



**DEAR CHIEF JUSTICE OF THE FEDERAL SUPREME COURT.<sup>1</sup>**

**Urgent assignment to the Honorable Justice Rosa Weber, who is presiding over connected actions – Action of Unconstitutionality (ADO) No. 59, Action Against the Violation of a Fundamental Constitutional Right (or ADPF for its acronym in Portuguese) No. 747, and ADPF No. 755.**

**PARTIDO SOCIALISTA BRASILEIRO – PSB**, a political party with representation in the National Congress and duly registered with the Superior Electoral Court, Corporate Taxpayer ID Number 01.421.697/0001-37, with headquarters at SCLN 304, Bloco A, Sobreloja 01, Entrada 63, Brasília/DF, CEP 70736-510 (**documents 01 and 02**); **REDE SUSTENTABILIDADE – REDE**, a political party with representation in the National Congress and duly registered with the Superior Electoral Court, Corporate Taxpayer ID Number 17.981.188/0001-07, with headquarters at Setor de Diversões Sul, Bloco A, salas 107/109, Ed. Boulevard Center, CONIC, Asa Sul, Brasília/DF, CEP 70391-900 (**documents 03 and 04**); **PARTIDO DEMOCRÁTICO TRABALHISTA – PDT**, a political party with representation in the National Congress and duly registered with the Superior Electoral Court, Corporate Taxpayer ID Number 00.719.575/0001-69, with headquarters at SAFS, Quadra 2, Lote 3, CEP 70042-900, Brasília/DF (**documents 05 and 06**); **PARTIDO VERDE**, with representation in the National Congress, registered with the Superior Electoral Court under Resolution 22083 of 2005, Corporate Taxpayer ID Number 31.886.963/0001-68, with headquarters at SCN, quadra 1, bloco F, No. 70, salas 711, 712, 713, Asa Norte, Brasília/DF, herein represented by its National Chairperson (**documents 07 and 08**); **PARTIDO DOS TRABALHADORES – PT**, a political party with representation in the National Congress and duly registered with the Superior Electoral Court, Corporate Taxpayer ID Number 00.676.262/0001-70, with headquarters at Setor Comercial Sul, Quadra 02, Bloco C, No. 256, Ed. Toufic, 1º andar, Brasília/DF (**document 09** – motion to enter power of attorney within 5 days under Article 104, paragraph 1, of the Code of Civil Procedure); **PARTIDO SOCIALISMO E LIBERDADE – PSOL**, a political party with representation in the National Congress and duly registered with the Superior Electoral Court, Corporate Taxpayer ID Number 06.954.942/0001-95, with headquarters at SCS, SC/SUL, Quadra 02, Bloco C, No. 252,

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<sup>1</sup> This is a non-official translation of the original petition in Portuguese. See original here <https://www.greenpeace.org/static/planet4-brasil-stateless/2020/11/97b4a6d6-petic%CC%A7a%CC%83o-inicial-adpf-clima%CC%81tica-11.11.2020.pdf>.

5º andar, Edifício Jamel Cecílio, Asa Sul, Brasília/DF (**documents 10 and 11**); and **PARTIDO COMUNISTA DO BRASIL – PCdoB**, a political party with representation in the National Congress and duly registered with the Superior Electoral Court, Corporate Taxpayer ID Number 54.956.495/0001-56, with headquarters at sala 1224, Edifício Executivo Office Tower, bloco F, Quadra 2, SHN, Asa Norte, Brasília/DF (**documents 12, 13, and 14**), pursuant to Article 102, paragraph 1, of the Constitution and Law No. 9882/1999, bring this

**Action Against the Violation of a Fundamental Constitutional Right - ADPF**  
*with a demand for a preliminary injunction*

seeking the urgent remedies listed at the end of this Petition aimed at solving serious and irreparable injuries to fundamental precepts resulting from actions and omissions of the Federal Government and its agencies, including abuse of power, which prevent the implementation of the public policy that has been in force for years to effectively combat deforestation in the Legal Amazon and the climate emergency.

Due to the relevance of this action and the specificity of its issue, the Petitioners file their brief accompanied by the following specialist entities: **INSTITUTO SOCIOAMBIENTAL – ISA**, a nonprofit organization qualified as a Public-Interest Organization of Civil Society – OSCIP, Corporate Taxpayer ID Number 00.081.906/0002-69, with headquarters at Av. Higienópolis, No. 901, sala 30, São Paulo/SP (**documents 15 and 16**); **ARTICULAÇÃO DOS POVOS INDÍGENAS DO BRASIL – APIB**, an indigenous organization that represents the Indigenous People of Brazil, with headquarters at SDS, Ed. Eldorado, sala 104, Brasília – DF – CEP 70392-900, herein represented by its Executive Coordinator Sonia Guajajara (Articles 231 and 232 of the Constitution), a Brazilian, indigenous to the Guajajara People, separated, Individual Taxpayer ID Number 937.121.626-34 and Identity Card No. 018075982001-6 SSP-MA (**documents 17 and 18**); **CONSELHO NACIONAL DAS POPULAÇÕES EXTRATIVISTAS – CNS**, a national nonprofit organization representing extractive populations, Corporate Taxpayer ID Number 14.352.991/0001-86, with headquarters at Rua Alexandre Farhat, No. 206, José Augusto, Rio Branco/AC, CEP 69900-779 (**document 19** – motion to enter power of attorney within 5 days under Article 104, paragraph 1, of the Code of Civil Procedure); **LABORATÓRIO DO OBSERVATÓRIO DO CLIMA – OC**, an environmental nonprofit organization, Corporate Taxpayer ID Number 30.097.990/0001-38, with headquarters at Estrada Chico

Mendes, No. 185, sala Hub, Sertãozinho, Piracicaba/SP, CEP 13426-420 (**documents 20 and 21**); **GREENPEACE BRAZIL**, with headquarters in the city of São Paulo, State of São Paulo, at Rua Fradique Coutinho, 352, Pinheiros, CEP 0546-000, Corporate Taxpayer ID Number 64.711.062/0001-94 (**documents 22 and 23**); **CONECTAS DIREITOS HUMANOS**, a nonprofit organization qualified as a Public-Interest Organization of Civil Society – OSCIP, Corporate Taxpayer ID Number 04.706.954/0001-75, with headquarters at Avenida Paulista, 575, 19 andar, São Paulo – SP, herein represented by its executive officer and duly authorized representative, Ms. Juana Magdalena Kweitel (**documents 24 and 25**); **INSTITUTO ALANA**, a nonprofit organization, Corporate Taxpayer ID Number 05.263.071/0001-09, with headquarters at Rua Fradique Coutinho, No. 50, 11 andar, São Paulo/SP (**documents 26 and 27**); **ASSOCIAÇÃO DE JOVENS ENGAJAMUNDO**, a nonprofit organization, Corporate Taxpayer ID Number 18.110.579/0001-00, with headquarters at Rua Teodoro Sampaio, 1647, Pinheiros, São Paulo/SP (**documents 28 and 29**); **ARTIGO 19 BRASIL**, a nonprofit organization, Corporate Taxpayer ID Number 10.435.847/0001-52, with headquarters at Rua João Adolfo, 118 – Conjunto 802, CEP 01050-020, Centro, São Paulo – SP (**documents 30 and 31**); and **ASSOCIAÇÃO CIVIL ALTERNATIVA TERRAZUL**, a nonprofit organization, Corporate Taxpayer ID Number 03.197.372/0001-48, with headquarters at SRTVS, Quadra 701, Bloco O – Ed. Multiempresarial- Sala 518, Asa Sul, CEP 70340-000, Brasília/DF (**documents 32 and 33**), who, under Article 138 of the Civil Procedure Code and Article 7, paragraph 2, of Law No. 9868/1999, apply for admission as *AMICI CURIAE*.

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## I. SUMMARY OF THE SUBJECT OF THIS ADPF

1. The subject of this Allegation of Disobedience of Fundamental Precept (ADPF) is the **effective implementation of the public policy in force to combat deforestation in the Legal Amazon – the Action Plan for the Prevention and Control of Deforestation in the Legal Amazon (PPCDAm) – to enable the achievement of the climate goals assumed by Brazil** before the global community in international agreements enacted by national laws.

2. The immediate adoption of the remedies demanded in the preliminary injunction is justified by the pressing need to stop very serious actions and omissions perpetrated by the Federal Government – including the Ministry of the Environment (MMA) and Federal agencies (Brazilian Environmental Protection Agency – IBAMA, Chico Mendes Institute for Biodiversity Conservation – ICMBio, and Fundação Nacional do Índio – FUNAI) – aimed at not complying with the aforementioned public policy whose purpose is to combat deforestation in the Amazon.

3. As a consequence of such acts, there was an expressive and unprecedented increase in deforestation, burns, and fires in the Amazon in 2019 and 2020

– and even at more frightening levels within Indigenous Lands (TIs) and Federal Conservation Units (UCs), which are under the direct responsibility of the Federal Government. Besides Brazil not complying with its climate goals, the situation causes serious and irreparable damage to the essential core of the fundamental right to an ecologically balanced environment of present and future generations – the fundamental precept that is the main subject of this ADPF-, and, as a result, to the fundamental precepts of the rights to life, dignity, and health, and the rights of Indigenous Peoples, traditional peoples and communities – including extractive communities-, and children and adolescents.

4. As we will demonstrate, the damage to fundamental precepts described in this ADPF must stop immediately, since deforestation in the Amazon has irreversible negative consequences, including (i) at the local and regional levels, it reduces or eliminates ecosystem services provided by forests – especially the hydrological cycle, which is essential to supply water to the population, to maintain the quality of life, and to develop relevant economic activities, such as agriculture and industry, which are highly dependent on rains from the biome; and (ii) at the global level, deforested or degraded forests, instead of contributing to maintaining global climate balance, damages it, rendering global efforts against the climate emergency completely unfeasible.

5. The implementation of the public policy to combat deforestation in the Amazon – which has already been in force for years –, has been ineffective in 2019 and 2020 due to the actions and omissions described below. Its effective implementation is urgent and essential to ensure the effectiveness of the Constitution itself. Therefore, we seek the effective implementation of an essential public policy, which is in force and has been irresponsibly neglected as of 2019.

## **II. STANDING**

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### **II.1. PETITIONERS' STANDING TO SUE**

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6. Petitioners PSB, REDE, PDT, PV, PT, PSOL, and PCdoB are political parties with representation in the National Congress. Therefore, under Article 2, item I, of Law No. 9882/1999 and Article 103, item VIII, of the Constitution, Petitioners have standing to sue regarding centralized constitutional review actions, including this ADPF.

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## II.2. INTEREST OF THE *AMICI CURIAE*

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7. The admission of entities as *amici curiae* in centralized constitutional review actions is widely accepted by this Federal Supreme Court<sup>2</sup> once the entity demonstrates its interest based on the relevance of the issue of the action and its adequacy of representation.

8. In this ADPF, the relevance of the issue is clear from its purpose to seek the effective implementation of the public policy to combat deforestation in the Legal Amazon. This is essential to guarantee to the community – present and future generations – the right to the ecologically balanced environment and, as a result, the rights to life, dignity, and health, and the rights of Indigenous Peoples, traditional communities, and children and adolescents.

9. As for adequacy of representation, all entities that request to participate as *amici curiae* have as their institutional purpose and practice the defense of the legal interests and fundamental rights discussed in this ADPF. Also, the entities have a notable specialization in the issues in dispute.

10. Therefore, ISA is a nonprofit organization founded in 1994 and qualified as a Public-Interest Organization of Civil Society – OSCIP by the Ministry of Justice under Law No. 9790/1999. Its institutional purpose and practice is, according to Article 2 of its Articles of Incorporation, among others, “to encourage socioeconomic development by guaranteeing democratic and ecologically sustainable access to and management of natural resources while maintaining cultural and biological diversity for present and future generations” (subitem ‘b’); “to promote the defense of social, collective, and diffuse interests and rights relating to the environment, cultural heritage, human rights, and peoples’ rights” (subitem ‘a’); and “to promote, conduct, and publicize research and studies, to organize documents and develop projects to protect the environment, cultural heritage, human rights, and peoples’ rights, especially of Indigenous Peoples and traditional populations” (subitem ‘c’). Furthermore, ISA may, in fulfilling its purposes, by itself or in cooperation with third parties, “bring public interest

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<sup>2</sup> See Federal Supreme Court. En banc. Appeal to the Direct Unconstitutionality Action - ADO - ADIn No. 4858. Rapporteur: Justice Edson Fachin. DJe 3 April 2017



litigation and other judicial actions to defend social, collective, or diffuse interests and rights, especially those related to the environment and cultural heritage” (Article 2, sole paragraph, subitem ‘f’). ISA has already been admitted as *amicus curiae* in other centralized constitutional review actions related to socio-environmental issues, such as in Direct Actions of Unconstitutionality – ADIs No. 4901, 4902, and 4903, which dealt with the constitutionality of provisions of Federal Law No. 12651/2012 (Native Vegetation Protection Act). ISA also has permanent offices in different locations in the Legal Amazon and works in partnership with local organizations, such as in Boa Vista (RR), Manaus (AM), São Gabriel da Cachoeira (AM), Canarana (MT), and Altamira (PA). ISA is nationally and internationally recognized as one of the most active and qualified entities concerning Amazon deforestation, climate change, forest economics, and protection of the rights of Indigenous Peoples and other traditional peoples and communities.

11. Likewise, APIB represents Indigenous Peoples nationally. It is formed by grassroots indigenous organizations, namely: Articulação dos Povos e Organizações Indígenas do Nordeste, Minas Gerais e Espírito Santo (APOINME); Coordenação das Organizações Indígenas da Amazônia Brasileira (COIAB); Articulação dos Povos Indígenas do Sul (ARPINSUL); Articulação dos Povos Indígenas do Sudeste (ARPIN-SUDESTE); Conselho do Povo Terena; Aty Guasu Guarani Kaiowá; and Comissão Guarani Yvy Rupa. According to its bylaws<sup>3</sup>, APIB was created by Acampamento Terra Livre (ATL) in 2005 and its purpose is “to promote and protect indigenous rights based on the articulation and unity between Indigenous Peoples and organizations in the different regions of the country”. Also, to bringing together the largest regional indigenous organizations from all parts of the country, the applicant is internationally recognized and denounced the violations to rights of indigenous communities and the social setbacks in Brazilian indigenous politics before the United Nations (UN) and the Inter-American Commission on Human Rights (IACHR). Since Indigenous Peoples are most directly affected by deforestation in the Amazon, especially when illegally carried out within Indigenous Lands, and since Indigenous Peoples are necessary to protect the forest and mitigate the effects of climate change, APIB can largely contribute with the Federal Supreme Court by providing the indigenous perspective on the matter.

12. CNS, formerly known as Conselho Nacional dos Seringueiros, is a nonprofit organization made up of extractive populations that, whether or not organized

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<sup>3</sup> <http://apib.info/apib/>

into associations, cooperatives, or other entities, “develop activities in the extractive economy and are demonstrably committed to the conservation of resources and sustainable development” (head of Article 7 and subitem ‘a’ of its Articles of incorporation). Still according to its articles of incorporation, CNS institutional purpose, among others, is “to protect the environment and conserve biological diversity, especially in the Amazon Region” (Article 2, subitem ‘a’); to ensure that the extractive populations are served by the Federal govern (Article 2, subitem ‘c’); “to develop activities aimed at the conservation and protection of the forest, water, land, fauna, and humans of the Amazon” (Article 2, subitem ‘g’); and to publicize the struggle and ways of life of extractive populations (Article 2, subitem ‘h’). CNS was founded under the leadership of Chico Mendes in 1985, during the 1st National Meeting of Rubber Tappers. CNS engages in protecting the environment and traditional peoples and extractive communities, especially concerning the creation and maintenance of several Federal Conservation Units, such as Extractive Reserves. These areas are classified as public domain lands and their use is assigned to extractive populations to ensure the sustainable use of natural resources and the protection of the culture and traditional practices of these populations.

13. Observatório do Clima is a network of civil society organizations that work to advance dialogue, public policies, and decision-making processes on climate change in the country and globally. According to Article 3, paragraph 1, of its Articles of incorporation, the purpose of Observatório do Clima is to promote discussion on the issue of climate change in the Brazilian context. Observatório do Clima is made up of some of the most representative environmental protection organizations in the country, namely: 350.org; Amigos da Terra – Amazônia Brasileira; ANGÁ – Associação para Gestão Ambiental do Triângulo Mineiro; APREC – Associação de Proteção a Ecossistemas Costeiros; Apremavi – Associação de Preservação do Meio Ambiente e da Vida; Arapyau; Avina; BVrio; Clima Info; COIAB – Coordenação das Organizações Indígenas da Amazônia Brasileira; ECOAR para Cidadania; Engajamundo; FBDS – Fundação Brasileira de Desenvolvimento Sustentável; FGV – Fundação Getúlio Vargas; Fundação O Boticário; FVA – Fundação Vitória Amazônica; GAMBÁ – Grupo Ambientalista da Bahia; Greenpeace; GTA – Grupo de Trabalho Amazônico; Hospitais Saudáveis; ICLEI – Governos Locais pela Sustentabilidade; ICV – Instituto Centro de Vida; IDEC – Instituto Brasileiro de Defesa do Consumidor; IDESAM – Instituto de Desenvolvimento da Amazônia; IDS – Instituto Democracia e Sustentabilidade; IEI Brazil – International Energy Initiative; IEMA – Instituto de Energia e Meio Ambiente; Instituto 5 Elementos;

Instituto Alana; Instituto Escolhas; IIEB – Instituto Internacional de Educação do Brasil; Imaflora – Instituto de Manejo e Certificação Florestal e Agrícola; Imazon – Instituto do Homem e Meio Ambiente da Amazônia; INESC – Instituto de Estudos Socioeconômicos; Iniciativa Verde; Instituto Ecológica/Sustainable Carbon; Instituto Polis; IPAM – Instituto de Pesquisa Ambiental da Amazônia; IPÊ – Instituto de Pesquisas Ecológicas; ISA – Instituto Socioambiental; ISPN – Instituto Sociedade, População e Natureza; ITDP – Instituto de Políticas de Transporte e Desenvolvimento; Justiça Eco – Observatório de Justiça e Conservação; Maternatura; OELA – Oficina Escola de Lutheria da Amazônia; Saúde e Alegria; SBDIMA – Sociedade Brasileira de Direito Internacional do Meio Ambiente; SNE – Sociedade Nordestina de Ecologia; SOS Amazônia; SOS Mata Atlântica; SOS Pantanal; SPVS – Sociedade de Pesquisa em Vida Selvagem e Educação Ambiental; TNC – The Nature Conservancy; Transparência Internacional; Uma Gota no Oceano; WRI – World Resources International; and WWF – World Wide Fund. Observatório do Clima was recently admitted as an *amicus curiae* in ADO No. 59, which is pending before this Federal Court of Justice.

14. Greenpeace, formed in 1971 in Canada, is one of the most notorious environmental organizations in the world. Greenpeace arrived in Brazil in 1992. Since then, it has been acting strictly under Article 225 of the Constitution to protect the environment for present and future generations. This includes the defense of diffuse and collective interests of Indigenous Peoples and traditional populations as well as specific projects in the Amazon. According to its articles of incorporation, Greenpeace's purpose is “to promote the protection and preservation of nature and the environment in general, including flora, fauna, and non-renewable natural resources”. Also, Greenpeace may “bring public interest litigation and adopt other judicial or extrajudicial initiatives to achieve its purposes, either collective or diffuse, related to the protection of the environment.” As one of the most representative non-governmental organizations in the debate on the protection of the environment and climate change, Greenpeace believes that its technical contribution may enrich the analysis of the merit of this case – which certainly will have an immeasurable impact on present and future generations.

15. Conectas is a nonprofit organization founded in 2001. Its purpose is to strengthen and promote respect for human rights in Brazil and the Southern Hemisphere. It is dedicated to education, strategic advocacy, and the promotion of dialogue between the civil society, universities, and international agencies. According to item VI of Article 3 of its articles of incorporation, Conectas institutional purpose is to “promote, support,

monitor, and evaluate human rights projects at national and international levels, in particular: (...) VI – to promote and defend human rights in court.” The sole paragraph, subitem ‘g’, of the aforementioned provision sets forth that, to achieve its purposes, Conectas may “bring legal actions aimed at the realization of human rights.” In the international arena, Conectas has a consultative *status* in the UN Economic and Social Council (since 2006) and an observer *status* in the African Commission on Human and Peoples’ Rights (since 2009). Also, Conectas has a solid performance in the Inter-American Human Rights System and in procedures before the UN Human Rights Council. Consequently, Conectas is the non-governmental organization most admitted as *amicus curiae* in actions pending in this Federal Supreme Court.<sup>4</sup> In terms of socio-environmental rights, Conectas runs a Social and Environmental Rights Development Program, whose priorities are “climate, environment, and human rights”. With this program, Conectas seeks to adapt the political, economic, and social processes to the commitments to reduce greenhouse gas emissions, having prepared the first guide on climate litigation in Brazil.<sup>5</sup>

16. Acting nationally and internationally, Instituto Alana is a nonprofit civil society organization that develops programs seeking to ensure the full experience of childhood. Created in 1994, Instituto Alana has been supported by income from an endowment since 2013. Among its institutional purposes are legal and other activities aiming at the development of the full capacity of children and adolescents and the defense of their rights. This expressly includes the “defense, preservation, and conservation of the environment and promotion of sustainable development”. Under its Climate and Socio-Environmental Justice project, Instituto Alana has acted in defense of the fundamental rights of children and adolescents in socio-environmental issues, as is the case, for example, with its contribution as *amicus curiae* in ADO No. 59.

17. Associação de Jovens Engajamundo is a nonprofit organization founded in 2013 and existing for an indefinite period. It trains young people to participate in international negotiations on climate changes and the environment and promotes knowledge and development of collective solutions regarding the Brazilian socio-environmental agenda from the perspective of the youth. It is a space for the articulation of the youth in Brazil, especially on the topic of climate emergency. These and other

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<sup>4</sup> See <<https://folha.com/jk2bc6gu>>. Accessed on: 11.11.2020.

<sup>5</sup> Available at: <<https://www.conectas.org/publicacoes/download/guia-de-litigancia-climatica>>. Accessed on: 11.11.2020.

activities are provided for in Article 2 of its Articles of incorporation, which also provides, among other purposes, “to monitor the Brazilian government so that it implements concrete results concerning what it undertakes nationally and internationally” (subitem ‘c’).

18. Artigo 19 is a nonprofit organization founded in London in 1987 and operating in Brazil since 2008. According to its Articles of incorporation, its main purpose is to protect and promote the right to freedom of expression and access to information. One of its main focuses is to preserve the right to information and transparency concerning government agencies. Artigo 19 is dedicated to monitoring the implementation of public policies in Brazil, including environmental ones. It monitors issues related to the transparency of access to data from the Rural Environmental Registry (CAR) and the Document of Forest Origin (DOF), Also to deforestation in the Amazon and the PPCDAm.

19. Finally, Alternativa Terrazul is a socio-environmental non-governmental organization founded in 1999. According to Article 2 of its articles of incorporation, its purpose is “to defend health and the environment to ensure quality of life and a sustainable society”. Its articles of incorporation also provide for the following purpose: the development of studies, research, and actions in the field of health, ecology, and sustainable human development, and authorizes Alternativa Terrazul to bring legal actions to defend diffuse interests to accomplish its purposes. Alternativa Terrazul has worked on projects, programs, campaigns, and activism to contribute to the construction of sustainable societies. Its references are the values and principles of the Earth Charter and the climate issue is one of its institutional priorities. During its 20-year history, the Alternativa Terrazul has actively participated in a set of alliances and local, regional, national, and global networks to promote human rights and the preservation of the environment.

20. Therefore, the interest of these entities to participate as *amici curiae* in this case is demonstrated.

### **III. ADMISSIBILITY OF THIS ADPF**

21. In 2019 and 2020, the Federal government irresponsibly abandoned the PPCDAm, failing to implement this essential public policy aimed at combating

deforestation in the Legal Amazon and thus attaining Brazilian climate goals. The actions and omissions of the Government cause serious violation and irreversible damage to fundamental precepts of the Constitution, more directly to the fundamental right of the Brazilian population to an ecologically balanced environment and, consequently, to life, dignity, and health, and to the rights of Indigenous Peoples, traditional communities, and children and adolescents. The unique gravity of the situation, unprecedented since the enactment of the Constitution of 1988, and the difficulty of coping with it show the need for intervention by this Supreme Federal Court in its greater function of guardian of the Constitution, according to the head provision of Article 102 of the Constitution.

22. Under said Article 102, paragraph 1, as regulated by Law No. 9882/1999, ADPF is the action intended to face this issue, since its subject must deal with acts of the government that violate or threaten fundamental precepts. For its admissibility, the following is required: (i) injury or threat of injury to a fundamental precept; (ii) caused by an act of the government; and (iii) lack of another instrument capable of remedying this injury or threat (subsidiarity). Such requirements are fully met in this case.

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### **III.1. DAMAGE OR THREAT OF DAMAGE TO FUNDAMENTAL PRECEPTS**

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23. The list of fundamental precepts in the Constitution is nonexhaustive. The majority of the jurisprudence includes among them: the teleological-normative bases of the Republic (Article 1), its purposes (Article 3), individual and collective rights and duties (Articles 5 and others), and social rights (Article 6 and others), including those rights provided for in Title VIII – The Social Order (Articles 193 to 232).

24. As shown by the events described below, including the historical increase in deforestation in the Amazon and its Protected Areas in 2019 and 2020, the actions and omissions of the Federal government cause serious violation and irreparable damage to the fundamental right of present and future generations to the ecologically balanced environment (Article 225) and, consequently, to the rights to life (Article 5), to a dignified life (Article 1, III), and to health (Article 196), as well as to the fundamental rights of Indigenous Peoples to their traditional lands (Article 231), the fundamental rights of traditional peoples and communities (Articles 215 and 216 of the Constitution and Article 68 of the Temporary Constitutional Provisions Act), and fundamental rights of children and adolescents (Article 227).

25. The serious and irreparable injury that is the subject of the ADPF originates from the repeated breach of constitutional duties directed to the government, namely: duty to care for and conserve public property (Article 23, I); duty to protect goods of cultural value and remarkable landscapes (Article 23, III); duty to protect the environment and combat pollution (Article 23, VI); duty to preserve forests, fauna, and flora (Article 23, VII); general duty to defend and preserve the environment for present and future generations (Article 225); duty not to degrade the environment (Article 225); duties of precaution and prevention (Article 225); duty to preserve and restore essential ecological processes and provide ecological management of species and ecosystems (Article 225, paragraph 1, I); duty to preserve the diversity and integrity of the country's genetic heritage (Article 225, paragraph 1, II); duty to protect protected areas (Article 225, paragraph 1, III); duty to protect fauna and flora and duty not to carry out practices that endanger their ecological function (Article 225, paragraph 1, VII); duty to inspect and control harmful and illegal activities against the environment (Article 225, paragraph 3); duty to protect the Amazon as a national heritage (Article 225, paragraph 4); duty to combat climate emergency (Article 225); duty to protect Indigenous Lands (Article 231); duty to protect other areas and other rights of traditional peoples and communities (Articles 215 and 216); and duty to guarantee absolute priority to children and adolescents (Article 227).

26. Therefore, compliance with the first requirement for the admissibility of this ADPF is clear.

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### **III.2. GOVERNMENT ACTIONS**

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27. Article 1 of Law No. 9882/1999 provides that “government actions” may be the subject of an ADPF. The events described below show that actions and omissions by the Federal government are making it impossible to effectively execute the public policy destined to combat deforestation in the Legal Amazon, including within Indigenous Lands and Federal Conservation Units. This prevents Brazil from fulfilling the climate goals assumed in international agreements and enacted by national laws.

28. In summary, as detailed below, without intending to present an exhaustive list, the acts of the government questioned in this ADPF are classified as

follows: (i) absolutely deficient government action: drastic reduction in environmental inspection and control; (ii) actions and omissions aimed at rendering unfeasible the implementation of the PPCDAm, including the restructuring of Federal agencies; (iii) non-execution of the available budget and freezing of the financing for the public policy; (iv) rules designed to make it impossible for the government to take sufficient action; (v) actions and omissions that violate fundamental rights to information and participation in environmental matters; and (vi) the virtual extinction of the PPCDAm.

29. In short, this ADPF turns against unconstitutional actions and omissions perpetrated by the Federal government that paralyze and hinder the effective and sufficient implementation of the policy to combat deforestation in the Legal Amazon and the climate emergency. Therefore, the second requirement of admissibility is fulfilled.

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### III.3. SUBSIDIARITY

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30. According to the jurisprudence, the subsidiarity requirement provided for in Article 4, paragraph 1, of Law No. 9882/1999, is fulfilled when there are no other means suitable for the global solution of the matter brought before the Court. This is what this Court decided in the following persuasive precedent:

“13. Principle of subordination (Article 4, paragraph 1, of Law 9882/99): no other effective means of remedying the injury, which is understood as a means capable of resolving the relevant constitutional controversy in a broad, general, and immediate manner. 14. The existence of ordinary proceedings and extraordinary appeals do not exclude, a priori, the use of the ADPF due to the markedly objective feature of that action.”<sup>6</sup>

31. The injuries caused by the actions and omissions are extremely serious, irreversible, and dramatically accentuated. In fact, we are facing a situation of **massive and widespread violation of fundamental rights**, which affects not only a large number of people living in the Amazon region, but given the climatic implications, has harmful consequences for the entire population of the country, South America, and the whole planet.

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<sup>6</sup> Federal Supreme Court. *En banc*. ADPF No. 33, Rapporteur: Justice Gilmar Mendes. DJe 27.10.2006. In the same sense: Federal Supreme Court. *En banc*. ADPF No. 97. Rapporteur: Justice Rosa Weber. DJe 30.10.2014.



32. To stop this devastating scenario, there is no other legal action – centralized constitutional review action or otherwise – that enables the global confrontation of the government acts discussed in this case and the adequate and effective solution, in a timely manner, of the very serious and irremediable injuries to fundamental precepts pointed out by the Petitioners.

33. Therefore, all requirements for this ADPF to be heard by this Federal Supreme Court are met.

#### **IV. INTRODUCTION: ESSENTIALITY OF THE AMAZON FOR THE FUNDAMENTAL PRECEPTS THAT ARE THE SUBJECT OF THIS ADPF**

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##### **IV.1. INTRODUCTORY NOTES ABOUT THE AMAZON**

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34. The Amazon is the largest tropical forest in the world, representing 67% of the entire remaining tropical forest. It is located in nine countries in South America.<sup>7</sup> About 60% of the Amazon area is in Brazil, which ranks first in the world ranking of countries with tropical forests. Brazil is also the country with the greatest biodiversity on the planet, with emphasis on the biological diversity of the Amazon.<sup>8</sup>

35. The preservation of the Amazon is essential not only due to its natural wealth, but also to guarantee the life and cultural diversity of the “Peoples of the Forest”, its greatest guardians. There are 188 Indigenous Peoples in the Amazon, totaling about 505,000 people from 38 different language families and a wide variety of traditional peoples and communities, which include quilombolas, riverside dwellers, extractivist populations, among others. Also, FUNAI reports 114 references to isolated or recently contacted Indigenous Peoples, 28 of which are confirmed by the Foundation.<sup>9</sup>

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<sup>7</sup> Brazil, Peru, Bolivia, Ecuador, Colombia, Venezuela, French Guiana, English Guiana, and Suriname.

<sup>8</sup> The Amazon has great biological diversity, housing: (i) about 3,600 species of trees, or one third of all tropical wood in the world; (ii) and 30,000 species of plants, one third of the total in South America; (iii) 1,000 bird species; (iv) 1,300 fish species, higher than any other basins in the world; (v) 311 mammal species, representing about 62% of the species in Brazil; (vi) 550 reptile species, of which 62% are endemic; and (vii) 163 amphibian species, 27% of those estimated for Brazil, in addition to a huge diversity of invertebrates. These data are daily reviewed according to new scientific discoveries.

<sup>9</sup> Observatório dos Direitos Humanos dos Povos Indígenas Isolados e de Recente Contato. Informe OPI n. 1 – Povos Indígenas Isolados no Brasil: resistência política pela autodeterminação. Available at: <<https://povosisolados.com/2020/02/11/informe-observatorio-opi-n-01-02-2020-povos-indigenas-isolados-no-brasil-resistencia-politica-pela-autodeterminacao/>>. Accessed on: 21.09.2020.

36. Among the many essential functions provided by the Amazon to maintain the ecological balance, its intrinsic relationship with water availability stands out. According to the National Water Agency (ANA), the Amazon has the largest hydrographic network on the planet.<sup>10</sup> Also to its rivers, the Amazon exchanges large amounts of water with the atmosphere, an essential process for regulating the local, regional, and global climate. About 70% of rainwater returns to the atmosphere due to the effects of evapotranspiration promoted by the forest<sup>11</sup>. The impressive amount of water released into the atmosphere by this process, about 200 million liters per second, is of the same order of magnitude as the amount of water that the Amazon River throws into the ocean. The water released into the atmosphere by evapotranspiration works as a feedback mechanism: on the one hand, forests guarantee the maintenance of the local, regional, and global climate, and, on the other, climate regulation allows the survival of forests<sup>12</sup>.

