

## Challenges for the Environmental Crimes Law in Pará<sup>1</sup>

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The application of the Environmental Crimes Law has not been effective for the protection of the Amazonian forests. The lack of integration between the institutions responsible for punishments and the application of penalties unrelated to environmental damage are challenges to the law's effectiveness, weakening the fight against the illegal logging of forests and disfavoring the repair of environmental damage. To reverse this situation we recommend: integrate the actions of the authorities involved in applying the law and invest part of the fines in environmental funds for the repair of damages and in inspection and control.

### Environmental Crimes in Pará

Deforestation has increased in the Amazon since<sup>2</sup> 2001, despite an increase in investments in inspection and control<sup>3</sup> and the existence of the Environmental Crimes Law (nº 9.605/98). This law characterizes the crimes and allows for fines of up to 50 million Brazilian Reais (equivalent to approximately US\$ 21 million<sup>4</sup>), as well as the imprisonment of violators. In a study conducted in the headquarters of the Federal Court in Belém, we

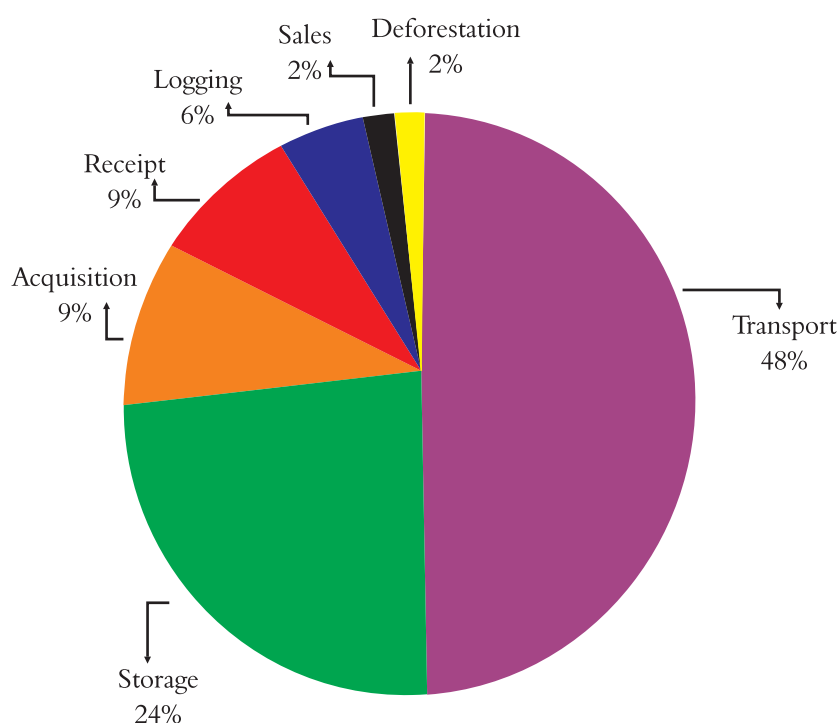
evaluated the effectiveness of this law's application in the legal system through the analysis of a sample of 55 judicial actions of environmental crimes in the forest sector in Pará. This State was chosen because it accounts for 46% of Amazonian timber production.<sup>5</sup> In 2003, Ibama – the Federal environmental agency – issued around 2,000 fines in Pará, making it national champion in environmental fines. This study took place from January to March 2003 and considered cases started between 2000 and 2003 to assess the evolution of the application of penalties.

### Profile of the Court Cases

Of the fifty-five cases analyzed, 53% were against legal entities and 47% against private persons. The great majority of the alleged violators resided in the interior of Pará and only three were domiciled outside of the State: two in São Paulo (in the southeast of Brazil) and the other in Rio Grande do Sul (in the south of Brazil).

Almost all the cases (98%) were violations concerning the transport, sale and storage of timber without legal authorization. The transport of timber without an Authorization for Transport of Forest

Figure 1. Forestry Environmental Crimes in the Belém (PA) Federal Court from 2000 to 2003.



Products<sup>6</sup> (acronym ATPF in Portuguese) was the most frequent violation, with around 48% of the cases, while unauthorized timber storage corresponded to 24% (Figure 1).

