

AN ANALYSIS OF THE NEW LEGAL FRAMEWORK FOR IBAMA'S ADMINISTRATIVE ENFORCEMENT PROCEDURES AND ITS EFFECTS ON COMBATING DEFORESTATION IN THE AMAZON



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In Brazil, the regulation of activities that impact the environment and the enactment of measures to ensure compliance with the law (known as 'command and control'¹ actions) are essential tools in preventing and combating illegal deforestation in the Amazon. However, once an environmental infraction is detected - such as illegal deforestation or vegetation burning - Brazil's environmental agencies must initiate administrative enforcement procedures to hold violators accountable, impose fines, and assess damages.

The administrative enforcement procedure, therefore, is a key factor in tackling illegal deforestation. Making this procedure more effective is essential for its stated goals of fining violators and deterring illegal activity.

This summary presents an overview of findings from the report, *Análise do Novo Procedimento Administrativo Sancionador do Ibama e seus Reflexos no Combate ao Desmatamento na Amazônia*, published by Climate Policy Initiative/Pontifical Catholic University of Rio de Janeiro (CPI/PUC-Rio) that analyzes the impacts of changes in Brazil's legislation and assesses whether they can bring greater effectiveness to Brazil's federal environmental agency's (*Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis* - IBAMA) administrative sanctioning procedure. CPI/PUC-Rio researchers reviewed literature and conducted a detailed analysis of Decree No. 9,760/2019 and other regulatory standards, as well as the new governance structure of the environmental sanctioning process. The researchers also collected data related to infraction notices in consultation with IBAMA's open databases and through the Access to Information Law (*Lei de Acesso à Informação* - LAI).

¹ Command and control policies refer to environmental policies that rely on regulation and enforcement other than financial incentives.

CHANGES TO THE ENVIRONMENTAL ADMINISTRATIVE SANCTIONING PROCEDURE

Environmental agencies are responsible for monitoring and inspecting behaviors and activities to make sure they comply with legal environmental protection rules. If an environmental violation is found - the environmental agency must act to repress it, imposing the appropriate sanctions on the person who caused the damage (infringer) - e.g., an environmental fine. Detection of environmental law violations, such as deforestation, triggers the environmental agency's obligation to impose sanctions. The agency, however, must first initiate an investigative administrative process.

According to the 1988 Federal Constitution, liability for environmental damages can occur simultaneously in the administrative, civil, and criminal spheres, each with its own peculiarities and specific investigative procedures. The Constitution confers concurrent jurisdiction for environmental matters on all three levels of the Federation (federal, state, and municipal), meaning that states and municipalities have their own environmental protection rules and administrative procedures in place.

Approved in April 2019, Decree No. 9,760 significantly altered IBAMA's sanctioning procedure. The main novelty in the federal level was the creation of a mandatory conciliation phase prior to the enforcement phase at all levels of government as we outline above (federal, state, and municipal).

Although environmental conciliation can, in theory, expedite the environmental sanctioning procedure by reducing the time it takes to close cases by seeking conciliation between the parties, its implementation by the current administration has fallen short: (i) regulation of the conciliation stage takes too long ; furthermore, the rules that regulate the scheduling of conciliation hearings are ambiguous; (ii) not enough conciliation hearings are being held, thus delaying the processing of thousands of infraction notices; (iii) from the beginning, the teams in charge of conducting the conciliation hearings (*Equipes de Conclusão das Audiências de Conciliação* - ECACs) have lacked clear and objective criteria to follow; many states are short-staffed, making it impossible to implement this stage properly; and (v) the lack of transparency in data pertaining to conciliation hearings prevents civil society from adequately monitoring and evaluating this new stage in the procedure.

The changes to the administrative environmental procedure have also been accompanied by major changes in the governance structure for the sanctioning process. The government has dismissed many civil servants in IBAMA's technical staff who held strategic management positions and has replaced them with military personnel and other professionals with no experience in environmental management and lacking the necessary technical qualifications. These changes call into question the capacity (and willingness) of the sitting government administration to make the administrative procedure more effective in investigating environmental infractions.

In addition, other measures spearheaded by the Minister of the Environment, Ricardo Salles have paved the way for even more insecurity and distrust of the new government environmental policy, indicating that further changes to the environmental sanctioning system may be forthcoming. For example, the Minister suggested the creation of a police force in the Amazon devoted to environmental inspection, as well as the merge of IBAMA and Chico Mendes Institute for Biodiversity Conservation (*Instituto Chico Mendes de Conservação da Biodiversidade* – ICMBio). Meanwhile, the Minister, the president of IBAMA (Eduardo Bim), and other members of the Ministry of the Environment (*Ministério do Meio Ambiente* – MMA) were involved in a Federal Police operation targeting the illegal export of native wood, culminating in Bim’s temporary suspension from the presidency of IBAMA and search and seizure operations in the offices of Minister Salles.² These events illustrate a significant amount of uncertainty surrounding the process.

