



LEGAL PERSPECTIVES FOR A SUSTAINABLE FUTURE

FOPEMA's Reflections on Climate Change
and Combating Deforestation



Cataloging in Publication
Brazilian Biodiversity Fund – FUNBIO

Legal Perspectives for a sustainable future: FOPEMA's reflections on climate change and combating deforestation. / Mello, Andréia (Coord.). _ Rio de Janeiro: FUNBIO, 2024.

176 p. : il. ; 16x23 cm __ (Climate Dialogues ; 1)

ISBN (Impresso): 978-85-89368-41-4

ISBN (PDF): 978-85-89368-42-1

1. Meio Ambiente. 2. Mudanças Climáticas. 3. Sustentabilidade. I. Vegas, Daniel. II. Neves, Rodrigo II. Nóbrega, Gabriel. IV. Pamplona, Tátilla. V. Oliveira, Thiago Emmanuel. VI. Nunes, Isac. VII. Passos, Júlia Gruppioni. VIII. Mello, Andréia. IX. Coleção.

CDD 333.72

IMPLEMENTED BY

Community, Protected Areas, and Indigenous Peoples Project in the Brazilian Amazon and Cerrado Savannah Program
Brazilian Biodiversity Fund (FUNBIO)

FUNDED BY

Norwegian International Climate and Forest Initiative – NICFI
Ministry of Foreign Affairs of Norway

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ACKNOWLEDGMENTS

We are grateful to all the people and institutions who contributed to shaping the ideas, recommendations, and solutions outlined in this book.

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FOR THE ENVIRONMENT OF
THE LEGAL AMAZON (FOPEMA)**





LEGAL PERSPECTIVES FOR A SUSTAINABLE FUTURE

FOPEMA's Reflections on Climate Change
and Combating Deforestation



In June 2022, the Forum of State Prosecutors for the Environment of the Legal Amazon (FOPEMA, the acronym in Portuguese) was established in Brasília. This initiative goes beyond merely organizing the collective of prosecutors from the nine states in the region; it has facilitated a collective understanding of the challenges affecting the area and its approximately 30 million residents, most of whom rely on it for their livelihood. In just two years, FOPEMA has significantly advanced the understanding and development of strategies and actions concerning four priority areas:

- ▶ carbon markets and payments for environmental services,
- ▶ discussions on a proposal for an automated tool for environmental fine collection and conversion possibilities;
- ▶ public safety and the environment, and
- ▶ protected areas.

For FUNBIO, it is immensely gratifying to contribute to fostering these exchanges and partnerships, which build valuable networks of knowledge and collaboration. Through the “Climate Dialogues” initiative, under the Community, Protected Areas and Indigenous Peoples Project in the Amazon and Cerrado Savannah Biomes (COPAÍBAS, funded by the Norwegian Ministry of Foreign Affairs), and in collaboration with FOPEMA and the GCF Task Force, we facilitated the publication of “Legal Perspectives for a Sustainable Future: FOPEMA’s Reflections on Climate Change and Combating Deforestation.”

This collection features articles from prosecutors that provide context on topics directly related to mitigating illegal deforestation and climate change in the Amazon, as well as insights into FOPEMA’s role in driving change. The knowledge shared by the forum transcends individual state policies, embracing a regional outlook that coordinates with the initiatives of the Legal Amazon Governors’ Consortium.

This collaboration between diverse organizations, all driven by the shared aim of conservation and sustainable development, marks a significant progress in achieving a deeper understanding and more effective implementation of legal obligations to mitigate climate change.

ROSA LEMOS DE SÁ

FUNBIO’s Secretary General

The Governors' Climate and Forests Task Force (GCFTF) was established in 2008 by the subnational governments of California, Acre, Amapá, Amazonas, Mato Grosso, Pará, Illinois, Aceh, and Papua. It serves as an innovative platform for cooperation and capacity building, aiming to transition to a low-emission development model. This initiative recognizes the critical role of subnational actions in achieving national and global climate goals.

The leadership of subnational governments became evident with the enactment of climate change legislation, often preceding national laws. In Brazil, the state of Amazonas led the way by approving the State Climate Change Policy in 2007, which aimed to promote the creation of market mechanisms to support project implementation and regulate Reducing Emissions from Deforestation and Forest Degradation (REDD). Shortly thereafter, the states of Tocantins, Amapá, and Acre followed Amazonas' example by approving their own climate policies.

Since the creation of the GCFTF, states have embarked on an unprecedented effort to implement mechanisms that enable sufficient and regular financing to address the challenges of combating environmental illegality. They recognize the short-term impacts and simultaneously promote the necessary changes to the "business as usual" development model by exploring economic alternatives that generate jobs and income for the local population while preserving forests.

The GCFTF Rio Branco Declaration, approved in 2014, consolidated this subnational vision and established strategic guidelines and priorities for collaborative efforts. It linked opportunities associated with climate financing to the decision to promote a new development model. This approval came a year after the recognition of REDD+ (Reducing Emissions from Deforestation and Forest Degradation, including the role of conservation of forest carbon stocks, sustainable forest management, and enhancement of forest carbon stocks) under the United Nations Framework Convention on Climate Change.

The institutionalization of the National REDD+ Commission in 2015 and the approval of the National REDD+ Strategy established fundamental milestones for states to effectively access climate financing. This facilitated the implementation of REDD Early Movers projects in the states of Acre and Mato Grosso, opening the door for other forms of financing throughout the region.

In 2019, with the establishment of the Interstate Consortium for the Sustainable Development of the Legal Amazon, the role of the Forum of Environmental Secretaries of the Legal Amazon was formalized. This forum also serves as the executive body of the GCFTF and the Environmental Sector Chamber of the Consortium.

To enhance state access to various forms of climate financing, the Environmental Secretaries, endorsed by the Governors, created the Environmental State Attorneys Working Group. This group is responsible for exploring and proposing improvements to the regulatory and jurisdictional framework within the current legal system. They consider the results and advancements of ongoing low-emission development projects, as well as the opportunities and challenges associated with the Brazilian Forest Code.

The Environmental State Attorneys Working Group actively engaged in the dialogue and collaborative development of strategies for accessing climate financing, led by the Environmental Secretaries with support from the GCFTF Executive Secretariat in Brazil. The group also received significant contributions from legal experts specializing in this area. Initially, their focus was on drafting a proposal

to regulate Article 41 of the Forest Code. Between 2020 and 2022, the Attorneys were also mandated to explore solutions for strengthening the collection of environmental fines and combating environmental illegality.

In 2022, with the introduction of new regulatory instruments, the Working Group, supported by the Environmental Secretaries, was transformed into the Forum of State Environmental Attorneys of the Amazon (FOPEMA, the acronym in Portuguese). The Forum's main objective is to guide decision-makers on key legal aspects of environmental management and to facilitate state access to REDD+ carbon market opportunities. The discussions and analyses focused on three priorities: a) defining the legal requirements for state access to the jurisdictional carbon market (J-REDD+); b) establishing innovative mechanisms for collecting environmental fines; c) exploring legal alternatives for nesting private projects within Jurisdictional REDD+ Programs. The consensus interpretations on the carbon market and nesting were documented in "Joint Statements" presented on 05/10/22 and 06/07/22.

Since 2022, FOPEMA's guidance and positioning have been crucial in directing states to meet the legal, institutional, and technical requirements established by the TREES Standard for accessing the Voluntary Carbon Market. The integration of insights from FOPEMA with those from other specialized Technical Working Groups within the GCFTF – such as the Safeguards Working Group, the Monitoring, Reporting, and Verification (MRV) Working Group, and the REDD+ Working Group – has underpinned the Environmental Secretaries' decisions and the proposals presented to the Governors.

In 2023, there has been an intensive effort to identify state-level institutional, technical, and legal arrangements for accessing various climate financing mechanisms, always considering local particularities. This effort led to the signing of the world's first subnational agreement for the commercialization of REDD+ carbon credits.

In the context of regulatory advances in this field, such as the progress of Draft Bill (PL) 2148/2015, the contributions of the State Environmental Attorneys from a legal perspective are crucial for subnational decisions. These contributions, along with inputs from other Working Groups, should be incorporated into the technical, economic, and institutional feasibility analyses led by the Environmental Secretaries. This will support decisions by the Governors and coordination with the Federal Government.

Rio Branco, May 2024

JULIE MESSIAS E SILVA

State Secretary for the Environment of Acre | President of GCFTF Brazil | President of the Forum of Environmental Secretaries of the Amazon | President of the Environmental Sector Chamber of the Legal Amazon Consortium



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Presentation

BY ANDRÉIA MELLO

In 2020, the Brazilian Biodiversity Fund (FUNBIO), a private, non-profit national financial and operational mechanism that collaborates with the government, private sectors, and civil society to allocate strategic and financial resources to effective biodiversity conservation initiatives,¹ signed a partnership with the Norwegian Ministry of Foreign Affairs to implement the Community, Protected Areas and Indigenous Peoples Project in the Amazon and Cerrado Savannah Biomes, also known as COPAÍBAS.² The program aims to reduce deforestation rates and consequent greenhouse gas emissions through strategies that contribute to the conservation of forests and native vegetation in the Amazon and Cerrado biomes.

Designed based on four different yet interconnected lines of action, the COPAÍBAS program involves:

- ▶ strengthening protected areas in the Cerrado;
- ▶ enhancing environmental and territorial management of Indigenous Peoples;
- ▶ disseminating information about the risks of climate change and the support tools for combating deforestation; and
- ▶ improving the economic efficiency of value chains and local productive arrangements of socio-biodiversity products.

Within the third line of action emerges the Climate Dialogues initiative, aimed at engaging various professionals working within the Brazilian justice system on the topics of climate change and combating illegal deforestation in the Amazon and Cerrado. By fostering dialogues and exchanging information and ideas among various stakeholders, the initiative seeks to generate solutions and guidance on how legal obligations can be more effective and impactful within the context of climate change.

Conceived as an initiative involving different phases and stakeholders to be mobilized and engaged, the Climate Dialogues aim to identify partnership opportunities and connections that shed light on key debates surrounding climate change and the fight against deforestation. One result of these partnerships is the production of books presenting the viewpoints and stances of various legal professionals with expertise in the Legal Amazon and Cerrado regions. This conceptual output aims not only to provide transparency regarding ongoing actions but also to offer insights into innovations, illustrating existing challenges and opportunities, and facilitating broader dissemination and reflection on the themes.

1 For more information about the Brazilian Biodiversity Fund (FUNBIO), please visit: funbio.org.br.

2 For more information about the COPAÍBAS Program, please visit: <https://copaibas.org.br>.

One such partnership is established with the GCF Task Force³ and the Forum of State Attorneys for the Environment of the Legal Amazon (FOPEMA, the acronym in Portuguese), affiliated with the Interstate Consortium for Sustainable Development of the Legal Amazon.⁴ This collaboration aims to enhance the connection and collective action of state attorneys from the Legal Amazon on the issue of climate change. It seeks to provide legal backing to states through agreements with potential regional impact, both within and outside the judicial system.

In the realm of climate change mitigation efforts, the GCF Task Force serves as a key partner. It comprises a coalition of 39 member states and provinces, collectively covering over one-third of the world's tropical forests. These members have joined forces with significant civil society partners within their respective regions to develop targeted jurisdictional strategies and investment plans for REDD+ and low-emission development (Window A). Additionally, the task force supports a select group of innovative approaches to address the underlying causes of deforestation on a large scale in key member states and provinces (Window B). Established to tackle the core issues of tropical deforestation and climate action, the task force also addresses the associated challenges of ecological disruption, biodiversity loss, food, energy, and water insecurity, as well as rural poverty.

The GCF Task Force plays a crucial role in supporting the establishment of FOPEMA. This forum gathers state attorneys from the Legal Amazon who possess practical and theoretical expertise in the biome. Its objective is to broaden and harmonize, wherever possible, consultative and adversarial approaches, including the formulation of doctrinal statements. This collaborative effort aims to transcend state-level policies, addressing overarching challenges and endorsing effective solutions.

As the legal arm of the State supporting the formulation of state public policies, they assess risks and opportunities and have specific duties that are collaboratively addressed to provide support not only to the states but also to the discussions of the Interstate Consortium for Sustainable Development of the Legal Amazon. This consortium serves as a vital platform for dialogue among various sectors of the State Executive branches and was established as a strategy to promote sustainable development in its member states. Its objective is to enhance the region's competitiveness and sustainability by advancing common agendas of priority programs and projects.

Within this context, this publication emerges as a collective endeavor aimed at shedding light on the discussions occurring within FOPEMA and facilitating the expansion of novel solutions for combating deforestation and addressing climate change.

3 For more information about the GCF Task Force, please visit: gctf.org.

4 For more information about the Interstate Consortium for Sustainable Development of the Legal Amazon, please visit: consorcioamazonialelegal.portal.ap.gov.br.



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FOPEMA as a driver of change

BY DANIEL VIEGAS

State Attorneys are often mistaken for Public Prosecutors. They are lawyers for the states and the Federal District, with a career dedicated to legal representation in court and advisory services for these federated units. According to Article 132 of the Federal Constitution:

“State Attorneys and those of the Federal District, organized in a career system that requires a public entrance exam with written tests and academic qualifications, involving the Brazilian Bar Association in all stages, will exercise judicial representation and legal consultancy for their respective federated units.”

The Federal Constitution establishes the career of State Attorneys and those of the Federal District as essential to justice. This designation underscores the institution’s importance, not necessarily in the administration of justice, but in the advocacy of significant legal assets, which involve defending the public interest.

Most State Attorney’s Offices have specialized teams that focus specifically on environmental issues. These cover a broad array of topics, from the work environment for public employees and historic and scenic preservation, to Protected Areas and other public policies designed by Environmental Secretaries and other secretaries with environmental impact, as well as government programs proposing new economic pathways toward a low-carbon economy.

State Attorney’s Offices have historically focused on improving collaboration between Fiscal and Administrative Attorneys. This meant that Environmental Attorneys had less opportunity to form closer relationships for sharing practical and doctrinal experiences. However, after the 18th edition of the Forum of Governors of the Legal Amazon in Palmas (Tocantins), State Environmental Attorneys of the Legal Amazon started meeting regularly, both in person and virtually. They initially formed a working group to advise governors and environmental secretaries. Supported by the GCF Task Force, which facilitated these meetings, and the Interstate Consortium for Sustainable Development of the Legal Amazon, which enabled joint action, they identified priority issues and strategies.

As this group of State Attorneys deepened their connections and dialogue, with emerging environmental issues affecting their daily work, the Forum of State Environmental Attorneys of the Legal Amazon (FOPEMA, the acronym in Portuguese) was formally established in Brasília on June 6-7, 2022. This development enhances the potential for coordinated understanding on topics impacting both biodiversity and the lives of nearly 30 million people, leading to greater efficiency, effectiveness, and impact of their efforts.

A key example of FOPEMA’s impact is its involvement in the debate surrounding Draft Bill (PL, the acronym in Portuguese) 412, regulating the Brazilian Emissions Trading System, which was presented in the Federal Senate by Senator Leila Barros. The initial draft raised legal uncertainty for the jurisdictional REDD+ systems in the Amazonian states, potentially hindering climate financing through

the voluntary carbon credit market. In this context, FOPEMA prepared a detailed technical note, which was presented to the Environmental Secretaries associated with the Legal Amazon Consortium. The Consortium released a joint statement from the nine governors of the Legal Amazon, which opened the door for negotiations with the reporting senator and the federal government to amend the PL significantly, ensuring federative harmony while maintaining the legal conditions necessary for advancing state-level REDD+ financing systems.

This underscores that governance combining robust technical action with consolidated political will can effectively advance the region's legitimate interests. It creates a locus for federative coordination, fostering the implementation of sustainable development public policies in the region.

Climate change and strategies to address it

BY ANDRÉIA MELLO AND DANIEL VIEGAS

Since the 1990s, international discussions have centered on the impacts of climate change and the development of strategies to address it. This global movement began with the first report from the Intergovernmental Panel on Climate Change (IPCC), which indicated that climate change could threaten Earth's systems. This warning spurred the signing of the United Nations Framework Convention on Climate Change (UNFCCC) during the 1992 Rio Conference.⁵

The UNFCCC's goal is to stabilize greenhouse gas (GHG) concentrations in the atmosphere to avoid dangerous human-induced interference with Earth's climate system. The consensus suggests that stabilization should occur within a time-frame that allows Earth's ecosystems to naturally adapt to climate change, ensuring food production and sustainable economic growth.

Nearly 30 years after the signing of the Convention, the Sixth Assessment Report (IPCC/2021) revealed several key findings. It confirmed that human influence on global warming is undeniable, that recent climate changes are unprecedented in centuries, and that every region on Earth is experiencing events – some extreme – triggered by global warming. Additionally, the report highlighted that many terrestrial and oceanic ecosystems, along with some of the services they provide, have already been affected by global warming.

The Paris Agreement, signed in 2015, aimed to keep the global temperature rise well below 2°C and to make every effort to limit it to 1.5°C. Brazil pledged to cut total net greenhouse gas emissions by 48% by 2025 and by 53% by 2030, relative to 2005 levels. Furthermore, at the 26th Conference of the Parties (COP26) in 2021, Brazil endorsed the Glasgow Leaders' Declaration on Forests and Land Use, which commits about R\$108 billion in public and private funding to support, among other initiatives:

- ▶ reverse deforestation and land degradation by 2030;
- ▶ end illegal deforestation by 2028; and
- ▶ restore 30 million hectares of degraded pasture.

Despite these international commitments, deforestation data and the difficulty in implementing effective countermeasures have created significant hur-

5 The Second United Nations Conference on Environment and Development, known as Rio-92 or the Earth Summit, was held from June 3 to 14, 1992, and brought together 108 heads of state from United Nations (UN) member countries. The participants aimed to find ways to reconcile socioeconomic development with the conservation and protection of Earth's ecosystems. Rio-92 produced the following official documents: the Earth Charter; conventions on Biodiversity, Desertification, and Climate Change; the Declaration of Principles on Forests; and the Rio Declaration on Environment and Development, along with Agenda 21. For more information, refer to <https://www2.camara.leg.br/a-camara/documentos-e-pesquisa/arquivo/sites-tematicos/rio20/eco-92>.

dles. This challenge is especially prominent in the Amazon, Brazil's largest biome, which accounts for about 59% of the nation's territory and is home to around 30 million people.

In 2022, PRODES data⁶ revealed that deforestation increased by 11,568 km². Of this, 34.61% occurred in Pará, 31.56% in Mato Grosso, 13.72% in Rondônia, 6.93% in Amazonas, 5.47% in Maranhão, 3.63% in Acre, 1.91% in Roraima, 1.82% in Tocantins, and 0.35% in Amapá.⁷ The dynamics of land use change significantly influence the quantification of greenhouse gas emissions in the Land Use, Land Use Change, and Forestry (LULUCF) sector. In 2020, the LULUCF sector emitted 637,039 Gg CO₂eq, representing 38.0% of Brazil's total emissions, with net emissions increasing by 56.8% compared to 2016.⁸

According to PRODES data, deforestation in the Amazon has reached 10,000 km² since 2019. This shift in the biome is alarming, as studies suggest that the forest is approaching a tipping point where it could turn into a savanna, with significant impacts on biodiversity, hydrological cycles, carbon storage, and human well-being.

With its vast biodiversity, substantial carbon stocks, and rich natural resources, there is no one-size-fits-all solution for addressing the challenges in the Amazon. Collaborative efforts are crucial for developing joint actions that alleviate the intense pressure on areas essential for climate mitigation. FOPEMA is one such initiative, bringing together professionals from the Brazilian justice system to provide legal support for state and regional public policies.

The establishment of this forum and the acknowledgment of the need for a united strategy among representatives of the Brazilian justice system to support the development of public policies with climate implications stem from the efforts of Amazonian states to explore mechanisms for transitioning away from a traditional "business as usual" development model. Instead, they aim to promote the sustainable use and valorization of the Amazon's environmental assets. In this regard, various mechanisms are being explored, and significant efforts are being made to seize opportunities associated with climate financing for REDD+. These efforts are inspired by the pioneering legislation of the state of California, which enacted ambitious subnational climate change laws in 2006.

The Amazonian states have been striving for innovation, with Amazonas, Tocantins, Amapá, and Acre leading the way by enacting specific legislation on this issue in 2007, 2008, 2009, and 2010, respectively. The drafting of these legislative acts benefited from the support of state environmental prosecutors, who played a crucial role in analyzing the applicable national regulatory framework and shaping these instruments. Importantly, these initiatives were developed even before

6 PRODES is a project that monitors deforestation in the Brazilian Amazon by satellite, calculating annual deforestation rates in the region. These rates are used by the Brazilian government to establish public policies. You can access the information through this link: <http://www.obt.inpe.br/OBT/assuntos/programas/amazonia/prodes>.

7 Data on the Legal Amazon and by states can be accessed through the following link: http://terrabrazilis.dpi.inpe.br/app/dashboard/deforestation/biomes/legal_amazon/rates.

8 Brazil. Annual Estimates of Greenhouse Gas Emissions in Brazil, 6th ed., 2022. <https://www.gov.br/mcti/pt-br/acompanhe-o-mcti/sirene/publicacoes/estimativas-anuais-de-emissoes-gee/arquivos/6a-ed-estimativas-anuais.pdf>.

the approval of Brazil's National REDD+ Policy, predating the establishment of the National REDD+ Commission in 2015.

Recognizing this, in 2019, state environmental prosecutors were challenged by the Secretaries of the Environment to develop a proposal for regulating Article 41 of the Forest Code.⁹ This was in response to the identified need to address regulatory hurdles and facilitate effective state access to climate financing opportunities in the REDD+ carbon market.

The prosecutors' contributions were pivotal in pinpointing the key limiting factors and crafting a proposal with demands aimed at bolstering financing for the Amazon. It is anticipated that the Forum of State Environmental Prosecutors of the Legal Amazon, which has expanded its focus to include other priority issues from the region's environmental and climate agenda, will aid in advocating for robust and effective public policies.

9 Also known as the Forest Code, Law No. 12,651/12 deals with the protection of native vegetation. Article 41 addresses the program to support and incentivize environmental conservation, as well as the adoption of technologies and best practices that reconcile agricultural and forestry productivity with reduced environmental impacts, promoting ecologically sustainable development. It always observes progressive criteria, covering various lines of action, including: payment or incentive for environmental services as remuneration, monetary or otherwise, for conservation and improvement activities of ecosystems that generate environmental services; deduction from the income tax base of rural property owners or possessors, whether individuals or legal entities, for part of the expenses incurred in the restoration of Permanent Preservation Areas, Legal Reserves, and restricted use areas deforested prior to July 22, 2008; and the use of public funds for the provision of repayable and non-repayable credits aimed at compensating, recovering, or restoring Permanent Preservation Areas, Legal Reserves, and restricted use areas deforested before July 22, 2008.

20-30 Priorities

BY FOPEMA

FOPEMA has identified four priority topics for discussion among state environmental prosecutors:

- ▶ carbon markets and payments for environmental services;
- ▶ debate on the proposal for a project to adopt a computerized tool for environmental fine collection and conversion possibilities;
- ▶ public safety and the environment;
- ▶ protected areas.

This publication outlines the key discussions on these topics, highlighting the characteristics of the states involved and the collaborative actions being planned. Each theme directly or indirectly contributes to climate action and offers valuable legal insights for the formulation of public policies in the region.

Carbon market

A key topic of discussion in the Climate Convention is the various approaches for developing tools to limit and/or reduce greenhouse gas (GHG) emissions, also known as GEE, for adoption by countries. Among the signed agreements, the Kyoto Protocol was particularly significant in this context, as it established mechanisms that assign economic value to emission reductions.