37. Another relevant characteristic of the forest is its extremely high concentration of carbon per hectare: The Amazon has the largest forest carbon stock on earth (49 billion tons of carbon<sup>13</sup>). It is, therefore, a fundamental agent for the global climate balance.<sup>14</sup> The Brazilian Circuit Court of Appeals for the 1st Circuit held that **“vegetation represents an important ‘carbon stock’, a natural antidote against the harmful effects of global climate change, which is a global reality.”**<sup>15</sup>

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<sup>10</sup> Its main river, the Amazon, cuts through a large part of the biome and flows into the Atlantic Ocean, throwing about one hundred and seventy-five million (175,000,000) liters of water per second into the sea. Its average flow in Brazilian territory is about one hundred and thirty-two thousand (132,145)m<sup>3</sup>/s, corresponding to an expressive seventy-four (74%) of the total of Brazil. See AYRIMORAES SOARES, Sérgio Rodrigues. “Conjuntura dos Recursos Hídricos no Brasil: regiões hidrográficas brasileiras”. Brasília: National Water Agency - ANA, 2015. Available at: <<http://www.snirh.gov.br/portal/snirh/centrais-de-conteudos/conjuntura-dos-recursos-hidricos/regioeshidrograficas2014.pdf>>. or<<http://atlas.ana.gov.br/Atlas/downloads/atlas/Resumo%20Executivo/Atlas%20Brasil%20-%20Volume%201%20-%20Panorama%20Nacional.pdf>>. Accessed on: 06.10.2020.

<sup>11</sup> O que é evapotranspiração? O Eco, 13.12.2014. Available at: <<http://www.oeco.org.br/dicionario-ambiental/28768-o-que-e-evapotranspiracao/>>. Accessed on: 06.10.2020.

<sup>12</sup> SPRACKLEN, D. V. & GARCIA-CARRERAS, L. *The impact of Amazonian deforestation on Amazon basin rainfall*. Geophysical Research Letters, n. 42, 2015, pp. 9546–9552.

<sup>13</sup> SAATCHI, SS; et al. *Distribution of aboveground live biomass in the Amazon basin*. Glob Change Biol, n. 13, 2007, pp. 816–837. See also: NEPSTAD, Daniel C; et al. *Interactions among Amazon land use, forests and climate: prospects for a near-term forest tipping point*. The Royal Society Publishing, v. 363, n. 1498, 2008. Available at: <<https://doi.org/10.1098/rstb.2007.0036>>. Accessed on: 27.10.2020.

<sup>14</sup> NOBRE, Carlos A.; NOBRE, Antônio D. O balanço de carbono na Amazônia brasileira. Revista Estudos Avançados, v. 16, n. 45, 2002. See also: OMETTO, JP; et al. *Amazon forest biomass density maps: tackling the uncertainty in carbon emission estimates*. Climate Change, n. 124, 2014, pp. 545-560.

<sup>15</sup> Circuit Court of Appeals for the 1st Circuit. 5ª Chamber. Rapporteur: Appellate Judge Fagundes de Deus. Agravo Regimental na Apelação Cível n.º 2002.34.00.039357-5. DJe 09.05.2008.

38. The relationship between the protection of forests in Brazil with local, regional, and world climate balance is the subject of several scientific studies<sup>16</sup>. Their conclusions reiterate the indispensability of the ecosystem services provided free of charge by the Amazon for the development of the most diverse economic activities, Also to human dignity, health, and quality of life – all values of constitutional stature. The warnings about the threats of irreversible injury to the Brazilian population should be highlighted:

“During the summer, masses of air carrying vapor flow away from the Amazon taking rain and other beneficial influences on the Southeast and South regions of Brazil (where the country’s largest productive infrastructure is located) and other areas, such as the Pantanal and Chaco, the agricultural regions in Bolivia, Paraguay, and Argentina. Were it not for that, these regions would most likely have an inhospitable climate.

(...)

**Removing forests**, threatening rains and the climate, would not only defeat competitive **agriculture**; lack (or excess) of water affects **energy** production, **industries**, **population supply**, and **life in cities**.”<sup>17</sup>

39. While it is important to protect the entire area of the Amazon biome, Conservation Units and Indigenous Lands especially play a fundamental role in reducing deforestation in the Amazon. Currently, the 145 Federal Conservation Units in the Amazon (51 are for Integral Protection and 94 for Sustainable Use) add up to 669,207.75 km<sup>2</sup> or 11.1% of the territory of the Legal Amazon. The 424 Indigenous Lands cover another 1,153,446.71 km<sup>2</sup>, representing 23% of the biome’s territory (including Indigenous Lands that have been approved, declared, identified, and those in identification). As a result, disregarding the overlapping areas between them, it appears that 34.1% of the Legal Amazon is formally protected by Federal Conservation Units and Indigenous Lands. State Conservation Units represent 7.2% of the biome. If they are added, **the total area formally protected in the Amazon is 41.3%**. This data already disregards overlapping areas. The Federal Court of Accounts (TCU) states the following on the subject of the relevance of Conservation Units:

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<sup>16</sup> For example: 1) WENG, Wei; et al. *Aerial and surface rivers: downwind impacts on water availability from land use changes in Amazonia*. Hydrology and Earth System Sciences Discussions, n. 22, Feb. 2018. 2) MARENGO, J. A. *Interdecadal variability and trends of rainfall across the Amazon basin*. Theoretical and Applied Climatology, n. 78, Apr. 2004. 3) BOOKHAGEN, B.; STRECKER, M. R. *Amazonia, Landscape and Species Evolution: A Look into the Past*. 1st ed. Wiley-Blackwell: New Jersey, 2015. 4) SORRIBAS, Mino Viana; et al. *Projections of climate change effects on discharge and inundation in the Amazon basin*. Climatic Change, n. 136, Mar. 2016.

<sup>17</sup> NOBRE, Antônio Donato. “O futuro climático da Amazônia: relatório de avaliação científica.” São José dos Campos: ARA: CCST-INPE: INPA, 2014, p. 10 e 31. Available at: <<http://www.ccst.inpe.br/o-futuro-climatico-da-amazonia-relatorio-de-avaliacao-cientifica-antonio-donato-nobre/>>. Access on: 06.10.2020.

**“Conservation Units and Indigenous Lands are extremely important in containing the progress of deforestation.”<sup>18</sup>**

**“Consolidating protected areas to guarantee their ecological function is essential to conserve biodiversity and the stock of genetic heritage; guarantee quantity and quality of water; preserve flora and fauna; and maintain the offer of ecosystem services that benefit not only the Amazon region but the whole country.”<sup>19</sup>**

40. The following excerpts explain the relevance of Indigenous Lands in combating deforestation in the Amazon:

“Indigenous Lands, as well as other types of Protected Areas, also to playing a fundamental role in the conservation of biodiversity, also **act as giant barriers to the advance of deforestation**. The loss of forest within the Indigenous Lands was less than 2% in the 2000-2014 period, while the average deforested area in the Amazon in the same period was 19%. This low rate is **related to the traditional modes of territorial occupation of Indigenous Peoples**, their way of using natural resources, and their customs and traditions that, in most cases, result in the preservation of the forest and its biodiversity. Deforestation in these areas is generally associated with activities carried out by non-indigenous people, such as **invasions for illegal logging, mining activities, and agricultural use**. (...)”

**The forests under the care of Indigenous Peoples in the Brazilian Amazon represent an immense carbon store.** (...) Indigenous Lands are not only important as barriers to deforestation, but also **for the climate issue**. The Xingu Indigenous Park is an example that illustrates this role of Indigenous Lands. **The replacement of native forests for pastures or crops increased regional temperature of 6.4°C in the forest-crop transition area, and 4.26°C in the forest-pasture area.** (...) A situation that **also affects agricultural production.**”<sup>20</sup>

41. Note that **more carbon is stored in the Amazonian Indigenous Lands than found in all forests in the Democratic Republic of the Congo (22,128 Mt C<sup>21</sup>) or the Republic of Indonesia (18,851 Mt C)**, two other countries with large portions of tropical forest. Adding carbon stocks in Indigenous Lands to those from Conservation Units result that **more than half (55%; 47,363 Mt C) of the Amazon carbon is contained in Protected Areas (APs)**. Depending on the deforestation in

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<sup>18</sup> Federal Court of Accounts Em banc Request from the National Congress No. 029.546/2016-8. Judgment No. 1909/2017. Session Date: 08/30/2017.

<sup>19</sup> Federal Court of Accounts Plenary Survey Report No. 031.699 / 2016-2. Appellate Judgment No. 2388/2017. Session Date: 10.25.2017.

<sup>20</sup> CRISOSTOMO, Ana Carolina; *et al.* Terras Indígenas na Amazônia Brasileira: Reservas de Carbono e Barreiras ao Desmatamento. Brasília, 2015. Available at: <<http://ipam.org.br/bibliotecas/terras-indigenas-na-amazonia-brasileira-reservas-de-carbono-e-barreiras-ao-desmatamento/>>. Access on: 06.10.2020.

<sup>21</sup> Millions of tons of carbon.

Brazil, this is enough carbon to **irreversibly alter the climatic and rainfall regimes at local, continental, and global scales.**<sup>22</sup>

42. **Deforestation represents the main Brazilian source of emissions of gases that cause climate change.** Justice Luís Roberto Barroso alerted in a recent scientific Article:

“By absorbing and storing carbon dioxide through photosynthesis, the forest plays a very important role in mitigating global warming. **With deforestation, the forest not only stops absorbing carbon but releases it back into the atmosphere.**”<sup>23</sup>

43. These introductory notes explain the relevance of the countless ecosystem services provided by the Amazon, all of which are essential to guarantee ecological and climate balance at the local, regional, and global levels. **This balance, however, is severely threatened by the high levels of deforestation, fires, and degradation in the biome,** including within Federal Conservation Units and Indigenous Lands, where the activity is **illegal**. As will be shown, the actions and omissions perpetrated in 2019 and 2020, notably the **non-compliance, by the Federal Government and its agencies, of the public policy to combat deforestation in the Legal Amazon – the PPCDAm** –, cause serious and irreversible injuries to the fundamental precepts that are the subject of this ADPF.

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## IV.2. IMMINENT TIPPING POINT

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44. Despite its high strategic importance, the Amazon has been the victim of an accelerated process of predatory deforestation, which **has already eliminated 19% of its original forest cover, an area larger than twice the size of Mato Grosso do Sul.** As Carlos Nobre and Thomas Lovejoy report: “Current deforestation (in the Amazon) is substantial and frightening: 17% across the Amazon basin and reaching 20% in the Brazilian Amazon.”<sup>24</sup>

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<sup>22</sup> BACCINI, A; et al. *Estimated carbon dioxide emissions from tropical deforestation improved by carbon-density maps*. Nature Climate Change, n. 2, 2012, pp. 182-185):

<sup>23</sup> BARROSO, Luís Roberto; MELLO, Patrícia Perroni Campos. Como salvar a Amazônia: Por que a floresta em pé vale mais do que derrubada. Revista de Direito da Cidade, v. 12, n. 2, 2020, pp. 331-376. Available at: <<https://www.e-publicacoes.uerj.br/index.php/rdc/article/view/50980/34015>>. Access on: 16.10.2020.

<sup>24</sup> In the original: “Current deforestation is substantial and frightening: 17% across the entire Amazon basin and approaching 20% in the Brazilian Amazon.” LOVEJOY, Thomas; NOBLE, Carlos. “Amazon

45. In the 1970s, studies showed<sup>25</sup> that the Amazon has a direct influence on the rainfall regime in all of South America and Central America. Since then, there has been a debate about what is the level of deforestation of the Amazon which would degrade the hydrological cycle to the point of threatening the very existence of the biome and the maintenance of ecosystem services. The first scientific models designed to investigate this issue pointed out that Amazon's "point of no return" (or tipping point) would be reached if deforestation reached 40%.<sup>26</sup> Over time, scientific knowledge evolved and began to incorporate elements that had previously been disregarded, such as the effects of climate change and forest fires.<sup>27</sup> Two of the most respected scientists in the world, Carlos Nobre and Thomas Lovejoy, recently alerted that **the negative synergies between deforestation, climate change, and burns/fires indicate that the Amazon is about to enter what they call "point of no return"** (tipping point).

46. The alert is emphatic: as soon as **20% to 25% of deforestation is reached, the Amazon will undergo irreversible changes, with irremediable losses to the ecosystem services it provides**. According to Carlos Nobre, in an interview with Jornal Nacional, from the Globo network: "If we cannot stop this process, **there is an enormous risk that much of the Amazon Forest will not exist in the future.**"<sup>28</sup>

47. It is, of course, the **greatest and most imminent threat to the ecologically balanced environment**, which is constitutionally protected. This "point of no return" would lead to an **irreversible transformation of the Amazon rainforest** and cause unforeseen consequences all over the planet. On a regional scale, *negative impacts are expected on Brazilian agriculture*<sup>29</sup> and other water-dependent economic activities,

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*tipping point: Last chance for action*" . Science Advances. v. 5, n. 2, ten. 2019. Available at: <<https://advances.sciencemag.org/content/5/12/eaba2949>>. Accessed on: 06.10.2020.

<sup>25</sup> SALATI, Eneas; *et al.* *Recycling of Water in the Amazon, Brazil: an isotopic study*. Water Resources Research, v. 15, n. 5, p. 1250-1258, Oct. 1979.

<sup>26</sup> For more detailed information on the topic, check out the report by professors José A. Marengo and Carlos Souza: <[https://www.oamanhaeoj.com.br/assets/pdf/Relatorio\\_Mudancas\\_Climaticas\\_Amazonia.pdf](https://www.oamanhaeoj.com.br/assets/pdf/Relatorio_Mudancas_Climaticas_Amazonia.pdf)> Access on 20.10.2020.

<sup>27</sup> LOVEJOY, Thomas E .; NOBLE. Carlos. *Amazon Tipping Point* . Science Advances, v. 4, n. 2, Feb. 2018. Available at: <<http://advances.sciencemag.org/content/4/2/eaat2340>>. Accessed on: 06.10.2020.

<sup>28</sup> Parte da Amazônia pode deixar de ser floresta, afirma estudo. Jornal Nacional, 10.07.2018. Available at: <<http://g1.globo.com/jornal-nacional/noticia/2018/07/parte-da-amazonia-pode-deixar-de-ser-floresta-afirma-estudo.html>>. Access on: 06.10.2020.

<sup>29</sup> Mudanças climáticas podem reduzir em até 10% o plantio de milho safrinha no Brasil. Revista Globo Rural, 29.07.2020. Available at: <<https://revistagloborural.globo.com/Noticias/Agricultura/Milho/noticia/2020/07/mudancas-climaticas-podem-reduzir-em-ate-10-o-plantio-de-milho-safrinha-no-brasil.html>>. Access on: 06.10.2020.

as well as a decrease in the contribution of moisture from the Amazon to the South/Southeast of Brazil and the continent, which may cause more *problems for the reservoirs of water all over Brazil*.

48. According to Professor Luiz Marques: **“This transition [point of no return] will bring brutal imbalances in water resources, climate, and agriculture in the country and the continent.** It probably means not only the greatest but also **the most imminent threat of socio-environmental collapse to the South American** population, not to mention its possible reverberations **on the planet** as a whole. (...) This is **established by the best scientific knowledge available** today.”<sup>30</sup>

49. The effects of this deleterious relationship between deforestation and climate change are considered to be *cyclical* and *cumulative* by science<sup>31</sup>: deforestation in Brazil impacts Earth’s climatic balance; in turn, global warming accelerates the process of destruction of tropical forests in the country, especially in the Amazon biome. The conclusions of José A. Marengo (CEMADEN) and Richard Betts (*Met Office Hadley Center*) point in this direction:

“All of these models show, to a greater or lesser extent, that **the tropical forest would disappear in the Amazon under the conditions of the new climate** (...). These changes could be explained by the effects of increasing the concentration of CO<sub>2</sub>, raising the temperature, and reducing rainfall, so that the dry season would become longer. (...) **Reducing deforestation would bring immediate benefits in terms of mitigating global emissions of greenhouse gases.**”<sup>32</sup>

50. The serious risks arising from deforestation in the Amazon resulted in Brazil assuming legal reduction targets, both internationally and internally as set forth in **Law No. 12187/2009, which institutes the National Policy on Climate Change, and in Decree No. 9578/2018**<sup>33</sup>, which partially regulated the statute. Among other provisions, these rules set the **goal to reduce deforestation by 80% by the year 2020** in

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<sup>30</sup> MARQUES, Luiz. ‘Ponto crítico na Amazônia’; análise de Luiz Marques (IFCH/Unicamp). Ecodebate, 07.03.2018. Available at: <<https://www.ecodebate.com.br/2018/03/07/ponto-critico-na-amazonia-analise-de-luiz-marques-ifchunicamp/>>. Access on: 06.10.2020.

<sup>31</sup> Climate tipping points - too risky to bet against. Nature Magazine, 27.11.2019. Available at: <<https://www.nature.com/articles/d41586-019-03595-0>>. Accessed on: 06.10.2020.

<sup>32</sup> MARENGO, José A. ; BETTS, Richard (coord.). “Dangerous Climate A Brazil-UK analysis of Climate Change and Deforestation impacts in the Amazon” CCST-INPE and Met Office Hadley Center, 2011. Available at: <[http://mudancasclimaticas.cptec.inpe.br/~rmclima/pdfs/destaques/relatorio\\_port.pdf](http://mudancasclimaticas.cptec.inpe.br/~rmclima/pdfs/destaques/relatorio_port.pdf)>. Accessed on: 06.10.2020.

<sup>33</sup> That replaced Decree No. 7390/2010.

comparison with the average verified between 1996 and 2005, **which corresponds to the maximum limit of 3,925 km<sup>2</sup>.**

51. According to official data from the National Institute for Space Research, 798,635.5 km<sup>2</sup> of the<sup>34</sup> Amazon rainforest were eliminated until July 2019, which represents **19%** of the **original forest in the Brazilian area**. Considering that, **the threshold of an irreversible rupture of the balance of the Amazon biome is fast approaching**. The exponential increase in deforestation in 2019 (34% – INPE/PRODES) and 2020 (estimated in 34% – INPE/DETER) further aggravates the scenario.

52. Another recently published study on deforestation and risks to the human population indicates that there may be an **“irreversible collapse” of civilization** if humanity remains on the current path, especially due to the conversion of forests into anthropized environments. The most optimistic projections indicate a **90% risk of total collapse in the coming decades**.<sup>35</sup>

53. Finally, the irreversible effects of the Amazon reaching the point of no return **can trigger the destabilization of other systems essential to climate balance**, such as the ice in the South and North Poles, currents and ocean temperatures, coral health, among others: **“The point of no return is the beginning of a chain reaction, like a row of standing dominoes. If one falls, all the others will fall.”**<sup>36</sup>

54. An important study published in the scientific journal *Nature* points out the following:

“Last year’s survey looked at 30 types of regime changes covering physical climate and ecological systems – from the collapse of the West Antarctic ice sheet to the change of the rainforest (...). This indicated that **exceeding the inflection points in one system**

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<sup>34</sup> INPE – Instituto Nacional de Pesquisa Espaciais. Portal Terrabrasilis. Available at: <<http://terrabrasilis.dpi.inpe.br/>>. Access on: 06.10.2020.

<sup>35</sup> Bologna, M., Aquino, G. 2020. *Deforestation and world population sustainability: a quantitative analysis*. Scientific Reports, n. 10, 2020. Available at: <<https://doi.org/10.1038/s41598-020-63657-6>>. Accessed on: 06.10.2020.

<sup>36</sup> NOBRE, Antônio Donato. “O futuro climático da Amazônia: relatório de avaliação científica.” Referenced work cit., p. 26.



may increase the risk of crossing them in others. These links were found in 45% of the possible interactions.”<sup>37</sup>

55. Given these considerations and those that will be presented below, we are very close to reaching the “point of no return” of the Amazon, after which **we will start to lose it irreversibly as a tropical forest. This forest guarantees the environmental balance set forth in Article 225 of the Constitution, and the climatic balance** set forth in several rules and international agreements. These balances are essential to human life, health, dignity, and the economy, and crucial to the rights of the children and adolescents of the present and future generations and, mainly, of the Indigenous Peoples and other traditional peoples and communities in Brazil.

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#### IV.3. BRIEF HISTORY OF DEFORESTATION INDICES IN THE LEGAL AMAZON AND PUBLIC POLICIES AIMED AT COMBATING DEFORESTATION: EVOLUTION UNTIL THE CREATION OF THE PPCDAm

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56. Despite being essential for the environmental and climatic balance of Brazil and the world, the Amazon has been suffering a rapid and intense process of destruction. **No other country in the world has deforested so much in such a short time.** The pace of deforestation in the Brazilian Amazon in the last two decades was about **170 times faster than that recorded in the Atlantic Forest during Colonial Brazil** – a biome that today has only 12.4% of its original coverage.<sup>38</sup>

57. And the official data from the National Institute for Space Research (INPE) only identifies areas where the forest has been *completely removed (clear cut)*. **Forest degradation** caused by logging, mining, and burning **is not considered in the data.** Given the difficulty in measuring forest degradation, the existing surveys differ about the total area already degraded to date, but they converge by pointing out that **the degradation rates may be even higher than the deforestation rates.** According to

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<sup>37</sup> In the original: “Research last year analyzed 30 types of regime shift spanning physical climate and ecological systems, from collapse of the West Antarctic ice sheet to a switch from rainforest to savanna. This indicated that exceeding tipping points in one system can increase the risk of crossing them in others. Such links were found for 45% of possible interactions.” Available at: <<https://www.nature.com/articles/d41586-019-03595-0#ref-CR3>>. Accessed on: 06.10.2020.

<sup>38</sup> SOS Mata Atlântica. Dados Gerais. Available at: <<https://www.sosma.org.br/conheca/mata-atlantica/>>. Accessed on: 06.10.2020.

Antonio Nobre, **no less than 1,250,000 km<sup>2</sup><sup>39</sup> have already been degraded – an area similar to the state of Pará.** Another study recently published in the journal *Science* (which takes into account only the period from 1992 to 2014) indicates that the degraded area in the period is **337,427 km<sup>2</sup> – the size of the state of Goiás.**<sup>40</sup>

58. The analysis of the **history of clear-cut deforestation** in the Brazilian Amazon is essential for the analysis of the 2019/2020 period – the immediate subject of this ADPF. Its history can be divided into three periods: (i) pre-2004, marked by low governance, contradictory policies, and high rates of deforestation; (ii) 2004-2011, a period with significant improvements in the performance of environmental policies, coordinated state actions, and effective results in reducing deforestation; (iii) 2012-2018, when governance was eroded and the Federal Government's efforts were reduced – despite the efforts of the environmental authorities of the time – and, as a consequence, the previous trend of reducing deforestation was reversed to a scenario of increasing deforested areas in the Amazon.

#### **IV.3.1. PRE-2004 PERIOD (1988-2004): HIGH DEFORESTATION INDICES, CONTRADICTIONARY POLICIES, AND IMPLEMENTATION OF ISOLATED AND TRANSITORY GOVERNMENTAL MEASURES**

59. *In the pre-2004 period*, the negative impact of the dissemination of data on deforestation in the Amazon influenced the creation by the Federal government of measures to protect the biome. Examples include: the enactment of Decree No. 96944/1988, which instituted the Program for the Defense of the Complex of Ecosystems in the Legal Amazon (“Programa Nossa Natureza”); the creation of IBAMA by Law No. 7735/1989; the regulation of Law No. 6938/1981 about the National Environment Policy by Decrees No. 97632/1989 and No. 99274/1990; the suspension of tax incentives for projects that promoted deforestation in the Legal Amazon through the enactment of Decree No. 97637/1989; the creation of the National Environment Fund by Law No. 7797/1989; the development of the Pilot Program for the Protection of Tropical Forests in Brazil (PPG-7); the expansion of the Legal Reserve in the Brazilian Forest Code (Law

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<sup>39</sup> NOBRE, Antônio Donato. “O futuro climático da Amazônia: relatório de avaliação científica.” Referenced work cit., p. 02.

<sup>40</sup> MATRICARDI, Everaldo A. T. *et al.* “Long-term forest degradation surpasses deforestation in the Brazilian Amazon.” In: *Science*, Sept. 11 2020. Available at: <<https://science.sciencemag.org/content/369/6509/1378/tab-pdf>>. Accessed on: 06.10.2020.

No. 4771/1965 replaced by Law No. 12651/2012); the enactment of Decree No. 98897/1990, which created Extractive Reserves (RESEX); and the creation of the Project for Monitoring Deforestation in the Legal Amazon by Satellite – PRODES in 1989, operated by the National Institute for Space Research (INPE), responsible for measuring deforestation in the Amazon to the present day.

60. Despite the relevance of these measures, the actions of the Federal government were **transitory and isolated**. More than that, despite the praiseworthy efforts of environmental authorities during the period, there was a clear *contradiction between the policies aimed at reducing deforestation in the Amazon and those policies adopted by other areas of the Federal Government*, especially those aimed at the economic development of the North region.<sup>41</sup> The document formulated in 2004 that originated the implementation of the PPCDAm acknowledged that: “there have been a **series of historical deficiencies and contradictions in public policies.**”<sup>42</sup>

61. Given this scenario and the fact this is the beginning of the development of public policies on the subject, the pre-2004 period was the period in which the highest rates of deforestation were recorded since the beginning of the measurements. Between 1988 and 2004, the average annual rate of deforestation was 18,438.5 km<sup>2</sup>, with the main peaks of deforestation occurring in the years 1988 (21,050 km<sup>2</sup>), 1995 (29,059 km<sup>2</sup>), and 2004 (27,772 km<sup>2</sup>).

#### **IV.3.2. 2004-2011 PERIOD: THE PPCDAm AND THE SIGNIFICANT DROP IN DEFORESTATION IN THE LEGAL AMAZON**

62. *In the second period, between 2004 and 2011*, the Amazon began to receive an expressive set of initiatives aimed at reducing deforestation: the implementation of regional programs, effective inspection and control measures, land, and territorial planning actions, and fostering of sustainable productive activities.

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<sup>41</sup> During this period, such governmental development programs were supported by the economic growth framework based on the unlimited exploitation of natural resources, which at the time were considered to be infinite. In: BECKER, Bertha Koiffmann. Novas territorialidades na Amazônia: desafio às políticas públicas. Bol. Mus. Para. Emílio Goeldi. Cienc. Hum., Belém, v. 5, n. 1, pp. 17-23, 2010.

<sup>42</sup> MINISTÉRIO DO MEIO AMBIENTE. Plano de Ação para a Prevenção e Controle do Desmatamento da Amazônia Legal. Brasília, 2004, p. 16. Available at: <[http://www.mma.gov.br/images/arquivo/80120/PPCDAM\\_fase1.pdf](http://www.mma.gov.br/images/arquivo/80120/PPCDAM_fase1.pdf)>. Access on: 06.10.2020.

63. The period was heavily marked by governmental **activities in the Amazon according to a public policy that involved different sectors of the government in an integrated and cohesive manner**, breaking the previous pattern of environmental agencies adopting isolated measures and contradiction between the various public policies adopted by the Executive Branch for the region.<sup>43</sup> As a consequence, **in the following years, the pace of deforestation dropped consistently and continuously, reaching 2012 with the lowest rate ever recorded.**

64. **Initiated in this period, the new model of action of the Federal government had as its main mechanism the creation and implementation of the PPCDAm**, which is aimed at addressing the fight against deforestation with coordinated and continuous efforts between different agencies and ministries of the Federal Government. According to the website of the Ministry of the Environment (MMA):

“The Action Plan for Prevention and Control of Deforestation in the Legal Amazon (PPCDAm) was created in 2004 and **aims to continuously and consistently reduce deforestation and create the conditions to establish a sustainable development model in the Legal Amazon.** One of the main initial challenges was to **integrate the fight against deforestation into Federal public policies** since the fight against the causes of deforestation could no longer be conducted in isolation by environmental agencies. The PPCDAm was structured to tackle deforestation in a comprehensive, integrated, and intensive manner. **The implementation of the Plan depends on the actions of more than a dozen Ministries (...).**”<sup>44</sup>

65. These actions were initially organized into three axes, as stated in the technical document that instructed the first phase of the Plan in 2004:

(i) *Land and Territorial Planning*: “Policies related to land and territorial planning in the Brazilian Amazon, which define standards on the rights of access to land and guidelines for the use and exploitation of natural resources, have a strong influence on the dynamics of deforestation, fires and illegal logging in the region. The fragility of these policies, revealing the incipient presence of the Federal Government in the Amazon region, is revealed, above all, in the precariousness of land regularization and the absence of territorial planning instruments (...). **The legally protected areas, Conservation Units, and Indigenous Lands play a fundamental role in the protection and sustainable use of native forests, functioning as a frontier to deforestation.** However, the current situation in these areas is also worrying. Part of

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<sup>43</sup> The public budgeting of the Ministry of the Environment (MMA) is an example of an indicator of this change in public policy. Between 2004 and 2005, the MMA paid expenses and discretionary expenses (environmental preservation and conservation subfunction) increased by 55% and 20%, respectively. See SIOP Available at: <<https://www.siop.planejamento.gov.br/>>. Accessed on: 06.10.2020.

<sup>44</sup> MINISTÉRIO DO MEIO AMBIENTE. Plano para Controle do Desmatamento Ilegal e Recuperação da Vegetação Nativa. Available at: <<http://www.mma.gov.br/informma/item/616-preven%C3%A7%C3%A3o-e-controle-do-desmatamento-na-amaz%C3%B4nia>>. Access on: 06.10.2020.

them is threatened by gradual invasions, occupations, and illegal exploitation of their resources (...) For this reason, the creation of new conservation units and consolidation of the existing ones is essential, as is the implementation of identification, demarcation, approval, and registration processes of indigenous lands”;<sup>45</sup>

(ii) *Environmental Monitoring and Control*: “**Overcoming the absence of the ‘rule of law’ in several places in the Amazon** – which is one of the main factors that facilitate illegal deforestation and logging – constitutes a central challenge for the planning of Monitoring and Control actions. The proposed emergency actions **should not be seen as just another ‘task force’ – limited and temporary** – but as steps towards the consolidation of an **integrated work culture within the scope of environmental monitoring, licensing, and inspection policies**”;<sup>46</sup>

(iii) *Fostering Sustainable Productive Activities*: “Due to the low productivity of agriculture in the Amazon and the large extent of land already deforested and abandoned (165,000 km<sup>2</sup>), we believe that the Federal government, in collaboration with state and municipal governments, should focus its agricultural promotion policy in the region in **increasing the productivity of land already deforested and incorporating abandoned areas into the productive process**, encouraging the **generation of jobs and income and social inclusion of small and medium rural producers**. Also, the Federal government must develop **actions to discourage the expansion of deforestation as much as possible**. An efficient inspection process and the **promotion of economic options that can coexist with the forest and its biodiversity or that need them to exist are essential to reduce the speed with which agriculture has advanced over the forest**.”<sup>47</sup>

66. The period now analyzed, between 2004 and 2011, includes the first and second phases of the Plan. The first phase started in 2004 and continued until 2008, but its implementation started in 2007. The second phase took place between 2009 and 2011, resulting in 2012 in the lowest rate ever recorded. The following phases are part of the next period, analyzed below: the third phase took place from 2012 to 2015; and the fourth, from 2016 to 2020. Let us move on to the analysis of the PPCDAm between 2004 and 2011.

67. One of the solutions to achieve the reduction of deforestation in the Amazon was the creation of Federal Conservation Units and the recognition of Indigenous Lands<sup>48</sup>, which, together, provide formal protection to an area of 452,242.9

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<sup>45</sup> MINISTÉRIO DO MEIO AMBIENTE. Referenced work cit., p. 20. Available at: <[http://www.mma.gov.br/images/arquivo/80120/PPCDAM\\_fase1.pdf](http://www.mma.gov.br/images/arquivo/80120/PPCDAM_fase1.pdf)>. Access on: 06.10.2020.

<sup>46</sup> Ibid. p. 23.

<sup>47</sup> Ibid., p. 25.

<sup>48</sup> As the Federal Audit Court stated: “The following contributed to the reduction: i) Development, in 2004, of DETER - Deforestation Detection System in the Amazon in Real Time, which issues warnings about deforestation in short intervals, allowing to reduce IBAMA’s response time of inspection operations; ii) Conservation Units: new Conservation Units were created in more than 500 thousand km<sup>2</sup>, mainly in areas of deforestation expansion; iii) Indigenous lands: more than 100 thousand km<sup>2</sup> of indigenous lands have been demarcated, which are proven to have significantly lower deforestation numbers, even when compared

km<sup>2</sup> in the biome – an area corresponding to about twice the size of the state of Roraima. A total of 46 Federal Conservation Units were created in the Amazon, with an equivalent area of 261,935.3 km<sup>2</sup> – a protected area larger than the United Kingdom or the State of São Paulo. A total of 100 Indigenous Lands were also recognized in the Amazon (including those approved and declared), with an area equivalent to 190,289.6 km<sup>2</sup>.

68. Between 2004 and 2011, the budgets of the MMA and the Brazilian Environmental Protection Agency (IBAMA) remained at a reasonable level. In 2011, the Ministry of the Environment's paid expense totaled R\$ 3,635,939,300 (25% higher than in 2004) and its discretionary expense for the environmental preservation and conservation subfunction added up to R\$ 145,416,392 (33% higher than in 2004). IBAMA's budget showed an increase of 7% in its paid expense (the 2011 amount was R\$ 1,719,294,520) and 4% in its paid discretionary expense (the 2011 amount was R\$ 345,092,842)<sup>49</sup>.

