

BNDES and its environmental policy

A critique from the perspective of organised civil society

NGO Repórter Brasil
www.reporterbrasil.org.br
Biofuel Watch Center
www.biofuelbrazil.org
February, 2011



Source: BNDES Databank and Verena Glass/Repórter Brasil

Sumário

- Introduction	2
- Socio-environmental criteria in financial institutions.....	3
- BNDES and its socio-environmental criteria.....	4
- Mega-enterprises funded by BNDES and socio-environmental impacts.....	8
- Enterprises in the sugar-alcohol industry funded by BNDES.....	14
- Recommendations.....	19

Introduction

As the largest development bank in Latin America and one of the largest in the world, the Brazilian Social and Economic Development Bank (Banco Nacional de Desenvolvimento Econômico e Social, BNDES) has been breaking loan records in recent years, benefiting mainly manufacturing industries, farming projects, and infrastructure works in segments privileged by Brazil's federal government. In 2010, the bank lent 168.4 billion reais – a 23% increase over the previous year. Not including Petrobrás's 24.7-billion-real capitalisation – a specific deal that pushes numbers up – the increase is 5% over 2009. Nevertheless, BNDES dealt last year almost three times more than it used to deal four years ago.

The same strength seen in the bank's financial performance is not repeated in terms of sustainability. While a socio-environmental department has been created to assess projects to be funded, safeguard policies still lack transparency. From 2009 on, a first effort to broaden criteria for assessing enterprises was focused on the cattle industry, for which the bank developed a specific policy including production chain analysis for meatpacking companies – that is, if cattle providers cause environmental damages, meatpacking companies should also be accountable for them.

That is not repeated in other industries with high potential for impact generation. For instance, in sugar-alcohol, where slave labour and other irregularities such as undue occupation of indigenous lands by the crop have not been satisfactorily dealt with. Furthermore, little attention has been paid to the displacement of agricultural activities caused by sugarcane expansion, such as the pressure on grains and cattle in the Mid-South and the resulting migration to the Amazon¹.

This work by Repórter Brasil's Biofuel Watch Centre examines BNDES's socio-environmental policies and their match with controversial projects it funds, coming to the conclusion that the bank usually does not embrace safeguards that actually avoid transferring funds to large-impact projects.

The mere adoption of checklist for environmental and labour legislation as a policy for socio-environmental assessment, which is predominant in BNDES operations, dates from the 1970s, when banks started to react to the emergence of government environmental departments and tougher legislation on the matter.

Despite being still under harsh criticism regarding policy enforcement and concrete results, a large part of development institutions of size similar to BNDES adopts proactive socio-environmental policies. The bank itself has such initiatives, with its specific policy for the cattle industry, incentive to projects aimed at reducing greenhouse effect gas emissions, and the Amazon Fund, but all that is incipient considering the institution as a whole. It lacks transparency in publicising information about enterprises it funds and a broad dialogue with society, NGOs, social movements, and local communities.

¹ 'Macro effects in Brazil - The impacts of agroenergy crops in four areas of the country' – Report by Repórter Brasil, 4 Cantos, Ecoa and Mater Natura, 2009.

Socio-environmental criteria in financial institutions

Besides national governments, multilateral institutions have been one of the main vectors of pressure to change the behaviour of financial institutions. Even though their adoption by countries or companies is not mandatory, the four hundred conventions and recommendations launched by the International Labour Organisation (ILO) since it was founded in 1919 serve as a guide for national legislations and private agreements by industry².

Also linked to the UN, the United Nations Environment Programme (UNEP) has projects related to banks and sustainability. In 1992, the organisation launched the UNEP Financial Institutions Initiative, in order to involve those institutions in the environmental debate, and the UNEP Declaration of Financial Institutions regarding the Environment and Sustainable Development, a commitment to strengthening their socio-environmental risk analysis departments and to demand that borrowers comply with national and international environmental legislation.

Another reference is the International Financial Corporation (IFC), an arm of the World Bank for funding the private sector. It has had a sustainability policy since 1998, encouraging production projects to improve their socio-environmental performances. In 2002, together with Dutch bank ABN Amro, the IFC started an international coordination of efforts to launch the Equator Principles in the following year, according to which signatory financial institutions should carry out socio-environmental assessment of projects granted with over 10 million dollars. Major Brazilian banks, such as Banco do Brasil, Itaú and Bradesco, have signed the Equator Principles. BNDES chose not to.

In June 2009, IFC experienced the embarrassment of having to cancel a 90-million-real loan to meatpacking company Bertin – which became part of JBS group in that same year. Two thirds of the amount had already been given. The cancellation took place after the release of Greenpeace's report 'Slaughtering in the Amazon', which denounced that the loan had funded enterprises that increased deforestation in the area of Marabá (state of Pará).

Besides, Bertin was accused of purchasing cattle from farms located within the Apyterewa Indigenous Land, in Pará. IFC's socio-environmental criteria for granting the loan are now under review. The new parameters, to be launched still in 2011, shall include previously ignored items such as greenhouse effect gases and impacts on production chains.

² Hopkins, Michael. Corporate social responsibility: an issues paper. Working paper 27. Geneva, ILO, May 2004.

