



# VIOLENCE AND HUMAN RIGHTS<sup>1</sup>

## Situation of isolated indigenous peoples in Brazil

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**ABSTRACT:** The decisions taken by Jair Bolsonaro's government since the first day of his mandate, in January 2019, have weakened the country's environmental control policies and contributed to reduced inspection, increased deforestation on public lands, and consequently, the violation of the rights of indigenous peoples. There is a great diversity of contexts for isolated indigenous peoples in Brazil, from small groups to a single individual. These groups are the survivors of successive massacres and are threatened by the spread of disease, and for these reasons avoid contact with other agents at any cost. In addition to the need to ensure that their territories remain protected, the decision itself to live in isolation must be guaranteed in accordance with the already established instruments, including the United Nations Declaration on the Rights of Indigenous Peoples and Convention No. 169 of the International Labor Organization (ILO). Despite the traumatic history of contact, Brazil is the country with the largest number of isolated indigenous peoples in South America, as well as has the oldest public policy in terms of guaranteeing the rights of these peoples to self-determination. The measures presented in this article substantially undermine the protection of the rights of isolated indigenous peoples and obstruct the possibility of advancing or enforcing human rights which are internationally recognized and provided for in domestic law.

**KEYWORDS:** Isolated indigenous peoples; human rights; policy setbacks; Amazon.

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## *1 The isolated indigenous peoples of the Amazon*

For the Brazilian State, in a definition given by the National Indian Foundation (FUNAI, 2012), the term ‘isolated indigenous peoples’ refers specifically to indigenous groups with no permanent relationship with society, or with little frequency of interaction, whether with non-Indians or other indigenous peoples. The decision to live in isolation is the very expression of the right of free determination, which must be protected and assisted by the State. In this sense, actions that aim to force contact and cause environmental destruction on their territories are clear violations of the fundamental human rights of people living in isolation. Contact situations, which are often forced and in many cases cause the introduction of germs and diseases (Albert and Ramos, 2002) even before the presence of the colonizer, generate huge population losses and the weakening of indigenous health and the demographic balance (Rodrigues, 2014).

At some point in their history, isolated indigenous peoples opted for “isolation” strategies, based either on traumatic contact experiences or on other decision-making processes that aim to reduce their degree of vulnerability (Amorim, 2016). By expressing their self-determination through this strategy, these peoples manifest the need to have a preserved territory, guaranteed both by field practices and legal frameworks implemented by the responsible government agency. Considering the close relationship between these peoples and their territories, the environmental integrity of these areas is a primordial condition for guaranteeing their self-determination, the maintenance of their ways of life, and their physical, psychological, and sociocultural integrity.

Brazil currently has the largest confirmed presence of isolated peoples in the world, and an immeasurable wealth of cultural and social diversity. There are 115<sup>1</sup> records, 28 of which have been confirmed, with the remaining, 86 under investigation as to their existence. These records are practically concentrated in the Amazon biome (Figure 1), with only two located outside of it: a record in Ilha do Bananal, Tocantins, and one in Avá-Canoeiro, in the north of Goiás, both under investigation. The Instituto Socioambiental (ISA) database considers six further records, classified as ‘with information’ (Ricardo and Gongora, 2019). Recently, in September of 2021, a new re-

<sup>1</sup> In addition to the 114 records from the FUNAI computation, the Alto Tarauacá Indigenous Land was added, demarcated and homologated according to the presence of isolated indigenous peoples.

cord in the middle Purus region was detected by the protection front team, but so far FUNAI has not adopted any measures regarding data management and protection of this isolated group.

The records of isolated indigenous peoples are distributed in a set of 78 protected areas - 54 Indigenous Lands and 24 Conservation Units (15 federal and 9 states). There are a further eight records located in areas with no protection mechanism. Of the 54 Indigenous Lands with a presence of isolated groups, 44 are homologated, five have a restricted use Ordinance, three have been declared (Kawahiva do Rio Pardo, Kaxuyana-Tunayana and Uneiuxi) and two are identified (Sawré-Maybu and Apiaká do Pontal e Isolados).

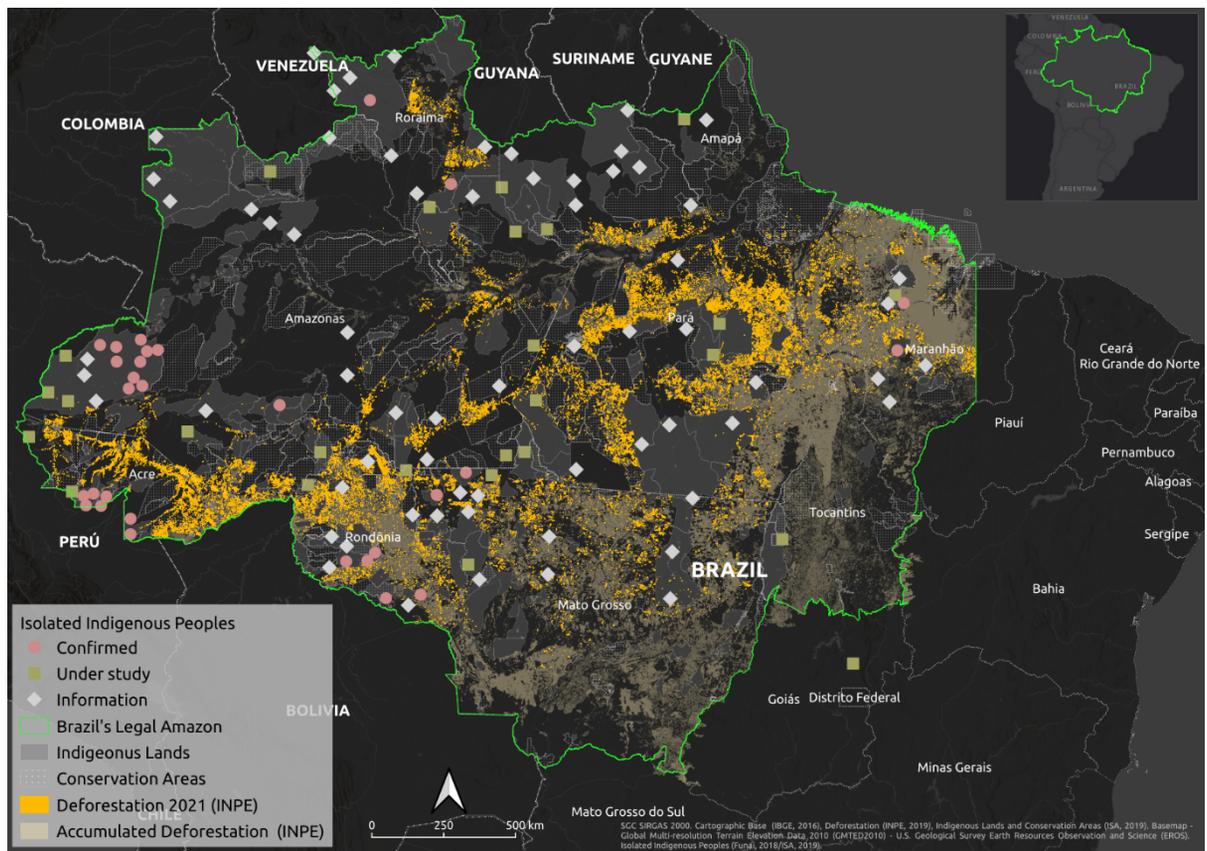


Figure 1. Location map of the records of isolated indigenous peoples. Source: Ricardo and Gongora, 2019.