69. It was also in this period that the aforementioned Law No. 12187/2009 was published, creating the National Policy on Climate Change, as well as Decree No. 7390/2010 (replaced by Decree No. 9578/2018), which enacted into the national legislation the goals assumed by Brazil before the international community for the reduction of emissions of gases that cause the climatic emergency, in particular the **goal of reducing deforestation in the Amazon by 80%** in comparison with the average verified between 1996 and 2005, **corresponding to the maximum of 3,925 km<sup>2</sup> per year until 2020**.

70. Another milestone of this period was the improvement in systems for monitoring deforestation in the Legal Amazon. The PRODES system (Project for Monitoring Deforestation in the Legal Amazon by Satellite) had already been in operation since 1988 and, during this period, the DETER system (Deforestation Detection System in Real Time) came into operation. Both systems were created by the National Institute for Space Research (INPE). Introduced in 2004, DETER contributed to the reduction of deforestation between 2004 and 2011, improving the links between real-time monitoring actions and environmental inspection operations. The deforestation warning system was

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to sustainable use conservation units." *In*: Ministério da Transparência, Fiscalização e Controladoria Geral da União. Relatório de Avaliação da Execução de Programas de Governo n.º 69 – Ações relativas à fiscalização ambiental sob responsabilidade do IBAMA. Brasília, 2017, p. 55.

<sup>49</sup> SIOP – Sistema Integrado de Planejamento e Orçamento. Available at: <<https://www.siop.planejamento.gov.br/>>. Access on: 06.10.2020.

designed to support environmental inspection with immediate and continuous information that can guide the selection of areas subject to field operations.

71. The relevance of the PPCDAm has been highlighted throughout the world. As noted in the Report of the Brazilian Senate Environment Committee entitled “Evaluation of the National Policy on Climate Change” (**document 34**):

“Fifteen years after its creation, the PPCDAm is the **main and most relevant Brazilian institutional framework in terms of understanding the dynamics of deforestation in the Amazon, identifying its causes and consequences, and proposing and implementing policies to deal with the problem.**

(...)

The **success achieved** in reducing deforestation in the Amazon rainforest attracted the attention of the international community and led **the country to become a world reference in combating deforestation and a global leader in the reduction of greenhouse gas (GHG) emissions.** In terms of reducing CO<sub>2</sub> emissions, between 2006 and 2015, the PPCDAm alone contributed with almost 4 billion tons less of CO<sub>2</sub> in the atmosphere, which corresponds to the total amount of Brazil’s gross emissions in 2017 and 2018 combined – according to data from the Greenhouse Gas Emission and Removal Estimating System (SEEG).”<sup>50</sup>

72. **The government’s compliance with the PPCDAm was responsible for the significant, gradual, and continuous reduction of deforestation, year after year, between 2004 and 2012.** The deforestation rate, which in 2004 was 27,772 km<sup>2</sup>, decreased to 4,571 km<sup>2</sup> in 2012 – **a reduction of 83%.** All of this is the result of the efforts of the Federal government, the MMA, the Brazilian Environmental Protection Agency (IBAMA), the Chico Mendes Institute for Biodiversity Conservation (ICMBio), the National Indian Foundation (FUNAI), and other ministries and agencies involved in the public policy. The graph below shows the mentioned reduction:

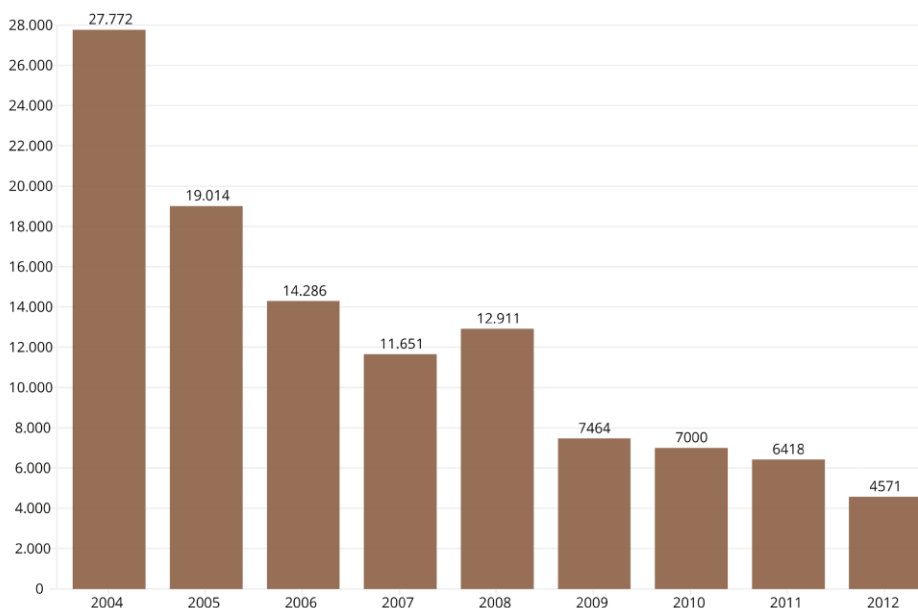
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<sup>50</sup> Senado Federal. Avaliação da Política Nacional sobre Mudança do Clima: Relatório Consolidado. 2019, p. 112-114. Available at: <<http://legis.senado.leg.br/sdleg-getter/documento/download/be24ff00-0608-4f8b-9d57-804c33097882>>. Access on: 27.10.2020.

Graph  
01:

### Desmatamento registrado na Amazônia Legal

Em quilômetros quadrados (km<sup>2</sup>) por ano, entre 2004 e 2012



Fonte: PRODES, do Instituto Nacional de Pesquisas Espaciais (INPE).

Deforestation registered in the Legal Amazon between 2004-2012.

#### IV.3.3. PERIOD OF 2012-2018: PPCDAM IMPLEMENTED WITH LESS EFFECTIVENESS

##### a) General picture of the deforestation in the Amazon in the period of 2012-2018

73. In 2012, the third phase of the PPCDAm began. It continued to be implemented but with a reduction in the Federal Government's efforts – despite the firm performance of the environmental authorities–, which promoted discontinuity and decreased effectiveness of the PPCDAm, **making the annual rates gradually increase again.**

74. During this period, also to the facts described below, the Federal Government transferred the coordination of the PPCDAm from the Office of the Chief of Staff to the Ministry of the Environment (Decree No. 7957/2013). Although according to Law No. 6938/1981 the Ministry of the Environment is the central agency of the National Environmental System (SISNAMA), this transference was accompanied by less inter-ministerial attention on the topic. Second Report of the Brazilian Senate Environment Committee:



“It is reasonable to say that the change in the coordination of the PPCDAm (...) had a negative impact on the original idea with which the plan was conceived. Its coordination was supposed to be at the center of the government, and not in a sectoral body as the Ministry of the Environment. Despite the Ministry of the Environment’s institutional role in combating deforestation, it does not have the same power to convene, intervene, and command the other ministries.”<sup>51</sup>

75. After registering the lowest level of deforestation in 2012 – 4,571 km<sup>2</sup>-, in 2013, 5,891 km<sup>2</sup> were deforested, an increase of 29% if compared to 2012. After a slight decrease of 15% in 2014, which recorded 5,012 km<sup>2</sup> of deforestation, the indices again showed an upward trend. In 2015, deforestation increased by 24% compared to the previous year, totaling 6,207 km<sup>2</sup>. In 2016, the figure registered a new increase of 27%, totaling 7,893 km<sup>2</sup> of deforestation. In 2017, there was a decrease of 12% if compared to 2016, with 6,947 km<sup>2</sup> deforested. A further 8% increase raised the annual deforestation rate in 2018 to 7,536 km<sup>2</sup>. Throughout this period (2012 to 2018), official data on deforestation in the Amazon increased by 65% and Brazil became less likely to meet its climate goal of reducing deforestation for 2020.<sup>52</sup>

#### **b) What does the public budget data for the period reveal?**

76. The analysis of the Federal public budget provides evidence on the reduction in the Federal Government’s efforts with environmental management and, thus, with the effectiveness of the PPCDAm. Between 2012 and 2018, the total paid expense of the Ministry of the Environment was reduced by 33%, reaching R\$ 189,925,353 in 2018. Discretionary expense paid for the environmental protection and conservation subfunction declined 30% in 2018 (R\$ 164,715,065).

77. Between 2003 and 2018, expenses with environmental management in Brazil varied considerably. In the most recent period, **the downward trend in the execution of this budget function began in 2014 and continued with greater intensity as of 2015**, when environmental management expenses were around R\$ 3.5 billion per year, which is about **26% lower than in 2005 (before the PPCDAm started to be implemented, which occurred in 2007)**. **On average, environmental management in**

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<sup>51</sup> Ibid., p. 118.

<sup>52</sup> On the theme: Ministério da Transparência, Fiscalização e Controladoria Geral da União. Relatório de Avaliação da Execução de Programas de Governo n.º 69 – Ações relativas à fiscalização ambiental sob responsabilidade do IBAMA. Brasília: 2017.

**the period accounted for only 0.14% of the Federal Government's total paid expense.**

78. From 2014 to 2015, **the value** of paid discretionary expenses for environmental management **dropped by 36.4%**. From 2014 to 2018, **the retraction was by 65.5%**. Between 2014 and 2018, the activities of environmental preservation and conservation and recovery of degraded areas **lost 57.8% and 59.1% of their discretionary budgets**, respectively.

79. Between 2008 and 2013, paid discretionary expenses stabilized at around R\$ 900 million per year, but fell again in 2014. In 2018, after successive cuts in resources, the paid discretionary budget of the Ministry of the Environment – Government and independent agencies – closed at R\$ 615 million, **about 50% less than the amount for 2005, and 28% less than in 2013.**

80. There is a clear reduction in discretionary expenses by the Ministry of the Environment with the Federal Government. At this point, the decreases **of 72.1% of the paid discretionary expenses by the Ministry of the Environment between 2014 and 2018 and 84.9% between 2003 and 2018 are noteworthy**. Between 2014 and 2018, **the Ministry of the Environment lost 28.1% of its paid discretionary expenses; the Brazilian Environmental Protection Agency (IBAMA) lost 8.3%; ICMBio lost 20.4%; and FUNAI lost 43.3%.**

81. As of December 2016, the Brazilian Environmental Protection Agency (IBAMA) started to count on resources from the Amazon Fund to cover the costs of inspection operations in the Amazon. Profisc 1 (Project: Empowering Environmental Monitoring and Control in Order to Combat Illegal Deforestation in the Brazilian Amazon) was signed and received approximately R\$ 56 million from the Amazon Fund until March 2018<sup>53</sup>. As a result of this project, Profisc 1-B was created<sup>54</sup> for the same purpose and had an estimated disbursement of approximately R\$ 140 million for 36 months – which end in April 2021. The disbursements of Profisc 1 and Profisc 1-B

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<sup>53</sup> Fundo Amazônia. Projetos: Fortalecimento do Controle e do Monitoramento Ambiental para o Combate ao Desmatamento Ilegal na Amazônia. Available at: <http://www.fundoamazonia.gov.br/pt/projeto/Fortalecimento-do-Controle-e-do-Monitoramento-Ambiental-para-o-Combate-ao-Desmatamento-Ilegal-na-Amazonia/>. Access on: 15.10.2020.

<sup>54</sup> Fundo Amazônia. Projetos: Profisc I-B. Available at: <http://www.fundoamazonia.gov.br/pt/projeto/Profisc-I-B/>. Access on: 15.10.2020.

contributed decisively to ensure the smooth implementation of the Brazilian Environmental Protection Agency's budgetary action 214N in 2017 and 2018, that is, for the implementation of environmental inspection operations in the Amazon.

82. **In 2018, the largest share of funds from the Amazon Fund (46%) went to Federal monitoring and inspection agencies<sup>55</sup>. The dismantling of the Amazon Fund took place in 2019 and 2020**, as will be shown below. This is the subject of the Action of Unconstitutionality (ADO) No. 59, reported by justice Rosa Weber, which is pending before this Federal Supreme Court.

83. The reduction in the Federal Government's efforts – again, despite the recognition of the efforts of environmental authorities throughout the period – was noted by official control agencies. According to the Office of the Comptroller General (CGU):

**“We estimate that IBAMA's current difficulty in maintaining the positive results already achieved in the combat of deforestation are related, among other factors, to the budget and personnel reduction faced by the agency, which may, as a consequence, compromise the achievement of the goal set by the Federal Government at the United Nations Conference on Climate Change.”<sup>56</sup>**

84. Therefore, the 2012-2018 period was marked by the reduction of the implementation of the PPCDAm and, thus, of the Federal Government's efforts to combat illegal deforestation, which raised the annual rates. The environmental authorities of the time did defend the protection of the environment but did not find full support at the higher governmental levels. The PPCDAm was still being implemented, but with less effectiveness than had been achieved in the previous period (2004-2011), when there was a reduction of 83% in deforestation rates in the Amazon. **Justice Luís Roberto Barroso pointed out that: “regrettably, however, as of 2013, the determination to comply with the PPCDAm has cooled and deforestation has grown again.”<sup>57</sup>**

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<sup>55</sup> CALIXTO, B. O dinheiro da Noruega está pagando a fiscalização da Amazônia. Revista Época, (digital version), 2017. Available at: <<http://epoca.globo.com/ciencia-e-meio-ambiente/blog-do-planeta/noticia/2017/08/o-dinheiro-da-noruega-esta-pagando-fiscalizacao-da-amazonia.html>>. Access on: 06.10.2020.

<sup>56</sup> Ministério da Transparência, Fiscalização e Controladoria Geral da União. Relatório de Avaliação da Execução de Programas de Governo n.º 69 – Ações relativas à fiscalização ambiental sob responsabilidade do IBAMA. Brasília, 2017, p. 12.

<sup>57</sup> BARROSO, Luís Roberto; MELLO, Patrícia Perroni Campos. Referenced work Cit., pp. 337-338.

## V. UNPROTECTED AMAZON – ACTIONS AND OMISSIONS ON THE IMPLEMENTATION OF THE PUBLIC POLICY TO COMBAT DEFORESTATION IN THE LEGAL AMAZON: GENERALIZED GOVERNMENT OMISSION AND INSUFFICIENT GOVERNMENT ACTIVITY IN BREACH OF THE CONSTITUTIONAL ORDER

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### V.1. GENERAL SCENARIO

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85. The Constitution of 1988 sets forth that the ecologically balanced environment is a fundamental right of the whole community, both present and future generations. Since its enactment, environmental authorities, whatever their leanings, have made efforts to enforce its constitutional precepts. They created and implemented public policies, enforced rules regarding government actions, and improved environmental management in the country. The highlight of the evolution of environmental policies, as mentioned was the creation, in 2004, and the implementation, as of 2007, of the PPCDAm. This plan is probably the most successful environmental public policy in the Brazilian experience.

86. The current government destroyed the Brazilian environmental policy and stopped this evolution process drastically. Since the electoral campaign until today, the anti-environmental discourse started to encourage the devastation of the Amazon and uncountable illegalities (summary of the main offenses against the environment, which do not seem to cease – **document 35**). These are direct attacks on monitoring agencies (National Institute for Space Research – INPE), on environmental inspection and control entities (Brazilian Environmental Protection Agency – IBAMA, Chico Mendes Institute for Biodiversity Conservation – ICMBio, and National Indian Foundation – FUNAI) and their officials, on civil society organizations in defense of the environment, on partner countries in international cooperation, and many others. According to our President, even during the electoral campaign: “I will no longer admit IBAMA and ICMBio to continue fining everyone around there. This party is going to end.”<sup>58</sup>

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<sup>58</sup> Available in: <https://g1.globo.com/rj/sul-do-rio-costa-verde/noticia/2018/12/01/bolsonaro-participa-de-formatura-de-cadetes-na-academia-militar-das-black-needles.ghtml> . Accessed on 22.10.2020.

87. **The 2019-2020 period, still underway, is unprecedented since the enactment of the Constitution. It is marked by constant attacks on Article 225 of the Constitution,** resulting in serious and irreparable damages to the fundamental rights of the Brazilian population concerning the ecological balance and causing losses of all orders, including in the economic and social spheres.

88. **So, as of the first day of 2019, the Federal government abandoned and stopped enforcing the public policy aimed at combating deforestation in the Legal Amazon, the PPCDAm.** The government actions that are the subject of this ADPF are not exhaustively listed below since the attacks continue to be perpetrated almost daily, but they can be classified as follows: (i) absolutely deficient government action: drastic reduction in environmental inspection and control; (ii) actions and omissions aimed at rendering unfeasible the implementation of the PPCDAm, including the restructuring of Federal agencies; (iii) non-execution of the available budget and freezing of the financing for the public policy; (iv) rules designed to make it impossible for the government to take sufficient action; (v) actions and omissions that violate fundamental rights to information and participation in environmental matters; and (vi) the virtual extinction of the PPCDAm. This is what we will show below.

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## **V.2. ABSOLUTELY DEFICIENT GOVERNMENTAL PERFORMANCE: DRASTIC REDUCTION OF ENVIRONMENTAL INSPECTION AND CONTROL**

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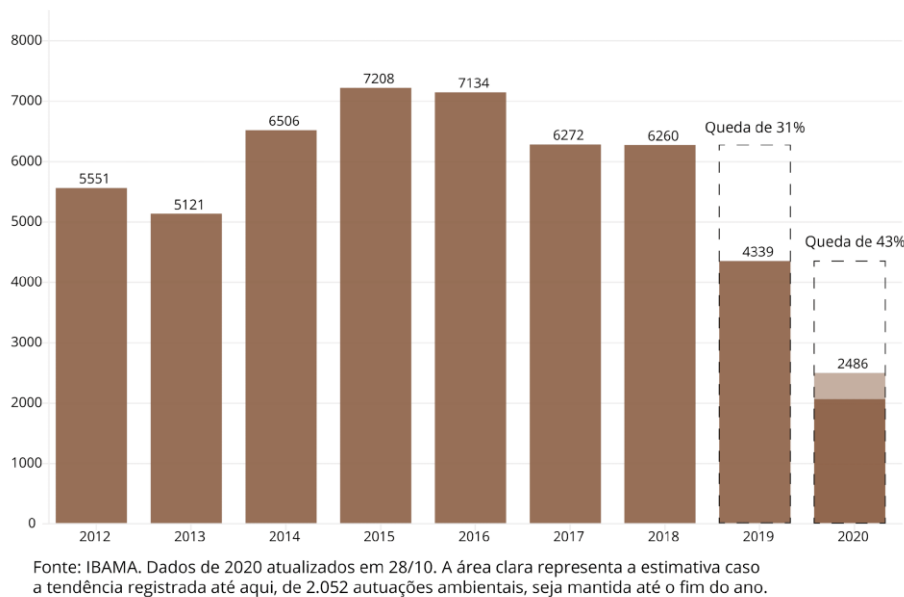
89. The first omission discussed in this ADPF is the **significant reduction in the inspection and control of deforestation in the Amazon.** Evidently, inspection alone is not able to control deforestation. However, it is undoubtedly one of the most relevant features of the PPCDAm since **government inspection, or the lack of it, produces immediate results in deforestation rates.** According to Justices Luís Roberto Barroso and Patrícia Perrone Campos Mello:

“Empirical research shows that **the active presence of the Government**, with personnel, equipment, and political will, is a **decisive factor in containing deforestation.** Especially because **forest destruction** is supported by **illegal practices** and, frequently, “banditry” (ABRAMOVAY, 2019, p. 11). **The historic reduction in deforestation occurred between 2004 and 2012 was mainly due to the severe inspection implemented, with effective field actions, including arrests, seizures, and fines.**”<sup>59</sup>

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<sup>59</sup> BARROSO, Luís Roberto; MELLO, Patrícia Perroni Campos. Referenced work Cit., p. 348.

## Autuações ambientais do tipo flora no Brasil



90. Based only on public data made available by the Federal Government itself, the number of notices of violation in the years 2019 and 2020 was assessed. Compared to previous years, there was a **drastic drop in the number of notices of violation in this period, despite the 34% increase in deforestation rates in 2019 (INPE/PRODES) and an estimated 34% in 2020 (INPE/DETER).**

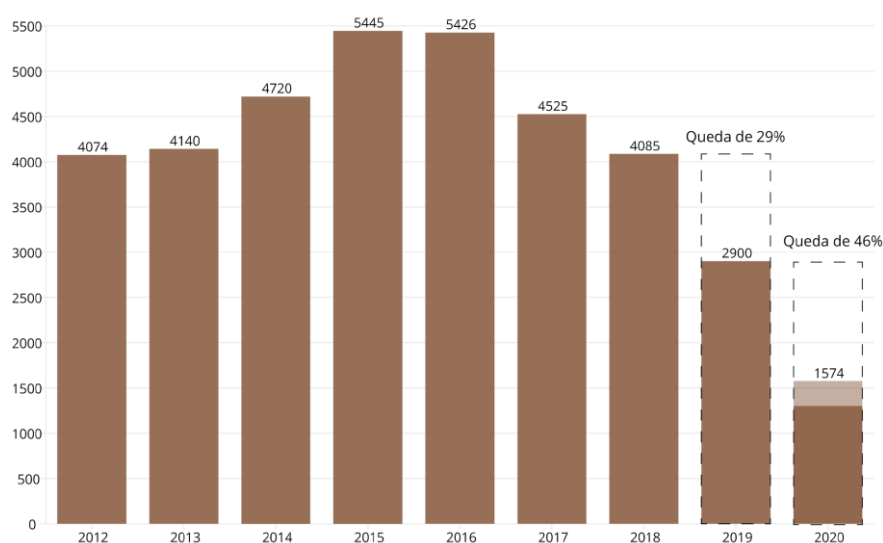
91. **In 2019, the Brazilian Environmental Protection Agency (IBAMA) issued 31% fewer notices of violation than in 2018. In 2020, the decline is even greater, reaching 43% according** to public data made available until 28 October 2020 and an estimate until the end of the year. **In total, compared to 2018, the reduction in notices of violation in Brazil was an astonishing 60%.** See below:

Graph 02: Environmental notices of violation against the flora in Brazil.

92. Likewise, the **decrease in the number of notices of violation in 2019 and 2020 in the Amazon is astonishing and unacceptable. There was a drop of 29% in 2019 and another of 46% in 2020** – again we considered the data of 28 October 2020 as a reference and estimated the rest of the year. In all, **compared to 2018, the reduction in notices of violation in the Amazon was 61% in just two years.** See below the chart with the public data from the Brazilian Environmental Protection Agency (IBAMA):

Graph 03: environmental notices of violation against the flora in the Legal Amazon.

### **Autuações ambientais do tipo flora na Amazônia Legal**

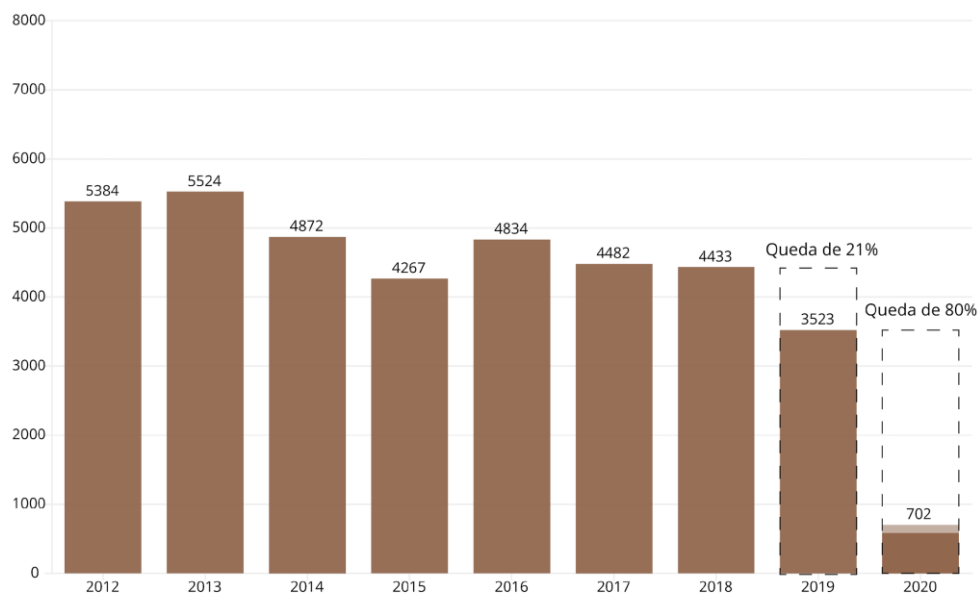


Fonte: IBAMA. Dados de 2020 atualizados em 28/10. A área clara representa a estimativa caso a tendência registrada até aqui, de 1.299 autuações ambientais, seja mantida até o fim do ano.

93. Likewise, according to official data, there was a drastic reduction in the number of cease-and-desist orders, which are one of the most imposed sanctions in case of illegal deforestation, as well as a reduction in fines given. **The decrease in the number of cease-and-desist orders in Brazil in 2019 and 2020 was 21% and 80%, respectively. In total, compared to 2018, the reduction was 84%:**

Graph 04: cease-and-desist orders in Brazil.

### Termos de embargo no Brasil



94. The figures speak for themselves. **Even though the number of illegal activities involving the environment has increased, and there has been a sharp rise in the deforestation indices in 2019 and 2020, government inspection and control activities have been drastically reduced.** This situation is aggravated because the annual period of greatest deforestation has already passed (the “dry” period, from May to September). Thus, most of the illegalities and also the notices of violation against the flora have already occurred and government action was absolutely insufficient.

95. Now, if **deforestation increased** at a frightening rate in the years 2019 and 2020, including within Conservation Units and Indigenous Lands (where the activity is essentially illegal), **nothing can justify the sudden drop in environmental inspection and control.** The opposite should have occurred: given the proliferation of illegal activities involving the environment in the Amazon, the Federal Government



should have acted effectively, using its police power to protect the environment, since the Federal Government is the guardian of this collective patrimony – the ecologically balanced environment.

96. In fact, this drastic reduction in environmental inspection goes against **the guidelines, objectives, and goals established by the PPCDAm itself, which provides for the “increased punishment of environmental crimes and infractions”** (item “3.1.”<sup>60</sup>) as an expected result for the end of the current 4th phase of the policy.

97. These events were assessed by the Brazilian Senate Environment Committee. According to the aforementioned Report on “Evaluation of the National Policy on Climate Change”, which also evaluated the effectiveness of the PPCDAm, **in 2019, there was a significant drop in the inspection and control of environmental offenses, both in the number of notices of violation and of inspection operations:**

**“The reduction in the number of fines is matched by the reduction in the number of inspection operations scheduled for 2019 by the Brazilian Environmental Protection Agency (IBAMA). The retraction in IBAMA’s command and control actions corresponds to the aforementioned discontinuity in the coordination of policies to combat deforestation, which was the responsibility of the MMA, and now there is no government agency in charge of coordinating the policies of combating deforestation. The removal of all powers related to combating deforestation from the MMA is part of the emptying of the Ministry’s technical and political role from 2019 on.”<sup>61</sup>**

98. Because of these events, the omission of the Federal Government and IBAMA to carry out their duty of inspection and control of deforestation is demonstrated. They failed to implement the most relevant aspect of the PPCDAm, in a serious breach of constitutional dispositions, as will be discussed in Chapter VI.

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### **V.3. ACTIONS AND OMISSIONS AIMED AT RENDERING UNFEASIBLE THE PPCDAm IMPLEMENTATION: INEXECUTION OF THE AVAILABLE BUDGET AND FREEZING OF PUBLIC POLICY FINANCING**

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<sup>60</sup> Available at: <[https://www.mma.gov.br/images/arquivo/80120/Anexo%20II%20-%20PLANO%20OPERATIVO%20DO%20PPCDAm%20-%20GPTI%20\\_%20p%20site.pdf](https://www.mma.gov.br/images/arquivo/80120/Anexo%20II%20-%20PLANO%20OPERATIVO%20DO%20PPCDAm%20-%20GPTI%20_%20p%20site.pdf)>, p. 10. Access on: 25.10.2020.

<sup>61</sup> Federal Senate. Referenced work Cit., p. 122.

99. As with the actions and omissions mentioned above, the analysis of the budget and its execution is also a fundamental element to verify the capacity of the Federal Government and its agencies to implement public policies. The analysis of the events below reveals that, even though there are resources available, budget execution in terms of action aimed at combating deforestation is insufficient. The levels of actions in 2020, in comparison to previous years, demonstrate the Government's unwillingness to implement the PPCDAm.

100. Before presenting the official public data and the data made available by the government after a request for access to information under the Access to Information Act, we highlight that, due to the scarcity of data, it is impossible to monitor and follow the overall budget execution of the PPCDAm. Also, there is no specific budget data on the actions provided for therein. The public policy involves several ministries and agencies, but its actions are not broken down into specific budget programs or lines of action. There is no updated information on official Federal websites or other media. It is alarming that, concerning the PPCDAm, an environmental public policy of absolutely essential nature for the community, **the available budget information does not allow its global oversight by the civil society.**

101. More than that, the repeated lack of information in response to requests for access to information submitted under the Access to Information Act – as will be explained below – suggests that not even the current administration, including the MMA – which coordinates or should coordinate the policy–, seems to be monitoring the implementation of the PPCDAm, whether globally and in each of the ministries and agencies involved.

102. Despite this, the budget data of MMA, IBAMA, ICMBio, and FUNAI – main executors of the PPCDAm – confirm the **non-implementation of this essential public policy.** This is what will be shown below.

### **V.3.1. MMA BUDGET EXECUTION: INEXECUTION OF THE AVAILABLE RESOURCES**

103. In the first year of each administration, the budget approved by the previous administration is executed. MMA – Administração Direta is a budgetary unit apart from its independent agencies – IBAMA, ICMBio, and Instituto de Pesquisas

Jardim Botânico do Rio de Janeiro. In 2019, the budget for MMA – Administração Direta had been approved by the previous administration, but its **execution regarding finalistic activities – those that are directly related to the implementation of public policies – was insignificant. This inexecution of the budget denotes undeniable governmental inaction.**

104. **This inexecution was identified by the CGU** in the Annual Accounts Audit Report referring to MMA’s expenses in 2019<sup>62</sup> (**document 36**), according to official data published in the Integrated Budget and Planning System (SIOP).

105. CGU’s first finding was that the Strategic Planning 2014-2022, governed by Administrative Rule No. 310/2017, **was thrown out and not replaced by MMA**. Also, according to the CGU, the goals referring to the objectives of the Thematic Programs of the **multiyear budget planning (PPA) 2016-2019 had not been broken down for the 2019 budget year** and the **Management Report did not link the results presented to objectives, indicators, and performance targets**. The CGU found that **the absence of any planning made it impossible to globally assess the results achieved in the 2019 budget year**.

106. Given this unique situation, the CGU decided to analyze the budget execution of the 2019 budget year based on three main MMA budgetary programs: Climate Change (2050); Conservation and Sustainable Use of Biodiversity (2078); and Environmental Quality (2083).

107. Even though there was an *available budget*, the CGU found that there was a **“significant reduction in the appropriation in the last 4 years (2016 to 2019) for these three thematic programs of the MMA, which went from just over R\$175 million to about R\$ 20 million, i.e., a reduction of almost 90% in terms of appropriation.”** Obviously, the drastic reduction in available resources is not compatible with the significant increase in deforestation indices in Brazil, especially in the Amazon, showing an **absolutely insufficient budget for the implementation of the PPCDAm**.

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<sup>62</sup> Office of the Federal Controller General Annual MMA Audit Report for the 2019 financial year. Available at: <<https://eaud.cgu.gov.br/relatorios/875381>> . Accessed on: 05.10.2020.

108. If that were not enough, on the issue of *budget execution*, even with a lower appropriation, there was a **significant reduction in the implementation of public environmental policies** in Brazil in 2019. According to the CGU, **implementation percentages were negligible**. See below:

- Program 2050 (Climate Change): **13%**.
- Program 2078 (Conservation and Sustainable Use of Biodiversity): **14%**.
- Program 2083 (Environmental Quality): **6%**.

109. A technical note prepared by the Observatório do Clima<sup>63</sup> (**document 37**) confirmed this inexpressive budget execution in 2019 regarding the finalistic activities of MMA – Administração Direta. According to the study, which considered exactly the same budget units and the same data source (Integrated Budget and Planning System – SIOP) as the CGU: **the average execution was a mere 11.1% of the authorized amount**. The Report of the Senate Environment Committee leaves no doubt about the discrepancy between the increase in deforestation, and fires in 2019 and the reduction of government actions:

“It seems **undeniable that there is a relationship between what happens in the region and the changes made in government agencies responsible for combating deforestation and fires**, notably the Ministry of the Environment (MMA), the Brazilian Environmental Protection Agency (IBAMA), and the Chico Mendes Institute for Biodiversity Conservation (ICMBio). These changes appear to be aimed at giving effect to President Jair Bolsonaro’s statements, widely circulated in the press, that **he would end the ‘industry of fines’ and that one of his government’s missions is to ‘neuter IBAMA and ICMBio’**.”<sup>64</sup>

110. After this unacceptable situation in 2019, **the year 2020 has shown even lower values** in terms of initial appropriation and mainly of budget execution.

