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## [Brazil, Mining and Biodiversity: From environmental degraders to environmental services providers: When the line between destroying and conserving is merely rhetorical](#)

The parliamentary coup that brought Michel Temer's illegitimate government to power, was not what set in motion one of the central goals of Brazil's current mining policy: to expand mineral production and its contribution to the national GDP. That goal, recently announced by the Temer government, already existed in President Dilma Rousseff's 2013 presentation of motions, when she sent the Legislature a proposal for a new Mining Code for the country. The crucial difference between the two governments is perhaps that with Rousseff the State was given a greater coordination and planning role given to the State in that process. During the debate on a new Code, Congress blocked these intentions. The group of congress people financed by large mining companies (1) made sure to remove all proposals guaranteeing any kind of public governance on mining policy from the new law, and to include articles that further expanded market access possibilities for mineral resources (2).

Congressional parliamentary amendments restricted the conditions the government had proposed on the authorization of titles; and they simplified concession procedures, diminishing the State's ability to define priorities on which minerals and areas should be exploited. The amendments also included articles that increased guarantees to mining companies to access land and water, granting them the right to use all the water necessary to operate their concessions. Likewise, they gave the National Mining Agency—to be created under the new law—the prerogative to expropriate lands for mining. The new Code sought to neutralize the effects of laws and regulations that, by guaranteeing rights, create restrictions on mining activity. One of the proposed amendments was to allow mining exploitation in conservation areas, where this activity is currently prohibited; and to require the National Mining Agency's approval to create protection areas for certain stakeholders (such as conservation units, indigenous lands and quilombola territories—communities formed by slaves who managed to escape captivity).

With Temer, the debate on the Code has lost centrality, as the government itself has accelerated the implementation of Parliament's proposals through provisional measures and ordinances.

The current fall in the price of mineral commodities creates a favorable climate for these measures to be implemented, as a way to sustain a sector that brings commercial revenue to the country, and to maintain the stability of an economic policy that is highly dependent on external resources. However, considering cycles of rise and fall in commodity prices, the Temer government's greatest legacy on mining policy will be laying the foundation for the country's mining companies to maximize profits during the next price boom.

### **Auctioning off borders, reserves and traditional peoples' lands to Big Capital**

In one swift movement, Temer's government wants to create the National Mining Agency through a precautionary measure, and open up Brazil's border areas to mining exploitation. This takes decision making on border area activities away from the National Defense Council, and allows companies

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mostly with foreign capital to act in these areas—which is currently prohibited.

In order to restore "investor confidence and re-establish legal certainty", the Ministry of Mines and Energy (MME) has publicly committed to simplifying concession procedures in order to reduce the timeframe to begin mining projects. It has also committed to auctioning more than 300 areas that the Mining Resources Research Company (state entity linked to the MME) has already investigated, most of which contain confirmed deposits (3). Through a provisional measure, the MME also aims to define changes in calculation rates and the distribution of mining royalties, which were under discussion for the new Code (4). Since the objective is to attract investors, the tax burden will probably continue to be highly beneficial for this sector. In addition to enjoying countless tax benefits, the mining sector in Brazil has one of the lowest royalty rates in the world; the formula used to calculate these rates is very attractive, since—unlike in most countries—it uses net instead of gross turnover (5).

Another measure that supports mining expansion in the country is the MME's Ordinance N° 126, which initiated the decline of the National Copper Reserve and Associates. The Reserve was created in the early 1980s, with the intention of exploiting existing mineral reserves in the area—mostly rich in gold—through a special regime, and under the control of the Mining Resources Research Company. The Reserve area, located in Pará and Amapá states, covers 46,000 square meters; and it was kept closed to mining companies. With the disappearance of the Reserve, the government wants to leave the area to private initiatives, catering to constant demands by mining companies, which consider its mineral reserves volume to be as important as the Carajás mining province. The bad news for the mining sector is that 69 percent of the reserve area currently overlaps with indigenous lands and conservation units, where mining is not permitted.

The declarations made in April by then president of the National Indian Foundation (FUNAI, by its Portuguese acronym) that indigenous lands should be opened to mining, as well as the modification of provisional measures MP 756 and 759 which propose to reduce protected areas in the Amazon by thousands of hectares—areas where there are strong mining and agricultural interests—points to the convergence between the government and sector representatives that have control in Congress. Bills that attack the national system of conservation units, aim to change environmental licensing laws or even eliminate them (PL 3729/2004, PL 654/2015, PEC 65/2012), and seek to open indigenous lands and traditional populations' territories to mining and other economic activities with huge socio-environmental impacts (PL 1610/1996, PEC 215/2000), are gaining momentum at this juncture. And the government shows willingness to move them forward.

### **The perverse logic of conservationist rhetoric that creates equivalence between degrading and conserving**

So far, this is nothing new. Relaxing constitutional environmental protections and restricting territorial rights do not, in and of themselves, constitute new agendas for the mining and agribusiness sectors. The new strategy refers to developing a rhetoric that seeks to create equivalence between degradation and conservation. At the heart of the argument is the hypothesis that it is possible to strike a balance between a project's impacts on biodiversity, and the benefits obtained through its voluntary offset initiatives.

This transformation occurs through a set of strategies that include deregulating mandatory environmental protections (as we are currently seeing), and creating legal, conceptual and methodological bases to measure both the biodiversity losses caused by large development projects, and the gains in conservation obtained through *biodiversity offset* activities. In practice, these are

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investments to conserve areas where there is an ecosystem similar to the one destroyed. Supposedly, this could enable companies to have a "zero net loss" in biodiversity, and even a "net gain" for conserving a "quantity" of biodiversity equal to or greater than that which was destroyed. In addition to creating a positive image for certain sectors (whose activities have known negative impacts on biodiversity), achieving "measurable net gains" in biodiversity makes it possible to create environmental "assets," which, transformed into commodities of comparable quality and quantity, could be sold.

