

SEEDS OF CONFLICT

How global commodity traders contribute to human rights abuses in Brazil's soy sector



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This report contains some quotations from press articles, documents and sources that have been translated into English from Portuguese. These are clearly indicated in the references.

EXECUTIVE SUMMARY

This investigation exposes how globally dominant multinational agricultural commodity traders are directly linked to, have contributed to, and profited from human rights abuses against land and environmental defenders resisting the expropriation of their traditional community's ancestral lands.

It centres on a 'green land grab' in Correntina Municipality of Brazil's Bahia state, in which plots within the territory critical to the lives and culture of customary communities have been co-opted as 'legal reserves' offsetting the industrial farms of powerful regional soy producers, in order to bestow legal and environmental legitimacy on their operations.

Brazil's croplands are a breadbasket for the world, and its forests and grasslands are the world's lungs. But Brazil is one of the most dangerous places to be a land and environmental defender. Global Witness has documented over 300 defenders killed in Brazil between 2012 and

2020. Many of these have been indigenous people protecting their livelihoods against the ever-expanding reach of commercial crops like soy. As more land is swallowed, the situation only worsens.

The fertile ridge of agricultural land stretching along the western border of Bahia state is one of Brazil's most intensively farmed zones. It is a priority area for soy and other cash crop expansion – and rife with land and water conflicts. In rural Correntina municipality, the Capão do Modesto '*fecho de pasto*' community has been sustainably managing a small patch of land in Brazil's Cerrado savannah for around 200 years. These *fecheiros* are recognised by the state government as traditional people who raise livestock, grow subsistence crops, and gather forest products.

Yet among the powerful players in commercial agriculture in western Bahia are seven agricultural producers who together claim to be the rightful owners of land within



Harvesting machines operating in a soy farm in Brazil 27 March, 2012. Paulo Fridman/Corbis via Getty Images

and around the community. Having registered land in the Capão do Modesto 'fecho de pasto' community as 'legal reserves' - in order to offset the absence of sufficient native Cerrado vegetation retained within their core farming areas - since 2017, the producers have sought to permanently evict the fecheiros of Capão do Modesto through a lawsuit that characterizes them as 'invaders' and destroyers of the environment.

Security agents hired by the producers have reportedly intimidated community members. Some have been arbitrarily detained, beaten, and threatened with murder. The community claim their ancestral lands are being taken from them, endangering their lives and livelihoods.

Land conflicts globally have worsened with the frenzied grab for productive land. Commercial agriculture takes a high toll on the environment – between 2001 and 2011, global emissions from crop and livestock production grew by 14%. The Cerrado is particularly ecologically important. It covers about 2 million square kilometres – over 20 percent of Brazil – and is the second largest biome in South America after the Amazon.

Global Witness research reveals that three of the biggest global grain-trading giants – Archer Daniels Midland (ADM), Bunge, and Cargill – have been trading, directly and indirectly, with businesses that some of these problematical producers own. In cases, these business relationships directly link international traders as contributors to the abuse and victimisation of the Capão do Modesto community.

In these cases, the international traders are failing to respect human rights; responsibilities laid down in their own policies, but also in the most authoritative international standards on business and human rights, including the United Nations Guiding Principles on Human Rights (UNGPs), the OECD Guidelines for Multinational Enterprises, and the OECD Guidance for Responsible Business Conduct. Pursuant to these standards, it is well established that ADM, Bunge, and Cargill's responsibilities to respect human rights in their corporate global soy operations exist independently of state human rights obligations.

The majority of soy the international traders export from facilities surrounding Capão do Modesto is shipped to

China, though significant volumes are also destined for European buyers, including some from the offending farms that are certified under sustainability schemes recognised by the EU. Around 40% of the soy the EU imports is from Brazil.

Despite public commitments to sustainability and due diligence, these international traders are profiting from land conflicts and alleged human rights abuses. The traders' nicely worded sustainability, human rights, and community land rights policies are little more than empty words on paper that disguise systemic negligence in identifying, addressing, or remedying existential harms to the vulnerable communities they claim to respect.

The traders have repeatedly failed, in Brazil and globally, to live up to their stated commitments to protect human rights and the environment, as Global Witness and others have documented.¹

The various companies featured in this investigation were contacted to comment on its findings. Their responses are featured at appropriate points throughout the report.

Traditional communities in Brazil need recognised land titles to allow them to live in peace – land protectors need protecting. But in the absence of sufficient state protections, global commodity traders who deal in these conflict-prone areas are responsible for ensuring that they are not sourcing conflict commodities.

Commodity traders must re-prioritise land and community rights in their soy supply chains. They must conduct robust and ongoing human rights and environmental due diligence along their entire value chains. They must ensure, and not just 'expect', that their suppliers and trading partners respect traditional and local communities' human and land rights. When communities and defenders are harmed in the profit of their businesses, they must provide redress.

Soon the traders who have operations in or supply the EU will likely be subject to a new law imposing on them a binding obligation to comply with mandatory human rights and environmental due diligence (HREDD) building on the established UNGPs and OECD Guidelines and Guidance on human rights. It is time the big trading houses got their houses in order.

SETTING THE SCENE

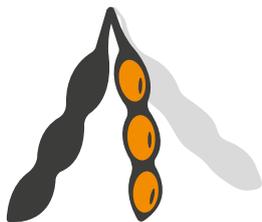
317 land and environmental defenders have been killed in Brazil between 2012 and 2020.²



Global emissions from crop and livestock production grew by 14% between 2001 and 2011.³

CERRADO

this savannah is Brazil's second largest biome, covering 2 million square kilometres – over 20% of Brazil.⁴



25: number of Cerrado municipalities prioritized for soy sourcing by global grain trading members of the Soft Commodities Forum. **5 are in western Bahia**, including Correntina municipality.⁵

3.17 million hectares: increase in agriculture area in western Bahia state between 1990 and 2020.⁶ Key crops include **soy** and **cotton**.



41% of soy imported to the EU is from Brazil.⁷

FUNDO E FECHO DE PASTO

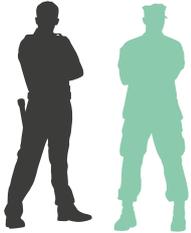
Fundo e fecho de pasto agropastoralist traditional communities have been sustainably managing land the Cerrado for centuries.

980: number of fundo e fecho de pasto communities across 56 municipalities in Bahia state identified by the government.⁸ Land conflict and water stress linked to agribusiness has threatened their traditional way of life.



OUR FINDINGS

7: agricultural producers have been **litigating to expel** the Capão do Modesto traditional community from ancestral lands in Correntina, western Bahia.



The community reports being **intimidated, harassed, and attacked**, including by armed guards hired by the seven agricultural producers.

Global grain-trading giants, including – **Archer Daniels Midland (ADM), Bunge and Cargill** – have been trading with some of these producers, and in cases have, or risk contributing to abuses perpetrated on the community, thereby failing in their responsibilities under international business and human rights standards.



RECOMMENDATIONS



Commodity traders must conduct **robust and ongoing human rights and environmental due diligence** along their whole value chains to ensure their own suppliers and trading partners respect traditional communities' Brazilian and internationally-respected land rights so that these violations are prevented and mitigated.

BAHIA'S AGRIBUSINESS BOOM

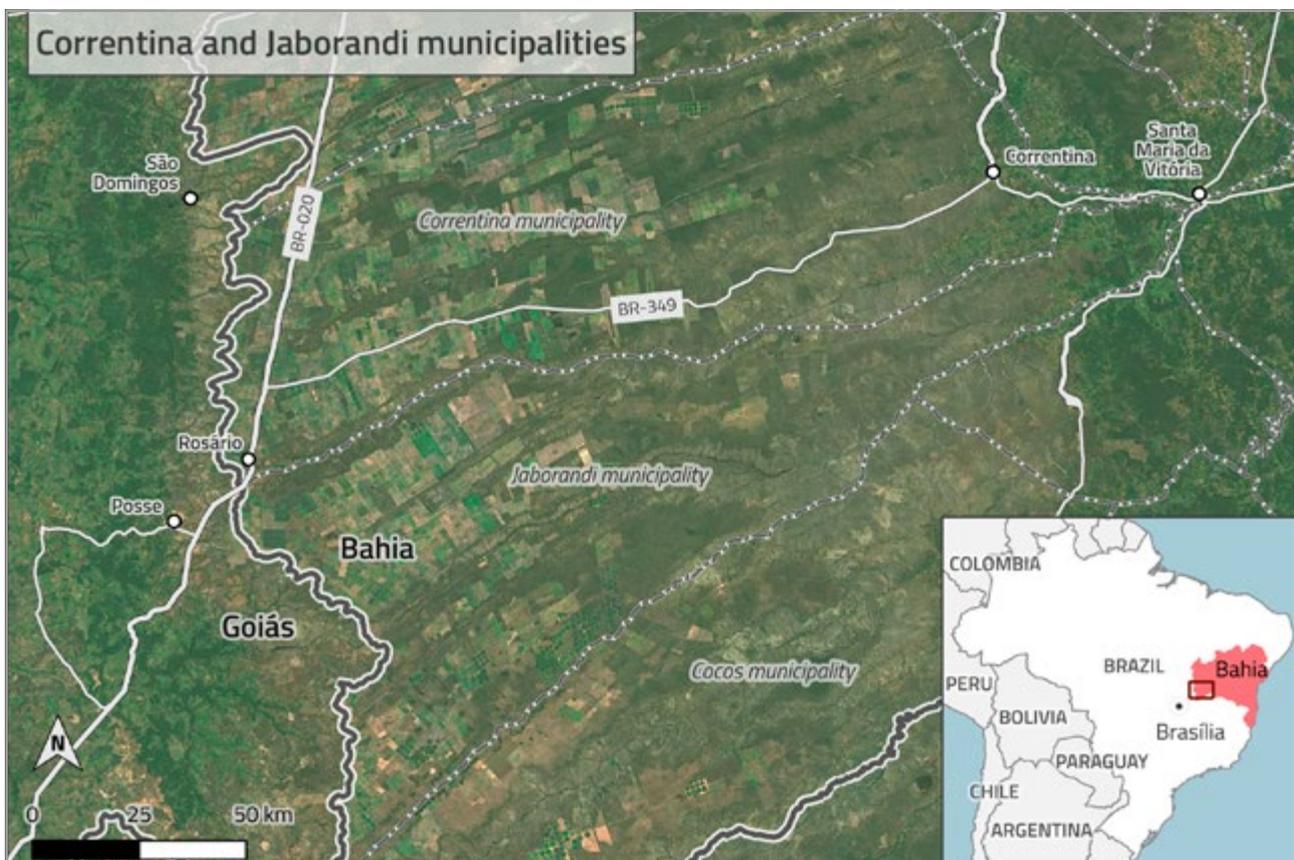
In the early 20th century, the interior of Brazil's Bahia state was sparsely populated by traditional communities and settlers primarily from southern Brazil. By the early 1980s, western Bahia had become a booming agricultural frontier – but a profitable one.⁹ The global price of food and agricultural commodities increased drastically after 2005, driving a scramble for arable lands in countries like Brazil with large, seemingly available land banks. Land prices increased in tandem – doubling on average nationwide between 2010 and 2015 with the promise of huge profits to be made in commercial agriculture.¹⁰ Western Bahia became one of the nation's fastest-growing areas of crop expansion – between 1990 and 2020, the region's total agricultural area increased by 3.17 million hectares.¹¹

The world's biggest commodity traders, too, have begun to invest heavily in sourcing from the region. The 'big four' grain trading giants – Archer Daniels Midland (ADM), Bunge, Cargill and Louis Dreyfus Company (LDC) – as well as COFCO and Viterra, have prioritised sourcing soy from 25 municipalities in the Cerrado. These are precisely the areas

of high deforestation risk: the 25 municipalities concentrate 44% of the total native vegetation conversion to soy in the entire biome.¹² The 'big four' traders dominate Brazil's soy export market: together they account for 42% of the total volume of soy exported from Brazil in 2018.¹³

That year, Brazil overtook the United States as the world's leading exporter of soybeans, a title it maintains. It is also one of the world's fastest-growing cotton exporters. Agribusinesses in the rural Correntina municipality grow both crops – and Correntina is one of the commodity traders' priority sourcing municipalities. But no longer can land be bought for a pack of cigarettes – its towns are crammed with brokers offering deals on land.

Land in this zone was not always bought. Often it was taken and regularised through land grabs, popularly called *grilagem* after the crickets (*grilos*) placed in boxes with falsified deeds to weather the paper. Land grabbing in this region is so common that in 2019 Federal Prosecutors



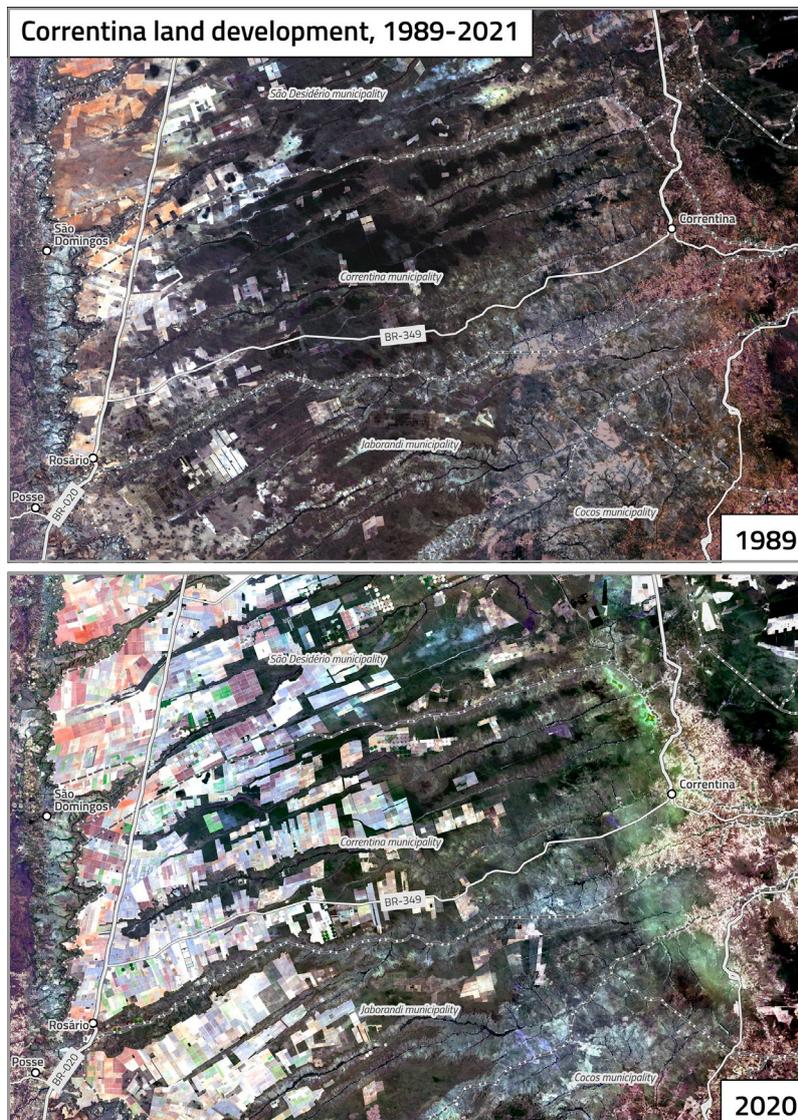
Sentinel-2 cloudless <https://s2maps.eu> by EOX IT Services GmbH modified Copernicus Sentinel data 2020. OpenStreetMap data © OpenStreetMap contributors

launched Operation Western (Operação Faroeste) to investigate judicial corruption and involvement in land grabs in western Bahia.¹⁴ More than 360,000 hectares – over twice the size of London – were alleged to have been grabbed in the scheme.

As mega-farms spread rapidly along Correntina’s rivers, intensive crop planting strained water supplies. Residents recall once-flowing tributaries being reduced to small streams, then to a trickle. In November 2017, thousands of protesters marched in Correntina against shortages they attributed to water-monopolizing farms Bahia’s traditional communities were particularly affected. Agropastoralist *fundo e fecho de pasto* communities were finding themselves squeezed off lands they had traditionally and sustainably used for centuries. Fecho de pasto – or ‘pasture closure’ – communities are one category of traditional peoples of Bahia state. They

rely on the river valleys and nearby flatlands to raise subsistence crops, harvest fruits, and graze cattle on the historically public lands.

They are recognised as legitimate traditional peoples in Bahia’s 1989 constitution, which sets out conditions under which land use rights can be granted.¹⁵ Law 12.910 (2013) recognises *fundo e fecho de pasto* peoples’ traditional way of life¹⁶ and mandates that the state government prioritise land tenure regularization to preserve it.¹⁷ Bahian state agency SEPROMI has for years been extending formal recognition to groups. It identified 980 such communities in 56 Bahia municipalities.¹⁸ However, this recognition does not grant the communities titles to specific territories. Without land titles, which only a tiny minority of traditional communities hold, many communities live in a state of continued tenure insecurity.



