

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

### **Introduction:**

For this report, we will demonstrate two different scenarios in Brazil's North and Northeast regions, specifically in the states of Pará and Bahia, regarding renewable energy and sustainability and their impact on human rights, taking into account measures that have taken place and emblematic cases to exemplify the context in which the UN Guiding Principles on Business and Human Rights are lacking implementation and therefore need to be enforced by the State and Companies.

### **Context and gaps in the development of human rights standards in the extractive and renewable energy sector:**

#### **Pará and environmental conservation:**

The National System of Conservation Units (SNUC), Law No. 9,985/2000, is an important initiative of the Brazilian State aimed at environmental balance through the establishment and management of protected areas under the responsibility of various federal entities and the private sector.

In addition to SNUC, the creation of Agroextractive Settlement Projects (PAEs), within the National Agrarian Reform Policy, initially as "environmentally differentiated settlements," has also had positive impacts on climate goals, considering the purpose of these settlements for the conservation of forest areas, especially in the Amazon, and directed towards traditional populations.

However, in the case of Sustainable Use Conservation Units created by the Federal Government, two factors reveal the inadequacy of this State policy and raise doubts about its effectiveness.

1. Delays by agrarian management agencies in completing the necessary legal procedures for the legal consolidation of Conservation Units; inertia in land regularization.
2. This inertia contributes to the perpetuation of the social vulnerability of agroextractivist populations, who are formally beneficiaries of the concessions but, in most cases, do not have their civil and economic rights fully and effectively ensured as a result of these measures.

*In this regard:*

The above account highlights the weakness in implementing State measures aimed at environmental preservation in the extractive sector, with a focus on promoting the rights of traditional peoples and communities. In the case of Sustainable Use Conservation Units in the state of Pará, it is evident that the created units still face legal insecurity, which further exacerbates the vulnerability of this sector. The Brazilian State, through the inertia and omissions of its agencies, hinders the transition to an effective system that combines sustainable development and environmental protection. This is because it leaves millions of hectares of forests completely unprotected, resulting in agrarian and environmental conflicts with human and environmental losses, making it impossible to promote a just energy transition based on human rights.

### **Bahia and renewable energy:**

It is notable that the exploration of renewable sources such as wind energy has been expanding in Brazil and worldwide. In pursuit of compliance with the Paris Agreement, strategies for energy transition and plans for clean energy development, such as wind energy, require significant land access. Furthermore, the large wind farms initiatives in Brazil, especially in the Northeast, are controlled by major foreign companies that prioritize the interests of international capital, with little consideration for environmentally sensitive areas and the historical residence areas of rural and traditional communities. This context has caused land conflicts, changes in land use, disruption of ways of life, and violations of the rights of indigenous peoples and traditional communities, including freedom of movement within their own territories and access to relevant areas to their living.

The state of Bahia is considered an important Brazilian state for new frontiers of energy production. The Wind Atlas of Bahia provides an overview of the expansion plan for this type of energy and indicates that a large portion of the implementation areas for this technology is located on lands considered "unallocated" but that are actually occupied by traditional peoples, such as Quilombos (communities of Afro-Brazilian descendants)<sup>1</sup> and *Fundo e Fecho de Pasto*. This context specifically applies to the high *sertão* of Bahia.

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<sup>1</sup> The quilombos communities were formed, during the slavery regime, from the action of struggle and resistance by the collectively conceived subject, the quilombola subject. In the communities, black people not only sought the individual condition of person, which the legal order denied them, but collectively challenged the foundations of a system built on slave labor, contributing to its economic unviability. After the abolition of the formal regime

*Impacts of wind farms implementation in the Alto Sertão region of Bahia, or in the productive sertão territory in Brazil:*

This is a semi-arid region composed of areas from the *cerrado* and *caatinga* biomes, as well as a set of small municipalities. The largest of these municipalities is Guanambi, with a population of around 90,000. The main municipalities already affected by wind farm complexes in these territories are Caetitê, Guanambi, Pindaí, Igaporã, and Lagoa Real, but there are ongoing processes for expansion to other municipalities in the region.