The current policy for the protection and promotion of the rights of isolated indigenous peoples dates back to 1987 and is related to the 1988 Constituent Assembly process. Before that, it was believed that the only way to protect these people and guarantee their rights was through contact. The Federal Constitution of 1988 recognized in its articles 231 and 232, the different ways of life of indigenous peoples, deconstructing the concepts of integration and guardianship. This general paradigm shift in the protection of indigenous rights was also manifested worldwide in Convention n. 169 of the ILO, which is today the main binding instrument for defending the rights of indigenous peoples in the world.

In 2022, the policy for the protection of the rights of isolated and recently contacted indigenous peoples in Brazil will be 35 years old. In 1987, the First Meeting of Sertanistas took a definitive step towards changing the official paradigm of the Brazilian State's relationship with these peoples, refuting the premise of obligatorily contacting them. At this moment, the error of forced contact in the previous decades and the tragic consequences of the absence of post-contact actions, especially health actions, were recognized.

The work of doctors, indigenists, anthropologists, and staff of the Special Secretariat for Indigenous Health (SESAI) and the FUNAI resulted in the publication of Joint Ordinance No. 4,094 of 20 December 2018 between FUNAI and the Ministry of Health, which defines principles, guidelines, and strategies for health care of isolated and recently contacted indigenous peoples. However, to date, the recommendation contained in Article 22 of the Ordinance has not been complied with. That is, the guiding document for the preparation of Contingency Plans for all confirmed records of isolated indigenous groups in the country has not yet been published.

The methodology developed and improved in the years after 1987 made possible the territorial dimensioning and sociocultural identification of isolated indigenous peoples, without establishing forced contacts. This methodology, in continuous development, today considers stages of work that involve research, collection, and systematization of reports; analysis of cartographic data, and field expeditions (Yamana and Amorim, 2016).

It is the responsibility of FUNAI, through its Coordination of Isolated and Recently Contacted Indians (CGIIRC) and its Ethno environmental Protection Fronts (FPE), to guarantee isolated peoples the full exercise of their freedom and traditional activities without the necessary obligation of contacting them<sup>2</sup>. As such, it is for the official indigenist body, in the exercise of police power, to regulate the entry and transit of third parties in areas with the presence of isolated indigenous groups, as well as taking the necessary measures for the protection of these groups<sup>3</sup>, through the regulation of use restrictions in these areas. Today, there are 11 FPEs in operation.

2 Annex I, Article 2, item "d", Decree nº 9,010, 23 March 2017.

The legal device of use restriction is supported by three legal norms - article 7 of Decree 1775/98; article 231 of the Federal Constitution of 1988; and article 1, item VII of Law No. 5371/67 - and it is an instrument for regulating the use of land occupied by isolated indigenous groups. Use restriction enables the necessary conditions for carrying out the task of locating references and promoting the rights of groups in isolation, as well as the studies of anthropological and environmental characterization of the territory, necessary for the administrative procedure of demarcation of Indigenous Land, as determined by Decree No. 1775/96.

3 Article 7, Decree no. 1.775/96.

Measures or projects that affect indigenous lands with the presence of isolated indigenous peoples deserve special attention about the processes of free, prior, and informed consultation under the terms of Convention no. 169 of the ILO (Yamana and Amorim, 2016). The specificities of these people indicate that forced contact itself puts the lives and autonomy of these people at risk. As they are particularly vulnerable to extreme situations of violation of fundamental human rights – including the risk of genocide – the State must observe even more carefully the ways and strategies of life of these peoples before taking any decision that may affect them.

## *2. Obligations of the Brazilian State towards human and environmental rights*

The Inter-American Court of Human Rights, through Consultative Opinion (OC) 23/17, established that there is a strong interdependence between human rights, the environment, and sustainable development. For human rights to be fully satisfied, a ‘minimum environmental quality’ must be respected, which is part of the notion of an ‘existential minimum’ needed for a human being’s full development. Current advancing deforestation and environmental degradation in the Amazon represent a severe threat to the full realization of the human rights of indigenous peoples, especially of those who have chosen to avoid contact with national society.

The State of Brazil has undertaken a national and international obligation to protect the environment and the human rights of indigenous peoples. In addition to constitutional provisions, the State is also bound to the American Convention on Human Rights, the Protocol of San Salvador, which establishes the right to a healthy environment, and other human rights treaties within the Universal System. The United Nations Declaration on the Rights of Indigenous Peoples, which recognizes and reaffirms fundamental universal rights recognized in the United Nations Charter, in the context of indigenous cultures, realities, and needs, is also of note. The Declaration underscores the commitment of States to take measures that guarantee respect for the wishes and decisions of indigenous peoples on matters that concern them.

Within the scope of International Instruments on indigenous rights, there are also the resolutions from the two International Decades of the World’s Indigenous People<sup>4</sup> and the Millennium Development Goals, in addition to all the general treaties on Human Rights, which have universal application. Specifically, regarding indigenous peoples, the International Covenant on Economic, Social and Cultural Rights, as well as the International Covenant on Civil and Political Rights and The International Convention on the Elimination of All Forms of Racial Discrimination are of note. In 2004, Brazil also ratified Convention No.169 of the International Labor Organization (ILO), adhering to the most comprehensive international law instrument on this matter, which seeks to guarantee indigenous and tribal peoples the minimum rights to

4 By resolution 49/214 of 23 December 1994, the United Nations General Assembly established the International Day of the World’s Indigenous Peoples, observed on 9 August every year. In 1990, the United Nations General Assembly proclaimed 1993 the International Year of the World’s Indigenous People.

safeguard their cultures and identities in the context of the societies they integrate. In environmental matters, Brazil has ratified the Kyoto Protocol and the Convention on Biological Diversity, in addition to being part of the Paris Agreement.

The treaties contain environmental and human rights obligations which the Brazilian State should use to guide the design of internal policy and to establish priority actions. Thus, actions or omissions by government agents, of any level or sphere, which result in the violation of these obligations, are fully attributable to the State and liable to accountability and reparation.

