canalenergia.com.br/noticias/53273130/para-diretor-da-aneel-modelo-tarifario-brasileiro-e-socialmente-injusto>.





REUTERS/Ueslei Marcelino



**TrustLaw**