Action strategies

According to the Social Investment Forums (www.socialinvest.org), a Washington-based research organisation, 3.07 trillion dollars were invested in 2010 under SRI criteria in the US – a 380% increase over 1995, when the organisation started its monitoring work. Those figures show the evolution of the socio-environmental approach adopted by companies in recent decades³.

Until the 1970s, the hegemonic view in corporate circles was marked by indifference to those concerns, under the view that environmental damages should be shouldered by society in favour of economic development. Between the 80s and the 90s, governments started to structure their environmental departments, creating legal demands for companies. In that stage of passive environmental management, companies started creating their own environmental departments in order to face legal demands to implant projects and execute activities.

From the 1990s on, several companies started adopting the so-called proactive environmental management. In that new stage, environmental issues started to be discussed by high management and to be seen as a competitive edge and a factor for organisational improvement. Of course, in too many cases, ‘corporate sustainability’ is nothing more than ‘green-washing’, but it should be acknowledged that the increasing debate within the business sector is an important improvement. On the other hand, it is also necessary to underscore that in emerging countries such as Brazil, priorities on economic development still cause companies and governments to place the environment on the back burner, evidencing a paradigm backwardness of at least forty years.

BNDES and its socio-environmental criteria

Brazilian banks’ socio-environmental policies are based on two distinct premises: the country’s legislation – such as environmental and labour-related laws – and voluntary agreements by industry – such as the Equator Principles. Let us examine the first aspect: Brazil’s legal framework includes devices mandating that banking institutions take environmental issues into consideration in their credit operations⁴.

Some of the legislation’ landmarks are: i) Law 6.938, of August 31, 1981, on the National Environment Policy, creating the National Environment System; ii) Law 7.347, of July 24, 1985, providing for public civil lawsuits to be used as specific legal

³ Moreira, Maria Suely. *Estratégia e implantação do sistema de gestão ambiental: Modelo ISO 14000*. 2ª ed. Belo Horizonte: Desenvolvimento Gerencial, 2001, in Ashley, Patrícia Almeida. *Ética e Responsabilidade Social nos Negócios*. 2nd ed. São Paulo: Saraiva, 2005.

⁴ Tosini, Maria de Fátima Cavalcante; Ventura, Elvira Cruvinel Ferreira; & Cuoco, Luciana Graziela Araújo. *Políticas de Responsabilidade Socioambiental nos Bancos: indutoras do desenvolvimento sustentável?* In *Revista da Procuradoria-geral do Banco Central*, vol. 2, no. 2, December 2008.

tools to defend the environment and other diffuse and collective interests; iii) the Federal Constitution, which dedicates a specific chapter to the environment, and its influence on state constitutions and municipal laws, including environmental concerns; iv) Law 9.605, of February 12, 1998, known as Environmental Crimes Law, providing for criminal and administrative sanctions applicable to conducts that damage the environment; v) Law 11.105, of March 24, 2005, on the use of genetic engineering techniques and the release of GMOs into the environment; its article 2, paragraph 4, provides for the co-accountability of banks when funding biotechnology projects.

Besides those legal aspects, Brazil's financial institutions have adopted voluntary initiatives for socio-environmental responsibility, such as the aforementioned Equator Principles and PNUMA initiatives. Another instrument is the Green Protocol, which links loans with interest rates and payback times to the adoption of socio-environmental criteria. The Protocol, created after the establishment of a working group by the federal government in 1995, has been signed by most state- and private-owned banks.



*Indigenous are occupied illegally by a sugarcane plantation in Mato Grosso do Sul
(Source: Verena Glass/Repórter Brasil)*

BNDES signs all the main voluntary environmental mechanisms but the Equator Principles. The bank has included⁵ the concept of environmental protection into its statute and has been demanding Environmental Impacts Studies from projects since the 1970s. Besides, it participated in the financial affairs sector of the United Nations

⁵ Ashley, Patrícia Almeida (ed.). *Ética e Responsabilidade Social nos Negócios*. 2nd. ed. São Paulo: Saraiva, 2005.

Conference on Environment and Development (UNCED), it signed the UNEP Financial Institutions Initiative and the Green Protocol, and released its Environmental Protocol in 1999, signalling that credit risk is directly proportional to the risk of damage to be caused by a project.

When it conducts socio-environmental analyses to grant loans, BNDES says it observes⁶ ‘applicable legislation; specific sector norms; the beneficiary’s policy of social and environmental responsibility; environmental compliance; environmental risk of the undertaking, in addition to social and environmental practices that raise the level of competitiveness of organisations and economic sectors and contribute to the improvement of social and environmental factors, not only of undertakings, but also of the country’.



Deforestation in cattle farm (source: Verena Glass)

After that analysis, the bank may take additional measures such as: carrying out complementary studies; recommending the rectification of the project; offering resources to reinforce mitigating measures; encouraging internal (employees and provision chain) and external (local development, society and the environment) social and environmental investments for beneficiaries; not granting financial support because of non-compliance or social and environmental risks. In cases of automatic indirect operations through partner financial institutions, the bank entrusts financial agents with verifying the client and the supported enterprise’s social and environmental regularity.