The record rates of deforestation and fires registered in 2019 and 2020 in the Amazon are directly associated with the environmental policy of the Bolsonaro government and its line of discourse (and that of its ministers), who support criminal acts such as slash-and-burn agriculture, land grabbing, the invasion of Indigenous Lands and illegal logging and mining. Just as we have detailed in the following sections, the new environmental policy - with legislative changes, restructuring of agencies, budget cuts, and changes in boards and leadership - has built a scenario conducive to the unbridled exploitation of the Amazon, with violations of the rights of indigenous peoples.

The United Nations Declaration on the Rights of Indigenous Peoples, approved by the General Assembly in September 2007, recognizes the close relationship of indigenous peoples with the environment. The Declaration also recognizes that respect for indigenous knowledge, cultures, and traditional practices contribute to sustainable development and the proper management of the environment. It points out not only the need to protect the environment but also self-determination, consultation, and reparation in cases of harmful environmental, economic, social, cultural, or spiritual consequences.

Applying the premises in the context of protecting the Brazilian Amazon and indigenous peoples, we can conclude that massive deforestation and forest degradation clearly threaten the rights of peoples and inhabitants to a healthy environment and, even if indirectly, that of thousands of other Brazilians. It should also be noted that this region of forest represents 49.3% of the national territory, is home to around 23 million people and, in addition to corresponding to of the planet's tropical rainforests, has a rich biodiversity and about 10% of the world's available drinking water.

Considering the idea of inseparability between the balanced environment and full enjoyment of human rights and the importance of the Amazon, its degradation can generate environmental phenomena which would affect other human and fundamental rights, in addition to the right to a healthy environment.

Due to the complexity of the effects of environmental degradation, and in consideration of its diffuse impact and collective interest, we must also emphasize the obligation the Brazilian State has to collaborate with other States to reach solutions and avoid greater damage, as well as broadly and satisfactorily meet the right to access information on environmental matters. Despite this, the Brazilian State has been rejecting all dialogue with other countries to ensure collaborative proposals and actions to halt the environmental crisis that is ravaging the Amazon, as well as attacking, denying, and concealing environmental information and data before the Brazilian population and international press.

As such, we remind the State and request the Human Rights Council of the United Nations (UNHRC) to intercede for the fulfillment of the following obligations assumed by Brazil: (i) Comply with its obligations and intensify operations related to the monitoring and territorial surveillance of indigenous lands; (ii) Ensure access to information about the possible impact on the environment; (iii) Guarantee the right to public participation by indigenous organizations in decision-making and policies; (iv) Guarantee access to justice, about the State's obligations to protect the environment and guarantee human rights; and (v) Concrete measures and planning of actions and budgets which fulfill their environmental obligations and guarantee the rights of isolated indigenous peoples.

In the following sections we will explain how the State has been failing to comply with these obligations, absolving itself of responsibility and threatening the human rights of isolated indigenous peoples in the Amazon.

## *3. Environmental policy setbacks in Brazil*

### *3.1. Actions of the Ministry of Environment*

With the appointment of Ricardo Salles for Minister of the Environment (MMA), the ministry, which has the constitutional obligation to protect the environment, came to serve the interests of the most backward ruralist sectors and to ceaselessly seek the dismantling of the bodies and autarchies dedicated to environmental preservation. The changes in the Ministry of Environment's policies follow an extensive roadmap: the emptying of the ministry's functions, such as the dismissal of civil servants and the exclusion of competencies to combat deforestation and climate change; deep budget cuts, mainly affecting enforcement; vacating of managerial positions in the ministry; cancellations of fines (lowest rates of fines issued by IBAMA in 24 years); stoppage of significant funding for conservation; granting of environmental authorizations in the absence of technical opinions; willingness to comply with requests for the extinction or reduction of conservation units and the defending non-compliance of the law against illegal logging activity.

IBAMA officials have also denounced that the Specialized Inspection Group (GEF), considered the agency's elite troops, is not operational, despite formally continuing to exist. Not even communication was spared: the MMA concentrated on IBAMA's external demands, prohibiting the agency from having contact with the press. The authoritarian centralization of access to information violates the basic democratic precepts of the Brazilian rule of law.

Regarding boards and presidencies, in April 2019, the president of the Chico Mendes Institute for the Conservation of Biodiversity (ICMBio), Adalberto Eberhard, resigned after Salles threatened agency officials. A week later, the entire ICMBio board was replaced by military police. In July, Bolsonaro and Salles made attacks on the deforestation monitoring of the Legal Amazon carried out by National Institute for Space Research (INPE). The president was unnerved about the information released, opposing the principle of transparency. In addition, Salles discredited official INPE data, exonerating its director Ricardo Galvão after defending the work of the Amazon Deforestation Satellite Monitoring Project (PRODES).

The aftermath of these events saw an explosion in deforestation. The MMA's omission of the number of fires in the Brazilian Amazon sparked protests outside the ministry. Senator Fabiano Contarato, president of the Senate Environmental Commission, took the initiative of calling for Salles' impeachment. The case was filed before the Supreme Federal Court (STF) and accuses Salles of violating the Constitution by changing the governance of the National Environment Council (CONAMA), as well as persecuting and exonerating public servants for personal reasons, and neglecting the current environmental situation. In addition, another important collegiate, the National Biodiversity Commission (CONABIO) was restructured, impacting the transparency and participation of civil society in environmental policies.

On another occasion, Salles and Bolsonaro slanderously suggested that NGOs were responsible for the increase in fires, and were influencing scientific practices carried out by INPE. Such statements are part of a strategy to disqualify and criminalize NGOs, in an attempt to reduce government oversight and pressure from civil society.

### *3.2. Eroding of IBAMA*

IBAMA is the executive body of the National Environmental System and has the purpose of materializing and implementing the government's environmental policies and guidelines. Despite being one of the main environmental protection agencies, IBAMA suffered the loss of 21 of its 27 regional superintendents, dismissed by Salles in the first 9 months of his term.

In addition, there has been a reduction of budgets for environmental protection and inspection, scientific research, and rural assistance for indigenous peoples, which has strangled IBAMA's operating conditions. In 2019, Salles announced a 24% cut to the IBAMA budget, with a 15% cut in the inspection sector and a 29% cut in the fire sector. The cuts also resulted in a 22% and 25% reduction in the inspection operations scheduled for 2019 and 2020, respectively, and remained at the same level in 2021 when compared to the previous period (2018). Between 2019 and 2021, the forest fire prevention and control action (action 214M) suffered consecutive reductions of 15%, 15%, and 23%, respectively.