In this context, the carbon credit market arises as a mechanism for offsetting carbon emissions or their equivalent in greenhouse gases. Here, one ton of carbon dioxide (CO₂) equals one carbon credit. These credits can be traded internationally, helping countries meet their emission targets and encouraging both the private sector and developing nations to participate in emission reduction efforts.

The regulation of these markets within countries and their implications for people living in those areas are still being debated. In Brazil, this is a topic of significant discussion, prompting reflection on modes of operation and assessment of associated risks for all stakeholders.

UNDERSTANDING THE ISSUE

BY RODRIGO FERNANDES DAS NEVES

Since the signing of the Framework Convention on Climate Change at the Rio '92 Summit, the international community has been exploring alternatives for international agreements and the implementation of public policies to tackle one of the most daunting and intricate challenges ever faced by humanity: climate change resulting from human activities.

Following years of deliberation, in 1997, the first international treaty on the matter was achieved – the Kyoto Protocol. It came into effect only in 2005 with the establishment of the Clean Development Mechanism (CDM), built upon the principle of “common but differentiated responsibilities.”

With the establishment of procedures, methods, standards, and governance for implementing the agreement, a system was put in place to acknowledge efforts in emission reduction and carbon sequestration. This enabled the effective trading of “carbon credits” between industrialized countries and Annex B countries, with the former being buyers and the latter sellers.

For Brazil, particularly, the Kyoto Protocol created numerous projects and opportunities, especially in the Southeast Region. This was particularly notable in reducing greenhouse gas (GHG) emissions from “landfills” and initiatives aimed at GHG sequestration through new forests, which serve as the primary source of carbon credits through this mechanism in Brazil. It's worth noting that the treaty specifically permitted afforestation or reforestation projects, as outlined in item 3 of Article 3 of the protocol.

The exclusion of avoided emissions resulting from stopping deforestation from the emerging market regulated by the Kyoto Protocol did not go unnoticed. This was particularly problematic for the Amazon because, in the years 2003-2004, immediately prior to the protocol's entry into force, the land use and forestry sector accounted for almost 80% of Brazil's gross emissions, primarily due

to deforestation, burning, and agriculture. However, these market resources did not address this issue.

In this scenario, the Amazon Region bore the brunt of greenhouse gas emissions and biodiversity loss in the country, while financial resources flowed to other regions of Brazil.

Autonomy of states in the national carbon market legislation

With the promulgation of the Federal Constitution (FC) of 1988, the Brazilian legal system acknowledges the significance of environmental protection, establishing ecology as a foundational element of the economic order, as outlined in Article 170, VI, of the FC. Additionally, it recognizes environmental preservation as a transgenerational right and simultaneously a duty of both the Public Power and the community, as stated in Article 225 of the Constitution.

In the wake of the Kyoto Protocol coming into effect – which effectively began in 2005 – Brazil passed the Public Forests Law (Law No. 11,284 of 2006). Although this law doesn't establish specific mechanisms for measuring and valuing emission reductions in native forest areas, it states that carbon credits would not be included in public forest concessions. This marked the first provision regarding carbon credits in Brazilian ordinary legislation, albeit in this case, it was interpreted in the opposite sense (Article 16, § 1, VI).

In 2009, the National Policy on Climate Change (PNMC, the acronym in Portuguese) was enacted, introducing more robust concepts regarding the establishment of an emissions reduction market. PNMC Law No. 12,187/2009 does not explicitly mention “carbon credits,” but defines emission reduction certification as “securities representing avoided greenhouse gas emissions.” Nonetheless, this marked the first instance of regulatory differentiation between what constitutes “carbon credits” (albeit under a different name) and what is termed “payment for results.”

The Forest Code¹⁰ of 2012 took several steps forward by explicitly defining, in Article 3, carbon credit as a “title of right over intangible and incorporeal tradable property” – in other words, a “credit” that can be sold and bought (thus, a market).

Additionally, article 41, I, “a”, of the Forest Code allows for the establishment of a program to compensate or incentivize environmental services as a retribution, whether monetary or not, for activities involving carbon sequestration, conservation, maintenance, and enhancement of carbon stocks, as well as reduction of carbon emissions. This, in part, represents a legal framework in Brazil for what is commonly referred to as Reducing Emissions from Deforestation and Forest Degradation (REDD+).

For the specific topic of this article – the role of subnational states in the carbon market – special attention should be given to the provisions of paragraph 5 of the aforementioned article 41 of the Forest Code:

¹⁰ Law No. 12,651/12 – Provides for the protection of native vegetation; amends Laws No. 6,938, of August 31, 1981, No. 9,393, of December 19, 1996, and No. 11,428, of December 22, 2006; repeals Laws No. 4,771, of September 15, 1965, and No. 7,754, of April 14, 1989, and Provisional Measure No. 2,166-67, of August 24, 2001, and provides for other measures.

Article 41. [...] [...] Paragraph 5. The program related to environmental services provided for in item I of the head of this article must integrate national and state systems, aiming at the creation of an environmental services market.

Consider the two highlighted elements in the legal text: 1) the acknowledgment of the existence of incentive systems for environmental services at the subnational level, with the national initiative required to integrate them (thus, it is not legally feasible for the federal government to prohibit subnational programs on this topic); 2) the objective of the integration outlined in the Code is the establishment of an environmental services market, including payment for results.

Given that both themes – the acknowledgement of state systems and the need for integration into a market – are in the same paragraph of the law, there is no doubt that, according to the Forest Code, states can engage in the carbon market, with national initiatives mandated to integrate (and not prohibit) subnational programs.

Furthermore, several provisions of Article 41 of the Forest Code outline various instruments that could serve as incentives for environmental services, including but not limited to credit and tax incentives. However, proper regulation for these incentives is still pending, ten years after the law was approved.

The regulation of Article 41 of the Forest Code can provide greater legal certainty for all stakeholders involved. This would facilitate the integration of initiatives from various federal entities at the national level, establishing a clear regulatory framework for the financial, tax, and credit instruments outlined in the Code.

In this context, it is important to note that Article 7, paragraph 2, of the Paris Agreement¹¹ acknowledges climate change as a global challenge requiring coordinated efforts at all levels of government, including subnational levels – reinforcing the central argument of this text.

The Paris Agreement, including the provision mentioned above, is an international human rights treaty, giving it a position of supralegal authority within Brazil's legal system. This was confirmed by the Federal Supreme Court (STF) in its recent ruling on Fundamental Precept Violation (ADPF) 708. As a result, all national environmental laws relating to climate change must be interpreted in a manner consistent with the Paris Agreement, which holds a special status in Brazil's legal hierarchy. Below is the STF's stance on the issue:

17. Similarly, the Constitution recognizes the supralegal status of international human rights treaties to which Brazil is a signatory, as outlined in Article 5, paragraph 2. There is no question that environmental issues fall under this provision. [...]

11 At the 21st Conference of the Parties (COP21) of the UNFCCC in Paris, a new agreement was adopted with the primary goal of strengthening the global response to the threat of climate change and enhancing the ability of countries to manage its impacts.

The Paris Agreement, approved by 195 UNFCCC countries, aims to reduce greenhouse gas (GHG) emissions within the context of sustainable development. The commitment focuses on keeping the global average temperature rise well below 2°C above pre-industrial levels and making efforts to limit the temperature increase to 1.5°C above pre-industrial levels.

Source: Brazilian Ministry of the Environment and Climate Change. Link: <http://antigo.mma.gov.br/clima/convencao-das-nacoes-unidas/acordo-de-paris.html>.

In parallel with the discussions taking place in Paris, the federal government, via Decree No. 8,576/2015, established the National Commission for the Reduction of Greenhouse Gas Emissions from Deforestation and Forest Degradation, Conservation of Forest Carbon Stocks, Sustainable Forest Management, and Increase in Forest Carbon Stocks (REDD Conaredd+). This commission was formed to establish governance in this sector.

In 2019, Decree No. 10.144 reformed the Commission, clarifying that Conaredd+'s role is to coordinate the national strategy for accessing 'results-based payments,' not to regulate the 'carbon market' itself, particularly the voluntary market. This was underscored in Resolution No. 3 of 2020, where Article 1 states:

[The Commission] acknowledges the contribution of the voluntary forest carbon market and aims to encourage its operation in alignment with relevant national and subnational legal frameworks. This clarifies that states' participation in the voluntary carbon market is not only legally supported but also explicitly recognized and promoted by Conaredd+, indicating that public authorities can engage in voluntary markets.

In this context, subnational states play a crucial role in achieving the Nationally Determined Contributions (NDC) goals. There should be stronger integration between regional initiatives and the national sectoral plans set by the federal government. Any emission reduction strategy in Brazil must consider integrating the efforts of the Legal Amazon states, which have public policies targeting emission reductions from deforestation and forest degradation.

Moreover, the voluntary market does not impose any obligations concerning the national emissions inventory, so it doesn't interfere with Brazil's international commitments, ensuring there's no negative impact on NDC targets. This allows subnational states to participate in the voluntary market without requiring 'corresponding adjustments' or federal government authorization or approval.

Subnational states have the opportunity to establish partnerships with companies – both national and international – in regulated markets. These collaborations enable companies to meet their emissions reduction targets through obligations fulfilled within Brazilian territory without the need for corresponding adjustments. This means that, even in regulated markets, states can engage in agreements that offer compensation for genuine emissions reductions. At the same time, private buyers meet their reduction commitments in Brazil, and the country's NDC accounting remains unaffected.

Moving past these issues, a significant legal milestone is Law No. 14,119 of 2021, which establishes the National Policy on Payment for Environmental Services (PNPSA, the acronym in Portuguese) and the Federal Program for Payment for Environmental Services (PFPSA, also the acronym in Portuguese). Although the law provides a fairly clear framework for the Federal Program, the National Policy has several gaps that will require a regulatory decree to address.

As a result, the states need to collaborate with the federal government to address key aspects of Law No. 14,119/2021, which will be regulated by federal decree. This includes defining eligible emission reduction efforts for both regulated and voluntary markets in Brazil and abroad, creating instruments for implementing the national policy, and establishing proper governance for the PNPSA. It also requires organizing the National Registry for Payments for Environmental Ser-

VICES and outlining the basic structure of the standard contract for environmental services payments, as stipulated in the law.

It's also crucial to detail how the law applies to eligible areas, beneficiaries, funding sources, allocation of public resources, tax benefits for environmental services payments, and basic metrics for valuing, validating, monitoring, verifying, and certifying related programs, projects, and similar instruments. This last point—standards, along with governance—is especially significant, as it will underpin a healthy market with minimum quality and legitimacy guarantees, reducing risks for investors and partners in Payment for Environmental Services (PES) initiatives.

The regulation of Law No. 14,119 of 2021 is, therefore, a matter of urgency and should be a priority for both the federal government and the states, especially those in the Legal Amazon.

To further solidify the national legal framework on REDD+, it's important to mention Decree No. 11,075 of 2022, which established the National System for Reducing Greenhouse Gas Emissions (Sinare, the acronym in Portuguese). This system serves as a centralized registry for emissions, removals, reductions, and offsets of greenhouse gases, and as a platform for trading, transferring, transacting, and retiring certified emissions reduction credits. Additionally, it provides accreditation for certifiers, operating as a preliminary and provisional cap-and-trade platform. In this context, certified emissions reduction credits can be used to meet emissions limits across various economic sectors.

The regulation reinforces the transferability of carbon credits described in the Brazilian Forest Code. In the decree, carbon credits are defined as financial and environmental assets that are transferable and represent the reduction or removal of one metric ton of carbon dioxide equivalent, issued and recognized in either the voluntary or regulated market. This underscores the potential of the voluntary market, where state entities can also participate.

REDD+ in the Brazilian Emissions Trading System (SBCE): Jurisdictional Initiatives from the Amazon States

Finally, there's the ongoing discussion about the bill to create the Brazilian Emissions Trading System (SBCE, the acronym in Portuguese). This bill has been voted on in both the Senate and the Chamber of Deputies and, at the time of writing, is back in the Senate for further consideration.

This legislative initiative is widely recognized as a significant—and necessary—step toward creating the legal and economic framework for an emissions reduction market in Brazil. The original bill, authored by Senator Leila Barros and initially approved by the Senate, achieved a balanced approach by combining public or 'jurisdictional' initiatives with private projects, which are essential as complementary strategies to government policies.

However, after passing through the Chamber of Deputies, the SBCE bill underwent significant and technically unsound changes, leading to legal uncertainties and creating unnecessary tension between public initiatives and private projects. In reality, these two approaches could work together in a regulated market, ensuring financial and environmental integrity through methodological 'nesting'.

The jurisdictional approach within the context of REDD+, incorporating the 'nesting' of private projects, offers a range of advantages, including economic, environmental, and social benefits that will be detailed below.

Equity in Benefit Distribution

The inclusion and engagement of local communities, Indigenous Peoples, and other stakeholders are crucial in the jurisdictional approach, fostering sustainable development and social justice with equitable and fair distribution of benefits generated by the market.

Conversely, a purely project-based approach would favor large-scale landowners, a group historically privileged by land concentration in the Amazon. This would repeat the exclusive patterns of earlier policies for the region, potentially excluding a significant number of small environmental service providers from the ‘market’.

Family farmers and traditional communities, considering the high transaction costs, technical complexities, and general lack of land tenure security (among other factors), would not have the economic means to develop their own projects.

Therefore, benefit distribution mechanisms within jurisdictional systems become the sole means to promote an inclusive market with social justice, integrating vulnerable groups and small environmental service providers as economic beneficiaries of the forest carbon market. This requires participatory and transparent governance for equitable benefit-sharing.

Large-scale and environmental integrity

The jurisdictional approach stands out for its ability to drive large-scale deforestation reduction, resulting in cost-effective carbon emission mitigation. Unlike isolated projects, which have limited impact and relatively high costs, the jurisdictional approach enables significant emission reduction results on a global scale. Restricting REDD+ solely to private projects would effectively exclude the forest conservation sector from global climate change mitigation efforts due to its insufficient scale of impact.

From an environmental standpoint, the jurisdictional approach safeguards the integrity and continuity of forests, fostering biodiversity conservation and the protection of ecosystem services. By encompassing entire political territories, it ensures that conservation and sustainable management efforts are implemented holistically, considering ecological interconnections and mitigating the issue of ‘leakage,’ where protection in one area inadvertently leads to increased deforestation in other areas.

Integrating private projects methodologically

It’s crucial to note that the jurisdictional approach not only simplifies but also amplifies private REDD+ projects. By integrating with jurisdictional programs or systems, private projects become more robust and reliable, benefiting from a stable regulatory framework and an integrated strategy for conservation and sustainable development. This alignment enhances the credibility and value of carbon credits generated, further encouraging private sector involvement in climate change mitigation efforts – a demand the market recognizes.

Summary of advantages in the jurisdictional approach

As noted by the World Economic Forum, the jurisdictional methodology fosters the development of a broad forest economy, incentivizing government au-

thorities to make decisions unique to the public sector. Concurrently, it facilitates the attainment of environmental benefits extending beyond carbon, such as biodiversity protection and restoration, water conservation, among others. Moreover, it safeguards the rights of small-scale producers and traditional communities. In essence, the jurisdictional approach:¹²

- ▶ promotes inclusion and engagement of a wide range of actors within the jurisdictional territory
- ▶ enables alignment of the accounting framework negotiated under the Paris Agreement
- ▶ reduces the risk of threats to environmental and social integrity
- ▶ creates opportunities for public-private collaboration, influencing deforestation reduction in production chains
- ▶ provides conditions for companies to achieve their net-zero objectives, particularly regarding emissions beyond their control
- ▶ sensures large-scale results swiftly

The jurisdictional approach also fosters transparency and governance, which are essential for investor confidence and the integrity of the carbon market. Implementation of sustainable practices and carbon credit generation are monitored and validated within a robust regulatory framework. This ensures that emission reductions are genuine, measurable, and verifiable, and they are seamlessly integrated into both national and international accounting systems. This ensures accounting integrity and prevents double-selling and double-counting.

Simultaneously, as previously mentioned, the jurisdictional approach not only doesn't obstruct but also enhances and facilitates private projects. It establishes a conducive environment for public-private collaboration and the growth of a robust forest carbon market with fair benefit distribution. This encourages the advancement of genuine projects while constraining the influence of those employing low-quality methodologies that distort baselines and undermine market integrity.

Conclusions and recommendations

Based on the comprehensive analysis of the National Policy on Climate Change Law, Article 41 of the Forest Code, particularly its § 5, Federal Decree No. 10,144/2019, Conaredd+ Resolution No. 3/2020, Law No. 14,119/2021, and Federal Decree No. 11,075/2022, in light of Article 7, §2 of the Paris Agreement, which holds a supralegal status in the national legal system (ADPF 708), the legal possibility for Brazilian subnational states to negotiate forest carbon assets and participate in environmental service incentive platforms, including pay-for-performance and regulated markets, is evident, provided there is no requirement for a corresponding adjustment.

¹² WORLD ECONOMIC FORUM. Forests for Climate: Scaling up Forest Conservation to Reach Net Zero. Available at: https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cad=rja&uact=8&ved=2ahUKEwjn-bnjpZP_AhX-qJUCHWpCBm8QFnoECBkQA-Q&url=https%3A%2F%2Fwww3.weforum.org%2Fdocs%2FWEF_Forests_for_Climate_2022.pdf&usq=AOvVaw3pvmiq3l22DTeQ6QtqWzhq.

In this regard, FOPEMA considers it legally viable for subnational states to participate in voluntary and regulated markets without the requirement of a “corresponding adjustment.” They are not subject to authorization or endorsement from the federal government to enter into transactional agreements regarding forest carbon credits and payments for results generated within their state systems. This is because, in such cases, there is no interference with national accounting and, therefore, no impact on the targets assumed under the Paris Agreement.

Hence, the participation of states in the forest carbon market is assured due to their significant jurisdiction over climate change issues and the autonomy granted to them by the Constitution of the Republic, under the conditions outlined in this document. Any potential restriction imposed by the Union would require a clear, justified, necessary, and reasonable explanation (clear statement rule). It’s important to note that the default presumption is in favor of states’ freedom to establish their institutional and regulatory frameworks (presumption against preemption).

Conversely, there are substantial opportunities for harmonizing national and state-level policies. It’s imperative to prioritize collaborative efforts between the Union and Amazonian states in regulating Article 41 of the Forest Code, Law No. 14,119/2021, and ensuring compliance with the Paris Agreement’s provisions regarding corresponding adjustments. This is vital for maintaining the integrity of the accounting system. States should actively seek out this collaboration, potentially by establishing a joint task force to address these issues comprehensively.

In conclusion, the jurisdictional approach to REDD+ emerges as a comprehensive and effective strategy for tackling the global challenges of deforestation and climate change. It delivers significant economic, environmental, social, and legal benefits. This framework not only instills confidence in investors but also ensures that private projects are in harmony with broader conservation and emission reduction goals, fostering a stronger, more transparent, and accountable market.

DEBATES AND PERCEPTIONS ON THE CARBON MARKET

BY FOPEMA

Presently, state attorneys are deeply engaged in comprehensively understanding the legal breadth of the subject and the implications of the agreements reached. Although significant progress has been made in various sensitive areas, challenges persist in analyzing certain aspects, such as asset quantification. Moreover, there is a recognized need to further explore the understanding of execution methods, which may entail direct negotiations that circumvent the usual bidding requirements, execution through state-owned enterprises, and/or public concessions.

Linked to this, there is ongoing discussion on how legal departments can encourage forest preservation. One avenue is through the development of projects involving communities focused on bioeconomy, concessions, and Payments for Environmental Services (PES).

Clear positions on these matters are crucial for understanding the legal constraints and facilitating reflections on innovations and shifts in perspectives. After all, with every new development in the socioeconomic landscape, it becomes necessary to reassess the discussion’s fundamentals.

SPECIFICITIES OF THE STATES

BY FOPEMA

FOPEMA strives for collaborative efforts, seeking to enhance understanding, procedures, and regulations within the Amazon biome. However, these issues manifest differently in each state. To highlight the diverse procedures, we offer a summary of each state's context and relevant legislation.

Acre

Acre is considered a benchmark state in discussions about REDD+ because, in addition to environmental policies in the state, it created the Environmental Services Incentive System (SISA) Law in 2010. Through it, a robust legal framework was established, with strong governance and socioenvironmental safeguards that enabled effective actions against emissions caused by deforestation, as well as the structuring of Acre's REDD+ program. Its overall objective is to promote the progressive, consistent, and long-term reduction of greenhouse gas emissions with a view to achieving the state's voluntary target of reducing emissions from deforestation and forest degradation.

The recognition of the developed policies came through financial cooperation established with Germany for the implementation of the first phase of the Global REDD Early Movers (REM¹³) program in Acre (2012-2018). The outcome was so positive that in 2018, the second phase of REM continued, with financial contributions also from the United Kingdom.

This cooperation is also taking place in the state of Mato Grosso and in the countries of Colombia and Ecuador.

Applicable Legislation

- ▶ **Law No. 1,277 of January 14, 1999** – Provides for the granting of economic subsidies to producers of crude natural rubber in the state of Acre, and other provisions.
- ▶ **Law No. 1,426 of December 27, 2001** – Provides for the preservation and conservation of forests in the state, establishes the State System of Protected Natural Areas, creates the State Forest Council and the State Forest Fund, and other provisions.
- ▶ **Law No. 1,904 of June 5, 2007** – Establishes the Ecological-Economic Zoning (EEZ) of the State of Acre
- ▶ **Law No. 2,025 of October 20, 2008** – Creates the State Program for Certification of Family Production Units in the State of Acre.
- ▶ **Law No. 2,308, October 22, 2010** – Creates the State System of Incentives for Environmental Services – SISA, the Incentive Program for Environmental Services

13 Launched at the Rio+20 Conference in June 2012, the REM program is an innovative initiative by the German Official Development Assistance (ODA) that rewards pioneers in forest conservation and climate change mitigation. It targets countries or subnational jurisdictions that have taken early initiatives to protect forests. The program provides performance-based payments for verified emissions reductions from deforestation, thereby piloting REDD+ in line with decisions made under the United Nations Framework Convention on Climate Change (UNFCCC). Source: REDD+ in the State of Acre: Rewarding a Pioneer in Forest Protection and Sustainable Livelihood. Link: <https://imc.ac.gov.br/wp-content/uploads/2018/08/REDD-inglés.pdf>.

– ISA Carbono, and other Programs of Environmental Services and Ecosystem Products of the State of Acre, and other provisions.

▶ **Decree No. 11,372 of November 28, 2023** – Establishes the State Plan for Prevention and Control of Deforestation and Burnings in Acre – PPCDQ-AC for the period 2023-2027.

Amapá

In August 2022, Amapá qualified for funding through the National REDD+ Strategy, which allocates resources annually based on performance, with a cap for each state in the Legal Amazon region. Simultaneously, the state is drafting legislation to establish the State Policy on Climate Change and Incentives for the Conservation of Environmental Services (PECISA, the acronym in Portuguese). This policy covers both programmatic aspects and safeguards, providing guidelines for complying with national and international agreements.

The state government has been in talks with two organizations to collaborate with the LEAF Coalition (Lowering Emissions by Accelerating Forest Finance), a public-private partnership designed to channel funds to forest-governing bodies by purchasing high-integrity jurisdictional REDD+ credits. This collaboration aims to facilitate the state's negotiations for future funding.