111. In this sense, the multiyear budget planning (PPA) 2020-2023, prepared by the current administration, **clearly reflects the decision to breach and paralyze environmental policy**. In the Executive’s proposal sent to the National Congress, the environmental function represented 2.1% of the expected resources, corresponding to

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<sup>63</sup> ARAÚJO, Suely. (In)execução dos recursos orçamentários do MMA – Administração Direta: esvaziamento das políticas públicas ambientais por não aplicação dos recursos. Observatório do Clima, 2020. Available at: <<http://www.observatoriodoclima.eco.br/wp-content/uploads/2020/09/nota-OC-execuc%CC%A7a%CC%83o-orc%CC%A7amenta%CC%81ria-MMA-Administrac%CC%A7a%CC%83o-Direta-final.pdf>>. Access on: 05.10.2020.

<sup>64</sup> SENADO Federal. Referenced work Cit., P. 121.

almost R\$ 140 billion in four years. However, when the data for this function is detailed, it appears that almost all resources are destined for the Ministry of Agriculture, Livestock, and Food Supply (MAPA). **The programs of MMA and its independent agencies accounted for a tiny 1.6% of the resources of this general environmental function.** If the total government resources provided for in the multiyear budget planning (PPA) proposal (R\$ 6.8 trillion) **are considered, MMA programs corresponded to the unacceptable percentage of 0.03% of that total, well below what has always been practiced in Brazil.**<sup>65</sup> The adjustments made by the Legislative did not change this situation. Even though the National Congress included a new program related to the “*Prevention and Control of Deforestation and Fires in Biomes*” (6014) – **in the absence of a provision in the Executive’s proposal (!)** –, the total approved for the four MMA finalistic programs was R\$ 24,000 less than the Executive’s initial proposal<sup>66</sup>.

112. Data on *budget inexecution in 2020* is even more unacceptable. Excluding ordinary expenses, such as the payment of wages and pensions, official data indicates that, **in 2020, until August 31, MMA – Administração Direta had paid only 0.4% of the authorized value for finalistic activities, totaling a paltry R\$ 105,410 in the implementation of public policies.**

113. Because of these events – which are consistent with the drastic reduction in the current budget appropriation and that expected for the coming years of environmental policy – and mainly of the inexpressive budget execution, it is clear that the Federal Government and its agencies are acting in non-compliance with the fundamental obligations imposed by the Constitution to ensure the effectiveness of the fundamental right of the community to an ecologically balanced environment, and emptying their essential core by stopping the implementation of public policies such as the PPCDAm.

### **V.3.2. ACTIONS AND OMISSIONS AIMED AT RENDERING UNFEASIBLE THE ACTIVITIES OF IBAMA, ICMBIO, AND FUNAI: ABSOLUTE DEFICIENT PERFORMANCE**

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<sup>65</sup> ARAÚJO, Suely; FELDMANN, Fábio. Onde está o meio ambiente no Plano Plurianual? Valor Econômico. 03.10.2019. Available at: <<https://valor.globo.com/opiniao/coluna/onde-esta-o-meio-ambiente-no-plano-plurianual.ghtml>>. Access on: 04.10.2020.

<sup>66</sup> ARAÚJO, Suely; FELDMANN, Fábio. Política ambiental, o que o orçamento mostra e promete. O Valor Econômico. 15.01.2020. Available at: <<https://valor.globo.com/opiniao/coluna/politica-ambiental-o-que-o-orcamento-mostra-e-promete.ghtml>>. Access on: 05.10.2020.

114. The reduction in the appropriation and, in particular, of the budget execution for combating deforestation in the Amazon by the Federal Government, as noted above, is repeated concerning independent agencies – IBAMA, ICMBio, and FUNAI – and their actions to combat deforestation. Also, to the other actions and omissions described in this ADPF, **the budgetary fragility of these agencies, on whose performance the implementation of the PPCDAm is most dependent, and the non-execution of the resources made available by the Federal Government in 2019 and 2020, make the fulfillment of the Federal Government’s duties provided for by the Constitution impossible** - as will be explained in Chapter VI.

115. The analysis of the *budgetary actions linked to the prevention and control of deforestation and forest fires* makes it clear that, also to the budgetary insufficiency, the **reduction in the execution of the available resources is significant**. To demonstrate this, see the following table:

Table 1. Budget appropriation and execution – Ibama and ICMBio (2018-2020)

Year	Budgetary unit	Budgetary action	Initial appropriation (Annual Budget Law) (R\$)	Current appropriation (committed) (R\$)	Value paid in the budget year	Paid/ Committed (%)
2017	IBAMA	214M	57,035,071.67	50,130,099.99	24,348,986.96	48.5
		214N	111,919,629.15	100,383,725.15	86,526,850.44	86.1
	ICMBIO	20WM	262,549,236.87	259,465,509.51	131,755,421.69	50.7
		214P	28,352,662.37	28,352,662.37	23,911,607.73	84.3
2018	IBAMA	214M	62,415,331.32	43,947,685.09	36,084,604.29	82.1
		214N	127,635,186.40	105,896,121.93	96,906,361.99	91.5
	ICMBIO	20WM	241,778,377.65	209,546,884.50	152,151,245.25	72.6
		214P	26,733,047.98	26,733,047.98	21,975,084.08	82.2
2019	IBAMA	214M	49,064,028.65	49,525,554.02	39,586,652.66	79.9
		214N	110,947,211.24	110,947,211.24	91,608,852.96	82.5
	ICMBIO	20WM	186,987,228.38	178,792,543.53	147,203,117.27	82.3
		214P	30,276,468.54	40,007,774.07	37,318,770.91	93.2
<b>2020 (until 30 October 2020)</b>	IBAMA	21BS	0	50,000,000	20,789,594	<b>41.5</b>
		214M	38,611,058	38,611,058	22,706,046	<b>58.8</b>
		214N	76,833,128	66,119,292	26,565,991	<b>40.1</b>
	ICMBIO	20WM	111,556,486	111,556,486	67,040,209	<b>60.0</b>
		214P	12,969,048	21,663,527	15,658,798	<b>72.2</b>

**Note 1:** 214M = Prevention and Control of Forest Fires; 214 N = Environmental Control and Inspection; 21BS = Prevention, Inspection, Combat, and Control of Illegal Deforestation, Forest Fires, and Other Environmental Offenses in the Legal Amazon and its Border Region (Lava-Jato resources allocated by the Federal Supreme Court in a decision at the end of 2019); 20WM =

Support for the Creation, Management, and Implementation of Federal Conservation Units; and 214P = Environmental Inspection and Prevention and Fighting of Forest Fires. Values adjusted for inflation by the IGP-M (FGV).

Note: Values adjusted for inflation according to official indexes.

116. ***Concerning IBAMA's initial appropriation for environmental inspection*** (action 214N), **resources in 2020** (R\$ 76,833,128.00) **are 25.3% lower than those of 2019** (R\$ 102,887,966. 00) while Brazil and the world were appalled by the increase in deforestation and burns/fires. **To make matters worse, the committed budget in 2020 was much smaller – only R\$ 66,119,292.00.** When the environmental inspection is regularly performed, considering the previous years and the regular implementation of the National Annual Environmental Protection Plan (PNAPA)<sup>67</sup>, **R\$ 66 million is absolutely insufficient for the operations that must be carried out by IBAMA per year.**

117. For a better understanding: with this limit, there are not enough resources in the committed budget to allocate to IBAMA the R\$ 47 million<sup>68</sup> that is paid annually by the Amazon Fund to enable the use of trucks and helicopters in the inspection operations against environmental offenses, as will be addressed with more details below. If this amount had been allocated as expected, a mere R\$ 20 million would have been left to cover all other inspection expenses throughout the country during the year, which would evidently be insufficient. Now, if IBAMA was already entitled to R\$ 47 million from the Amazon Fund to fund essential inspection operations in the Amazon, why was the appropriation created in an amount that renders the allocation of these resources impossible? The most likely answers are, at the very least, managerial incompetence and/or intentional creation of difficulties for environmental inspection and control.

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<sup>67</sup> PNAPA is the annual planning of actions under the responsibility of IBAMA's Environmental Protection Officer (DIPRO). It is approved at the end of each year, covering the operations of the following year, being formalized by ordinance, which keeps the details of the operations confidential. Available at: <[https://www.in.gov.br/materia/-/asset\\_publisher/Kujrw0TZC2Mb/content/id/56965876](https://www.in.gov.br/materia/-/asset_publisher/Kujrw0TZC2Mb/content/id/56965876)>. Accessed on: 05.10.2020.

<sup>68</sup> Amount obtained when divided the total value of the contract for three years, of R\$140 million.

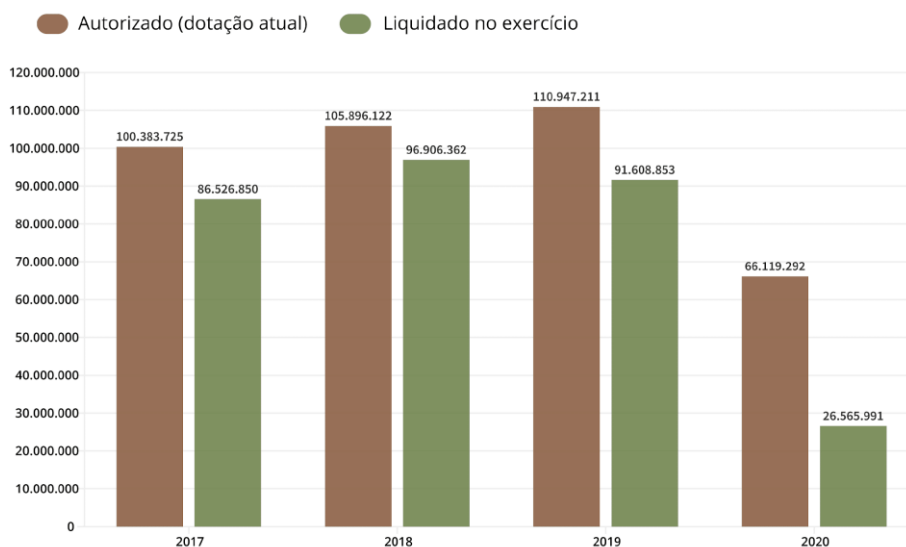
118. If the insufficiency of committed resources is a matter of grave concern, **its non-execution in 2020 is astonishing**, especially when, in contradiction, deforestation in the Amazon increased 34% in 2019 (INPE/PRODES) and another 34% is estimated in 2020 (INPE/DETER). Considering the budget execution until 5 October 2020 – a period in which most of the deforestation and burns had already occurred due to the “dry” period in the Amazon–, only **35.3% of the budget action related to environmental inspection by the independent agency had been executed (action 214N)**. See below the graph that shows the sharp drop in IBAMA’s committed and executed budgets in the budget action on environmental control and inspection:

Graph 05: Committed budget and paid budget for IBAMA’s action 214N.

119. The graph shows that in 2017 and 2018 budget execution for inspection action used to be high, always above 80%. **The execution of 35.3% at the beginning of October is confirmation of the Federal Government’s omission – inspection actions are far below what is necessary, absolutely insufficient, and in a much smaller**

### Orçamento autorizado e orçamento liquidado da ação 214N do Ibama

214N - Controle e fiscalização ambiental



Fonte: Portal do Orçamento. Dados de 2020 atualizados em 30/10.

**number than used to be carried out until then**. Likewise, despite the significant and exponential increase in burns and fires in Brazil in 2019 and 2020, **IBAMA executed a mere 41.6% in the budgetary action on forest fire prevention and control in 2020** (action 214M).



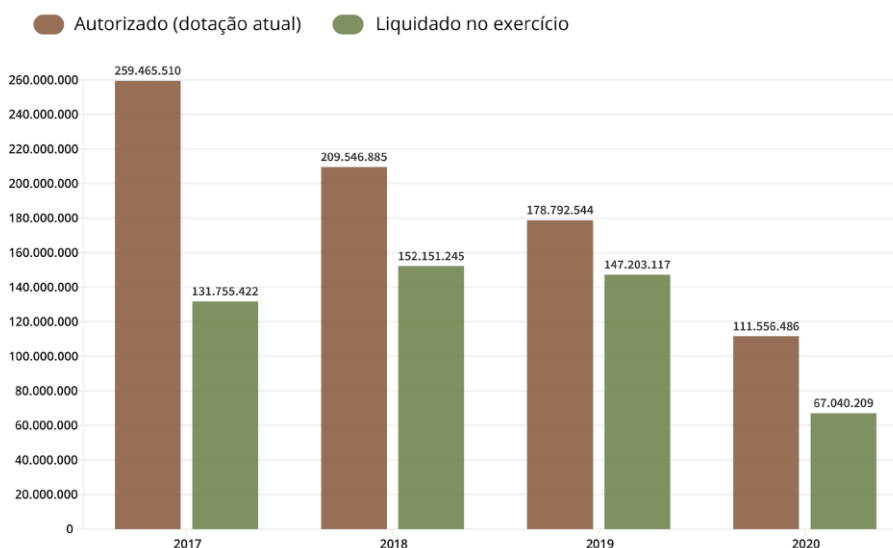
120. Finally, confirming what is described herein, in 2020, **IBAMA had an additional allocation of R\$ 50 million made available by this Federal Supreme Court** from resources arising from the Lava-Jato operation (action 21BS). This amount was supposed to be used both in environmental inspection and in the control of forest fires. **From what the official data reveals, IBAMA seems to have disregarded this Court's effort to support environmental protection: of this total amount, until 5 October 2020, only 35% had been paid.** Even the execution of these R\$ 50 million was partial: R\$ 33,967,322.00 (**document 38**). Three months before the end of the year, and after the “dry” period in the Amazon, this level of execution is absolutely unjustifiable given the serious growth of environmental offenses in the country.

121. The same is true at ICMBio. The main finalistic action of the independent agency (action 20WM), referring to the creation, management, and implementation of Protected Areas, had a committed amount in 2020 (R\$ 111,556,486.00) **32.7% inferior to that of 2019** –, certainly an insufficient amount. Again, **there was a low execution of this finalistic action of the independent agency in 2020 (action 20WM): 51.6%.** See below:

Graph 06: Committed budget and paid budget for ICMBio's action 20WM.

### Orçamento autorizado e orçamento liquidado da ação 20WM do ICMBio

20WM - Apoio à Criação, Gestão e Implementação das Unidades de Conservação Federais



Fonte: Portal do Orçamento. Dados de 2020 atualizados em 30/10.

122. In this context, the amount proposed by the government in the Annual Budget Bill for 2021 is frightening. Considering the *execution* in 2019 of the main action

of the ICMBio (action 20WM) amounted to **R\$ 136,510,230.00**, the **proposed appropriation for 2021 of only R\$ 74,965,626.00** suggests the intention to extinguish the biodiversity agency due to starvation, or to render its performance completely unfeasible.

123. This situation exposes Federal Conservation Units in the Amazon to crime, illegal deforestation, fires, land grabbing, illegal logging, and illegal ore exploitation, among other environmental problems related to these Protected Areas.

124. Finally, concerning FUNAI and its institutional mission of defending and inspecting Indigenous Lands, despite the extremely relevant tasks that it performs, this agency goes through a situation of **absolute poverty**, which renders compliance with its constitutional and legal mission unfeasible.

125. Indeed, given the neglect of the Federal Government, FUNAI, and IBAMA in the protection of Indigenous Lands in the Amazon, the number of **illegalities has been growing** in these territories, which can be demonstrated by **two objective data**. The first, to be explored in detail in Chapter VI, is the **expressive increase of 83% in deforestation within Indigenous Lands in 2019 compared to 2018** (INPE/PRODES). The second is the **frightening rise in levels of violence against Indigenous Peoples and their Indigenous Lands**. On the subject are the following excerpts from the Violence Report of the Indigenous Missionary Council – CIMI:

“The Report points out that, **in 2019, there was an increase in cases in 16 of the 19 categories of violence analyzed by the publication. Special attention is drawn to the intensification of reports in the category “land invasions, illegal exploitation of resources, and property damage”, which went from 109 cases reported in 2018 to 256 cases in 2019.** This data shows an **unprecedented tragedy in the country: indigenous lands are being ostensibly invaded from the North to the South of Brazil**. In some episodes described in the Report, the invaders themselves mentioned the name of the President of Brazil, showing that their criminal actions are encouraged by those who should fulfill their constitutional obligation to protect indigenous territories, which are assets of the Federal Government. In 5 other categories, besides ‘invasions/illegal exploitation/damage’, the number of cases almost doubled compared to 2018. This can be seen in: **‘territorial conflicts’, which went from 11 to 35 cases in 2019; ‘death threat’, which went from 8 to 33; ‘multiple threats’, which went from 14 to 34 cases; ‘willful bodily injuries’, which almost tripled the number of records, from 5 to 13; and ‘deaths due to lack of assistance’, which went from 11 in 2018 to 31 cases in 2019.**

As mentioned above, **in 2019 there were 256 cases of “land invasions, illegal exploitation of resources, and property damage” in at least 151 indigenous lands, affecting 143 peoples in 23 states.** (...) this data reveals an extremely worrying reality:

**in the past year alone there has been an increase of 134.9% in cases of invasions compared to those recorded in 2018.** This represents **more than double** the 109 cases recorded in 2018.

These 256 cases included 107 cases of damage to the environment (77) and property (30) as exposed by Indigenous Peoples in their lands.”<sup>69</sup>

126. FUNAI is going through a budget bottleneck that is emptying the rights ensured to Indigenous Peoples by the Constitution. More than that, the logic that has prevailed is the following: the fewer resources FUNAI receives to guarantee its structure, the less capacity for budget execution it has; low budget execution, in turn, is used as a justification for investing fewer resources in the following years. Indigenous Peoples pay the bill.

127. Also, a large part of IBAMA’s expenses is dedicated to the payment of personnel and labor burdens, leaving insufficient resources for the execution of its finalistic actions, that is, those destined directly to the execution of public policies for the protection of Indigenous Peoples and their Indigenous Lands. Surprisingly, such a disastrous situation is publicly confessed on FUNAI’s own website (**document 39**), almost as a cry for help ignored by the Federal Government. This is what it says:

“FUNAI has a **budget appropriation that is significantly insufficient to fulfill its institutional mission.** (...) As a result of the limited appropriation, **FUNAI has only been able to maintain a minimum functioning** of its administrative units, while it has **reached the regrettable condition of meeting only emergencies**, without any chance of expanding and significantly advancing policy results through its performance.”<sup>70</sup>

128. The following are the conclusions of the Institute for Socioeconomic Studies (INESC) on FUNAI’s budgetary failure to protect Indigenous Lands in 2020:

“[Until September 2020] **Only 30% of the resources destined for the regularization, demarcation, and inspection of indigenous lands and the protection of Indigenous Peoples in voluntary isolation (budget action 20UF) had been executed (R\$ 6.3 million).** The action that brought together all other indigenous rights (social rights, environmental and territorial management, cultural preservation, etc.) had only 14% of its resources actually paid so far (R\$ 6.5 million).”<sup>71</sup>

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<sup>69</sup> Conselho Indigenista Missionário (Cimi). RELATÓRIO Violência Contra os Povos Indígenas no Brasil – Dados de 2019. 2020, p. 08-09. Available at: <<https://cimi.org.br/wp-content/uploads/2020/10/relatorio-violencia-contra-os-povos-indigenas-brasil-2019-cimi.pdf>>. Access on: 03.11.2020.

<sup>70</sup> Fundação Nacional do Índio. Política Indigenista. Available at: <<http://www.funai.gov.br/index.php/nossas-acoes/politica-indigenista?start=22>>. Access on: 16.10.2020.

<sup>71</sup> Available at: <<https://www.inesc.org.br/os-impactos-do-ploa-2021-na-politica-indigenista/>>. Accessed on: 29.10.2020.

129. About this situation, which is still current, the Federal Court of Accounts (TCU) already pointed out that: “There is a proven **lack of clarity on the part of the Federal Government about the role of FUNAI as an agency with police power** – under Law No. 5371/1967 – in the reserved areas and matters related to the protection of Indigenous Peoples **without the means to do so.**”<sup>72</sup>

130. Finally, the following are the findings of the Report named “Threats and violations of human rights in Brazil: isolated Indigenous Peoples” (**document XX**), prepared by ISA, Conectas, and Comissão Arns and presented to the UN Human Rights Council:

“Of all the entities affected by precarious policies in the environmental field, **Funai, the official indigenous agency, is in the worst situation.** The serious budget constraint, also to the massive change in its coordinating staff, has practically paralyzed the execution of its activities. From the perspective of the human rights of isolated Indigenous Peoples, the situation is dramatic due to drastic and unjustified cuts, coupled with the enormous political pressure from openly anti-indigenous sectors. In parallel, there is an **unprecedented increase in violence** against indigenous communities and Funai’s employees themselves. Two episodes are remarkable: the shooting on a Funai base in the Indigenous Land Vale do Javari in August 2019, and the **murder of a Funai’s contractor and former employee in September** in Tabatinga/AM. **Funai was already at the limit of its capacity to fulfill its obligations, but the situation was aggravated by the decisions taken by the current administration, in particular Decree 9711/2019, which created a provision for 90% of Funai’s budget provided for in the Annual Budget Law.**”<sup>73</sup>

131. Finally, confirming the absence of minimum conditions for IBAMA, ICMBio, and FUNAI to satisfactorily exercise the power of socioenvironmental police in the Amazon, among other essential functions, see below the data on the deficit of civil servants in each of these Federal agencies:

- IBAMA: 2,821 open positions – 50% of its workforce (**document 40**)
- ICMBio: 1,317 open positions<sup>74</sup>;
- FUNAI: deficit of more than 2,000 civil servants; the agency requested in 2020 a civil service entrance examination to fill at least 834 vacancies – the request

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<sup>72</sup> Federal Audit Court. Em banc. Survey Report No. 008.223/2015-7. Appellate Judgment No. 2626/2015. Session Date: 10/21/2015.

<sup>73</sup> Available at: [https://www.socioambiental.org/sites/blog.socioambiental.org/files/arquivos/povos\\_isolados\\_cdh\\_onu\\_r elatorio\\_2020.pdf](https://www.socioambiental.org/sites/blog.socioambiental.org/files/arquivos/povos_isolados_cdh_onu_r elatorio_2020.pdf), p. 17-18. Accessed on: 03.11.2020.

<sup>74</sup> Available at: <https://www.concursosnobrasil.com.br/concursos/br/concurso-icmbio.html> . Access on 28.10.2020.

has not yet been granted; the forecast for 2021 is that the agency will have only 1541 civil servants, over 1000 less than in 2013.<sup>75</sup>

132. Therefore, IBAMA, ICMBio, and FUNAI: (i) **do not have sufficient initial budget appropriation to fulfill their missions** and have seen a drastic drop compared to the figures available in previous years; (ii) **the execution of the available budget (payment) is much lower than what the agencies have historically practiced, including and especially concerning actions aimed at the inspection and control of environmental crimes**; (iii) there is a **huge deficit of civil servants** in the three agencies, which has prevented their satisfactory performance. The strengthening of IBAMA, ICMBio, and FUNAI is an essential measure to enable the effective and satisfactory execution of the policy to combat deforestation in the Amazon.

### **V.3.3. SHUTDOWN OF THE AMAZON FUND, WHOSE MAIN PURPOSE IS TO GUARANTEE THE IMPLEMENTATION OF THE PPCDAM**

133. The Amazon Fund was established by Decree No. 6527/2008. Legally, it is not a fund, but an account with the Brazilian Development Bank (BNDES), whose resources are **linked to non-reimbursable investments in actions to prevent, monitor, and combat deforestation and to promote the conservation and sustainable use of the Legal Amazon**. According to Article 1 therein, the use of resources from the Amazon Fund may cover the following topics: management of public forests and **protected areas; environmental control, monitoring, and inspection**; sustainable forest management; **economic activities developed from the sustainable use of the forest** and other forms of vegetation; ecological-economic zoning, **land use and regularization**; conservation and sustainable use of biodiversity; and **recovery of deforested areas**.

134. These lines of action that are eligible for Fund financing are all important to ensure the implementation of the PPCDAm due to the similarity of its purpose with the thematic functions of the public policy (land and territorial planning; environmental monitoring and control; fostering sustainable productive activities, and economic and regulatory instruments). So much so that **the aforementioned Decree**

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<sup>75</sup> Available at: <<http://www.funai.gov.br/index.php/comunicacao/noticias/6069-funai-aponta-necessidade-de-concurso-publico>>. Accessed on 10.25.2020.

**expressly provides that the actions of the Amazon Fund must follow the guidelines of the PPCDAm**<sup>76</sup>.

135. Thus, **with the shutdown of the Amazon Fund as of 2019, government actions aimed at complying with the PPCDAm have been jeopardized.**

As mentioned above, the topic is the subject of Action of Unconstitutionality (ADO) No. 59<sup>77</sup>, reported by justice Rosa Weber.

136. For the proper implementation of the Amazon Fund, Decree No. 6527/2008 provided BNDES with amounts for the operation of the Technical Committee of the Amazon Fund (CTFA) and the Amazon Fund Guidance Committee (COFA), besides the costs for contracting audit services.

137. However, **CTFA and COFA were extinguished in 2019** by Decree No. 9759/2019, which generally suppressed a large number of Federal collegiate bodies as of 28 June 2019, except those whose existence was required by 28 May. **There was no requirement from government authorities for the maintenance of the two collegiate bodies of the Amazon Fund, which resulted in their extinction. There is no other structure in their place.** Then, Decree No. 10144/2019 and Decree No. 10223/2020 expressly revoked the Articles of Decree No. 6527/2008 that provided for these two bodies of implementation of the Fund, confirming their extinction.

138. Thus, with the aforementioned normative modifications made since 2019, this administration **formally put an end to the governance structure and operating dynamics of the Amazon Fund, making it impossible to contract new projects, even though there was a large number of available resources already deposited but not yet contracted. There is a significant number of resources available without execution**, whose application was made impossible by the extinction of the Fund's governance, notably the CTFA and the COFA, among other reasons.

139. The Amazon Fund is recognized as a successful financial mechanism with significant results. Fundraising for the Fund involves voluntary donations

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<sup>76</sup> See paragraph 2 of Article 1 of Decree No. 6527/2008.

<sup>77</sup> Federal Supreme Court. Direct Action of Unconstitutionality by Default - ADO No. 59. DF. Rapporteur. Justice Rosa Weber. Available at: <<http://portal.stf.jus.br/processos/detalhe.asp?incidente=5930766>>. Accessed on: 04.10.2020.

conditional on the reduction of greenhouse gas emissions from deforestation in the Amazon, which must be proven yearly. The donations, which so far total **R\$ 3.3 billion**<sup>78</sup>, came from the governments of Norway (93.8%) and Germany (5.7%), and Petrobrás (0.5%). Of this total, **until 2018, approximately R\$ 1.9 billion had been contracted and R\$ 1.1 billion had been disbursed** benefiting 103 projects, which involved: 746 thousand rural properties registered in the Rural Environmental Registry (CAR); 162 thousand people benefited from sustainable productive activities; 687 environmental inspection missions; 465 scientific or informational publications produced; 338 institutions supported directly and through partnerships; 190 conservation units supported; and 65% of the indigenous lands of the Amazon supported.<sup>79</sup>

140. Since the dismantling of the Fund's governance structure **in 2019, there were neither new contributions of resources nor contracting of projects**. The Amazon Fund's Portfolio Report of 30 June 2020<sup>80</sup> shows that **the total number of**

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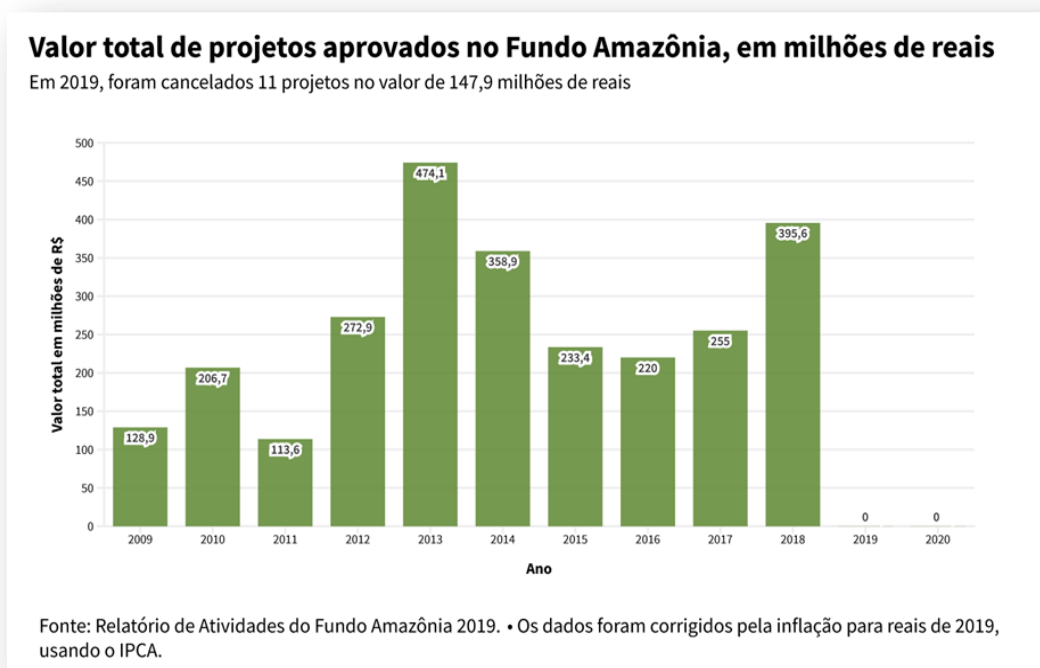
<sup>78</sup> The total considers the historical values provided by the *Fundo da Amazônia* website. Financial investments results are not computed. Available at: < <http://www.fundoamazonia.gov.br/pt/fundo-amazonia/doacoes/> >. Accessed on: 04.10.2020.

<sup>79</sup> Fundo Amazônia: Relatório de Atividades. 2018. Available at: <[http://www.fundoamazonia.gov.br/export/sites/default/pt/.galleries/documentos/rafa/RAFA\\_2018\\_port.pdf](http://www.fundoamazonia.gov.br/export/sites/default/pt/.galleries/documentos/rafa/RAFA_2018_port.pdf)>. Access on: 04.10.2020.

<sup>80</sup> Fundo Amazônia. Informe da Carteira. 2020. Available at: <[http://www.fundoamazonia.gov.br/export/sites/default/pt/.galleries/documentos/informe-de-carteira/2020\\_2tri\\_Informe-da-Carteira-Fundo-Amazonia.pdf](http://www.fundoamazonia.gov.br/export/sites/default/pt/.galleries/documentos/informe-de-carteira/2020_2tri_Informe-da-Carteira-Fundo-Amazonia.pdf)>. Access on: 04.10.2020.

supported projects has remained at 103 since 2018<sup>81</sup>. The chart below shows the shutdown of the Amazon Fund in 2019 and 2020 according to BNDES data:

Graph 07: Total value of projects approved by the Amazon Fund in millions of reais.



141. Considering the numbers of the Amazon Fund’s Portfolio Report dated 30 June 2020<sup>82</sup>, the amount of R\$ 1.8 billion had been contracted in 103 projects until 2018. If the R\$ 3.3 billion in deposits made<sup>83</sup> are added **to the account’s financial earnings, the result is R\$ 4.7 billion, which means there should be at least R\$ 2.8 billion available for new contracts but without any destination.** This is what is extracted from the BNDES 2019 report on the Fund:

“The total amount of resources for investment in projects (97% of the total donations received + earnings generated over the years) is **R\$ 4,754 million. The amount of R\$ 1,860 million, of which R\$ 1,173 million have already been disbursed, have been allocated to projects in execution or concluded.**”<sup>84</sup>

<sup>81</sup> See electronic document nº 47 under the Direct Action of Unconstitutionality (ADO) nº 59 - Distrito Federal. Available at: < <http://portal.stf.jus.br/processos/detalhe.asp?incidente=5930766> >. Accessed on: 14.10.2020.

<sup>82</sup> Fundo Amazônia. Informe da Carteira. 2020. Referenced work cit

<sup>83</sup> Fundo Amazônia. Doações. Available at: <<http://www.fundoamazonia.gov.br/pt/fundo-amazonia/doacoes/>>. Access on: 04.10.2020.

<sup>84</sup> Fundo Amazônia. Relatórios de Atividades. 2019, pp. 30-31. Available at: <[http://www.fundoamazonia.gov.br/export/sites/default/pt/galleries/documentos/rafa/RAFA\\_2019\\_port.pdf](http://www.fundoamazonia.gov.br/export/sites/default/pt/galleries/documentos/rafa/RAFA_2019_port.pdf)>. Access on: 27.10.2020.



142. Another relevant aspect is that among the actions supported by the Amazon Fund are<sup>85</sup> IBAMA's Profisc 1 and its sequence Profisc 1-B<sup>86</sup>, which, as previously mentioned, **since the end of 2016 have supported the independent agency with financial resources for environmental inspection in the Amazon**. Without the guarantee of these resources, IBAMA would not have been able to carry out inspection operations to protect the biome in 2017, 2018, and 2019.