Satellite imagery: USGS/NASA Landsat. Contains OpenStreetMap data © OpenStreetMap contributors

Brazil: a hostile environment for land and environmental defenders

Brazil is a particularly hostile environment for land and environmental defenders. Global Witness has documented the killing of 317 land and environmental defenders between 2012 and 2020, many of them indigenous persons.¹⁹ The hostility towards defenders is likely to worsen. President Jair Bolsonaro, who took office in 2018, has rolled back existing environmental and human rights safeguards. He has gained a reputation for denigrating and questioning indigenous Brazilians' humanity and vowing to roll back their territorial holdings.²⁰ His approach to environmentalism has been called pro-business and anti-science.²¹ Under his watch, the budget of Brazilian environmental agency IBAMA, which monitors illegal deforestation and other environmental crimes, was reportedly slashed by 25%.²² Bolsonaro's administration has famously declared the Amazon region open for business,²³ worrying indigenous and conservation groups already facing violent land-grabbing linked to agribusiness expansion.²⁴ The rate of deforestation in indigenous territories is rising sharply – with a 74% increase from 2018 to 2019.²⁵ Land disputes are at a record high, according to the Pastoral Land Commission (CPT).²⁶ Many murders of land defenders remain unsolved.²⁷



Water is an essential asset for traditional communities in Western Bahia. © Nelson Almeida/AFP via Getty Images

A GREEN GRAB OF 'EMPTY' LANDS

Such is the case with the *fecheiros* of Capão do Modesto. “Our community has been around since the time of my great grandfather - generation to generation,” recalls Limírio de Castro, who is in his early eighties. His wife, Geni, recalls her “great grandfather was Modesto. He died, but the community Capão do Modesto was named after him.” The Capão do Modesto community has existed for 200 years. About 80 families occupy and raise cattle and crops on plateaux about 20 kilometres from Correntina town, and in the valley carved by the Rio das Éguas river below. The *fecheiros* of Capão do Modesto live modestly. Unconnected to the national grid, some families have solar electricity supply; others do without. Most homes have no indoor toilets; a communal water pump supplies cisterns with their daily water needs. About 39 families from Capão and surrounding pastoralist communities use an estimated 3,000 hectares of grazing land, alternating where they let the cows roam according to the season and need to allow the pasture to regenerate.

Capão do Modesto is surrounded by many other *fecho de pasto* communities – 21 in Correntina, 13 in neighbouring Jaborandi municipality alone, according to the non-governmental Pastoral Land Commission (Comissão Pastoral da Terra). In the four years leading up to 2012, the Fechos de Pasto Association of Correntina, of which Capão do Modesto is a member, reported that “land grabbers” had taken over the closure areas along the Arrojado valley, dismantling collective fences, constructing new roads and fences and deforesting.²⁸ “We are almost imprisoned here – and the only thing stopping us from being prisoners is that we don’t bow our heads to them,” says Limírio.

“They united as a group, then sliced up [our land] and now they say they are the owners of a legal reserve which offsets the deforestation they committed elsewhere. How come they deforest these other areas and then come here to destroy our communities? It kills our communities with anger and suffering. It’s unjust.”

– Severino de Oliveira (not his real name²⁹),
fecheiro from Capão do Modesto.

No one should live or work on this land, claim its current registered owners, all commercial agricultural producers. They purchased the land to function as “legal reserves” – native vegetation land to be set aside or conserved as an offset to the intensive agricultural practices operated on their other land holdings in the Cerrado.

Agricultural producers are required by the 2012 Forest Code to offset the environmental toll of their activities by maintaining “legal reserves”.³⁰ These are areas that rural landowners are required to set aside in their land holdings to maintain native vegetation. Legal reserves can offset excess deforestation carried out by landowners prior to 2008 – the Forest Code requires them to either restore legal reserves within the deforested properties or through a compensation process.³¹ Civil society has criticised such provisions for deforestation ‘compensation’ as providing a deforestation ‘amnesty’.³²

In the Cerrado, a producer must maintain 35% of each of their rural properties as a legal reserve.³³ The registered owners of land plots overlapping the territory of the Capão do Modesto community bought these lands primarily to act as ‘legal reserves’ against their own productive farms – farms producing soy and cotton and other crops. Their ability to operate depends on it: financial institutions operating in Brazil can no longer provide rural credit to landowners that are non-compliant with the Forest Code requirement of registering their property in the Environmental Rural Registry (CAR), for example, nor to landowners subject to embargoes from IBAMA, an agency of the environment ministry.³⁴

However, there is no requirement that a legal reserve offsetting an agriculturally productive farm be within the productive farm’s boundaries. As long as the legal reserve is located within the same biome as the farm, the legal reserve of a particular farm could be dozens or even hundreds of miles away, including in another state.³⁵ This provision has resulted in the proliferation of a new form of ‘green land grabbing’, where farming landowners take over new lands to be maintained as nature reserves in order to avoid the need to revert productive farmland elsewhere to native vegetation.³⁶

Such is the case with Capão do Modesto. In the mid-to late-2000s, the current titleholders to land plots overlapping with the *fecho de pasto* area purchased these plots specifically to function as legal reserves of the producers’ soy and cotton farms, in some cases

hundreds of kilometres to the west. Since 2017, seven of the producers have been jointly litigating against eight community members, who they allege have trespassed on their legal reserve property and caused material damage. The community understand that the plaintiffs – Agropecuária Sementes Talismã, Almor Paulo Antonioli and his daughters Claudia and Paula, Luiz Carlos Bergamaschi, Dino Rômulo Faccioni and Suzane Piana – are seeking to have them permanently expelled from their ancestral lands.

The producers who hold titles to the Capão do Modesto land argue that the community are trespassers who are destroying the native vegetation. They claim that the areas, as areas of legal reserve, which generally prohibit agriculture, grazing or hunting on the land,³⁷ cannot be trespassed upon, and that the obligation to preserve the area falls on them as titleholders. However, in a 2016 complaint to Bahia state’s environmental authority INEMA, the *fecheiros* claim that Capão do Modesto cannot be declared as legal reserve, because it had been already recognised the previous year as a “*fecho de pasto*” community area by SEPROMI.³⁸

“I would like to tell [the producers] to get their money back from whoever sold [the community land]”, says Geni, from Capão do Modesto, reflecting on ‘land grabbing’ in the region. “Those land grabbers who are selling land, when the land runs out, what will they live on? Will they rob a bank?”

The contradiction between environmental and land regulations that do not address the question of traditional tenure and Constitutional and case law precedent which recognises the fundamental nature of traditional communities’ rights is a weakness of Brazil’s land regime. It places traditional communities in a fundamentally vulnerable position. Such weak governance makes it even more important for traders, responsible for mitigating against land tenure risks, to ensure they are not trading with producers who are violating the fundamental rights of traditional peoples.

In practice, land buyers in Bahia are not required to check if they are buying traditionally owned or occupied lands or not. The Forest Code and its subsequent regulations fall short of establishing clear land ownership and usage safeguards, except in very specific cases where communities themselves hold formal land titles. The land boundaries, including of legal reserve zones, in the CAR land registry system are self-declaratory.

There is also no official database or map of land that is owned by traditional groups, apart from the National Indian Foundation (FUNAI) land registry. This only



Billboards around the pasture closure areas warn that no trespassing, hunting, fires, or fishing are allowed in legal reserve areas. Farmers are required by Brazil’s Forest Code to maintain a certain percentage of their land holdings as ‘legal reserve’. Traditional communities who use and occupy valley areas along riverbanks and nearby grasslands where they can graze their cattle are particularly affected, as these lands are frequently used as legal reserves. *Global Witness*

covers 689 territories³⁹ recognised as being owned by “indigenous” groups, themselves only one among dozens of different types of recognised traditional communities. Brazil has a diversity of traditional peoples. From the quilombola communities descended from runaway slaves to the women ‘nut breakers’ of Babaçu, many of these fall under the category of Traditional Communities and peoples (PCT) and benefit from constitutional protections. So too do the *fundo e fecho de pasto* agropastoralists of Bahia. Absent a central registry of traditional lands, a responsible land buyer could check the database compiled by the Pastoral Land Commission (Comissão Pastoral da Terra, CPT) for evidence of land conflicts or traditional ownership claims in zones that interest them.⁴⁰

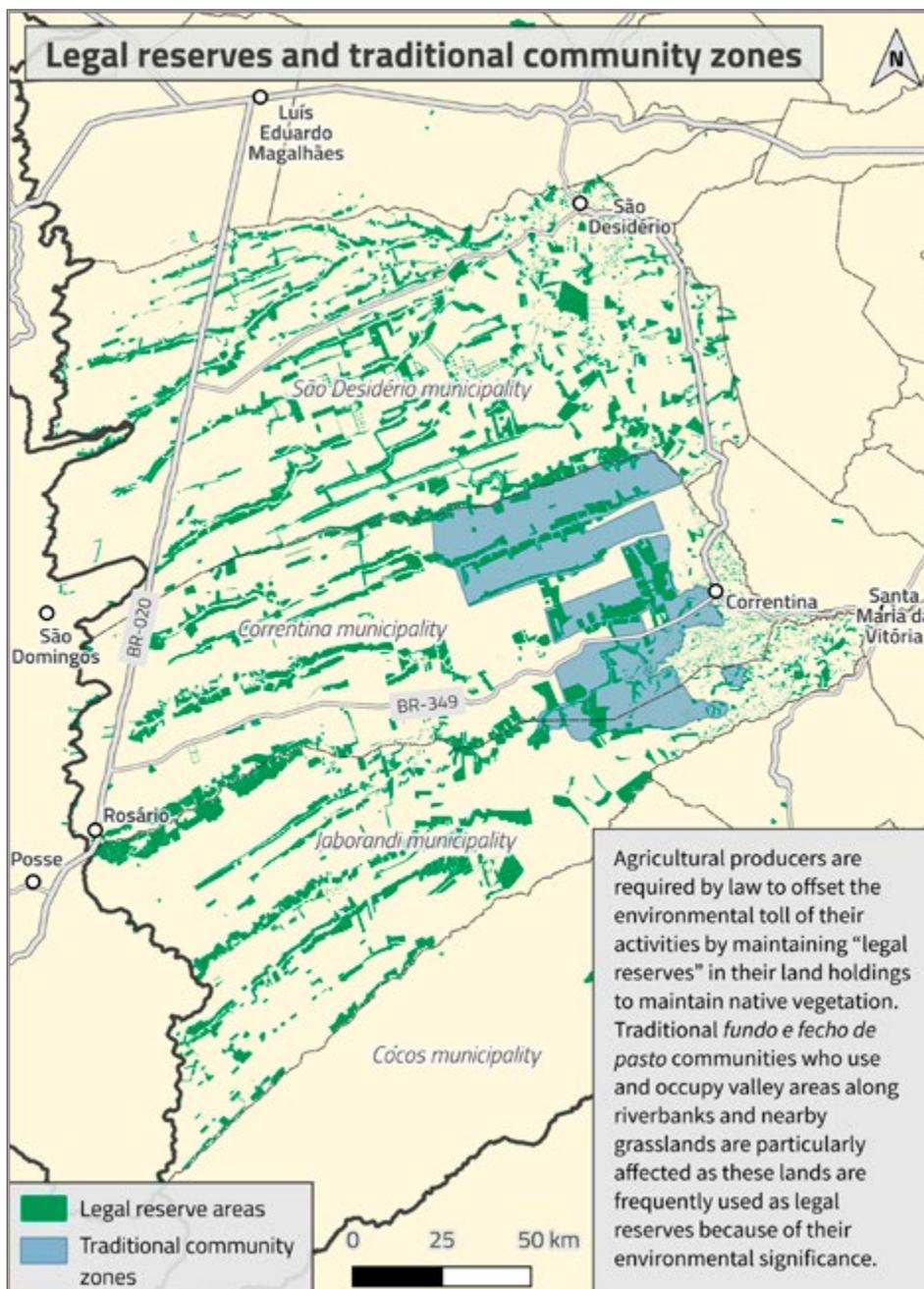
Producers looking to turn a profit are not incentivised by Brazilian law to establish if the land they are buying customarily belongs to a traditional community. But the strong incentives to comply with environmental laws, or rather the threat of sanctions if they fail to do so, mean that instruments of environmental law and policy are increasingly used to support legal claims of private ownership and possession over areas occupied by traditional communities. This ‘green land grabbing’ (*grilagem verde*) particularly affects traditional communities like the *fecheiros* of Capão do Modesto, who use and occupy valley areas along riverbanks and nearby grasslands where they can graze their cattle, which are frequently declared as legal reserves because of their environmental significance.⁴¹ In this way, companies ignore traditional land tenure issues.

Seeing their lands being bought by new owners, the Capão do Modesto *fecheiros* sought protection through formalisation. They registered a community

association in December 2014. So, too, did the Porcos, Guará e Pombas community. In July 2015, the Bahia state Secretariat for the Promotion of Racial Equality (SEPROMI) granted Capão do Modesto a 'self-recognition certificate' identifying them as a *'fecho de pasto'* community. By 2019, the Bahian state Coordinator for Agricultural Development (CDA) promised that it would begin a land regularisation process (*ação discriminatória administrativa rural*) in Correntina. Finally, they hoped, the CDA would grant them tenure rights to use their lands – whether classed as a 'legal reserve' by the agricultural producers or not.

But in recent years, certificates and associations could not guarantee their protection.

"They united as a group, then sliced up [our land] and now they say they are the owners of a legal reserve which offsets the deforestation they committed elsewhere," laments Severino de Oliveira (not his real name⁴²), a member of the Environmental Community Association of Small-Scale Farmers from Capão do Modesto. "How come they deforest these other areas and then come here to destroy our communities? It kills our communities with anger and suffering. It's unjust."



Legal reserves: Cadastro Ambiental Rural, February 2021. www.car.gov.br; Traditional community zones: Comissão Pastoral da Terra (CPT), 2020. Provided to Global Witness. Contains OpenStreetMap data © OpenStreetMap contributors

POWERFUL PRODUCERS

In 2017, seven agricultural producers filed a lawsuit against members of the Capão do Modesto community which the community understands is intended to permanently expel them from their traditional lands. Two further producers also hold land overlapping with the Capão do Modesto and Porcos, Guará e Pombas *fecho de pasto* zones. Collectively, these nine producers are major players in the soy and cotton industries in western Bahia. Between them, they hold titles to 102,288 hectares of land in Correntina – around 10% of total registered land in the municipality, dwarfing the land claims of the Capão do Modesto and Porcos, Guará e Pombas communities.

Of the seven producers litigating against the *fecheiros* of Capão do Modesto, Dino Rômulo Faccioni personally holds titles to the largest amount of the privately registered land in and around Correntina. The businesses of Grupo Faccioni/Faccioni Agricola are major grain producers: 13 properties covering 11,368 hectares are registered in Faccioni's name in Correntina and neighbouring São Domingo municipality in Goiás state, while several more are registered to members of the Faccioni family. With his wife, Faccioni also directs and is the sole shareholder of Lavrobrás Comercio e Representações (Lavrobrás), an agricultural equipment and inputs company operating in the agricultural hub of Rosário, in south-west Correntina.

Agropecuária Sementes Talismã Ltda ('Talismã') holds the next largest amount of private land. Talismã owns 13 properties in Correntina, comprising 10,150 hectares. Three of these overlap with the Capão do Modesto *fecho de pasto* area.

Talismã is part of the 'Talismã group' of businesses dealing primarily in soy seeds; it was initially created by João Lenine Bonifacio de Sousa and is now owned by his sons Marco Alexandre Bronson de Sousa, Frederico and Raphael Gonçalves e Sousa. An agriculturalist from Goiás state, JLB de Sousa worked for fertilizer companies in the 1970s and 1980s, the early days of the Cerrado crop boom. João and his son Marco have held significant positions of influence in Brazil's crop seed industries. In the early 2000s, João was president of the Brazilian Association of Seeds and Seedlings (ABRASEM). Marco was until recently President of the Brazilian Association of Soybean Seed Producers (ABRASS). He has also represented ABRASS in meetings with the Ministry of Agriculture and Brazilian Chamber of deputies, lobbying on the regulation of plant seeds patents and 'pirate' seed producers.