Through a discursive political maneuver, polluters become "environmental service providers," and new commodities are created, enabling the emergence of new markets. These initiatives also increase access to land for companies which, in addition to already having territorial and spatial control over the areas where they conduct their activities, also end up having control over lands used for offsets.

This lobby has already been effective in Brazil. In 2014, the Biodiversity and Forests Secretary of the Ministry of Environment participated in a gathering about offset models applied to mining. The global mining sector, by the way, is the one that has subscribed most to this initiative (6). The Secretary publicly defended the importance of developing tools to build the biodiversity market (7).

In 2010, the Brazilian Business Movement for Biodiversity was created (MEBB, by its Portuguese acronym). This entity seeks to influence the development of Brazil's biodiversity strategy, and one of its central goals is to improve legal and regulatory frameworks on issues such as appraisal of and access to biodiversity.

As of 2017, the company Hydro, which has a bauxite mine in Paragominas (Pará State), has purported to achieve a "no 'net loss' in biodiversity." To reach this goal, it has financed "biodiversity restoration" and monitoring activities in the only remaining forested area in Paragominas. Such activities include cataloguing of the variety of species and their behaviors, and developing pilot research on restoration techniques and methods to measure results (8).

Alcoa has followed a similar path in Juruti Velho (west of Pará state), where it also extracts bauxite. With the goal of "generating a net positive impact" on biodiversity, the company has voluntarily invested in the maintenance of three environmental parks, in Poços de Caldas (18 hectares), São Luís (1,800 hectares) and Tubarão (12 hectares). It has also developed programs to rehabilitate mining areas, where it defines biodiversity "indices," in order to establish performance metrics for ecosystems businesses. According to the company's sustainability manager, this is "one of the main challenges of corporate biodiversity management." (9)

While Brazil anticipates requiring mandatory offset actions for biodiversity loss due to activities with high environmental impact, mining companies' interest in carrying out these actions has led to territorial disputes. In the state of Minas Gerais, the National Steel Company (CSN, by its Spanish acronym) and Ferrous Resources of Brazil are in a legal battle over an area which, despite having no iron ore, is valuable for creating environmental offsets for their mining activities (10).

Behind the conservationist rhetoric on biodiversity offsets, there is a consolidation of new biodiversity markets in the medium term, which will impose new forms of territorial regulation connected to institutions and multi-scalar actors (financial market operators, cooperation agencies, consultants, etc.). This market consolidation also grants companies—which have been heavily denounced for socio-environmental impacts and rights violations—the power to define nature, place a value on it, and protect it under a utilitarian and colonial paradigm. This paradigm ignores and imposes upon the

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multiple forms of biodiversity stewardship and production that peasants, indigenous peoples and other traditional peoples have historically carried out, through their creativity and social struggle. The areas where they live are now the frontiers for these new forms of capital accumulation.

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(1) The study [Quem é quem nas discussões do novo código da mineração](#) ("Who's who in the discussions on the new mining code"), prepared by the Brazilian Institute for Social and Economic Analysis (IBASE, by its Portuguese acronym), analyzed campaign donations made by the largest mining companies operating in the country (Vale, Votorantim, AngloGold, Usiminas, Kinross and MMX). It showed the enormous political influence that mining companies have, along with parliamentarians who make decisions on the issue: those who received the most donations are precisely the members of the Mines and Energy Commission—a permanent fixture in the House and the Special Commission on Mining—which exists specifically to discuss reform of the Code.

(2) For an analysis of the proposal for the new regulatory framework on mining, and the amendments made by congressional representatives, see: <https://fase.org.br/pt/acervo/documentos/o-novo-codigo-mineral-menos-governanca-publica-sobre-o-aproveitamento-dos-recursos-minerais-e-mais-imprescricao-na-garantia-de-direitos-aos-afetados/>

(3) See <http://www.brasilmineral.com.br/noticias/governo-quer-restaurar-confian%C3%A7a-de-investidores> and <http://www.cnf.org.br/noticia/-/blogs/setor-mineral-espera-capital-estrangeiro-em-futuros-leiloes>

(4) See <http://economia.estadao.com.br/noticias/geral,mp-que-cria-agencia-da-mineracao-esta-pronta-para-ser-publicada,70001784332>

(5) See the [technical note](#), recently published by the Institute for Socio-Economic Studies (INESC, by its Portuguese acronym), which analyzes in detail the fiscal and tax aspects of big mining in Brazil (referring to, respectively, the State's capacity to access mining revenues, and the means or instruments through which these revenues are collected).

(6) In 2012, 38 companies signed onto “net loss zero commitments,” which consist of developing “offset” activities for “losses” in biodiversity. 15 of them were industries from the mining sector. See *Environmental regulation in the Green Economy: Changed to facilitate destruction*. WRM Newsletter 212. <http://wrm.org.uy/articles-from-the-wrm-bulletin/section1/environmental-regulation-in-the-green-economy-changed-to-facilitate-destruction/>

(7) See <http://www.canalrural.com.br/noticias/agricultura/compensacao-voluntaria-para-biodiversidade-tera-projeto-piloto-brasil-45300>

(8) See <http://www.otempo.com.br/capa/economia/mineradora-destr%C3%B3i-em-minas-e-compensa-no-nordeste-1.811277>

(9) See

(10) ABDALA, Fabio. *Mineração e biodiversidade: uma associação viável e necessária para a sustentabilidade dos territórios com mineração*. 3º. Anuário Mineral do Pará 2014. Simineral, Belém/PA, March 2014.