143. Inexplicably, after two consecutive increases in deforestation in 2019 and 2020, **until 4 October 2020, IBAMA had requested from the Amazon Fund only R\$ 10,208,677.46<sup>87</sup> when the annual amount available is around R\$ 47 million.**

144. Furthermore, in **all years up to the present moment, given its relevance to combat deforestation, Profisc 1 has been 100% executed. Currently, IBAMA has executed only 55% of Profisc 1-B, which expires in April 2021**, even though the annual period with the highest rates of deforestation has already passed – May to September. **With high rates of deforestation and burns, IBAMA simply did not execute an important part of the financial resources available for environmental inspection and control.**

145. Finally, the justifications presented by the authorities for the shutdown of the Amazon Fund, which are generic and have no grounds, **were refuted by the embassies of Norway and Germany – the main donors to the Fund – and by the Office of the Comptroller General (CGU)<sup>88</sup>. Also, there is no record of problems in the**

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<sup>85</sup> Fundo Amazônia. Projetos: Fortalecimento do Controle e do Monitoramento Ambiental para o Combate ao Desmatamento Ilegal na Amazônia. Available at: <<http://www.fundoamazonia.gov.br/pt/projeto/Fortalecimento-do-Controle-e-do-Monitoramento-Ambiental-para-o-Combate-ao-Desmatamento-Ilegal-na-Amazonia/>>. Access on: 04.10.2020.

<sup>86</sup> Fundo Amazônia. Projetos: Profisc I – B. Available at: <<http://www.fundoamazonia.gov.br/pt/projeto/Profisc-I-B/>>. Access on: 04.10.2020.

<sup>87</sup> See the item “evolution” available at: <<http://www.fundoamazonia.gov.br/pt/projeto/Profisc-IB/>>. Accessed on: 04.10.2020.

<sup>88</sup> Examples of articles addressing the conflicts generated by Minister Ricardo Salles in relation to the Amazon Fund: 1) Ministro do Meio Ambiente diz ter analisado 1/4 dos contratos do Fundo Amazônia e verificado inconsistências. G1. 17.05.2019. Available at: <<https://g1.globo.com/natureza/noticia/2019/05/17/ministro-do-meio-ambiente-diz-ter-analisado-14-dos-contratos-do-fundo-amazonia-e-verificado-inconsistencias.ghtml>>. Access on: 27.10.2020. 2) Responsável pelo Fundo Amazônia no BNDES é afastada do cargo. Folha de São Paulo, 17.05.2019. Available at: <<https://www1.folha.uol.com.br/ambiente/2019/05/responsavel-pelo-fundo-amazonia-no-bndes-e-afastada-do-cargo.shtml>>. Access on: 27.10.2020. 3) Após declarações de Ricardo Salles sobre Fundo Amazônia, BNDES afasta diretora. O Eco, 19.05.2019. Available at: <<https://www.oeco.org.br/noticias/apos-declaracoes-de-ricardo-salles-sobre-fundo-amazonia-bndes->

**Fund according to an audit carried out by the Federal Court of Accounts (TCU) at the request of the Congress, TC No. 018.242/2017-0. TCU's analysis of BNDES' work as a manager concluded the resources had been appropriately applied. TCU stating: "the Amazon Fund has been satisfactorily managed, without evidence, considering the scope of the audit carried out, of serious irregularities in the achievement of its purposes or the proper application of its resources."**<sup>89</sup>

146. Due to the conflicts generated since 2019, the boom in deforestation in 2019<sup>90</sup> and 2020, and the extinction of governance structures, representatives of the governments of Norway and Germany started to **refuse to make new deposits** in the Amazon Fund, **risking its extinction**. In any case, if the Fund receives or not more resources, **it is not acceptable that the significant amount available – around R\$ 2.8 billion – be shut down by governmental inaction**, especially considering the relevance of these resources for the **implementation of the PPCDAm** and the consequent protection of the Amazon, currently under heavy attack. Since the governance structure (CTFA and COFA) is one of the conditions for the fulfillment of the agreement between Brazil and the two European countries, if no measure is adopted, **this significant resource deposited, but not yet executed, may simply have to be returned (!)**.<sup>91</sup>

147. Finally, see below the findings made by the Senate Environment Committee, which corroborate the events described herein:

**"The government seems to ignore that around 60% of the projects already approved by the Fund aim to support Federal, state, and municipal governments in actions to strengthen public management of forests. It also ignores that the Amazon Fund has been an important source of resources to the reduced budget of IBAMA, including for environmental inspection operations and to support the National Center for Prevention and Fight against Forest Fires (Prevfogo). The Fund is currently shut down and has not approved any new project since January 2019, even though all the governors of the region have declared they are in favor of the**

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[afasta-diretora/](#) >. Access on: 27.10.2020. 4) Retrospectiva 2019: Após extinguir comitê gestor, governo paralisa Fundo Amazônia. O Eco, 18.12.2019. Available at: <<https://www.oeco.org.br/noticias/retrospectiva-2019-apos-extinguir-comite-gestor-governo-paralisa-fundo-amazonia/>>. Access on: 27.10.2020.

<sup>89</sup> Federal Audit Court. Em banc. Appellate Judgment No. 1700/2019. Session date: 24.07.2019.

<sup>90</sup> INPE PRODES saw an increase of 34% in the period from August 2018 to July 2019, compared to the previous period corresponding to the same months. The DETER alert system, from the same institute, points to an increase in the same percentage for the period from August 2019 to July 2020, which has yet to be confirmed by PRODES. Available at: <<http://terrabrasilis.dpi.inpe.br/>>. Accessed on: 04.10.2020.

<sup>91</sup> See electronic document n° 47 under the Direct Action of Unconstitutionality (ADO) n° 59 - Distrito Federal. Available at: <<http://portal.stf.jus.br/processos/detalhe.asp?incidente=5930766>>. Accessed on: 04.10.2020.

**continuity of operations and stressed its importance.** As a result of the government's stance, the main donors of the Amazon Fund – Germany and Norway – have suspended the transfer of resources to Brazil.

(...)

**There is no acceptable reason, under any perspective, for Brazil to give up this source of resources, which is why we believe it is important to immediately reactivate the operations of the Amazon Fund and its Guidance Committee (COFA).**<sup>92</sup>

#### **V.3.4. CONSIDERATIONS ABOUT THE GUARANTEE OF LAW AND ORDER (GLO) AND THE OPERATION GREEN BRAZIL 2**

148. The fact that the Armed Forces have always played a relevant role in *supporting* IBAMA, ICMBio, and other authorities in combating deforestation in the Amazon is widely known. Breaking this logic, the current administration has **subordinated the inspection operations of IBAMA and ICMBio to the Armed Forces, removing technical and managerial autonomy from the agencies responsible for the protection of the biome.**

149. In August 2019, in the middle of the most critical period of fires in the Amazon, which generated wide national and international repercussions, Decree No. 9985, of 23 August 2019, authorized the employment of the Armed Forces for the guarantee of law and order (GLO) concerning preventive and repressive actions against environmental crimes and to locate and fight fire outbreaks. According to this rule, **the employment of the Armed Forces occurred in conjunction with the agencies legally responsible for environmental inspection**, also to those of public security.

150. In 2020, GLO started earlier. This time, instead of creating an “articulation”, Decree No. 10341 of 6 May 2020 set forth that **the Armed Forces would coordinate the actions to the detriment of the powers of agencies such as IBAMA and ICMBio**. See below:

“Article 3 The Minister of Defense will define the allocation of the available means and the Commands that will be responsible for the operation.

Article 4 The employment of the Armed Forces referred to in this Decree will occur in conjunction with public security agencies **under the coordination of the Commands referred to in Article 3** and with environmental protection agencies.

Sole paragraph. **The Federal agencies of environmental protection that act in the form of the *head provision of this Article* will be coordinated by the Commands referred to in Article 3.**

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<sup>92</sup> Federal Senate . Referenced work Cit., P. 124-151.

151. As a result, the Federal agencies of the National Environmental System (SISNAMA) with *legal power and technical competence* to carry out environmental inspection were placed **hierarchically under military commands**.

152. **However, the military agents who are part of the so-called Operation Green Brazil 2 do not even have the power of environmental police, which is granted exclusively to SISNAMA's agencies** under Article 70 of Law No. 9605/1998:

“Article 70. An environmental administrative violation is any action or omission that violates the legal rules of use, enjoyment, promotion, protection, and recovery of the environment.

**Paragraph 1. The authorities that have the power to issue notices of environmental violation and start administrative procedures are the civil servants from environmental agencies that are part of the National Environmental System (SISNAMA) who are designated for inspection activities, and the agents of the Port Authority (Ministry of the Navy).**

Paragraph 2 Any person who verifies an environmental violation may inform the **authorities listed in the previous paragraph, so they exercise their police power.**

Paragraph 3 **The environmental authority who becomes aware of an environmental violation is obliged to promote its immediate investigation** through the proper administrative procedure, under penalty of co-responsibility.”

153. In Operation Green Brazil 2, therefore, the military is carrying out a coordinating role and imposing their orders on IBAMA and ICMBio, while, at the Federal level, they **do not have the legal power to do so**: only the agents of these two independent agencies who have the legal power to act in environmental inspections.

154. Besides this issue about legal power, the fact is that environmental inspection **requires sophisticated and highly specialized technical competence**. Therefore, it cannot be performed by agents without specific training. Environmental inspectors, after passing the civil service entrance examination for Environmental Specialist<sup>93</sup>, must take a course with a workload equivalent to that of a graduate specialization (especialização), where they are instructed on the technical and legal components of environmental policy and trained in inspection activities. Also, they learn by the experience accumulated by IBAMA and ICMBio and are trained to plan inspection operations – including activities such as intelligence, analysis of satellite images, and

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<sup>93</sup> See Law No. 10410/2002.

goods circulation documents, among others – and to execute them, which are highly complex activities.

155. In the first mission of Operation Green Brazil 2 in 2020, in the state of Mato Grosso, even though high resources and a large contingent of military personnel were mobilized, **the inspection operation did not result in the issuance of any notice of violation.** In this case, the Armed Forces ignored IBAMA's technical information, which led to "zero" effectiveness in the operation.<sup>94</sup> In 2019, on more than one occasion the Armed Forces **refused to comply with requests for support made by IBAMA** in inspection actions against environmental offenses.<sup>95</sup> Also, the information about Operation Green Brazil 2 has some inconsistencies<sup>96</sup>, including reports of misuse of resources<sup>97</sup>. According to data from the Federal government itself, the Armed Forces are using part of the resources that should be used in inspection operations in the Amazon for the reform of barracks and other questionable applications, some even outside the Amazon.

156. As if that were not enough, another issue is that **it is impossible to objectively evaluate the results of Operation Green Brazil 2.** The figures that have been released admittedly consider actions of the agencies with or **without the**

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<sup>94</sup> Exército ignora IBAMA, mobiliza 97 agentes e faz vistoria sem punição. Folha de São Paulo, 20.05.2020. Available at: <<https://www1.folha.uol.com.br/ambiente/2020/05/exercito-ignora-ibama-mobiliza-97-agentes-e-faz-vistoria-sem-punicao.shtml>>. Access on: 05.10.2020.

<sup>95</sup> IBAMA diz que comandos militares se recusaram a apoiar ações de fiscalização. Folha de São Paulo, 30.09.2019. Available at: <<https://www1.folha.uol.com.br/ambiente/2019/09/ibama-diz-que-comandos-militares-se-recusaram-a-apoiar-acoes-de-fiscalizacao.shtml?origin=folha>>. Access on: 05.10.2020.

<sup>96</sup> See for example: 1) Operação militar na Amazônia infla dados de combate ao desmatamento. Estadão, 19.06.2020. Available at: <<https://sustentabilidade.estadao.com.br/noticias/geral.operacao-militar-na-amazonia-infla-dados-de-combate-ao-desmatamento,70003339043>>. Access on: 05.10.2020. 2) Governo demite fiscais, mas usa resultado de ação do grupo para turbinar balanço sobre Amazônia. Estadão, 23.06.2020. Available at: <<https://sustentabilidade.estadao.com.br/noticias/geral.governo-demite-fiscais-mas-usa-resultado-de-acao-do-grupo-para-turbinar-balanco-sobre-amazonia,70003341630>>. Access on: 05.10.2020. 3) Militares criticam falta de recursos contra desmatamento, mas usam dinheiro para pintar unidades. Estadão, 20.07.2020. Available at: <<https://sustentabilidade.estadao.com.br/noticias/geral.militares-criticam-falta-de-recursos-contra-desmatamento-mas-usam-dinheiro-para-pintar-unidades,70003369671>>. Access on: 05.10.2020. 4) Mourão e Defesa apresentam balanços discrepantes da militarização no combate a crimes na Amazônia. O Globo, 05.10.2020. Available at: <<https://oglobo.globo.com/sociedade/mourao-defesa-apresentam-balancos-discrepantes-da-militarizacao-no-combate-crimes-na-amazonia-24677358>>. Access on: 27.10.2020.

<sup>97</sup> Puxadinho Militar com Dinheiro da Amazônia. Piauí, 05.10.2020. Available at: <<https://piaui.folha.uol.com.br/388206-2/>>. Access on: 27.10.2020.

participation of the military, and they even consider and disclose results of state environmental agencies<sup>98</sup> who have not participated.

157. According to a statement by the Minister of Defense, Operation Green Brazil 2 costs **R\$ 60 million per month**<sup>99</sup>. This amount is **similar** to that committed to be executed by IBAMA **throughout 2020 in the budget action related to environmental inspection (214N) – R\$ 66 million**. This amount is used by the agency for operations throughout the country, involving matters beyond deforestation, such as the protection of wildlife and the control of pesticides and pollution, among others.<sup>100</sup>

158. Despite this amount, **the ineffectiveness of governmental action under the command of Guarantee of Law and Order (GLO) is remarkable**; so much so that **deforestation rates in 2019 and 2020 have increased significantly and are expected to exceed 13,000 km<sup>2</sup> this year**, and there was a **significant drop in the issuance of notices of violation in 2020 (which had already dropped in 2019)**, even with the GLO having been created in May, as explained above.

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#### **V.4. “PUSH THROUGH DEREGULATION AND CHANGE ALL THE RULES”: LEGAL RULES INTENDED TO RENDER GOVERNMENT ACTIVITY UNFEASIBLE**

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159. Throughout Brazilian history, environmental authorities have made efforts to improve environmental laws and guarantee the protection of the environment. As of 2019, however, **an unprecedented situation has occurred: environmental regulation has been suffering constant attacks aimed at deregulation**. On 22 April 2020, the highest authority of the environment confessed:

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<sup>98</sup> Militares não “aplicaram R\$ 222 milhões em multas” na Amazônia, como afirma Bolsonaro. Fakebook, 11.09.2020. Available at: <<https://fakebook.eco.br/militares-nao-aplicaram-r-222-milhoes-em-multas-na-amazonia-como-afirma-bolsonaro/>>. Access on: 06.10.2020.

<sup>99</sup> Operação das Forças Armadas na Amazônia custará R\$ 60 milhões. Poder 360, 11.05.2020. Available at: <<https://www.poder360.com.br/governo/operacao-das-forcas-armadas-na-amazonia-custara-r-60-milhoes/>>. Access on: 27.10.2020.

<sup>100</sup> It should also be noted that only two months of Operation Brazil Green 2, R\$120 million, would pay the salary of 1,000 IBAMA inspectors for one year, including bonuses, 13th salary and vacation. With this contribution, the municipality could operate effectively throughout Brazil. The same rationale applies to ICMBio.

“The opportunity that we have, that the press is not... the press is giving us a little relief on the other issues, is **to approve changes in regulation for deregulation, simplification, all reforms (...)**”

“All we do is struck down by the courts the following day, so we need to make an effort while we are in this **moment of tranquility in terms of press coverage** because they only talk about Covid and **push through deregulation, changing and simplifying all the rules for the National Historic and Artistic Heritage Institute (IPHAN), the Ministry of Agriculture, the Ministry of the Environment, the Ministry of this, the Ministry of that.**”

“**We don’t need Congress**, because, in this mess, Congress is not going to pass any laws. Now there are **a lot of things that are ‘opinion-signature, opinion-signature’**. **Without an opinion, they cannot be signed because it would send you to jail...** So, the... the... the... this is really worth it. We **have a huge opportunity to do it**”.

160.           **The environmental deregulation seen since 2019 is serious and extensive**, as shown by the data from the project “Política por Inteiro”<sup>101</sup>, which updates regulation changes on the topic of climate change. Also, to the other actions and omissions described in this ADPF, **the global reduction of legal environmental protection levels resulting from a series of governmental regulations renders unfeasible the satisfactory execution of the PPCDam** and seriously injures the fundamental right of the community to the ecologically balanced environment and the other rights mentioned in this Petition. Below we summarize *three examples* of environmental deregulation with direct impacts on the protection of the Amazon, in a clear encouragement to deforestation.

161.           *The first example* is Decree No. 9760, of 11 April 2019, which amended Decree No. 6514/2008 to **include a new stage to the environmental punishment process**. The main consequence of this amendment was **to suspend proceedings until the completion of the new stage**: a hearing before the conciliation center. The topic is the subject of ADPF No. 755, reported by justice Rosa Weber, which is pending before this Federal Supreme Court

162.           Regarding the matter, as emphasized by the Office of the Comptroller General (CGU) in 2019, “environmental inspection, in a broad sense, is a systemic process, whose ability **to deter perpetrators** depends on several variables, among which is the **certainty and speed of sanctions applied**. (...) Such conclusion also derives from the understanding that **the lack of speed in the conclusion of the proceeding may imply**

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<sup>101</sup> Projeto Política por Inteiro. Available at: <<https://www.politicaporinteiro.org/>>. Access on: 10.10.2020.

**an increase in the perception of impunity, damaging the effectiveness of inspection actions and their deterrent power.”<sup>102</sup>**

163. Nevertheless, the current status of the punishment process before IBAMA is shaky: (i) **a very low rate of the fines applied by IBAMA was effectively paid**; according to CGU, (ii) there is a **“lack of timeliness in all stages of the environmental punishment process”**; and, still according to CGU, (iii) **“the seriousness of the proceedings and their impact in the environmental punishment process is worrisome”<sup>103</sup>**.

164. Instead of promoting changes to this situation towards procedural effectiveness and the consequent effectiveness of inspection actions, the creation of this **new procedural stage – hearing before the conciliation center – greatly aggravates the inefficiency of the environmental punishment process, causing certainly of impunity and the consequent encouragement of environmental offenses**.

165. According to Article 97-A, paragraph 1, of Decree No. 9760/2019: **“The flow of period referred to in Article 113 [presentation of administrative defense] is suspended by the scheduling of the environmental conciliation hearing and it only continues to flow after the date of the hearing.”** As a result, the conciliation stage **hinders continuity** and imposes yet another bottleneck on the already time-consuming environmental punishment process.

166. That is exactly what has been happening since the new rule was issued. In response to a request for information under the Access to Information Act (**document 41**) of August 2020, since Decree No. 9760/2019 came into force, **IBAMA has held only 5 conciliation hearings. On top of that, the persons against whom the notice of violation was issued were not present at those hearings**. The number is very small, especially considering the **need for 7205 hearings, as informed by IBAMA. At ICMBio, no conciliation hearing has taken place** so far, according to information obtained under the Access to Information Act (**document 42**) According to ICMBio’s answer: “the conciliation and prior analysis teams are in the training stage” and “the

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<sup>102</sup> Office of the Federal Controller General Evaluation Relatório de Avaliação do Processo Sancionador Ambiental do Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais – IBAMA. 2019, p. 7. Available at: <<https://auditoria.cgu.gov.br/download/12741.pdf>>. Accessed on: 27.10.2020.

<sup>103</sup> Ibid., p. 22.



environmental conciliation system is being gradually implemented”. In the meantime, punishment **processes accumulate without any progress or decision, risking that the statute of limitations of the notices of violation issued since the creation of the Decree will run out.**

167. Given this situation, the result of the first example of environmental deregulation promoted as of 2019 is the **shutdown of the administrative punishment process at IBAMA and ICMBio concerning the notices of violation issued as of October 2019**, when the delayed effective date required by the mentioned Decree ended.

168. The *second example* is Decree No. 10084/2019, which, by revoking Decree No. 6961/2009, **eliminated the prohibition hitherto in effect and allowed sugarcane activities in the Amazon and the Pantanal**, further increasing pressures on the forest. The matter is the subject of Public Interest Litigation No. 1016202-09.2019.4.01.3200, pending before the 7th Federal Environmental and Agrarian Court for the Judicial District of Amazonas, in which the request for urgent relief was granted to suspend the effects of the new regulation. According to the judge who rendered the preliminary decision: “**granting access to the biomes of the Amazon, the Pantanal, and the basin of the upper Paraguay river; indigenous lands; and areas of environmental protection without any scientific feasibility study is to bet on the certainty of new disasters and environmental plagues, subjecting people to genocide or unpredictable massacres**” (document 43)

169. Finally, the *third example* of deregulation with deforestation impacts in the Amazon is Interpretative Order No. 7036900/2020, issued by the president of IBAMA, which **extinguished the possibility of carrying out *on-the-spot* inspections on the export of native wood**. The Interpretative Order was issued in February 2020, after a formal request from logging associations, even though it is contrary to a Technical Note issued by IBAMA. Due to the new “interpretation” (“opinion, signature, opinion, signature”), **on-the-spot inspection in Brazilian ports on the export of native wood has been dismissed and rendered unfeasible. The inspection of the export of native wood is currently restricted to the remote assessment of self-declaratory information turned in by logging companies.**

170. According to public data consolidated by Mapbiomas, if 99% of the deforestation carried out in Brazil is illegal (as there is no record of authorization for

vegetation suppression)<sup>104</sup> and deforestation rates in the Amazon increased 34% in 2019 (PRODES/INPE) and 34% in 2020 (DETER/INPE), how could IBAMA eliminate the inspection of native wood exports? In other words, **if only 1% of deforestation is done lawfully – with authorization to suppress vegetation – how can the control of the legality of wood exports be considered enough after the elimination of one of its main components, on-the-spot inspections?** The rule made an important legality control mechanism unfeasible, making it more difficult for IBAMA to achieve the purposes of the PPCDAm: control of the legality of deforestation and wood exports.

171. Among the regulations issued by environmental authorities to weaken the legislation, the three examples above, added to the other actions and omissions in question, denote that the current administration acts against the protection of the environment set forth by the Constitution, especially concerning deforestation in the Amazon. This is a direct violation of the government's constitutional obligations to guarantee the effectiveness of the rights that are the subject of this ADPF.

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#### **V.5. ACTIONS AND OMISSIONS AGAINST THE FUNDAMENTAL RIGHTS TO INFORMATION ABOUT AND PARTICIPATION IN ENVIRONMENTAL MATTERS**

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172. Also, to the above-mentioned acts harmful to fundamental precepts, which show the shutdown of the PPCDAm – a public policy aimed at combating deforestation in the Amazon-, there have been repeated violations of the fundamental right to information.

173. In Brazil, since 2019, environmental control agencies and policies have increasingly been stripped of their power or eliminated. This seriously affects the production and dissemination of socio-environmental information, including about the duties of active<sup>105</sup> and passive transparency<sup>106</sup>, with serious implications in the

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<sup>104</sup> Map biomas. Relatório Anual do Desmatamento no Brasil. 2019, p. 6. Available at: <<https://s3.amazonaws.com/alerta.mapbiomas.org/relatorios/MBI-relatorio-desmatamento-2019-FINAL5.pdf>>. Access on: 29.06.2020.

<sup>105</sup> Active transparency is the disclosure of information on the initiative of the public agency itself, without the citizen's request.

<sup>106</sup> Passive transparency is making public information available to comply with specific demands of an individual or legal entity.

participation of the population in public policies aimed at protecting its legal interest – the ecologically balanced environment.

174. To start with, there is a repeated prevalence of official discourse aimed at discrediting agencies and institutions that produce data and information, including Federal agencies. Amid an unscientific scenario of denial of deforestation, fires, and climate change by the country's main authorities, **the years 2019 and 2020 were marked by direct attacks on the National Institute for Space Research (INPE), the main agency monitoring deforestation in Brazil**, whose assessed data is **made publicly available, with active transparency, to any and all citizens** – obviously, including public authorities. Authorities have preferred, from the beginning until today, to **deviate from the reality of the serious problem that plagues the Amazon** – continuous and historical increases in the rates of deforestation and fires - **instead of complying with the Constitution and ensuring the protection of the environment**.

175. In 2019, after unfounded criticism of INPE's data – which only informs about the reality of deforestation, without any subjective analysis – including insinuations that the agency was allegedly divulging false information and “acting in the service of an NGO”<sup>107</sup>, INPE's then CEO, Dr. Ricardo Galvão, – a prestigious scientist who had been working at the agency since the 1970s – resigned<sup>108</sup>. The episode opened the possibility of censorship of the data, which should be subjected to government scrutiny before being published.

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<sup>107</sup> 1) ‘Apagão’ de dados é risco para toda a sociedade: queremos mais transparência e respeito à ciência. Artigo 19, 05.08.2019. Available at: < <https://artigo19.org/blog/2019/08/05/apagao-de-dados-e-risco-para-toda-a-sociedade-queremos-mais-transparencia-e-respeito-a-ciencia/> >. Accessed on: 27.10.2020. 2) Exoneração de diretor do Inpe é publicada no ‘Diário Oficial’. G1, 07.08.2019. Available at: <<https://g1.globo.com/natureza/noticia/2019/08/07/exoneracao-de-diretor-do-inpe-e-publicada-no-diario-oficial.ghtml>>. Access on: 27.10.2020. 3) Diretor do Inpe será exonerado após críticas do governo a dados de desmate. Folha de São Paulo, 02.08.2019. Available at: <<https://www1.folha.uol.com.br/ambiente/2019/08/diretor-do-inpe-sera-exonerado-apos-criticas-do-governo-a-dados-de-desmate.shtml>>. Access on: 27.10.2020. 4) Em resposta a Bolsonaro, Inpe diz prezar por honestidade científica. Folha de São Paulo, 01.08.2019. Available at: <<https://www1.folha.uol.com.br/ambiente/2019/08/em-resposta-a-bolsonaro-inpe-diz-prezar-por-honestidade-cientifica.shtml>>. Access on: 27.10.2020.

<sup>108</sup> Details on Ricardo Galvão's trajectory and his nomination for the scientist of the year award by the specialized magazine Nature can be consulted at: Exonerado por Bolsonaro, Ricardo Galvão está entre os 10 cientistas do ano. Correio Braziliense, 14.12.2019. Available at: <[https://www.correiobraziliense.com.br/app/noticia/ciencia-e-saude/2019/12/14/interna\\_ciencia\\_saude,814003/exonerado-por-bolsonaro-ricardo-galvao-esta-entre-os-10-cientistas-do.shtml](https://www.correiobraziliense.com.br/app/noticia/ciencia-e-saude/2019/12/14/interna_ciencia_saude,814003/exonerado-por-bolsonaro-ricardo-galvao-esta-entre-os-10-cientistas-do.shtml)>. Access on: 27.10.2020.

176. In 2020, again after generic and unsupported accusations, the General Coordinator for INPE's Earth Observation, who was responsible for monitoring deforestation in the Amazon, Dr. Lúbia Vinhas – an experienced researcher who had been working at the agency since 1997-, also resigned. After all this clash, the current President of the National Council of the Legal Amazon recently stated that **he was unaware that INPE's deforestation data is public and accessible (!)**.<sup>109</sup>

177. That said, as far as the subject of this ADPF is concerned, the general picture of environmental misinformation is **even more striking when it comes to the production and transparency of data related to the PPCDAm.**

178. To start with, there is no information available on the specific budget appropriation and execution for the PPCDAm. There is also no up-to-date tracking and monitoring of the specific actions taken by each ministry and other public agencies to fulfill this public policy since these actions are not discriminated to the public, whether on an official website or by other means. There is also no information about specific budget programs and actions for monitoring the execution of available resources. The only document available is an internally produced annual report. **There is no way to monitor its implementation through social control.** Thus, the first omission concerning the topic is the **lack of information and the consequent impossibility of monitoring the PPCDAm.**

179. This situation was confirmed by extensive research conducted by Article 19 and ISA. Between September and November 2019, the organizations made **226 requests for information under** the Access to Information Act to the MMA – **who should coordinate the PPCDAm** – and to other agencies involved in the implementation of the PPCDAm. The information requested was related to the progress of PPCDAm actions in 2019 and previous years. The fourth stage of implementation of the policy (from 2016 to 2020) especially stood out. **The complete results of the study are attached hereto, in a specific Report on the low degree of transparency of the PPCDAm (document 44) in 2019.**<sup>110</sup>

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<sup>109</sup> Mourão diz que desconhecia que dados de queimadas são públicos e pede análise qualitativa ao Inpe. G1, 16.09.2020. Available at: <<https://g1.globo.com/politica/noticia/2020/09/16/mourao-diz-que-desconhecia-que-dados-de-queimadas-sao-publicos-e-pede-analise-qualitativa-ao-inpe.ghtml>>. Access on: 27.10.2020.

<sup>110</sup> Report pending publication and release, scheduled for December 2020.

180. Among the most prominent conclusions for the present ADPF, the *first* to be highlighted is the **frequent response offered by several agencies, including the MMA, that certain data or information on the implementation of the PPCDam simply does not exist**. Also, to making access to environmental information unfeasible, this indicates that the internal monitoring of PPCDam's actions is deficient and that very little is being done to achieve the purposes of this essential public policy since 2019.

181. The *second outstanding conclusion* is that, as shown by the low degree of compliance with requests by the MMA, **there is no systematic and organized internal or external information on the execution of the PPCDam**, which is even more serious when considering that several ministries and public agencies are responsible for its implementation. When there was a response, the reports were presented in an uncoordinated and decentralized manner, on different websites and links, without any systematization of partial and total results, referring to different geographical sections, and without information on various goals provided for in the PPCDam.

182. The *third finding* was the **receipt of the same insufficient response for a large number of requests of information, including at different hierarchical levels** (initial responses and appeals to higher courts).

183. The survey also reported that there was **no communication between the MMA, the policy coordinator, and the other agencies that make up the PPCDam**. In several requests, **the MMA responded that the request should be forwarded to another agency** – which should have been done by the respondent agency itself under Article 11, III, of the Access to Information Act. After following this guidance and submitting new requests to the agencies indicated by the MMA (Ministry of Economy, Ministry of Justice and Public Security, ICMBio, and Funai), **responses were repeated in the sense that these requests were again made to the MMA itself (!)**.

184. Another aspect that demonstrates a serious failure in the production of information, including indicating non-implementation of the public policy, is the constant use of the concept of “additional work” to justify not sharing requested data. Had there been internal monitoring by the government itself and especially the MMA, on the implementation of the PPCDam, there would be no “additional work” to be done to present the requested information. This is **information that should be public, with**

active transparency, so that the population can keep track of the government actions to defend its national heritage – the Amazon, according to Article 225, paragraph 4, of the Constitution –, but that is not even found in the drawers of the MMA, whose role in the PPCDAm is that of coordination.

185. In light of the above, it is clear that the Federal Government has violated the fundamental right of access to information, which is widely applicable in socio-environmental matters. **The lack of information, data updating, and disclosure of the PPCDAm implementation actions prevent broad access to socio-environmental information as of 2019.**

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#### V.6. PPCDAm “EXTINCTION”

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186. At the beginning of 2019, after threats of extinction of the Ministry of the Environment and announcements of the end of the “party” of fines at IBAMA, the reorganization of the MMA under Law No. 13844/2019 and Decree no. 9672/2019 was perceived with extreme concern. Several essential structures were simply **extinguished** overnight. The National Water Agency (ANA) was transferred to the Ministry of Regional Development (MDR), preventing the “integration of water resources management with environmental management” (Article 3, III, of Law No. 9433/1997, which created the National Policy on Water Resources); and the Brazilian Forest Service (SFB) was transferred to the Ministry of Agriculture, Livestock and Food Supply (MAPA), which replaced the MMA in the role of managing the Rural Environmental Registry (CAR), which monitors the environmental regularity of rural properties and possessions – and this causes a conflict of interest.

187. More frightening than that was the **elimination of all instances of deforestation and climate change combat in the MMA**. In this aspect, stands out the **elimination of the Secretariat for Climate Change and Forests without naming a substitute to perform the functions it performed**. According to the regulations in force until then<sup>111</sup>, the Secretariat was subdivided into: The Department of Policies on Climate Change; **Department of Forests and Combat to Deforestation**; and Department of Monitoring, Support, and Promotion of Actions on Climate Change.

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<sup>111</sup> See Decree No. 8975/2017, as amended by Decree No. 9085/2017.

188. Note that, unlike previous MMA agencies, **the term “deforestation” was simply excluded from Decree No. 9672/2019.** Just as a comparison, **the expression appeared fourteen times in the regulation that disciplined the MMA before 2019**<sup>112</sup>.