Faccioni and his wife own Lavrobrás, a major agricultural goods and inputs store. *Global Witness*

Suzane Mari Piana holds titles to 22 properties in Correntina and neighbouring Jaborandi districts, both directly and through a business she owns with her family, Piana Capello Agropecuária, totalling 7,719 hectares. One of these properties, Fazenda Serrana IV, overlaps with the Porcos, Guará e Pombas *fecho de pasto* area. Piana is a director and shareholder of Ciaseeds Agronegócios also known as Ciaseeds Sementes (formerly Tecnoseeds), a major soy and cotton seed provider based out of Rosário in western Correntina. She has served as the



Talismã, a major soy seed producer headquartered in neighbouring Goiás state, is litigating against the *fecheiros* of Capão do Modesto. *Global Witness*

Rosário-Correntina regional representative for the Bahia Producers and Irrigators Association (AIBA) and marketing director for the Bahian Association of Cotton Producers (ABAPA) and is on the latter's fiscal council.

In an 8 November 2021 letter to Global Witness, Suzane Mari Piana denied her Fazenda Serrana IV farm overlapped a traditional community, saying “technically, there is no overlap of properties”, and stating that “there is no court decision granting the “Porcos, Guará e Pombas” community rights”. She denied the litigation she was party to sought to deny *fecho de pasto* communities from accessing ancestral lands, arguing instead that the lawsuit was brought because “certain people started to invade a private area”.

Almor Paulo Antonioli, and his daughters Claudia and Paula, also hold titles to the fecheiros' traditional lands. The family specialises in rearing and breeding cattle – Almor introduced the Devon breed to the area in the 1990s. Between them, the Antoniollis hold titles to 9 plots of land in Correntina (7,322 hectares) where they also grow corn and soy. Three of these make up Prata Nova farm, which overlaps with the fecho area of the Porcos, Guará e Pombas traditional community.

In an 8 November 2021 letter to Global Witness, Almor Paulo Antonioli and his daughters also denied their Prata Nova farm overlapped community lands. They

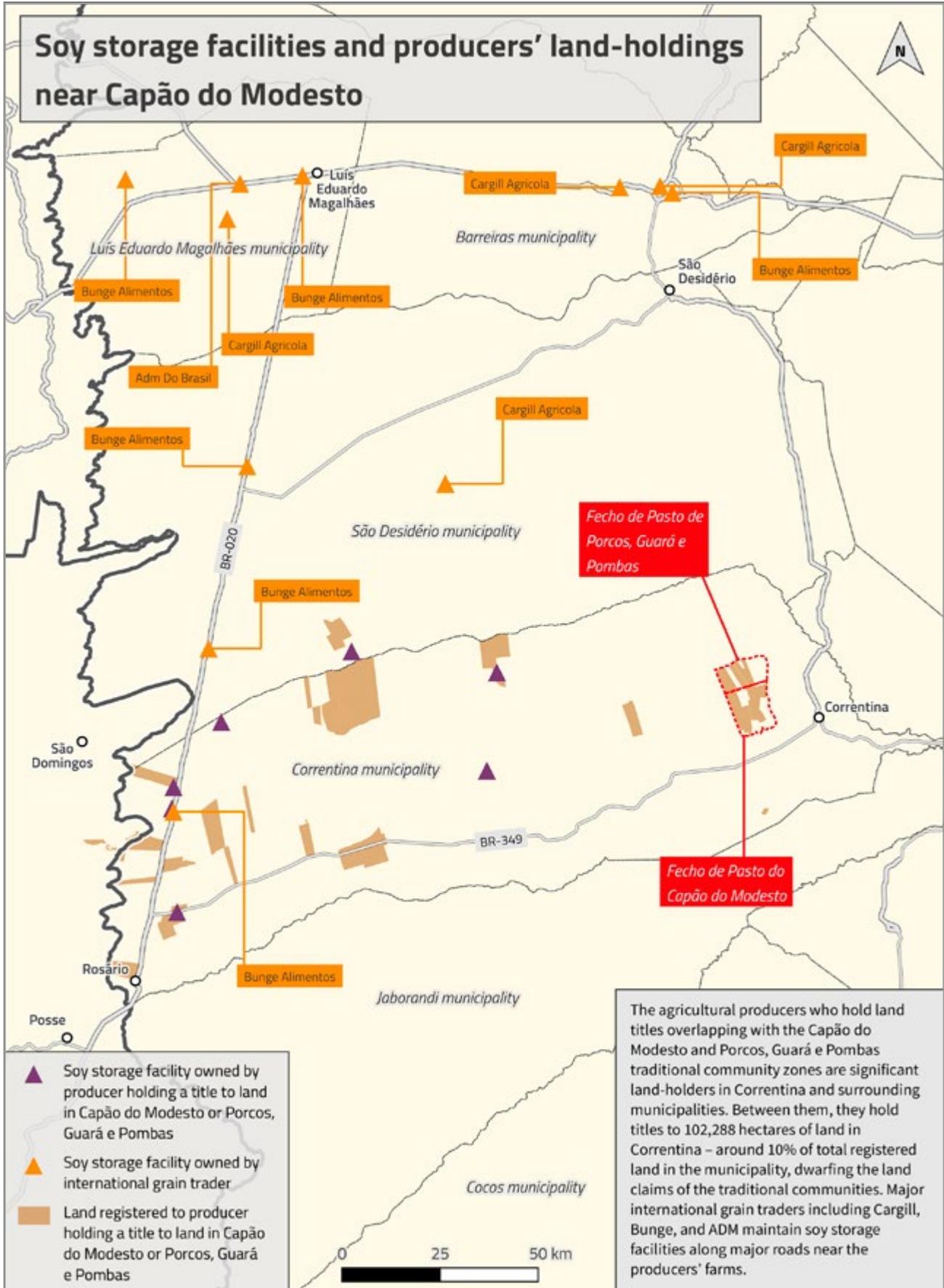
argued that the litigation they had brought did not seek to exclude traditional people from their ancestral lands but instead protect their property rights “within the possibilities provided by the Brazilian legal system”. While conceding that the case was ongoing, they asserted that “there is no legal evidence that this so-called traditional community exists in my property.”

Luiz Carlos Bergamaschi also holds titles to a significant amount of land in Correntina: 27 plots covering 4,615 hectares are registered in his name in the municipality and several more are registered to members of his family, who together are members of the Bergamaschi Group. Bergamaschi is an influential figure in the region and represents Brazilian industry abroad. He took over as President of ABAPA in 2021, having previously served as vice president, and is an advisor to the Bahia Producers and Irrigators Association (AIBA). Bergamaschi has travelled internationally representing ABAPA and the Bahia state government, including to Portugal and China to secure technical cooperation protocols and liaising with cotton customers, to Germany to discuss consumer expectations of Bahian cotton, and to the United Arab Emirates to attend the International Cotton Association annual meeting.

During the lawsuit, the Capão do Modesto community claimed that two further landowners victimized the community by claiming parts of its land.



Soy growing at Fazenda Tucumã, which is registered to Suzane Mari Piana. Piana is litigating against the fecheiros of Capão do Modesto. Piana is also a director of Ciaseeds, a soy seed company. *Global Witness*



Soy storage facilities: Trace platform 2016, www.trace.earth; Land boundaries: Cadastro Ambiental Rural, February 2021, www.car.gov.br. Contains OpenStreetMap data © OpenStreetMap contributors

The first, Agricola Xingu (XinguAgri), is a significant exporter of Brazilian cotton, and it is particularly active in western Bahia. In 2019 and 2020, it exported a total of 19,083 tonnes of cotton products from its São Desidério base, including to Indonesia, China, and Bangladesh.⁴³ XinguAgri is a subsidiary of Japanese multi-trading giant Mitsui. Mitsui and Company were Correntina's largest cotton exporters in 2017; and Correntina was the sixth biggest cotton-exporting municipality in Brazil.⁴⁴ XinguAgri holds titles to 41 plots of land in Correntina and São Desidério – a total of 67,996 hectares. One of these, Fazenda Tabuleiro VII, which overlaps with the Capão do Modesto fecho land, is serving as a legal reserve for Agricola Xingu's large productive farms. INEMA listed at least 19 alleged environmental infractions against Agricola Xingu, including deforestation and causing degradation of a permanent protection area in 2016, according to internal records reproduced in an inspection report.⁴⁵ The Capão do Modesto community allege that Xingu removed portions of the barriers the community use to fence in their cattle,⁴⁶ and that Xingu maintains a guard in the Capão do Modesto site.

In an 8 November 2021 letter to Global Witness, Agricola Xingu did not comment on the environmental infractions cited by INEMA, but said it “works firmly in the preservation of the environment” and operates “within the parameters of ... applicable regulations”. Xingu asserted that its Fazenda Tabuleiro VII property “does not overlap any other area”. While acknowledging that there “is a possible interest of this community in the area” the company said “there is no supporting document that demonstrates any right of the so-called Community of Fecho de Pasto do Capão do Modesto.” Xingu said it is unaware of and has no record of the alleged removal of barriers.

Though he is not party to the litigation, businessman John Kudiess holds titles to four properties in Correntina, one of which (Fazenda Bela Vista V) overlaps with the Porcos, Guará e Pombas fecho de pasto area. Kudiess' business interests are far more significant than his relatively small landholdings in Correntina (8,140 hectares) would suggest. He is a director of a soy and cotton seed business, JH Sementes, with his brother Harald. JH Sementes also has a chequered environmental record. In 2013, public prosecutors in Goiás state alleged that Kudiess had diverted rainwater from plantations to the borders of a nearby environmental protection area, causing landslides.⁴⁷

In a 10 November 2021 letter to Global Witness, John Kudiess also denied his Bela Vista V farm overlapped Porcos, Guará e Pombas *fecho de pasto* land, arguing that after he purchased the property in 2008 it was invaded by people not from the area. Kudiess said of the alleged

landslides in Goiás that legal proceedings had included “no proof that the activities on the property would be the cause of such landslides”.

These agricultural producers do not have an unambiguous claim to the land, even with their land titles. Since 2009 at least, rival parties have hotly contested who ‘owns’ the Capão do Modesto lands. The land acquisition chain for the plots making up Capão do Modesto is marred with evidence of “fraud”, according to the legal claims of several of the contesting parties.⁴⁸

On 8 August 2006, the Correntina land registry office created a ‘new’ registry entry for a plot covering Capão do Modesto and parts of Porcos, Guará e Pombas fecho de pasto areas, in the name of Jose and his wife Zulmira Pereira de Souza.⁴⁹ The Pereira de Souzas were at the time an elderly, apparently illiterate couple – signing documents by thumbprint – who were listed ‘owners’ of the plot registered under the number 5336. Shortly after its registration, plot 5336 was subdivided into over 20 plots under the Pereiras' names. These individual plots were then sold off directly and indirectly to its current legal owners, sometimes on the same day. In this way, between February 2007 and May 2011, Talismã, Faccioni, Bergamaschi, the Antoniollis, Piana, Agricola Xingu and Kudiess would become the current legal owners of the plots that together make up ‘Capão do Modesto’ and Porcos, Guará e Pombas fecho de pasto areas.

However, the Pereiras may not have had the necessary authority to sell the land in the first place. A lawsuit filed in 2009 by a Correntina-based businessman contested their claim. Documents seen by Global Witness that pre-date the 2006 registration in the Pereiras' names apparently show that a plot that overlaps the Capão do Modesto land had been registered under the number 3815 in February 1994.⁵⁰ Another third party also claimed to own part of the land. In 2010, Agropecuária Onça Pintada filed a nullity lawsuit seeking to invalidate both registrations 5336 and 3815.⁵¹ The company's lawyers presented documents apparently showing that it had purchased the area, known as ‘Pretec’ farm,⁵² from its original owners by private deed of promise of assignment of rights, in July 1989, paying for it in soybeans.⁵³

The current lawsuit seeking to permanently expel the fecho de pasto community from Capão do Modesto is therefore not the first battle over this patch of land. The alleged double registration of plots raises significant concerns that the land might have been fraudulently acquired by one or more parties since the 1990s. It is not alleged that any of current title holders to land in or around Capão do Modesto were engaged in fraudulent behaviours.

SEEDS OF CONFLICT

“They didn’t tell us they had purchased the land,” recalls Severino. “Initially, they would show up from time to time, and they told us we could carry on with our work, we could carry on grazing our animals. But, after a while, they started to show who they really were.” Severino is among eight defendants in a repossession action filed by the agricultural producers over the Capão do Modesto lands. “They said they had purchased the land, and that they had the documents. One day, I asked an engineer who came to measure the area if I could see these documents. He opened his laptop, in the middle of the land, and showed me the pages. I took pictures of them and saw the name of Luiz Bergamaschi. (...) He said Bergamaschi was the owner of Capão do Modesto, not only him, but others as well.”

For a few years after these ‘owners’ purchased the lands, the community lived in relative peace. Since the land was mostly left undisturbed as ‘legal reserve’, the *fecheiros* continued to graze their animals and live as normal. The peace would not last.

In October 2014, Severino filed a complaint with the police, which would be the first of many complaints made by the community, reporting the destruction of their fences, threats, intimidations and even a physical attack. He reported that the fences the communities had erected to contain their grazing cattle had been destroyed.⁵⁴ Many of their cows – so important for the community’s subsistence lifestyle – had gone missing. In 2015, he filed another complaint, where he stated that armed men destroyed the community fences again, once again releasing their animals.⁵⁵

The intimidations soon took a personal turn. In 2016, Severino reported to the police that armed men trespassed into their community land, saying they were there to measure the area. He also reported that community members were being intimidated by 9 men using 3 vehicles, and that they feared for their lives.⁵⁶ Later that same year, Severino reported to the police that a truck driven by an individual believed by the community to be an employee of the producers’ security agency intentionally tried to ram his car⁵⁷ whilst saying he would shoot him in the forehead.

Then, the threats turned legal. In November 2017,⁵⁸ the producers filed a claim at the Civil Court of Correntina. They accused the eight Capão do Modesto community members of “continuously invading their property in

an organised and obstructive way”. They accused the community of harming the environment by releasing cattle for grazing on top of their legal reserve, destroying signage, causing fires to renew the vegetation so their cattle can graze again – in what they described as an “ancient and reprehensible practice”.⁵⁹

The legal case followed a string of threats against the community. On 11 February 2017, Severino was surreptitiously attacked while chatting to a friend in Correntina town, by the same person that threatened to kill him, this time accompanied by that person’s family members, all of whom kicked and punched Severino while insulting him. He sustained head and chest injuries, and he was badly hit on the head, causing his ear to bleed and severe headaches, according to the police report detailing the attack.⁶⁰ A friend who witnessed the event testified that the attackers stopped only when a group of people came and pulled the aggressor and his family off the victim.⁶¹

Many of the community’s police complaints accuse unnamed “armed men.”⁶² One name, however, appears consistently throughout the various complaints: Carlos Erlani Gonçalves Santos, also known as ‘Sergeant’ or ‘Cabo Erlani’ – a first sergeant and reservist in the military police. Starting in 2013, the litigating producers hired Erlani’s private security companies to provide “security services for legal reserve,” including over plots overlapping with Capão do Modesto and neighbouring Porcos, Guará e Pombas fecho de pasto areas.



More than 6,000 people protested on the streets of Correntina for the protection of the Arrojado river in December 2017. Rosa Tunes.

By the time they were hired, Erlani's company had an established reputation for operating outside the law. In 2012, police officers from Correntina arrested three men and detained seven others who worked for Erlani's security firm, SGT Segurança, on charges of carrying guns without having a licence. One employee was subject to an arrest warrant in a neighbouring state. Erlani's private security company was reportedly not registered with the Federal Police, a legal requirement. At the time of their arrest they were wearing company uniforms, according to a media report.⁶³ In 2017, Jurandir Cruz dos Anjos, president of the Porcos, Guará e Pombas fecho de pasto community association, whose territory overlaps with some plots Erlani's men patrol, filed a police report alleging that a security guard under the orders of Cabo Erlani ripped down a house belonging to the community and threatened them.⁶⁴ From 1995 to 2018, Erlani has been a defendant in at least six court cases in Bahia, accused of various criminal offenses,⁶⁵ including crimes against the public peace (gang-related).⁶⁶

In November 2021, Luiz Bergamaschi, Dino Faccioni, Suzane Piana, and the Antonioli Family all admitted to hiring Erlani's firm to patrol their properties. Talismã also confirmed hiring security professionals to patrol his properties, but did not confirm which ones. All denied any knowledge of the alleged threats, intimidation, and harassment of *fecho de pasto* community members.