Additionally, Amapá is working on a proposal to pay for preserving standing forests and reducing deforestation. The state, which has the most well-preserved section of the Amazon in Brazil, emphasizes the need for incentives to maintain these forests and foster development in harmony with the natural environment.

However, REDD+ credits face a procedural challenge, as they don't benefit states with high forest cover and low deforestation rates, focusing instead on reducing emissions from deforestation.

Applicable Legislation

▶ **Complementary Law No. 0005 of August 18, 1994** – Establishes the Environmental Protection Code of the State of Amapá.

▶ **Law No. 0702, of June 28, 2002** – Defines the State Policy on Forests and Other Forms of Vegetation of the State of Amapá, aimed at promoting sustainable production of forest goods and services, conserving ecosystems, and improving the quality of life in the state.

▶ **Law No. 686, of July 7, 2002** – Creates the Water Resources Management Policy of the State of Amapá, ensuring decentralized, participatory, and integrated management of water resources among the government, users, and communities, ensuring economic development, social well-being, and maintaining the quality standards of water resources in the state.

▶ **Law No. 1,028, of July 12, 2006** – Defines the Creation and Management of the State Forest of Amapá – FLOTA/AP, aimed at sustainable use through the exploitation of environmental resources and ecological processes, maintaining biodiversity and other ecological attributes in a socially just and economically viable way.

▶ **Decree No. 5,096, of August 27, 2013** – Establishes the Amapá Forum for Global Climate Change and Environmental Services – FAMCSA, with the goal of engaging society in discussions and decision-making about climate change and the conservation of the environmental resources in the State of Amapá.

▶ **Decree No. 3,528 of June 26, 2014** – Establishes the State Forestry Program – PEF/AP, which guides state-level forestry actions, intra- and inter-sectoral coor-

dination, and partnerships with municipal programs, other states, federal initiatives, international cooperation, and other non-governmental entities and organizations.

► **Decree No. 2,212 of June 9, 2017** – Restructures the State Program for Ecological and Economic Zoning of the State of Amapá – PEZEE/AP, with the goal of guiding state planning by providing indicators for the suitability of natural resource use, promoting sustainable agricultural and industrial activities, risk prevention, and the need for environmental protection, promoting environmental sustainability, and improving the quality of life for the populations involved.

Amazonas

Law No. 4,266, of December 1, 2015, established the Amazonas State Policy on Environmental Services and the Environmental Services Management System, which provides crucial tools for implementing the REDD+ mechanism. One such tool is the Environmental Services Management System for programs, subprograms, and projects, with a focus area being the Climate and Carbon Regulation Program. This initiative aims to recover, conserve, and preserve natural ecosystems to promote climate balance and thermal comfort, reduce greenhouse gas emissions, and conserve, maintain, and increase carbon stocks through activities that support the conservation and restoration of both natural and human-altered ecosystems.

The program comprises three subprograms, one of which is REDD+, aimed at reducing greenhouse gas emissions from deforestation and forest degradation, managing carbon flows, promoting sustainable forest management, and maintaining or increasing forest carbon stocks. It also encompasses reforestation, restoring degraded areas, and agroforestry systems, except in cases where natural forests are converted.

To operationalize this legal framework, a mixed REDD+ system was developed for the State of Amazonas, focusing on the commercialization of historical credits derived from reduced deforestation results achieved between 2006 and 2015. Additionally, the system enables the implementation of private REDD+ projects within Protected Areas (PAs).

The state government launched its first private call for proposals through Public Call Notice No. 002/2023 – SEMA, with the aim of approving REDD+ project proposals for development and implementation within the 42 state PAs. The call targeted execution agents recognized by the state’s environmental policy management.

At the same time, the Amazonas government is in carbon trading negotiations with the state-owned enterprise.

Applicable Legislation

► **Complementary Law No. 53, of June 5, 2007** – Regulates Clause V of Article 230 and §1 of Article 231 of the State Constitution, establishes the State System of Protected Areas (SEUC, the acronym in Portuguese), sets penalties for infractions, and provides additional measures.

► **Law No. 3,135, of June 5, 2007** – Establishes the Amazonas State Policy on Climate Change, Environmental Conservation, and Sustainable Development, along with other provisions.

- ▶ **Decree No. 26,958, of September 4, 2007** – Establishes the *Bolsa Floresta*¹⁴ program of the State Government of Amazonas, outlining its framework and providing additional measures.
- ▶ **Law No. 4,266, of December 1, 2015** – Establishes the Amazonas State Policy on Environmental Services and the Environmental Services Management System, creates the State Climate Change, Environmental Conservation, and Environmental Services Fund, amends State Laws No. 3,135/2007 and 3,184/2007, and provides other measures.
- ▶ **Decree No. 44,968 of December 9, 2021** – Concerns the State Policy on Environmental Services, the Bolsa Floresta program, and other provisions.
- ▶ **Decree No. 47,565 of June 5, 2023** – Establishes the Amazonas State Plan for Prevention and Control of Deforestation and Wildfires (PPCDQ/AM) in its fourth phase; Reactivates the Committee for Prevention and Control of Deforestation and Wildfires in Amazonas; and establishes the state’s voluntary commitment to reducing degradation, wildfires, and deforestation while providing other measures.

Maranhão

In 2021, the State of Maranhão introduced the Policy for Reducing Greenhouse Gas Emissions from Deforestation and Forest Degradation, Conservation of Forest Carbon Stocks, Sustainable Forest Management, and Increase of Forest Carbon Stocks (REDD+), as well as the Management of Environmental Assets and Payment for Environmental Services (PES). This policy, known as the Jurisdictional REDD+ and PES System, aims to establish a mechanism for compensating forest assets in both public and private areas.

The legislation also broadened the role of Maranhão Parcerias (MAPA), a mixed-capital corporation set up as a joint-stock company. MAPA’s mission is to promote the economic and social development of the State of Maranhão by managing projects and providing services in partnership with the private sector. Under the 2021 law, MAPA will function as the Organizing Body for Commerce, Markets, Financial Support, and Management within its institutional remit. It will focus on creating financial and economic structures, encouraging green investments, and developing strategies to attract and raise funds and investments.

The state government is at a stage very similar to that of Amapá regarding the LEAF Coalition, with the letter of intent being facilitated through the state-owned company Maranhão Parcerias.

Applicable Legislation

- ▶ **Law No. 11,578, November 1, 2021** – Establishes the Policy for Reducing Greenhouse Gas Emissions from Deforestation and Forest Degradation, Conservation of Forest Carbon Stocks, Sustainable Forest Management, and Increase of Forest Carbon Stocks (REDD+), as well as the Management of Environmental Assets and Payment for Environmental Services (PES) of the State of Maranhão, known as the Jurisdictional REDD+ and PES System. It also amends State Law No. 11,000, dated April 2, 2019, to expand the scope of work of Maranhão Parcerias – MAPA.

¹⁴ Translator’s Note: A government funded program that provides benefits to families living in Protected Areas in exchange for commitments to preserve the forest.

- ▶ **State Decree 37,969 of October 26, 2022** – Regulates State Law No. 11,578 of November 1, 2021.

Mato Grosso

In 2013, Mato Grosso state established the State REDD+ System (SisREDD+ MT), aimed at contributing to the Action Plan for the Prevention and Control of Deforestation and Forest Fires in the state (PPCDIF/MT, the acronym in Portuguese). This system also incorporates environmental safeguards aligned with the Cancun Convention, along with programs, projects, and support actions. It includes technical instruments at the state level, management of REDD+ resources, assets, and services, as well as municipal, national, and international cooperation.

Four years later, in 2017, the Climate Change Policy of Mato Grosso was enacted, outlining the state's principles and objectives. It mandated participatory governance for all initiatives related to REDD+. During this period, Mato Grosso (MT) started benefiting from the REM program. This was attributed to the state's significant reduction of over 90% in deforestation rates in forests between 2004 and 2014.

In the first phase of the program, the state only receives funding if it maintains deforestation below the threshold of 1,788 km²/year. The funds from the initiative are managed by FUNBIO, the institution responsible for the financial and operational management of REM MT. Disbursements follow specific rules, with 60% allocated to subprograms supporting:

- ▶ family agriculture of traditional peoples and communities in the Amazon, Cerrado, and Pantanal;
- ▶ Indigenous Territories; and
- ▶ sustainable production, innovation, and markets.

The remaining 40% is designated for institutional strengthening and structuring public policies of governmental entities in the state, as well as for implementing and developing structural public policies.

Thanks to the positive results achieved during Phase 1, which enabled the preservation of forests and the empowerment of Indigenous Peoples and traditional communities, the REM program's Phase 2 was confirmed by the governments of Germany and the United Kingdom. This ensures the continuation of the state's environmental preservation efforts and commitments.

Applicable Legislation

- ▶ **Law No. 9,111, dated April 15, 2009** – Establishes the Mato Grosso Forum on Climate Change and stipulates other provisions.
- ▶ **Decree No. 2,943, dated October 27, 2010** – Establishes the Action Plan for the Prevention and Control of Deforestation and Forest Fires in the State of Mato Grosso (PPCDQ/MT) and stipulates other provisions.
- ▶ **Law No. 9,878, dated January 7, 2013** – Creates the State System for Reducing Emissions from Deforestation and Forest Degradation, Conservation, Sustainable Forest Management, and Increasing Forest Carbon Stocks (REDD+) in the State of Mato Grosso and stipulates other provisions.
- ▶ **Decree No. 2,055, dated December 19, 2013** – Establishes the Action Plan for the Prevention and Control of Deforestation and Forest Fires in the State of Mato Grosso (PPCDQ/MT) and stipulates other provisions.

- ▶ **Decree No. 2,694, dated December 29, 2014** – Provides for the establishment and regulation of the management council of the state REDD+ system.
- ▶ **Complementary Law No. 582, dated January 13, 2017** – Establishes the State Policy on Climate Change.
- ▶ **Decree No. 1,490, dated May 15, 2018** – Establishes the Action Plan for the Prevention and Control of Deforestation and Forest Fires in the State of Mato Grosso (PPCDIF/MT) and provides other provision.
- ▶ **Decree No. 1,689, dated October 24, 2018** – Provides for the establishment of the Strategic Management Committee of the Global REDD Early Movers Program (REM) in the State of Mato Grosso (CEGREM/MT)
- ▶ **Decree No. 1,160, dated October 25, 2021** – Creates the CARBONO NEUTRO MT program; establishes the state of Mato Grosso's adherence to the Race to Zero campaign under the United Nations Framework Convention on Climate Change; sets voluntary targets for reducing illegal deforestation in the state; institutes the Action Plan for the Prevention and Control of Deforestation and Forest Fires in the State of Mato Grosso (PPCDIF/MT) 4th phase (2021-2024), and provides other provisions.

Pará

In 2019, the government of Pará began to structure the *Amazonia Agora* State Plan (PEAA, the acronym in Portuguese) as one of the sectoral policies related to the State Policy on Climate Change of Pará (PEMC/PA, also the acronym in Portuguese), focusing on the land use change sector. Launched in August 2020, through Decree No. 941, the PEAA aims to achieve a reduction of at least 37% in greenhouse gas emissions from forest conversion and land use by 2030, as well as decrease emissions by 43% by 2035.

To achieve this target, the PEAA primarily focuses on increasing land use efficiency through command-and-control measures, promoting the regularization of rural properties, combating deforestation and wildfires, and establishing environmental financing to support sustainable activities and reduce greenhouse gas emissions. Additionally, it incorporates three cross-cutting pillars: communication, data transparency, and participatory management; infrastructure and logistics for sustainable development; and information technology, innovation, and scientific research.

For the long-term environmental financing aspect, a strategy based on public-private partnership has been formulated. This strategy aims to enhance public policies and social initiatives through a privately managed fund with public oversight, known as the Eastern Amazon Fund (FAO, the acronym in Portuguese). The initiative, initially introduced in 2019 by way of Decree No. 346 issued on October 14th, is part of an ecosystem of funds in Pará. This ecosystem comprises public and private financial mechanisms that offer diverse responses to the state's socioenvironmental needs.

In addition to this, the government of Pará is working on setting up the jurisdictional system to safeguard the integrity of the carbon market, along with implementing the State Program of Payments for Environmental Services (PES). Nevertheless, a challenge remains in the voluntary market, where there have been reports of rights violations in certain territories.

Applicable Legislation

- ▶ **Decree No. 254, dated August 8, 2019** – Establishes the Pará Forum on Climate Change and Adaptation and stipulates other provisions.

- ▶ **Decree No. 346, dated October 14, 2019** – Establishes the financing strategy called the Eastern Amazon Fund (FAO) as a private collaboration instrument to achieve environmental and development policy goals in the state of Pará.
- ▶ **Law No. 9,048, dated April 29, 2020** – Establishes the State Policy on Climate Change of Pará (PEMC/PA) and stipulates other provisions.
- ▶ **Decree No. 941, dated August 3, 2020** – Establishes the *Amazonia Agora* State Plan (PEAA), creates the Scientific Committee of the Plan and the Permanent Monitoring Nucleus of the Plan, and stipulates other provisions.
- ▶ **Decree No. 1.942, dated October 21, 2021** – Regulates § 5 of article 9 of State Law No. 9,048, dated April 29, 2020, which deals with the Management Committee of the State System on Climate Change (COGES Clima), and stipulates other provisions.
- ▶ **Decree No. 2,281, dated April 6, 2022** – Amends and repeals provisions of State Decree No. 1,942, dated October 21, 2021, which regulates § 5 of article 9 of State Law No. 9,048, dated April 29, 2020, regarding the Management Committee of the State System on Climate Change (COGES Clima), and provides other provisions.
- ▶ **Decree No. 2,744, dated November 9, 2022** – Establishes the Program of Integrated Action for Sustainable Territories (PTS), amends Decree No. 941, dated August 3, 2020, and repeals State Decree No. 344, dated October 10, 2019.
- ▶ **Law No. 9,781, dated December 27, 2022** – Amends State Law No. 9,048, dated April 29, 2020, which establishes the State Policy on Climate Change of Pará (PEMC/PA).

Rondônia

In 2018, Rondônia promulgated Law No. 4,437/18, establishing the State Policy on Climate Governance and Environmental Services (PGSA, the acronym in Portuguese) and the Climate Governance and Environmental Services System (SGSA, also the acronym in Portuguese). This law includes the creation of three initiatives: the Incentive Program for Environmental Services Conservation, the Climate Regulation, Climate Change Adaptation, and Quality of Life Program, and the Environmental Services Payment Program.

The aim of these initiatives is to not only reduce greenhouse gas emissions but also to mitigate and adapt to the impacts of climate change. Additionally, they seek to ensure food production, preserve biodiversity, protect the rights of Indigenous Peoples and traditional communities, and promote sustainable economic development with low emissions.

Within the realm of jurisdictional markets, the state is spearheading the “Unlocking and Boosting Low-Emission Development” project, commonly referred to as Window B. This collaborative initiative involves the Forum of Secretaries of Environment of the Legal Amazon, the Governors’ Climate and Forests Task Force (GCF Task Force) in Brazil, and the United Nations Development Programme (UNDP).

Within the framework of the Sectoral Plan for Climate Change Adaptation and Low Carbon Emission in Agriculture, aimed at Sustainable Development – known as Plan ABC+, the government of Rondônia is focused on planning and coordinating actions to adopt sustainable production technologies. The goal is to harmonize productivity and sustainability in the agricultural sector while working towards reducing greenhouse gas emissions.

Projects have been contracted and implemented within the state, including initiatives in the Rio Cautário Extractive Reserve (RESEX), supported by the Environmental Services Conservation Incentive Program. Additionally, projects have been undertaken in the Rio Preto Jacundá Extractive Reserve and the Guará-Mirim Park.

Applicable Legislation

► **Law No. 4,437 of December 17, 2018** – Establishes the State Policy on Climate Governance and Environmental Services (PGSA) and creates the State System for Climate Governance and Environmental Services (SGSA) within the state of Rondônia and stipulates other provisions.

Roraima

The climate transformations brought about by international and national climate policies are arriving in Roraima with a focus on reconciling agricultural and livestock production sustainability with environmental conservation. Historically, the state has utilized the conversion of native forest vegetation as a means to drive economic development, resulting in a notable increase in productive activities in recent years. However, despite this growth, around 80% of Roraima's territory remains preserved.

Considering the unique local conditions, the state government acknowledges the imperative to combine economic progress with the preservation of natural resources. Thus, initiatives have commenced aimed at establishing mechanisms for Reducing Emissions from Deforestation and Forest Degradation (REDD+) alongside Payments for Environmental Services (PES).

The effort to establish REDD+ in Roraima began in 2017, supported by the GCF Task Force, aiming to develop a jurisdictional system. In 2018, the state applied for funding under Window A, which allowed the initiation of the process to structure its REDD+ jurisdictional system.

The significant outcome of Window A was the issuance of Decree 29,710-E/20, which established the State Policy for Advancing Economic-Environmental Development with Low Greenhouse Gas Emissions (GEE) from deforestation and forest degradation. This decree outlines a governance system involving diverse sectors of society, including a Government Working Group (GWG) for REDD+, a Social Working Group (SWG) for REDD+, and the State Forum for Advancing Economic-Environmental Development with Low Emissions.

Since 2022, new funding from the GCF Task Force has helped identify gaps in state systems for meeting the criteria of the ART TREES certification standard. The Unlocking and Boosting Low-Emission Development project, or Window B, aims to address these gaps by contributing to the development, implementation, and adaptation of subnational and national plans to combat deforestation, wildfires, and forest degradation. Its objective is to enable access to the global program for the registration, verification, and issuance of REDD+ emission reduction credits, thereby facilitating access to the LEAF Coalition.

Based on these financial supports and state legislation, the State System of Environmental Services and Reduction of Emissions from Deforestation and Degradation, Conservation, Sustainable Forest Management, Maintenance, and Increase of Forest Carbon Stocks (REDD+) is being built in Roraima.

Applicable Legislation

- ▶ **Complementary Law No. 007 of August 26, 1994** – Establishes the Environmental Protection Code for the Administration of Environmental Quality, Protection, Control, and Development of the Environment and Adequate Use of Natural Resources in the State of Roraima.
- ▶ **Complementary Law No. 153 of December 21, 2009** – Adds and modifies provisions of Complementary Law No. 007, of August 26, 1994, which Establishes the Environmental Protection Code for the Administration of Environmental Quality, Protection, Control, and Development of the Environment and Adequate Use of Natural Resources in the State of Roraima, to declare activities of social interest and public utility and other provisions.
- ▶ **Decree No. 12,272-E, dated January 25, 2011** – Establishes the Action Plan for Prevention and Control of Deforestation and Fires in the State of Roraima – PPCDQ-RR and creates the Permanent Interinstitutional Working Group for its coordination and other provisions.
- ▶ **Complementary Law No. 193, dated January 17, 2012** – Establishes the Roraima Rural Environmental Regularization Program – RR SUSTENTÁVEL, aiming to promote and support the environmental regularization of rural properties and possessions and their inclusion in the Rural Environmental Registry System or Rural Property Environmental Licensing – SLAPR.
- ▶ **Law No. 986, dated January 22, 2015** – Stipulates technical procedures for the elaboration, presentation, execution, and technical evaluation of Sustainable Forest Management Plans (PMFS) in native forests and subsequent formations.
- ▶ **Decree no. 28,193-E, dated December 12, 2019** – Institutes the State Plan for Prevention and Control of Deforestation and Wildfires in Roraima (PPCDQ/RR) and creates the Institutional Management Committee and the Executive Committee for monitoring, evaluation, monitoring, and implementation of actions of the PPCDQ/RR.
- ▶ **Decree no. 29,407-E, dated October 1, 2020** – Approves the State Plan for Mitigation and Adaptation to Climate Change for the consolidation of a low-carbon economy in agriculture – know as the Plan ABC in Roraima.
- ▶ **Decree no. 29,710-E, dated December 9, 2020** – Institutes the State Policy for Boosting Economic-Environmental Development with Low Emissions of greenhouse gases from deforestation and forest degradation, and provides for other measures.
- ▶ **Decree no. 34,746-E, dated September 19, 2023** – Institutes, in an extraordinary capacity, the Integrated Cabinet for Preventive Action and Management of Natural Disasters – GIGD of the State of Roraima.

Tocantins

Tocantins is leading the way in the carbon market, pioneering legislation to meet the stringent criteria of environmental service investors. Through the implementation of the State Policy for Payment for Environmental Services (PEPSA, the acronym in Portuguese), outlined in Law No. 4,131/23, the state provides legal certainty, outlines the specifics of PES, and sets forth special regulations. Furthermore, this law establishes the Climate Fund (FunClima), designed to allocate financial resources to support projects focused on mitigating and adapting to climate change.

The PEPSA aims to offer legal assurance, streamline the execution of Payments for Environmental Services, and define specific guidelines regarding the

legal framework of PSA. Meanwhile, FunClima, managed by the Secretariat of Environment and Water Resources, is intended to allocate financial resources to support projects, programs, and actions focused on mitigating the effects of climate change and adapting to these climatic shifts and their consequences.

The legislation provides definitions for various environmental terms and outlines the scope, objectives, principles, and underlying assumptions of the PEPSA. It mentions the Environmental Services Payment Program (PROPSA, acronym in Portuguese) and its activities, along with criteria for conducting PES operations, ownership of jurisdictional carbon credits, and the establishment of the PEPSA database.

Moreover, the state, through a Special Purpose Vehicle (SPV) called Tocantins Carbon, is tasked with overseeing certification processes and becoming eligible to generate carbon credits under an internationally recognized standard widely acknowledged in this market.

Following a selection process through a public call for proposals based on Law No. 13,303 of June 30, 2016, a partnership was formed with Mercuria, a Swiss oil and gas company, with the support of Tocantins Parcerias, a mixed economy company. The agreement includes the company's commitment to invest in environmental services and cover the costs of carbon credit certification, based on the state's potential for credit generation. In exchange, the company is guaranteed preference in purchasing any surplus carbon generated by Tocantins until 2032, at the market value prevailing at the time of the state government's decision to sell.

In the event that Tocantins decides to sell to another institution, it commits to reimbursing the Swiss company for the costs of environmental services and certification. The financing model for the certification process is currently being developed.

As part of Tocantins' Jurisdictional REDD+ program, the strategy aims to systematically decrease greenhouse gas emissions resulting from deforestation and forest degradation. It is grounded in the Prevention and Combat Plan for Deforestation and Forest Fires in the State of Tocantins (PPCDIF, the acronym in Portuguese) and operates through four main pillars: Prevention, Command and Control, Combat, and Monitoring. This initiative is designed to encourage the preservation of native vegetation while honoring the livelihoods of indigenous communities reliant on forests.

Applicable Legislation

Tocantins has established several legal instruments to facilitate the implementation of the carbon market, including the State Policy for Payment for Environmental Services and the creation of the Tocantins State Climate Fund. Both initiatives enable the state to meet the requirements for participation in the carbon market.

- ▶ **Law No. 1,917, dated April 17, 2008** – Establishes the State Policy on Climate Change, Environmental Conservation, and Sustainable Development of Tocantins, and adopts other provisions.
- ▶ **Decree No. 5,000, dated February 21, 2014** – Establishes the State Plan for Mitigation and Adaptation to Climate Change for the Consolidation of a Low Carbon Emission Economy in Agriculture – ABC-TO Plan, and adopts other provisions.
- ▶ **2020-2030 ABC Plan – ABC+TO** – The Sectoral Plan for Climate Change Adaptation and Low Carbon Emission in Tocantins Agriculture is a State Plan that

builds upon the national sectoral policy to address climate change in the agricultural sector, for the period from 2020 to 2030.