In the report "Dossier: Renewable Energies in Bahia: Paths and Missteps<sup>2</sup>," which addresses the issue of wind farm complexes in general, we also refer to the work developed by Cáritas Regional Nordeste 3 in conjunction with other pastoral and social movements, such as the Pastoral Land Commission (CPT), in the territory, as well as audiovisual records of documentaries on the subject produced by CPT<sup>3</sup> and the actions of other social organizations.

While analyzing the obstacles foreseen in Instruction Normative No. 01/2020<sup>4</sup> from the state of Bahia as an instrument that sought to promote the energy transition plan, it is evident that the norm, initially considered a tool to guarantee the rights of traditional peoples, in practice, only benefits large wind energy companies and projects. This reality raises doubts about the widely publicized advantages of wind energy, allowing for reflection on its real impacts on environmental, political, and socioeconomic sustainability.

There are at least 265 wind farms in the state of Bahia, most of which are located in areas with low protection for native vegetation, such as the *caatinga* and *cerrado* biomes. These regions have historically lacked social investments and public policies and are home to municipalities with Brazil's lowest Human Development Index (HDI).

*Direct impacts:*

The interference in the habitat caused by wind farms in the high *sertão* of Bahia leads to significant alterations that usually affect the fauna and flora, changing its natural composition.

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of slavery, the quilombola subject continued to act as a protagonist in the transformation of Brazilian law, specifically with regard to their interests and needs. (LEOPOLDO ROCHA SOARES, Os Quilombos na Constituição Federal de 1988 e na Ordem Jurídica Internacional: Escravidão e Resistência Na Transformação do Direito Brasileiro, 2021)

<sup>2</sup> [www.dossienergiasrenovaveis.com.br/dossie.pdf](http://www.dossienergiasrenovaveis.com.br/dossie.pdf)

<sup>3</sup> [www.youtube.com/watch?v=s90nKSlbgoQ](https://www.youtube.com/watch?v=s90nKSlbgoQ), [www.youtube.com/watch?v=80Nz4KI9hcs](https://www.youtube.com/watch?v=80Nz4KI9hcs)

<sup>4</sup> [www.sda.sdr.ba.gov.br/sites/default/files/2020-07/INSTRU%C3%87%C3%83O%20NORMATIVA%20-%20C3%81REAS%20ENERGIA%20EOLICA.pdf](http://www.sda.sdr.ba.gov.br/sites/default/files/2020-07/INSTRU%C3%87%C3%83O%20NORMATIVA%20-%20C3%81REAS%20ENERGIA%20EOLICA.pdf)

Deforestation during the installation phase eliminates various important species that have historically been used as food and for medicinal purposes by local communities. Furthermore, there is a negative effect directly affecting the soil through compaction and erosion, making the deforestation of oxygen-rich native areas paradoxical. Moreover, the installation of wind turbines completely alters animal life, and they can become barriers to bird migration, causing accidents, often fatal.

According to the "Dossier: Renewable Energies, Paths and Missteps," the installation of a single wind tower requires 40 tons of ironwork, up to 320 cubic meters of concrete (equivalent to 40 concrete mixer trucks), and 150,000 liters of water.

The noises produced by wind turbines directly affect the way of life of traditional communities. Besides affecting the lives and reproduction of humans and wildlife, there are reports from residents in areas where wind farms are located that the intermittent shadowing caused by the rotating blades and the noise generated by the turbines have long-term effects on the health of domestic animals.

Despite the limited available data, it is pointed out that the organization has observed that the health of the residents has been significantly affected, particularly their mental and psychological well-being. This is due to noise pollution and the loss of these vacant lands, which have historically been collectively used by the communities for economic, cultural, and religious purposes. When these lands are privatized by large companies, they become restricted private areas, altering the dynamics of life and the sense of identity and connection to the land for entire communities. There are constant violations of the right to territory and self-determination of traditional communities.

After the installation of wind turbines, complaints of illnesses such as depression, sleep disorders, insomnia, migraines, and emotional distress have become frequent, as clearly depicted in the documentary "Ventos do Agreste" <sup>5</sup>.