The scrapping of the agency directly impacts isolated indigenous peoples, as it obstructs the monitoring and inspection of environmental licensing and cases of invasions, such as the illegal exploitation of natural resources on Indigenous Lands with the presence of isolated groups, including logging, exploitation of mineral and water resources, expansion of the agricultural frontier, predatory hunting and pesticide use, among other activities that degrade the environment. Between budget cuts, personnel reduction, political interference, and environmental deregulation, IBAMA has been reduced to a shell of what was once an agency whose mission was to monitor and intervene for environmental protection.

Adopting the period in which the deforestation monitoring - Prodes - is calculated (August of the prior year to July of the current year) we observe continuous reductions in the number of fines during the three years of the current government, that is, a drop of 13.8% in 2019, 28,3% in 2020 and 3.6% in 2021. The year 2021 coincides with the lowest number of fines for crimes against flora applied by IBAMA in the last two decades in the Amazon (OBSERVATÓRIO DO CLIMA, 2022).

### 3.3. ICMBio

The Chico Mendes Institute for Biodiversity Conservation (ICMBio) is a federal agency whose main objective is to implement, manage, protect, inspect, and manage the Conservation Units instituted by the Union. The agency, as with IBAMA, is being severely eroded through a serious budget reduction, as well as massive layoffs, appointments of officials with no subject experience, constant attacks from the government itself, and allegations of the existence of a 'fine industry'. Between 2019 and 2021, the main final action (20WM action), referring to the creation, management, and implementation of Conservation Units, suffered successive cuts of 17%, 36%, and 34%, respectively. This demonstrates the intention of extinguishing the biodiversity agency due to starvation, or completely making its performance unfeasible.

In October 2020, a working group was established to merge ICMBio with Ibama. The working group was extended for another 120 days. The group has no representatives of civil society and academia and operates under secrecy. Without transparency

and participation and oblivious to technical and empirical evidence, the government induces yet another structural change in the National Environment System (SISNAMA) and this measure practically represents the extinction of ICMBio.

The eroding of the ICMBio particularly affects isolated indigenous peoples, as there are records (12 with information and three under study) in 15 federal Conservation Units, also affecting Conservation Units that border Indigenous Lands. In addition, in some of the Conservation Units staff needs to have special conditions for dealing with situations of overlap between Conservation Units and Indigenous Lands, causing the eroding of this agency to also erode the rights of these peoples and communities.

### *3.4. Impairment of FUNAI operation*

Of all the institutions affected by policies of erosion in the environmental field, FUNAI, the official indigenist body, is the worst off. The serious budgetary restrictions, in addition to the massive changes to its coordination, have practically paralyzed activities. From the perspective of human rights, and the rights of isolated indigenous peoples, the situation is dramatic in the face of drastic and unjustified cuts, combined with huge political pressure from openly anti-indigenous sectors. In parallel, there has been an unprecedented growth in violence against indigenous communities and FUNAI personnel. Two episodes are striking: a firearms attack on a FUNAI base in Vale do Javari Indigenous Land, in August 2019, and the assassination of a collaborator and former FUNAI employee in September, in Tabatinga/AM.

This situation, in which the agency's obligations were already at the very limit of feasibly operating, is aggravated by the current government's decisions, especially Decree 9.711/2019, which froze 90% of the FUNAI budget provided for in the Annual Budget Law. The lack of personnel affects the entire institution, but in the Local Technical Coordination's (CTLs) and Ethno environmental Protection Fronts (FPEs), which are closer to indigenous communities, the outlook is more serious. In regions with intense land disputes over demarcation processes, high levels of violence and a lack of personnel further expose indigenous people. In many cases, the Coordination has a single employee.

The current government has been ignoring warnings of imminent possible massacres of indigenous peoples, especially the isolated. Without presenting justification or alternatives for the fact that drastic budget cuts make the State's work in promoting and defending the rights of indigenous peoples impossible, it could lead to more serious situations than those seen in recent years. Since 2014, the reduction of FUNAI spending on actions of inspection, monitoring, and protection of Indigenous Lands has been systematic and already amounts to 48.4%.

FUNAI has also been undergoing massive management changes, which further compromise its functioning. In June 2019, General Franklimberg Ribeiro de Freitas was discharged after strong pressure from the ruralist lobby. Franklimberg had come into conflict with the Secretary of Land Affairs of the Ministry of Agriculture, Luiz Antônio Nabhan Garcia, a declared enemy of agrarian reform and the demarcation of indigenous lands. Nabhan is a former president of the Rural Democratic Union (UDR), an entity that brings together rural landowners, and is suspected of crimes such as the illegal appropriation of public land and the formation of militias in the region of Mato Grosso do Sul.

Bolsonaro made the post available to the ruralist lobby, which appointed Marcelo Augusto Xavier, a Federal Police Chief who had previously worked with FUNAI's Parliamentary Inquiry Commission (CPI) set up in 2016 in the interest of parliamentarians investigating alleged irregularities in the agency. Previously, in 2014, Xavier had been removed from 'disintrusion' operations of the Marãiwatsédé Indigenous Land for passing on strategic information to farmers in the region. In 2017, Xavier asked the Federal Police to take 'persecutory measures' against indigenous people and NGOs in Mato Grosso do Sul who were occupying the entrances to rural properties located on lands claimed by the Guarani and Kaiowá peoples.

Since taking office, the president of FUNAI has issued an order to change the command of 15 of the agency's area coordination's, as well as changes in other highly relevant directorates. One of them was the Territorial Protection Directorate, occupied by the lawyer Silmara Veiga de Souza, who has already acted in favor of farmers in a case of a contested demarcation of Indigenous Land. Since leaving the Federal Police to take command of FUNAI, Xavier has not granted interviews nor followed the recommendation of the Federal Public Ministry (MPF), which claimed that officials

being appointed have no academic background or expertise in the areas of Anthropology and Social Sciences. Another serious measure is the fact that, under the guidance of the president of FUNAI, teams are prevented from moving into unmarked lands or recommending that “tribes” that invade “private properties” do not receive a basic basket. Along with all of this, FUNAI’s Public Prosecutor’s Office gave up actions related to demarcation actions, including those with favorable decisions.

Another very serious measure is the fact that, under the guidance of the FUNAI president, prosecutors are dropping lawsuits to demarcate Indigenous Lands, preventing teams from moving in non-homologated areas, or recommending that “tribes” invading “private property” do not receive a basic food basket. Along with all of this, the FUNAI prosecutor’s office has dropped lawsuits related to demarcation actions, including those with favorable decisions.

Another attack was the appointment of Ricardo Lopes Dias, a pastor who has worked with the American sect Ethnos360, previously known as New Tribes Mission, and coordinate for nine months (from March to November of 2019) the Coordination of Isolated and Recently Contacted Indians (CGIIRC). The appointment of a missionary to lead the CGIIRC points to a return to the policy of forced contact which, when in force as a state policy during the 1970s, caused the death of thousands of indigenous groups through diseases and violence perpetrated by the public agents themselves.