Crimes linked to activities in the forest (unauthorized logging and deforestation) were only 8% of the total analyzed (Figure 1). The predominance of cases concerning unauthorized transport and storage reflects the greater activity of Ibama's inspection and control along the transport routes and in timber companies rather than inside the forest, where deforestation and illegal logging occur.

### Progress in the Courts

The Ministério Público<sup>7</sup> receives the fines from Ibama and proposes either the start of a criminal action or a kind of plea-bargaining with the alleged violators. The Court Tribunal is responsible for conducting the processes. In 91% of the cases studies, the Federal Ministério Público chose plea-bargaining because the alleged violator met the legal requirements.<sup>8</sup> Only in 9% of the cases, were the alleged violators submitted directly to a criminal action.

Of the 55 cases analyzed, only 2% were concluded during the study period. In the majority of the cases (62%), the alleged violators had not been located by the Court in order to start the process (Figure 2). In 16% of the cases there were procedural problems such as a conflict between the Federal and State Courts over which had jurisdiction over environmental

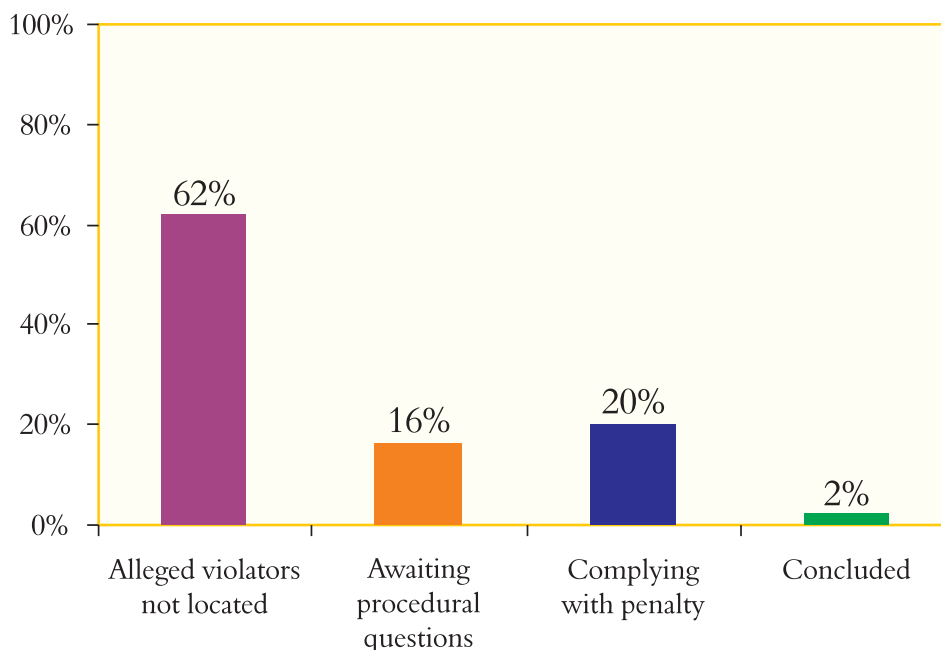
crimes.<sup>9</sup> Only 20% of the alleged violators were complying with settlements established with the Ministério Público and the judge.

On average, it took 24 working days from the start of the legal process to the initial procedural order of the judge determining the date of the hearing. For the 16 cases where there was a hearing, the average was 183 working days between the initial decision and the end of the negotiation. The only process concluded lasted 522 working days, of which 281 were to comply with the settlement which should have been done in 90 days. In other words, in all, this case took almost three years.

### Lack of Integration between Institutions

The lack of integration between the institutions responsible for the application of the Environmental Crimes Law - Ibama, Ministério Público and the Court Tribunal – made it difficult for the Federal court to locate the alleged violators after Ibama issued the fine. For example, Ibama did not immediately inform the Ministério Público of the issued fines. On the other hand, the Federal Court does not set dates to deal especially with environmental crimes. Thus, the research showed that the average time between Ibama issuing the fine and the start of criminal action was 244 working days. This delay was sufficient for the alleged violators to change address. Also, according to Federal Court staff, this change of address was the principal cause of the delay in locating the alleged violators.

Figure 2. Progress of the processes analyzed in the Belém (PA) Federal Court.



