

## EXECUTIVE SUMMARY

# WHERE DOES BRAZIL STAND WITH THE IMPLEMENTATION OF THE FOREST CODE?

A SNAPSHOT OF THE CAR AND THE PRA IN BRAZIL'S STATES



## INTRODUCTION

Brazil has a terrific opportunity to align its agricultural growth with the protection of its natural resources. According to estimates, Brazil could double its agricultural production using only existing croplands, without clearing any new land.<sup>1</sup> The Law to Protect Native Vegetation (Law no. 12,651/2012), commonly known as the Forest Code, is fundamental to encouraging Brazil's efforts in this direction. Not merely a tool to protect Brazil's remaining forests, the code could drive intensified land use and provide incentives for expanding agricultural production via productivity gains rather than by clearing new land for crops.

Although it is a federal law, the Forest Code is implemented at the state level, so states' efforts to regulate and operate its rules and instruments are critical to its success. States must take a series of actions including:

1. regulating environmental compliance procedures, including requirements of the **Rural Environmental Registry (Cadastro Ambiental Rural - CAR)** and the **Environmental Compliance Program (Programa de Regularização Ambiental - PRA)**, and regulating methods and parameters for restoring native vegetation;
2. setting up information systems that can handle a large amount of data on rural properties;
3. acquiring technical resources such as satellites and cartographic databases; and
4. hiring and training human resources.

To track progress towards the implementation of the Forest Code, it is essential to map, analyze, and continually monitor states' efforts. This will help identify successful actions taken by states that are further along in the process, with the purpose to replicating those actions. It will also help policymakers create customized strategies to address the specific challenges and profiles of each state.

<sup>1</sup> Antonaccio, L., Assunção, J., Celidonio M., Chiavari, J., Leme Lopes, C., Schutze, A. **Ensuring Greener Economic Growth for Brazil**. Rio de Janeiro: Climate Policy Initiative, 2018. Available at: <https://climatepolicyinitiative.org/wp-content/uploads/2018/12/BID-Ensuring-Greener-Economic-Growth-for-Brazil.pdf>

Various proposals for amendments to the Forest Code have been introduced in Brazil's National Congress, on the grounds that the law should be modified because states are having trouble implementing it, and rural producers are thus unable to comply with its regulations. But the reality is quite different in most states. Significant efforts are being made to regulate the Forest Code and create a robust environmental compliance system for rural properties. Nearly all states have shown remarkable progress.

Therefore, no change to the Forest Code should be proposed without a careful analysis of its impact on the states' implementation of the code. Most states have already regulated some aspects of the federal law, often with the active participation of rural producers and civil society. To make a change to the federal legislation that would substantially alter state regulations would be to disregard the efforts and resources that have already been devoted to creating and implementing these regulations.

This document summarizes the main findings and takeaways of a full report (available in Portuguese)<sup>2</sup> produced by analysts from Climate Policy Initiative/Núcleo de Avaliação de Políticas Climáticas da PUC-Rio (CPI/ NAPC PUC-Rio). The full report provides an overview of the Forest Code in Brazil's states, and gives a detailed analysis of regulatory efforts at the state level. It identifies actions already underway in the states, progress made, major challenges and flaws, and primary public policy recommendations.

The full report gives policymakers and others working directly or indirectly on implementing the Forest Code an objective view of how the law is being regulated and implemented in each of Brazil's states. It will help them identify major challenges as well as opportunities to move forward, and will serve as a guide on how to direct their efforts and available resources. Moreover, the report provides important information not previously available to the public, and will be a tool for transparency and insight into states' actions. This work is the result of an extensive data collecting effort, including a workshop, questionnaires and bilateral conversations with state-level representatives officials.

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2 Chiavari, J.; Lopes, C. L. Relatório. **Onde estamos na implementação do Código Florestal? Radiografia do CAR e do PRA nos estados brasileiros**. Rio de Janeiro: Climate Policy Initiative, 2019. Available at: <https://www.inputbrasil.org/wp-content/uploads/2019/12/Onde-estamos-na-implementacao-do-Codigo-Florestal.pdf>

## SUMMARY

The process of environmental compliance for rural properties involves several steps and the participation of various entities. The first steps are registration in and validation of the Rural Environmental Registry (*Cadastro Ambiental Rural* - CAR), but states also have to regulate the Forest Code and implement the Environmental Compliance Program (*Programa de Regularização Ambiental* - PRA). The steps must be completed in order: once a property has the CAR validated, it is eligible to join the PRA and begin the process of forest restoration. Current efforts that concentrate on the phase of analysis and validation of all registrations and only later implementing the PRA could hold up the compliance process for rural properties. Furthermore, not having access to the rules of the PRA prior to clearing the CAR process creates uncertainty for property owners and landholders. They need clarity from the beginning about how the compliance process will work. States should facilitate the procedures of analysis and validation in the CAR, as well as the actions needed to implement the PRA.