There is no way to dissociate the escalation of violence indigenous peoples have suffered from the measures and declarations of the current government. A preliminary survey published by the Indigenist Missionary Council (CIMI, 2019) showed that, in the first nine months of the 2018 year, 160 cases of “possessory invasions, illegal exploitation of natural resources and various damages to the heritage of indigenous peoples” had been registered on 153 Indigenous Lands in 19 Brazilian states.

According to official FUNAI data, there are at least 243 Indigenous Lands with demarcation procedures that have not yet been concluded, and which are threatened by the recent FUNAI measure on banning trips to non-homologated areas. According to the Federal Constitution, the Union must demarcate lands traditionally occupied by indigenous people (caput of article 231 of the Federal Constitution). The conclusion of a process of demarcation of an Indigenous Land does not exempt the indigenous agency from responsibility towards its institutional mission, which is to defend indi-

genous rights, clearly established in Law No. 5.371/1967 and Decree No. 9.010/2017. According to the monitoring of normative acts linked to the recognition of Indigenous Lands in the Federal Official Gazette, most of the 243 Indigenous Lands have had their recognition process halted for an average of 10 years. This measure exposes an estimated population of at least 130,000 indigenous people to a total lack of assistance by the Brazilian State.

Furthermore, the slowness of the process of demarcating Indigenous Lands, headed by the State, cannot be attributed to the indigenous peoples, and in any case clashes with the provisions of article 67 of the Transitory Constitutional Dispositions Acts (ADCT) of the 1988 Constitution, which establishes five years for the Federal Union to carry out the demarcation of all Indigenous Lands. The process of demarcation, however, can drag on for more than 30 years, as with the Guapenu and Capivara Indigenous Lands, both in the state of Amazonas, which have been under study since 1985. The measure also affects six areas with a use restriction Ordinance (official determination) where there are records of isolated indigenous peoples. The Piripkura Indigenous Land is a case in point, which once had an Ordinance regulating the working group for identification in 1985, but today has only a restricted use Ordinance to protect the remaining members of the Piripkura (Kagwahiva) people who live in the region.

The decision of the FUNAI president blocks processes of environmental licensing and Indigenous Land demarcation which depend on the direct action of personnel in those areas. As provided in article 25 of Law 6.001/1973, which establishes the Statute of the Indian, the recognition of the rights of indigenous peoples to the permanent possession of the land they inhabit “will be independent of its demarcation.” In the area of environmental licensing, it has blocked staff visits, for example, to present to indigenous people the environmental impact studies of infrastructure projects. Even more seriously, the order has made many aspects of the daily practical life of indigenous people impossible, in the continuous suffocation of communities, as FUNAI employees help indigenous people with basic and routine activities such as birth registration, opening bank accounts, and purchase of food and fuel for places without electricity. During the Covid-19 pandemic, this measure further vulnerable indigenous populations.

The technical note published by the National Institute of Colonization and Agrarian Reform (INCRA), which requires the removal of non-homologated Indigenous Lands from the Land Management System (SIGEF) is a measure that may further increase the degree of threat in those territories. With INCRA's determination, around 237 Indigenous Lands whose demarcation process has not yet been completed may simply disappear from official databases. Of these Indigenous Lands, 11 (two identified, three declared and six with a use restriction Ordinance) share ten records of isolated indigenous peoples (four confirmed, three under study, and three 'with information'). The consequences of the exclusion of these areas from the SIGEF could be irreversible. If there is no public information about where these Indigenous Lands are, the INCRA itself may grant titles to land grabbers who illegally occupy the land. Title bearers of lands overlapping territories with the presence of isolated indigenous groups could obtain environmental licenses for activities such as deforestation.

### *3.5. Eroding of indigenous health*

Indigenous healthcare has also been affected by the generalized dismantling of public policy. In early 2019, the Bolsonaro government sought to decentralize indigenous health, and municipalizing care. Today it is linked to the Ministry of Health, through the Special Secretariat of Indigenous Health (SESAI) and two Special Indigenous Sanitary Districts (DSEIS). Thanks to the mobilization of the indigenous movement in the entire country, the government reversed its decision.

But other problems persist. The indigenous people demand an end to the delays in transfers, which have been frequent since last year. Assistance was also hit by the termination of the *Mais Médicos* program, as many professionals worked in Indigenous Lands. The appointment of Sílvia Waiãpi to coordinate the secretariat also caused dissatisfaction with the indigenous movement. Of an authoritarian profile, she terminated instruments of participation such as the Condisi Presidents Forum (District Council for Indigenous Health) and the National Council for Indigenist Policy.

In areas with a presence of isolated indigenous groups, care is even more urgent because they are susceptible to contagious diseases. This is the case of the Yanomami

Indigenous Land, which has 8 records of people in voluntary isolation. The land has been the target of a massive invasion by illegal miners - there are 20,000 there, according to the latest estimate (ISA, 2020). The direct effect of the invasion was an outbreak of malaria and the risk of contamination by Covid-19. In only one village over 70 cases of malaria have been identified, a situation which has been repeated elsewhere, and six deaths have been recorded in communities of the Uraricoera River, in 2019. In December, the Yanomami and Ye'kwana people sent a letter to the SESAI requesting improvements in health care. Among the problems listed were out-of-date medications and a lack of professional staff. In 2020, the MPF made a recommendation to the agency that measures be taken for the prevention, treatment, and eradication of malaria in indigenous communities affected by outbreaks of illness in Amazonas (AM). Without defenses for this disease, isolated groups living in this territory could be decimated.

In Vale do Javari, the territory with the largest number of records of isolated peoples in Brazil, six children died at the beginning of 2020, generating an alert about the fragile health situation of the indigenous peoples of the region.

Monitoring the evolution of Covid-19 among indigenous populations represents a major challenge. Although official data provide information about the dynamics, they do not necessarily reflect the extent of the pandemic. Furthermore, the lack of data disaggregation makes it difficult to recognize the regions and peoples most affected. Another serious problem is the lack of control measures to support indigenous peoples. Through ADPF 709/2020, the Articulation of Indigenous People of Brazil (APIB) joined the Clinic for Fundamental Rights of Rio de Janeiro State University (UERJ) and six political parties to combat the omission of the federal government in combating Covid-19 and to take measures regarding the risk of genocide. The action asks the Federal Superior Court (STF) to order the federal government to install sanitary barriers in more than 30 territories where indigenous peoples live in voluntary isolation or in recent contact, as well as the removal of invaders from the Yanomami, Karipuna, Uru-Eu-Wau-Wau, Kayapó, Araribóia, Munduruku, and Trincheira Bacajá. ADPF also requests that the Secretariat of Indigenous Health (SESAI) serve all indigenous people, including those in urban contexts or who live in non-homologated areas. However, after four versions of a plan presented by the federal government, the

measures have not yet been implemented. Until February 2020 (27/02/2020), APIB's independent monitoring has registered 49,582 cases of Covid-19 and 975 deaths, affecting 162 indigenous peoples<sup>5</sup>.