189. Also, breaking with previous administrations, **all references to combating climate change** were suppressed, giving practical application to the statements of public authorities denying climate change<sup>113</sup>. The only exception was the Managing Committee of the National Fund for Climate Change, which remained inoperative throughout 2019 and only met in July 2020<sup>114</sup> as a result of an important interlocutory order issued by justice Luís Roberto Barroso of this Federal Supreme Court (ADPF No. 708).<sup>115</sup>

190. From the beginning, **the government shut down the PPCDAm**, which previously had been implemented by several ministries and agencies, and the deforestation control, **which was reduced to the absolutely insufficient and isolated performance of IBAMA and ICMBio.** This is exactly what the Senate Environment Committee found in a report released in early December 2019:

“As in the area of climate change, as of 2019, **the MMA unit that was responsible for coordinating Brazilian policies for preventing and controlling deforestation was extinguished, as were all the Ministry’s powers related to combating deforestation.** As a result, **all implementation actions related to the PPCDAm** and the Action Plan for the Prevention and Control of Deforestation and Forest Fires in the Cerrado (PPCerrado) were shut down, even though these were two of the most important instruments of the National Policy on Climate Change (PNMC). Current actions to combat deforestation are limited to IBAMA while data from Prodes/Inpe points to an increase of about 30% in the deforestation rate in the Amazon from August 2018 to July 2019.”<sup>116</sup>

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<sup>112</sup> See Decree No. 8975/2017, as amended by Decree No. 9085/2017.

<sup>113</sup> Available at: 1) < <https://www.nexojornal.com.br/podcast/2019/09/12/Os-ministros-de-Bolsonaro-eo-negacionismo-clim%C3%A1tico> > ; 2) < <https://www1.folha.uol.com.br/ambiente/2019/09/ministro-do-meio-ambiente-vai-se-reunir-com-negacionistas-do-aquecimento-global-em-washington.shtml> > ; 3) < <https://www.terra.com.br/noticias/ciencia/sustentabilidade/meio-ambiente/ernesto-araujo-nega-aquecimento-global-em-discurso-nos-eua.66172f007894f76aa6c987a907da6ed0ohrnxa0.html> > . Accessed on: 03.11.2020.

<sup>114</sup> Ministério do Meio Ambiente. Reuniões do Comitê Gestor do Fundo Nacional sobre Mudança do Clima. Available at: < <https://www.mma.gov.br/clima/fundo-nacional-sobre-mudanca-do-clima/comite-gestor/reunioes.html> > . Access on: 04.10.2020.

<sup>115</sup> Federal Supreme Court. Order Direct Action of Unconstitutionality by Default - ADO No. 60 - ADPF No. 708. Rapporteur: Justice Luís Roberto Barroso. DJe 28.06.2020. Available at: < <http://portal.stf.jus.br/processos/detalhe.asp?incidente=5951856> > . Accessed on: 04.10.2020.

<sup>116</sup> Federal Senate. Referenced work Cit., P. 189-190.

191. At this point, we emphasize that the non-implementation of the policy to combat deforestation in the Amazon **violates the Constitution, international rules, and the statutes and regulations that establish and maintain in force the PPCDAm as an essential public policy**. On the subject, Law No. 12187/2009, which creates the National Climate Change Policy, provides as its instrument the **plans to combat deforestation in biomes** – which means there must be a *specific plan for each biome*:

“Article 6 The following are instruments of the National Policy on Climate Change:  
(...)  
III – the Action Plans for the Prevention and Control of Deforestation in biomes.”

192. More explicitly, Decree No. 9578/2018, which replaced the previous Decree No. 7390/2010, regulates said Article 6 of the Law as follows:

“Article 17. For the purposes of the provisions of this Decree, the following action plans for preventing and controlling deforestation in biomes and sectorial plans for mitigating and adapting to climate change are considered:  
I – **Action Plan for the Prevention and Control of Deforestation in the Legal Amazon – PPCDAm**”

193. In fact, **the PPCDAm is a public policy that has been provided for in the Brazilian legal system since a Decree of 3 July 2003** – now revoked –, which established the Plan’s Executive Committee, among other aspects. Even Decree No. 6527/2008, as amended by Decree No. 8773/2016, provides that BNDES actions with the **Amazon Fund “must comply with the guidelines of the PPCDAm”** (Article 2, paragraph 2).

194. Since 2004, when the PPCDAm was officially launched by a Decree of 15 March 2004, **no one had ever dared to abandon the PPCDAm**. Regardless of who held the Presidency, the position of Minister of the Environment, or the command of Federal environmental agencies, this plan was implemented, to a greater or lesser degree, resulting in its **strengthening**. The PPCDAm is considered **the main reason for Brazil’s success in controlling deforestation in the Amazon, with a reduction rate of 83% obtained between 2004 and 2012**. Even with the difficulties faced after 2012 to keep deforestation below 5,000 km<sup>2</sup> per year, deforestation in the biome was around 7,000 km<sup>2</sup> between 2012 and 2018.

195. This situation has changed dramatically in the current administration. With the **“extinction” of the PPCDAm**, the country has seen its indexes **exceed 10,000**



km<sup>2</sup> (INPE/PRODES), an **increase of 34%** in the period that ended in July 2019, with a **tendency for a new increase of 34%** in 2020, according to an estimate calculated considering INPE/DETER alerts. **This data means that we are facing for the first time in history two consecutive increases above 30% in annual deforestation rates in the Legal Amazon.**

196. Also, to this nefarious result and the other elements mentioned above, **there are two other astonishing facts when it comes to the non-implementation of the PPCDAm between 2019 and 2020.**

197. *The first* is the fact that, differently from previous years (since 2003), **the year 2019 passed without any instance of interministerial articulation or executive coordination for the implementation of the PPCDAm.**

198. On the subject, as is well known, the implementation of public policies, especially those of a complex nature, with the involvement of several ministries and Federal agencies, also to articulations with states and municipalities, requires the existence of a minimum structure of articulation and executive coordination that allows the feasibility of government actions in a coordinated and integrated manner. **The PPCDAm, which involves the work of more than a dozen ministries and agencies of different natures, has always had an instance of coordination and execution – since the Decree of 3 July 2003, now revoked.**

199. However, in response to a request for information made by Article 19 and ISA (**document 45**), the MMA stated: “We further inform that the **Permanent Interministerial Working Group** and the **Executive Committee of the Action Plan for the Prevention and Control of Deforestation in the Legal Amazon (PPCDAm)** – mentioned in the appeal that was filed – **were extinguished under Decree No. 9759, of 11 April 2019.**”

200. Thus, both the Interministerial Group and the Executive Committee of the PPCDAm **remained inoperative throughout 2019.** After highlighting “**clear signs of the urgent need to reactivate previously existing structures, as well as the plans for the prevention and control of deforestation in Brazilian biomes**”<sup>117</sup>, the Senate

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<sup>117</sup> Federal Senate. Referenced work Cit., P. 190.

Environment Committee recommended that the Federal Government should: **“Restructure the department of the MMA in charge of coordinating policies to prevent and combat deforestation and immediately reactivate the Action Plans for Prevention and Control of Deforestation in the Amazon and the Cerrado (PPCDAm and PPCerrado).”**<sup>118</sup>

201. Therefore, **the PPCDAm was totally shut down by the Federal Government as of 2019.** As a matter of fact, the current management of the MMA has shown an inability to implement public policies. Or, more directly, it has chosen **not to** act: **not to fulfill** governmental obligations and to **act contrary** to the environmental protection determined by the Constitution.

202. On 28 November 2019, Decree no. 10142/2019 established the Executive Committee for the Control of Illegal Deforestation and Recovery of Native Vegetation (CONAVEG), which apparently is a substitute for the Permanent Interministerial Working Group and the Executive Committee of the Action Plan for the Prevention and Control of Deforestation in the Legal Amazon (PPCDAm). **There is no public information available on this Committee regarding meetings held, dockets, deliberations, or any other pertinent acts.** CONAVEG is only made up of government agencies.

203. In what appears to have been an attempt – without demonstration of effectiveness – to positively signal to this Federal Supreme Court – where actions regarding the Federal Government’s inaction in the implementation of public environmental policies (*i.e.*, ADPF No. 708 and Action of Unconstitutionality (ADO) No. 59), and to the national and international markets and communities, **on 11 August 2020**, Decree No. 10455/2020 was issued. This Decree once again included the terms “climate” and “deforestation” in the MMA organization, at least in some references within the scope of the Secretariat for the Amazon and Environmental Services and the Executive Committee for the Control of Illegal Deforestation and Recovery of Native Vegetation (CONAVEG).

204. After complete inaction for over a year and a half, while the Amazon faced peaks of deforestation, the mere reinsertion of the deforestation issue within the

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<sup>118</sup> Federal Senate. Referenced work Cit., P. 149.

scope of the MMA, without any indication of effectiveness, sounds like a fictitious announcement just to respond to market pressures and public opinion, with no intention of actually implementing public policy on this topic.

205. The most important example in this sense is the *second astonishing fact* mentioned above: the “Plan for the Control of Illegal Deforestation and Recovery of Native Vegetation 2020-2023”, whose coordination is the responsibility of CONAVEG.

206. At the outset, **unlike the PPCDAm, which is still in force, such an alleged new “plan” is not even mentioned in any statute or regulation, which makes it non-existent in legal terms.**

207. **One day after the Vice-President of Brazil stated, on 9 July 2020, that the government still had no plan to reduce deforestation<sup>119</sup>**, which had a negative impact, the Special Secretariat for Social Communication (SECOM) simply posted on its Twitter account eight generic measures to “preserve the Amazon and Brazilian biomes”, including issues not directly related to the deforestation agenda. In the last one of these “measures”, the “launching of the plan to control illegal deforestation was announced.” There is no news about the launch of such a new plan.

208. In fact, the general MMA website<sup>120</sup> (**document 46**) indicates a specific website on the topic (<http://combateadodesmatamento.mma.gov.br/> – **document 47**), in which: there is no mention of the new plan, but of the PPCDAm – which is in full force as pointed out at the beginning of this item-; and the PPCDAm Executive Committee is still mentioned as being responsible for the public policy, with no reference to CONAVEG (<http://combateadodesmatamento.mma.gov.br/comissao-executiva> – **document 48**).

209. Indeed, if the aforementioned Plan for the Control of Illegal Deforestation and Recovery of Native Vegetation 2020-2023 **does not exist in the legal sphere**, since it has not been created by any legal rule, it also **does not exist as a public policy plan. Unlike the PPCDAm, the new plan does not have: strategic guidelines;**

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<sup>119</sup> Available at: < <https://oglobo.globo.com/economia/empresarios-cobram-mas-mourao-diz-que-governo-ainda-nao-tem-plano-para-reduza-desmatamento-24526564> > . Accessed on 29.10.2020.

<sup>120</sup> Available at: < <https://mma.gov.br/florestas/controle-e-preven%C3%A7%C3%A3o-do-desmatamento.html> > . Accessed on 29.10.2020.

**goals; actions defined for each goal; lines of action; schedule; power assignment; articulation with other parties besides the Federal Government (in particular, with state governments); sources of funds; expected results; sources of funds or indicators for monitoring expected results.**

210. With 25 pages, including cover, table of contents, references, etc., **the referred plan is not a plan**, unlike the PPCDAm, which is a world example of a successful and organized public policy, with a clear definition of its guidelines, goals, actions, etc. **It simulates a public policy** designed by the current administration to continue its failure to implement the PPCDAm, which is still in force, as evidenced above. In fact, **the number of notices of violation and cease-and-desist orders and the amount of budget execution were much inferior in 2020 than they had already been in 2019, which shows that the failure to implement the PPCDAm has been greatly aggravated – and not the other way around.**

211. For comparison purposes, while the “fake” plan, which allegedly covers all biomes, contains “zero” essential elements of any public policy, the Operational Plan of the 4th stage of the PPCDAm (2016-2020)<sup>121</sup>, which focuses on combating deforestation in a specific biome, provides for 10 strategic guidelines, 9 strategic goals, and 78 lines of action for the Federal government, besides defining responsibilities and other elements.

212. The PPCDAm has been gradually improved during its four stages (2004-2008; 2009-2011; 2012-2015; and 2016-2020), as a public policy should be. Until now, no new administration had so violated the Constitution and deconstructed the main tool for controlling deforestation in the Amazon. More than deconstructed, **as of 2019, this administration has imploded the PPCDAm and seems to have put in its place – without any legal provision, while the rules that provide for the PPCDAm are still in force – a merely discursive document, of few and generic pages, written after 18 months of complete government inaction, and which was announced the day after the President of the National Council of the Amazon confessed that there was no plan whatsoever, just to try to reduce the pressures that are being applied against the anti-environmental policies implemented as of 1 January 2019.**

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<sup>121</sup> Available at: <<https://www.mma.gov.br/images/arquivo/80120/Anexo%20II%20-%20PLANO%20OPERATIVO%20DO%20PPCDAm%20-%20GPTI%20%20p%20site.pdf>>. Access on 20.10.2020.

## **VI. INJURY TO FUNDAMENTAL PRECEPTS: FUNDAMENTAL RIGHTS DIRECTLY VIOLATED BY GOVERNMENT ACTION AGAINST THE FULFILLMENT OF FUNDAMENTAL OBLIGATIONS**

213. The serious scenario described above, of actions and omissions aimed at rendering the fight against deforestation and the climatic emergency unfeasible, resulting in the emptying of the essential core of the fundamental rights addressed in this ADPF, constitutes an inadmissible and abusive non-compliance with the fundamental obligations set forth by the Constitution, statutes, and regulations, also to international rules ratified by Brazil.

214. As can be seen from the facts described above and from the legal grounds set out below, **such acts produce and continue to produce, continuously and exponentially, harmful and irreversible effects to the fundamental precepts established by the Constitution**, notably to the fundamental rights and obligations of the Brazilian community to the ecologically balanced environment and, therefore, to life, dignity, and health, as well as to the fundamental rights and obligations aimed at protecting children and adolescents and, especially, Indigenous Peoples and other traditional peoples and communities. This is a **serious, significant, and irremediable injury that must be promptly remedied by this Federal Supreme Court**.

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### **VI.1. 2019/2020 PERIOD: HISTORICAL INCREASE IN DEFORESTATION IN THE LEGAL AMAZON**

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#### **VI.1.1. GENERAL DATA (INPE): RECORDS OF INCREASE IN DEFORESTATION**

215. The adoption of the PPCDAm revolutionized the government action in the combat of deforestation in the Amazon. Its full implementation, with the support of the Federal Government, led Brazil to the lowest rate of deforestation in its history in 2012 – 4,571 km<sup>2</sup>. After that, as described above, the PPCDAm continued to be implemented, but with less input from the Federal Government. This took deforestation rates to 7,536 km<sup>2</sup> in 2018.

216. In 2019 and 2020, **the PPCDAm was abandoned**. Given the omission of the Federal Government and the encouragement by public authorities to environmental offenses, the increase in deforestation rates has broken **historical records. These are not normal variations, as had happened in previous years, but something absolutely “out of the curve”.**

217. The 2019 deforestation rate consolidated by PRODES/INPE was **10,129<sup>122</sup> km<sup>2</sup>, 34%** more than the 7,536 km<sup>2</sup> observed in 2018. **This was the highest index since 2008** and also the **third-highest percentage increase in history**. As will be further explored below, **deforestation in 2019 within Conservation Units and Indigenous Lands has skyrocketed**, with even greater increases perceived within these Protected Areas, where vegetation suppression is essentially illegal.

218. **The scenario is even worse in 2020**. According to INPE data using the DETER system (Deforestation Detection in Real Time), **a further increase of 34% in the annual rate is estimated**. The consolidation of the 2020 data will be presented by INPE's PRODES system until the end of the year. If the forecast is confirmed, **the country may surpass the 13,000 km<sup>2</sup> mark, surpassing three times the 2020 climate goal for reducing deforestation** (3,925 km<sup>2</sup>). It will also be **the first time in history that deforestation in the Amazon has had two consecutive increases of around 30%.**

219. Note that PRODES data is released annually and offers the official rate for deforestation in the legal Amazon. The DETER system, in turn, has different technology and methodologies<sup>123</sup>, aimed at monitoring the dynamics of deforestation in real time. DETER data is sent almost in real time to IBAMA without any restriction of the minimum mapped area. It indicates alerts of deforestation, its intensity, and the classification of its causes (*i.e.*, clear-cut deforestation, mining, forest degradation, burning, and logging). Since the methodologies and also the purposes of DETER and PRODES are different, it is not recommended to compare the data in “km<sup>2</sup>”. But DETER's percentage increases are a strong indication of what might be announced by PRODES at the end of each year.

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<sup>122</sup> Instituto Nacional de Pesquisas Espaciais. PRODES: Monitoramento do Desmatamento da Floresta Amazônica Brasileira por Satélite. Available at: <<http://www.obt.inpe.br/OBT/assuntos/programas/amazonia/prodes>>. Access on: 15.07.2020.

<sup>123</sup> The DETER system obtains daily data from the CBERS-4 and IRS satellites, with 64 and 56 meters of spatial resolution, respectively.

220. That said, to have an exact understanding of this DETER data, note that, between August 2018 and July 2019, the system recorded **6,844 km<sup>2</sup>** of deforestation, **the highest rate since the beginning of the measurements (2015). In 2020, DETER identified 9,205 km<sup>2</sup>** from August 2019 to July 2020. As a result, **the previous record of 2019 was surpassed in 2020 by 34%.**

221. One of the most immediate effects of increased deforestation is the increase in burning rates. In 2019 there was an expressive increase in deforestation, which created an abundance of combustible material and enabled illegal fires to spread. As stated by Justice Luís Roberto Barroso:

**“Burnings are, most of the time, causes or consequences of deforestation. Many burnings are crimes committed with the purpose of disposing of native vegetation and allowing space for livestock and agriculture, causing serious damage to the forest and the health of the population (ROCHA, 2017). In 2019, the situation became extremely serious, with a significant increase in the number of fire spots if compared to previous years.”<sup>124</sup>**

222. In 2019, the legal Amazon ended the year with 129,089 active fire spots, **an increase of 39% compared to 2018.** There are **81% more fire spots than the average between 2011 and 2018.**

223. The day known as “**day of fire**” – 10 August 2019 – received this name because producers and land grabbers set fire to the Amazon, generating one of the largest records of fires in September ever recorded by INPE (32,602 fire spots). The first half of August revealed a significant increase (60%) of hot spots if compared to the average for the same period in the previous three years, although the average volume of rainfall was considered normal.

224. **In 2020, burns have confirmed this scenario of destruction<sup>125</sup> and have already surpassed the amount recorded in the entire year of 2019.** With data available only until 14 October 2020, INPE recorded 128,420 fire spots in the region,

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<sup>124</sup> BARROSO, Luís Roberto; MELLO, Patrícia Perroni Campos. Referenced work Cit., P. 340.

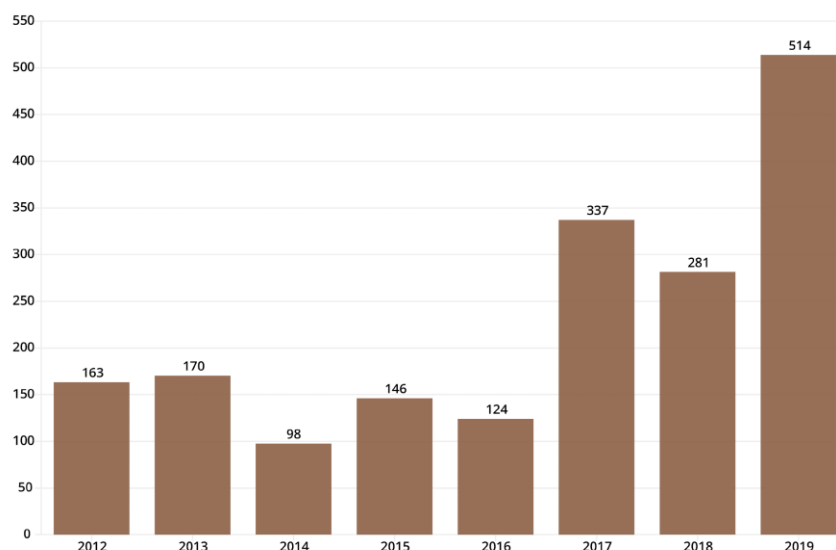
<sup>125</sup> MOUTINHO, P.; et al. Nota técnica nº 3: Amazônia em Chamas - desmatamento e fogo em tempos de covid-19. Instituto de Pesquisa Ambiental da Amazônia. Brasília, 2020. Available at: <<https://ipam.org.br/bibliotecas/amazonia-em-chamas-4-desmatamento-e-fogo-em-tempos-de-covid-19-na-amazonia/>>. Access on: 16.10.2020.

**26.5% more than that recorded during the same period of 2019** (from January to 13 October). In September and October 2020, new records were broken. The Legal Amazon was the target of 50,631 active fire spots in September, an **increase of 55% over the same month last year**. While authorities gave public statements and posted on their social networks that there were no fires in the Amazon in 2020, only fourteen days in September were enough to reach the fire rate of September 2019 and caused an immense cloud of smoke that scared Brazil and the world. In just thirteen days of October, 14,347 active fire spots have already shown an increase of 21% compared to the thirty days of October 2019.

## VI.1.2. TOTALLY OUT-OF-CONTROL DEFORESTATION WITHIN

### Desmatamento em Terras Indígenas

Entre 2012 e 2019, em quilômetros quadrados (km²) por ano



Fonte: PRODES, do Instituto Nacional de Pesquisas Espaciais (INPE).

## INDIGENOUS LANDS AND FEDERAL CONSERVATION UNITS IN THE LEGAL AMAZON

225. According to data consolidated by PRODES/INPE for the year 2019, the Protected Areas continue to be important barriers in the protection of the forest. However, despite the illegality of deforestation in Conservation Units and Indigenous Lands – save for some legal exceptions –, **the year 2019 represented a boom in forest destruction within these areas**. In terms more directly related to the subject of this ADPF, 2019 presented the following increases in deforestation if compared to 2018:

- **83% in Indigenous Lands:**

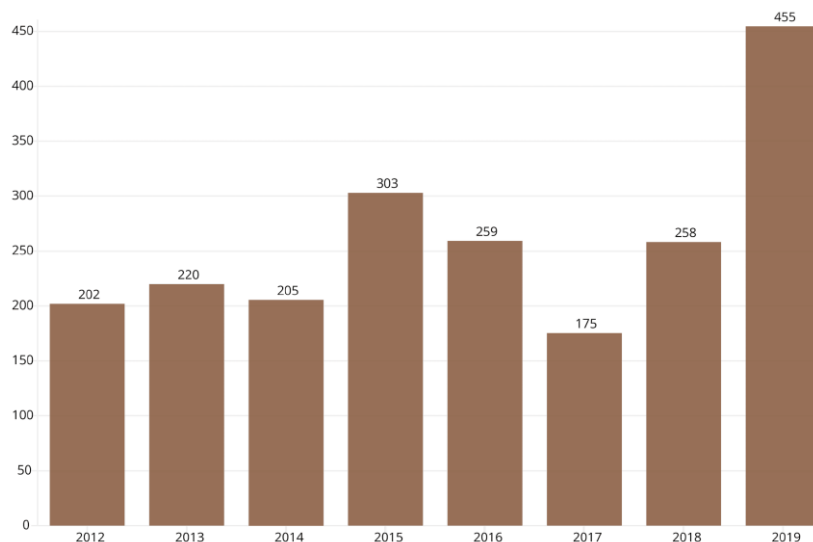
Graph 08: Deforestation in Indigenous Lands.



- **76% in Federal Conservation Units:**

### Desmatamento em Unidades de Conservação federais

Entre 2012 e 2019, em quilômetros quadrados (km²) por ano



Fonte: PRODES, do Instituto Nacional de Pesquisas Espaciais (INPE).

Graph 09: Deforestation in Federal Conservation Units.

226. *Concerning Indigenous Lands specifically*, a total of 181 of them (47.3% of the Indigenous Lands covered by the consolidated PRODES data) presented deforestation in 2019, totaling 513.75 km². Only 20 Indigenous Lands (5.2% of the Indigenous Lands covered by the consolidated PRODES data) account for 85% of the deforestation recorded in all the analyzed lands, which shows a scenario of intense pressure in a reduced number of Indigenous Lands. Much of this deforestation occurred in the Xingu River basin, where five Indigenous Lands accounted for 74% of the total deforestation seen in these areas.

227. As for the percentage of increased deforestation in the most threatened Indigenous Lands when comparing 2019 to 2018, the data provided by PRODES/INPE is **alarming**. The Ituna/Itatá Indigenous Land was the most devastated territory in 2019, presenting a **significant increase of 685% in deforestation** compared to the previous year. Among the twenty most deforested Indigenous Lands in 2019, the **Yanomami Indigenous Land stands out showing an incredible 624% increase**, followed by the Apyterewa Indigenous Land, 354% increase, the Munduruku Indigenous Land, 193% increase, the Trinchiera/Bacajá Indigenous Land, 179% increase, and the Kayapó

Indigenous Land, 175% increase compared to 2018. **The Evaré I and Portal do Encantado Indigenous Lands showed frightening increases of 6,460% and 1,940%, respectively.** The table below, which contains the most deforested Indigenous Lands in 2019 and the percentage increase in each of them if compared to 2018, leaves no doubt about the **significant increase in deforestation that occurred in these areas.** **Of the 20 most deforested Indigenous Lands, 17 had an increase in deforestation, and only 3 registered a decrease.** See:

Indigenous Land	Deforestation 2018 (km <sup>2</sup> )	Deforestation 2019 (km <sup>2</sup> )	Increase between 2018 and 2019 (%)
Ituna/Itatá Indigenous Land	15.37	120.73	<b>685%</b>
Apyterewa Indigenous Land	18.86	85.69	<b>354%</b>
Cachoeira Seca Indigenous Land	53.44	62.64	<b>17%</b>
Trench/Bacaja Indigenous Land	12.55	35.02	<b>179%</b>
Yanomami Indigenous Land	4.78	34.63	<b>624%</b>
Kayapó Indigenous Land	7.35	20.23	<b>175%</b>
Mundurucu Indigenous Land	6.22	18.24	<b>193%</b>
Karipuna Indigenous Land	13.71	10.94	-20%
Uru-Eu-Wau-Wau Indigenous Land	9.34	10.78	<b>15%</b>
Manoki Indigenous Land	2.11	4.59	<b>118%</b>

Andirá-Marau Indigenous Land	1.92	4.15	<b>116%</b>
Portals do Encantado Indigenous Land	0.20	4.08	<b>1940%</b>
Sete de Setembro Indigenous Land	3.44	3.90	<b>13%</b>
Uaçá I and II Indigenous Land	0.77	3.78	<b>391%</b>
Évare I Indigenous Land	0.05	3.28	<b>6460%</b>
Pacaás-Novas Indigenous Land	0.67	3.04	<b>354%</b>
Upper Rio Negro Indigenous Land	1.59	2.97	<b>87%</b>
Zoró Indigenous Land	37.97	2.94	-92%
Menkü Indigenous Land (re-study)	4.06	2.75	-32%
Vale do Javari Indigenous Land	0.57	2.61	<b>358%</b>

Table 02. Indigenous Lands with the largest increases in the absolute values of deforestation between 2018 (August/2017 to July/2018) and 2019 (August/2018 to July/2019).

228. In 2019, the Federal Conservation Units saw the same devastation observed in Indigenous Lands. In total, 87 Federal Conservation Units were deforested, which corresponds to 454.55km of rainforest. Federal Conservation Units for Sustainable use were the most affected, accounting for 84.5% of the total deforestation registered in the Federal Conservation Units. Furthermore, 20 Federal Conservation Units were so heavily deforested that they account for 89% of the total deforestation recorded in Federal Conservation Units.

229. The boom in deforestation in these areas in 2019 is confirmed by **the data on the Trairão National Forest (FLONA) and the Pacaas Novos National Park (PARNA), which shows a frightening increase of 2,931% and 1,396%, respectively,**

compared to 2018. Also noteworthy is Bom Futuro FLONA, with a 420% increase, followed by Aripuanã FLONA, with 262%, Alto Juruá Extractive Reserve (RESEX), with 241%, and Chico Mendes RESEX, with a 255% increase compared to 2018. **Of the 20 most deforested Federal Conservation Units in the Amazon, 19 registered an increase** and only one registered a modest reduction. See below:

Federal Conservation Unit	Deforestation 2018 (km <sup>2</sup> )	Deforestation 2019 (km <sup>2</sup> )	Increase between 2018 and 2019 (%)
Jamanxim FLONA	73.42	100.99	<b>38%</b>
Chico Mendes RESEX	21.50	76.35	<b>255%</b>
Tapajós Environmental Protection Area (APA)	39.10	65.74	<b>68%</b>
Terra do Meio Ecological Station (ESEC)	12.37	30.85	<b>149%</b>
Altamira FLONA	22.64	26.68	<b>18%</b>
Nascentes da Serra do Cachimbo Biological Reserve (REBIO)	3.85	14.44	<b>275%</b>
Itaituba II FLONA	15.06	11.68	-22%
Amanã FLONA	7.82	9.12	<b>17%</b>
Bom Futuro FLONA	1.68	8.73	<b>420%</b>
Alto Juruá RESEX	2.54	8.65	<b>241%</b>
Verde para Sempre RESEX	6.35	7.53	<b>19%</b>
Aripuanã FLONA	2.03	7.35	<b>262%</b>
Amazon FLONA	-	6.36	-
Jamanxim PARNA	2.77	6.30	<b>127%</b>
Riozinho do Anfrísio RESEX	2.93	5.01	<b>71%</b>
Saracá-Taquera FLONA	3.31	4.47	<b>35%</b>
Rio Ouro Preto RESEX	1.44	4.08	<b>183%</b>

Trairão FLONA	0.13	3.94	<b>2931%</b>
Pacaás Novos PARNA	0.26	3.89	<b>1396%</b>
Gurupi REBIO	4.02	3.43	<b>38%</b>

Table 03. Federal Conservation Units with the largest increases in the absolute values of deforestation between 2018 (August/2017 to July/2018) and 2019 (August/2018 to July/2019).

230. The data for fires in Conservation Units and Indigenous Lands for 2020 causes even greater concern. In 2019, these areas recorded **2,219.3 km<sup>2</sup>** of fires (1,902.1 in Indigenous Lands and 317.2 in Federal Conservation Units). **Between January and September 2020 alone, 2,811.4 km<sup>2</sup> were degraded by fires, surpassing the index for all months of 2019.** In Indigenous Lands, the increase in the area degraded by fires was 36% compared to the twelve months of 2019. **September 2020 presented alarming numbers of fires, registering 2,529.2 km<sup>2</sup> in fires in Indigenous Lands and Federal Conservation Units, an impressive increase of 195%** compared to September 2019.

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## VI.2. INJURED FUNDAMENTAL RIGHTS

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### VI.2.1. FUNDAMENTAL RIGHT OF PRESENT AND FUTURE GENERATIONS TO THE ECOLOGICALLY BALANCED ENVIRONMENT, LIFE, DIGNITY OF THE HUMAN PERSON, AND HEALTH

231. The fundamental precept directly, seriously, and irreversibly harmed by the public actions that are the subject of this ADPF, as described in Chapter V, is the fundamental right of the whole community<sup>126</sup>, both present and future generations, to the ecologically balanced environment.

232. This fundamental right, provided for in Article 225 of the Constitution, is the most relevant environmental rule in the entire Brazilian legal system. So much so that it is also classified as the most important principle of Socio-Environmental Law, a

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<sup>126</sup> “It is necessary to note that from said Article 225 it is inferred that the subject “all” is the one entitled to the legal good “ecologically balanced environment.” This fundamental right, therefore, belongs to the *collectivity*, it is not possible to identify and individualize, one by one, its holders, which is why “everyone who shares the same factual situation is simultaneously harmed by the injury or benefited by its termination.” *In*: YOSHIDA, Consuelo Yatsuda Moromizato. Direitos e interesses individuais homogêneos: a ‘origem comum’ e a complexidade da causa de pedir. Implicações na legitimidade ad causam ativa e no interesse processual do Ministério Público. *In*: “Tutela dos Interesses Difusos e Coletivos.” São Paulo: Juarez de Oliveira, 2006, p. 05.

finalistic command that should serve as a guide for all relations that involve the environment.

233. Despite this serious injury to this fundamental right directly affecting **current generations**, including children, adolescents, and youth<sup>127</sup>, we highlight, from the outset, its clear **intergenerational characteristic**, since the Constitution has assigned “to the Government and the community the duty to defend and preserve it for present and **future generations**.” According to the teachings of José Joaquim Gomes Canotilho, “the basic meaning of the principle is **to compel present generations to include the interests of future generations as a measure of action and consideration**.”<sup>128</sup>

234. As explained by this Federal Supreme Court in an opinion by Justice Celso de Mello:

“The Constitution brings, for the first time in our constitutional history, a chapter dedicated to the environment, where the **principle of responsibility and intergenerational solidarity is adopted, that is, the Constitution guarantees not only to the current generation but also to future generations, the right to an ecologically balanced environment (Article 225)**. (...) Therefore, the existence of an ecologically balanced environment **means not only its preservation for the current generation but also future generations**. And if the watchword today is sustainable development, this concept includes **economic growth with a parallel and more respected guarantee of the health of the population, whose rights must be observed taking into account not only current needs but also those that can be predicted and that must be prevented for future generations**.”<sup>129</sup>

235. The protection of the ecological balance is so important that such a fundamental right, of diffuse ownership, was expressly qualified as “**essential to a healthy quality of life**”, which explicits the interdependent relationship it has with **the fundamental rights to life, health, and dignity of the human person** – including the survival of human beings and other forms of life.

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<sup>127</sup> The Youth Statute, established by Law 12852/2013, also contains an exclusive chapter dedicated to the theme “From the Right to Sustainability and the Environment”, which reiterates the right to an ecologically balanced environment for the youth.