**Figure 1** shows states' progress toward implementing the CAR and the PRA, which will be summarized below.

All states have made considerable progress in registering properties in the CAR, though small-scale property owners and landholders, as well as traditional people and communities, still need government support to move forward. Some states are much further along than others in analyzing and validating registrations, but all of them have trouble moving through this step due to the high volume and low quality of registrations and a lack of technical and human resources to handle the validations. **Ten states are still in the registration phase of the CAR and have not yet begun the validation process.**

**Fifteen states have already created regulations for instituting the program**, though some of them will need to adopt additional regulations to properly foster the environmental compliance of rural properties. Of the remaining states, not all are at a complete standstill; some already have prepared drafts for regulating their PRAs. Others, meanwhile, are well behind, which also means they will likely feel more of an impact from the implementation of a federal PRA.

There is currently considerable uncertainty surrounding the federal PRA, with no rules yet in place that would establish a process for joining the program and fulfilling its requirements, and no rules designating the responsibilities to federal and state government entities. Moreover, the federal PRA could be challenged in court on the grounds that it damages Brazil's federative principle, thus creating legal insecurities around how the Forest Code is to be implemented in these states. An alternative to this situation might be for the federal government to help the states that are furthest behind in regulating the Forest Code by adopting a set of minimum requirements rural landholders would have to meet in order to move forward.

Regulation is the first step, but states must take many other steps to effectively implement the PRA. These include creating information systems, acquiring technical resources, and training human resources, among others. This is why the majority of states are still far from ready to roll out the PRA. **The PRA has been effectively implemented in only five states: with fully functional operations, signed commitment agreements, and plans for compliance being executed and monitored in Permanent Preservation Areas (*áreas de Preservação Permanente* - APP) and on Legal Forest Reserves.**