### *3.6. Demarcation of Indigenous Lands*

According to FUNAI, there are currently 479 homologated, reserved, or regularized indigenous lands, located in all biomes, with the greatest concentration being in the Legal Amazon. In addition to these, there are 75 Indigenous Lands declared by the Ministry of Justice: 43 identified and approved by the FUNAI presidency and 116 in the process of identification by FUNAI.

Indigenous peoples have an original right to the lands they traditionally occupy (Article 231, Federal Constitution). This means that the Indigenous Land is preexistent to any title deed issued by the State, regardless of administrative demarcation procedures, as the indigenous people are the first and natural owners of these lands. The law also states that demarcations must be made "by the initiative and under the guidance of the federal assistance agency". In other words, it is up to FUNAI, under its own initiative, to start the process.

In 2019, president Bolsonaro started a battle to transfer the responsibility for demarcating lands to the Agriculture portfolio. It is the first time since the creation of the former Indian Protection Service (SPI) in 1910, FUNAI's predecessor, that the indigenist agency has been stripped of its role of demarcation. After two Provisional Measures were issued, the STF minister Luís Roberto Barroso granted an injunction suspending the attempt to transfer the competency for demarcating Indigenous Lands.

Formal attempts to change the regime for the protection of indigenous rights have been accompanied by an integrationist discourse, aiming to rehabilitate assimilationist policies rightly rejected by the Constitution. In addition to ignoring the entire constitutional indigenist apparatus when affirming that "it is the President of the Republic who demarcates Indigenous Land by decree", Bolsonaro criticizes the policy of land demarcation when he declares that "over 15% of the national territory is demar-

<sup>5</sup> Disponível em:  
<https://covid19.socioambiental.org/>.  
Acesso em: 27/02/2020.

cated as quilombola and Indigenous Land. Less than 1 million people live in these places, isolated from real Brazil, exploited and manipulated by NGOs. We will together integrate these citizens and value all Brazilians”, or that “the indigenous peoples do not do lobbying, do not speak our language and today manages to have 14% of the national territory. I will, in the end, speak briefly about the history of this, but one of the intentions is to make it impossible for us.”

It is worrying that Bolsonaro, as head of the country’s Executive Branch, makes pronouncements saying that environmental preservation and the recognition of the rights of indigenous and traditional peoples are the results of manipulative actions by interests opposing his government and that would lead to “the insolvency of Brazil”, inciting hate speech and acts of violence that aggravate national reality: Brazil is ranked among the most violent for defenders of socio-environmental and human rights (Global Witness, 2019).

The direct consequences of the president’s legislative initiatives and political campaigns are the complete paralysis of demarcations, the freezing of administrative processes for qualifying records of isolated peoples, the cancellation of the supervision of Indigenous Lands with the presence of isolated indigenous groups, the increase in agrarian conflicts and acts of violence against indigenous people and the invasion of Indigenous Lands. Since Bolsonaro assumed his presidential mandate, all acts published by FUNAI to proceed with the recognition and demarcation of Indigenous Lands have been made by lawsuits filed by the Public Attorney. However, as the Public Attorney itself denounces, the FUNAI presidency has changed the composition of the working groups responsible for preparing Circumstantial Identification and Demarcation Reports (RCID) of Indigenous Lands, appointing professionals without the required training to carry out the studies.

### *3.7. Economic depredation of the Amazon*

President Bolsonaro's speech at the opening of the United Nations General Assembly, on 24 September 2019, highlighted his lack of understanding of his country's geopolitics, history, and socio-cultural reality. The speech was marked by unfounded, inaccurate, demagogic, and lying accusatory statements, including against governments, social organizations, the media, and native peoples. Bolsonaro attempted to blame indigenous people and traditional communities for the Amazon fires.

Brazil's Indigenous People Articulation (APIB) published the following note responding to the statement:

“(...) Bolsonaro, with his hate speech and wish to legalize criminal activity such as mining, as well as opening up protected areas to invaders of every kind, and the expansion of agribusiness and large enterprises, was fuel for lighting, in proportions never seen in Brazil's recent history, fires in the Amazon and Cerrado biomes. Even so, he brazenly states in his speech that the Amazon remains virtually untouched and that he has a “solemn commitment” to it. We also repudiate attempts to demoralize and delegitimize the struggle our authentic leaders, such as cacique Raoni, their peoples, and organizations, are engaged in, nationally and internationally, to defend Mother Nature - Brazil's unparalleled heritage, and, above all, life, our lives and those of other Brazilians, whose existence will also be unsustainable with the worsening of the [...] bioclimatic crisis.[...]. Finally, even though the entire international community already knows, as Bolsonaro has warned that he never plans to demarcate any more indigenous lands, we are warning of the increase in invasions of our territories and, consequently, of violence against our leaders, peoples, and organizations. We are holding Mr. Bolsonaro responsible for the conflicts which, fueled by his publicly anti-indigenous speeches, may threaten our lives.”

With racist and slanderous assertions, Bolsonaro reaffirmed to the entire world his intention to economically exploit the Amazon through the rejection of articles 231 and 232 of the Brazilian Constitution, fundamental clauses which guarantee indigenous peoples the right to respect for their forms of social organization, languages, beliefs, and traditions, as well as the native rights over their lands. Brazilian law, and the international treaties and provisions, to which Brazil is a signatory, recognize indigenous

peoples as subjects of full rights. This legislation recognizes the inseparable character between collective law and the diffuse right to an ecologically balanced environment.

The federal government is submitting a law proposal to Congress which provides for the exploration of Indigenous Lands, including the possibility of developing mining activity, the construction of hydroelectric dams, oil and gas exploration, as well as allowing the exercise of economic activities by indigenous peoples on their lands, such as mining, agriculture and raising livestock. In the case of agriculture, the government proposal also allows for the cultivation of genetically modified organisms. The government text states that indigenous peoples will be consulted, but does not grant them the power of veto over activities. Regarding isolated indigenous peoples, the proposed bill is a direct threat, as it does not consider the direct embargo of any activity of impact in areas where isolated ethnic groups live.

In 2019, IBAMA published Normative Instruction No. 8<sup>6</sup>, which makes it possible to delegate the licensing of large works to states and municipalities. Companies will be able to make requests directly to the local environmental body. Requests include, among others, authorizations for projects on Indigenous Lands and for oil exploration on the Brazilian coast. Additionally, on 27 August 2019, the House Constitution and Justice Committee (CCJ) approved the Proposal for Amendment to the Constitution (PEC) 187/2016, which aims to facilitate farming and forestry activities on Indigenous Lands.