- ▶ **Law No. 4,111, dated January 5, 2023** – Establishes the State Policy on Payment for Environmental Services (PEPSA) of Tocantins, and adopts other provisions.
- ▶ **Law No. 4,131, dated January 5, 2023** – Establishes the Tocantins State Climate Fund – FunClima, and adopts other provisions.

FOPEMA'S WORK DRIVING CHANGE

BY FOPEMA

The subject presents conceptual and legal challenges, as there is still much to be regulated. However, progress has been made in analyzing the legal and institutional aspects to enable transactions in the voluntary carbon market within FOPEMA's framework. Specific analyses have been carried out and consolidated in Joint Statements.

In 2022, the following guidance was issued to state-level Climate Policy managers:

Joint Statement 01/2022, dated May 10, 2022:

- ▶ Carbon credits can become a public environmental asset, allowing, among other possibilities, a state-owned company to be capitalized, potentially by internalizing the credits as an increase in capital, to enable their trading in the market.
- ▶ This is a highly dynamic market, so the models, instruments, and tools designed by the states should be created with a long-term perspective and enough flexibility to allow access to various options, depending on the opportunities and rules set by buyers, donors, or partners. States should ensure that regulations do not restrict the available alternatives for accessing resources, whether through payment by results or through accessing regulated or voluntary markets.
- ▶ For the “nesting” of private projects, it is recommended to adopt the following general guidelines: a) the interested party should be able to present a calculation of the credits issued by the project using the same methodology chosen by the state to ensure consistency in implementation, accounting, and maintaining the system's integrity; or b) alternatively, establish regulations for a registry with at least the project's area boundaries, allowing the state to calculate the potential credit generation based on the public system's standards. This also helps ensure accounting integrity and prevents double counting.
- ▶ Permanent information exchange between SEMA [State Environmental Secretariat] and PGE [State Prosecutor's Office] managers regarding the technical, political, economic, scientific, and administrative aspects involved in meeting the requirements for accessing the carbon market is crucial. This helps in creating regulations or issuing legal opinions based on the best available knowledge, significantly reducing the system's legal risks.
- ▶ It's essential to consider that discussions about state access to the REDD+ carbon market should include the topic of taxation, which could impact the

economic dynamics of transactions. Thus, this topic should be part of the agenda for the June Working Group discussions.

Joint Statement 02/2022, dated June 7, 2022:

- ▶ FOPEMA suggests that the states within the Legal Amazon create ways to register private projects in the voluntary carbon market to maintain the accounting integrity of state systems. This can be done through public calls for projects, notices, or similar instruments without interfering in private negotiations or indicating state endorsement.
- ▶ FOPEMA recommends that the states monitor the implementation of the Work Plan provided by the Brazilian Ministry of the Environment (MMA) related to the revision of the national FREL [Forest Reference Emission Levels], as well as the schedule of Conaredd+ meetings and its advisory bodies. This way, as work progresses and if necessary, the states can weigh in on decisions through their representation on Conaredd+.
- ▶ FOPEMA recommends that states that are not yet eligible for payment by results complete their processes with Conaredd+, and that all states in the Legal Amazon assess the feasibility of accessing multiple funding sources, including markets, to support meeting NDC targets.
- ▶ Furthermore, the Forum discussions have facilitated interaction with partners, mainly concerning potential taxation applicable to CERs [Certified Emissions Reduction] and the proposals and perspectives of private project developers, providing insights for creating a project alignment proposal.

Regarding the taxation applicable to CERs, attorneys reviewed the results of a study conducted by the [Brazilian] Sharlack Law Firm. Based on their analysis of National Legislation (Law No. 14,119/2021), they concluded that the amounts received as payment for environmental services do not form part of the tax base for Income Tax, Social Contribution on Net Profit, Contribution for Social Integration and Public Servant Property Formation Programs, or Contribution for the Financing of Social Security. This provision applies only to contracts executed by public authorities or, if between private parties, provided they are registered with the CNPSA [National Registry of Payments for Environmental Services], subjecting the taxpayer to appropriate tax compliance measures.

The possible arrangements proposed in the study for the generated credits are:

- ▶ direct sale of the title (carbon credit) by the states;
- ▶ sale of the title (carbon credit) by a state-controlled company; and
- ▶ granting the right and obligation¹⁵ to provide environmental services within the jurisdiction. Specific premises were defined for each case, along with associated challenges that must be considered for each alternative.

¹⁵ Granting a right and obligation means that by granting a right, you are also imposing a corresponding obligation. Source: Revista de Direito Constitucional e Internacional (https://www.mpsp.mp.br/portal/page/portal/documentacao_e_divulgacao/doc_biblioteca/bibli_servicos_produtos/bibli_boletim/bibli_boi_2006/RDConsInter_n.95.06.PDF).

Regarding the alignment of private projects:

- ▶ Dialogue has begun with companies developing private projects to explore mechanisms that facilitate project alignment and accounting as outlined in the TREES Standard.
- ▶ The theoretical frameworks used for the design of Acre's Environmental Incentives and Services System have been explored.

Private projects generate carbon credits based on the conservation of surplus native vegetation on rural properties under Avoided Planned Deforestation (APD) or based on illegal deforestation and degradation pressures in the region from other forest remnants under Avoided Unplanned Deforestation (AUD). The VERRA/VCS Standard is the most widely accepted in the market.

A methodological mismatch was identified between private projects and J-REDD programs. The development companies have profiled deforestation for each state and identified protected forests in private areas, allowing them to estimate the carbon credit potential from Avoided Planned Deforestation (APD) and Avoided Unplanned Deforestation (AUD) projects, which are 28% and 72%, respectively. The state with the most potential for project development is Mato Grosso. These proportions have led to the idea that establishing a quota might be a viable way to address the alignment issue.

Revisiting the suggestions from the Scientific Panel established in Acre, it was noted that the approach at the time involved defining a baseline. Since the baseline represents a plausible scenario of emissions without external intervention, setting baselines for different types of land use/occupation would be necessary to structure an overall baseline. This required delineating homogeneous areas, such as Protected Areas (PAs), Indigenous Territories (TIs), settlements, private properties, and different soil types, and examining deforestation history over the last 10 or 20 years for each category, projecting the trends into the future. This approach could produce a baseline map that helps define the scope of the carbon market for each case, aiding accounting and the “nesting” of private projects. This topic is still under discussion, emphasizing the importance of revising the national baseline, which is currently in progress and expected to be presented in early 2024.

Fine Conversion

Historically, it is important to highlight that for each environmental infraction or irregularity identified, the competent authority must impose the corresponding environmental administrative sanction, in accordance with the normative forecast. Article 70 of Federal Law No. 9,605/1998 (Environmental Crimes Law) defines environmental administrative infraction as “any action or omission that violates the legal rules for the use, enjoyment, promotion, protection, and recovery of the environment.”

In this context, Federal Decree No. 6,514/08 provided regulations for administrative sanctions, specifying the process for classifying such behaviors through the issuance of infraction notices and delineating the penalties to be imposed for instances of environmental administrative infractions, alongside the potential application of other legally established penalties.

Indeed, historically, while the identification of these infractions is straightforward, the enforcement of penalties for their commission, particularly concerning the collection of fines imposed on offenders, has been one of the most significant and daunting challenges faced by environmental agencies, especially within the states of the Amazon, due to the vast territorial expanses of most of these states.

There are several difficulties, including:

- ▶ fines of nominal amounts, often directed to active debt or protested, despite lacking significant environmental impact;
- ▶ challenges in identifying offenders for certain environmental infractions, or, upon identification, facing difficulties in notifying them – a necessary procedural step; and
- ▶ larger fines, upon collection, are allocated to public funds, typically subject to budget constraints or delays in financial disbursement.

An alternative to this scenario could be the use of the conversion of simple fines into services for the preservation, improvement, and restoration of environmental quality. This is a special procedure outlined in Federal Decree No. 6,514/2008 and in some state laws, notably Law No. 9,575/2022 in the state of Pará, within the Amazon region. This law specifically provides for this method of reconciling environmental fines, aiming to streamline environmental activities and expedite the resolution of environmental processes.

Certainly, facilitating this procedure requires environmental agencies to make several adjustments to existing protocols and commit to monitoring and delivering results. Progressing with these solutions has the potential to broaden support for the restoration of degraded areas and generate positive environmental impacts.

UNDERSTANDING THE ISSUE

BY TÁTILLA BRITO

The conversion of environmental fines is a provision granted to those accused in punitive proceedings, aiming to replace the obligation of paying the penalty

with the responsibility of providing environmental services. This effectively substitutes a simple fine with services focused on preserving, enhancing, and restoring environmental quality. Initially introduced in the Environmental Crimes Law (Federal Law No. 9,605/1998) and later regulated by Federal Decree No. 6,514/2008, it became applicable within the state of Pará following the enactment of State Law No. 9,575 on May 11, 2022. This law outlines procedures for administrative environmental proceedings to investigate conduct and activities that are harmful to the environment, along with the corresponding sanctions, while also addressing environmental conciliation within the public administration of Pará.

In the Amazon states, the majority do not have a specific law addressing environmental conversion. Nevertheless, this absence does not prevent its application. Each state can utilize Federal Decree No. 6,514/2008 for determining and imposing penalties, as well as for guidance in developing their internal procedures.

It's worth emphasizing the regulation published in 2022 in the state of Pará, as it is pioneering at the state level regarding this issue. It incorporates local specificities, allowing for the implementation of environmental fine conversion that is more tailored to regional realities.

The mentioned law, in articles 11 and 44, section IV, introduces fine conversion as a form of environmental conciliation. It offers the accused the choice between paying the reduced fine stated in the issued infraction report or converting this reduced amount into an environmental project listed in the fine conversion database designated by the environmental agency (the Secretary of State for Environment and Sustainability of Pará). This conversion is directed towards supporting initiatives for the preservation, improvement, and restoration of environmental quality.

The federal regulation outlines two methods of fine conversion:

- ▶ direct conversion, which involves the accused drafting and implementing a project for environmental preservation, improvement, or restoration independently, according to pre-defined or approved guidelines from the relevant state environmental agency; and
- ▶ indirect conversion, which allows the accused to pay the reduced fine amount, with legal discounts applied, directing this sum to a project designated by the state environmental agency. The execution of the project may be carried out by either the state agency or a third party contracted by them.

State Prosecutors are optimistic about the potential of environmental fine conversion as a solution for the accumulation of environmental fines within regulatory agencies. They aim to utilize this instrument to engage major offenders, individuals, or entities with substantial fine amounts resulting from punitive processes. This approach is particularly relevant in cases involving significant environmental damage or when multiple infringement proceedings against a single entity lead to a substantial fine. By collectively assessing these cases, there is potential for environmental conciliation regarding the imposed fines.

Thus, the perspective with environmental fine conversion is, in the medium term, to establish several Commitment Agreements for Environmental Fine Conversion (CA–Environmental Fine Conversion) with large companies and individu-

als who have significant fine liabilities with state environmental agencies, thereby making the instrument of environmental fine conversion, which is often discredited among jurists and environmental professionals, a more viable option for the composition and resolution of environmental liabilities.

This strategy by federal entities is driven by the potential for environmental fine conversion to serve as a positive marketing tool for large companies. It can aid in enhancing governance structures and meeting ESG (Environmental, Social, and Governance) standards, which are now primary concerns within corporate environments.

In this context, it's important to highlight that ESG has replaced the terminology "sustainability" in corporate settings. This shift gained momentum in 2015 with the UN's 2030 Agenda and the Paris Agreement, both centered around Sustainable Development Goals (SDGs). Failing to align with these principles can lead to adverse effects on a company's reputation.

Indeed, over the past five years, governance and ESG have emerged as increasingly influential topics. Corporate governance holds the potential to steer company actions towards more sustainable practices. As a result, there has been a growing urgency to adopt measures that make business processes more sustainable.

Thus, the existence of punitive processes, with fines imposed on companies by environmental agencies due to conduct or activities that are harmful to the environment, affects the company's branding (its reputation and image conveyed to the market) and, consequently, its profits.

Contrary to what is often assumed, sustainability extends beyond environmental concerns. ESG commitments also encompass social and ethical aspects, giving rise to discussions on transparency, diversity, compliance, and regulatory risk.

Effective management of risks related to environmental and social issues goes far beyond merely complying with legal and regulatory requirements. It serves as a metric to guide best practices, considering environmental and social impacts throughout the business chain. This includes aspects such as carbon emissions, waste management, labor issues, and diversity and inclusion of workers, among others.

Hence, it is evident that having environmental punitive proceedings pending against a company, previously considered a secondary concern with solutions often delayed, as companies relied on the slow progress of these processes within environmental agencies, resulting at times in fines becoming prescribed, is now seen as a significant issue for the company's image. This situation poses a *reputational risk*, distancing the company from being perceived as a "brand" that fulfills the ESG criteria increasingly demanded by the market.

With that in mind, the states in the Legal Amazon region largely maintain that environmental fine conversion could serve as a significant reconciliation tool. This is because it can be employed as a strategy by the implicated legal entities themselves to create a favorable perception, effectively mitigating reputational risks.

Challenges for applicability

Given the considerations above, the feasibility of companies using the environmental fine conversion institute as a means to improve their image in the market is evident. This demonstrates that, despite environmental infractions, the payment of imposed fines can be redirected through environmental fine conversion into services aimed at preserving, improving, and restoring environmental quality.

The challenges to its implementation stem from classic issues arising from deficiencies in the structure of both federal and state environmental agencies. These agencies still lack adequate technical infrastructure and sufficient personnel (public servants) to efficiently and promptly address the demand for environmental fine conversion.

Moreover, there is currently no established model for environmental fine conversion in Brazil that has produced significant practical results. This is particularly evident at the federal level, where the process at the Brazilian Institute of the Environment and Renewable Natural Resources (IBAMA) is highly bureaucratic, difficult to implement, and lacks a transparent and organized procedural flow for fine conversion within the agency.

In this scenario, the state of Pará stands out as one of the Amazon states that sought, from the drafting stage of the state law, to make adjustments, aiming to address the shortcomings observed in other federative entities. As a result, the state government developed a simpler, faster, and more objective procedure, with the aim of encouraging the accused to reconcile through the environmental fine conversion institute. The main challenge for the state public entity is to instill credibility in the procedure among the accused parties.

Considerations

The conversion of environmental fines into services for environmental preservation, improvement, and restoration arose from a beneficial normative change in the realm of environmental infractions. This change not only aligns environmental enforcement practices with the recovery and preservation of environmental assets but also substitutes the mere obligation to pay a fine with the obligation to provide an environmental remediation service or allocate the fine payment to a specific project indicated by the competent environmental authority.

Initially established in the Environmental Crimes Law (Federal Law No. 9,605/1998) and further detailed by Federal Decree No. 6,514/2008, environmental fine conversion was implemented in the state of Pará with the enactment of State Law No. 9,575 on May 11, 2022. This legislation governs the environmental administrative process for investigating harmful conduct and activities, outlines the applicable sanctions, and addresses environmental conciliation within the public administration of Pará.

The Amazon states view the implementation of the environmental fine conversion tool optimistically. They believe it will attract individuals and/or legal entities facing high fines in punitive proceedings to engage in conciliation. There is a hope that these companies will use fine conversion as a positive marketing strategy, leading to improved governance and ESG practices. This is particularly crucial because ongoing environmental punitive processes against a company pose reputational risks, potentially undermining its image as a brand that fulfills the ESG standards increasingly demanded by the market today.

The challenges to its implementation are due to issues such as the environmental agency's lack of technical infrastructure and personnel, as well as the absence of a clear and organized procedure. This lack of clarity may make the accused hesitant to choose the environmental fine conversion process during environmental conciliation.

DEBATES AND PERCEPTIONS ON FINE CONVERSION

BY FOPEMA

Environmental fine conversion is the permission granted to the accused in a punitive process to convert the obligation to pay the penalty into an environmental service. In practice, it replaces a simple fine with services aimed at preserving, improving, and restoring environmental quality.

The fine conversion, with conciliation as a mediation tool, was initially modeled by the Brazilian Institute of the Environment and Renewable Natural Resources (IBAMA). Both this institution and the Chico Mendes Institute for Biodiversity Conservation (ICMBio) have their own regulatory guidelines to guide the procedures to be adopted. This content serves as a model and basis for reflection on possible improvements at the state level.

The experience of federal environmental agencies helps refine the adoption of new models. This is because models like these aim to avoid procedural bureaucratization, strengthening a more educational/punitive approach rather than a purely revenue-oriented one.

Furthermore, this reflection can be expanded when considering the revenue-oriented treatment given to the enforcement of active debt at the state level. Currently, State Debt and Tax Prosecutors' Offices are responsible for executing these resources, while State Environmental Prosecutors' Offices act as legal advisory bodies and handle litigation regarding the imposition of fines or the granting of environmental licenses.

The State Debt and Tax Prosecutors' Offices handle various types of debts, ranging from unpaid taxes to the collection of environmental fines. They are best suited for this type of monitoring because they have specific systems and software, often utilizing artificial intelligence, which facilitates the collection process.

The issue is that there's no distinction in the treatment given to different types of debts. This results in environmental fines being handled solely for revenue purposes, without considering the legal right that was violated, namely the right to an ecologically balanced environment. One possible solution would be to adopt a new perspective on the matter, where the judicial enforcement of these fines doesn't solely follow a financial criterion. This doesn't mean changing the entity responsible for collection, but rather the criterion used for protest or debt enforcement, which should be environmental, considering the significance of the legal right involved.

However, many states in the Amazon lack their own regulations regarding environmental fine conversion and conciliation in infringement proceedings. This means that they rely on federal legislation, and consequently, these states share some challenges related to the issue with federal environmental agencies. However, there's still a need for legal understanding on ways to disseminate this model across states, considering regional aspects and lessons already learned.

Among the aspects to be observed, there is a lack of adequate structuring of mechanisms for converting fines into environmental preservation, improvement, and restoration services. This is because fine conversion requires monitoring systems and procedures, as well as trained personnel for oversight. Additionally, there is an insufficient amount of mechanisms to incentivize the accused to adhere to conciliation through fine conversion.

In addition to this, there is a reflection on the need for regulatory improvement regarding the procedure and application of environmental fines. This is

because often, due to procedural errors within the State Environmental Departments, environmental fines are prescribed and/or judicially declared null. Enhancing the regulations for formalizing the terms of citation, notification, and adjudication of any appeals within the departments can also contribute to the improvement of the process.

This directly impacts the time spent on concluding the administrative process, which sometimes becomes excessive. On the other hand, it highlights a mismatch between the number of citations in new proceedings and the pace of instruction and adjudication in the first instance.

The challenges of the existing model mainly revolve around the lack of an environmental fine conversion model in Brazil that has effectively yielded significant practical results. The absence of pre-structured projects and/or activities for the use of resources emerges as an area to be addressed. In much of the Amazon, the biggest challenge for the government is not necessarily the lack of resources but the absence of projects for resource allocation.

It's clear there's a concerted effort to bolster the effectiveness of deforestation control plans, recognizing the need for mechanisms to broaden legal actions and curb illegality, thus shifting this behavior. Moreover, there's a pursuit of solutions that provide alternatives for collecting fine proceeds beyond solely for public funds. This is due to challenges in transparency and resource accessibility typically associated with funds deposited into the state's general account.

In this scenario, several opportunities can be identified for improvement in the adopted procedures:

- ▶ Development of specific state legislations to make environmental administrative processes more efficient, with clear provisions on prescription and interruptive causes.
- ▶ Specific regulations that would enable conversion without implying a reduction in responsibility regarding the caused environmental damage.
- ▶ Regulations foreseeing environmental regularization programs.
- ▶ Establishment of objective parameters for conduct adjustment agreements.
- ▶ Strengthening of the personnel structure. Suggestion: Expansion of the command-and-control collaboration with the Military Police and Fire Department, without compromising the competence of environmental analysts – through cooperation agreements.
- ▶ Use of programs/systems (Business Intelligence) to analyze and plan the execution of fines, both in the administrative and judicial phases.
- ▶ Implementation of automation mechanisms for analysis.

SPECIFICITIES OF THE STATES

BY FOPEMA

FOPEMA strives for collaborative efforts, seeking to enhance understanding, procedures, and regulations within the Amazon biome. However, these issues manifest differently in each state. To highlight the diverse procedures, we offer a summary of each state's context and relevant legislation.

Acre

The State currently lacks a specific procedure for converting fines, resulting in all infractions being collected by the treasury or recorded as active debt when the legal obligation is not met.

Applicable Legislation

- ▶ **State Law No. 1,117, dated January 26, 1994** – Governs the environmental policy of the state of Acre and provides other measures.
- ▶ **State Law No. 3,161, dated August 9, 2016** – Concerns the establishment of a system for the registration, billing, and installment payment of non-tax credits recorded as active debt, arising from fines for environmental infractions, amending Law No. 1,117, dated January 26, 1994, and provides other measures.
- ▶ **State Law No. 3,349, dated December 18, 2017** – Establishes the Environmental Regularization Program for rural properties and possessions within the state of Acre – PRA-Acre.
- ▶ **Normative Order IMAC No. 2, dated January 5, 2018** – Governs the procedure of the installment system, registered as active debt and collection of non-tax credits, resulting from fines for environmental infractions, in accordance with Law No. 3,161, dated August 9, 2016.
- ▶ **State Decree No. 9,025, dated June 4, 2018** – Regulates Law No. 3,349, dated December 18, 2017, which established the Environmental Regularization Program for rural properties and possessions within the state of Acre – PRA-Acre, and provides other measures.

Amapá

The state has a complementary law and decree, both dated from 1998, which now require updating. This is necessary because, for example, the state law (Environmental Code) establishes a maximum penalty limit based on a fiscal measure. This results in the highest possible fine being 40,000 reais, and penalties exceeding this value are often contested due to the limitations imposed by the state law.

Environmental violations are identified through the issuance of an environmental infraction notice, at which point fines are applied. Additionally, the penalty may be increased by a daily fine, warning, temporary or permanent closure, loss, or suspension of financing and/or tax incentives and benefits, seizure, embargo, and demolition. Once investigated through an administrative process, observing the rites and deadlines established in state regulations, a bank slip for penalty payment is issued. If the fine is not settled, after a final decision is issued and all legal procedures are completed, the case is forwarded to the State Attorney General's Office (PGE, the acronym in Portuguese) for registration in the active debt.

The state legislation does not provide for the conversion of fines nor for conciliation, with one form of compensation being the use of Conduct Adjustment Agreements (CAAs). However, these are rarely utilized due to the lack of objective parameters for performing conversions, which can lead to deviations from their intended purpose. For this reason, the attorney general's office has started to restrict these agreements, only allowing CAAs that have clear and objective parameters.

Regarding the statute of limitations, the state follows the Civil Code, with a prescription period of 10 years.

Applicable Legislation

- ▶ **Complementary Law No. 0005, dated August 18, 1994** – Establishes the Environmental Protection Code of the State of Amapá and provides other measures (amended by Complementary Laws 0033, dated December 23, 2005; 0036, dated May 8, 2006; 0070, dated January 9, 2012; 0091, dated October 6, 2015).
- ▶ **State Decree No. 3,009, dated November 17, 1998** – Regulates Title VII of Complementary Law No. 0005, dated August 18, 1994, which establishes the Environmental Protection Code of the State of Amapá and provides other measures.

Amazonas

Since 2005, Amazonas has had a law that allows the conversion of simple fines into services for the conservation, improvement, and recovery of environmental quality. However, there is no specific legislation on the procedures to be adopted in the case of fine conversion. The state applies federal legislation in the administrative process of fines but recognizes the need for state laws that address local peculiarities.