⁶ Política Socioambiental do BNDES, available at www.bndes.gov.br

Besides those general rules that apply to all segments to be funded by BNDES, it created specific rules for the cattle industry, often accused of socio-environmental violations, such as deforestation and slave labour. BNDES is the main investor in Brazil's meatpacking industry, with a 10-billion-real investment between 2008 and 2010⁷. To obtain resources, meatpacking and slaughtering companies need to prove that their providers have not been convicted of invading Indigenous Land, discrimination or child or slave labour, and have not occupied areas interdicted by IBAMA.

Focuses for action

The study 'Public Funding and Climate Change – Analysis of Strategies and Practices of Brazilian Public Banks and Constitutional Funds in Climate Change Management'⁸, released by Getúlio Vargas Foundation in 2010, surveyed the latest measures taken by banks in the socio-environmental arena. The study shows that BNDES has strengthened its environmental action after 2009, when it created an Environment Area reporting directly to its board. With 'superintendent' status – above the former management, which focused on technical support – executives are in charge of analysing operational, credit, and investment activities. The new area also has the mission of building institutional knowledge on the subject of the environment.

BNDES also manages the Amazon Fund – a mechanism created by Union Decree 6527/2008 to raise donations for non-refundable investments to preventing and fight deforestation, promote conservation and sustainable use of forests in the Amazon biome, and invest in new monitoring technologies (in all Brazilian biomes). Initiatives to apply the resources are classified as: sustainable production activities; conservation and protection of Conservation Units; scientific and technological development; modernisation and institutional efficiency.

The Getúlio Vargas Foundation recognises that sustainability and especially climate change issues gained strength within the internal strategies of BNDES and other banks included in the study. Nevertheless, it sustains that 'specifically designed products are developed by intermediary management levels focusing on short-term actions, resulting in low representativeness from both the allocation and the demand point of views'.

Civil society organisations have also been underscoring contradictions intrinsic to the bank's very investment strategy: while it funds infrastructure works with extremely high social and environmental impacts in the Amazon, it manages the Amazon Fund to fight deforestation. How the bank deals with indirect impacts in agricultural projects is not clear. When funding sugar-alcohol processing plants, BNDES encourages expansion of sugarcane plantations, which displaces other crops towards agricultural border areas – usually areas with major socio-environmental liabilities.

⁷ 'Financiamentos Públicos e Mudança do Clima - Análise das Estratégias e Práticas de Bancos Públicos e Fundos Constitucionais Brasileiros na Gestão da Mudança do Clima', Centro de Estudos em Sustentabilidade da Fundação Getúlio Vargas, 2010, p. 20.

⁸ Available at <http://intranet.gvces.com.br/cms/arquivos/pnumagvces.pdf>

Mega-enterprises funded by BNDES and socio-environmental impacts



*Protests in Brasília against BNDES by funding Belo Monte hydroelectric plant
(Source: Verena Glass/Repórter Brasil)*

Huge hydroelectric plants in the Xingu and Madeira rivers, projects for celluloid factories in areas of traditional communities, meatpacking companies that multiply cattle heads over the Amazon forest, sugarcane plantations in indigenous areas. A close look at BNDES loans shows the risks and impacts involved in such operations. It also reveals that behind such initiatives, several labour, social, environmental and land-related impacts are added to the liability involving companies funded by BNDES and therefore, the bank itself.

On the one hand, such impacts show the importance that the bank improve its practices, governance, transparency, and funding criteria. At the same time, they underscore the need for other institutions and society as a whole to organise to demand such improvements from the bank, hold it accountable, and dialogue with in order to build them.

The demand for changes in the bank led to the creation of BNDES Platform, which included social movements and organisations. One of the core aims of the effort is to influence the bank to strengthen its public and social development orientation – beyond the ‘economic’ also included in its name. According to Gabriel Strautman, a member of the Platform board, ‘information provided by BNDES to society is totally insufficient.

We are demanding more transparency from the bank'. In Diagnoses and proposals to re-orient Brazil's main public development tool, the platform presents a series of perspectives that would allow BNDES to improve its practices⁹.

Hydroelectric plants in the Amazon

The hydroelectric plants of Santo Antonio and Jirau, on Rondônia's Madeira River, have had their economic and environmental feasibility highly questioned since the beginning of licensing processes. Nonetheless, BNDES has lent a total of 13.3 billion reais to those enterprises. While their construction works accumulate impacts, questions, and lawsuits, the state of Rondônia experiences major changes, with a clear swelling of its capital Porto Velho, especially in the outskirts.



Hydroelectric plants of Santo Antonio was responsible by an ecological disaster in December, 2008, according to Ibama (Source: Divulgação Globo Amazônia)

Buses arrive from all over the country loaded with workers, allured by promises made by deceitful recruiters (locally known as 'cats'). Attraction, disappointment and difficulties are enormous according to Repórter Brasil's news report¹⁰ 'Deceitful recruitment associated to the Madeira construction works fools migrants'. Besides more common labour law violations, even cases of slave labour were seen in the construction works of the Madeira plants¹¹.