6 Federal Official Gazette, Normative Instruction No. 8 of 20 February 2019. Available at: [http://www.in.gov.br/materia/-/asset\\_publisher/Kujrw0TZC2Mb/content/id/65393173](http://www.in.gov.br/materia/-/asset_publisher/Kujrw0TZC2Mb/content/id/65393173)

Indigenous peoples have already spoken out against PEC 187 and any other changes to their constitutional rights enshrined in articles 231 and 232. A technical analysis by the Legal Advisory Board of the Indigenous Missionary Council (CIMI) indicated that the proposal is unconstitutional, as articles 231 and 232 of the Federal Constitution are fixed clauses, that is, they cannot be changed.

The Draft Law 3729/2004 focused on environmental licensing, with text created by the Parliamentary Agricultural Front and industry sectors, poses a serious threat to isolated indigenous peoples as it eliminates thousands of protected areas from impact assessment, disregarding Indigenous Lands without a delimitation ordinance, quilombola areas without promulgated titles and Conservation Units for sustainable use, making 29% of Indigenous Lands, 87% of quilombola territories and 543 Conservation Units non-existent for licensing purposes.

There are 133 planned infrastructure works (hydroelectric power plants, railways, highways, ports, and transmission lines) which impact 52 protected areas (36 Indigenous Lands and 16 Conservation Units) and six unprotected areas, affecting a total of 92 records of isolated indigenous peoples (23 confirmed, 20 under study, 44 with FUNAI information and 5 with ISA information). Eighteen protected areas (12 Indigenous Lands and six Conservation Units) and two unprotected areas are under pressure from 81% of the planned infrastructure projects (Oviedo et al., 2019).

In addition to the infrastructure works, 3,773 mining requirements affect 31 Indigenous Lands and 17 Conservation Units with records of isolated indigenous peoples. In total, 65 records of indigenous peoples in isolation could be affected by mining projects. The indigenous people living in the interior of the Yanomami Indigenous Land could be the worst affected. This Indigenous Land has 536 mining requirements, affecting almost half of its entire territory.

Finally, in 2021, IBAMA and FUNAI published a joint Normative Instruction which opens space for agricultural production within Indigenous Lands, not only by the indigenous peoples but also through associations with other non-indigenous producers. Under the new rule, only simple leasing or renting indigenous land to outside producers is prohibited. With the measure, Jair Bolsonaro is advancing its agenda of exploring the Indigenous Lands, despite the subject being the competence of the Legislative for requiring regulations provided by the Federal Constitution. The joint Normative Instruction No. 1/2021 attacks and disrespects the right to exclusive use of indigenous peoples in relation to their traditional lands.

If we look at the last 14 years (2009 to 2022), Indigenous Lands presented a strong resumption of deforestation from 2017 (Figure 2). Deforestation of Amazon Indigenous Lands has already consumed over a million hectares. According to official data from the PRODES system (INPE), between 2017 and 2022, the increase in deforestation in Indigenous Lands was 125%.

Of the 54 Indigenous Lands with records of isolated indigenous peoples (83 records), 35 have recorded deforestation which by July 2022 had totaled 151,300 hectares. These Indigenous Lands were the most devastated territories in the last six years. Between 2017 and 2022, deforestation in these territories represented 33% of the total deforested in the set of Indigenous Lands in the Amazon. There were 78,853 hecta-

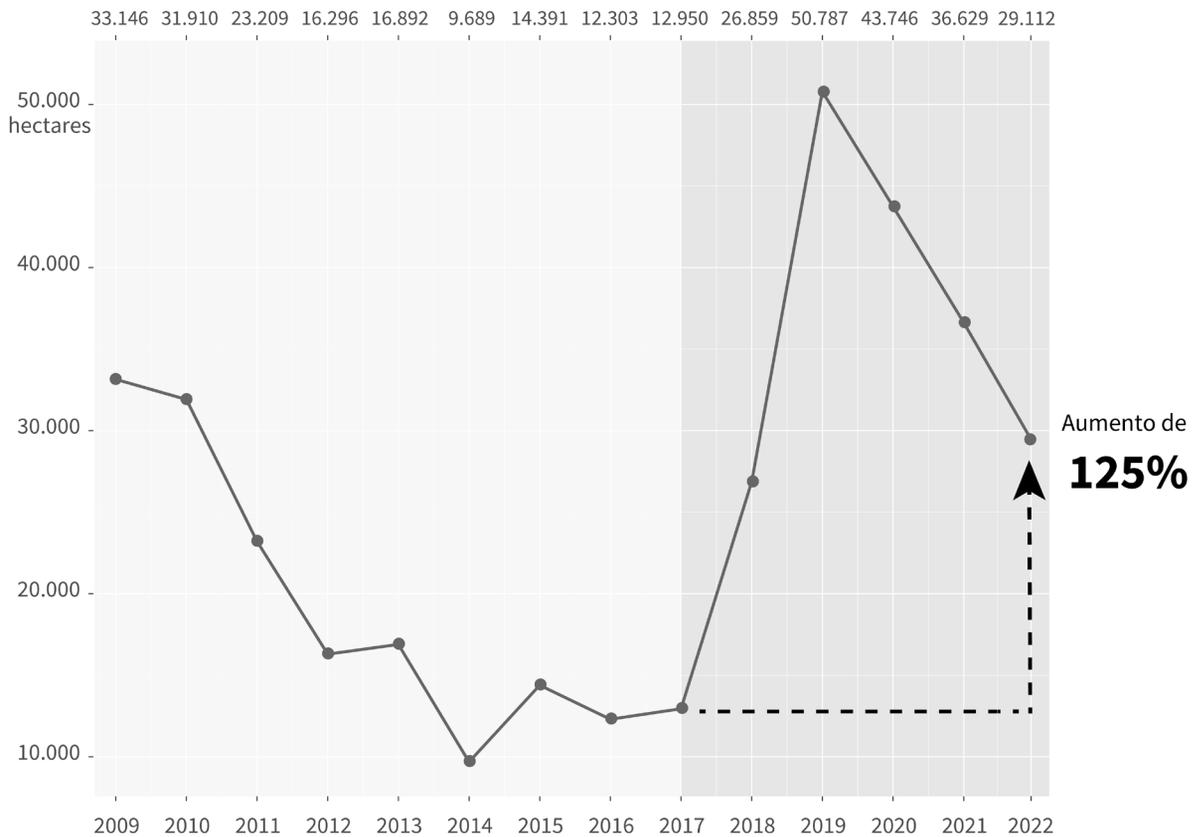


Figure 2. Deforestation in the Indigenous Lands in the Amazon between 2009 and 2022, evidencing the increase recorded in the period from 2017 to 2022. Source: PRODES-INPE.

res deforested in the territories of isolated indigenous peoples, which represented an increase of 292% during the period studied (Figure 3). This increase is 133% higher than the one registered for all Indigenous Lands in the legal Amazon. Among the Indigenous Lands with the presence of isolated indigenous groups that suffered the worst devastation in 2022 are Yanomami, Uru-Eu-Wau-Wau, Piripkura, Vale do Javari, Arariboia, Pirititi, and Mamoadate.