Applicable Legislation

- ▶ **State Law No. 2,984, dated October 18, 2005** – Modifies, as specified, Law No. 1,532, dated July 6, 1982, concerning the Policy of Prevention and Control of Pollution, Improvement and Recovery of the Environment, and Protection of Natural Resources, and provides other measures.
- ▶ **Complementary Law No. 53, dated June 5, 2007** – Regulates clause V of article 230 and paragraph 1 of article 231 of the State Constitution, establishes the State System of Protected Areas (SEUC, the acronym in Portuguese), addressing infractions and penalties, and establishes other provisions.

Maranhão

Environmental fines of nominal amounts are logged into active debt and formally protested through notarial channels. Conversely, significant penalties benefit from artificial intelligence assistance. The overarching goal is to imbue fines with a dual purpose: educational and punitive, rather than purely revenue driven.

One of the identified challenges is that low-value environmental penalties often go unprotested in notary offices due to procedural oversights. This situation underscores the need for enhanced regulatory frameworks within the Fiscal Attorney's Offices and State Environmental Secretariats to prevent such occurrences. In contrast, high-value fines are managed through a system that leverages artificial intelligence, housed within the Fiscal Attorney's Offices. Despite this technological support, execution difficulties persist, particularly with issues like the incorrect identification of offenders at the time the infringement notice is drafted. Such problems typically stem from inaccuracies in the wording of the infringement notices themselves.

In this context, there is a need to reconsider the educational role of fines, emphasizing the necessity for a regulatory framework that specifically differentiates environmental penalties from other types of fines. An effective strategy could involve converting sanctions into community service, thereby ensuring meaningful punishment for those who breach environmental laws. This approach should be accompanied by procedural enhancements within both the Fiscal Attorney's Offices and the State Environmental Secretariats. These bodies need improved regulatory mechanisms and enhanced training for their personnel to better enforce environmental regulations and promote compliance effectively.

Applicable Legislation

- ▶ **State Law No. 5,405, dated April 8, 1992** – Establishes the Environmental Protection Code and addresses the State Environmental System and the proper use of natural resources in the state of Maranhão.
- ▶ **Decree No. 13,494, dated November 1993** – Regulates the Environmental Protection Code of the State of Maranhão.
- ▶ **Order No. 017, dated March 1, 2018** – Concerns the regulations on the procedures for the investigation and procedural instruction of administrative environmental infractions in the state of Maranhão and provides other measures.
- ▶ **Regulatory Guideline SEMA No. 1, dated June 23, 2023** – Governs the procedures related to infraction notices, investigation, and judgment of administrative infractions for conduct and activities harmful to the environment within the scope of the Secretary of State for the Environment and Natural Resources of Maranhão (SEMA), and provides other measures.

Mato Grosso

In 2022, Mato Grosso established the Environmental Fines Conversion Program, which enables the conversion of fines into services aimed at the preservation, improvement, and restoration of environmental quality. Nevertheless, the obligation to completely repair any environmental damage remains, irrespective of the penalty's value. When a party opts for conciliation, they accept responsibility and bypass lengthy administrative processes.

Applicable Legislation

- ▶ **Complementary Law No. 38, dated November 21, 1995** – Provides for the State Environmental Code and other measures.
- ▶ **State Decree No. 1,436, dated July 18, 2022** – Addresses the state administrative process for investigating administrative infractions due to conduct and activities harmful to the environment, regulates the Environmental Fines Conversion Program, and provides other measures.
- ▶ **State Decree No. 275, dated May 9, 2023** – Amends provisions of Decree No. 1,436, dated July 18, 2022, which addresses the state administrative process for investigating administrative infractions due to conduct and activities harmful to the environment, regulates the Environmental Fines Conversion Program, and provides other measures.

Pará

The state of Pará views the mechanism of environmental fine conversion optimistically, believing it will bring individuals and/or corporations with high penalty amounts from punitive processes into environmental conciliation. This approach bets on the idea that companies will start to see the conversion of environmental fines as a positive marketing strategy for their corporation.

In Pará, two modalities of fine conversion have been envisioned, generally outlined as follows:

- ▶ **Direct Execution Conversion of Simple Fine:** In this modality, the development and execution of the project aimed at the service of preservation, improvement, and recovery of environmental quality are carried out by the offender using their own resources, following the outlines of projects

previously defined and/or approved by the competent state environmental agency.

▶ **Indirect Execution Conversion of Simple Fine:** In this modality, the offender simply pays the amount of the fine imposed in the punitive process, including any legal discounts. This amount is then allocated to a project or a portion of a project indicated by the competent state environmental agency, with the execution carried out by the state environmental agency itself or a third party contracted by it.

In the process of converting environmental fines, the state of Pará utilizes predefined initiatives available in the state's Fine Conversion Project Bank. Exceptionally, offenders may propose their own initiatives; however, these proposals must undergo a technical review by the chambers of the Environmental Resources Tribunal (TRA, the acronym in Portuguese). The initiative can only be considered approved after a comprehensive evaluation by the full tribunal.

As a compensatory measure, offenders are given the opportunity to participate in a portion of a project listed in the Project Bank for the conversion of environmental fines maintained by the state environmental agency. This allows offenders, regardless of the penalty amount imposed, the option to choose fine conversion as a means of conciliation by contributing to part of a project, especially since their penalty does not cover the full cost of the project.

Applicable Legislation

- ▶ **Law No. 9,575, dated May 11, 2022** – Addresses the environmental administrative process for assessing conduct and activities harmful to the environment and applicable sanctions, as well as dealing with environmental conciliation, within the Public Administration of the State of Pará. It also amends and repeals provisions of State Law No. 5,752, dated July 26, 1993, and State Law No. 5,887, dated May 9, 1995.
- ▶ **Decree No. 3,600, dated December 19, 2023** – Regulates the process of converting simple environmental fines into services for the preservation, improvement, and recovery of environmental quality, as specified in Article 11 and Clause IV of Article 44 of State Law No. 9,575, dated May 11, 2022.

Rondônia

The state lacks specific legislation for fine conversion; however, the process requires not only an agreement but also ongoing monitoring of its execution. Until recently, Rondônia faced a backlog of approximately 10,000 cases needing review, making it challenging to manage such a volume. Consequently, the authorities decided to prioritize expedited judgments, effectively reducing the number of pending cases to about 2,500. This streamlined approach not only accelerated the procedural timeline but also significantly boosted revenue, generating an additional five million reais in 2021 alone.

Currently, there is an understanding that proposing conciliation might result in a low uptake rate. Moreover, the state would likely struggle to effectively monitor such conversions due to existing challenges. Further procedural structuring is necessary, especially since a limited number of permanent professionals are available, hindering effective control over environmental fines.

For minor infraction notices with low values, there is no active enforcement – these are merely subjected to formal protest.

Applicable Legislation

There is no state legislation on the issue.

Roraima

In Roraima, the state uses federal legislation as the foundation for its internal regulations that guide the conversion of fines. According to a normative instruction, one legal resolution for concluding the process regarding simple fines involves their conversion. This method is considered a special procedure that replaces the obligation to pay an environmental fine with the provision of services focused on the preservation, improvement, and restoration of environmental quality.

The individual cited for an infraction can request the conversion of the fine during the conciliation phase, at which time they are given the opportunity to implement, by their own means, a project aimed at the preservation, improvement, and restoration of environmental quality.

To facilitate this, a Program for the Conversion of Environmental Fines (PCMA, the acronym in Portuguese) has been established, which includes strategic guidelines for fine conversion. This program is composed of priority axes and themes, as well as objectives and indicators that will guide the presentation of projects aimed at managing the attainment of environmental benefits. Based on this program, projects are selected that are devised by competent institutions and are to be executed by the individual cited.

The standard procedure involves conciliation, a process aimed at adjusting the offender's behavior through the execution of environmental projects by the culprit themselves.

Applicable Legislation

► **Regulatory Guideline FEMARH No. 11, dated May 25, 2022** – Amends Regulatory Guideline No. 05/2022, dated February 8, 2022, regulating state administrative processes for investigating administrative infractions due to conduct and activities harmful to the environment.

Tocantins

Since 2002, Tocantins has had legislation authorizing the conversion of fines into goods or services. This is governed by Law No. 1,325, dated April 17, 2002, which empowers the executive branch to convert amounts resulting from the imposition of environmental fines into the transfer of goods or provision of services. This allows for the allocation of resources towards technical training for employees, environmental awareness programs, and nature conservation initiatives.

The mentioned regulation is based on Federal Law No. 9,605/98 and has since been supplemented by several subsequent regulations. One of the most significant is Normative Instruction No. 02, dated May 10, 2017, which establishes a Project Bank, also known as the Project Shelf. Through this bank, the Tocantins Nature Institute (Naturatins) can directly allocate the resources from fine conversions to the implementation of projects contained within the bank.

Among the projects listed in the Fine Conversion Project Bank, there is the acquisition of an information and geotechnology tool aimed at supporting monitoring, allowing for better oversight and management of the state's environmental heritage, as well as programs for Analysis and Validation of the Rural Environmental Registry and scientific research.

Applicable Legislation

- ▶ **Law No. 1,325, dated April 17, 2002** – Authorizes the Executive Branch to convert amounts resulting from the imposition of environmental fines into the transfer of goods or provision of services.
- ▶ **Naturatins Regulatory Guideline No. 2, dated May 10, 2017** – Provides for the procedures for investigating administrative infractions due to conduct and activities harmful to the environment, the imposition of sanctions, defense, the appeals system, the collection of fines or their conversion into the provision of services for the preservation, improvement, and restoration of environmental quality for Naturatins, fine installment plans, and the applied monetary correction index, among other matters.
- ▶ **Naturatins Ordinance No. 131, dated May 8, 2019** – Establishes the Naturatins Project Bank (Project Shelf) for participation in Fine Conversion, as stipulated in Article 62 of Normative Instruction No. 12, dated November 18, 2018.

FOPEMA'S WORK DRIVING CHANGE

BY FOPEMA

When collectively examining the challenges for fine conversion implementation across the nine states of the Legal Amazon, FOPEMA identified areas of convergence that serve as both challenges and opportunities for collaborative action. Joint efforts can expedite the adoption of new procedures.

Among the listed points are:

- ▶ **Specific Legislation** – While federal legislation exists on the subject, there's a need to tailor state laws to incorporate the theme, considering regional nuances. Many states require a more assertive approach with the Legislature to underscore the importance of legislation supporting administrative accountability for environmental infractions. Identifying areas of consensus and establishing a minimum necessary regulatory framework can streamline internal processes within states.
- ▶ **Absence of Technology to Support Fine Enforcement** – Presently, there are difficulties in identifying offenders and facilitating fine enforcement. Artificial intelligence systems, especially those capable of connecting states, can streamline bureaucratic processes. A platform containing information from all states can expedite the identification of offenders and support the issuance, enforcement, and collection of fines.
- ▶ **Prescription/Delay in Proceedings** – There's a backlog of cases, often pending execution, resulting in the expiration of infringement notices due to prolonged delays. Computerization and the use of artificial intelligence offer potential solutions to this issue. Additionally, FOPEMA could conduct a study on prescription cases and their legal provisions to address this challenge effectively.
- ▶ **Low-Value Fines** – Enforcing these fines can be difficult, but there are potential solutions. They can be incorporated as components of larger projects funded by public or private sources or converted into activities. Pre-approved projects would be designated until reaching the set target.

- ▶ **Objective Criteria for CAAs** – The absence of clear criteria results in significant discretion and the potential for misuse. Developing these criteria, with regional similarities in mind, can establish a standard that promotes environmental protection and addresses climate change effectively.
- ▶ **Staff Shortage** – A significant structural challenge is the insufficient number of personnel. Fine conversion demands not only agreement but also ongoing monitoring of activities. Expanding technical teams is necessary, and partnerships with other sectors of society can be enhanced without diminishing the responsibility of staff. Additionally, augmenting personnel dedicated to command and control can be achieved through partnerships with other agencies, ensuring clear distinctions of roles to avoid confusion.

In addition to these aspects, collaborative studies and shared understandings on the subject could be expanded upon to provide support for regulations, guidelines, or unified statements across all states in the Legal Amazon region. One key area for focus involves the collection practices employed by State Attorneys General and Tax Authorities in relation to environmental fines. There's a pressing need for the formulation of regulations that differentiate fines stemming from environmental violations, ensuring effective penalties for those who breach environmental norms.

Within this context, it's crucial to develop regulations that address the environmental regularization of rural properties and outline pathways for compliance with existing legislation. This issue involves coordination between land management and environmental agencies and holds significant potential for resolving territorial challenges.

Furthermore, artificial intelligence emerges as a tool that should be explored beyond the mentioned areas. Presently, information technology provides services that not only expedite procedures but also foster innovation. Embracing novel approaches can mitigate backlogs and foster the creation of innovative environmental solutions.

Ibama has developed expertise in utilizing a Business Intelligence (BI) System for fines, which merits examination and dissemination. This system facilitates access to data regarding offenders, issuance of certificates, and aggregation of statistics, enabling the quantification and enhancement of the work performed. By learning from the successes and shortcomings of this experience, it's possible to design a system tailored to meet the requirements of individual states.

An area worth delving into is the diverse legal and regulatory approaches to fine conversion. Pre-approved projects and allocated quotas offer potential solutions for addressing low-value fine conversions. Moreover, acknowledging alternative financing mechanisms beyond public funds can expand implementation options. Within the public sector, Rondônia's model, with dedicated categories for such resources, presents an interesting case for analysis.

To kickstart the activities, it will be crucial to compile existing environmental legislation in each state and detail their procedures. This would require an effort to gather information, which would provide the study with legal groundwork for prosecutors to seek solutions for fine enforcement and application.

Public Security

According to data from the Brazilian National Institute for Space Research (INPE), through the TerraBrasilis¹⁶ platform, over the last ten years, there has been an increase in deforestation in the Legal Amazon, reaching its peak in 2021, with a consolidated rate of 13,038.00 km² deforested. All states experienced some level of increase during this period, although a decrease was recorded in almost all states starting from 2022.

The 2024 data on the platform indicates a significant accumulation in the states of Pará, Mato Grosso, and Rondônia, with Pará showing a significant decrease in deforestation rates starting from 2021.

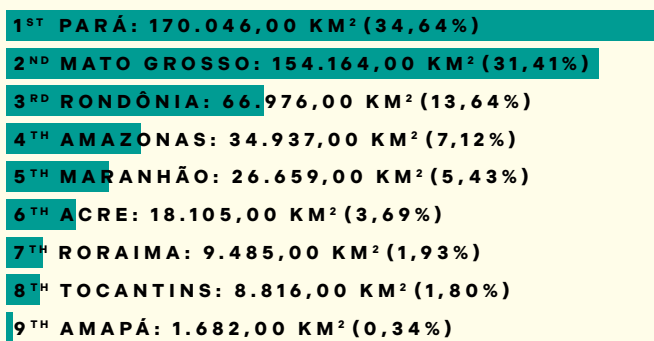


Figure 1 – Accumulated deforestation rates in the Legal Amazon.

Source: <http://terrabrasilis.dpi.inpe.br/>

Coupled with this issue is the practice of land grabbing, which is linked to the deforestation process. It begins with land grabbing, progresses to illegal logging, often also tied to illegal mining, and concludes with an alternate use of the land for soy cultivation. This situation has been increasingly recognized, and it presents an additional challenge, as land grabbing complicates the identification of the major deforesters.

Data from the Pastoral Land Commission, the State University of Amazonas, and other institutions have been showing an increase in land tenure conflicts, involving criminal factions and organized crime. Additionally, the homicide rate in the Legal Amazon has been rising and coincides with the areas under deforestation pressure, particularly in Amazonas, Rondônia, and Pará.

The Amazon is seen as a pivotal area for numerous interactions stemming from the regional and global markets of drug and arms trafficking. Consequently, it should be analyzed within a broader framework that examines how its territory is occupied and utilized by organized crime networks and illicit operations. Emphasizing public security is crucial in curbing deforestation and environmental

¹⁶ Source: TerraBrasilis Platform. Link: http://terrabrasilis.dpi.inpe.br/app/dashboard/deforestation/biomes/legal_amazon/rates.

crimes. However, merely deploying militarization or external security forces for specific command and control tasks has shown limited effectiveness.

Criminal organizations have infiltrated the territory, including protected areas, Indigenous lands, and riverside communities, which suffer most from this intrusion. Their criminal activities obstruct the development of a low-carbon economy, inflict immediate harm on established value chains, and lead to significant social and economic losses. This includes damage to conventional agricultural activities that are crucial to the national trade balance.

The Brazilian Forum on Public Security explains that “based on the available assessments and information regarding the scenario of violence and public security in the Amazon, the institutional capacities and interinstitutional arrangements of the public security forces and environmental agencies in the region do not provide sufficient operational capability or integration levels to effectively confront the escalating organized crime in the area, whether it involves drug trafficking, environmental crimes, or the intersections between these two sectors.”¹⁷

UNDERSTANDING THE ISSUE

BY DANIEL VIEGAS AND GABRIEL NÓBREGA

Public security has emerged as a crucial topic because prosecutors have empirically observed in their practice what was confirmed by the report “Cartographies of Violence in the Amazon Region.” This report was developed by the Brazilian Forum on Public Security (FBSP) with support from the *Instituto Clima e Sociedade* (ICS) and collaboration from researchers at the Emerging Territories and Networks of Resistance in the Amazon (TERRA, the acronym in Portuguese) research group and the State University of Pará (UEPA). It highlighted the following contexts:

- ▶ An intensification of land grabbing on both public and private properties as part of a process that involves illegal logging and unauthorized mining, which ultimately leads to the land being used for agriculture and livestock without meeting minimum environmental standards. These events have led to an increase in land tenure conflicts and solidified environmental damage, often involving a series of related crimes such as drug trafficking, corruption of public officials, fraud, and money laundering;
- ▶ A strong presence of organized crime factions and disputes among them over national and transnational drug routes that traverse the region, contributing to an increase in homicide rates and intentional violent deaths in the Amazon, which are above the national average;
- ▶ Between 2018 and 2020, the dynamics of lethal violence in the Amazon Region differed from the rest of the country, particularly due to the pronounced spread of violence into more remote areas. Homicide rates in rural and intermediate Amazonian municipalities increased, while similar municipalities in the rest of the country saw a decrease in homicides;

¹⁷ Source: Public Security and Organized Crime in the Legal Amazon. Link (publication in Portuguese): <https://forumseguranca.org.br/wp-content/uploads/2023/06/informe-especial-seguranca-publica-e-crime-organizado-na-amazonia-legal.pdf>.

- ▶ In Amazonian municipalities under deforestation pressure, we find homicide rates that exceed both the national average and that of the Legal Amazon region, reinforcing the perception that drug trafficking, deforestation, land grabbing, and illegal mining are interconnected.

In this context, relying solely on militarization or sending security forces from outside the region to address specific command and control demands has proven to be ineffective against the presence of criminal organizations that begin to occupy the territory, particularly affecting protected areas, Indigenous lands, and riverside communities.

These criminal practices not only make it impossible to pursue any feasible path towards a low-carbon economy, but they also cause immediate damage to existing value chains, leading to social and economic losses. This includes harm to regular agricultural activities, which constitute a significant portion of the national trade balance.

For this reason, FOPEMA alerted the then Minister of Justice and Public Security, Anderson Gustavo Torres, on October 5, 2022, about the findings in the “Cartographies of Violence in the Amazon Region” report. They requested that the Ministry invest in strengthening integrated command and control mechanisms that connect federal and state levels, particularly involving various agencies and branches of government (police forces, public prosecutors, public defenders, Ibama, ICMBio, the Judiciary, and state attorney offices, among others). This effort aims to foster collaboration between public security and environmental agencies.

In response, the minister said, “We will ensure the investment and strengthening of integrated command and control mechanisms that connect federal and state spheres, and particularly various agencies and branches of government (police forces, public prosecutors, public defenders, Ibama, ICMBio, the judiciary, and state attorney offices, among others), to foster cooperation between public security and environmental bodies, in order to combat criminal practices in the said region.” He then forwarded the following statements:

- ▶ **The Federal Police**, through Official Letter No. 1482/2022/SEAPRO/GAB/PF (20491303), informed that it is already operating as requested by FOPEMA. In terms of combating illegal deforestation, the Biome Guardians initiative from SEOP/ MJSP is active, operating through the coordination of public agencies at six Multi-Agency Operational Bases (GBBOs, the acronym in Portuguese). These bases are installed in municipalities with the highest incidences of deforestation as monitored by PRODES and DETER in 2021, located in Altamira/Pará, Itaituba/Pará, Novo Progresso/Pará, São Félix do Xingu/Pará, Humaitá/Amazonas, and Porto Velho/Rondonia.
- ▶ **The Federal Highway Police (PRF)**, via Official Letter No. 1004/2022/DIOP (20262214), reported that it conducts environmental inspections on federal highways and roads and areas of interest to the Union. In 2022 alone, over 32,000 cubic meters were seized, representing a 27% increase compared to the same period in 2021. In the fight against illegal mineral extraction, the PRF seized nearly 2,500 tons of raw materials belonging to the Union, which had been illegally usurped, marking a 36% increase from the previous year. Regarding arrests related to environmental crimes, the PRF made over 2,400 arrests in 2022, which is approximately a 13% increase compared to 2021.

- ▶ **The National Indigenous Peoples Foundation**, through Official Letter No. 1588/2022/PRES/FUNAI (20295397), reported that it is participating in the Operation Biome Guardians, coordinated by SEOPI/MJSP¹⁸, with two of its staff members. The operation aims to combat illegal deforestation and forest fires in the Legal Amazon region.
- ▶ **The National Secretariat for Public Security**, through Official Letter No. 9538/2022/GAB-SENASP/SENASP/MJ (20238406) and Information No. 62/2022/CGOFN/DFNSP/SENASP (20174452), which consolidates the documents referenced in the annex, reported that they support the Brazilian Institute of the Environment (Ibama) through the Biome Guardians operations. These operations foster and integrate the relationship between public security agencies in combating illegal deforestation and other environmental crimes.
- ▶ **The Secretariat of Integrated Operations**, through Official Letter No. 6763/2022/SEOPI/MJ (20238404), reported that this is already being implemented, as the Biome Guardians operation, focusing on Combating Deforestation, Forest Fires, and Preserving Indigenous Lands, aims to integrate efforts to combat all criminal offenses affecting the relevant region.

However, the responses did not fully address the complexity highlighted by the State Environmental Prosecutors and demonstrated in the “Cartographies of Violence in the Amazon Region” report. They focused on mentioning the existence of the Biome Guardians operation, which, in its three pillars (combating illegal deforestation, wildfires and forest fires, and protecting Indigenous lands), focuses primarily on addressing the effects rather than the root causes of violence in the Legal Amazon.

The report indicates that the Amazon is a central location for multiple relationships established within the regional and global markets of drug and arms trafficking. Due to this position, it needs to be viewed within a broader context concerning the forms of occupation and use of its territory by organized networks of criminality and illicit activities operating within it.

The study also concluded that municipalities affected by land grabbing and illegal logging and mining activities are responsible for 70% of this excess violence. However, according to the data collected since 2015, there has been a generalization of violence in the region, primarily attributed to the expansion of international drug trafficking activities, coupled with the occurrence of other illegalities.