The article about deceitful recruitment of workers reports that 'safety problems have even caused deaths in both construction works'. Accidents led to the interdiction of part of the construction site at Santo Antonio, after a lawsuit filed by Rondônia's state labour

⁹ To know the document, see: http://www.plataformabndes.org.br/documento_plataforma.pdf

¹⁰ 'Aliciamento associado à obra no Rio Madeira ilude migrantes', by Bianca Pyl:
<http://www.reporterbrasil.com.br/exibe.php?id=1818>

¹¹ 'Trabalho escravo é encontrado em obra ligada à usina do Madeira':
<http://www.reporterbrasil.org.br/exibe.php?id=1664>

prosecutors). The Rondônia State Labour Authority, an agency of the Ministry of Labour and Employment (Ministério do Trabalho e Emprego, MTE) has issued over 250 violation notifications to the construction site. In the provisional decision to the prosecutors' lawsuit, the federal justice partly agreed to their demand. The final sentence is not scheduled yet.

As for Jirau, in February 2009, BNDES approved a 7.2-billion-real credit for the plant. In October 2010, Rondônia's federal and state prosecutors filed a public civil lawsuit against the state of Rondônia, the city of Porto Velho, the Union, IBAMA, the National Electricity Agency (Agência Nacional de Energia Elétrica, ANEEL) e Energia Sustentável do Brasil (ESBR, the company in charge of the construction works), for not meeting conditions set for health, education, transport, and safety¹².

Besides liberation of slave labour, not compliance with conditions, the existence of public civil lawsuits against Jirau's licensing, the 475,000-real fine for illegal deforestation applied to the enterprise in early 2009, and numerous other denunciations – increase in violence, drug use, child prostitution, health chaos, etc¹³ – no measures are known to have been taken by BNDES in order to enforce its alleged socio-environmental safeguards.



*Local community in Jirau protests against lack of socio-environmental safeguards in July, 2009
(Source: Rondoniaovivo)*

¹² MPF - http://noticias.pgr.mpf.gov.br/noticias/noticias-do-site/copy_of_direitos-do-cidadao/usina-de-jirau-mps-movem-acao-civil-publica-para-garantir-direitos-basicos-de-moradores-de-mutum-parana

¹³ A Crítica - Prostituição 'explode' na maior vitrine do PAC - http://acritica.uol.com.br/especiais/Prostitutas_da_Amazonia-Rondonia-PAC-Jirau-Santo_Antonio-Strip_tease_0_301169948.html

Belo Monte, in the River Xingu (state of Pará) is another emblematic case. Starting by the legal aspect: the plant is the object of 10 public civil lawsuits filed by federal prosecutors (others have been filed by civil society actors). Those suits might lead to the cancellation of licenses and the plant's auction itself). Some preliminary decisions were made by justice recognising the project's legal, environmental e social problems. Even though those decisions were later revoked, the plant's major impacts and risks remain.

In March 2010, the Bank received an extrajudicial notification¹⁴ signed by 22 organisations detailing problems in the project, warning that 'the Provisional License 342/2010 granted by IBAMA to the enterprise has serious problems, because it ignored and transgressed conclusions of the technical team of the agency itself' – and holds the Bank co-accountable for the damages that the plants might cause.

In April, BNDES announced that it would assume the funding of 80% of the works, with special payment conditions over 30 years. The Bank responded to the notification, sustaining that 'BNDES is not aware of specifics of Belo Monte Hydroelectric Plant' since the loan had not been formally requested by the entrepreneurs. But it assured that when requests are presented, the Bank 'examines the project in its several aspects, including the socio-environmental aspect and its economic and financial feasibility'¹⁵.

Despite legal problems and non-compliance with the indigenous and environmental conditions, in December 2010, BNDES granted a 1.087-billion short-term loan to Belo Monte's entrepreneurs.

Meatpacking companies in the state of Pará

Daniel Avelino, a Federal Prosecutor from the state of Pará, points out that there have been a huge increase and several changes in BNDES's role in recent years. Avelino says that the bank's investments in Pará, concentrated in meatpacking, mining, and steel companies as well as in infrastructure works (such as the Belo Monte plant), have been marked by 'an absence of control from the environmental and social point of view'.

The prosecutor adds that the bank's support to major meatpacking companies such as JBS and Marfrig is challenged even from the economic-management point of view¹⁶. 'After a lot of pressure by prosecutors and civil society, companies started to make small changes in their procedures, practices, etc. They realised the importance of not contributing to problems in their production chain', he says, while listing some of the

¹⁴ <http://www.xinguvivo.org.br/2010/10/24/notificacao-extrajudicial-ao-bndes>

¹⁵ In early January 2011, another document was sent to BNDES, written by NGOs Friends of the Earth – Amazônia Brasileira and International Rivers, ("Mega-projeto, Mega-riscos: Análise de Riscos para Investidores no Complexo Hidrelétrico Belo Monte", <http://www.amazonia.org.br/arquivos/374461.pdf>), which examines the financial risks of the project. There was no response.

¹⁶ 'MPF vai investigar apoio do BNDES ao JBS': http://economia.estadao.com.br/noticias/not_54991.htm

core problems seen in the cattle industry in the state, such as deforestation and slave and child labour.