At the end of 2017, the soy producers apparently ceased using Erlani's security services.⁶⁷ But the pattern of intimidation allegedly continued. From 2018, a new security firm, Estrela Guia, reportedly began threatening and intimidating community members.⁶⁸ Estrela Guia has been accused of violent attacks against traditional communities protesting alleged land grabbing at a soy mega-farm in nearby Formosa do Rio Preto, which counts Bunge and Cargill among its clients.⁶⁹

Community members Cícero Rodrigues da Silva and Evanildo José dos Santos described how they were riding their horses in the community area when two armed men from Estrela Guia approached them and pointed a gun at their chests. The armed men told them to leave and warned them not to return to the area, saying they

“This spring of ours here only dried up after they cleared it. All the springs that have not been deforested here have water.”
– Raimundo, *fecheiro* from Capão do Modesto

had a list with the names of the community members they were watching, and that at the top of the list was Severino's father.⁷⁰ In 2019, Severino reported to police that the community had been prevented by officials believed to be from Xanxerê farm, owned by cotton producer Luiz Carlos Bergamaschi, from continuing to put up the fences to protect their water sources (*nascentes de água*), which had been built using materials the Bahian state environmental agency provided for this purpose.⁷¹ Severino had previously complained to police that in February 2018, armed men were seen patrolling the area where community fencing had been destroyed.⁷²

On 16 May 2019, Severino reported that a vehicle drove at high speed towards his house, almost slowing to a stop at its front, but then speeding away when he went outside to check on who it was, leaving him suspicious and anxious. The same complaint alleges that people were coming to their area and clearing Cerrado vegetation. He also said a man on a motorcycle patrolling the area had ordered some of the community members to remove their cattle from the area.⁷³ Estrela Guia has been accused of organising the arbitrary arrest of Givaildo Cruz dos Anjos, Jurandir's brother,⁷⁴ who was grazing cattle in the Porcos, Guará e Pombas pasture closures, taking him to Correntina police station and a local military police battalion in April 2018.⁷⁵

In April 2018, the judge initially ruled in favour of the producers in their land repossession action, accepting their version of events and witnesses' statements,⁷⁶ despite the violence and intimidation. The producers relied on witnesses including Erlani,⁷⁷ who seemed to contradict the producers' narrative. He claimed that the community's cattle grazed in the area since 2014, though the producers alleged that the invasions occurred only in September 2017, according to the community members' lawyers from the Association of Lawyers for Rural Workers (AATR).⁷⁸

Community members who attended the hearing felt frustrated that they were not able to give testimony. The decision came at a time when their cattle had to be moved from one area to the other, generating anxiety among the members of the community, who (correctly) assumed that the producers would try to prevent them from feeding their cattle in other areas, and collect wild plants and fruits from the Cerrado. There was also uncertainty about the exact area that was being claimed by the producers, increasing the families' level of anxiety: they did not know if the producers were claiming exclusively the collective area, where the community graze their cattle or also the individual areas, where families have their houses. The latter would mean not only a loss of their means of subsistence, but also the loss of their homes.



Access to water is important to the fecheiro communities; water resources have been dwindling in Correntina allegedly due to the high volumes of water used in commercial crop farming. *Global Witness*

The threats reportedly continued, including against the community's lawyers. Two lawyers from the AATR representing the community reported to the police that Erlani stared at them and gestured in a clearly intimidating manner during the justification hearing.

The community was able to halt actions against them pending a decision on an appeal of their case in June 2018. The higher court decision revoked a preliminary injunction in favour of the producers, arguing that the defendants' rights were at imminent risk. The judge also ruled there was no proof of deforestation or other risks that could affect the legal reserve, as the producers had claimed.⁷⁹

The victory did not last long. The producers appeared to alter their legal emphasis. Instead of focusing on tenure and ownership issues, they began to focus on their ecological credentials, and to cast the community as nature-destroyers. The producers claimed that the community members were newly damaging the vegetation in the area with their cattle grazing practices⁸⁰ and that the community was hunting wild animals and deforesting or burning the native vegetation.⁸¹ "[The defendants] do not show any concern, let alone responsibility, for the environment... They are there in the area, we repeat, only with the aim of exercising their

pastoral activities. They do not really care for the fact that the 'pasture' is in reality environmentally protected native Cerrado vegetation."⁸²

Experts on the Cerrado biome disagree with this assessment. Academic studies have shown that traditional communities from the Cerrado region have over many generations developed sustainable uses of the region's biodiversity and natural resources.⁸³ The way they herd animals is much less intensive per square meter than cattle-rearing by industrial enterprises, and more sustainable.⁸⁴ Native vegetation in conservation units is better protected in areas that traditional communities manage compared to government park guards, according to one study in the Amazon.⁸⁵

Nevertheless, on 5 June 2019, the Higher Court overturned the decision they had made in favour of the communities, accepting the producers' allegations of environmental damage caused by the community's cattle practices.⁸⁶ The producers moved swiftly to request an urgent eviction warrant against the community in June 2019, with the use of the police if necessary.⁸⁷ Since then, the communities have lived with the fear that at any time, and with no notice, they could be permanently and violently expelled.



Marcos Rogério Beltrão dos Santos, environmentalist and documentary filmmaker. © Marizilda Cruppe / Greenpeace.

“This was a very good place,” recalls Raimundo, a fecheiro from Capão do Modesto. “It still is... But it is not as it was. The freedom we had. The rights that we had. Today they want everything to be taken. The situation today is that you are stuck and you have nowhere to go. Where would we go from here? You can’t put a foot there, you can’t pick a fruit.”

“The negative impacts for the community, were they to lose their territory, are immeasurable,” warns Marcos Rogério Beltrão dos Santos, environmentalist and documentary filmmaker, which has been working with traditional communities in the area since 2004. “The area where the community lives has been affected by

“The negative impacts for the community, were they to lose their territory, are immeasurable”

– Marcos Rogério Beltrão dos Santos, environmentalist and documentary filmmaker

climate change, and therefore the pasture for their cattle no longer grows as it used to. Because of this, the community had to reduce the number of cattle they raise, and if they were forced to leave their territory, they would have much less space, and consequently, would have to reduce their herd even further, which will in turn affect their subsistence.” The *Fecheiros* describe a crushing sense of fear. “Sometimes, I lie down in bed at night, but I can’t sleep. And when I wake up, I don’t have any appetite to eat, because of the problems we’ve been facing,” laments Geni.

The territory enables not only the physical survival of these communities, but also their cultural survival. The combination of small-scale cattle grazing and agriculture, as well as the sustainable use of the area’s resources, such as plants, fruits and wood, and the conservation of natural resources is the core of their territory and enables the physical and cultural reproduction of the fundo e fecho de pasto families, according to anthropological and geographical studies.⁸⁸ “Losing their territory would mean losing their own identity,” says Rogério.

TRADING IN CONFLICT CROPS

Global Witness' investigation has revealed that, through their purchases of soy, international commodity traders are in cases directly linked to, and have contributed to and profited from the legal threats against Capão do Modesto community members by some of the producers, and the human rights abuses allegedly perpetrated by agents working for them. These commodity traders are in turn funded by international financiers, and their soy supplies many of the world's biggest agricultural inputs and food industry companies, and ultimately, in turn, major consumer goods firms.

The soy supply chain is unnecessarily opaque to outsiders not party to its contracts, impeding transparency and accountability in this major commodity supply chain. Brazil's vast soy fields are harvested from late January to April. Once harvested, producers either store their crop in silos on their own farms or at nearby companies' silos with whom they have storage agreements, until sales and transfers of the crop are confirmed. Most soybeans are crushed for use for animal feed, rather than human consumption. Crushing plants are mainly owned by soybean traders and processors, commonly large, international or Brazilian corporations who export soy products to international markets.

To whom a soybean producer ultimately sells his or her crop (usually in parts) depends on several factors, among them: the traders operating in the area; the prices offered; the traders' storage capacity or the volumes they

are seeking at the time of the sale; and any contractual obligations a producer may have taken on, for example, as part of loan financing agreements. A producer may also sell their crop to a local brokerage company, which will purchase the crop and resell it to a trader in a 'triangular trade'. Given this decentralised process, the most detailed supply chain information is held by local procurement managers who review and decide on crop purchases from rural offices far from the commodity traders' national headquarters. Because the traders do not publish lists of their direct and indirect suppliers, it is difficult to trace a soy crop from farm to market and producers treat this information as commercially sensitive.

Nevertheless, several traders stand out as giants exporting from Correntina and surrounding municipalities.

Bunge is Correntina's top soy exporter, according to the Trase platform. In 2018, Bunge exported around 84,611 tonnes of soy from Correntina – heavier than eight Eiffel Tower. While Trase indicates these shipments went primarily to mainland China,⁸⁹ trade records seen by Global Witness indicate that between February 2019 and May 2020 Bunge's facility in Correntina repeatedly exported to EU countries, including four times to France and once each to Portugal and Romania.⁹⁰ The Missouri-headquartered company is one of the 'Big Four' traders who, with Archer Daniels Midland (ADM), Cargill and Louis Dreyfus Company, dominate the international trade in grains and oilseeds.⁹¹ Speaking to Global Witness, Bunge's



We pay upfront! Soy, corn, millet, and sorghum are all grown in and around Correntina municipality. *Global Witness*

territorial manager in Correntina estimated that Bunge purchases 25% of all soy produced in the region. Terra Santa Agro, in a distant second place, exported 22,456 tonnes of soy in 2018, mostly to a Uruguayan subsidiary of Bunge and Brazilian subsidiary of Chinese trading giant COFCO.⁹² 80% of this soy was sold to China. Amaggi & LD Commodities SA – a joint venture of Amaggi and Louis Dreyfus Company – was in third place, exporting 20,743 tonnes of soy from the municipality to China in 2018.⁹³ Amaggi is owned by the family of ‘soy king’ Blairo Maggi, who served as governor of the Amazonian state of Mato Grosso and a leader of the bancada ruralista – a political caucus of federal deputies and senators who promote the interests of agribusinesses in Congress.

Trade records also indicate that in August 2020 ADM also sent 82,256 tonnes of soy in five bulk shipments to Europe from its facility in Correntina, including four to Portugal and one to the UK.

It is also possible that soy or other crops produced in Correntina are exported from traders’ facilities in neighbouring districts, such as Luís Eduardo Magalhães district, where many international soy traders have offices. ADM, for example, exported 531,054 tonnes of soy products and 20,813 tonnes of cotton products from its Luís Eduardo Magalhães installation at Rua Pernambuco between 2019 and 2020 and 2019 and 2021 respectively, according to Brazilian export records.⁹⁴ Traders also sell soy to each other. For example, of the soy products ADM shipped in the example above, 36,000 tonnes were sent to Bunge group companies. Trade records seen by Global Witness indicates soy from ADM’s facilities in Luís Eduardo Magalhães were shipped four times to Europe in 2019 and 2020, including large volumes to itself at Europoort Rotterdam, in the Netherlands, and to Bunge in Amsterdam, the Netherlands, and twice to another trader



ADM has an office in Rosário, Correntina municipality. In 2016- 2017, ADM counted 105 properties belonging to its suppliers in Correntina municipality, covering 218,112 hectares of farmland, 18 % of the municipality. *Global Witness*

in Lisbon, in Portugal. Between January 2019 and April 2021, soy from Bunge’s facility in the same municipality, worth over \$789 million, was shipped to multiple European countries, including to France (\$494m), Germany (\$217m), Spain (\$46.5m), Romania (\$31.3m), and to the Netherlands and the UK.

Soybeans grown on a farm in Correntina could therefore enter the supply chains of multiple international traders’ shipments to China or Europe.

Talismã, however, directly traded with ADM in Correntina. In November 2017, ADM do Brasil credited Talismã’s account with around 530,000 reais, a total equivalent to around US\$ 160,000. These transactions indicate that ADM may be directly linked to and have contributed to the harms to traditional communities that Talismã has been involved in.

Cargill and Amaggi & LD Commodities SA – the latter a joint venture of Amaggi and Louis Dreyfus Company (now renamed ALZ Grãos) – may also be directly linked to harms to the community through their commercial relationships with Talismã. Around 880,000 reais (US\$ 270,000) was transferred to Talismã’s accounts from Cargill Agricola over late December 2017 and January 2018. On one day alone in October 2018, Talismã reported that it had supplied Cargill with around 240,000 reais’ worth of products, about US\$ 67,000, according to commercial information seen by Global Witness. Amaggi & LD Commodities SA transferred around 320,000 reais (US\$ 97,000) to Talismã in late December 2017.

These transactions expose how several of the world’s largest multinational commodities traders – all of which



Bunge maintains storage silos along highway BR-020 and is a major exporter of soy from Correntina. *Global Witness*

publicly espouse sustainability and rights values and are bound by the human rights due diligence responsibilities central to the UNGPs and OECD Guidelines– may be directly linked to, and in turn have contributed to, while profiting from the expropriation of vulnerable communities' land by trading with producers who seek to expel such communities from their lands.

In a November 2021 letter to Global Witness, Talismã's President, Marco Alexandre Bronson e Sousa, did not deny the company's Riacho do Capão II-IV and Tamara II-IV properties overlapped lands claimed by the Capão do Modesto community, but, like other producers, argued they had been 'invaded', prompting his involvement in both the litigation and his hiring of security professionals. Appealing to confidentiality, Talismã declined to confirm or deny sales of soy to ADM, Cargill, or Amaggi-LD Commodities, but indicated sales occur "according to the opportunity and convenience of each operation."

ADM similarly did not deny or confirm purchasing soy from Talismã, including from those of its farms overlapping the Capão do Modesto community lands, but, on receipt of a digital shapefile detailing the land claimed by the community, indicated it had opened its grievance mechanism – although the company did not confirm whether this was applied to Talismã.

Cargill told Global Witness that "we do not work with ... Talismã", nor sources soy from it, in a November 2021 letter. The company did not initially respond when asked to confirm or deny the US\$ 67,000 of purchases from Talismã in 2017 and 2018 evidenced in commercial information seen by Global Witness. On seeking clarity, Cargill said it had negotiated with Talismã regarding its 2016 and 2017 crop, but said purchases were blocked because it presented embargoed areas.

Representatives of ALZ Grãos, which incorporates what was then Amaggi-LD Commodities, told Global Witness it does not nor has ever conducted business with Talismã, and that the commercial information detailing the US\$ 97,000 transferred from Amaggi-LD Commodities to Talismã in December 2017 seen by Global Witness was 'inaccurate.'

Financial information, testimonies and contracts reviewed by Global Witness also suggest that Bunge may source soy from Talismã, if indirectly. Global Witness analysed three Financial Agricultural Bond agreements (Cédula de Produto Rural Financeira, CPRF) signed between Talismã and one of its creditors, ECO Securitizadora de Direitos Creditórios do Agronegócio SA (EcoAgro), an agricultural finance company. In the agreements, Talismã guarantees it will honour its obligations to EcoAgro, but should it fail to pay its debts, EcoAgro would take ownership of thousands

of kilogrammes of Talismã's soybean harvests in the years 2018/2019, 2019/2020 and 2020/2021. Separately, Talismã had negotiated an agreement with NPK Trans Operadora, an agricultural logistics, finance and trading company, in which Talismã committed to selling its soybeans to NPK in return for payment from NPK. In the CPRF agreements between Talismã and its creditor EcoAgro, EcoAgro is entitled to request money owed to it directly from NPK, which has an agreement to purchase Talismã's crop, if Talismã defaults on its loan.

The CPRF contracts list a number of possible "offtakers" for Talismã's soy harvests through its sale agreement with NPK.⁹⁵ These include the Brazilian subsidiaries of Bunge, ADM, and Cargill, among other major soy traders. As part of showing EcoAgro that it has successfully transferred its crop, Talismã must show copies of the offtaker contracts between NPK and its clients, which could be any of the above-mentioned traders. Some of Talismã's harvests in these years was therefore likely sold by NPK to traders which may include ADM, Bunge, and Cargill.

ADM and Bunge are principal clients of NPK – they are the only large international soy traders listed as 'main clients' on its website in March 2020.⁹⁶ In this way, NPK acts as an intermediary facilitating an indirect trade in soybeans between Talismã, a soy producer, and clients including international commodity traders. However, by building third parties – such as logistics companies and traders like NPK – into its procurement models, Bunge risks obtaining soy from companies like Talismã, including from those of its properties overlapping traditional community lands, which Talismã's owners are actively seeking to expropriate using aggressive legal means and security firms deploying threats, violence, and intimidation.

Talismã declined to comment on any of these agreements or any ultimate recipients of its soy. ADM chose not to comment on whether they had or do purchase soy from NPK, while Bunge said it had no commercial relationship with the firm. Cargill said it does not work with nor sources soy from NPK, though did not respond when asked if it had done in the past. NPK told Global Witness it has never sold soy provided by Talismã.