The restriction of movement in the territory, access to water, roads, and farmland, as well as land grabbing and enclosure by companies, have generated major conflicts with these traditional communities that have occupied these territories for more than 100, 150, or 200

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[www.youtube.com/watch?v=80Nz4KI9hcs&pp=ygUfZG9jdW1lbnTDoxJpbyB2ZW50b3MgZG8gYWdyZXN0ZQ%3D%3D](https://www.youtube.com/watch?v=80Nz4KI9hcs&pp=ygUfZG9jdW1lbnTDoxJpbyB2ZW50b3MgZG8gYWdyZXN0ZQ%3D%3D)

years. These people are directly affected, altering their way of life in favor of "clean energy," which generally is not even produced for the use of the local communities themselves.

In pursuit of exploring another sector of the market, companies in the industry employ various mechanisms to disarticulate and destabilize communities. Examples include individual approaches to traditional communities aimed at undermining community organization, as well as the presentation of confusing contracts, often taking advantage of families' limited legal or formal education. Additionally, companies negotiate different agreements within the same community, provoking disputes and divisions among residents and families, which directly impacts the communal way of life that constitutes the cultural identity of these people.

Based on existing legislation, the state subordinates itself to the economic interests of enterprises and creates measures to accommodate them. It is evident that these measures do not collaborate with traditional communities; on the contrary, their clear objective is to provide greater security to wind energy companies by establishing regulated and expedited procedures.

With the aforementioned Normative Instruction, the right to land regularization, where public lands are mostly allocated to indigenous peoples and traditional communities, is violated, as it becomes conditioned to the economic interests of the wind power companies, who use the discourse of clean energy solely for profit.

It is noteworthy that popular participation in the process is incipient, and when it does exist, it is always conditioned to the relationship established with the company. Undoubtedly, this weakens the understanding of traditional communities regarding the impacts that the project can bring to their lives and territories. The public hearings themselves, held either prior to or during the implementation process of these projects, are published in a weak manner, merely as a protocol requirement, without involving and mobilizing the different sectors of society that are interested and affected.

In this sense, the state has been trying to incentivize public policies and create norms aimed at energy renewal, but in doing so, it has harmed and violated the fundamental rights of communities and traditional peoples. Some examples include:

- i. The right to prior, free, informed, and good-faith consultation, as provided by International Labour Organization (ILO) Convention No. 169, is disregarded by the state, particularly concerning the issuance of this Normative Instruction;
- ii. Disregard for collectivity due to the lack of specific protocols and the absence of government oversight;

- iii. Test tower installation occurs after the signing of an agreement between the; state and the project's proponents, without consulting the traditional communities;
- iv. The mentioned Normative Instruction does not provide respect for the way of life of quilombolas and members of "fundo e fecho de pasto" communities, violating the right to self-determination;
- v. The Department of Racial Equality Promotion of the State of Bahia (Sepromi) does not participate in the implementation process of these projects;
- vi. The land diagnosis, which serves as the basis for land regularization, is conducted by a private company contracted by the wind energy company. This exposes and puts at risk individuals and communities opposed to the installation of the projects;
- vii. There are no scheduled meetings between state representatives and communities without the participation of company representatives;
- viii. There is no regulation of contracts between traditional communities and wind energy companies, even though it is widely known that these contracts contain abusive clauses;
- ix. Traditional communities that refuse to sign the commitment agreement may have their lands allocated for wind energy purposes;
- x. The indicated regulation does not establish any limitations on companies regarding environmental protection and the preservation of cultural, historical, and archaeological heritage. No areas are designated where the installation of parks would be prohibited due to their specific environmental, social, and cultural qualities.

Therefore, it is crucial to create norms and policies that guarantee the participation of vulnerable communities that will be affected, thus respecting human rights, the right to prior consultation and consent, the right to self-determination, and the Guiding Principles on Business and Human Rights established by the United Nations. It also requires responsible action and due diligence from companies, especially in large enterprise projects. Furthermore, studies are needed to assess all the damages that the implementation of renewable energies can cause in the short, medium, and long term, providing effective solutions for an energy transition that respects human rights.

This contribution to the Working Group on Business and Human Rights is not intended to be opposed to renewable energy and sustainability. On the contrary, it aims to demonstrate that the

achievement of sustainability must take into account social and environmental aspects, where both the public and private sectors represent legitimate interests without leaving anyone behind.