In 2009, when pressures over the industry increased, BNDES changed aspects of its funding to meatpacking companies – forcing the industry to improve its practices. ‘It then seemed highly positive’, recognised Avelino. Until 2011, however, norms had not been entirely enforced. The bank has not conducted an audit on the new regulation, for instance. ‘We are studying which measures to take to face that situation’, he explains, adding that the scenario demands new legal theses that might even include the bank’s accountability.

According to Avelino, BNDES needs to define forms of enforcing the norms. ‘And there has to be a more public way to bring that information to society, exposing companies that received funds and which of them are complying’. Right now, federal prosecutors have focused their action in the search for explanations. When they have that information, they shall examine the procedures to be adopted with the bank.

Eucalyptus and communities

Another industry where BNDES provides strong support and participation – even as a partner to some companies – is paper and celluloid. It collects conflicts with traditional communities and other segments, which have little dialogue with the bank. In the state of Maranhão, Mayron Régis, a member of the Carajás Forum, explains that since the 1980s there has been an ‘intrinsic’ relationship between BNDES and eucalyptus in the borders of states of Maranhão, Piauí, Tocantins and Pará. In the Lower Parnaíba region, Maranhão, where the towns of Santa Quitéria, Urbano Santos and Anapurus are located, the dispute between eucalyptus and soybean for land has consistently damaged communities. Deforestation hits areas of extractive activities (pequi, bacuri, babassu, and others), and land conflicts multiply.

The region’s potential for timber production has awakened the greed of several segments. Vale, Gerdau, Margusa, Suzano and other important business groups in Brazil’s economy carried out a land race to the region, marked by violence and illegality. Land grabbing denunciations involved Suzano Papel e Celulose¹⁷. The company intends to reach 7.2 million tons of paper and celluloid produced a year by 2015 – of which 1.3 million tons would come from a new unit in Maranhão and 1.3 million from a new factory in Piauí – both would be among the largest ones in the world.

Régis estimates that in Santa Quitéria alone, 70 thousand hectares would be used to plant eucalyptus. He sustains that organisations have not gone to BNDES to talk about the matter because they see the bank as historically ‘closed to dialogue’. On the other hand, ‘local organisations have no experience in dealing with financial institutions’. In December 2010, the bank approved a 2.7-billion-real loan to Suzano in Maranhão.

¹⁷ <http://www.luiscardoso.com.br/politica/suzano-faz-grilagem-no-maranhao-e-falsifica-assinatura-da-governadora-roseana-sarney>

BNDES then had 4.38% of shares in the company. With the loan, that share might increase, as well as the bank's power over the company¹⁸.

In the state of Espírito Santo, eucalyptus and pine plantations have caused several impacts. And, once again, BNDES is an active part in consolidating those enterprises. Since the 1960s, the strongest impact of the activity has been land-grabbing on traditional communities' territories, such as Tupiniquim and Guarani Indians in the town of Aracruz and quilombola (slave descendant communities) of Sapê do Norte, in Conceição da Barra and São Mateus. Part of the land has been recovered, especially by the Indians after 2005.

According to Winnie Overbeek, from NGO FASE-Espírito Santo, BNDES was one of the main sources of major loans to the celluloid industry (especially to Aracruz) in the state. Besides granting credit, the bank was a shareholder at the company in several expansion projects through its subsidiary BNDESpar. In the purchase of the company by the Votorantim Group, which involved 2 million reais granted by BNDES, it raised its participation in the enterprise and started to own 30% of the new company, Fibria. Therefore, the celluloid industry in the state was possible based on billions of public money. 'Our money', underscores Overbeek, according to whom BNDES should fund 'economic activities that really benefit the population without causing major negative socio-environmental impacts'.

Given the absence of dialogue with the bank – and the hasty increase in loans to the industry in Espírito Santo – FASE-ES chose to enter Platform BNDES and Brazil Network on Multilateral Financial Institutions (Rede Brasil sobre Instituições Financeiras Multilaterais). Overbeek sees modest results of those efforts with the bank. For instance, the BNDES website started to offer more information about its policies. On the other hand, 'we were able to establish more interconnection among communities and social movements that suffer impacts and support organisations', he says.

In the state of Mato Grosso do Sul, the absence of mobilisation to face the march of celluloid companies is yet another aspect to attract enterprises. Disregard for Indigenous peoples' rights also makes it easy to expand eucalyptus and pine plantations in the state, while indigenous peoples struggle to homologate their land. One of the industry's national hubs, the town of Três Lagoas, Mato Grosso, has units of Fibria and International Paper. Besides, the Eldorado Group (JBS/MCL) will build the world's largest celluloid factory in that town. The investment will amount to 4.8 billion reais, of which 3.8 billion will come from funding agencies, including BNDES.

According to Mieczslau Kudlavicz from the Land Pastoral Commission in Mato Grosso do Sul, even in Três Lagoas there is no organised movement to face the advancement of eucalyptus – not even the Movement of Landless Rural Workers, MST. 'There are rural worker unions, which do not carry that struggle'. Kudlavicz points out that expansion of those plantations is already affecting cattle as well as beans, corn, coffee, and rice in the area. He adds that in July 2011, the paper and celluloid industry in the state will be the subject of an important seminar at the Mato Grosso Federal University.