Global Witness also spoke with an employee of Fazenda Aurora, a property owned by the Aurora-Seriös Group, who confirmed that 'Fazenda Talismã', a reference to Talismã's farms, maintains part of their production earmarked for Bunge inside Aurora-Seriös' storage facilities. The Aurora-Seriös Group (which includes Seriös Sementes Industria e Comercio Ltda and Seriös Agropecuária Ltda) is part-owned by Heinz Kudiess, John Kudiess' brother. John holds legal reserve land overlapping with the Porcos, Guará e Pombas fecho de



Fazenda Aurora is owned by the Seriös group.
Global Witness

pasto. Commercial information seen by Global Witness indicates that over October and November 2018, Talismã provided 16.9 million reais (around US\$ 5.2 million) worth of products to Seriös Agropecuária Ltda and Seriös Sementes Indústria e Comercio Ltda. It is also reported that Bunge and Seriös' had a commercial relationship similar to the CPRF financing agreement between Talismã and EcoAgro, presenting further risk that Bunge is directly linked to and contributing to the harms reportedly experienced by the community in connection with Talismã's expropriation of traditional lands.⁹⁷

Heinz Kudiess, President of Grupo Seriös, told Global Witness that "we are prevented from talking about any business of the Group, even more when it involves third parties, due to the customary confidentiality clauses." Mr Kudiess stated that the major 2018 financial transactions from Grupo Seriös companies to Talismã evidenced in commercial data seen by Global Witness 'never happened'.

Bunge repeatedly declined to confirm or deny purchases of soy from Grupo Seriös in turn supplied by Talismã. Bunge stated that it "does not purchase soybeans from areas overlapping with the traditional communities mentioned", while also conceding that no soy is grown on the overlapping land, which functions as legal reserve for soy-producing properties such as Talismã's. Asked to clarify if it purchased soy grown on properties (rather than 'areas') Talismã owned that overlapped the Capão do Modesto community's land claim, Bunge rephrased its misleading 'area' argument, stating that "we do not buy soy from the areas under dispute" – while again not denying it sources soy from Talismã-owned properties overlapping the community. Bunge did not clarify a third request.

The traders are also connected to businesses owned by another of the producers litigating against the Capão do

Modesto fecheiros, Dino Rômulo Faccioni. With his wife, Faccioni owns Lavrobrás, an agricultural hardware and inputs company operating out of Luis Eduardo Magalhães.

Global Witness visited Lavrobrás in Correntina and spoke to a Lavrobrás salesman. The salesman explained how Lavrobrás' business is linked to the traders. In order for local producers to obtain the agricultural inputs they need to prepare a new harvest – for example, pesticides and machinery – on credit, local producers promise to pay Lavrobrás either from the profits from the sale of their soy crop to other parties or using the crop itself as payment. These sales are either agreed in advance based on projected harvests, or at harvest time.

He estimated that 75% of such contracts of the sale of local producers' harvests – by which they obtain funds to pay back Lavrobrás – involve the large traders ADM, Bunge, or Cargill as buyers of the harvests. He also confirmed that Faccioni group farms, which include farms registered to Dino Rômulo Faccioni, would sell part of their crop to ADM and Bunge. Such purchases expose the traders to further risk of being directly linked to and contributing to human rights violations involved in the expropriation of traditional community lands in Correntina.

In a November 2021 letter, Dino Faccioni confirmed that Faccioni Group farms sells soy to ADM and Bunge, alongside other traders. ADM declined to confirm or deny purchases of soy from Faccioni Group farms (including those overlapping the traditional communities) or soy from other farms overlapping the community land claim via Faccioni's Lavrobrás. ADM said it has opened its grievance mechanism in response to Global Witness' enquiries but did not indicate whether this applied to Faccioni Group farms or farms it sourced from indirectly via Lavrobrás, or both.

Bunge repeatedly declined to confirm or deny purchases of soy from Faccioni Group farms, or soy produced on other farms overlapping the traditional communities, via Faccioni's Lavrobrás. Bunge stated that it "does not purchase soybeans from areas overlapping with the traditional communities mentioned", while also conceding that no soy is grown on the overlapping land, which functions as legal reserve for soy-producing properties such as Faccioni's. Asked to clarify if it purchased soy grown on properties (rather than 'areas') Faccioni owned that overlapped the Capão do Modesto community's land claim, Bunge rephrased its misleading 'area' argument, stating that "we do not buy soy from the areas under dispute" – while again not denying it sources soy from Faccioni Group properties overlapping the community. Bunge did not clarify a third request.

Certified Conflict

Perhaps the clearest and most systematic example of trader direct links and contribution to the harms being perpetrated against traditional communities in Correntina is in the relationship between ADM and the influential Luiz Carlos Bergamaschi, a primary actor in the pressure experienced by the Capão do Modesto community.

Bergamaschi is registered as the owner of over 10 plots overlapping with the Capão do Modesto community land – most of which are registered as ‘legal reserve’ offsetting his productive Xanxerê farms, without which the farms would not comply with Brazil’s land registration and environmental laws.

In 2010, ADM asked Bergamaschi, to have his Fazenda Xanxerê property audited under the International Sustainability and Carbon Certification (ISCC) system. In a glossy 2015 ISCC video, Bergamaschi explains that being audited was important as “it gives access to new markets, especially in Europe”, where the ISCC scheme is recognised under the EU Renewable Energy Directive.⁹⁸ ADM’s then-Director of Sustainability explains in the video that, “at the beginning, it was a challenge to implement the ISCC sustainability requirements on a farm level”, and that “a mindset change on a farm level had to be achieved as a precondition to start the audits.”⁹⁹

Whether these audits ever credibly assessed the land conflict occurring within the Xanxerê legal reserves is unclear, but doubtful. The 2020 ISCC audit report for ADM’s facility states “it may be assumed’ that the ISCC’s social requirements - including human, labour and land rights, as defined under ISCC Principle 4 – “are fulfilled” in the limited farms actually assessed, none of which are identified.¹⁰⁰

At the time the ISCC film was released, and ADM was celebrating Bergamaschi as a poster boy for sustainable farming, conflict over the Xanxerê legal reserve was already raging, and Bergamaschi was employing armed guards accused of intimidating the traditional Capão do Modesto community living on and using ancestral lands that Fazenda Xanxerê claims to fulfil its requirements.¹⁰¹

Two years earlier, Fazenda Xanxerê had been awarded the “Best Property in the 2013 Socioenvironmental Commitment” category in the “Produzindo Certo” (“Doing It Right”) awards¹⁰² – an initiative of ADM’s Doing It Right Program, in partnership with NGO Aliança da Terra, to promote sustainable agriculture practices.¹⁰³

Bergamaschi boasts in the ISCC film that his 10,000 hectares (ha) of croplands include 1,001 ha of ‘protected land which is recognised by the authorities’, and the video displays aerial footage of a tributary of the Rio de Correntina (Rio das



Luiz Carlos Bergamaschi – Managing Director of Xanxerê Farm. He has been litigating against members of the Capão do Modesto community. ISCC promotional video; 2015.



Luiz Carlos Bergamaschi promotes Fazenda Xanxerê's legal reserve area – land also claimed by the Capão do Modesto community. *ISCC promotional video; 2015.*

Éguas) running through verdant native Cerrado vegetation. What is not mentioned, but Global Witness visual analysis reveals, is that much of the 'protected land' shown in the film is the 'legal reserve' land Bergamaschi is allegedly seeking to expropriate from the fecheiros of Capão do Modesto in a classic 'green land grab'.

Through its long-term supply relationship with Bergamaschi's ISCC audited Fazenda Xanxerê, ADM is directly linked to, and is systematically contributing to the human rights and land rights harms allegedly being perpetrated by agents acting for Bergamaschi.

ADM is not the only trader to whom Bergamaschi's Xanxerê farms supply soy. Staff at one of the local transportation firms informed Global Witness that soy from the farms are also trucked to Bunge's facility in Rosario.

Responding to an enquiry from Global Witness, in November 2021 Luiz Bergamaschi indicated he supplies both ADM and Bunge, and that ADM had asked him to certify his Fazenda Xanxerê under the ISCC. He stressed that the litigation of the the Capão do Modesto community did not affect his sales to either trader, or his ISCC certification. Bergamaschi, like other farmers, denied his properties overlapped land claimed by the community, stating that "there is no registration or certification of any other area that overlaps mine." He asserted the litigation was not brought to exclude traditional people from land they claimed, but instead "because certain people started to invade a private area." Confirming he had hired Erlani's security company to patrol his properties, he denied any knowledge of alleged threats, intimidation or harassment of community members. Bergamaschi also denied that staff of Fazenda Xanxerê had prevented community members from fencing off water sources.

ADM said it immediately opened its grievance procedure on receipt of a letter from Global Witness, and that it had contacted all its related suppliers, who had provided personal statements and other information. ADM neither confirmed nor denied a relationship or any purchases of soy from Bergamaschi's Fazenda Xanxerê (or any of the producers asked about), nor whether the grievance procedure pertained to the supplier. In communicating its initial enquiries, ADM said its commercial relationships with the producers named by Global Witness that it sources from were in compliance with its policies. When asked, ADM did not indicate if it intended to consult the community rather than just its suppliers, although it confirmed its enquires were incomplete. ADM did not confirm or deny whether its suppliers had alerted it to the fact that Bahia state authorities had resolved in February 2021 to conduct a "land discrimination process" to assess land ownership relating to over 11,000 hectares of territory claimed by both the Capão do Modesto community and soy producers, including Bergamaschi, in a process that provides a legal avenue to formalise land use rights for the community.

Bunge repeatedly declined to confirm or deny purchases from Bergamaschi's Fazenda Xanxerê, stating that it "does not purchase soybeans from areas overlapping with the traditional communities mentioned". When asked to clarify if it purchased soy grown on properties (rather than 'areas') Bergamaschi owned that overlapped the Capão do Modesto community's land claim, Bunge again did not deny it, while rephrasing its misleading 'area' argument, stating "we do not buy soy from the areas under dispute". Bunge did not clarify a third request.



ADM and the International Sustainability and Carbon Certification (ISCC) promoted Fazenda Xanxerê as a model of sustainable farming. *ISCC promotional video; 2015.*

FAILURES OF DUE DILIGENCE

Highway BR-020 runs like a spine connecting Correntina and municipalities to its north and south in the crop lands of western Bahia. Driving along the straight flat planes, it is hard to ignore the traders. Their silos break the otherwise flat expanses of farmland; their logos endorse petrol stations. Billboards encourage producers to take up trader-sponsored credit and capacity-building projects. The big traders dominate the logistical and financial infrastructure the soy producers rely on.

The tight relationship between traders and commercial producers in western Bahia creates an impression that it would be impossible for traders not to know which farms supply their crops. Correntina is one of 25 priority soy sourcing municipalities for ADM, Bunge, Cargill, and the other members of the Soft Commodities Forum (SCF).¹⁰⁴

In their SCF reporting, ADM, Bunge, and Cargill state that their direct suppliers are 100% traceable. Direct suppliers make up most of their suppliers from these 25 municipalities, including 88% of ADM's, 98.4% of Bunge's, and 97% of Cargill's.¹⁰⁵

Nevertheless, the traceability – internally – of a trader's suppliers does not equal compliance with environmental or human rights safeguards. All three traders appear to have failed to identify, or ignored that they are sourcing from producers criminalising land and environment defenders and failed to provide protection and remedy in line with their responsibility under international standards, including the UNGPs and OECD Guidelines and Guidance.

'Sustainability' and the Soft Commodities Forum



Six of the world's biggest grain traders are members of the Soft Commodities Forum (SCF), a voluntary sustainability initiative created in 2019 and couched within the World Business Council for Sustainable Development (WBCSD).¹⁰⁶ The SCF aims to advance "collective action on a conversion-free soy supply chain" in the Cerrado region.¹⁰⁷ It is described by some as a major development that expands the soy sector's work to exclude Amazon deforestation and to cover the conversion of a wider set of ecosystems.¹⁰⁸ The SCF is now a guide for the Consumer Goods Forum's new Forest Positive Coalition. Twice yearly, SCF members report on their efforts to improve traceability in their soy supply chains, including initiatives to train select producers in best practices. However, traceability – at least internal traceability – does not equal transparency. SCF members do not identify their suppliers publicly; they publish only aggregate data about the percentages of their direct and indirect suppliers that are "traceable."¹⁰⁹ Without public supply chain data, it is impossible to assess SCF members' claims, and its approach therefore legitimizes and perpetuates supply chain opacity that has not been tolerated for other 'forest risk commodities', notably palm oil.

Additionally, despite claiming that the forum seeks to balance "environmental, social and economic interests", the SCF's aims are now framed almost exclusively around preventing deforestation and native vegetation conversion (NVC). SCF materials, member companies' progress reports, and information from member traders received by Global Witness evidence that social issues like land conflicts and traditional land claims are not a focus of the forum's current action plans. The prioritisation of an anti-deforestation agenda, without due attention to social risks like land conflicts with indigenous and traditional communities, risks locking soy procurement into lands presenting little deforestation risk, but plenty of social harms and ongoing land conflict.

Companies' focus almost exclusively on environmental measures is also dramatically out of step with responsible practices in forest-risk sectors, which for years have emphasized the centrality of free, prior and informed consent (FPIC), as reflected in the Accountability Framework Initiative¹¹⁰ or the High Carbon Stock Approach.¹¹¹

Some of these same producers have been previously cited for slave labour and deforestation, suggesting that either the traders failed to identify these risks, or identified them and chose to disregard them. Furthermore, traders do not publish information about suppliers in their soy supply chains, as most do in their palm oil supply chains, for example. It is virtually impossible to assess independently any of the traders' sustainability or traceability claims, and this is a major impediment to soy supply chain transparency.

ADM

ADM has been heavily involved in efforts to enhance its suppliers' sustainability credentials and proclaims detailed knowledge of its Correntina supply base. In 2016- 2017, ADM counted 105 properties belonging to its suppliers in Correntina municipality, covering 218 hectares of farmland, 18% of the municipality.¹¹² In 2020, ADM reported that it had 100% traceability to farm for direct sourcing in the 25 priority municipalities, including Correntina.¹¹³ By the end of 2022, ADM pledges, it will achieve 100% traceability in both its direct and indirect soy supply chain in all of Brazil, completely eliminating deforestation from all its supply chains by 2030.¹¹⁴

In 2011, ADM celebrated being the "first company to provide Europe with ISCC-certified sustainable soy" in line with EU Renewable Energy Directive (EU-RED) requirements" having worked directly with growers, particularly in South America, to pass 'intensive audits' to meet the certification requirements for export to the European market.¹¹⁵ For almost a decade, the ADM installation near Capão do Modesto at Luís Eduardo Magalhães has been certified for sustainable soy under the scheme.¹¹⁶ One of the requirements of certification is adherence to ISCC Principle 4, which requires certificate-bearers to comply with human, labour and land rights standards.¹¹⁷

ADM could therefore reasonably be expected to be aware of and mitigate land conflicts in its supply chain, but appears not to have done so in traditional community lands in Correntina.

Provision 4.1.10 of ADM's 2017 Human Rights Policy proclaimed "respect [for] land-tenure right[s] and the rights of indigenous and local communities to give or withhold their free, prior and informed consent to operations on lands to which they hold legal rights."¹¹⁸ While sounding good, the wording actually limited the policy to respecting only those communities holding 'legal rights' to land.

In May 2021, ADM agreed a new version of its Human Rights policy, embodying a very similar commitment

to respect FPIC for communities "on lands to which they hold legal or customary rights". In June, ADM told Global Witness that to implement this commitment in its Brazilian soy supply chain (as opposed to its own operations), the company overlays maps of indigenous community territories verified and granted land rights by Brazil's National Indigenous Foundation (FUNAI), and maps of quilombolas community lands legally verified and granted by the Palmares Foundation, onto maps of its suppliers' properties. Quilombo settlements are inhabited by the descendants of Afro-Brazilian slaves who escaped plantations common in Brazil prior to the eradication of slavery in 1888. ADM said it excludes farms overlapping these legally gazetted lands from its supply chain. It said that "As a company, we are not in a position to adjudicate land rights claims, so we rely on the process used by the government". ADM argued that because of these measures "We currently do not source from indigenous lands or quilombolas, so the granting or withholding of FPIC is not applicable for our supply chain".¹¹⁹

While displaying some initiative, ADM's approach is highly problematic. ADM falsely limits the concept of 'indigenous and local communities' with rights to FPIC to just two types of communities – Indigenous and quilombolas. This structurally excludes numerous other types of traditional communities with cultural and customary land rights protected under Brazil's federal constitution or the constitutions of states, but which have not yet had those lands mapped and further regularised by relevant federal or state agencies. For ADM, the rights to FPIC of all these traditional communities are apparently "not applicable", and ADM apparently conducts no due diligence regarding them at all.