Simulation studies of deforestation in protected areas with a presence of isolated indigenous peoples (Oviedo et al., 2019) indicated that, in a scenario of escalating deforestation, 78 protected areas (54 Indigenous Lands, 15 federal Conservation Units, and 9 state Conservation Units) will have lost a total area of 6,030,376 hectares by 2039. When assessing the remaining forest, we can observe that in the worst-case

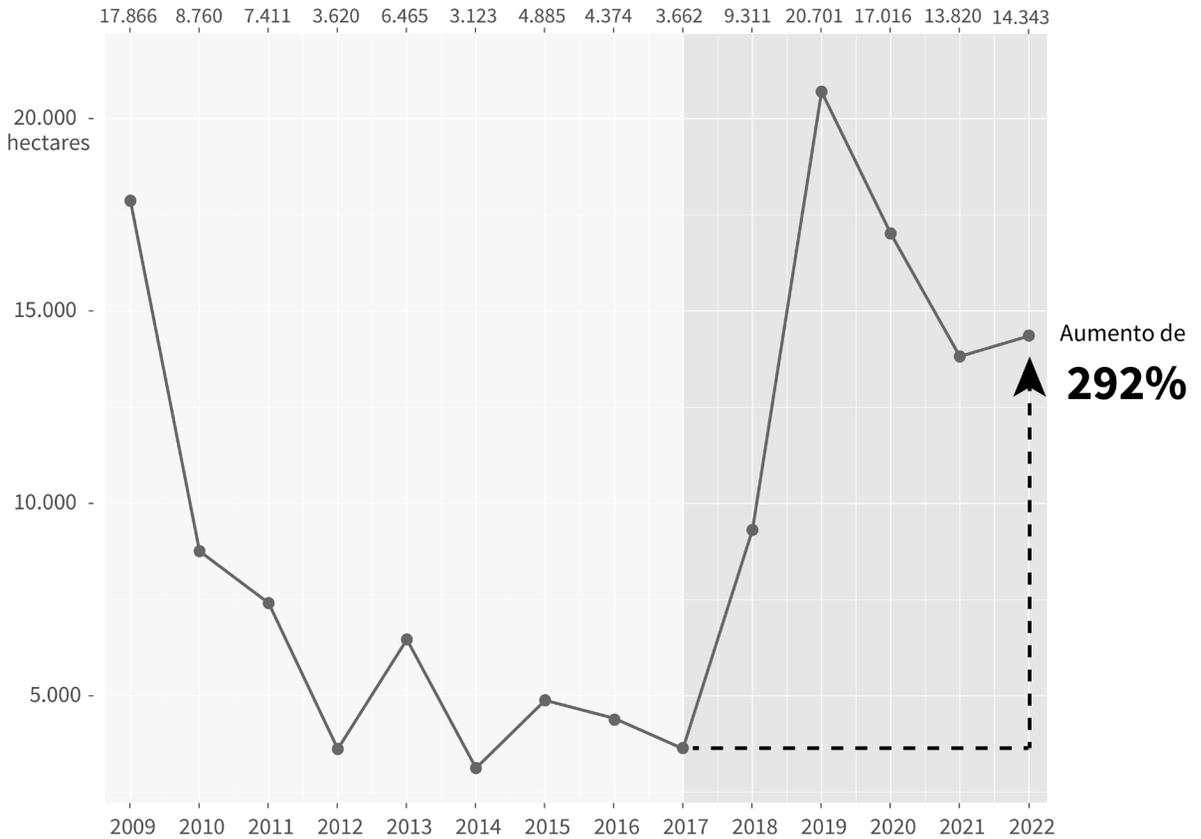


Figure3. Deforestation in Indigenous Lands with records of isolated indigenous peoples in the Amazon between 2009 and 2022, evidencing the increase recorded in the period from 2017 to 2022. Source: PRODES/INPE.

scenario, some protected areas lose all of their forest covers by 2039. This is the case of Cana Brava and Krikati Indigenous Lands, Flona Bom Futuro, Esec Três Irmãos and Resex do Rio Cautário. Other areas lose a significant amount of forest during the study period, such as Rebio Gurupi (86%), Flona de Jacundá (83%), TI Arara do Rio Branco (80%), TI Awá (71%), TI Jacareúba / Katawixi (69%), TI Caru (66%), TI Araribóia (64%), TI Uru-Eu-Wau-Wau (46%) and TI Apiaká-Kaiabi (40%).

## 4. Conclusions

The legislative changes and executive and administrative acts established so far indicate the eroding of the national apparatus for the protection of indigenous peoples in Brazil, resulting in a direct threat to the right to life, integrity, culture, property, freedom, and a healthy environment of thousands of people. There is an urgent request to the Brazilian State to commit itself not to regress in the protection and guarantee of the human rights of isolated indigenous peoples. The Brazilian State must restore the current legislative apparatus to promote the rights of isolated indigenous peoples in the form they consider appropriate, respecting their concept of development and worldview.

In this sense, the State must strengthen organs such as IBAMA, ICMBio, and FUNAI. The recomposition of the budget of the Ministry of Environment is urgent, especially regarding environmental inspection operations of protected areas with the presence of isolated indigenous peoples. Inspection operations in Indigenous Lands and Conservation Units with the presence of isolated indigenous peoples should be intensified. Budgets and human resources must be adequate and consistent with FUNAI's institutional responsibilities. The budget allocated to CGIIRC is insufficient to fulfill the institutional mission of protecting isolated indigenous peoples in the country.

FUNAI's Ethno-Environmental Protection Fronts (FPEs) must be strengthened, allocating adequate financial and personnel resources. In 2019, FPEs had just over 100 employees (bids and commissioned positions). This contingent is insufficient to carry out work in a region of approximately 60 million hectares. It is urgent to expand the FPE workforce. The administrative processes of records with information status and under study must advance and be concluded. There is an urgent need for greater investment in actions to locate isolated and not yet confirmed indigenous groups, prioritizing situations of greater vulnerability, especially the records located outside the Indigenous Lands. The recommendation contained in article 22 of Joint Ordinance No. 4,094/2018, between FUNAI and the Ministry of Health, must be met through the preparation of Contingency Plans for all confirmed records of isolated indigenous groups in the country.

Finally, the restrictions on use for areas with isolated indigenous groups and newly contacted indigenous peoples outside Indigenous Lands must be guaranteed and issued, and that the demarcation processes of Indigenous Lands be resumed immediately.

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