¹⁸ BNDES terá direito a veto em decisões da Suzano:
http://www.estadao.com.br/estadaodehoje/20101222/not_imp656738,0.php

Enterprises in the **sugar-alcohol** industry funded by BNDES



Cosan company's Nova América uses sugarcane harvested in an indigenous area in Mato Grosso do Sul (Source: Marcos Homero Lima/MPF-MS)

According to data provided by BNDES, between 2008 and 2010, the bank funded over 90 sugar-alcohol enterprises, spending some 17 billion reais in projects like plantation and industrial capacity expansion, energy co-generation, and others. Specifically regarding the labour law aspect, a government decision mandates that BNDES check and consider, both for granting loans and for cancelling them, the Ministry of Labour and Employment's Dirty List of Slave Labour (companies, properties and owners included in the list are not eligible for public funding). The same procedure is adopted for environmental issues, based on the IBAMA'S list of areas interdicted because of environmental crimes.

Regarding tax legislation, in turn, loans demand presentation of clearance certificate regarding debts to the union, and during the stage of operation monitoring, 'beneficiaries and enterprises have their tax and social security status checked'. A survey conducted by Repórter Brasil found that only 15 out of 89 plants listed in the BNDES loan databank for 2008, 2009 and until June 2010 had not been subjected to labour, environmental or tax-related lawsuits during the period¹⁹.

Labour-related problems found in inspections conducted by labour prosecutors, which generated investigations, include slave labour, degrading labour, workers deceitful

¹⁹ Surveys conducted with labour prosecutors, state environmental agencies, and the registry of outstanding debts to the Union.

recruitment, traffic of human beings, FGTS (Time of Service Fund) fraud, material and moral damages, labour intermediation, abuse of employee's directive power, lack of individual protection equipments, health and safety in agricultural activities, among others. Fines for environmental crimes refer mostly to plantations in improper areas and illegal burnings.

Tax problems, in turn (outstanding tax debts to the Union) were found in five of the plants with loans (Usina Colombo S/A – Açúcar e Alcool, which received a 122,743,634-real loan; Usina Iacanga de Açúcar e Alcool Ltda, with 52,727,596 reais, Usina Ipiranga de Açúcar e Alcool Ltda, 27,992,934 reais; Abengoa Bioenergia Agroindustria Ltda, 291,892,346 reais; and Açucareira Quatá, 163,403,783 reais – all located in the state of São Paulo)²⁰. Questioned by Repórter Brasil, BNDES provided no explanation on those cases.

Considering BNDES's assertion that it assesses legal issues of beneficiaries, criteria used are not clear. It is true that the bank has followed the premise of excluding from its portfolio companies included in the Dirty List of Slave Labour, but the existence of previous investigation procedures for labour or environmental crimes – lawsuits that might lead to the inclusion in the Dirty List or even the cancellation of environmental licenses – is ignored in the bank's legal and risk assessments.

Emblematic cases – like Brenco (which has BNDESPar as its partner), where 17 workers were liberated in Campo Alegre de Goiás, state of Goiás, in February 2008, or Cosan, included in the Dirty List of Slave Labour on December 31, 2009, for having kept 42 workers under conditions analogue to slavery – show the need for more explanations by the bank about the criteria it uses when assessing legal issues and the effectiveness of the Dirty List as a reference to grant loans.

During the short period when Cosan remained in the Dirty List, which it left after a preliminary court decision on January 8, 2010, BNDES cancelled the loans, only to resume them after the preliminary decision and even before the final sentence – which confirmed the withdrawal of the company from the List but did not challenge its conviction for slave labour in the Ministry's administrative procedure.

But it should be pointed out that Cosan's labour problems are not limited to the administrative procedure for slave labour. In an article published on August 3, 2010 (Cosan violates labour agreements and accepts to pay 3.4 million reais), Repórter Brasil showed that labour irregularities remain in several of the group's plants, including often breaking Conduct Adjustment Commitments, (Termos de Ajustamento de Conduta, TACs) signed with labour prosecutors in São Paulo. In May 2010, Cosan had to sign TAC no. 7689/2010 to replace three others (signed on March 30, 2007 and on September 4 and October 10, 2008).

Violation of previously signed agreements was found during inspections conducted in the plant in 2008 by the Ministry of Labour and Employment and by labour prosecutors. In July 2008, the company signed a new amendment to the TAC for having broken the

²⁰ Search conducted on the National Treasury's Solicitor General's website, <http://www2.pgfn.fazenda.gov.br/ecac/contribuente/devedores/listaDevedores.jsf>

terms agreed upon since 2005 in its Univalem unit, located in the town of Valparaíso, São Paulo.

A survey conducted by prosecutors on problems found by inspections in plants belonging to the Cosan Group in 2009 and 2010 points out irregularities such as the extinction of individual labour contracts, excessive working hours, overtime, unhealthy and hazardous activities and operations, unpaid dismissal fees, problems with individual protection equipments, production incorrectly recorded, irregular working papers, labour intermediation, among others.

In March 2009, newspaper Folha de S. Paulo published a story on three other cases of loans granted to companies with labour law problems. 'Usina São João Açúcar e Alcool, for instance, received 456.6 million reais from BNDES to enlarge two plants in the state of Goiás. One of them, Agropecuária Campo Alto, in Quirinópolis (294 km from Goiânia), had 24 violation notifications last year [2008], with 421 workers found in degrading conditions, bad lodging conditions and lack of individual protection equipments, according to the Ministry of Labour. The inspection took place in May (with a 176.6-thousand-real fine), and the contract [with BNDES] was signed in June [de 2008].'