Therefore, failing to effectively combat land grabbing processes, or weakening mechanisms for monitoring environmental crimes such as illegal logging or mining, is directly related to the increase in violence rates in the Amazon. The Ministry of Justice has overlooked the fact that the process of exploiting illegal land use, often with the complicity of the National Institute for Colonization and Agrarian Reform (INCRA), involves threatening, injuring, or even murdering the population living in the targeted territory, especially Indigenous Peoples and traditional communities. It is no coincidence that the majority of deforestation occurs in undesignated public lands (46%), agrarian reform settlements (32%), and

¹⁸ Secretariat of Integrated Operations (SEOPI), affiliated with the Ministry of Justice and Public Security.

private areas (15.5%). Deforestation in the Amazon, estimated at 13.2 thousand km² by the Prodes system of INPE, is advancing in the southern region of the Legal Amazon, surging between August 2020 and July of 2023.

There was a 22% increase compared to the previous year. As had not happened since 1998, deforestation increased in all states of the Legal Amazon. Specifically, in the last five years, according to data from INPE, the Amacro region, located between three Northern states and known as the deforestation frontier, was responsible for 77% of deforestation in Rondônia, 63% in Acre, and 82% in Amazonas.

The link between land grabbing and deforestation is evident in the report “Undesignated Public Forests & Land Grabbing,” produced by the Amazon Environmental Research Institute (IPAM). According to the report, 66% of deforestation to date has taken place within areas illegally declared as private property. Even more concerning, almost 30% of undesignated public forests are irregularly registered in the Rural Environmental Registry (CAR, the acronym in Portuguese).

These data underscore that combating deforestation requires the involvement of INCRA and state Land Policy Secretariats, implementing effective measures against land grabbing and ensuring proper allocation of public lands. Simultaneously, preventing the expansion of organized crime and drug trafficking necessitates a public policy fostering sustainable productive chains, including forest management, açai cultivation, oilseed production, and fisheries management, among others.

Therefore, to ensure territorial sovereignty, sustainable development, and protection of the forest, as one of Brazil’s greatest economic assets, it is urgent to act decisively in combating deforestation. This necessarily involves taking firm action against drug trafficking, land grabbing, and illegal mining.

DEBATES AND PERCEPTIONS ON PUBLIC SECURITY

BY FOPEMA

Studies and research in the Amazon region have been expanding our understanding of the association between land grabbing and the process of deforestation. This association begins with land grabbing, which leads to illegal logging, often linked to illegal mining, followed by the establishment of plantations, such as soybeans.

A significant challenge lies in identifying the true perpetrators of deforestation, holding them accountable, and fostering an environment conducive to implementing meaningful public policies. This gap exacerbates land tenure conflicts, leading to a high homicide rate in the Legal Amazon.

Linked to this is the presence of criminal factions, with organized crime controlling the drug trade in states like Amazonas. Understanding this is crucial because the Amazon serves as a hub for various relationships within regional and global drug and arms markets. Therefore, it must be viewed within a broader context, considering how organized crime networks operate within its territory and contribute to illicit activities.

Despite the initiatives of federal agencies in the region, the responses have not been able to address the complexity of the challenges identified by State Environmental Prosecutors and demonstrated in studies such as the “Cartographies of Violence in the Amazon Region” report.

This context directly impacts actions related to climate change. If we look at the Legal Amazon, we will see that the majority of deforestation occurs in undesignated public lands. The area with the most significant advancement and pressure is in the southern region of the Legal Amazon, where deforestation has increased, especially in Amacro.

Relying solely on militarization or sending security forces from outside the region to address specific command and control demands has proven ineffective. There is a need for the development of more robust and intelligence-driven strategies that combine command and control with income-generating actions. In this regard, supporting public policies for the development of sustainable productive chains, with the involvement of Economic Development Secretariats, can create an environment for economic revitalization.

Indeed, criminal organizations are present in the territory, including within protected areas, Indigenous Lands, and riverside communities. These criminal activities make it impossible to pursue any feasible path towards a low-carbon economy, causing immediate damage to existing value chains and social and economic losses. This includes harm to regular agricultural activities, which represent a significant portion of the national trade balance.

The solutions involve collaborative efforts, with the creation of structured networks designed to address regional challenges. Therefore, the involvement of organizations such as INCRA and State Land Policy Secretariats is essential, not only for implementing isolated actions but also for designing structural interventions.

A significant portion of rural conflicts revolves around discussions on land ownership and possession. In this regard, effective actions against land grabbing, coupled with promoting proper allocation of public lands, emerge as a path to pursue. Enhancing the Rural Environmental Registry (CAR) is one strategy that can address the nearly 30% of undesignated public forests registered irregularly.

This solution cannot be dissociated from intelligence actions that involve effective measures against drug trafficking and illegal mining.

Several steps are crucial for effectively addressing the issue. During the debates, six points stood out:

- ▶ The need to expand dialogue with INCRA to increase participation in command-and-control policies, ensuring greater efficiency in combating land grabbing on federal public lands and stricter monitoring of economic activities within agrarian reform settlements.
- ▶ Increasing dialogue between Environmental Secretaries and Land Policy Entities/Organizations at the state level, to establish collective land regularization mechanisms that enable the implementation of environmental economic policies such as payment for emissions reduction (carbon markets) and payments for environmental services.
- ▶ Strengthening the organizational structure of land policy entities in Legal Amazon states to enable them to combat land grabbing and implement measures for the proper allocation of state public lands, prioritizing the facilitation of environmental economic policies.
- ▶ Increasing dialogue between Environmental Secretaries and Public Security Secretaries to develop intelligence and enforcement actions against drug trafficking, unlicensed logging, and illegal mining.

- ▶ Enhancing the Rural Environmental Registry (CAR) by increasing the number of registered and analyzed properties.
- ▶ The contribution of Legal Amazon states, with support from State Prosecutors, to facilitate public policies for the development of sustainable productive chains.

SPECIFICITIES OF THE STATES

BY FOPEMA

FOPEMA strives for collaborative efforts, seeking to enhance understanding, procedures, and regulations within the Amazon biome. However, these issues manifest differently in each state. To highlight the diverse procedures, we offer a summary of each state's context and relevant legislation.

Acre

In 2023, Acre implemented the State Plan for Public Security and Social Defense, incorporating two strategic lines aimed at addressing environmental offenses. The first, outlined in Strategic Action 5, emphasizes conducting preventive and enforcement actions against environmental and rural offenses. Among the established measures is the coordination of joint operations with municipal, state, and federal environmental agencies, as well as other relevant entities such as the National Institute for Colonization and Agrarian Reform (INCRA), National Indigenous Peoples Foundation (Funai), and Federal Police. These efforts are specifically targeted at reducing illegal deforestation in the state of Acre.

Furthermore, there is also the immediate response to deforestation through visible policing and collaboration with environmental enforcement agencies. Additionally, there is a focus on promoting, reviewing, innovating, and enhancing measures. This approach considers the normative, financial, material, and human aspects of the means and mechanisms for combating environmental crimes, including those serving as precursors to other offenses.

The second, Strategic Action 21, is focused on the development and support of programs and projects that facilitate the implementation of coordinated preventive and enforcement actions with other sectors, both public and private. The aim is to reduce environmental crimes, transboundary offenses, and social conflicts.

Acre is situated in the extreme southwest of the Brazilian Amazon and shares borders with Amazonas and Rondônia, as well as Bolivia and the Republic of Peru. Beyond the political challenges, the region has approximately 88% of its area covered by forest, which is susceptible to various types of crimes. These include drug trafficking, illegal logging, and other natural resource-related crimes, rural violence, land grabbing, and invasion of both public and private lands. Consequently, in addition to traditional offenses against fauna and flora, environmental crimes also involve fraud, corruption, money laundering, land grabbing, as well as violent crimes, prompting a reflection on public security.

Applicable Legislation

- ▶ **Decree No. 11,291, dated July 19, 2023** – Provides for the State Plan for Public Security and Social Defense of the State of Acre – PESPDS 2021-2030 and repeals Decree No. 7,582, dated December 22, 2020.

Amapá

The Amapá is currently developing the Integrated Tactical Plan for Public Security in the Amazon (PTI, the acronym in Portuguese). This initiative falls under the broader framework of the Amazon Plan: Security and Sovereignty (Amas Plan), spearheaded by the federal government, and involves collaboration among state social defense agencies. The objective is twofold: to combat and diminish deforestation in the Amazon Region by the conclusion of 2026, while also fostering closer cooperation among various institutions, bolstering integrated security operations, and emphasizing proactive measures and swift responses.

Applicable Legislation

No specific legislation.

Amazonas

According to the Brazilian Forum on Public Security, “among the states comprising the Legal Amazon, Amazonas had the highest rate of intentional violent crimes in 2022.” This can be attributed to various factors, one of which is the fact that the state of Amazonas shares borders with two of the three main global producers of drugs, especially cocaine: Peru and Colombia.

Indeed, there is an intertwining of environmental crimes with other offenses, with deforestation at the core of illegal activities, driving four main activities: timber theft, illegal mining, land grabbing of public lands, and environmental liabilities within the agricultural sector. This demands significant efforts from public authorities, especially in intelligence-led actions for public security.

The state of Amazonas lacks specific provisions in its legislation for addressing environmental crimes within its public security framework. The State Plan for Public Security and Social Defense 2021-2030 primarily focuses on adopting programs and actions geared towards preventing, controlling, inspecting, and repressing cross-border crimes and other offenses occurring in the border areas and divisions of Amazonas, particularly in riverine environments, in collaboration with other relevant agencies.

Applicable Legislation

- ▶ **Secondary Legislation No. 63, dated May 4, 2007** – Establishes the Integrated Public Security Intelligence System of the State of Amazonas, establishes rules for its organization and maintenance, and provides other measures.
- ▶ **Secondary Legislation No. 79, dated May 18, 2007** – Addresses the State Secretariat of Public Security, defining its purposes, competencies, and organizational structure, setting its roster of commissioned positions, and establishing other measures.
- ▶ **Decree No. 45,319, dated March 18, 2022** – Institutes the State Plan for Public Security and Social Defense 2021-2030 and provides other measures.

Maranhão

The conflicts and violence in Maranhão stem from issues surrounding land and human rights. In recent years, the expansion of agricultural activities in the Matopiba region, encompassing the states of Maranhão, Tocantins, Piauí, and Bahia, has significantly impacted numerous traditional communities in the area.

According to the Network of Security Observatories¹⁹, “violence in rural areas has worsened in recent decades with the expansion of the agricultural frontier in the Amazon and the Cerrado, with the cultivation of soybeans and eucalyptus, and with extensive livestock farming. The conflicts arising from this process have led to the disruption of traditional ways of life for peasant, quilombola, and indigenous communities. Families of rural workers from these communities, who have faced difficulties due to the impact on their way of life, have ended up migrating to the urban outskirts of nearby cities. Those who chose not to leave their communities were forced to reinvent their ways of making a living. Both for families remaining in rural outskirts and those migrating to urban outskirts, the persistence of social and kinship ties is common. In both cases, under enormous socio-economic pressure resulting from the destruction of their ways of life, these families, especially the younger members, find in illegal activities such as retail drug trafficking a way to obtain work and income.”

The economic expansion, particularly in the southern region, has elevated soybean cultivation to become the primary export of Maranhão. However, it’s noted that a portion of the acquired lands often come with issues due to land grabbing. Many of these cases of land grabbing happen in areas where there are disputes over the land ownership of Traditional Peoples.

Another important aspect is the high incidence of deaths in rural conflicts, which occur at different stages of the land grabbing intensification cycle. Within the administrative process, this macro scenario is often not depicted, with only piecemeal actions taken, making it difficult to analyze the problem as a whole, which is considered larger and more complex.

Moreover, the interconnection between public security and environmental crimes is still being elucidated. While the Environmental Protection Code and the State Environmental System envisioned the participation of the State Secretariat of Justice and Public Security within the framework of the State Council for the Environment (CONSEMA), their involvement has not been systematized.

In 2021, Maranhão established the State Plan for Public Security and Social Defense (2020-2030), in line with the National Public Security and Social Defense Policy outlined in Law No. 13,675 of June 11, 2018. Environmental issues are addressed broadly, generally aimed at supporting actions to maintain public order, safeguard individuals, property, the environment, and assets and rights.

However, recently, through a partnership between the Public Security Secretariat (SSP) and the federal government, via the Ministry of Justice and Public Security (MJSP), the state has embarked on structuring the Integrated Tactical Plan for Public Security in the Legal Amazon, within the framework of the Amazon Plan: Security and Sovereignty (Amas Plan). The aim is to devise optimal strategies to be implemented through the Amas Plan, facilitating sustainable development and enhanced security in the region, while also curtailing crimes arising from illegal logging and deforestation, among other illicit activities.

19 Fonte: Além da floresta [e-book]: crimes socioambientais nas periferias/ Silvia Ramos... [et al.]; illustration by Renata Mello Segtowick. – Rio de Janeiro: CEsEC, 2023. Link: http://observatorioseguranca.com.br/wordpress/wp-content/uploads/2023/06/RELATORIO_alem-da-floresta_final_web-2.pdf.

Applicable Legislation

- ▶ **Law No. 5,405 of April 8, 1992** – Establishes the Environmental Protection Code and provides for the State Environmental System and the proper use of natural resources in the state of Maranhão.
- ▶ **State Law No. 11,161, of November 11, 2019** – Provides for the State Public Security and Social Defense Policy and creates the State Council for Public Security and Social Defense.
- ▶ **Decree No. 37,107, of October 13, 2021** – Establishes the State Public Security and Social Defense Plan (2020-2030) for the state of Maranhão and adopts other provisions.

Mato Grosso

With support from the REM program, the state government is enhancing its use of technology and innovation through a monitoring platform designed for daily surveillance using Planet satellite imagery. This platform also generates weekly alerts for detecting changes in the state's native vegetation cover. This system facilitates the strategic planning and execution of operations to combat environmental crimes and infractions, thereby broadening the scope of analyses concerning both environmental and public safety issues.

Additionally, there has been a reinforcement of management structures and an expansion of collaborative efforts, enabling Mato Grosso to enhance its command-and-control operations. Key among these initiatives is the formation of the Strategic Committee for Combating Illegal Deforestation. This committee includes representatives from the State Secretariats of Environment and Public Security, Military Police, Military Fire Brigade, Civil Judicial Police, Indea, the Federal and State Public Prosecutor's Offices, Federal Police, Federal Highway Police, Ibama, ICMBio, and Funai, coordinating efforts to address deforestation effectively.

However, the Mato Grosso State Public Security Plan for 2020-2030 continues to address environmental issues in a comprehensive manner. Strategic Objective 6 outlines the prevention and combat of environmental crimes in both urban and rural settings. This includes measures such as fire prevention and suppression, investigation of environmental offenses, environmental forensic examinations, and inspections concerning flora and fauna.

Although it does not yet address the connection between organized crime and environmental offenses, the suite of measures targeting environmental concerns enhances understanding of the territory and potential solutions. This enhancement is due to improved strategies and techniques, which facilitate the categorization and prioritization of law enforcement demands in operations designed to combat deforestation.

Applicable Legislation

- ▶ **Decree No. 1,483, dated September 15, 2022** – Approves the Internal Regulations of the State Secretariat of Public Security of Mato Grosso and defines the responsibilities of the Integrated Intelligence Training Center.

Pará

In the Amazon, an overlap of various illegal activities and violence has been observed. The “Cartographies of Violence in the Amazon Region” project notes

that activities such as drug trafficking, deforestation, land grabbing, and illegal mining would typically demand the intervention of multiple regulatory and law enforcement agencies. However, due to a lack of coordinated action and existing frictions among federal entities and state agencies, it is not surprising that the regions identified as centers of environmental crimes also report high rates of intentional violent deaths.²⁰

In Pará, specifically, according to the Security Observatory Network, “data obtained from the State Secretariat of Public Security and Social Defense of Pará (SEGUP-PA) reveal a consistent rise in crimes against Indigenous Peoples and quilombola communities year by year. Between 2017 and 2022, 474 cases of violence including homicides, sexual assaults, and property crimes were documented. While theft, robbery, and threats constitute 40.72% of the reported violence against quilombola and indigenous communities in Pará, the occurrences of fatalities and forceful land seizures (possession dispossession) are particularly alarming.”²¹

Part of the response to these challenges came in 2020 with the establishment of the Amazônia Agora State Plan (PEAA, the acronym in Portuguese) by the government of Pará as the state’s environmental policy. Among its areas of focus are state actions against environmental crimes, included under the Command-and-Control pillar (Environmental Law Enforcement, Licensing, and Monitoring), as well as initiatives that integrate environmental sustainability with bioeconomy.

The Public Security System of the State of Pará was established on February 2, 1996, and reorganized on December 28, 2011, under the name State System of Public Security and Social Defense (SIEDS, the acronym in Portuguese). In 2022, the state government ratified the State Plan for Public Security and Social Defense of Pará (PESPDS/PA, also the acronym in Portuguese) for 2022-2031, presented by the State Council of Public Security (CONSEP). While the document does not explicitly address environmental actions or crimes, the established partnerships underscore the state’s commitment to addressing both public security and environmental concerns.

In this context, a cooperation agreement was signed among the State Secretariat of Environment and Sustainability of Pará (Semas), the Secretariat of Public Security and Social Defense (SEGUP), the Military Police, the Civil Police, and the State Military Fire Department (CBMPA). The objective is to enhance security operations against illegal deforestation and other environmental infractions in Pará. This agreement allows agents from all state public security agencies to issue environmental violation notices, thereby expanding environmental enforcement across the entire territory of Pará. With increased state presence in these areas, a decrease in crimes is anticipated.

20 Source: Brazilian Forum on Public Security. Cartographies of Violence in the Amazon Region: a synthesis of data and preliminary results. Link (publication in Portuguese): <https://forumseguranca.org.br/wp-content/uploads/2021/11/cartografias-das-violencias-na-regiao-amazonica-sintese-dos-dados.pdf>.

21 Source: Além da floresta [e-book]: crimes socioambientais nas periferias / Silvia Ramos... [et al.]; illustrations by Renata Mello Segtowick. – Rio de Janeiro: CESeC, 2023. Link: http://observatorioseguranca.com.br/wordpress/wp-content/uploads/2023/06/RELATORIO_alem-da-floresta_final_web-2.pdf.

Applicable Legislation

- ▶ **Decree No. 2,397, dated June 1, 2022** – Ratifies Resolution No. 440/CONSEP-2022, dated April 14, 2022, of the State Council of Public Security (CONSEP), which approved the State Plan for Public Security and Social Defense (PESPDS/PA) – 2022-2031.
- ▶ **Decree No. 941, dated August 3, 2020** – Establishes the Amazônia Agora State Plan (PEAA), creates the Scientific Committee of the Plan, the Permanent Monitoring Unit of the Plan, and provides other measures.

Rondônia

Since 1985, Rondônia has operated the Environmental Police Battalion (BPA, the acronym in Portuguese), tasked with monitoring, preventing, and addressing infractions against the state's flora, fauna, water resources, and speleological heritage. The BPA conducts joint operations with the State Secretariat of Environmental Development (Sedam), the Brazilian Institute of Environment and Renewable Natural Resources (Ibama), the Chico Mendes Institute for Biodiversity Conservation (ICMBio), and the National Indigenous Peoples Foundation (Funai).

The integration of environmental protection and public security is primarily facilitated by the efforts of the battalion, where environmental monitoring and enforcement are fundamental tasks. Their core mission is to prevent and penalize environmental violations, thereby ensuring compliance with laws and safeguarding natural resources.

However, what's particularly alarming in Rondônia is the growing violence and audacity of criminals toward public authorities. Several incidents illustrate this trend: for instance, a widely publicized event where a police vehicle was chased and surrounded by criminals due to disagreement with enforcement measures. Another incident involved the seizure of a tractor in a park, resulting in police being surrounded by locals. Additionally, offenders set fire to bridges to prevent law enforcement access to certain areas. These instances underscore a shift in criminal behavior and emphasize the urgency of expanding strategies for environmental public security.

However, data from the State Public Security Observatory shows that there was a decline in environmental crimes in 2023 due to increased awareness and the implementation of public policies aimed at environmental protection.

Applicable Legislation

- ▶ **Decree No. 23,698, dated February 27, 2019** – Approves the Strategic Plan for Public Security, Defense, and Citizenship of the State of Rondônia.

Roraima

In 2019, the state of Roraima enacted a law that established the Public Security and Social Defense System. Among its objectives is to support actions aimed at maintaining public order, ensuring the safety of individuals, protecting property and the environment, as well as safeguarding rights and assets.

The state encounters substantial challenges due to its borders with Guyana and Venezuela, as well as its internal boundaries with Amazonas and Pará. Addressing public security involves tackling a range of criminal activities, including smuggling, drug and arms trafficking, as well as combating environmental crimes,

notably linked to illegal mining activities, particularly within Indigenous Territories (ITs).

Recent studies reveal a concerning nexus between drug trafficking, illegal timber extraction, land grabbing, and mining activities within Indigenous Territories (ITs). Effectively addressing these intertwined challenges requires the establishment of collaborative networks involving diverse organizations working in tandem to counter criminal actions.

Applicable Legislation

- ▶ **Complementary Law No. 143, dated January 15, 2009** – Establishes the Territorial Planning and Organization System of the State of Roraima and provides other measures.
- ▶ **Complementary Law No. 144, dated March 6, 2009** – Amends §3 of Article 16 and §3 of Article 17 of Complementary Law No. 143, dated January 15, 2009, which establishes the Territorial Planning and Organization System of the State of Roraima and provides other measures.
- ▶ **Law No. 738, dated September 10, 2009** – Establishes the Rural Land Policy of the State of Roraima, repeals Law No. 197, dated April 8, 1998, and provides other measures.
- ▶ **Law No. 1,357, dated November 26, 2019** – Establishes the Public Security and Social Defense System of the State of Roraima (SISPDS), the State Public Security and Social Defense Policy (PESPDS), the State Council of Public Security and Social Defense of Roraima (CONSESPDS), and provides other measures.

Tocantins

In Tocantins, the enforcement of environmental laws, particularly within the Legal Amazon areas, faces similar challenges to other states in the Amazon region. Multiple state agencies are involved in combating violations of environmental regulations.

Among these agencies is the Tocantins Environmental Military Police Battalion (BPMA-TO), which plays a pivotal role in combating environmental offenses in the state. Its responsibilities include cracking down on illegal deforestation and wildlife trafficking, as well as preventing and controlling wildfires and other activities aimed at safeguarding the environment.

It's noteworthy that the BPMA-TO collaborates closely with other institutions within the National System of the Environment (Sisnama, the acronym in Portuguese), including Ibama and the Tocantins Nature Institute (Naturatins). This coordinated effort is crucial for maximizing the effectiveness and impact of operations targeting environmental crimes.

One of the notable operations carried out by BPMA-TO in partnership with other institutions was Operation Amazon Routes, which aimed to combat various forms of environmental crimes along routes used for the transportation of illegal products such as timber, wildlife, and other natural resources.

The collaborative effort between BPMA-TO, Ibama, and Naturatins in this operation underscores the dedication of these entities to safeguarding the environment and combatting environmental degradation. This ensures the preservation of Tocantins' natural resources and contributes to the conservation of the Amazon region as a whole.

Applicable Legislation

- ▶ **Order No. 003/99 from the General Commander of PMTO** – Establishment of the Independent Environmental Police Company (Cipama).

FOPEMA'S WORK DRIVING CHANGE

BY FOPEMA

The collaborative efforts of the prosecutors in this scenario hold the potential to yield impactful solutions. Some avenues that could be pursued through FOPEMA include:

- ▶ Facilitating dialogue between Environmental and Public Security Departments to devise strategies against drug trafficking, unlicensed logging, and illegal mining;
- ▶ Fostering a collaborative environment to enhance or elevate land institutes;
- ▶ Conceptualizing artificial intelligence mechanisms or essential IT content to bolster strategic initiatives within the territory;
- ▶ Enhancing the Rural Environmental Registry by increasing registered and assessed properties, while assisting in identifying gaps and implementing improvements;
- ▶ Enabling Legal Amazon states, with backing from State prosecutors, to navigate legal pathways for sustainable production chain development through public policies.