Any community still working towards formal state land recognition and gazettelement – a path that almost universally involves FPIC not yet having been 'respected' let alone achieved – is considered by ADM as not having land rights worth screening for in their supply chain risk assessments. Where non-indigenous or non-quilombolas traditional or local community land rights are claimed, but have not been legally mapped by the state, ADM doesn't worry about FPIC, but where land rights have been mapped and legally granted and communities can legally enforce FPIC, ADM begins assessing risk and excluding suppliers.

Through this practice ADM's due diligence on land rights and FPIC is in essence non-existent when most needed by the least protected communities, and prioritised when that need is largely removed.

In March 2021, ADM also published a new Policy to Protect Forests, Biodiversity and Communities. It proclaims

‘respect [for] Indigenous and Local Community rights to land and resources in accordance with the U.N. Declaration on the Rights of Indigenous Peoples.’¹²⁰ While UNDRIP does not apply to all communities, only to indigenous peoples, ADM told Global Witness that in Brazil they extend the rights of UNDRIP to quilombolas communities as well. ADM did not indicate this commitment applied to any other traditional community in Brazil that might be described as a ‘local community’ – even where their land rights are protected under the country’s constitution.

ADM’s effective denial of the right of FPIC for many traditional Brazilian communities who may be seeking a legal land title presumably applies to the hundreds of *fundo e fecho de pasto* communities of Bahia’s soy heartlands, including the Capão do Modesto community, and many other traditional communities locked into the glacial grind of government formalisation of their rights across Brazil. This makes a mockery of its loudly proclaimed commitment to community land rights.

In correspondence with Global Witness, ADM did not respond when asked if it required the farm property registrations of its Brazilian soy suppliers to be validated by the government, in line with the Environmental Compliance Program (*Programa de Regularização Ambiental*, PRA) – a requirement of Brazil’s Forest Code. Not requiring government validation of soy farm boundaries compounds the structural contradictions in ADM’s FPIC procedures. This double standard means that ADM considers communities to have no right to land or to exercise FPIC unless validated by the government, while happily accepting self-declarations of property ownership by farmers that are not validated by the government – even where communities may be seeking or in a process to achieve validation of their rights to the same land the farmers claim. It’s one rule for communities, and another for ADM’s suppliers.

Respect for land use rights is also a requirement for suppliers adhering to ADM’s Responsible Soybean Standard, which applies to select suppliers who are reviewed annually for compliance.¹²¹ It requires that “in cases of disputed-use rights of land, a comprehensive, participatory and documented community rights assessment must be carried out.” Failure to do so, however, is only a ‘minor’ non-conformity.¹²² Yet, even such ‘minor’ non-conformities are unlikely to have ever been recorded under ADM’s systems in Brazil. ADM told Global Witness that its ‘supplier non-compliance protocol and grievance and resolution process’ logs the outcomes of all ‘issues’ in its supply chain in a dedicated tracker. It agreed with Global Witness’ assessment of that log, admitting that “none of the grievances listed ... for Brazil, refer to exploitation, FPIC, or human rights violations”.

ADM also confirmed that the SCF does not currently work on FPIC or land rights at all. It said that while the SCF is discussing including additional key performance indicators, “the SCF member companies’ action plans are focused on deforestation and land conversion related issues.’

ADM says it has worked with the consultancy ELEVATE to conduct risk assessments on its global operations and supply chains, including a focus on exploitation and land rights. It says it is working with ELEVATE to add supplier-level audits to its 2021 monitoring plan, having piloted such a scheme in its Madagascan vanilla supply chain. Nonetheless, ADM rates its Brazilian soy supply chain as lower risk than its other commodity-geography combinations, so has no plan to introduce these farm-level audits in Brazil.

Presented with information about the specific land conflict in Correntina, in November 2021, ADM said it immediately opened a grievance procedure, although would not confirm which companies it covered, nor which of those involved in the dispute were its suppliers. While its enquiries were not complete before publication (ADM said grievance enquiries normally required 30 days), within less than four days ADM informed Global Witness that through its enquiries ADM had learned that farms it purchased from had been ‘invaded’, and that litigation to repossess the lands had favoured its suppliers. ADM reported its suppliers all denied allegations of threats and physical attacks by security firms hired by them as ‘false’ and said it had found their properties to be legal and compliant with its policies. While indicating its investigation remained ongoing, ADM did not confirm, when asked, whether it intended to consult with the affected community, or seek opinions or information not provide by its suppliers. ADM added that Global Witness’ characterisations of its policies and the work of the SCF, all based on information provided by ADM, were “inaccurate”.

Bunge

In 2020 Bunge reported it had “complete insight” into its soybean sourcing: 100% traceability to farm for direct sourcing for the 25 priority municipalities, including Correntina.¹²³ It would start taking its indirect supply



Archer Daniels Midland food processing facility and trademark logo.
Ken Wolter / Alamy Stock Photo



A logo sits on the side of a grain storage silo, operated by Bunge Ltd. Vincent Mundy/Bloomberg via Getty Images

chain seriously, it pledged, and begin “guiding grain resellers” to implement “chain verification systems” to track the origins of Bunge’s indirect soy supply.¹²⁴ It launched an app for producers to navigate social and biodiversity data and

land registry information with a view to supporting “sustainable production.” It also offered loans to Cerrado soy producers willing to sign up to no-deforestation or no-native land conversion agreements.¹²⁵

Like ADM, Bunge also proclaims respect for human rights and land rights, but without any clarity on how such abuses will be monitored, mitigated, or redressed, particularly in its expansive supply chains. Bunge’s Grains and Oilseeds Commitment pledges to “respect human rights and indigenous community rights, and apply free, prior and informed consent for land purchases and use.”¹²⁶ In June 2021 Bunge confirmed that its commitment to FPIC applied to non-indigenous communities. However, it explained that this policy commitment was only monitored on land it owns and operates itself. In implementing FPIC on lands in its supply chain the company said it “expect[s]” its suppliers to comply with its ‘Code of Conduct.’¹²⁷ Bunge’s Code of Conduct does state Bunge’s expectation for its suppliers to “uphold human rights”, but it does not mention land rights once, does not refer to FPIC, nor mentions indigenous or customary communities. While the code requires compliance with its environment policy,¹²⁸ that in turn does not mention land rights or FPIC as policy considerations.¹²⁹

Bunge added that “contract clauses in Brazil also include more granular expectations, for instance respecting human rights and work conditions”, and that it provides “an anonymous, multi-lingual, externally administered hotline” for the submission of complaints, including on human rights, although it did not explain whether or how these relate to land rights or FPIC, or provide texts of relevant contract clauses.¹³⁰

Language on human rights also features in Bunge’s webpage on ‘responsible supply chains’, which proclaims that “the possibility of human rights violations in our supply chain is taken very seriously.”¹³¹ But again, it merely refers to the Code of Conduct, reiterates its opposition to child or forced labour, employment law violations, and “other forms of exploitation”. It makes no comment on land rights or FPIC.

The company’s ‘No Deforestation Commitment’ outlined in its 2021 Global Sustainability Report does refer to “respecting the rights of indigenous peoples, workers and local communities”, but only in a section about palm oil specifically. Reporting how its policies “align” with ‘NDPE’ (No Deforestation Peatland, or Exploitation policies), Bunge’s 2021 report says, “NO EXPLOITATION, refers to no exploitation of workers, children, local communities or small-scale growers in the production of palm oil.”¹³² These policies apparently do not apply to its soy supply.

Asked to explain its procedures to monitor for ‘exploitation’ in its Brazilian soy supply chains, specifically where not involving slave or forced labour, Bunge told Global Witness that ‘Human rights and exploitation risk in the soy supply chain in Brazil are categorized under the Modern Slavery Act’. This suggests that only a violation of that act – which does not relate to land rights or FPIC for communities – would constitute a human rights problem worthy of Bunge’s attention. The company reiterated it had not identified any cases of slave or child labour in 2020.

Bunge did tell Global Witness that it would violate its policies if soy suppliers intimidated, threatened, or attacked local or indigenous communities, but declined to disclose how or if it monitored for such violations, and stated it had no records of such violations for 2020.

But worryingly, Bunge told Global Witness that it respects the rights of supplier farmers to litigate against traditional or local communities contesting their rights to the supplier’s property. Bunge said ‘We respect the rights of parties to take legal action, regardless of who is litigating, and we respect the outcomes of the judicial process and take measures to comply with legal demands.’ Such a position is not compatible with Bunge’s proclaimed expectation that those same suppliers respect FPIC – in accordance with UNDRIP - for local and indigenous communities. Suing to expel communities from lands they claim is structurally contrary to the very principle of FPIC, as the community in Capão do Modesto know too well.

Bunge also suggested that its Brazilian soy suppliers’ property registrations need not have been validated by state authorities as required by the PRA of the Forest Code - even where those properties overlap lands claimed by local or traditional communities. It said it encourages suppliers to have property registrations that are “as accurate as possible” and that it will wait for the government to validate them.

Overall, Bunge’s implementation of its commitment to land rights and FPIC across the hundreds of thousands of hectares where it sources Brazilian soy is a mirage. It consists merely of an ‘expectation’ of suppliers to follow

a code that does not explicitly mention or pertain to land rights or FPIC in any way at all, while supporting the rights of suppliers to sue traditional communities off the lands they claim, with little more than an unvalidated self-declaration of property ownership in hand as justification. This ‘expectation’ is not monitored in any meaningful way by Bunge. It is in effect not undertaking any due diligence on land rights, land conflicts, or FPIC in its Brazilian soy supply chain that might identify or mitigate risks of significant harms on local communities or land and environmental defenders by its suppliers.

Presented with information about the specific land conflict in Correntina, in November 2021, Bunge reported that it was ‘unaware’ of the facts presented, but that its enquiries had identified that farmers had brought litigation to repossess legal reserve areas from ‘invasion by third parties’. Bunge denied it had any commercial relationship with Talismã, NPK, or Lavrobrás in Correntina. Nonetheless, the company repeatedly opted not to deny sourcing soy produced on farms with legal reserve areas overlapping community land claims detailed in this report, including those owned by Talismã, Faccioni Group, or Bergamaschi’s Fazenda Xanxerê. Instead, Bunge asserted it “does not purchase soybeans from areas overlapping with the traditional communities mentioned” – while simultaneously accepting that no soy is produced on those areas. Asked for explicit clarity on whether it purchased soy produced on such farms, Bunge again reissued its potentially misleading ‘area’-based denial, stating “we do not buy soy from the areas under dispute”. Responding to a third request for clarification, Bunge reiterated its previous position. Bunge reiterated its condemnation of “any acts of violence, illegal activities, and violations of anyone’s protected rights”, and that its contracts contained clauses obliging suppliers to ‘respect and protect human rights’. The company asserted that “all its commercial operations with suppliers are legal and comply with Brazilian legislation and company procedures”.

Cargill

Cargill has a Sustainable Soy - South American origins policy with four commitments, one of which is to respect and uphold “the rights of workers, indigenous peoples and communities.” Specifically, it notes Cargill’s support for the FAO’s Voluntary Guidelines on the Responsible Governance of Land Tenure, and for “the rights of indigenous and local people” including “Free, Prior and Informed Consent as a core to protecting those rights”.¹³³

The company’s Commitment on Human Rights aims to “respect the resources or tenure rights of indigenous people

and communities”, proclaims its observance of FPIC, and support for the FAO Voluntary Guidelines on Responsible Tenure of Land, Fisheries and Forests, ‘which help ensure that land tenure rights of local people are protected’.¹³⁴ The company’s Supplier Code of Conduct also stipulates an expectation that farmers “respect the principle of free, prior, and informed consent concerning the resources and tenure rights of indigenous communities.”¹³⁵

Cargill’s Soy Action Plan also commits to understanding supply chain risks, and monitoring, verifying, and reporting so as to take corrective action in the event of violations.¹³⁶

However, Cargill does not publicly disclose how it assesses the risk of land rights or indigenous and traditional community rights violations that its policies purport to prohibit. Its ‘risk assessment’ methodology is limited to monitoring for deforestation and native land conversion using satellite tools.¹³⁷ Cargill has a Soy Grievance Process which outlines how claims against suppliers should be investigated, and while this allows for Cargill employees and third parties to file reports there is no indication of any proactive monitoring of land rights related violations by Cargill itself.¹³⁸

Global Witness asked Cargill¹³⁹ if and how it proactively monitored for violations of the community land rights or FPIC principles that it proclaims as requirements of its soy suppliers, and how many problematic cases had been identified and addressed to date. The company failed to answer the questions, nor did it indicate it has identified or resolved any single case of land rights or FPIC policy violations in its soy supply chain in Brazil.¹⁴⁰

Instead, Cargill issued a statement listing a range of ‘procedures’ it follows to ensure social requirements are met – monitoring slave labour lists, government farm embargoes, and following the soy moratorium and Green Grain Protocol – none of which meaningfully pertain to land rights conflicts across Brazil’s soy production landscapes. While Cargill did state that harassment, intimidation and the use of violence by suppliers was prohibited under its policies, the company failed to clarify whether suppliers violated its rules when suing communities to expel them from lands they claim.

Global Witness has yet to see any evidence that Cargill is actively doing anything meaningful or systematic to deliver on its commitments on human rights and community land tenure rights and FPIC in its Brazil soy supply.

Responding to information on the specific land conflict in Correntina this report details, in November 2021, Cargill reiterated the policies described above, and said that



Soybean Processing Factory in Luís Eduardo Magalhães, Bahia State, Brazil. © Victor Moriyama / Greenpeace

“we would immediately investigate through our formal grievance process” if they learned of any allegation of human rights abuses against a supplier farmer. While stating that it does not work with or source soy from Talismã or NPK, on two separate occasions Cargill did not confirm or deny specific evidence of significant direct purchases from Talismã in 2017 and 2018. Following repeated requests for clarity, Cargill said that “we had negotiations with Agropecuaria Sementes Talismã in the crops of 2016 and 2017, however in compliance with our commitments, this company was blocked on our systems for presenting embargoed areas.”

Across all three major soy traders buying from or potentially buying from farmers whose properties overlap the Capão do Modesto *fecho de pasto* community, the pattern is the same: nice sounding policies proclaiming ‘support for’ or ‘respect for’ community land rights and FPIC are fundamentally betrayed by non-existent or ineffective and discriminatory monitoring, mere ‘expectations’ that suppliers deliver, and not one single land rights or FPIC case having been identified or resolved to date.

The conflict between the Capão do Modesto *fecho de pasto* community and producers, some of which were ADM and Cargill’s direct suppliers in 2017 and 2018 and have directly and likely indirectly supplied Bunge, has been ongoing for close to a decade and in litigation for almost four years. There is no evidence that any of these traders was aware of the Capão do Modesto land dispute, demonstrating the inadequacy of their due diligence processes for even identifying human rights risks, let alone providing remedy for them. This appears to be the case even when a trader is certified by a sustainability initiative like the ISCC, such as with ADM’s operations near Correntina.

Bunge and Cargill have also been directly accused of having poor environmental and human rights records elsewhere in Bahia. The two traders are major clients

of the notorious estate of Agronegócio Condomínio Cachoeira do Estrondo in Formosa do Rio Preto district, about 250 kilometres from Correntina town, according to Greenpeace.¹⁴¹ Part of the lands occupied by Estrondo estate were reportedly recognized by the courts as belonging to the traditional communities of *geraizeiros*, who have inhabited the region for about 200 years. Residents claim to have suffered intimidation and threats during the land conflict.¹⁴²

ADM claims that 100% of its soy sourced from direct suppliers complies with the National Pact for Slavery Work Eradication¹⁴³ and that it does not source from areas embargoed by IBAMA. Cargill, too, says it has a monitoring system based on government lists of embargoed farms to prevent soy from entering its supply chain from farming operations accused of illegal deforestation or slave labour.¹⁴⁴ However, Talismã, one of ADM’s and Cargill’s direct suppliers in 2017 and 2018 and Bunge’s possible indirect supplier, was subject to an IBAMA embargo for impeding the natural regeneration of native vegetation in 2011 on one of its farms and remains listed on IBAMA’s public embargo list.¹⁴⁵ Faccioni, whose farms are part of the Faccioni group which supplies Bunge, was inspected in 2005 for slave labour on the Paraná farm in Correntina.¹⁴⁶ The Veneza farm, which IBAMA lists under Faccioni’s name, was also cited for deforestation in 2019, though the judgement is still pending.¹⁴⁷ Talismã and Faccioni are both party to the litigation seeking to expel the *fecheiros* of Capão do Modesto from their traditional lands.

The due diligence procedures and sustainability policies of these traders have plainly been inadequate in preventing, mitigating, and providing remedy for land conflicts. Focused overwhelmingly on deforestation, they are not taking sufficient action to prevent or mitigate land conflicts and associated human rights violations in their soy supply chain in the Cerrado region.