Rio Claro Agroindustrial received 419.5 million reais to install three sugarcane-processing units. In one of them, in Caçu (340 km from Goiânia), bad lodging conditions and lack of protection equipments were found. Labour prosecutors speak of a 'degrading situation' in workers' conditions. The inspection took place in February (the company was fined at 234,6 thousand reais), and the contract with BNDES was closed in December [of 2008]. Usina Porto das Águas received 278.9 million reais for a unit in Chapadão do Céu (595 km from Goiânia). In that unit, besides denunciations of workers deceitfully recruited by 'cats' and subjected to degrading work, bad lodging conditions and lack of equipment were found. The contract was signed in May and the inspection took place in June, and there was a fine of 128.6 thousand reais.

Indigenous lands

According to BNDES, one of the criteria adopted for loans is that candidates meet legal environmental demands, 'especially the ecological-economic zoning and the agro-ecological zoning'. According to the Sugarcane Agroecological Zoning, the crop is banned from the Amazon, Pantanal, the Upper Paraguay Basin and indigenous lands – a norm adopted as a resolution by the National Monetary Council on November 26, 2009.

In Mato Grosso do Sul, BNDES funded two processing plants whose production came partly from indigenous lands acknowledged by the union. Nova América, whose industrial area belongs to the Cosan Group, received a 24-million-real loan from the Bank on October 30, 2009, to 'install an industrial unit to produce sugar, alcohol and electricity, with processing capacity of 1.5 million tons of sugarcane in the 2009/10 harvest, reaching 4.5 million tons in the 2013/14 harvest'. The companies' Caarapó unit leases the Santa Claudina farm, which belongs to state deputy and agribusinessman José Teixeira (DEM) and overlaps with the Guyraroca Indigenous Land. The area has

already been inspected by FUNAI and had its identification and delimitation statement published on the Union' Official Gazette.

The São Fernando processing plant, in Dourados, received a 33.8-million-real loan on December 12, 2008. Until April 2010, the plant leased the El Shadai farm, which is within the Jatayvary Indigenous Land in Ponta Porã – a 8.8-thousand-hectares area recognised by FUNAI – a fact disregarded by the bank in the loan agreement. The leasing was terminated because of a Conduct Adjustment Commitment celebrated between the company and federal prosecutors in Dourados, on April 22, 2010.

Responding to a recommendation by federal prosecutors about problems found in the funding of sugar-alcohol activities in indigenous lands in Mato Grosso do Sul, on January 7, 2011, BNDES stated that 'regarding the aforementioned recommendations [not granting loans to enterprises overlapping with any of 38 Indigenous Lands], it has no means to identify enterprises established in rural areas located within areas of traditional indigenous occupation', since it does not have verifying devices in the area, such as the Dirty List of Slave labour and the list of areas interdicted by IBAMA. When problems arise, BNDES would establish corrective measures.



Guaranis in Mato Grosso do Sul (Source: Verena Glass/Repórter Brasil)

According to federal prosecutor Marco Antonio Delfino, BNDES's funding policies are not aligned with those of other federal government agencies. Since BNDES-funded enterprises end up causing problems in environmental units, indigenous lands, agrarian reform settlements, 'actions go in opposite directions'. Conflicting policies lead to waste of resources and damage efforts. The money granted by BNDES to production in a certain area, which, after all, is recognised as indigenous, might never be recovered.

And the land offered to the bank as collateral for that loan cannot be used for that purpose either.

Inconsistence of assessment and monitoring tools

The creation of the Dirty List of Slave Labour by a presidential decree as well as the List of Areas Interdicted by IBAMA, and the exclusion of companies listed from state banks' funding portfolio are an improvement in controlling public investments. But that is not enough to enforce the social role to be played by those operations, since there seem to be failures in the application and monitoring of the other safeguards. According to BNDES, the assessment of requests for loans and their respective enterprises includes 'the main social and environmental impacts, including their surroundings', and the enforcement of 'possible social and/or environmental conditions set based on the analysis (of the client and the enterprise), complementary to legal demands, when applicable'.

In the operation monitoring stage, BNDES sustains that it verifies, among other aspects, 'the fulfilment of any mitigating measures, conduct adjustments obligations, and conditions included in the contracts and environmental licenses'. Considering the several levels of labour law violations found at inspections by labour prosecutors' and Ministry of Labour Employment in the sugar-alcohol industry, it would be the Bank's obligation, according to its own criteria, to consider the concurrent problems in several areas as social impacts and proceed with sanctions and cancellation of loans.

As an example, Abengoa (a Spanish-capital company with units in São João da Boa Vista and Pirassununga, São Paulo), which received a 291,892,346-real-loan in June 2010, besides its tax debts already mentioned, is under investigation for labour-related problems with working hours, the so-called hours in excess and termination of contracts before they are paid, payment of regular overtime, resting periods, breaks at work²¹ as well as at least six fines and two warnings for environmental crimes applied by São Paulo's Environmental Technology and Sanitation (Companhia de Tecnologia de Saneamento Ambiental).