Protected Areas

Protected Areas are specially protected territorial spaces, whose legal foundations are supported by the Federal Constitution. Despite existing in Brazil since 1934, it wasn't until 2000 that the various categories and forms of use were systematized through the enactment of Law No. 9,985, which established the National System of Protected Areas (SNUC).

According to the legislation, Protected Areas can be established by the Public Authorities at any of the three levels of government (municipal, state, and federal) through decree or law. Their protection encompasses “territorial spaces and their environmental resources, including jurisdictional waters, with relevant natural characteristics, legally established by the Public Authorities, with conservation objectives and defined boundaries, under a special administration regime, to which appropriate protection guarantees apply” (Article 2, paragraph I, of Law No. 9,985/00).

SNUC aims to contribute to the maintenance of biological diversity and genetic resources within the national territory and jurisdictional waters, protect endangered species at regional and national levels, aid in the preservation and restoration of natural ecosystem diversity, protect and restore water resources, provide means and incentives for scientific research activities and environmental monitoring, as well as safeguarding the livelihoods and natural resources necessary for the subsistence of traditional populations, among other activities.

Maintaining Protected Areas across the various Brazilian biomes is one of the primary strategies for fulfilling Brazil's commitments to the targets outlined in the Paris Agreement. However, to achieve this, response models for the consolidation of these spaces and policies to combat deforestation will need to become much more effective and widespread across the territories of Brazilian states.

This is because, despite PAs being one of the main public policy instruments for biodiversity conservation and associated ecosystem services, their conservation has faced challenges in the national scenario. This is evidenced in the ongoing legislative actions in Brazil, aimed at reducing, recategorizing, and extinguishing Protected Areas. These processes, known by the acronym PADD (Protected Areas Downsizing, Downgrading, and Degazetting), have been expanding in recent years, creating a significant impact on protected areas.

When observing data from the Amazon biome, it is evident that it includes the most extensive Protected Areas with the highest carbon density. As such, they stand out, accounting for a storage of 593.8 tons of CO₂ per hectare (ha). Meanwhile, the Cerrado, which has been under severe pressures, corresponds to 178.8t CO₂ per ha of the existing stock. This highlights the importance of the Amazon and, at the same time, the urgency to expand Protected Areas in the Cerrado, with support for the consolidation of existing areas.

But it goes beyond just greenhouse gas capture. Environmental valuation studies are increasingly highlighting the economic significance of these areas, both for developing financial alternatives and for implementing strategies to combat deforestation. There's a need to integrate the biodiversity agenda with the climate agenda, demonstrating the advantages of collaborative financing to reinforce the Protected Areas.

UNDERSTANDING THE ISSUE

BY ANTONIO ISAC NUNES CAVALCANTE DE ASTRÉ

Among the numerous challenges of our time, the greatest of all are the changes to the planet brought about by human intervention. As is known, since the paradigm shift to modernity, notably from the 17th century onward, civilization has been dominated by thought founded on the subjectivity of the individual and the appropriation of the natural environment to satisfy the desires and wishes of individuality,²² consolidating a functionalist, utilitarian, and instrumental view of nature. This has triggered the current ecological crisis²³ and, consequently, climate change (also referred to as climatic alterations²⁴ or climatic mutation²⁵). According to Sachs,²⁶ since then, a truly global crisis has emerged, affecting not only countries but also generations, whose solutions are inherently complex. There is even talk of the Anthropocene,²⁷ an era that positions human beings as geological agents.

In this context, there emerges a need for human self-restraint, aimed at the well-being of present and future generations.²⁸ Thus, starting from the Stockholm Convention (1972), through the report “Our Common Future” (1987), and the Rio

22 “In modernity, the foundational horizon of political thought undergoes a radical transformation. Man now understands himself, above all, as a ‘being of needs’ that must be satisfied; thus, his self-realization is interpreted primarily as self-preservation. Man is a totality of needs, desires, and aspirations. From this perspective, his happiness, his self-fulfillment, will consist in the ‘maximization of the satisfaction of his needs.’ [...] ‘property’ will emerge as a fundamental anthropological category: since happiness fundamentally consists in the satisfaction of desires, having what is necessary for this becomes a condition for the humanization of man.” (Translated from the original in Portuguese: OLIVEIRA, Manfredo Araújo de. *Ética e sociabilidade*. 4. ed. São Paulo: Loyola, 2009, p. 21-22).

23 OLIVEIRA, Manfredo Araújo de. *Ética, direito e democracia*. 2. ed. São Paulo: Paulus, 2010, p. 56.

24 SACHS, Jeffrey D. *A era do desenvolvimento sustentável*. Lisboa: Conjuntura Actual Editora, 2017, p. 417-418.

25 LATOUR, Bruno. *Diante de gaia: oito conferências sobre a natureza no antropoceno*. Translated by: Maryalua Meyer. São Paulo/Rio de Janeiro: Ubu Editora/Ateliê de Humanidades, 2020, p. 23-25.

26 SACHS, Jeffrey D. *A era do desenvolvimento sustentável*, cit. p. 418-421.

27 CRUTZEN, Paul J. Geology of mankind: the anthropocene. *Nature*, 415, 2002, jan, p. 23.

28 Beyond the guardianship of human societies, Sarlet and Fensterseifer note that “the Kantian conception of dignity must be rethought in terms of recognizing an end in itself inherent also to other forms of life (or to life in general, whether human or non-human)” (SARLET, Ingo Wolfgang; FENSTERSEIFER, Tiago. *Direito constitucional ecológico: constituição, direitos fundamentais e proteção da natureza*. 7th ed. São Paulo: Thomson Reuters Brasil, 2021, p. 127). Regarding the analysis of the evolution of the rights of nature and its framing within legal systems, it is important to consider how these ideas are increasingly influencing environmental laws and policies. This emerging perspective seeks to extend the principles of fundamental rights and dignity to the natural world, challenging traditional legal frameworks that view nature primarily as property or a resource. This shift towards recognizing nature’s intrinsic value is crucial for developing more sustainable and respectful ways of interacting with our environment.: KERSTEN, Jens. Who needs rights of nature? In: HILLEBRECHT, Anna Leah Tabios; BERROS, Maria Valeria (ed.). *Can nature have rights? legal and political insights*. Munique: Rachel Carson Center, 2017. p. 11-13. Available at: <https://www.environmentandsociety.org/perspectives/2017/6/can-nature-have-rights-legal-and-political-insights>. Accessed on: December 2, 2022.

Earth Summit (1992), there have been significant – though still insufficient – advances in the theorization of sustainable development and, more recently, sustainability, as well as in developing solutions to problems arising from climate change. These milestones mark pivotal moments in environmental governance, reflecting a growing global consensus on the urgent need to address environmental degradation and promote a sustainable coexistence between humans and nature.

In the context of climate change, Brazil holds undeniable importance due to its possession of the largest tropical forest in the world, the Amazon Rainforest, which is considered a national heritage under Article 225, §4 of the Federal Constitution. Therefore, the Amazon must be preserved and protected. For this reason, Abramovay highlights Brazil’s dual contribution:

- ▶ the interruption of deforestation, which is the primary source of greenhouse gas emissions;²⁹ and
- ▶ the emergence of a knowledge-based economy of nature, making rational use of the planet’s biodiversity source. These efforts are crucial for mitigating climate change impacts and for leveraging Brazil’s unique environmental assets sustainably.³⁰

To address this enormous challenge, various legal instruments for prevention, precaution, and in situ conservation, including Protected Areas,³¹ have been developed. For the purpose of this essay, a focus will be placed on Protected Areas, understood as “a geographically defined area that is designated, regulated, and managed to achieve specific conservation objectives,” as defined by the Convention on Biological Diversity (CBD).³²

More precisely, the focus will be on a specific type of protected area, namely Protected Areas, whose legal framework will be outlined in the following section.

The legal framework of Protected Areas

Aligned with the concept of protected areas from the Convention on Biological Diversity (CBD), as previously mentioned, the original Brazilian constitution-maker, in guaranteeing to all, including future generations, the right to an ecologically balanced environment, imposed on the Public Power the obligation to “define, in all units of the Federation, territorial spaces and their components to be especial-

29 Há, inclusive, regiões da Floresta Amazônica que perderam a capacidade de absorver o dióxido de carbono, perdendo sua condição de sumidouro de carbono. Nesse sentido, ver: DENNING, Scott. *Southeast Amazonia is no longer a carbon sink*. 2021. Available at: <https://www.nature.com/articles/d41586-021-01871-6#:~:text=Atmospheric%20measurements%20show%20that%20deforestation,implications%20for%20future%20global%20warming>. Accessed on: Dec. 6, 2022.

30 ABRAMOVAY, Ricardo. *Amazônia: por uma economia de conhecimento da natureza*. São Paulo: Elefante, 2019, p. 94-95.

31 BENJAMIN, Antônio Herman. O regime brasileiro de Unidades de Conservação. *Revista de Direito Ambiental*, São Paulo, v. 21, n. 1, jan./mar. 2001, p. 31.

32 BRASIL. Decreto nº 2.519, de 16 de março de 1998. Promulga a Convenção sobre Diversidade Biológica, assinada no Rio de Janeiro, em 5 de junho de 1992. *Diário Oficial da União*. Brasília, 17 mar. 1998. Available at http://www.planalto.gov.br/ccivil_03/decreto/1998/anexos/and2519-98.pdf. Accessed on: Dec. 2, 2022.

ly protected, with changes and suppressions allowed only through law, forbidding any use that compromises the integrity of the attributes that justify their protection”, as stated in article 225, §1, clause III, of the Federal Constitution.

These Specially Protected Territorial Spaces (ETEPs, the acronym in Portuguese) constitute a category that includes various types of protected areas. Legal Reserves (RL) and Permanent Preservation Areas (APP) are considered ETEPs in a broad sense, while Protected Areas (UCs) are referred to as ETEPs in a strict sense.³³

Protected Areas (UC, the acronym in Portuguese) were regulated by Federal Law No. 9.985, dated July 18, 2000, which established the National System of Protected Areas (SNUC).³⁴ They are defined by Article 2, clause I, which outlines the essential characteristics for a special administration regime, to which appropriate protection guarantees apply. Therefore, a UC must meet the following criteria: natural significance, official recognition, territorial delimitation, conservationist objectives, and a special regime of protection and administration.³⁵

Protected Areas in Brazil are divided into two groups: Full Protection and Sustainable Use. Full Protection UCs³⁶ aim to preserve nature, allowing only the indirect use of its natural resources (Article 7, Paragraph 1) and Sustainable Use UCs³⁷ aim to reconcile the conservation of nature with the sustainable use of part of its natural resources (Article 7, Paragraph 2).

Protected Areas in Brazil can be established by acts of the Public Authority, such as decrees and laws. The creation of these units requires technical studies and typically involves a public consultation process (Article 22, caput and Paragraph 2, of Federal Law No. 9.985/2000). However, they can only be abolished, reduced, or altered through a formal law (Article 225, Paragraph 1, Clause III of the Federal Constitution; and Article 22, Paragraph 7, of Federal Law No. 9.985/2000).³⁸

Based on these norms, hundreds of Protected Areas have been created across the country, especially in the Legal Amazon, proving to be spaces that have a close

33 MILARÉ, Édís. *Direito do ambiente: a gestão ambiental em foco: doutrina, jurisprudência, glossário*. 6. ed. São Paulo: Revista dos Tribunais, 2009. p. 695.

34 Despite Law No. 9.985 only being enacted on July 18, 2000, many Protected Areas (UCs) in Brazil had been established much earlier, albeit in a more sporadic and unsystematic manner. The Itatiaia National Park, created in 1937, was the first nationally protected area. (BENJAMIN, Antônio Herman. O regime brasileiro de Unidades de Conservação. *Revista de Direito Ambiental*, São Paulo, v. 21, n. 1, jan./mar. 2001, p. 32).

35 BENJAMIN, Antônio Herman. O regime brasileiro de Unidades de Conservação. *Revista de Direito Ambiental*, São Paulo, v. 21, n. 1, jan./mar. 2001, p. 35.

36 Article 8 of the National System of Protected Areas Law (SNUC) states that the group of Full Protection Protected Areas is composed of the following categories: I – Ecological Station; II – Biological Reserve; III – National Park; IV – Natural Monument; and V – Wildlife Refuge.

37 Art. 14. The group of Sustainable Use Protected Areas consists of the following categories: I – Environmental Protection Area; II – Area of Relevant Ecological Interest; III – National Forest; IV – Extractive Reserve; V – Wildlife Reserve; VI – Sustainable Development Reserve; VII – Private Natural Heritage Reserve.

38 “[...]. Provisional measures cannot convey norms that alter specially protected territorial spaces, under penalty of violating Article 225, Clause III, of the Constitution of the Republic. [...] (BRASIL. Federal Supreme Court. *Adi no. 4717*. Reporting Justice: Cármen Lúcia. Brasília, April 5, 2018. *Diário da Justiça Eletrônico*. Brasília, Feb. 15, 2019. Available at: <https://jurisprudencia.stf.jus.br/pages/search/sjur398386/false>. Accessed on: Dec. 5, 2022.

relationship with the preservation and restoration of essential ecological processes, the ecological management of species and ecosystems, the diversity and integrity of Brazil's genetic heritage,³⁹ as well as allowing the practice of sustainable activities, which are objectives already outlined by the constituent (Article 225, §1, clauses I and II, of the Federal Constitution), fostering the development of a knowledge economy of nature (Article 4, clause XIII, of Law No. 9.985/2000), as will be discussed further.

Assessments and perspectives

Currently, Brazil has 2,659 Protected Areas, of which 357 protect 120,523,249 hectares of the Amazon Biome (28.59%). Of these, 99 are Full Protection Protected Areas and 258 are Sustainable Use Protected Areas.⁴⁰

Moreover, Brazil has the fourth largest protected area in the world, behind only the United States, Russia, and China. However, in contrast, it invests almost five times less than Argentina, seven times less than Costa Rica, nine times less than Mexico, and 35 times less than the United States per protected hectare.⁴¹

The importance of Protected Areas for the preservation of ecological systems, and evidently, for human beings, is undeniable. Regarding the latter, Abramovay reports that 30% of the water consumed comes from protected areas, in addition to 79% of the water used for generating electricity.⁴²

Despite the importance of Protected Areas, one cannot ignore that they are frequently invaded by land grabbers, loggers, miners, among others, with the aim of illicitly exploiting their natural resources, as well as consolidating occupation with the intent of future land regularization.

Indeed, it has historically been common for the harmful practice of occupying these areas under the guise of predatory progress, where the negative externalities impact the ecosystem itself. Meanwhile, those engaging in these illegal activities benefit from the financial gains. This represents a scenario where profits are internalized, and damages are socialized.

However, it is crucial to combat these practices effectively. Abramovay notes that '[...] allowing these areas to be deforested results in two significant losses for the country. The first is the degradation of ecosystem services associated with the water cycle, carbon sequestration, and biodiversity. The second is the tolerance of illegal and violent methods of land appropriation in the region, which perpetuates a cycle of criminality that undermines democratic coexistence.'⁴³

Regarding this issue, Schmidt reveals that environmental enforcement is largely ineffective. When an offender is cited, the administrative process typically

39 FERREIRA, Helene Sivini. Política ambiental constitucional: deveres ambientais. In: CANOTILHO, José Joaquim Gomes; LEITE, José Rubens Morato (Org.). *Direito constitucional ambiental brasileiro*. 6. ed. São Paulo: Saraiva, 2015. Cap. 5. p. 280.

40 BRASIL. MINISTÉRIO DO MEIO AMBIENTE. *Plataforma Oficial de Dados do Sistema Nacional de Unidades de Conservação da Natureza*. 2022. Available at: <https://cnuc.mma.gov.br/powerbi>. Accessed on: Dec. 6, 2022.

41 ABRAMOVAY, Ricardo. *Amazônia: por uma economia de conhecimento da natureza*. São Paulo: Elefante, 2019, p. 77-78.

42 *Ibid.*, p. 55.

43 *Ibid.*, p. 68.

takes an average of 2.9 years, and only 0.2% of the imposed fines are actually paid.⁴⁴ This significant flaw ultimately encourages further environmental offenses, due to the perception that the offender will not be punished, or if they are, the penalties are less severe than the financial gains.

Another significant aspect concerns political support for the invasion of these protected areas, either through direct incentives or attempts to eliminate or reduce Protected Areas through regulatory acts, invariably without following the required legal procedures. In this context, Abramovay points out that the Protected Areas in the Amazon are '[...] under attack not just sporadically, but through coordination involving miners, land grabbers, illegal loggers, often supported by municipal, state, and national political figures and organizations.⁴⁵

Considerations

An analysis of Protected Areas underscores their vital importance to both humans and biodiversity, especially in the context of ongoing climate change and the predatory exploitation of natural resources.

Additionally, it has been observed that Federal Law No. 9,985/2000 marked a significant legal milestone in the systematization and legal protection of Protected Areas. However, it is crucial to acknowledge that the effective protection of these areas is still less than what is minimally necessary, as offenders still find it profitable to invade these areas and benefit from their illicit activities.

Nevertheless, it is crucial to look ahead and reinforce the mechanisms for combating these illicit practices, while also encouraging those who actively engage in ecological preservation, particularly extractivist populations and those who sustainably harness nature-based knowledge.

Legally, on the other hand, “the principles of non-regression and progressivity are manifested as normative duties or obligations binding on all branches of government (Legislative, Executive, and Judicial), particularly with respect to expanding specially protected environmental areas to combat deforestation, ecological degradation, and the mass extinction of species”.⁴⁶ Therefore, the constitutional provisions regarding an ecologically balanced environment demonstrate a progressive commitment both to protect existing areas and to expand them.

Finally, a topic that is beginning to be discussed in doctrine and jurisprudence relates to the legal protection of ecosystems, not in terms of their utility to humans, but as autonomous subjects of rights, endowing them with dignity, intrinsic value, and subjective rights. This shift can be seen either through the expansion of justice theories leading to normative production, as observed in Ecuador

44 SCHMITT, Jair. *Crime without Punishment: The Effectiveness of Environmental Oversight for Controlling Illegal Deforestation in the Amazon*. 2015. Thesis (PhD in Sustainable Development), University of Brasília, Brasília, 2015, pp. 168-169.

45 ABRAMOVAY, Ricardo. *Amazônia: por uma economia de conhecimento da natureza*. São Paulo: Elefante, 2019, p. 80.

46 SARLET, Ingo Wolfgang; FENSTERSEIFER, Tiago. *Curso de direito ambiental*. São Paulo: Grupo GEN, 2022, p. 802. E-book. ISBN 9786559643783. Available at: <https://integrada.minhabiblioteca.com.br/#/books/9786559643783/>. Accessed on: Dec. 6, 2022.

and Bolivia, or through constitutional interpretation based on Andean constitutionalism and the dialogue among constitutional courts.

DEBATES AND PERCEPTIONS ON PROTECTED AREAS

BY FOPEMA

Brazil has been establishing international agreements that recognize protected areas as a crucial tool for conservation. However, despite the significance of these areas, their economic value is not yet clear to many sectors. This value must be highlighted to support regional development policies.

To this end, different strategies can be adopted, but they need to be further detailed and regulated at the state level. The incorporation and clarity of these rules contribute to the recognition of various support mechanisms, as well as the enhancement of clear, efficient, and effective procedures.

Among the debated topics, the granting of park concessions and the treatment of communities residing within and around these areas are seen as pressing concerns. Although ILO Convention No. 169, adopted in Brazil through Decree No. 5,051 on April 19, 2004, mandates the establishment of prior consultation, listening, and consent mechanisms for Indigenous and tribal peoples, clear and detailed procedures regarding the form and timing of implementation are still lacking in state legislations.

As a complement to this debate, forest concessions emerge as a tool that still needs to be matured, not only from an economic standpoint but also in terms of the development perspective for communities residing within public forests.

Within this scope, another issue concerning public forests is land regularization within these areas. There are numerous pre-existing conflicts prior to concession that need to be addressed, whether through expanding dialogue among stakeholders or through clear norms and procedures for recognizing possession and ownership of assets. This could lead to progress in another area, which is expanding the declaration of legal reserves within rural properties.

Added to this context is the need to address federal environmental licensing for activities with significant environmental impact, as well as the overlapping of different zoning regulations in various categories of protected areas. Many conflicts arise from a lack of understanding about the rules governing the use of a particular territory, sparking debates about the right to compensation.

Another issue arises with the creation of Protected Areas by law, which often lack the necessary preliminary studies to validate their establishment. Despite being a legislative act, these areas require all legal requirements to be met for the definition of type, category, boundaries, and uses to be established.

While Protected Areas are prominently featured, other modalities can also be considered, such as quilombola areas or additional measures for nature conservation. In this latter group, military areas stand out, as they encompass large conservation areas but are not designated as conservation territories. Considering ways to recognize the conservation efforts in these areas adds value to the mosaic of protected areas and contributes to addressing climate change.

SPECIFICITIES OF THE STATES

BY FOPEMA

FOPEMA strives for collaborative efforts, seeking to enhance understanding, procedures, and regulations within the Amazon biome. However, these issues manifest differently in each state. To highlight the diverse procedures, we offer a summary of each state's context and relevant legislation.

Acre

With approximately 47% of its territory conserved through various types of protected areas, the state of Acre boasts significant federal, state, and municipal Protected Areas, as well as substantial Indigenous Lands. The management of these spaces is intertwined with a history of struggle and resilience among traditional populations in defense and protection of the environment.

Specifically regarding Protected Areas (UCs), in Acre they are relatively recent compared to other states. For example, the Rio Acre Ecological Station, the first to be established in Acre territory, was instituted on June 2, 1981, approximately two months before the enactment of the law that created the National Environmental Policy in the country.

The organization of the different models of state Protected Areas came 20 years later, in 2001, through the State System of Protected Natural Areas. The state law introduced differentiated aspects compared to the federal system, explicitly mentioning in its objectives the incorporation of elements such as contribution to education, culture, sports, and recreation for citizens. Additionally, it highlighted the concept of ecotourism, broadening the focus on generating employment, income, and quality of life for forest populations.

In 2021, a new state law revised the State System of Protected Areas. It incorporated two important principles: technical and financial sustainability, ensuring administrative and managerial continuity in the management of state Protected Areas, and guaranteeing the permanence of traditional communities residing at the time of creation within the boundaries of Protected Areas under state jurisdiction. This was achieved through the establishment of agreements between the managing agency of the Protected Areas and these communities.

Applicable Legislation

- ▶ **Law No. 1,426, dated December 27, 2001** – Establishes the preservation and conservation of forests in the state, institutes the State System of Protected Natural Areas, creates the State Forest Council and the State Forest Fund, and provides other measures.
- ▶ **Law No. 3,883, dated December 17, 2021** – Concerns the State System of Protected Natural Areas – SEANP.

Amapá

The Government of Amapá has been developing a socioenvironmental and urban project called AMAPARQUE in the metropolitan region of the municipalities of Macapá and Santana. Its goal is to protect the floodplain areas (wetlands), which are threatened by irregular human activities. These areas are often invaded by families during low river levels when the space is dry, causing serious social and environmental problems. Therefore, new strategies are currently being studied and physical struc-

tures are being implemented to prevent invasion in these regions. It is hoped that environmental projects can be implemented to generate income for local communities.