ADM said the IBAMA embargo for Talismã’s property covered a non-productive area, so it would not be possible to source soy from it. Talismã said the IBAMA embargo was issued prior to its purchase of the property, that the company paid the fines and remedied the situation in accordance with mandated regeneration procedures and is awaiting administrative closure of the case. Cargill did not comment on the IBAMA embargo on Talismã’s farm but reiterated “we do not and will not supply soy from farmers who clear land illegally”. Dino Faccioni said the IBAMA embargo for his Veneza farm resulted from deforestation by its previous owner, that Faccioni has filed a defence under IBAMA’s administrative proceedings, and that a legal case with the prior owner is awaiting conclusion. He said he was “unfairly” cited for slave labour and claimed to have been acquitted.

CONTRIBUTING TO HUMAN RIGHTS ABUSE

It is not just land rights conflict and aggressive litigation of communities by farmers that the trader's purchases directly link them to, but fundamental human rights violations.

Community members have reported being physically attacked, arbitrarily detained, and beaten; having guns pointed at them while being subjected to death threats and other intimidations; and having property destroyed, all while living under an ongoing threat of losing their lands and livelihoods.

These constitute violations of numerous Articles of the Universal Declaration of Human Rights, including Article 3 (the right to life, liberty and security of person); Article 5 (freedom from cruel, inhuman or degrading treatment or punishment); and Article 17 (the right to own property).

These abuses have all occurred during a dispute with soy producers maintaining 'legal reserve' areas that prevent them having to revert part of their existing soy production areas to native Cerrado vegetation, in turn enabling them to maximise profits.

Purchases of agricultural commodities from plots with legal reserves overlapping the community lands where these human rights abuses are alleged mean multinational commodity traders are directly linked to those abuses, and as such are failing in their responsibilities under the UN Guiding Principles on Business and Human Rights (UNGPs),¹⁴⁸ and those as further defined in the OECD Guidelines for Multinational Enterprises (OECD Guidelines)¹⁴⁹ and OECD Due Diligence Guidance for Responsible Business Conduct (OECD Guidance).¹⁵⁰ These are the most authoritative and widely



John Ruggie, author of the UN Guiding Principles on Business and Human Rights. Astrid Stawiarz/Getty Images for UN Global Compact

used international soft law standards on business and human rights.

Worse, commodity traders may not merely be ‘directly linked’ to these human rights impacts but can be regarded as meeting the criteria of ‘contributing to’ the abuses, a form of involvement that, according to the UNGPs, infers a further responsibility on the traders to “provide for or cooperate in their remediation”, with the OECD Guidelines and Guidance similarly mandating active remediation.¹⁵¹

The OECD Guidance states that *“an enterprise ‘contributes to’ an impact if its activities, in combination with the activities of other entities cause the impact, or if the activities of the enterprise cause, facilitate or incentivise another entity to cause an adverse impact.”*

The Guidance details three factors to be considered when determining whether a company has contributed to, rather than merely being directly linked to, negative impacts. Broadly these include: whether the company’s actions ‘encourage or motivate an adverse impact by another entity’; whether the company ‘could or should have known about the adverse impact or potential for adverse impact’, and whether the company’s activities ‘actually mitigated the adverse impact or decreased the risk of the impact occurring’.

Clearly, in those business relationships where the traders are indeed ‘directly linked’ to the alleged harms perpetrated on the Capão do Modesto community there are significant grounds to determine that they have also ‘contributed to’ the abuses in ways that bestow on them a duty of remediation.

Major purchases of commodities from the producers causing the abuses – whether through acts or omissions – are a clear motivation and encouragement for the producers to continue operating in the way they have, where their soy production is reliant on what communities consider to be an abusive ‘green land grab’ being perpetrated on the Capão do Modesto community. Information in the public domain, including multiple police reports, legal cases, local media coverage of the conflict, combined with the traders’ intimate knowledge of their supply chains and their responsibilities under both their own policies and UN and OECD human rights due diligence responsibilities, mean the traders should and could have known about the abuses. The fact that all three traders surveyed by Global Witness proclaim not to have identified any land or human rights conflicts in their Brazilian soy supply chains, detailed no information pertinent to this or similar cases on how they conduct land or human rights due diligence on their suppliers’ operations, while the abuses have occurred, escalated, and persisted unmitigated over a long period, all indicate that the traders’ actions have completely failed to identify let alone mitigate or decrease the likelihood that the abuses occurred.

All of these factors point to a clear duty on the traders to actively provide credible remediation to the effected communities for the harms perpetrated against them in the production of the commodities the traders buy.

While the concepts of ‘directly linked’ and ‘contribution to’ espoused in the UNGPs and/or the OECD Guidelines and Guidance are “sui generis” terms meant for non-legal contexts to guide and assess corporate conduct, that may soon change.

The European Commission has committed to proposing legislation mandating corporate human rights and environment due diligence (HREDD). The European Parliament has already advised the Commission on the drafting of this directive as included in the annex to a European Parliament report on Corporate Due Diligence and Corporate Accountability adopted in March 2021.¹⁵² [See box on page 37] The Parliament report recommendations use the same wording in defining ‘contribution to’ harms as the OECD Guidance. While it is yet to be seen whether land rights and free and prior informed consent (FPIC) will be built into the expected HREDD legislation as requirements of company due diligence, it is inconceivable that fundamental human rights violations will not be. Without rapid improvements in their human rights and land rights due diligence, the traders may soon find they have a legal case to answer for contributing to and failing to remedy human rights harms in their soy or other supply and value chains.



Organisation for Economic Cooperation and Development (OECD) – this institution has developed guidance for multinational companies that builds on the UN Guiding Principles. Rafael Henrique/SOPA Images/LightRocket via Getty Images

TRADITIONAL TENURE: A CASE TO ANSWER

The producers claim that the *fecheiros* of Capão do Modesto, among others, aim only to “breed and fatten their own assets, without any concern for the society that protects them.”¹⁵³

Brazilian constitutional and case law recognises that traditional communities like the recognised *fundo e fecho de pasto* communities of western Bahia have fundamental rights including the right to practice their way of life, which is inherently tied to their territorial identity.

Brazil’s progressive 1988 Constitution, forged out of the nation’s struggle with years of dictatorial rule, protects the fundamental rights of Brazil’s various communities to their identity and way of life, and observes that “property shall observe its social function”.¹⁵⁴ Chapter VIII specifically guarantees “Indians” (índios) the right to have their “social organization, customs, languages, creeds and traditions recognized, as well as their original rights to the lands they traditionally occupy”.

Consequently, Brazilian states incorporated rules about the protection of fundamental rights of their own native traditional communities into their state constitutions. In Bahia, where the community of Capão do Modesto live, Article 178 of the 1989 state constitution specifically recognises the rights of traditional communities, including *fundo e fecho de pasto* communities, setting out conditions under which land use rights can be granted.¹⁵⁵ In 2017, the Attorney General of Brazil gave an opinion that denying traditional communities’ land tenure rights condemns them to eventual extinction.¹⁵⁶

The producers litigating against the Capão do Modesto *fecheiros* point to deeds of sale and purchase registered in the Correntina general land registry to prove their ownership of plots overlapping with the community’s territory. However, their private property rights are far from assured under Brazilian law, international legal obligations, and Brazilian case law.



Traditional community member feeds his cattle, western Bahia, 2019. © Nelson Almeida/AFP via Getty Images



Eight out of twelve of Brazil's major river basins and three aquifers rely on the Cerrado as a source for their water. Traditional communities are also reliant on the Cerrado's waters, and have for centuries taken care of aquifers and streams that are gradually drying out due to large scale agriculture. Cavan Images / Alamy Stock Photo

Brazil is party to International Labour Organisation (ILO) Convention 169,¹⁵⁷ a major binding international convention aiming to secure indigenous peoples' and tribal peoples' rights. Article 14 states that traditional communities have rights of ownership and possession over the land they traditionally occupy.

Brazilian case law is mixed on the question of whether traditional communities' land rights trump private ownership rights in land dispute cases. Brazilian Federal Courts in certain cases have upheld traditional communities' rights by dismissing land repossession claims or eviction attempts by private parties over community-claimed land.¹⁵⁸ There are also cases where the courts recognize the right of the communities over parts of territory that plaintiffs alleged were invaded. In these cases, the courts, elaborating on the right to land and cultural rights, understood that rigid territorial limits might conflict with traditional occupation.¹⁵⁹ These rulings, issued by federal courts, demonstrate a federal precedent that the constitutional rights of the communities can take precedence over other laws that individuals and businesses have used to justify their land claims when these come into conflict with those of traditional communities.

However, Brazilian state-level courts have also ruled in favour of private landowners in disputes involving land claims by traditional communities, showing that rights of either side are not absolute in case law.¹⁶⁰

A recent development at the Supreme Court concerning *fecho de pasto* peoples aligns with federal-level court

judgements upholding traditional and indigenous land claims over private property rights. The Attorney General of Brazil lodged a suit in 2017 challenging the State of Bahia for their failure to protect the constitutional rights of *fundo e fecho de pasto* peoples,¹⁶¹ and its imposition of a deadline for individual *fecho de pasto* communities to conclude any land regularisation processes that would guarantee land tenure rights. Traditional communities have often not been able to claim their land rights; they live in distant, isolated communities with limited access to government offices, phone or internet networks, and many lack knowledge of Brazilian state land governance processes. The Attorney General noted that this isolation enabled *fundo e fecho de pasto* communities to preserve their lifestyles and identities but made it more difficult to access the State's legal and bureaucratic institutions that would formalise their constitutional rights to land.¹⁶²

Learning to navigate and push for formal land titles would benefit traditional communities, according to Elmo, a *fecheiro* from Praia community. "These people have a history of resistance. They have always resisted the invasion of their land. However, there is a new strategy being used nowadays and the community needs to learn how to deal with that, how to dialogue with the authorities."

The recognition by federal courts of the land rights of traditional communities, such as in the examples above, should be a red flag for traders like ADM, Bunge and Cargill who purchase crops from producers in zones inhabited by many traditional communities with ancestral land claims. Unresolved land claims should constitute a fundamental unmitigated risk in any credible human rights due diligence procedure, including those proclaimed by the traders.

A special commission of the Bahian state Coordinator for Agricultural Development (CDA) initiated the land regularization process for Capão do Modesto area in early 2021 with a view to assessing the community's application for a land title. Once the CDA accepts such an application, it can significantly reduce land conflicts by preventing new repossession claims and/or by discouraging further land grabbing.¹⁶³ But the process is slow. In 2015, the CDA had received 250 land title applications from traditional communities, and only 7 land titles were issued in that year.¹⁶⁴

If the Bahian state CDA confirms that the area ancestrally occupied by the Capão do Modesto community is formally theirs, and if this finding is then validated by an administrative body or a court, commodity traders could find themselves doing business with companies that are breaking Brazilian law.

EXPOSURE RISKS

The traders' poor environmental and human rights track record is becoming increasingly costly. In 2018, Brazil's environmental agency IBAMA fined five traders including Bunge and Cargill a total of US\$ 29 million for deforestation.¹⁶⁵ Investors, too, are growing wary. In February 2021, it was reported that Danske Banke excluded Bunge, ADM, and Cargill from two of its investment funds, Danske Invest and Danica, over deforestation in Brazil.¹⁶⁶ The blacklisting follows evidence of thousands of alerts over fires ravaging forest land in the proximity of the three

traders' silos.¹⁶⁷ In May 2021, top institutional shareholders in Bunge Limited threw their weight behind a call for the company to do more to protect the Cerrado – voting 98% in favour of a proposal to strengthen Bunge's no deforestation policy.¹⁶⁸ Bunge's role in driving deforestation and related human rights risks in its soy and palm oil supply chains constitute a significant material risk to investors. This corresponds with increasing pressure on financiers to shift to align their investments with their climate, biodiversity, sustainability and ESG commitments.¹⁶⁹

Global traders soon could be subject to new EU corporate accountability law

International traders who operate in the EU may also be open to litigation and enforcement procedures in the future for causing and/or contributing to human rights and environmental harm and failing to fulfil due diligence requirements aimed at preventing and mitigating their negative impacts. In April 2020, the European Commissioner for Justice committed to introducing a new law in 2021 to hold corporates to account. On 10 March 2021, the European Parliament voted overwhelmingly to adopt a legislative initiative report calling for the urgent adoption of a binding EU law that ensures companies are held accountable and liable when they harm - or contribute to harming - human rights, the environment and good governance.¹⁷⁰

The potential obligations on companies are expansive: MEPs agreed that the new law should apply to companies in all sectors, and include smaller companies operating in high risk sectors. ADM and Bunge have multiple European investors, and even more numerous direct and indirect European clients – from animal feed manufacturers through major food producers to high street retailers - all of which could therefore be subject to any EU-level law. The MEPs' report highlighted the need for companies to proactively identify and mitigate risks, for example, making mandatory engagement by companies with affected stakeholders. The MEPs recommended that the Commission introduces a regime where companies can be held civilly liable for the

human rights and environmental harms in their supply chains.¹⁷¹ No longer will respect for human rights be a matter of self-regulation or mere 'expectations' being placed on suppliers. The Commission is expected to publish its proposal for the law in late 2021.

The efforts in the EU to enact a broad-ranging law on human rights and environmental due diligence that would cover all companies is also to be complemented by a product-focused legislative process examining narrow but detailed accountabilities for forest-risk commodities in agriculture in particular. Both the UK and EU have laws under development outlining accountabilities for businesses that are using or importing forest-risk commodities, such as soy, with growing calls for similar measures in the US. It is expected that both the UK and EU laws will require compliance with local laws on land ownership and use, and the need for measures to include an obligation on Free, Prior and Informed Consent (FPIC) in line with international law have been raised both by the European Parliament and UK parliamentarians. There is also a live international discussion on how financiers, including banks and investors will need to comply with these, or similar, measures.

With a growing consensus amongst civil society, the private sector and the wider public on the need for corporate accountability legislation, the European Union (EU) has a clear mandate to introduce a strong, enforceable law.¹⁷²

While there is growing awareness by investors of deforestation risk, they have a long way to go to adequately acknowledge human rights in their risk assessment and to heed the long-expressed expert advice that land grabbing/ social conflict and deforestation are two sides of the same coin and have to be addressed with equal rigour. It is also needed to avoid the situation where companies operating in sensitive eco-systems, such as forests, will simply relocate their operations onto grabbed land.

There is a groundswell of global discontent about the traders' social and environmental record. In 2020, 29 global investment firms demanded meetings with Brazilian diplomats worldwide to pressure President Bolsonaro's administration to stop deforestation in the Amazon.¹⁷³ Traders may face new regulatory risks. Mandatory due diligence bills have been announced and/or introduced at the federal and state levels in the US that would restrict market access for industrial agricultural commodities like soy and palm oil that are known drivers of deforestation.¹⁷⁴

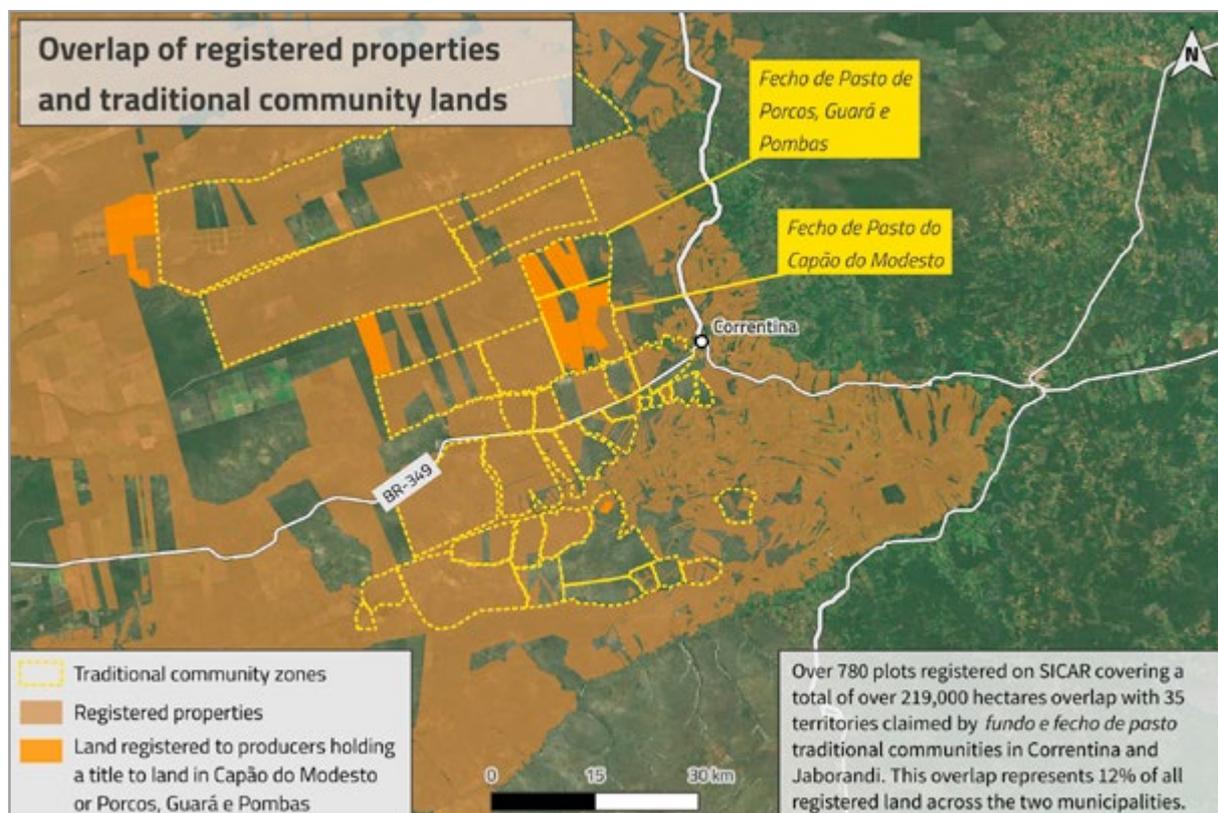
Both Correntina and Jaborandi, with their many traditional communities and land and water conflicts, are among the 25 priority soy sourcing municipalities for ADM, Bunge, and Cargill in Brazil, as well as for other soy-trading SCF members COFCO, Louis Dreyfus Company, and Glencore Agriculture (now rebranded as Viterra).