According to BNDES's own rules, this case would be subject to sanctions regardless of the lists on slave labour and areas interdicted by IBAMA, after irregularities are proved in examination of fiscal and social security criteria, social impacts (workers' rights violations) and environmental impacts (including the enterprise's surroundings). On the other hand, it can be said that the mere existence of Conduct Adjustment Commitments, often used to 'accommodate' socio-environmental problems, does not guarantee the interruption of irregularities and impacts as shown by the above case of Cosan (which repeatedly broke those Commitments). To meet its own safeguards, BNDES would have to monitor the Commitments and apply appropriate sanctions.

Still about Cosan, it should be underscored that the preliminary and final court decisions excluding the company from the Dirty List did not cancel its administrative conviction for using slave labour. That is, whether or not it is in the Dirty List, BNDES is funding an enterprise convicted for slave labour practices.

²¹ Ongoing lawsuits reported by the labour prosecutors' office in the state of São Paulo.

A similar analysis applies to Brenco, caught in the act using slave labour in 2008. On May 11, 2009, the company was benefited by a provisional sentence granted by the 12nd Labour Court in Brasília, establishing that MTE's Labour Inspection Department (Secretaria de Inspeção do Trabalho, SIT) 'refrain from including the company's name (...) in the "Registry of Employers that have kept workers under conditions analogue to slavery" until all possibilities for discussion of violations registered have been exhausted, even in the judicial realm'. Through the Office of the Solicitor General, however, the government filed an ordinary appeal, which cancelled the preliminary decision favouring the company in July 2009.

In November 2010, the first decision (favouring Brenco) was restored by the Regional Labour Court, and the Solicitor General has filed a new appeal. The Brenco case is even more complex since BNDES is joining a project whose violations of workers' rights and social impacts are targeted by lawsuits filed by the federal government itself through the Solicitor General Office. At least, in order to follow its own legal safeguards, the bank should cut its ties with that enterprise given the current legal issues.

Recommendations

In spite of improvements such as publicising data on loans on its website and strengthening its environmental department, BNDES still has serious problems of transparency regarding publicity of social and environmental safeguards for the projects it funds, enforcement and monitoring rules, as well as sanctions applicable when those criteria are not met. It has also been giving specific and occasional attention to impacts caused by production chains to which its funded enterprises are linked.

Dialogue with civil society organisations by the bank's board is hard and fledging, as could be verified by Repórter Brasil during the process of researching for this report. With no open channel, the institution deviates from advanced models for building socio-environmental indicators for credit assessment, which use the expertise of NGOs, social movements, and local communities in their construction and improvement. Even though the bank took steps in that area – as can be seen in the creation of specific criteria for the cattle industry – they were short and need to be expedited. Other industries, such as sugar-alcohol, need specific mechanisms to assess their environmental risks.

Therefore, in order to allow public access and control of its criteria and its operations, BNDES must clearly publish on its website:

- The social safeguards it demands from projects it funds.
- The environmental safeguards it demands from projects it funds.
- The legal safeguards it demands from projects it funds.
- The land-related safeguards it demands from projects it funds.
- The economic safeguards it demands from projects it funds.

- The procedures to enforce the safeguards above as well as appropriate measures of adjustment and sanctions.

As for the monitoring of enterprises to enforce safeguards after loans are granted, the bank must build a structure to be able to assess impacts of the projects funded, publicising audits and their methodology and sanctions applied. As for cases of conviction for environmental and slave labour crimes, measures are needed from BNDES regardless of the companies' inclusion in MTE and IBAMA lists. When those measures are linked solely to the inclusion in those lists, the bank ties up its socio-environmental policy to formal mechanisms and reduces its potential. It should be underscored that part of BNDES's resources come from the Workers Support Fund (Fundo de Amparo ao Trabalhador), so that they should never be applied in enterprises that violate labour legislation. As an accessory mechanism in monitoring funded enterprises, BNDES must adopt a policy to receive denunciations and recommendations from public attorneys.

For purposes of legal assessment of enterprises asking for loans or already funded, BNDES must focus on ongoing lawsuits that might imply stopping their end-activity as a barriers to grant loans until final decision are made. For loan assessment and requests purposes, BNDES must carry out public hearings with populations threatened or affected by the enterprise in question, and consider their recommendations when funding projects. Repórter Brasil also recommends that the bank create external and independent sustainability committees to help its administration board, as already done by private companies and public institutions in Brazil and abroad. The bank's environmental risk assessment's must also consider indirect impacts caused by the enterprise funded, both in rural and in urban areas.

Expediente

Repórter Brasil
Organização de Comunicação
e Projetos Sociais

General coordination
Leonardo Sakamoto

Biofuel Watch Center
Marcel Gomes (coordination)
Antonio Biondi
Verena Glass

Financial management
Fabiana Garcia

Administrative support
Edilene Cruz

Address
São Paulo
Bruxelas Street, 169, São Paulo-SP,
CEP 01259-020
Phones: (55) (11) 2506-6570
biobr@reporterbrasil.org.br

Support

Cordaid 

 

Solidaridad 