### Penalties Unrelated to Environmental Damage

Our analysis revealed that a large part of the penalties proposed in the judicial settlements were unrelated to the environmental damage caused. The majority of the penalties proposed (95%) were for social assistance (especially, donation of medical supplies and food). Only a small part (3%) was related to the environment and involved the donation of seedlings for reforestation (Figure 3). The lack of environmental technical assistance for the Ministério Público and the Courts contributed to this situation. The prosecutors and judges have little information on the location and intensity of environmental impact. In one case, the federal judge requested Ibama for an evaluation of environmental damage but this body responded that it could not carry out these analyses due to the lack of staff and financial resources. In other words, without knowing where the damage occurred it is difficult to estimate and define its restoration.

### Suggestions for Public Policies

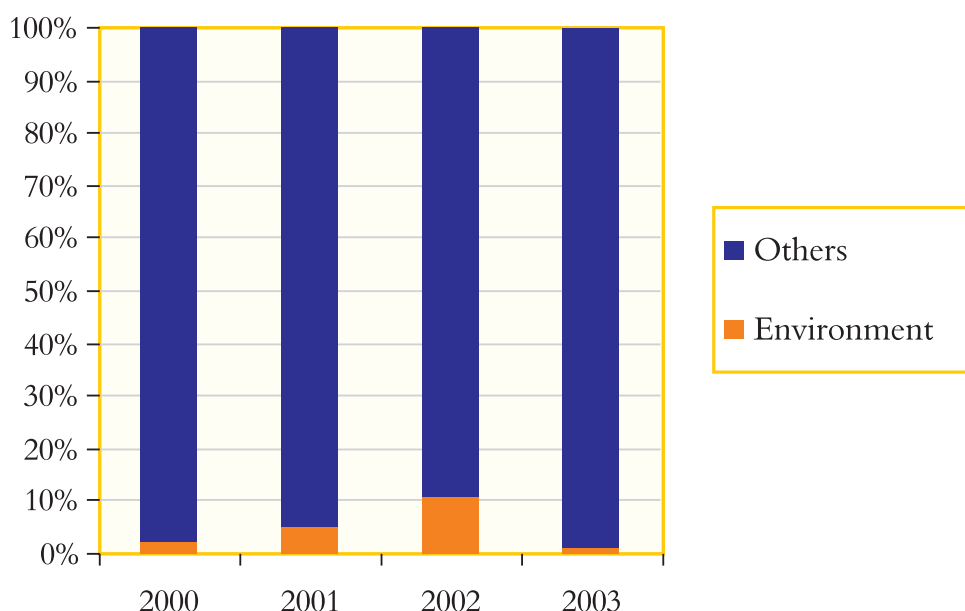
The inappropriate application of the Environmental Crimes Law impedes the effective combat of illegal logging in the Amazonian forests and disfavors the repair of environmental damage. Our analyses enable us to indicate two principal solutions for the problems identified in the judicial arena: integrate the institutions involved in the application of the law (environmental bodies, the Ministério Público and the courts) and invest part of the penalties in environmental funds.

**Integrate the Institutions.** The lack of integration between the bodies involved in the application of the Environmental Crimes Law has made it difficult for the Courts to locate the alleged violators following Ibama's charging and consequently led to a delay in case progress. One mechanism used by the Federal Court in Blumenau – a city in the south of Brazil – until mid-2001<sup>10</sup>, could be adapted to the Amazon to solve this problem. The Blumenau Federal Court established pre-fixed dates and times for hearings on environmental negotiations. Thus when the Environmental police<sup>11</sup> charged the violator, they already advised him of the date when he should appear at the Federal Court hearing. The Environmental police sent the information to the Ministério Público and Federal Court and, in less than 30 days the negotiation was held. In 2000 and 2001, the appearance rate was 95%, with 100% compliance of penalties.<sup>12</sup> The adaptation of this mechanism to the Amazon region would mainly involve an improvement in communications infrastructure.<sup>13</sup>

**Invest in Environmental Funds.** The absence of environmental technical support for the Ministério Público and the Courts and the uncertainty of the crime's location make the application of penalties related to specific environmental damage impossible in all cases.

To solve this problem we recommend investing in funds linked to the repair of environmental damage and environmental protection. In this way the environmental damage would be compensated, for example, with the protection of natural wealth in Conservation Units.