**Figure 1:** States' progress toward implementing the CAR and the PRA

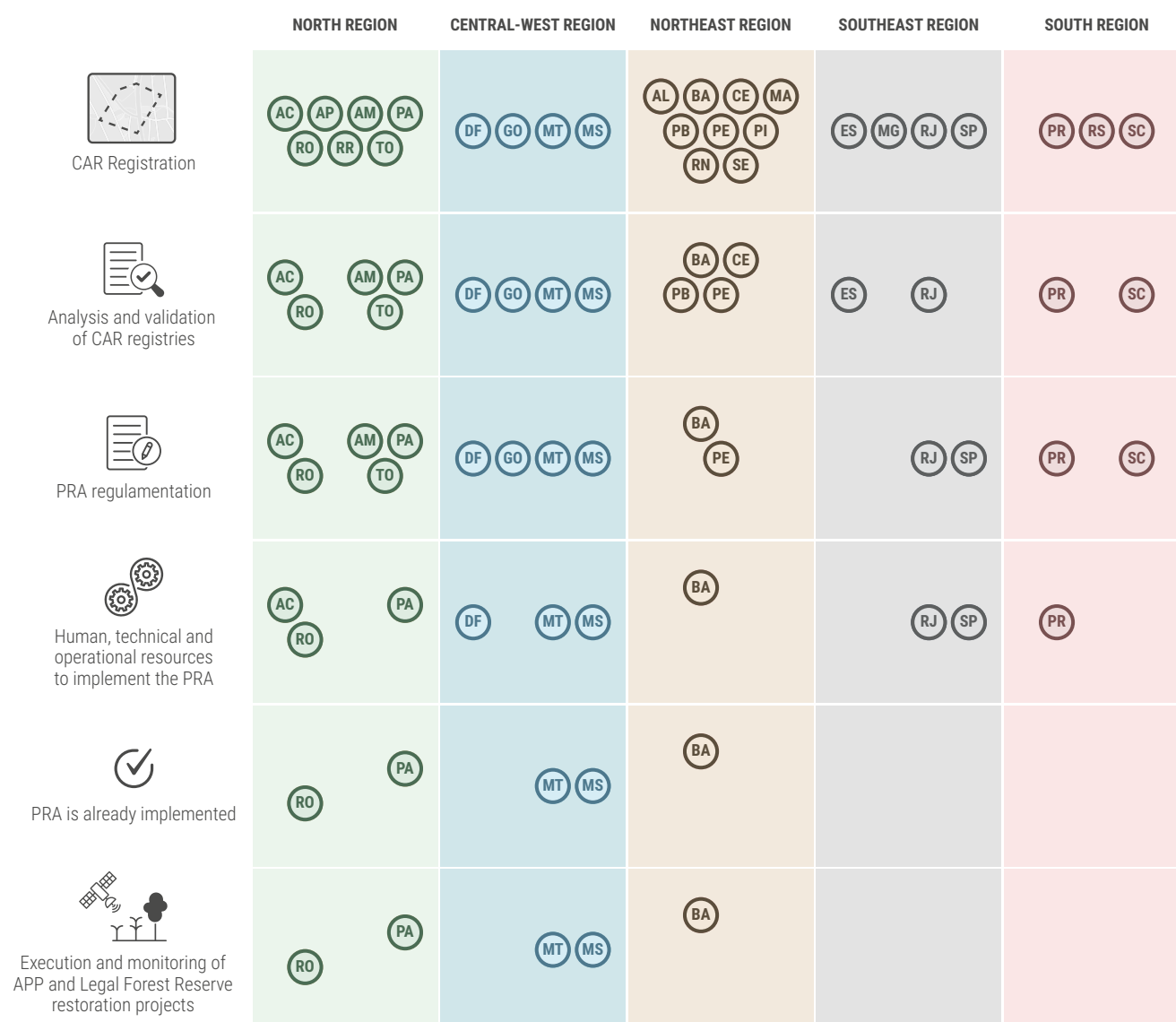


Figure elaborated by Climate Policy Initiative / NAPC PUC-Rio, 2019

**States in the north and central-west regions have made the most progress toward implementing the Forest Code. Commitment Agreements have been signed, and actions for forest restoration are underway in APPs and on Legal Forest Reserves.** Meanwhile, the northeast region is the furthest behind. Six states have no regulation whatsoever, and some of those have only recently begun the initial CAR phases of analysis and validation. Efforts to implement the PRA are still in the early stages. The state of Bahia is the one exception: as well as being fairly far along in the process, it also has its own dynamic mechanism or procedure or own way of implementing the Forest Code.

One key factor for implementing the PRA in the states is regulating environmental compliance in APPs and on Legal Forest Reserves, in case there is liability. **Table 1** summarizes the status of all states regarding this legislation, defining methods and parameters for forest restoration in APPs and on Legal Forest Reserves, which will be explained briefly below.

**Most states have already established minimum rules regarding the forest restoration of the APPs and Legal Forest Reserves; however, twelve states have not yet established any rules for environmental compliance in APPs and on legal reserve.**

Some states have instituted legal rules that establish directives and criteria on how to create, execute, and monitor projects to restore native vegetation in degraded or altered areas, and have created manuals and booklets to disseminate this information.

**Legal Forest Reserve compensation, via the donation of a private area within a public Conservation Unit (official protected area) to the state or federal government, is the method most often used by the states. Twelve states have adopted this practice.<sup>3</sup>**

In addition, all of the investment states have made to structure a robust environmental compliance system should be used to foster the environmental compliance of all properties in unlawful status, regardless of when any deforestation may have taken place. **Only five states are currently using, or have plans to use, the PRA module of the National System for Rural Environmental Registry (SICAR), or a similar system, to promote environmental compliance of illegal deforestation both before and after July 22, 2008.<sup>4</sup>**

Another important question is the role of the federal government in states' implementation of the PRA. The Brazilian Forest Service has developed various helpful tools in the SICAR. States do benefit from using the SICAR platform and its modules—including the registration module and the environmental compliance module—but they remain completely dependent on the federal government. Any decision-making, disruption, or delay in the SICAR directly affects states and can have a serious impact on the implementation of the Forest Code.

Finally, it is worth emphasizing that states should share information, in a clear and accessible manner, on what they are doing to implement the Forest Code. This should include any legislation they adopt, the status of their CAR validation, and the status of their implementation of the PRA. Transparency is key to ensuring that society, legislators, and the federal government are able to follow and monitor the process.

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3 In Brazil many public protected areas were created while overlapping private lands. These private properties should be expropriated by the government, with financial compensation. However, due to the lack of financial resources many private lands remained within public protected areas. The Forest Code allows landowners with Legal Forest Reserve liabilities to offset those by the acquisition of private lands within a Conservation unit and then transfer the land ownership to the federal or state government.

4 The Forest Code created a special regime that offers some rural landowners greater leniency for environmental compliance, such as more flexible, or reduced, APP standards and the possibility to offset the Legal Forest Reserve. This special regime applies solely to rural properties where native vegetation was illegally clear-cut for agriculture or livestock breeding purposes prior to July 22, 2008. Illegal deforestation taken place after that date must be restored according to stricter rules of the Forest Code.