<sup>128</sup> CANOTILHO, José Joaquim Gomes. *Direito constitucional ambiental português: tentativa de compreensão de 30 anos das gerações ambientais no direito constitucional português*. In: CANOTILHO, José Joaquim Gomes; LEITE, José Rubens Morato. (Orgs.). “Direito constitucional ambiental brasileiro.” São Paulo: Saraiva, 3.<sup>a</sup> ed., 2009, p. 8.

<sup>129</sup> Federal Supreme Court. En banc. ADPF No. 101 / DF. Rapporteur: Justice Carmen Lúcia. 06/04/2012 In the same sense, among others: Federal Supreme Court. En banc. Preliminary Injunction in Direct Unconstitutionality Action - ADO - ADO No. 3540-1/DF. Rapporteur: Justice Celso de Melo. DJe 02.03.2006.

236. This Federal Supreme Court has long ruled on the **essentiality** of the fundamental right to an ecologically balanced environment and its **direct relationship with the fundamental right to life**. According to an opinion by the Chief Justice of this Federal Supreme Court, Luiz Fux:

“Ecology, in its various aspects, recognizes as its main guideline the **urgency** to face real **environmental problems**, which already **endanger life on Earth** in the paradigm of the risk community. An environmental **crisis** causes a **special drama** in the problems it raises, as they **threaten the viability of the ‘continuum of species’**.”<sup>130</sup>

237. In this sense, legal literature resonates the premise that “the recognition of the right to a healthy environment is, in fact, an **extension of the right to life**, whether considering the **physical existence** and **health** of human beings, or the **dignity of that existence** – the quality of life –, which makes it worth living.”<sup>131 132</sup> In this sense, Érika Bechara points out that “it is not possible to talk about the **survival** and **dignity of the human person** without relating them to **the preservation of environmental balance**.”<sup>133</sup>

238. Equally, the **interdependence between guaranteeing the fundamental right of everyone to an ecologically balanced environment and the realization of the fundamental right to health**, as provided for in Articles 6 and 196 of the Constitution, among others, is irrefutable. If the expression “essential to a healthy quality of life” is sufficiently explicit when establishing such a relationship, justice Gilmar Mendes leaves no room for doubt:

“We learn that the preservation of the ecologically balanced environment constitutes a **cofactor or dimension that enhances the enjoyment of the right to health and the implementation of public health policies**. **The effectiveness of one right is dependent, to some extent, on the effectiveness of the other**.”<sup>134</sup>

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<sup>130</sup> Federal Supreme Court. En banc. Appeal to the Supreme Court No. 835558/SP. Rapporteur: Justice Luiz Fux. DJe 09.02.2017, p. 2.

<sup>131</sup> MILARÉ, Édís. “Direito do Ambiente.” São Paulo: Revista dos Tribunais, 9.<sup>a</sup> ed., 2014, p. 89.

<sup>132</sup> According to Guilherme José Purvin Figueiredo, the right to an ecologically balanced environment “is therefore linked to that constitutional provision, to the head of Article 5 of the Constitution, which elects life as a fundamental human right.” *In*: FIGUEIREDO, Guilherme José Purvin. Curso de Direito Ambiental. São Paulo: Revista dos Tribunais, 4.<sup>a</sup> ed., 2011, p. 121.

<sup>133</sup> BECHARA, Érika. A proteção da fauna sob a ótica constitucional. São Paulo: Juarez de Oliveira, 2003, p. 01.

<sup>134</sup> Federal Supreme Court. En banc. ADPF No. 101/DF. Vote by Justice Gilmar Mendes. Rapporteur: Justice Carmen Lúcia. 06/04/2012

239. As for the dignity of the human person, this Federal Supreme Court understands the following:

“The most serious environmental violations recently witnessed at the international level and in Brazil **have a devastating impact on the sphere of human and fundamental rights of entire communities. And the serious environmental infractions can constitute, at the same time, serious violations of human rights**, even more so if we consider that the elementary material core of human dignity ‘is made up of the **existential minimum**, a phrase that identifies the set of goods and utilities indispensable for physical subsistence and to enjoy one’s freedom. **Below this level, even when there is survival, there is no dignity**’.”<sup>135</sup>

240. Recently, when recognizing that the “relationship of **interdependence** between the right to a healthy environment and other rights is not foreign to the jurisprudence of the Supreme Federal Court”, justice Luís Roberto Barroso exemplified the following rights affected by environmental destruction: “the **right to life** (Article 5 of the Constitution), **health** (Article 6 of the Constitution), **food security** and **drinking water** (Article 6 of the Constitution), **housing** (in the sense of habitat), **work** (Article 7 of the Constitution), the **cultural identity, the way of life, and the livelihood of Indigenous Peoples, quilombolas, and other traditional communities** (Article 23, III, Article 215, head provision and paragraph 1, and Article 216 with Article 231 of the Constitution and Article 68 of the Temporary Constitutional Provisions Act).”<sup>136</sup>

241. The jurisprudence of other Supreme Courts<sup>137</sup> and also of International Courts is in line with this understanding. According to the Inter-American Court of Human Rights:

“This Court recognized the existence of an **undeniable relationship** between the protection of the environment and the realization of other human rights”, emphasizing that “several **fundamental rights require, as a necessary precondition for their**

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<sup>135</sup> Federal Supreme Court. En banc. Appeal to the Supreme Court No. 835558/SP. Rapporteur: Justice Luiz Fux. February 09, 2017 Still in this sense: Federal Supreme Court. En banc. Direct Unconstitutionality Action - ADO No. 4,066 / DF. Rapporteur: Justice Rosa Weber. 07.03.2018

<sup>136</sup> Federal Supreme Court. Order Direct Action of Unconstitutionality by Default No. 60- ADPF No. 708. Rapporteur: Justice Luís Roberto Barroso. DJe 28.06.2020.

<sup>137</sup> In judging a case related to an ecologically balanced environment, specifically regarding the protection of the Amazon, the Supreme Court of Colombia deemed “this residual and exceptional action to uphold fundamental individual and collective guarantees, threatened due to the connection of the healthy environment with supralegal prerogatives such as life, health or human dignity.” *In*: Supreme Court of Justicia of Colombia. Radicación nº 11001-22-03-000-2018-00319-01. Acción Popular, 2018. Available at: <http://www.cortesuprema.gov.co/corte/wp-content/uploads/relatorias/tutelas/B%20MAY2018/STC4360-2018.doc> > . Accessed on: 06.10.2020.



**exercise, a minimum environmental quality, and are deeply affected by the degradation of natural resources.** <sup>138</sup>

242. In another light, also to the considerations above on the intergenerational aspects of the right to an ecologically balanced environment, **the intimate relationship between environmental preservation and the guarantee of survival and quality of life of children and adolescents is known: this population is the most vulnerable to the consequences of environmental deterioration, including the climatic emergency, both in the short and long term.** <sup>139</sup>

243. Due to their peculiar condition of development and their intrinsic vulnerability, such phenomena affect children and adolescents much more intensely than other human populations<sup>140</sup>. With environmental devastation, the fundamental rights of children and adolescents **to life, dignity, health,<sup>141</sup> food security,<sup>142</sup> and an ecologically balanced environment are threatened.** The UN Committee on the Rights of the Child has already recognized a variety of environmental issues as essential factors in ensuring the full realization of the range of fundamental rights of children by the Convention on the Rights of the Child.<sup>143</sup>

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<sup>138</sup> Inter-American Court of Human Rights Advisory Opinion OC-23/17, of 12.15.2017. Available at: <[http://www.corteidh.or.cr/docs/opiniones/seriea\\_23\\_esp.pdf](http://www.corteidh.or.cr/docs/opiniones/seriea_23_esp.pdf)>. Accessed on: 06.10.2020.

<sup>139</sup> Terra dos Homens. *Protecting Environmental Child Rights*. Available at: <[http://www.terredeshommes.org/wp-content/uploads/2013/01/tdh\\_Environmental-Child-Rights\\_2012-11-final.pdf](http://www.terredeshommes.org/wp-content/uploads/2013/01/tdh_Environmental-Child-Rights_2012-11-final.pdf)>. Access on: 25.08.2020.

<sup>140</sup> In this sense: “As people in a peculiar condition of development (...) they enjoy all the rights of adults that are applicable to their age and still have special rights resulting from the fact that: they do not have access to full knowledge of their rights; they did not reach conditions to defend their rights in the face of omissions and transgressions capable of violating them; they do not have their own means to meet their basic needs; they cannot answer for compliance with the laws and duties and obligations inherent to citizenship in the same way as the adult, because they are beings in full physical, cognitive, emotional and sociocultural development.” In: PEREIRA, Tânia da Silva. “Direito da Criança e do Adolescente: uma proposta interdisciplinar.” Rio de Janeiro: Renovar, 2008, p. 25.

<sup>141</sup> AMIN, Andréa Rodrigues. In: MACIEL, Kátia Regina Ferreira Lobo Andrade *et al.* “Curso de Direito da Criança e do Adolescente: aspectos teóricos e práticos.” São Paulo: Lumen Juris, 2010, p. 32.

<sup>142</sup> The constitutional right to food is a recent achievement: it was only in 2010, as a result of a great mobilization of civil society, that Constitutional Amendment 64 was approved, changing the wording of article 6 of the Constitution to include food as a fundamental right. Conselho Nacional de Segurança Alimentar e Nutricional. *Direito humano à alimentação adequada e soberania alimentar*. Publicado em 12.12.2014. Available at: <<http://www4.planalto.gov.br/consea/comunicacao/artigos/2014/direito-humano-a-alimentacao-adequada-e-soberania-alimentar>>. Access on: 06.10.2020.

<sup>143</sup> Center for International Environmental Law (CIEL). *The Right to a Healthy Environment in the Convention on the Rights of the Child*. 2016. Available at: <<https://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2016/CIEL.pdf>>. Accessed on: 25.08.2020.

244. In cases where there is a conflict of interest or an impossibility to provide common fundamental rights, under Article 227 of the Constitution, **the prevalence of the best interests of children and adolescents and their rights must always be realized.**

245. As will be discussed below, the effectiveness of the fundamental right to an ecologically balanced environment was the subject of explicit concern on the part of the framers of the Constitution. **The only mention made of the term “effectiveness” in the text of the Constitution is precisely in its Chapter VI, related to the protection of the environment.** Article 225, paragraph 1, provides for a series of **tasks for the Government** “to ensure the effectiveness of that right.”<sup>144</sup>

246. The relevance of the environmental legal interest is certain, and its qualification conferred by the framers of the Constitution – *it must be ecologically balanced – must be understood*.<sup>145</sup> As Paulo Affonso Leme Machado asserts, “the special characteristic of the principle is that *ecological imbalance is not indifferent to the law*.”<sup>146</sup>

247. As for its characteristics<sup>147</sup>, the legal interest “ecologically balanced environment” is **indivisible, inalienable, and unwaivable**, since, because it belongs to everyone and no one in particular, its appropriation or change of ownership is not allowed – it belongs to the community; **nonpecuniary**, as it does not have an objectively measurable equity content; **essentiality for all forms of life**, considering that the ecologically balanced environment is essential not only for the maintenance or promotion of the quality of life but for the very survival of living beings; and **difficulty or impossibility of repair**, rendering necessary the application of the principles of **precaution and prevention**, so that environmental injuries, which irreparable by nature, be avoided as much as possible – this is, as stated by this Federal Supreme Court, one of

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<sup>144</sup> “The fundamental right to the environment has been guaranteed the direct and immediate applicability attributed by the Constitution of 1988 (Article 5, paragraph 1) to the rules that define fundamental rights and guarantees. “ *In*: SARLET, Ingo Wolfgang; FENSTERSEIFER, Tiago. *Direito Constitucional Ambiental: Constituição, Direitos Fundamentais e Proteção do Ambiente*. São Paulo: Revista dos Tribunais, 3.<sup>a</sup> ed., 2013, p. 326.

<sup>145</sup> Among others : RODRIGUES, Marcelo Abelha. *Elementos de Direito Ambiental: parte geral*. 2.<sup>a</sup> ed. São Paulo: Revista dos Tribunais, 2005, p. 71

<sup>146</sup> MACHADO, Paulo Affonso Leme. *Direito Ambiental Brasileiro*. 20.<sup>a</sup> ed. São Paulo: Malheiros, 2012, p. 67-68.

<sup>147</sup> RODRIGUES, Marcelo Abelha. Referenced work Cit., P. 73.

the main characteristics of Socio-Environmental Law: orientation for **anticipating the occurrence of damage**.<sup>148</sup>

248. Equally relevant to maintaining the essential core of the right to an ecologically balanced environment is compliance with the principle of the **prohibition of deficient protection**, which is widely applicable in the case of this ADPF due to the actions described in Chapter V herein. According to the opinion of this Federal Supreme Court, written by Justice Alexandre de Moraes:

“The exemption from licensing of activities identified according to their economic sector, regardless of their potential for degradation, and the consequent exemption from the previous environmental impact assessment (Article 225, paragraph 1, IV, of the Constitution) **mean deficient protection of the fundamental right to an ecologically balanced environment (Article 225 of the Constitution), while it is the Government’s duty to exercise the power of environmental police to prevent and mitigate potential damage to the environmental balance.** 5. Direct Action of Unconstitutionality is granted.”<sup>149</sup>

249. In fact, the qualification of the ecological balance as an object of constitutional protection is relevant since, to meet this aim, **due protection must be given to the elements that compose it**, because “*they interact in complex processes and reactions culminating in the ecological balance.*”<sup>150151</sup> This is what happens in the example of the **right to water**, which, although not expressly stated in the Constitution, derives directly from Article 225 of the Constitution, having been recognized by the United Nations General Assembly as *essential* for the realization of all rights humans.

250. Brazilian jurists of national and international reference in the subject of the Law on Climate Change, as the judge-jurist Gabriel Wedy, has recognized, under Article 225 of the Constitution, the existence of the “**fundamental right to the integrity of the climate system or a fundamental right to a stable and secure climate.**”<sup>152</sup>

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<sup>148</sup> Idem, p. 203-204.

<sup>149</sup> Federal Supreme Court. En banc. Direct Action of Unconstitutionality – ADO No. 5312. Rapporteur: Justice Alexandre de Moraes. DJe 11.02.2019.

<sup>150</sup> RODRIGUES, Marcelo Abelha. Referenced work Cit., P. 76-77.

<sup>151</sup> This is also what Patryck de Araújo Ayala says, when he asserts that “the subjective protection of the environment has its construction decisively organized around an extension of the objective that must be achieved by this protection, reproducing the need to guarantee a high quality of life and quality of *all its elements* formative and constitutive.” *In*: AYALA, Patryck de Araújo. Devido processo ambiental e o direito fundamental ao meio ambiente. Rio de Janeiro: Lumen Juris, 2011, p. 154.

<sup>152</sup> WEDY, Gabriel; CAMINE Maiara; RHODEN Eliana; ARNHOLD Tatiana. “Direito fundamental ao clima estável e a audiência do fundo ambiental”. Available at: <<https://www.conjur.com.br/2020-out-10/ambiente-juridico-direito-fundamental-clima-estavel-audiencia-fundo-clima>>. Access on 29/10/2020.

251. As described above, **guaranteeing the ecologically balanced environment, and protecting the Amazon Forest – which has been given the status of national heritage** by paragraph 4 of Article 225 of the Constitution – are inseparable. The Supreme Federal Court has already ruled that “**the Constitution gave special treatment to the Amazon Forest** by integrating it into the national heritage, adding that its use will be done, according to the law, **under conditions that ensure the preservation of the environment, including the use of natural resources.**”<sup>153</sup>

252. The actions and omissions perpetrated in 2019 and 2020 against the protection of the Amazon, described in Chapter V, empty the essential core of the right to an ecologically balanced environment, due to its absolutely deficient protection, causing significant and irremediable injury to this fundamental precept qualified by the Constitution as essential to life, health, dignity, as well as to the realization of the rights of Indigenous Peoples, traditional communities, children, and adolescents. **The urgent decision to immediately protect the ecological balance cannot wait any longer.**

#### **VI.2.2. FUNDAMENTAL RIGHT OF INDIGENOUS PEOPLES TO THEIR TRADITIONAL LANDS**

253. According to Article 231 of the Constitution, the original fundamental right to Indigenous Lands constitutes the *central element* of the constitutional protection of Indigenous Peoples in Brazil. This Article sets forth, in its *head provision*, that “**Indigenous Peoples (...) have original rights to the lands** they traditionally occupy, and the **Federal Government is responsible for** demarcating, **protecting, and ensuring respect for all their assets.**” Despite the relevance of the duty to demarcate Indigenous Lands, the **constitutional responsibility of the Federal Government to adopt measures capable of ensuring their protection and the respect for the integrity of their assets stands out for the purposes of this ADPF.**

254. To reinforce the need to protect these traditional territories, given their **essentiality for the physical and cultural survival of Indigenous Peoples**, paragraph 2 of the same Article 231 provides that “the lands traditionally occupied by Indigenous

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<sup>153</sup> Federal Supreme Court. En banc. Direct Action of Unconstitutionality – ADO No. 1.516-8. Rapporteur: Justice Sydney Sanches. DJe 13.08.1999.

Peoples **are intended for their permanent possession**, and they have the right to **exclusively enjoy** the riches of the soil, the rivers, and the lakes existing therein.” Paragraph 4 of the same Article tried to safeguard Indigenous Lands to the maximum, expressly qualifying them as “**inalienable and unwaivable**, and the rights over them as **imprescriptible**.” Finally, paragraph 5 provides for the **impossibility of removing** Indigenous Peoples from their lands, except in extremely exceptional and temporary situations, after which the right to their immediate return is guaranteed.

255. Certainly, the reason for such emphatic constitutional protection is the fact that the **existence/survival of Indigenous Peoples depends directly on the guarantee of permanence in their traditional lands** (Article 231, paragraph 1). This is, of course, the **minimum standard of guarantee**, protection, and defense of **human dignity** and the **very survival of Indigenous Peoples, both physical and cultural**.

256. Reading the Report of the *National Constitutional Convention* leaves no room for doubt:

“**Wide protection is given to the rights of Indigenous Populations** in recognition of the **pluri-ethnic character of the Brazilian population** and in the treatment provided for the two main problems that affect such populations: land and legal protection of Indigenous Peoples. **As for the land, recognizing that for the Indigenous Peoples it means life itself, the Constitution provides that they have the right to its permanent possession**, and efforts were made to guarantee its definitive demarcation (...).”<sup>154</sup>

257. The recognition of these original fundamental rights of Indigenous Peoples has, on several occasions, been confirmed by this Federal Supreme Court. As stated by Justice Celso de Mello:

“The constitutional text clearly provides that **the land issue represents the fundamental aspect of the constitutional rights and prerogatives guaranteed to the Indigenous Peoples**, as they, without the possibility of access to indigenous lands, are exposed to **very serious risk of cultural disintegration, loss of their ethnic identity, dissolution of their historical, social, and anthropological ties, and erosion of their own perception and conscience as a people** and as a nation that reveres the mystical places of their spiritual worship and that celebrate in them the unfathomable mysteries of the universe in which they live.”<sup>155</sup>

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<sup>154</sup> Relatório da Assembleia Nacional Constituinte VII – Comissão da Ordem Social – VII Subcomissão de negros, populações indígenas, pessoas deficientes e minorias – Relatório – volume 196.

<sup>155</sup> Federal Supreme Court. 1st Chamber. Appeal to the Supreme Court No. 183188/MS. Rapporteur: Justice Celso de Mello. DJe February 14, 1997. (we highlight)

258. This is, in essence, a **fundamental right directly linked to the main constitutional guarantees of the rights to life and dignity under Articles 5, head provision, and 1, III, of the Constitution, respectively, among others.**<sup>156</sup> Hence the importance not only of recognizing the territorial rights of Indigenous Peoples in practice, with formal demarcation – an issue that is not the subject of this ADPF –, but mainly of **guaranteeing their effective protection**, an objective determined by the Constitution, which is directly linked to rights to permanent possession and exclusive use of Indigenous Lands.

259. The boom in deforestation and burns/fires within Indigenous Lands in the Amazon in 2019 and 2020, an activity essentially illegal and perpetrated by invaders, also to threats such as illegal mining, illegal logging, and land grabbing, cause irreversible damage to the fundamental precept set forth in Article 231 of the Constitution. Therefore, the need to cease the actions and omissions listed in Chapter V herein according to the Prayer for Relief below, is imperative.

### **VI.2.3. FUNDAMENTAL RIGHTS OF TRADITIONAL PEOPLES AND COMMUNITIES**

260. With more emphasis since the Constitution of 1988, Brazil recognizes and values the cultural diversity of the Brazilian population as a founding and guiding principle of the country's democratic institutions. In this sense, regarding the subject of this ADPF, Articles 215 and 216 of the Constitution provide as follows:

“Article 215. **“The Federal Government shall ensure to everyone the full exercise of cultural rights** and access to sources of national culture and shall **support and foster the appreciation and diffusion of cultural manifestations.**”

Paragraph 1 **The Federal Government shall protect the expressions of popular, indigenous, and Afro-Brazilian cultures, and those of other groups participating in the national civilization process.**

(...)

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<sup>156</sup> This is what José Afonso da Silva asserts, according to which “the question of the land had become the central point of the constitutional rights of the indigenous people, because, for them, it has a value of physical and cultural survival. Their rights will not be protected if they are not guaranteed permanent ownership and the wealth of the lands traditionally occupied by them, as the dispute over these lands and their wealth, as Manuela Carneiro da Cunha recalls, forms the core of the indigenous issue today in Brazil. For this very reason, this was one of the most difficult and controversial topics in the drafting of the 1988 Constitution, which sought to surround the Indigenous people fundamental rights with all their guarantees.” *In: SILVA, José Afonso da. “Curso de Direito Constitucional Positivo.” São Paulo: Malheiros, 32.<sup>a</sup> ed., 2009, p. 856.*

Paragraph 3 The law will establish the National Culture Plan in the form of a multiyear plan aimed at the cultural development of the Country and the integration of government actions to attain the following:

I – defense and appreciation of the value of the Brazilian cultural heritage;

II – production, promotion, and dissemination of cultural interests;

(...)

V – appreciation of the value of ethnic and regional diversity

Article 216. **The Brazilian cultural heritage includes interests of a tangible and intangible nature**, taken individually or together, which bear reference to the identity, activity, and memory of the **different groups that form the Brazilian population, which include:**

**I – forms of expression;**

**II – ways of creating, making, and living;**

(...)

**IV - works, objects, documents, buildings, and other spaces intended for artistic and cultural expressions;**

261. Article 68 of the Temporary Constitutional Provisions Act also states: “Article 68. To the remnants of quilombo communities occupying their land, definitive ownership is recognized, and the Federal Government must issue the respective titles.”

262. The following are the considerations of Justice Edson Fachin in a decision confirmed by this Federal Supreme Court: **“The Constitution gives special protection to the territories occupied by communities with traditional ways of creating, making, and living, and by the quilombola remnants, respectively in Articles 216 of the Constitution and 68 of the Temporary Constitutional Provisions Act.”**<sup>157</sup>

263. Since the Constitution came into force, Brazil has been developing its statutory framework – including the enactment of international rules – for the implementation of the fundamental rights of Indigenous Peoples and traditional communities, such as the right to land, self-determination, and effective participation in the decision-making processes related to their rights and interests.

264. To start with, the International Labor Organization (ILO) Convention No. 169, enacted into the Brazilian legal system by Decree No. 5051/2004, protects Indigenous Peoples and other traditional peoples and communities.<sup>158</sup> On the subject,

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<sup>157</sup> Federal Supreme Court. En banc. Direct Unconstitutionality Action - ADO No. 4269/DF. Rapporteur: Justice Edson Fachin. DJe 20.10.2017, p. 19.

<sup>158</sup> In this sense, according to article 1, item 1, a, of the Convention, tribal peoples are those “whose social, cultural and economic conditions distinguish them from other sections of the national community, and

Liana Amin Lima da Silva, Bruna Balbi Gonçalves, and Carlos Frederico Marés de Souza Filho point out that: “Considering the definition of ‘tribal peoples’ provided for in the Convention, **all traditional non-Indigenous Peoples and communities in Brazil can be identified as ‘tribal peoples’ based on the right to ethnic and cultural diversity under Articles 215 and 216 of the Constitution.**”<sup>159</sup>

265. Among the rights of traditional communities recognized by the Convention, territorial rights are highlighted, given the close interdependence of the fundamental rights of these communities with their traditional lands. The matter is regulated by Articles 13 and 14 of the Convention, which were interpreted by this Federal Supreme Court as follows:

“Under these provisions, **the central issue regarding the characterization of traditional communities and their quilombola species is land, their special and traditional connection with the land, and the possession of land** to develop their specific way of life, which is different from the surrounding population. (...) **This relationship of identity between the community and its land receives special attention in the Constitution and the international commitments assumed by Brazil.**”<sup>160</sup>

266. Furthermore, similarly to Indigenous Lands, the essentiality of protecting the lands of other traditional peoples and communities – which protect **them** and are protected by them – is **in the interest of the entire community**, since they are essential for guaranteeing the fundamental rights to the ecologically balanced environment, life, health, and dignity of the human person.

267. The protection of cultural, tangible, and intangible heritage to safeguard the rights and interests of all humanity, among other purposes, is the subject of several international rules in force in Brazil, notably:

(i) The Convention Concerning the Protection of the World Cultural and Natural Heritage of 1972, enacted in Brazil by Decree No. 80978/1977, which establishes that **“of the cultural or natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of mankind as a whole”** (preamble);

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whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations.”

<sup>159</sup> MAGALHÃES, Sônia B.; CUNHA, Manuela Carneiro da (coord.). A Expulsão de Ribeirinhos em Belo Monte: Relatório da SBPC. SBPC: São Paulo, 2017. Available at: <<http://portal.sbpcnet.org.br/livro/belomonte.pdf>>. Access on: 06.10.2020.

<sup>160</sup> Federal Supreme Court. En banc. Direct Unconstitutionality Action - ADO No. 4269/DF. Rapporteur: Justice Edson Fachin. DJe 20.10.2017, p. 19.



- (ii) The Rio Declaration on Environment and Development of 1992, which provides that: “Indigenous people and their communities and other local communities have a **vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support** their identity, culture, and interests and enable their effective participation in the achievement of sustainable development.” (Article 22);
- (iii) The Convention for the Safeguarding of the Intangible Cultural Heritage, enacted by Decree No. 5753/2006, which provides that “the **deep-seated interdependence between the intangible cultural heritage and the tangible cultural and natural heritage**” (preamble); and
- (iv) The Convention on the Protection and Promotion of the Diversity of Cultural Expressions, enacted by Decree No. 6177/2007, which provides that: “The protection, promotion, and maintenance of cultural diversity are **an essential requirement for sustainable development for the benefit of present and future generations.**” (Article 2, ‘6’).

268. Concerning traditional communities in Conservation Units, such as extractive communities, Law No. 9985/2000, which regulates the Constitution, provides that one of the purposes of the National System of Conservation Units (SNUC) is “**to protect the natural resources necessary for the subsistence of traditional populations, respecting and appreciating the value of their knowledge and culture and promoting them socially and economically**” (Article 4, item XIII). Despite this purpose applying to all categories of Conservation Units, as it affects the entire SNUC, the mentioned Law No. 9985/2000 regulates certain categories of Conservation Units with a special focus on the protection of the territorial rights of traditional communities, among which we highlight: the **Sustainable Development Reserve**, which aims to “preserve nature and, at the same time, ensure the conditions and means necessary for reproduction and improvement of the ways and quality of life of the traditional populations and their exploitation of the natural resources, as well as for appreciating the value, conserving, and perfecting knowledge and techniques for managing the environment developed by these populations” (Article 20, paragraph 1); and the **Extractive Reserve**, whose primary purpose is “to protect the livelihoods and culture of these populations and ensure the sustainable use of the unit’s natural resources” (Article 18). The relevance of RESEX is significant, as pointed out by legal literature:

“The various uses of resources, aiming at their longevity and quality, registered in the RESEX, corroborate the sustainable model, that is, **the populations remain in the Conservation Unit, undertake a diversified production, and contribute to the balance and conservation of natural resources in their territory.**”<sup>161</sup>

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<sup>161</sup> TEIXEIRA, T. H.; et al. A diversidade produtiva em Reservas Extrativistas na Amazônia: entre a invisibilidade e a multifuncionalidade. *Desenvolvimento e Meio Ambiente*, v. 48, nov. 2018, p. 181. Available at: <<https://revistas.ufpr.br/made/article/view/58805/36961>>. Access on: 27.10.2020.

269. Indeed, also to the Constitution and the aforementioned international rules enacted by Brazil, the protection of traditional communities in Protected Areas, such as Federal Conservation Units, finds shelter in several statutes and regulations, with emphasis on:

- (i) The National Protected Areas Plan (PNAP), established by Decree No. 5758/2006, which establishes, in detail, the guiding principles, purposes, and strategies aimed at protecting the ecologically balanced environment and the traditional peoples and communities in those territories;
- (ii) The National Policy for the Sustainable Development of Traditional Peoples and Communities (PNPCT)<sup>162</sup>, established by Decree No. 6040/2007, which regulates the Constitution and governs the application of the fundamental rights provided for in Articles 215, 216, and 231 of the Constitution and Article 68 of the Temporary Constitutional Provisions Act.
- (iii) The regulation of the protection of Extractive Reserves, established by Decree No. 98897/1990, in the modality “territorial spaces destined to self-sustainable exploration and conservation of renewable natural resources, by extractive population” (Article 1), “considered to be of ecological and social interest” (Article 2, sole paragraph).

270. As described in Chapter V herein, the environmental devastation promoted in 2019 and 2020 in the Amazon, whose origin goes back to the abandonment of the PPCDAm and the absence of a public policy to combat deforestation, causes serious and irreversible damage to the fundamental precepts provided for in Articles 215 and 216 of the Constitution and in Article 68 of the Temporary Constitutional Provisions Act, which safeguard the fundamental rights of traditional peoples and communities.

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### **VI.3. DELIBERATED OMISSION AND ACTION AGAINST THE IMPLEMENTATION OF CONSTITUTIONAL GOVERNMENT OBLIGATIONS**

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#### **VI.3.1. GENERAL CONSTITUTIONAL GOVERNMENT OBLIGATIONS ON THE PROTECTION OF THE AMAZON FOREST**

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<sup>162</sup> To get an idea of how diverse traditional peoples and communities are in Brazil, “among the groups that make up the National Council of Traditional Peoples and Communities (CNPCT), there are indigenous peoples, quilombola communities, and *terreiro* communities/peoples, and communities/people of African origin, gypsy peoples, artisanal fishermen, extractivists, coastal and marine extractivists, *caíçaras*, *faxinalenses*, healers, islanders, raiders, *gerázeiros*, *caatingueiros*, *vazantes*, *verideiros*, ever-living flower pickers, *pantaneiros*, *morroquianos*, Pomeranian people, *mangaba*, babassu coconut breakers, Araguaia retreaters, communities of funds and pasture closures, riverside dwellers, *cipozeiros*, *andirobeiros*, *caboclos*.”

271. The calamity in which we find the public policy aimed at combating deforestation in the Amazon and the climatic emergency – explained in Chapter V herein – , triggers a situation of unacceptable deficient protection of the ecologically balanced environment, life, health, dignity of the human person, fundamental rights of Indigenous Peoples and traditional peoples and communities and children and adolescents. This is a result of repeated omissions and actions contrary to the fundamental precepts qualified by the Constitution as government obligations.

272. When analyzing such obligations, we should keep in mind that, more than ensuring the right to an ecologically balanced environment – which is considered a diffuse legal interest essential to the quality of life of present and future generations-, **the Constitution provided for an express and special imposition for its effectiveness**, to be achieved by the **fulfillment of constitutional government obligations**. After all, **if “a good part of Brazilian environmental laws can only be compulsorily enforced”**<sup>163</sup>, complying with socio-environmental duties to guarantee the fulfilment of Article 225 is a matter of standing relevance, essential for compliance with the constitutional mandates.

273. In line with the understanding of this Constitutional Court, the fundamental right of community – in its present and future generations – to an ecologically balanced environment is included in the list of solidarity rights<sup>164</sup>, whose essentiality assumes they are fundamental rights-duties, since **its implementation depends directly on the Government adopting essential measures resulting from the Constitution and sub-constitutional legislation.**<sup>165</sup>

274. As examples of duties violated by the Federal government regarding the protection of an ecologically balanced environment, the general attributions established in Article 23 of the Constitution can be initially mentioned, which command the Federal entities: I – to watch over the Constitution, **the laws and democratic institutions, and preserve public property; III – protect documents, works, and other assets of historical, artistic, and cultural value** monuments, **notable natural**

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<sup>163</sup> HARTMANN, Analúcia. “Políticas públicas ambientais: Ministério Público.” In: D’ISEP, Clarissa Ferreira Macedo; NERY JÚNIOR, Nelson; MEDAUAR, Odete. (Orgs.). *Políticas públicas ambientais: estudos em homenagem ao professor Michel Priour*. São Paulo: Revista dos Tribunais, 2009, p. 36.

<sup>164</sup> In this sense: Federal Supreme Court. Precautionary Measure in Unconstitutional Direct Action n. ° 3.540-1/DF. Relator: Ministro Celso de Melo. DJe 03.02.2006.

<sup>165</sup> SARLET, Ingo Wolfgang; FENSTERSEIFER, Tiago. Ob. cit., p. 234.