IMPLICATIONS FOR COMBATTING DEFORESTATION IN THE AMAZON

Command and control actions regulations play a crucial role in combating deforestation in the Amazon. Evidence shows that these actions were primarily responsible for the sharp and continuous decline in deforestation rates in the Amazon region between 2004 and 2012.^{3,4} IBAMA’s monitoring and enforcement of sanctions in cases of unauthorized vegetation removal have effectively inhibited the advance of deforestation in the Amazon. CPI/PUC-Rio estimated that, if IBAMA’s monitoring and enforcement had not been in place, between 2007 and 2016 the Amazon would have lost, in addition to the area that was actually deforested, an additional 270,000 km².⁵ As such, changes to IBAMA’s administrative enforcement procedures can have significant impacts on the policy to combat deforestation.

Starting in 2004, monitoring and inspection operations in the Amazon biome were planned and carried out under the Action Plan for Prevention and Control of Deforestation in the Legal Amazon (*Plano de Ação para Prevenção e Controle do Desmatamento na Amazônia Legal* – PPCDAm). However, with the changes made by MMA in 2019, under the command of Minister Ricardo Salles, PPCDAm came to a halt. In its place, the government implemented “Operation Green Brazil” (*Operações Verde Brasil*) I and II, led by the Ministry of Defense. These operations consisted of using the armed forces to coordinate and execute actions to combat deforestation and illegal fires in the Amazon. In the three decades since IBAMA was created, this was the first time it had ever been removed from the command of its duties.⁶ These military operations, however, were not only much more costly, but they also failed to achieve their primary objectives of preventing deforestation and punishing offenders.⁷

2 Talento, Aguirre, Leandro Prazeres, and Mariana Muniz. *PF faz operação contra Ricardo Salles e presidente do Ibama é afastado do cargo*. O Globo, May 19, 2021. glo.bo/2QAJH13.

3 Assunção, Juliano, Clarissa Gandour, and Rudi Rocha. “Deforestation Slowdown in the Brazilian Amazon: Prices or Policies?”. *Environment and Development Economics* 20, No. 6 (2015): 697–722. bit.ly/2ZPE1Ep.

4 Burgess, Robin, Francisco Costa, and Benjamin A. Olken. “The Brazilian Amazon’s Double Reversal of Fortune”. *SocArXiv* (2019). bit.ly/3mDvfm7.

5 Assunção, Juliano, Clarissa Gandour, and Rudi Rocha. *Detering Deforestation in the Brazilian Amazon: Environmental Monitoring and Law Enforcement*. Climate Policy Initiative, 2019. bit.ly/3yoX9WQ.

6 Fakebook.eco. *Exército na Amazônia fiscaliza menos com efetivo 5 vezes maior*. O Eco, November 17, 2020. bit.ly/3bk5kKb.

7 Spring, Jake. *Militares fracassam em missão de conter desmatamento da Amazônia*. G1 Amazônia, March 24, 2021. glo.bo/3hmDxfZ.

In addition, the changes in leadership and coordination positions at IBAMA have had a profound impact on actions to combat illicit environmental activities in the Amazon, two heads of inspection were dismissed shortly after efforts had been successfully put in place to combat illegal mining and deforestation in the Amazon; the head of the environmental enforcement division was also dismissed from his position. All IBAMA state superintendents were also replaced by military personnel or other individuals who lacked the necessary qualifications for the position.

Enforcement of precautionary measures - as required by law - has also been neglected by the current administration. The seizure and destruction of equipment used in illegal deforestation and embargos on deforested areas are key deterrence measures against offenders.⁸ Since taking office as the president of Brazil, however, Jair Bolsonaro has repeatedly prohibited IBAMA officers from enforcing precautionary measures when they are needed.^{9,10} IBAMA agents have also been threatened and prevented from carrying out inspections.¹¹ Two episodes illustrate how controversial the government has been in its efforts to combat deforestation in the Amazon. The first involves the seizure of native wood on the border between Pará and Amazonas by the Federal Police,¹² and the second refers to the suspension of an operation to remove cattle from a fully protected area (conservation unit), also in the state of Pará.¹³ In both cases, the Minister of the Environment was accused of favoring those who engage in illegal activities.^{14,15}

The numbers speak for themselves. Deforestation and illegal fires in the region have increased significantly since Bolsonaro took office,^{16,17,18} while penalties for illegal deforestation have declined. According to data from National Institute for Space Research (*Instituto Nacional de Pesquisas Espaciais* - INPE), the rate of deforestation in the Amazon in 2020 was 47% higher than in 2018.¹⁹ The number of infractions against flora, however, fell by half (56%) in 2020 versus 2018.²⁰

Regarding IBAMA's execution of the new sanctioning procedure to address Amazon deforestation, so far there is no record of conciliation hearings held for infractions committed against the biome's flora since its enactment over two years ago. Moreover, despite the newly institute mandatory conciliation procedures, there are no records IBAMA actually engaged in any.

As for the enforcement phase of the sanctioning process, it should be noted that all infraction notices are first ruled on by state superintendents and, on appeal, by the President of IBAMA.