**Table 1:** Legislation by states related to forest restoration in APPs and on Legal Forest Reserves

		NORTH REGION								CENTRAL-WEST REGION				SOUTHEAST REGION				SOUTH REGION				NORTHEAST REGION								
		AC	AP	AM	PA	RO	RR	TO	DF	GO	MT	MS	ES	MG	RJ	SP	PR	RS	SC	AL	BA	CE	MA	PB	PE	PI	RN	SE		
Restoration of APP consolidated areas	Set deadline for APP restoration	★	★	★	★	★		★	★	★			★	★	★	★	★				★				★					
	Defines the possibility of economic use of parcels not covered by the APP restoration schedule	★																							★					
	Establishes the methods and parameters for the restoration of APP consolidated areas	★	★	★	★	★	★	★	★	★	★	★	★	★	★	★	★	★	★		★			★	★					
	Establishes detailed rules for the design, execution and monitoring of APP restoration projects		★	★	★	★		★					★		★	★					★			★	★					
Restoration of Legal Forest Reserve consolidated areas	Set deadline for Legal Forest Reserve restoration	★	★	★	★	★	★	★	★	★	★	★	★	★	★	★	★	★	★		★		★	★	★					
	Defines the possibility of economic use of parcels not covered by the Legal Forest Reserve restoration schedule	★			★	★		★			★							★			★			★	★					
	Establishes the methods and parameters for the restoration of Legal Forest Reserve consolidated areas	★	★	★	★	★	★	★	★	★	★	★	★	★	★	★	★	★	★		★			★	★					
	Establishes detailed rules for the design, execution and monitoring of Legal Forest Reserve restoration projects		★	★	★	★		★			★			★	★						★			★	★					
	Regulates the article 68 of the Forest Code									★						★														
	State has adopted agroecological zoning (applicable only to states in the Brazilian Legal Amazon)	★	★	★	★	★	★	★	n/a	n/a	★	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	★	n/a	n/a	n/a	n/a	n/a		
Legal Forest Reserve offset	Regulates the Legal Forest Reserve offset	★	★	★	★	★		★	★	★	★	★	★	★	★	★	★	★	★		★			★						
	State's procedure to offset Legal Forest Reserve through acquisition of private area in public Conservation Unit and then and donate it to the government		★	★	★	★		★	★	★	★	★	★	★	★	★	★	★	★		★			★	★					
	State's procedure to offset Legal Forest Reserve through Environmental Reserve Quota (Cota de Reserva Ambiental - CRA)	★	★	★	★	★		★		★							★		★		★			★						
	State's procedure to offset Legal Forest Reserve through registration of na equivalent surplus area in the same biome	★	★	★	★	★		★	★	★	★	★		★	★				★		★			★						
	State's procedure to offset Legal Forest Reserve through registration of na equivalent surplus area in the same biome		★	★	★	★																								
Restoration of illegal deforestation after 2008	Defines the procedure to promote environmental compliance of illegal deforestation after 22nd July 2008	★	★	★	★			★	★				★	★	★		★				★									
Status	Status of all states regarding the legislation that defines restoration of APP and Legal Forest Reserve areas	☺	☺	☺	☺	☺	☺	☺	☺	☺	☺	☺	☺	☺	☺	☺	☺	☺	☺	☺	☺	☺	☺	☺	☺	☺	☺	☺		

**Legend:** ★ Yes  
 ☺ Advanced status - has a sufficient normative framework to promote restoration of APP and Legal Forest Reserve areas  
 ☹ Intermediate Status - insufficient normative framework to promote restoration of APP and Legal Forest Reserve areas  
 ☹ Beginner Status - lack of normative framework to promote restoration of APP and Legal Forest Reserve areas

Table created by CPI / NAPC PUC-Rio, 2019

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## ANNEX I

### LIST OF BRAZILIAN STATES

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#### North Region

AC - Acre  
AP - Amapá  
AM - Amazonas  
PA - Pará  
RO - Rondônia  
RR - Roraima  
TO - Tocantins

#### Central-West Region

DF - Distrito Federal  
GO - Goiás  
MT - Mato Grosso  
MS - Mato Grosso do Sul

#### Southeast Region

ES - Espírito Santo  
MG - Minas Gerais  
RJ - Rio de Janeiro  
SP - São Paulo

#### South Region

PR - Paraná  
RS - Rio Grande do Sul  
SC - Santa Catarina

#### Northeast Region

AL - Alagoas  
BA - Bahia  
CE - Ceará  
MA - Maranhão  
PB - Paraíba  
PE - Pernambuco  
PI - Piauí  
RN - Rio Grande do Norte  
SE - Sergipe

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*The Land Use Initiative (INPUT – Iniciativa para o Uso da Terra) is a dedicated team of specialists who work at the forefront of how to increase environmental protection and food production. INPUT engages stakeholders in Brazil's public and private sectors and maps the challenges for a better management of its natural resources. Research conducted under INPUT is generously supported by the Norway's International Climate and Forest Initiative (NICFI), Children's Investment Fund Foundation (CIFF) and Instituto Clima e Sociedade (ICS) through grants to Climate Policy Initiative.*



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