Figure 3. Penalties related (%) to environmental damage in the cases analyzed in the Belém (PA) Federal Court.



We recommend investing in funds with the following characteristics: (i) support environmental programs in the Amazon; (ii) demonstrate transparency through audits and publication of annual reports; (iii) use transparent processes in the choice of projects; and (iv) possess an administrative structure compatible with its objectives. The Brazilian Fund for Biodiversity (Funbio)<sup>14</sup> would be

a candidate to receive support, as it invests in biodiversity protection in the Amazon through the Arpa Project (Protected areas of the Amazon). Another option is the Fund for the Defense of Universal Rights<sup>15</sup> which, despite not being exclusively concerned with the Amazon or with the environment, supports projects with this theme in the region.

#### References and Notes

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<sup>2</sup> Data from INPE show that the deforestation rate for the year 2004 (26,000 km<sup>2</sup>) was the second largest in the history of the Amazon.

<sup>3</sup> In only 11 months of 2002 the federal government invested around R\$ 14.14 million in the monitoring of forest management plans and the inspection and control of forest resources. See the data in: Neal, B. 2002. Uma experiência da sociedade civil de intervenção no orçamento federal. *Orçamento e política ambiental* 4:1-7. Instituto de Estudos Socioeconômicos, Brasília. Available at: [http://www.inesc.org.br/conteudo/publicacoes/boletins/1rWWe n J E q r Z X 4 d l l 8 K Y l p 6 8 F M t g R u q R G / inesc\\_bolambientais\\_n04\\_dez02.pdf](http://www.inesc.org.br/conteudo/publicacoes/boletins/1rWWe n J E q r Z X 4 d l l 8 K Y l p 6 8 F M t g R u q R G / inesc_bolambientais_n04_dez02.pdf). Accessed on April 13th, 2005.

<sup>4</sup> Exchange rate on 18th August 2005 US\$ 1 = BR\$ 2.381.

<sup>5</sup> Lentini et al. A expansão madeireira na Amazônia. *O Estado da Amazônia*, n° 2. Belém: Imazon, 2005. 4p.

<sup>6</sup> The ATPFs are issued by Ibama after approval of a forest management plan or of deforestation and should accompany the logs during transport from the forest to the mills.

<sup>7</sup> The "Ministério Público" (or "MP") is a prosecutor's office that functions almost like a fourth branch of government. It functions independently of the other branches at both the federal and state levels. It has exclusive authority to bring environmental criminal actions.

<sup>8</sup> The plea-bargaining is not possible if the alleged violator: (i) has made this kind of negotiation in the five years prior to the violation; (ii) has been condemned by a judicial sentence to imprisonment; and (iii) has a record, social conduct and personality incompatible with the measure to be adopted (Art. 76, § 2° of law n° 9.099/95).

<sup>9</sup> The jurisdiction conflict happened from mid-2001 when Federal Judges who were judging cases of environmental crimes followed the new interpretation of the Superior Court Tribunal (STJ) and refused to continue analyzing them understanding that the State Courts had jurisdiction to judge them. The new interpretation of the STJ caused great judicial debate about the true jurisdiction over environmental crimes. Currently, the predominant interpretation is that the State Courts have jurisdiction in cases of environmental crimes practiced outside the area of interest of the Federal Union.

<sup>10</sup> From 2001 the cases were judged by the State Courts due to the jurisdiction conflict. See note 7.

<sup>11</sup> The Environmental police are the control and inspection body in Santa Catarina.

<sup>12</sup> Schäfer, J. G. & Machado, J. B. 2000. Juizado especial criminal no âmbito da Justiça Federal - uma experiência relativa ao procedimento dos crimes ambientais de menor potencial ofensivo. *Revista de Informação Legislativa*. [S.I.]. 147: 29-33.

<sup>13</sup> As the Federal Courts did not have a headquarters in the majority of cities where the alleged violators resided, the State Courts were responsible for locating them for the hearing. However, the lack of fax machines, precarious access to the internet and problems with telephone lines impeded the Federal Courts from knowing quickly if the alleged violators had been located in time, which ended up postponing the dates previously assigned for the hearings.

<sup>14</sup> More information at: <http://www.funbio.org.br>

<sup>15</sup> This is a national fund created by law. More information at: <http://www.mj.gov.br/cfdd/default.htm>