8 Schmitt, Jair. "Crime sem castigo: a efetividade da fiscalização ambiental para o controle do desmatamento ilegal na Amazônia". PhD Thesis, Universidade de Brasília, 2015.

9 Bragança, Daniele. *Bolsonaro desautoriza operação do Ibama em UC desmatada*. O Eco, April 14, 2019. bit.ly/3uJMWsw.

10 Vargas, Matheus. 'Quem é o cara do Ibama?', diz Bolsonaro sobre queima de máquinas. O Estado de São Paulo, November 5, 2019. bit.ly/3f9O6BS.

11 Watanabe, Phillippe. *Agente do Ibama é agredido com garrafa no rosto em operação contra desmate*. Folha de São Paulo, May 6, 2020. bit.ly/3uGDWxw.

12 Maisonnave, Fabiano. *Operação da PF faz a maior apreensão de madeira da história*. Folha de São Paulo, December 21, 2020. bit.ly/3yezQ22.

13 Menegassi, Duda. *Diretoria do ICMBio suspende operação que iria retirar gado ilegal de UC no Pará*. O Eco, May 12, 2021. bit.ly/33JxSbE.

14 Mattoso, Camila. *Na Polícia Federal não vai passar boiada, diz chefe da PF no Amazonas após críticas de Salles*. Folha de São Paulo, April 4, 2021. bit.ly/3fmJI0G.

15 Ascema Nacional. *A Lona e o Picadeiro do Ministro do Meio Ambiente*. 2021. bit.ly/3tPlq4X.

16 MAPBIOMAS. *Relatório anual de desmatamento no Brasil - 2019*. May 2020. bit.ly/3hpFjJ5.

17 Alencar, Ane, Lucas Rodrigues, and Isabel Castro. *Amazônia em Chamas 5: o que queima, e onde*. Brasília: Instituto de Pesquisa Ambiental da Amazônia, 2020. bit.ly/3tUCadU.

18 Fellows, Martha, Ane Alencar, Matheus Bandeira, Isabel Castro, and Carolina Guyot. *Amazônia em Chamas 6: desmatamento e fogo em terras indígenas*. Brasília: IPAM, 2021. bit.ly/3uMGf8z.

19 INPE. *Prodes*. 2020. bit.ly/3uKW8WF.

20 IBAMA. *Dados abertos do Ibama*. Banco de autos de infração. 2021.


However, many superintendent offices are under management of military police officers or people who lack the minimum requirements for the job in terms of technical qualifications. In some cases, there are conflicts of interest as well (e.g., the case of the superintendent of the state of Acre who, prior to taking office, had worked as a lawyer for people charged with environmental infractions). Furthermore, superintendents enjoy no job security (tenure) in their positions and may be replaced at any time. The absence of specific hiring criteria and job security in the superintendent position increases the likelihood that superintendents will succumb to external pressures when rendering their decisions, thus jeopardizing the impartiality of the process.

The constant replacement of superintendents by Minister Ricardo Salles and the Minister's public criticism of operations to combat deforestation demonstrate just how fragile these assignments can be.^{21,22,23}

Many doubts surround the effectiveness of IBAMA's new administrative procedure in curbing illegal deforestation in the Amazon. Currently, the shutdown of the enforcement procedures - be it due to a weaker monitoring and inspection stage or to delays in holding conciliation hearings (or failing to hold them at all) - can have immediate impacts. Without proper monitoring and inspection in place, offenders are free to engage in deforestation and illegal fires with no accountability, and the standstill or delay in holding conciliation hearings greatly increases the likelihood of running the statute of limitations on sanctions (i.e., the authorities can no longer apply a penalty once a certain time period has elapsed). As there is not yet enough data and evidence available, a more thorough assessment of the medium- and long-term impacts of this new sanctioning system will need to be conducted - particularly on whether the environmental conciliation stage will be able to close cases and collect fines or whether it will further weaken IBAMA's already fragile administrative procedure.

An ineffective administrative sanctioning procedure, coupled with weakened environmental governance, will have significant impacts on the policy to combat deforestation in the Amazon by failing to hold environmental offenders accountable and by weakening the power of the policy to deter such actions.

The full report, in Portuguese, highlights key findings from CPI/PUC-Rio's analysis of Decree No. 9,760/2019 and other regulatory standards, as well as the new governance structure of the sanctioning process.

 **Análise do Novo Procedimento Administrativo Sancionador do Ibama e seus Reflexos no Combate ao Desmatamento na Amazônia.** bit.ly/sancionador.

21 Muniz, Bianca, Bruno Fonseca, and Raphaela Ribeiro. *Governo Bolsonaro reduz multas em municípios onde desmatamento cresce*. Agência Pública. 2020. bit.ly/3tl6y8b.

22 Valente, Rubens. *'Ibama está paralisado', desabafa coronel do Exército exonerado por Salles*. UOL Notícias, February 24, 2021. bit.ly/3wl67hC.

23 Mattoso, Camila. *Na Polícia Federal não vai passar boiada, diz chefe da PF no Amazonas após críticas de Salles*. Folha de São Paulo, April 4, 2021. bit.ly/3fmJI0G.

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