In Amapá, traditional Protected Areas occupy about 62% of the territory, totaling 19 areas covering nearly 8.8 million hectares. Of these, 12 are federal, five are state, and two are municipal.

An identified challenge in establishing Protected Areas is the overlap with other protected areas or areas designated for mining in some locations. This leads to conflicts in boundaries and interpretations regarding exploitation rights, often resulting in conflicting reports and opinions. Therefore, the development of socio-legal studies is crucial to effectively and decisively resolve these cases.

Applicable Legislation

- ▶ **Complementary Law No. 5 of August 18, 1994** – Institutes the Environmental Protection Code of the State of Amapá and establishes other provisions.
- ▶ **Law No. 165, of August 18, 1994** – Creates the State Environmental System and provides for the organization, composition, and competencies of the State Environmental Council, creates the Special Fund for Environmental Resources, and establishes other provisions.
- ▶ **Decree No. 3325 of June 17, 2013** – Regulates the exploitation of native forests and successive formations on public and private domains, including in legal forest reserves in the state of Amapá and establishes other provisions.

Amazonas

Amazonas is Brazil's largest state, with a significant representation in the Protected Areas system. Approximately 30.21% of its territory is designated as Protected Areas, comprising 16.96% federal, 12.05% state, and 1.19% municipal areas. In total, these areas cover approximately 47.2 million hectares.

Similarly to Acre, the state of Amazonas has relatively new Protected Areas, with its first state UC created in 1989. In 2007, the State System of Protected Areas (SEUC) was enacted, featuring its own characteristics, including a strong involvement of traditional populations.

In 2020, a new state law authorized the State Secretariat for the Environment (Sema) to grant the first forest concessions in Protected Areas of Amazonas. The aim is for these concessions to provide a sustainable economic alternative for the state, conserving forests while also fostering income generation.

However, there is a concern about how to involve nearby communities in the discussion, in accordance with International Labor Organization (ILO) Convention No. 169. The Brazilian Federal Supreme Court (STF) has already ruled on the need to exclude the concession of areas where there is overlap between territories occupied by indigenous peoples and traditional communities with Protected Areas. This was highlighted in the case of Unconstitutionality Action 7,008 against São Paulo state law 16,260/2016, which authorized the Public Treasury to grant private initiatives the exploitation of tourism and commercial extraction of timber and forest by-products in state Protected Areas.

One of the mechanisms to prevent conflicts involves conducting a land survey of the area to identify these overlaps. This not only aims to reduce the impacts of illegality in areas with high rates of deforestation but also serves to mitigate potential conflicts.

Land policy presents a significant challenge in many states. To address some of the existing conflicts, Amazonas has been working on granting collective land use rights to indigenous peoples and traditional communities.

In 2012, the Amazon Dialogue was established to address these disagreements. It convened state and federal agencies monthly to discuss land regularization in Protected Areas. This initiative, which lasted until 2018, successfully facilitated the granting of real land use rights to residents' associations.

The rules outlined in the environmental licensing law, refined over time and developed with input from a diverse range of stakeholders, aimed to prevent the establishment of large individual areas. Instead, they emphasized collective regularization, with a maximum use area limit of 2,500 hectares.

The work began with social movements and civil society organizations aiming to draft a decree regulating the matter. The decree designates the area as a territory of common use and defines it as “territorial spaces specially protected, granted by the state of Amazonas to Indigenous Peoples and traditional communities, considering social and environmental sustainability, whose use can be collective or familial.”

The conceptual scope suggests an indispensable heritage crucial for the physical and cultural continuity of the group. It encompasses a range of material and immaterial assets chosen for their ancestral significance, contribution to community identity, or importance for lifestyle choices and collaboration. This includes territories and areas inhabited by Indigenous Territories (ITs) and traditional communities, such as lands and riverine regions.

The decree also introduces two management modalities: self-management (for smaller areas, like Indigenous Territories) and co-management (for larger areas). Governance rules have been established for both, resulting in resolved land regularization. In the case of Indigenous Peoples, recognition may lead to subsequent demarcation of these territories, similar to the process for quilombola communities. An illustrative case discussed was the situation concerning the Manicoré River, where civil society organizations supported the installation of identification plaques in the area to safeguard the communities. However, local entrepreneurs objected and met with the governor to demand the cancellation of the land use concession. Their opposition stemmed from their desire to acquire individual titles, and because the group in question was not indigenous to the area, their request was not accommodated.

Applicable Legislation

- ▶ **Law No. 4,415, dated December 29, 2016** – Governs the management of forests within areas under state jurisdiction for sustainable production; establishes the Executive Deputy Secretariat of Forest Management (SEAGF) within the structure of the State Secretariat of the Environment (SEMA); creates the State Forest Development Fund (FEDF), and includes other provisions.
- ▶ **Law No. 5,225, dated September 5, 2020** – Amends Law No. 4,415, dated December 29, 2016, regarding the management of forests within areas under state jurisdiction for sustainable production; establishes the Executive Deputy Secretariat of Forest Management (SEAGF) within the structure of the State Secretariat of the Environment (SEMA); creates the State Forest Development Fund (FEDF), and includes other provisions.
- ▶ **Complementary Law No. 53, dated June 5, 2007** – Regulates item V of ar-

ticle 230 and paragraph 1 of article 231 of the State Constitution; establishes the State System of Protected Areas (SEUC); addresses infractions and penalties, and includes other provisions.

Maranhão

Maranhão has very unique characteristics, as it is formed by a mosaic of biomes, with singular peculiarities. In total, 64% of its territory is composed of the Cerrado, 35% of the Amazon, and 1% of the Caatinga. This means that part of its area is included in both the Legal Amazon and discussions related to the Brazilian Northeast. Additionally, it faces strong pressure in the Matopiba region, which includes the states of Maranhão, Tocantins, Piauí, and Bahia, where agriculture has been expanding since the 1980s.

This environmental diversification is also reflected in the social realm, giving rise to various groups with their distinct cultural characteristics. While this diversity is a significant asset, it also brings forth substantial challenges, particularly concerning the infringement of human rights and the rights of Indigenous Peoples.

Through collaboration with the Federal Public Prosecutor's Office, a framework was established to regulate compliance with ILO Convention No. 169. This framework ensures free, prior, and informed consultation whenever any project, action, policy, or program has the potential to impact Indigenous Peoples. This regulatory mechanism, established through a judicial agreement, has facilitated effective interventions in addressing these issues.

Nevertheless, in Maranhão, there remains a significant challenge regarding the high rates of land grabbing, often resulting in multiple land titles. Numerous individuals claim ownership of these areas and seek judicial recognition of their ownership. This leads to a burden of legal proceedings and individualized actions. One example is the Mirador State Park, situated in the southeastern part of the state. Year after year, additional landowners emerge, alongside the traditional communities already present within the park boundaries.

Nonetheless, there are instances where Protected Areas (UCs) are created without prior consultation or technical studies, often through legislation, resulting in administrative conflicts.

In this scenario, structuring a management model for protected areas that considers desired levels of territorial consolidation, along with an analysis of local characteristics and economic evaluation of implementation costs, can facilitate the consolidation of the system.

Applicable Legislation

- ▶ **Law No. 9,413, dated July 13, 2011** – Establishes the State System of Nature Protected Areas of Maranhão and establishes other provisions.
- ▶ **Decree No. 36,415, dated December 18, 2020** – Regulates article 23 of Law No. 9,413, dated July 13, 2011, which addresses the State System of Nature Protected Areas of Maranhão and institutes the State Program for Incentives to Private Natural Heritage Reserves (Pró-RPPN), under the coordination of SEMA.

Mato Grosso

Mato Grosso encompasses 141 municipalities spread across three different biomes: the Amazon Rainforest, the Pantanal Wetlands, and the Cerrado Savanna.

Two of these biomes are constitutionally protected by Article 225, Paragraph 4 of the Federal Constitution.

In terms of territory, the Amazon Rainforest covers 54% of the state's area, the Cerrado occupies the central portion with approximately 39%, while the Pantanal, located in the southern part of the state, covers about 7% of the area. Within these regions, it is notable that the largest Protected Areas within the Amazon Rainforest and the Pantanal are under federal management, while the largest area of units in the Cerrado is administered at the state level.

The first Conservation Unit in the state was established in 1978, in the southern region, named Águas Quentes State Park, located near the capital, Cuiabá. From then on, particularly in the 1990s, the state of Mato Grosso began a process of creating and implementing Protected Areas, which culminated in the formulation and structuring of the State System of Protected Areas (SEUC) in 2011. Currently, the SEUC comprises 47 units, spanning various categories.

In 2020, the government of Mato Grosso proposed a constitutional amendment (PEC, the acronym in Portuguese), aiming to alter and add provisions to Article 263 of the State Constitution of Mato Grosso. The PEC 12/2022 stipulates that the creation of new units is contingent upon budget allocation for compensating landowners and the regularization of 80% of the area of existing Protected Areas. The PEC also imposes restrictions on creating units that don't necessitate land regularization and extends the implementation deadline for existing UCs to 10 years.

The proposal is currently under discussion in the Legislative Assembly of the State of Mato Grosso.

Applicable Legislation

► **Law No. 9,502, dated January 14, 2011** – Establishes the State System of Protected Areas (SEUC) and establishes other provisions.

Pará

In 2023, the State of Pará instituted the Policy and State System of Protected Areas. This measure establishes important guidelines for the creation of new protected areas within the territory of Pará, aiming to preserve natural resources and promote sustainable development.

The legislation innovates by creating two new categories of Protected Areas: Municipal Woodlands and Special Protection Rivers. These two categories are focused on urban areas and aim to tailor the legislation to local characteristics.

Moreover, it includes significant directives concerning traditional populations, emphasizing the conservation of the lifestyles and management practices of traditional peoples and communities, as well as resident and user populations. Additionally, it acknowledges and values the ethnoecological knowledge of indigenous populations when they are present in the surrounding areas.

Similarly, it directs the consideration of the conditions and needs of traditional populations, residents, and users in the development and adaptation of sustainable management methods and techniques for environmental resources. Furthermore, it emphasizes ensuring their active participation in the creation, implementation, and management of Protected Areas.

Lastly, it's important to note the inclusion of land-related aspects. Traditionally treated peripherally despite its significant conflict potential, this new law

directs efforts to integrate the creation and management processes of Protected Areas with land administration policies.

Applicable Legislation

- ▶ **Law No. 10,306, dated December 22, 2023** – Establishes the State Policy for Nature Protected Areas; provides for the State System of Nature Protected Areas (SEUC); amends State Law No. 7,638, dated July 12, 2012; and repeals Articles 83 and 84 of State Law No. 5,887, dated May 9, 1995.
- ▶ **Law No. 7,638, dated July 12, 2012** – Provides for the special treatment as referred to in Paragraph 2 of Article 225 of the Constitution of the State of Pará.
- ▶ **Ordinary Law No. 5,887, dated May 9, 1995** – Provides for the State Environmental Policy and other provisions.

Rondônia

Protected Areas in Rondônia were initiated in the 1990s through the Rondônia Agroforestry Plan (Planafloro, the acronym in Portuguese). This plan, supported financially by the International Bank for Reconstruction and Development (IBRD), was a federal government initiative aimed at implementing an improved approach to the management, conservation, and sustainable development of the state's natural resources.

The Planafloro played a significant role in the creation of a large portion of the state's Protected Areas. In 2002, the regulation of these areas came through state law, which enacted the State System of Protected Areas (SEUC). Since then, Rondônia has established 40 Protected Areas, although some of them are currently subject to judicial review.

That's because in 2017, Law No. 4,228 was enacted, stating that “the creation of forest reserves within the state of Rondônia, belonging to any Zone of the Socioeconomic-Ecological Zoning of Rondônia, established by Complementary Law No. 233, dated June 6, 2000, and its amendments, must be done through a duly deliberated law by the Legislative Assembly.” Based on this law, the establishment of new protected areas in Rondônia must be carried out through legislation.

Despite the legal provision, in 2018, the state government decreed the creation of nine Protected Areas and the regulation of two others, totaling 530 thousand hectares. Shortly afterward, legislative decrees were approved, extinguishing the created and regulated areas.

In 2021, Complementary Law No. 1,089/2021 was passed, altering the boundaries of the Jaci-Paraná Extractive Reserve and the Guajará-Mirim State Park. Additionally, it established the Ilha das Flores State Park, the Abaitará State Park, the Bom Jardim Sustainable Development Reserve, the Limoeiro Sustainable Development Reserve, and the Pau D'Óleo Wildlife Reserve. This legislation resulted in the degazetting of 220 thousand hectares from two Protected Areas. Furthermore, it reinstated the creation of the 11 Protected Areas that had been initially decreed by the governor in 2018.

In order to provide some form of compensation for the degazetting of areas, the new law recreated five of the 11 units extinguished by the Legislature. However, still in 2021, two of the new areas were abolished through complementary legislation.

In November 2021, the Rondônia State Court (TJRO) declared Law No. 1,089/2021 unconstitutional. However, in addition to legislative pressure, Pro-

tected Areas also face challenges in the field. Current difficulties stem, for instance, from the floods of 2014. Following this climate event, entire cities were isolated, leading to the urgent opening of a road within the park as a temporary solution. Despite the situation returning to normal, the road remained open, justified by arguments regarding ease of access and Unit control. Nevertheless, this has resulted in significant impacts on the UC, often leading to deforestation.

Applicable Legislation

- ▶ **Ordinary Law No. 1,143, dated December 12, 2002** – Regulates Article 8, paragraphs XVI and XVII, and Article 219, paragraphs I, II, III, and V of the State Constitution, which deal with the sustainable use of state forests and extractive reserves in the state of Rondônia and stipulates other provisions.
- ▶ **Ordinary Law No. 1,144, dated December 12, 2002** – Provides for the State System of Nature Protected Areas of Rondônia (SEUC/RO) and stipulates other provisions.
- ▶ **Ordinary Law No. 4,135, dated September 21, 2017** – Amends Article 2, paragraph IV of Law No. 1,143, dated December 12, 2002.
- ▶ **Law No. 4,228, dated December 18, 2017** – Provides for the creation of a forest reserve by the Executive Branch of the State of Rondônia.
- ▶ **Complementary Law No. 1,089, dated May 20, 2021** – Alters the boundaries of the Jaci-Paraná Extractive Reserve and the Guajará-Mirim State Park and creates the Ilha das Flores State Park, the Abaitará State Park, the Bom Jardim Sustainable Development Reserve, the Limoeiro Sustainable Development Reserve, and the Pau D’Óleo Wildlife Reserve.
- ▶ **Complementary Law No. 1,094, dated July 30, 2021** – Repeals Articles 3 and 4 of Complementary Law No. 1,089, dated May 20, 2021, which “alters the boundaries of the Jaci-Paraná Extractive Reserve and the Guajará-Mirim State Park and creates the Ilha das Flores State Park, the Abaitará State Park, the Bom Jardim Sustainable Development Reserve, the Limoeiro Sustainable Development Reserve, and the Pau D’Óleo Wildlife Reserve.”
- ▶ **Complementary Law No. 1,095, dated July 30, 2021** – Amends Article 10 and provides a new wording to Annex III and Addendum – Annex IV of Complementary Law No. 1,089, dated May 20, 2021, which “alters the boundaries of the Jaci-Paraná Extractive Reserve and the Guajará-Mirim State Park and creates the Ilha das Flores State Park, the Abaitará State Park, the Bom Jardim Sustainable Development Reserve, the Limoeiro Sustainable Development Reserve, and the Pau D’Óleo Wildlife Reserve.”

Roraima

Roraima was recognized as a federative entity in 1988 with the promulgation of the Federal Constitution. Before that, the area was considered a federal territory, and therefore, due to this historical background, it presents distinctive features, with approximately 68% of preserved vegetation cover within protected areas or military properties (ZEE, 2017).

In 2022, the State System of Protected Areas was established in the state. The law, although concise, outlines fundamental aspects of the new system and aligns regulations with federal law. Notably, it transformed Environmental Protection Areas (APAs, the acronym in Portuguese) into Sustainable Development Reserves (RDSs, also the acronym in Portuguese), offering increased protection while ac-

knowledging existing communities. Nonetheless, challenges persist, including the development of self-management mechanisms for Protected Areas.

Furthermore, there is a pressing need to enhance the organization of their councils to mitigate agrarian conflicts. Additionally, collaborative reflection on the mosaic of protected areas is essential for effective management.

Applicable Legislation

- ▶ **Complementary Law No. 7, dated August 26, 1994** – Establishes the Environmental Protection Code for the Administration of Environmental Quality, Protection, Control, and Development of the Environment and Proper Use of Natural Resources in the State of Roraima.
- ▶ **State Law No. 169/10** – Establishes detailed criteria and regional peculiarities for the creation and expansion of Protected Areas within the boundaries of the state of Roraima and establishes other provisions.
- ▶ **Law No. 1,704, dated July 15, 2022** – Provides for the creation of the State System of Protected Areas (SEUC/RR), the recategorization of the Baixo Rio Branco Environmental Protection Area into the Nascentes State Park, the Itapar-Boiaçu Sustainable Development Reserve, and the Campina Sustainable Development Reserve, as well as the creation of the Xeriuni Sustainable Development Reserve, and stipulates other provisions.

Tocantins

Tocantins recognizes the importance of Protected Areas, especially given its location in the geographical transition zone between the Cerrado and the Amazon Rainforest, encompassing both biomes.

In this way, using the Ecological-Economic Zoning as a reference, which provides data on soil, vegetation, and climate to identify environmentally sensitive areas, eligible regions can be determined, depending on their uniqueness and importance for the conservation of protected areas.

At least 15% of the total territory of the state is comprised of protected areas. Currently, Tocantins has, at the state level, three parks, nine environmental protection areas (APA), and one natural monument, covering locations such as Lajeado State Park, Canto State Park, Natural Monument of Fossilized Trees (Monaf), and Jalapo State Park, managed by the Tocantins Nature Institute (Naturatins).

Despite the progress made, the fight for the maintenance of environmental protection areas remains a relevant topic, especially given the increase in deforestation at the national level and the expansion of the agricultural frontier, the impacts of forest fires, and the loss of species and habitats for various reasons.

Thus, there is still much work to be done in strengthening the effective technical framework and promoting land regularization in environmental parks, as well as the necessary promotion of alternative economic practices aimed at encouraging resident populations or those in the surrounding areas to engage in activities that increase their income while generating less impact on the natural environment.

Applicable Legislation

- ▶ **Law No. 1,560, dated April 5, 2005** – Establishes the State System of Nature Protected Areas (SEUC), and adopts other provisions.

- ▶ **Law No. 996, dated July 14, 1998** – Creates the Cantão State Park and adopts other provisions.
- ▶ **Law No. 1,203, dated January 12, 2001** – Creates the Jalapão State Park, and adopts other provisions.
- ▶ **Law No. 907, dated May 20, 1997** – Provides for the Environmental Protection Area as specified and adopts other provisions.

FOPEMA'S WORK DRIVING CHANGE

BY FOPEMA

The joint action of prosecutors, in this case, can bring solutions with high impact not only for Protected Areas but also for guaranteeing the rights of traditional communities. Some pathways that can be facilitated through FOPEMA are:

- ▶ Publishing materials tailored to the shared experiences of states within the Legal Amazon.
- ▶ Establishing a platform for sharing knowledge and legal precedents among prosecutorial offices, encompassing both advisory and litigation aspects, concerning the challenges affecting Protected Areas.
- ▶ Assisting prosecutors in cultivating a state-oriented legal advocacy approach, which may occasionally conflict with the current government.
- ▶ Broadening research on compensation rights.
- ▶ Advocating for the integration of technical studies and economic valuations of Protected Areas.
- ▶ Conducting comprehensive and detailed procedures regarding traditional populations.
- ▶ Formulating legal doctrines and interpretations.

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AGENCIES INVOLVED

FIXE EVENTOS

AGÊNCIA FEBRE



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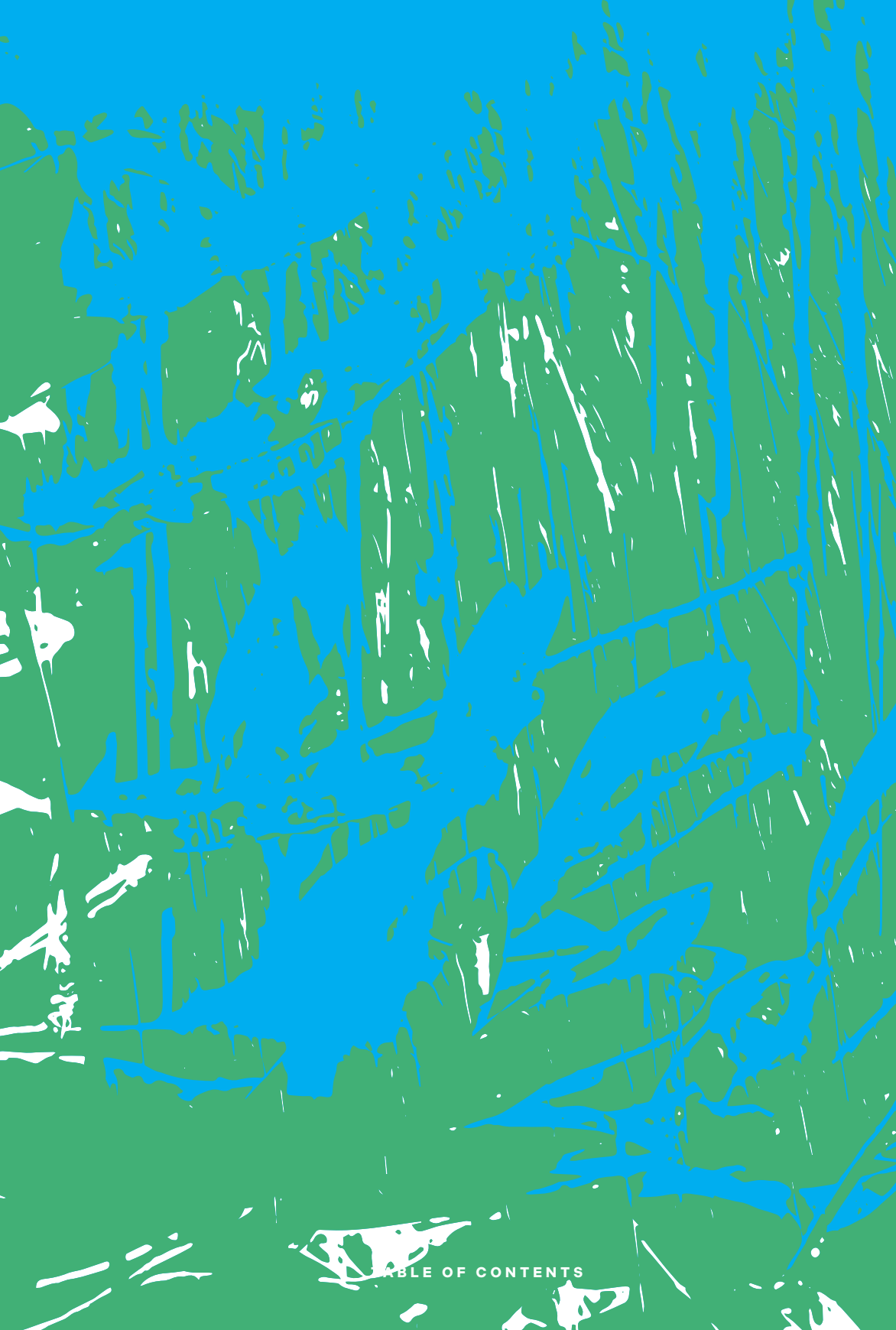


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