They have committed to sourcing extensively from precisely this zone. They are therefore heavily exposed to the risk of sourcing significantly more conflict crops than their proven connections to the producers litigating against Capão do Modesto demonstrate.

Capão do Modesto is only one of hundreds of *fecho de pasto* communities in Bahia – there are at least 35 communities alone in Correntina municipality and Jaborandi, bordering it to the south. While few land conflicts result in litigation, there are potentially scores of conflicts which involve suppliers to the great grain traders operating in the hot zone of western Bahia.

787 plots had been registered on SICAR by December 2020 that overlap with these 35 *fecho de pasto* community territories, covering a total of 219,369 hectares of community-claimed land. This overlap represents 12% of all registered land across the two municipalities.

Land tenure conflicts and allegations of land grabbing are widespread across Brazil's agricultural states.¹⁷⁵ The burden of proof lies therefore on traders to demonstrate publicly that they are not sourcing crops either grown on traditional communities' lands, or on farms that are legally reliant on 'legal reserve' areas under private land titles overlapping with traditional community lands.



Land boundaries: Cadastro Ambiental Rural, February 2021, www.car.gov.br; Traditional community zones: Comissão Pastoral de Terra (CPT, 2021). Provided to Global Witness; Sentinel-2 cloudless – <https://s2maps.eu> by EOX IT Services GmbH (contains modified Copernicus Sentinel data; contains penStreetMap data © OpenStreetMap contributors)

AFTERMATH

For the Capão do Modesto community, the future looks uncertain. Since the 2019 Court ruling in favour of the producers, the community members' lawyers have been working to have it appealed. Several appeals have been rejected and at the time of writing, the community members and their lawyers were preparing further actions. Given the nature and frequency of the intimidations they face, the eight defendants and the communities they belong to justifiably fear that the threats and aggressions against them might escalate.¹⁷⁶

Not long after the Bahian state Coordinator for Agricultural Development (CDA) began the land regularisation process of the Capão do Modesto community, Severino reported another incident to the police. According to the police report, on the 30th of April 2021, Severino heard a vehicle park in front of his house and what he thought were two shots being fired. The vehicle remained there for about two hours. The following day, three unknown men on motorcycles repeatedly circled Severino's house, according to the report.¹⁷⁷ As a result, community members continue to live in fear of reprisals.

Agribusiness is still booming in the region and demand for Brazilian soy is soaring. Brazilian soy exports rose steeply during the COVID-19 pandemic because of attractive exchange rates, agribusiness expansion and US-China tensions. Brazil exported so much soy in 2020, particularly to China, that the country had effectively 'run out' of beans, having to import them for domestic use.¹⁷⁸ Agribusinesses and farmland developers count on a windfall – in the first few months of the pandemic, Bahia state authorised over 34,000 hectares of deforestation according to one study, three quarters of which was destined for agriculture and two thirds of which was native Cerrado vegetation.¹⁷⁹ Continued destruction of the Cerrado's native vegetation is a major setback in the fight against climate change.

“We resist because we need to remain in our territory. If we give up our land to them, what are we going to live off?”

– Juscelino Santos Britto, *fecheiro* from Brejo Verde community

“I would die if I had to leave this land.”

– Juscelino Santos Britto, *fecheiro* from Brejo Verde community

Amid the boom, traditional communities report being increasingly squeezed. Less and less land is available for grazing their cattle on the plateau, water that used to gush in some of the streams running from Bahia's rivers has reduced to a trickle. However, the challenges *fecho de pasto* communities face are gaining visibility. In 2020, the Bahian state government agency, SEPROMI, fulfilled its 2014 pledge to map *fecho de pasto* communities, which it hoped would strengthen communities, preserve their territories, and contribute to land tenure regularization. Its 2020 partnership with the Federal University of Bahia and GeografAR identified 980 such communities in 56 municipalities.¹⁸⁰

But these communities need more than papers and studies officialising their centuries-old way of life. They need formal land titles and remedy for harms caused.

As the dispute over this corner of western Bahia unfolds, the commodity traders profiting from their commercial relationships with these unscrupulous agribusinesses continue to operate in the area, potentially still trading with producers whose farms and activities are pushing traditional communities into hardship.

“I would die if I had to leave this land. I was born and raised here. My dad was also born here. ... His parents were also born here...” says Juscelino Santos Britto from the Brejo Verde community, who is 63 years old. “I don't want to leave this land.”



Wooden boards on a trail indicating different paths to follow in the Brazilian Cerrado. The Capão do Modesto community faces an uncertain future. One route might lead to eviction from their lands while the other might secure their livelihood and the conservation of the Cerrado. Vinicius Bacarin / Alamy Stock Photo

CONCLUSIONS

A traditional community of *fundo e fecho de pasto* agropastoralists in Correntina municipality of Brazil's Bahia state have reported being subjected to violent human rights abuses and intimidations, including death threats and beatings, for defending their legitimate customary land rights and livelihoods against an alleged green land grab involving a group of powerful soy producers.

The community's efforts to have their lands registered and recognised by state agencies, in line with their rights under Brazil's constitution and that of Bahia state, are also being aggressively litigated by the producers, in structural opposition to the principle or practice of free and prior informed consent (FPIC).

The soy producers are causing these harms – whether through acts or omissions - in a bid to secure properties that overlap the community lands, which they claim as 'legal reserves', and which function to bestow legal compliance with Brazil's environmental, land use and registration laws on their soy producing farmlands elsewhere in the Cerrado biome.

Three major multinational Agri-commodity traders, ADM, Cargill, and Bunge are directly linked to these harms through purchases of soy from farms belonging to producers with 'legal reserves' that overlap community lands, where rights abuses have been perpetrated against community members. Soy the traders export from the region ends up in China, Europe, and other markets, used mainly for animal feed for the burgeoning industrial meat sector.

These traders proclaim human rights and land rights policies and due diligence procedures that, on paper, could or should prevent direct links to harms in their supply chains. But through weak, selective, discriminatory, or at times non-existent implementation, all have apparently failed to either identify, mitigate, or remediate the harms their purchases directly link them to.

These acts of omission mean the traders are failing in their responsibilities under the most authoritative international business and human rights standards, including the UN Guiding Principles on Business and Human Rights (UNGPs), the OECD Guidelines for Multinational Enterprises, and the OECD Due Diligence Guidance for Responsible Business Conduct.

Further, there are credible reasons to suggest that the traders may be regarded as having contributed to the human rights violations suffered by the traditional community concerned and are in turn obliged under these international standards to proactively provide or cooperate in the provision of remediation for these harms to the community – remedy they are not understood to have sought to bring about.

Moreover, while these failings are currently in violation of prevailing international standards and some of the traders' own stated policies, the European Commission has committed to bring forward legislation on corporate accountability that should mean such failings will soon be sanctionable violations of enforceable EU member state laws.

The traders concerned, ADM, Bunge, and Cargill, must rapidly re-prioritise and re-tool their exercise of credible human rights and land rights due diligence to bring themselves into compliance with both international human rights standards and emerging EU law. Providing remedy for the affected community in Correntina should be their first port of call.



Member of a traditional community manipulating manioc flour.
Victor Moriyama

RECOMMENDATIONS

Recommendations:

In Brazil, ADM, Bunge, and Cargill should:

- Immediately work to stop the ongoing land and human rights abuses and litigation against the communities detailed in this report, and proactively provide or cooperate in the provision of credible remedy to the community for those harms already perpetrated, in line with their responsibilities under the UNGPs and OECD Guidelines and Guidance;
- Immediately prioritise the identification of indigenous, traditional, quilombolas, and rural landless communities affected by their soy supply chains, including where community land rights claims are still pending formal government recognition and titling processes;
- Avoid reliance on supplier policies and audits to assess compliance with respect to land rights and Free, Prior and Informed Consent. Conduct own verification and risk assessments on the ground and publish information of the results;
- Do not source from soy suppliers who are:
 - operating on properties claimed or contested by indigenous, traditional, or rural landless communities in the absence of FPIC;
 - litigating against communities asserting competing land rights claims;
 - threatening, attacking or intimidating communities asserting competing land rights;
 - operating on properties for which Environmental Rural Registry (CAR) registrations have not been validated by state institutions to respect Brazilian legal requirements and community land rights;
- Provide for and deliver effective remedy for communities, including where relevant compensation, where soy suppliers have:
 - used community claimed land in the absence of FPIC;
 - subjected communities to costly litigation that challenges their land rights claims;
 - subjected communities to threats, intimidation, attacks or other human rights violations;

The process of providing and delivering remedy should ensure communities or individuals are not put at risk of reprisals when freely enunciating the harms they have been subject to and their associated needs. This may require engaging experts in the security and protection of human rights defenders before and during consultation processes, ensuring third party lawyers and civil society representatives chosen by the defenders involved, employing secure communications practices and other security and equity measures. Remedies agreed with communities should be honoured, and not limit the rights of communities to further pursue land rights claims.

- Commit to the Cerrado Soy Moratorium and align operations with the 2020 deforestation cut-off date in accordance with the Accountability Framework Initiative;
- Lobby the Brazilian government to more urgently implement the human rights and community land rights policies already established in law and the constitution, and to reform environmental and property licensing procedures to incorporate community land rights.

Globally ADM, Bunge and Cargill should:

- Ensure full traceability to farm for all direct and indirect suppliers across all commodity and country supply chains and ensure this information is transparently and regularly published;
- Ensure the Soft Commodities Forum builds strong human rights and land rights due diligence into member action plans, and that soy traceability is transparently reported to farm-level;
- Adopt, publish, and implement credible measures to monitor for, prevent, and provide remedy for land rights abuses in their global supply chains across all commodities traded, incorporating a zero-tolerance stance on illegal land acquisition, and excluding all suppliers operating on land where the free, prior and informed consent (FPIC) of affected communities has not been obtained;

➤ Adopt and implement a public policy position on human rights defenders that includes a zero-tolerance stance on threats and violence against defenders, with the explicit inclusion of those at highest risk, namely land and environmental defenders;

➤ Publicly support binding regulation in nation states requiring corporate supply chain due diligence on human rights, land rights and the environment.

Recommendations for Brazilian government institutions:

➤ The state of Bahia's Coordinator for Agricultural Development (CDA) should accelerate the land titling process for fundo e fecho de pasto communities to enable them to maintain their sustainable livelihoods that conserve the Cerrado, and publish lists and indicative maps of all traditional community lands still to be assessed for titling, to ensure visibility of these communities while the titling backlog is cleared;

➤ Bahia's environmental authority, INEMA, should:

- ensure that traditional communities in the Cerrado are properly consulted about the inclusion of their territories into the State Forest Registry of Rural Properties (CEFIR), and can prevent the validation of CARs that overlap their territories;
- be mandated to exclude rural properties overlapping lands that the Coordinator for Agricultural Development (CDA) deems to be subject to competing community land rights claims or titles, when issuing deforestation permits or approving legal reserves;

➤ The Brazilian government should reform environmental and property licensing procedures, so that rural properties self-declared on the Environmental Rural Register (CAR) cannot be validated – for example under the Programa de Regularização Ambiental (PRA), in line with the Forest Code – where they overlap lands claimed by or titled to indigenous or traditional communities;

➤ The Supreme Court should prioritise case number ADI 5783-2017, in which the Attorney General argues that article 3 (paragraph 2) of law 12.910/2017 of the state of Bahia unconstitutionally and illegally imposes a deadline for fundo e fecho de pasto communities to present land titling requests.

Recommendations for the European Union:

➤ Ensure that the upcoming EU legislation on Sustainable Corporate Governance committed for 2021:

- mandates binding and enforceable human rights and environment due diligence on multinational agribusiness supply chain actors operating in or supplying EU markets;
- requires credible action to identify, mitigate, prevent, and remedy all and any human rights and land rights impacts in global value chains supplying EU markets;
- has the scope to ensure that companies must conduct due diligence sufficiently upstream in their value chains to provide liability for types of harms detailed in this report, and that affected communities can seek redress in EU courts;
- mandates EU member states to provide for sufficient penalties for both non-compliance with due diligence obligations and the actual harms identified in their business operations to meaningful deterrence for companies;
- mandates that as part of their human rights and environmental due diligence, companies must conduct meaningful stakeholder engagement with potentially affected groups in order to identify actual and potential impacts they are involved with early.
- requires companies to continuously respond to affected communities' concerns in every stage of an economic project and business activity as part of effective human rights and environmental due diligence

➤ Ensure that EU legislation on forest risk commodities committed for 2021 upholds international human rights standards and land rights, including a requirement for free and prior and informed consent for indigenous and local communities affected by the production of regulated commodities.

Recommendations for the United States, as the Home State of ADM, Bunge, and Cargill:

➤ Take steps to legally require that traders domiciled in the US demonstrate respect for human rights in their global soy supply chains, specifically as is necessary to prevent, identify and address all harms to local communities and land and environmental defenders.

➤ Officially investigate any credible claims that a domiciled international trader has contributed to illegal acts of violence against a land and environmental defenders

METHODOLOGICAL NOTE

The Brazilian government maintains several national databases where information about land plots can be assessed, including the Information System of the Environmental Rural Register (Sistema Nacional de Cadastro Ambiental Rural, SICAR)¹⁸¹ and the Land Management System (Sistema de Gestão Fundiária, SIGEF).¹⁸²

Data for the size and legal reserve areas of plots featured in this report are taken from the SICAR system (April 2021). This is because a rural producers' compliance with the Forest Code (2012) is primarily assessed based on information provided by the producer about his/her landholdings in the SICAR system, which is periodically updated. To provide a comprehensive view of the numbers of plots and 'ownership' attributed to the producers featured in this report, Global Witness conducted searches for the producers' names against several systems. These included the SIGEF system (last search April 2021) and the State System of Environmental Information and Resources (Sistema Estadual de Informações Ambientais e de Recursos Hídricos) maintained by the Institute for the Environment and Water Resources (INEMA);¹⁸³ both systems contain 'ownership information'. A plot attributed to a producer was then checked against the SICAR system for further confirmation of general size and location. Plots registered to Agropecuária Buriti dos Negros, the former trading name of Agropecuária Sementes Talismã, were included

in Talismã's landholdings. Global Witness excluded from calculations of a producers' landholdings those plots whose registration were marked as 'cancelled'. Global Witness also excluded plots where 'ownership' could not be otherwise clarified or corroborated using official sources. Information on plot size or 'ownership' occasionally conflicted between systems; this may be due to discrepancies in updating. In this case, the most recent information available was taken as authoritative.

Data on the acquisition dates and the relationship between the agriculturally productive plots and corresponding 'legal reserve' plots for plots attributed to the producers featured in the report is taken from legal filings in the producers' repossession claim (case 8000574-63.2017.8.05.0069).

The number, location and boundaries of traditional lands claimed by *fundo e fecho de pasto* communities in Correntina and Jaborandi municipalities is taken from map data provided to Global Witness by the non-governmental Pastoral Land Commission (Comissão Pastoral da Terra, CPT) based on June 2019 data. The overlap between traditional community lands and privately registered land was calculated by overlaying the traditional community lands map with land boundary data for plots registered in the two municipalities taken from the SICAR system (April 2021).

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