**landscapes**, and archaeological sites; VI – **protect the environment** and fight pollution in any of its forms; VII – **preserve forests, fauna, and flora**.

275. As noted, **preserving forests, fauna, and flora** was expressly mentioned under the list of duties of Article 23, given its obvious direct relationship with the guarantee of an ecologically balanced environment. Furthermore, the defense of the environment was promoted to a guiding principle of the economic order under Article 170, VI, of the Constitution.

276. Also, regarding the environment, the *head* of Article 225 imposes “**the duty to defend and preserve the environment for present and future generations to the Government and the community**. “It is a true “**explicit, generic, substantive, and positive obligation** to defend and preserve the environment (...). Also, the constitutional text forged a generic, substantive, and negative, but implicit obligation **not to degrade the environment**, which is *also set forth in the head* of article 225.”<sup>166</sup>

277. Paragraph 1 of Article 225 of the Constitution is even more emphatic as to the need to guarantee concreteness to the diffuse right under consideration, setting forth a series of **tasks addressed explicitly to the Government**, aimed precisely at, under the terms of the provision, “**ensuring the effectiveness of such right**.” According to Justice Gilmar Mendes, of the Federal Supreme Court,

“**The Constitution deals with special attention the issue of guaranteeing environmental preservation and public health**. As you can see, in the *head* of Article 225 and the items of its sole paragraph, the citizens’ right to an ecologically balanced environment is affirmed for a healthy quality of life, as well as **the Government’s duty to carry out objective means to achieve this end**”.<sup>167</sup>

278. In this sense, Antonio Herman Benjamin emphasizes that the framer of the Constitution “**expresses himself through decreeing direct obligations, which are, so to speak, center stage, from which law enforcers and beneficiaries’ powers are granted**.”<sup>168</sup> And the author continues: “The intention of the framers of the Constitution

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<sup>166</sup> BENJAMIN, Antônio Herman. “Constitucionalização do ambiente e ecologização da constituição brasileira.” In: CANOTILHO, José Joaquim Gomes; LEITE, José Rubens Morato. (Orgs.). *Direito constitucional ambiental brasileiro*. 3.<sup>a</sup> ed. São Paulo: Saraiva, 2009, p. 114.

<sup>167</sup> Federal Supreme Court. En banc. ADPF No. 101/DF. Vote by Justice Gilmar Mendes. Rapporteur: Justice Carmen Lúcia. 06/04/2012

<sup>168</sup> BENJAMIN, Antônio Herman. Referenced work Cit., P. 112.

here was to **remove any doubts about the cogent nature of the determinations addressed to the entire Nation.**<sup>169</sup>

279. Out of the seven constitutional requirements<sup>170</sup> on the Government, set forth by paragraph 1 of Article 225, **four were and continue to be directly violated in 2019 and 2020, under the terms of Chapter V of this ADPF.** *The first*, set forth in item I, stipulates the Government's duty to **"preserve and restore essential ecological processes and provide ecological management of species and ecosystems"**, a provision that applies to government actions to protect the Amazon, as an essential ecological process, including concerning Federal Conservation Units and Indigenous Lands.<sup>171</sup>

280. As for the *second* constitutional requirement, Article 225, paragraph 1, item II sets forth the **duty to "preserve the diversity and integrity of the country's genetic heritage"**, denoting the imperative need to **protect Brazilian biodiversity**, the richest one in the world, highlighting the Amazon Forest.

281. These two obligations are directly related to the *third*<sup>172</sup> requirement, set forth in item III, according to which the Government "must define, in all units of the Federation, **territorial spaces and their components which are to receive special protection**, any alterations and suppressions being allowed only by means of a law, and

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<sup>169</sup> Ibid., P. 114.

<sup>170</sup> It should be noted, that "the role of the State's environmental protection duties outlined by the paragraph 1 of Article 225 is non-exhaustive, being open to other duties necessary for a comprehensive and integral protection of the environment, especially due to the permanent emergence of new risks and threats to nature, caused by the advance of technique, as is the case today, for example, of the global warming." *In*: SARLET, Ingo Wolfgang; FENSTERSEIFER, Tiago. Referenced work Cit., P. 282.

<sup>171</sup> Helene Sivini Ferreira's lesson evidences the relationship of the aforementioned fundamental obligation with the protection of the Amazon: "when referring to essential ecological processes, the framer of the Constitution wanted to guarantee the protection of vital processes that make possible the interrelationships between living beings and the environment. (...). In this perspective, therefore, it is the Government's obligation to preserve and restore the essential conditions to the existence, survival, and development of living beings." Still on the provision herein, the author stresses that, "with regard to the ecological management of species and ecosystems, the Constitution granted the Government the planned management of biodiversity, that is, the variability of living organisms from all origins, which comprises different plants, different animals, and microorganisms, the genes they contain, as well as the ecosystems of which they are part of" FERREIRA, Helene Sivini. "Política Ambiental Constitucional." *In*: CANOTILHO, José Joaquim Gomes; LEITE, José Rubens Morato. (Orgs). *Direito Constitucional Ambiental Brasileiro*. 3.<sup>a</sup> ed. São Paulo: Saraiva, 2009, p. 283-284.

<sup>172</sup> "In its ecological sense, it can be said that the expression *territorial spaces and their components* refers to the concept of ecosystem, here understood as an integral part of a broader concept, that of biodiversity. It is clear, then, that the provision herein has a close relationship with the environmental duties previously analyzed. " *In*: LEITE, José Rubens Morato (coord.). Ibid., p. 62.

**any use which may harm the integrity of the attributes which justify their protection being forbidden.”** This provision constitutes a true **general clause for the protection of Protected Areas**, the mere creation of conservation units “on paper” is not enough. They require effective protection. After all, according to the Superior Court of Justice:

“The creation of Conservation Units is not an end in itself. It is linked to clear constitutional and legal objectives for protecting Nature. (...) In truth, there will be nothing but a system of protected areas **on paper or a façade, a no-man land, where the omission of the authorities is understood by possible perpetrators as an implicit authorization for deforestation, predatory exploitation, and illegal occupation.**”<sup>173</sup>

282. Finally, the *fourth imposition* set forth in Article 225, paragraph 1, item VII, establishes the Government’s duty to **“protect the fauna and the flora, with prohibition, in the manner prescribed by law, of all practices which represent a risk to their ecological function, cause the extinction of species** or subject animals to cruelty.”<sup>174</sup> Again, Brazilian flora and fauna protection – particularly those in the Amazon Forest – constitutes, in the view of the framers of the constitution, **an essential measure to ensure the collective right to an ecologically balanced environment**. It should be noted that when it comes to the **Amazon, the preservation of Brazilian flora gains even more relevance, considering it is a national heritage** under paragraph 4 of Article 225 of the Constitution, which determines whether **its use is carried out “under conditions which ensure the preservation of the environment**, therein included the use of natural resources.”

283. Certainly, deforestation in the Amazon is the main focus of concern in environmental matters for both Brazilian and the global community, having harmful consequences for the ecological balance, biodiversity, climate balance, life, dignity, health, and the well-being of the population, especially of indigenous and traditional peoples, children and adolescents. Hence, as the best scholars set out:

“When attention is focused **on environmental degradation in general terms** – including and especially concerning ‘new’ ecological problems, such as **global**

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<sup>173</sup> Appeal to the Superior Court of Justice. 2nd Panel. Appeal to the Superior Court of Justice No. 1071741/SP (Case No. 2008 / 0146043-5). Rapporteur: Justice Herman Benjamin. DJe 16.12.2010.

<sup>174</sup> In effect, “the Constitution, using the collective “flora” aims at the broad protection of these natural elements. In addition, the Constitution dealt with certain forests and vegetation in a different way, given their condition as members of ecosystems with a very rich and rare biodiversity. This is the case of the Amazon Forest and the Atlantic Forest, which were built on national heritage (...). In addition, forests and vegetation forms that are part of territorially protected spaces created by law are under special regime. “*In: MILARÉ, Édis. “Direito do Ambiente.” Referenced work cit., p. 551.*

**warming** –, notably given the social and environmental risks related to it (whether they are in progress or not), the **relevance of recognizing a series of state duties to be adopted to face their causes** is verified. If the **Government does not adopt such protection measures (...)** to ensure the efficacy and effectiveness of the fundamental right herein, it will **result (...) in unconstitutional practice and judicial control**, both under an abstract and diffuse perspective.”<sup>175</sup>

284. By regulating the aforementioned constitutional obligations attributed to the Government, Article 2 of Law No. 6938/1981 sets forth as the main objectives of the National Environment Policy, among others, **“the preservation, improvement, and recovery of live-conducive environmental quality, aiming to** ensure in the country, conditions for the socio-economic development, the interests of national security, and the **protection of the dignity of human life**, taking into account the following principles: I – **governmental action in maintaining ecological balance**, considering the environment as a public asset to be **necessarily secured and protected**, aiming collective use; II – **rationalization of the use of soil**, subsoil, water, and air. “ Still, Article 4 defined that the Brazilian Environment Policy will aim, among other aspects, **“the preservation and restoration of environmental resources** aiming their rational use and **permanent availability**, contributing to the life-conducive maintenance of the **ecological balance**.”<sup>176</sup>

285. As noted, the Constitution was especially concerned with the effectiveness of the fundamental right of all individuals, including present and future generations, to an ecologically balanced environment, and, therefore, linked the Government to adopt positive measures, embodied in expressed constitutional obligations deemed essential to such desire. Actions and omissions described in Chapter V denote unmistakable state action contrary to the fulfillment of the rights-duties of this ADPF, resulting in the emptying and irreparable damage to the essential nucleus of the rights to the environment, life, dignity, health, and other guarantees of Indigenous Peoples, traditional communities, children, and adolescents.

### VI.3.2. PRECAUTION AND PREVENTION OBLIGATIONS

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<sup>175</sup> SARLET, Ingo Wolfgang; FENSTERSEIFER, Tiago. Referenced work Cit., P. 283.

<sup>176</sup> Regarding said provisions, Justice Gilmar Mendes said: “Law No. 6938/81 sets forth, as a principle of the National Environment Policy, government action in maintaining ecological balance, considering the environment as a public asset to be necessarily guaranteed and protected, in view of collective use (Article 2, I). The purpose of such policy is also to seek economic and social development compatibility with the preservation of the quality of the environment and ecological balance (Article 4 (I). *In*: Federal Supreme Court. En banc. ADPF No. 101 / DF. Vote by Justice Gilmar Mendes. Rapporteur: Justice Carmen Lúcia. 06/04/2012

286. In the case herein, in which the effective fight against deforestation and climate emergency in the Amazon is intended, actions and omissions indicated in this ADPF denote a clear breach of the prevention and precaution constitutional obligations.

287. In sum, the prevention principle can be found in Article 225 of the Constitution, as well as in Article 2, items I, IV, and IX, of the Brazilian Environmental Policy Law, Law No. 6938/1981, among others. Alexandra Aragão teaches that “the prevention principle then implies the adoption of **measures before the occurrence of concrete damage**, the causes of which are well known, **to avoid the materialization of these damages** or, at least, to significantly lessen their effects.”<sup>177</sup> The precautionary principle is based on Article 225 of the Constitution, on the aforementioned Principle 15 of the Rio Declaration on Environment and Development of 1992<sup>178</sup>, on Article 3 of the United Nations Framework Convention on Climate Change<sup>179</sup>, and various provisions of sub-constitutional legislation, such as those in Law No. 6938/1981. Its content goes further, as, according to **its orientation, the lack or insufficiency of scientific knowledge about the possibility of occurrence of environmental degradation will not be an obstacle for adopting precautionary measures designed to eliminate or minimize the occurrence of damage.**

288. Understanding that these principles are distinct and independent, Justice Celso de Mello, states “they are the ‘**essence of environmental law**’, always with the purpose of **avoiding, neutralizing, or minimizing** potentially risky situations to life, quality of life, and the environment.”<sup>180</sup> Also according to Justice Celso de Mello, “the

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<sup>177</sup> CANOTILHO, José Joaquim Gomes; and LEITE, José Rubens Morato (orgs.). Referenced work Cit., P. 44.

<sup>178</sup> “Principle 15. In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”

<sup>179</sup> “Art. 3 The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost.”

<sup>180</sup> Federal Supreme Court. En banc. Direct Unconstitutionality Action - ADO No. 4066/DF. Vote by Justice Celso de Mello. Rapporteur: Justice Rosa Weber. 07.03.2018



environmental principles of prevention and precaution qualify as **values of constitutional** importance.”<sup>181</sup>

289. Its relevance finds place in the conception that environmental damage is difficult or impossible to repair.<sup>182</sup> When construing a case involving Principle 15<sup>183</sup> of the Rio Declaration on Environment and Development, he stated that **“when it comes to the environment, reparation is not always possible or viable.”**<sup>184</sup> As Marcelo Abelha Rodrigues well explains:

“When environmental damage has occurred, **its reconstitution is practically impossible. The same ecosystem can never be revived.** An extinct species is an irreparable damage. **A deforested forest causes irreversible damage, due to the impossibility of reconstituting the fauna and flora and all the environmental components in a deep and incessant process of balance,** as it was before. **Anyway, with the environment, it is definitely better to be safe than sorry.”**<sup>185</sup>

290. Given this circumstance, which is characteristic of the diffused legal interest protected, national and international scholars and case law are unanimous: **it is the Government’s obligation to anticipate damages to the environment, to foresee them and, thus, avoid them.**<sup>186</sup> Indeed, it is the obligations of prevention and precaution that should serve as a guide for state actions aimed at preserving the ecologically balanced environment. In line with the understanding of this Federal Court of Justice:

“In the new world order, **what will be adopted as a public policy is what is necessary to anticipate environmental damage risks, as well as the impact that actions or omissions may have.**”<sup>187</sup>

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<sup>181</sup> In the same sense: Federal Supreme Court. En banc. ADPF No. 101/DF. Rapporteur: Justice Carmen Lúcia. 06/04/2012

<sup>182</sup> MILARÉ, Édis. Referenced work, P. 89

<sup>183</sup> According to that Principle, “where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”

<sup>184</sup> Federal Supreme Court. En banc. ADPF No. 101/DF. Rapporteur: Justice Carmen Lúcia. 06/04/2012

<sup>185</sup> RODRIGUES, Marcelo Abelha. Referenced work Cit., P. 203-204.

<sup>186</sup> On this logic, Antônio Herman V. Benjamin teaches that “Environmental Law is - or should be - first of all, a set of rules of *preventive* nature. In all segments of this legal subject, the aspect of preventing environmental damage is emphasized. The protection of the environment, through a long evolution, surpassed the repressive-reparative phase, fundamentally based on norms of criminal and civil liability, until reaching the current stage in which the greatest concern is with avoidance and not with repair or repression.” In: *BENJAMIM, Antonio Herman. Os princípios do estudo de impacto ambiental como limites da discricionariedade administrativa. In: “Revista Forense.” Rio de Janeiro: Forense, 1992, n.º 317, p. 30.*

<sup>187</sup> Federal Supreme Court. En banc. ADPF No. 101/DF. Rapporteur: Justice Carmen Lúcia. 06/04/2012

291. In the present case, the incidence of precaution and prevention obligations is unequivocal, since **this ADPF aims to halt serious injuries to socio-environmental fundamental rights resulting from deforestation in the Legal Amazon and the climate emergency, as a result of abusive actions and omissions.** If the unacceptable situation described in chapter V prevails, **irreversible environmental damage for present and future generations is certain to occur, with drastic consequences not only of environmental nature, but also social and economic, locally, regionally, and globally,** given the direct relationship between forest destruction and issues such as water collapse, climate emergency, changes in the rainfall regime, atmospheric pollution, serious damage to human health, energy crisis, and lack of inputs for agricultural and industrial activities, also, of course, water supply among other deleterious effects of deforestation in the Legal Amazon.

### VI.3.3. OBLIGATIONS TO FIGHT ENVIRONMENTAL OFFENSES

292. Among the state constitutional obligations directly violated by the Federal Government and competent Federal entities is **the right-duty to inspect and control deforestation – environmental police right-duty** –, which is largely regulated by the Constitution and by sub-constitutional legislation. According to the Superior Court of Justice:

“Therefore, by constitutional imposition, **the Brazilian State**, in all its facets and levels, appears as the **guardian-guarantor** of the fundamental right to an ecologically balanced environment. The *head* and paragraphs of Article 225 of the Constitution list several **specific tasks related to these broad police power.**”<sup>188</sup>

293. The constitutional duty of inspection, applied to combating deforestation in the Amazon, comes straight from the Constitution, Also to Federal legislation. At first, the **duty to prevent illegal activities** regarding the environmental legal interest is set forth in the aforementioned Article 23 of the Constitution. Under its item I, the Government must **watch over the Constitution, the laws, and also conserve public property**, as is the case not only of an ecologically balanced environment but mainly of Indigenous Lands (an asset of the Federal Government, according to Article 20, XI, Constitution) and Conservation Units, Also to vacant lands and others. Item II, on the other hand, imposes **the protection of notable natural landscapes, such as the**

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<sup>188</sup> Superior Court of Justice. 2nd Panel. Appeal to the Superior Court of Justice No. 1071741/SP (Case No. 2008/0146043-5). Rapporteur: Justice Herman Benjamin. DJe 16.12.2010.

**Amazon rainforest**, and **cultural value** assets, such as legal interests attributed to Indigenous Peoples, notably their traditional lands. Items VI and VII are even more explicit, according to which it **is up to the Government to protect the environment and preserve forests, fauna, and flora**.

294. Such duty still comes directly from the *head of Article 225*, and paragraph 1, which imposes fundamental obligations to be fulfilled by the Government. Moreover, the Constitution dedicated a **specific provision to fight harmful and unlawful acts against the environment**. According to paragraph 3 of Article 225, “conducts and activities deemed harmful to the environment **will subject** the perpetrators, **whether individuals or legal entities, to criminal and administrative sanctions, without prejudice to the obligation to repair the damages caused.**” Said constitutional provision constitutes **a true general clause to combat environmental devastation**, through **maximum state repression** and triple accountability to those who commit illegalities and/or effective damage to the ecologically balanced environment. It is worth noting, that criminal prosecution and administrative accountability in environmental matters were regulated by Law No. 9605/1998 and by Decree 6514/2008. Civil liability is no-fault based and follows the Integrated Risk Management Theory. It finds legal support under Article 14, paragraph 1, of Law No. 6938/1981, the Brazilian Environment Policy. This duty is further reinforced when it comes to the Amazon biome, as set forth in paragraph 4 of Article 225.

295. Such constitutional provisions, when added to sub-constitutional legislation, according to the Superior Court of Justice, impose “**an unequivocal, unavailable, irreplaceable, and imprescriptible duty-power of urban-environmental control and inspection.**” The Superior Court observations are valuable:

“The Superior Court of Justice **has repeatedly admitted the State’s responsibility in environmental matters due to its omission in its control and inspection duty of control duty.** (...) **And when interests shared between the present and future generations are at stake, greater control and surveillance measures are expected from the State.** So, when it comes to common interest supported on intergenerational pillars, the Government has no powers left to exercise, as if it were a depositary by constitutional and legal designation whose role is to take good care of what it **manages on behalf of others.** Besides being **inherent to the exercise of the State’s police power, the duty-power of environmental control and inspection (= duty-power to implement) comes directly from the constitutional framework for guaranteeing essential ecological processes** (in particular Articles 225, 23, VI and VII, and 170, VI) and the legislation. **Nothing stimulates environmental degradation more than the collective sense of impunity**, especially when the illegal occupation of public spaces is

seen in plain sight. It is the **highly harmful feeling to the public interest** that ‘if others can break the law with impunity, so can I’.”<sup>189</sup>

296. The right-duty to inspect and fight illegal activities, notably deforestation in the Amazon, was **largely regulated by sub-constitutional legislation**, which is due to its fundamental relevance for achieving everyone’s right to an ecologically balanced environment. Among the main examples, the following stand out: Article 2, I, III, IV, VII, and IX, of Law 6938/1981; Article 1, I, and III, of Decree No. 99274/1990; Article 70, paragraph 3, and 72 of Law No. 9605/1998; 96 and 101 of Decree No. 6514/2008.

297. Also, when it comes to combating deforestation within the scope of the Federal Government’s powers, as in the present case, it is up to IBAMA, in general, to carry out permanent inspection. According to Article 2 of Law No. 7735/1989, IBAMA is created: “for the purpose of: I – **exercising the power of environmental police**; II – **perform actions of national environmental policies**, referring to Federal attributions related to environmental licensing, environmental quality control, authorization to use natural resources, and **environmental inspection, monitoring, and control**, in compliance with the guidelines issued by the Ministry of Environment.” Such powers are detailed in Decree No. 8973/2017.

298. The public acts in Chapter V, especially the drastic drop in notices of violations, cease-and-desist orders, and specific budget execution on inspection and control show that, despite the significant increases in deforestation in the Legal Amazon, the Federal Government and its competent agencies and entities have drastically reduced environmental inspection, completely disregarding the fundamental obligation herein, greatly aggravating the serious and irreversible injuries to the essential nucleus of the right to an ecologically balanced environment and other fundamental rights that are subject of this ADPF.

#### **VI.3.3.1. OBLIGATION TO INSPECT AND COMBAT ILLEGAL DEFORESTATION IN FEDERAL CONSERVATION UNITS IN THE LEGAL AMAZON**

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<sup>189</sup> Superior Court of Justice. 2nd Panel. Appeal to the Superior Court of Justice No. 1071741/SP (Process No. 2008/0146043-5). Rapporteur: Justice Herman Benjamin. DJe 16.12.2010. In the same sense: Superior Court of Justice. 2nd Panel. Appeal to the Superior Court of Justice No. 1220669/MG (Case No. 2010/0193970-0 ). Rapporteur: Justice Herman Benjamin. DJe 18.12.2015.

299. Especially in the Amazon, the relevance of the inspection of illegal activities in environmental matters is notorious, therefore, **the Government's constitutional obligation becomes even more indispensable when dealing with areas under the domain of the State, as is the case with Federal public domain** Conservation Units where deforestation is prohibited as a general rule, with legal exceptions, especially the traditional practices of "People of the Forest", as extractive communities. The aforementioned obligations would already be enough to show how essential an effective implementation of the Federal Government right-duty of police against illegal deforestation within Conservation Units is, including the written provision from Article 225, paragraph 1, III, of the Constitution.

300. In fact, according to Law No. 9985/2000, the mere fact that a relevant part of the Federal Conservation Units constitutes a **good of the Federal Government** would be enough to link it to the fulfillment of the **duties of care and protection of public property**. See the following decisions of the Superior Court of Justice on the subject:

**"The Government is responsible, in the form of unavoidable duty and under penalty of committing malfeasance in office, to immediately order that the property be restored to the full benefit of the community (...). This is all because the public domain land is not subject to adverse possession. It rejects all kinds of privatization and, as a result of its unwaivability, it is not implicitly transferred to third parties."**<sup>190</sup>

**"For the Federal Government goods, once the illegal occupation is found, the competent body must 'summarily take possession of the property, canceling any records eventually made', without prejudice of damages due to its misuse (Article 10 of Law 9636/1998)."**<sup>191</sup>

301. More than that, when dealing with Federal Conservation Units, as in the present case, **"the Government's obligation to defend them is placed at the square root, in its good faith that integrates state property and for the common use of the people, with diffuse and intergenerational ownership."**<sup>192</sup>

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<sup>190</sup> Superior Court of Justice. 2nd Panel. Appeal to the Superior Court of Justice No. 1457851/RN (Process No. 2014 / 0127073-0). Rapporteur: Justice Herman Benjamin. DJe 19.12.2016.

<sup>191</sup> Superior Court of Justice. 2nd Panel. Appeal to the Superior Court of Justice No. 1410732/RN (Process No. 2013 / 0198039-6 ). Rapporteur: Justice Herman Benjamin. DJe 13.12.2016.

<sup>192</sup> Superior Court of Justice. 2nd Panel Appeal to the Superior Court of Justice No. 1017741/SP (Case No. 2008/0146043-5). Rapporteur: Justice Herman Benjamin. DJe 03/24/2009.

302. There is abundant sub-constitutional legislation designed to regulate the Constitution and guide state action towards the fulfillment of its fundamental duties of care and police power, notably **inspecting, protecting, monitoring, preventing, and controlling environmental devastation in Federal Conservation Units, especially regarding illegal deforestation and fires.**

303. For the purposes of this ADPF, it is important to note that Article 1 of Law No. 11516/2017 attributes **the purpose of ICMBio “to exercise the power of environmental police for the protection of conservation units** created by the Federal Government”; and grants **IBAMA the competence to exercise the power of environmental police** in these specially protected spaces. Other relevant rules to the case are:

- (i) Article 2, IV, and Article 9, VI, of Law 6938/1981: regulate the protection of specially protected territorial spaces;
- (ii) Article 1, *head* and II of Decree No. 99274/1990 (which regulates Law No. 6938/1981): regulates the obligation of the Government to “protect the representative areas of ecosystems through the implementation of Conservation Units and ecological conservation”;
- (iii) Article 2 and following of Annex I of Decree No. 8974/2017 (which regulates Law No. 11516/2017): details ICMBio tasks in fulfilling the fundamental duties herein, such as **“inspecting and applying environmental administrative penalties** for non-compliance with the legislation regarding **the protection of Federal Conservation Units and their buffer zones;**
- (iv) Decree no. 5,758 / 2006, which institutes the National Strategic Plan for Protected Areas – PNAP: sets forth provisions to guarantee the compliance with the duty of environmental inspection in Federal Conservation Units by the Government, all of which the Federal Government and ICMBio (Also to IBAMA, in its supplementary jurisdiction) do not comply with;
- (vi) Article 25, *head*, and paragraph 1, of Law No. 9985/2000 (SNUC): regulates the protection of Conservation Units buffer zones (except the Environmental Protection Area and Private Natural Heritage Reserve), imposing that “the agency responsible for the administration of the unit will establish specific rules regulating the occupation and use of resources in the buffer zone and ecological corridors of a Conservation Unit”.

304. There was a boom in deforestation in 2019 in Federal Conservation Units and deforestation was still at high levels in 2020, as described above. This reveals that the acts and omissions subject to this ADPF, notably the sharp drop in inspection, the lack of budget execution, and the incentive to illegality, result in a serious lack of protection of these protected spaces, with serious and irreparable injuries to the fundamental precepts aimed to the protection of the environment, life, health, dignity, of traditional people, communities, children, and adolescents.

### VI.3.3.2. OBLIGATION TO INSPECT AND COMBAT ILLEGAL DEFORESTATION IN INDIGENOUS LANDS IN THE LEGAL AMAZON

305. Concerning Indigenous Lands, their mere classification as **goods of the Federal Government**, under Article 20, XI, of the Constitution, would be enough to obligate the Federal Government and the Federal agencies to inspect the illegal deforestation committed within its jurisdiction.

306. In the case of fundamental indigenous territorial rights, as noted above, the relevance of their protection is **more emphatically determined by Article 231 of the Constitution**, which is justified by its essential character to the physical and cultural survival of Indigenous Peoples. This provision explicitly charged **the Federal Government to “protect and strengthen all its goods”** (from the Indigenous Lands) as a fundamental measure to guarantee the indigenous people’s “social organization, customs, languages, beliefs, and traditions”. Hence, its paragraph 2 reinforced this **fundamental obligation in guaranteeing these people permanent possession and exclusive usufruct of indigenous lands**. As Helene Sivini Ferreira explains: “While the Federal Government has the legal property *over* such spaces (Article 20. XI) and all water resources therein (Article 20, III), the **indigenous people have only responsibilities, for being a kind of guardian of the possessor.**”<sup>193</sup>

307. International rules ratified by Brazil also determine **the State's positive actions to ensure effective protection for Indigenous Lands**. Due to the relevance of the duties expressly assumed by Brazil before the international community, *we* transcribe and highlight the following provisions set forth in the Convention No. 169 of the International Labor Organization – ILO, ratified by Brazil by Decree No. 5051/2004:

“Article 2

1. Governments shall have the responsibility for developing, **with the participation of the peoples concerned**, coordinated and systematic action **to protect the rights of these peoples and to guarantee respect for their integrity.**

Article 4

1. **Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labor, cultures, and environment of the peoples concerned.**

Article 7

4. **Governments shall take measures, in co-operation with the peoples concerned, to protect and preserve the environment of the territories they inhabit.**

Article 14

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<sup>193</sup> FERREIRA, Helene Sivini .. Referenced work Cit., P. 283-284.

2. Governments **shall take steps as necessary** to identify the lands which the peoples concerned traditionally occupy, and **to guarantee effective protection of their rights of ownership and possession.**

Article 15

1. **The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded.** These rights include the right of these peoples to participate in the use, management, and conservation of these resources.

Article 17

3. **Persons not belonging to these peoples shall be prevented from** taking advantage of their customs or of lack of understanding of the laws on the part of their members **to secure the ownership, possession, or use of land belonging to them.**

Article 18

Adequate penalties shall be established by law for **unauthorized intrusion upon, or use of, the lands of the peoples concerned, and governments shall take measures to prevent such offenses.**”

308. Again, the aforementioned Federal Supreme Court case law – and other Brazilian Courts – also applies to Indigenous Lands on the serious unconstitutionality present regarding actions and omissions that prevent the implementation of essential public policy, aimed at safeguarding fundamental rights, such as the fundamental rights of Indigenous Peoples. To add up, it is important to exemplify how the Circuit Court of Appeals for the 1st Circuit, which is the competent review court for cases in the Amazon, has ruled on similar cases to the one presented here, through a direct interpretation of the Constitution. See:

“Constitutional protection imposes on the Government and the whole community the duty to defend and preserve, for present and future generations, the ecologically balanced environment, essential to a healthy quality of life, as a diffuse and fundamental right. Just like the good for the common use of the people (Constitution, Article. 225, head), already sets forth, in its normative commands, the precautionary principle (when in doubt about the harmful potential of a given environmental action, the most conservative decision is taken, avoiding the action) and the consequent prevention (since once a certain activity may be harmful, it must be avoided). (...) **In the case herein, the search for jurisdictional protection imposes the principle to be more strictly complied with, as it also seeks to safeguard the protection of the use of indigenous lands, with their beliefs and cultural traditions, to which the Constitution provides special protection (Constitution, Article 231, and paragraphs).** In the determinant line that States should recognize and duly support Indigenous Peoples and communities’ identity, culture and interests and enable their effective participation in the achievement of sustainable development (Principle 22 of the Rio Declaration on Environment and Development), the **desired precedent protection seems appropriate – setting up a team composed of IBAMA, FUNAI, and the Federal POLICE employees to stop the activities of timber and ore extraction, in the interior of the Bacurizinho Indigenous Land, as well as to seize equipment and the illegal forest product, and to implement a permanent inspection post within the period stipulated in the single-judge decision and from its**



**knowledge to fulfill these specific obligations.** Appeals and official remittance are not granted. Trial court decision affirmed.<sup>194</sup>

309. The sub-constitutional indigenous legislation, when regulating the Constitution on the fundamental duty in question, spells out a series of measures to be implemented by the Government and competent entities, such as FUNAI and IBAMA. Here are some of the main examples:

(i) Article 1, VII, of Law No. 5371/1967, which creates and establishes as **FUNAI purposes “to exercise police power in the reserved areas and in matters pertaining to the protected Indigenous Peoples.”**

(ii) Articles 34 and 36 of Law No. 6001/1973, which set forth the Indigenous Peoples Statute: provide that FUNAI may “request the collaboration of the Armed and Auxiliary Forces and the Federal Police to ensure the protection of the lands occupied by Indigenous Peoples and communities”, setting the Federal Government competence to “**adopt administrative measures or bring, through the Federal Prosecutor’s Office, appropriate court measures to protect the native’s possession over the lands they inhabit;**

(iii) Article 4 of Decree No. 1775/1996, which governs Indigenous Land demarcation states: “**once the presence of non-indigenous occupants in the area under demarcation is verified, the Federal land agency will prioritize the respective resettlement (...)**”;

(iv) Article 2 of Decree No. 9010/2017: sets forth a series of **measures for FUNAI to guarantee compliance with the inspection duties of Indigenous Lands** and the guarantee of their permanent possession and exclusive usufruct by Indigenous Peoples, including “exercising police power in defense and protection of Indigenous Peoples” (item IX);

Decree No. 5758/2006: sets forth state actions aimed at the **effective protection of Indigenous Lands;**

(v) Decree No. 7747/2012, which created the “National Policy for Indigenous Lands Territorial and Environmental Management – PNGATT”: regulates Government measures to “**guarantee and promote the protection, recovery, conservation, and sustainable use of indigenous lands and territories natural resources, ensuring the indigenous heritage integrity,** improving the quality of life and the full conditions of physical and cultural reproduction of present and future generations of Indigenous Peoples, respecting their sociocultural autonomy, under current legislation in effect” (Article 1).

310. There are international landmark precedents aimed at restraining omissions and actions by the Government contrary to the protection guarantee of Indigenous Lands. In the case of *Maia Indigenous Communities of the District of Toledo v. Belize*<sup>195</sup>, the Inter-American Commission on Human Rights found **a violation of the**

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<sup>194</sup> Circuit Court of Appeals for the 1st Circuit. 5th Panel. Civil Appeal No. 0046682-54.2010.4.01.3700. Rapporteur: Federal Judge Souza Prudente. 12.06.2017

<sup>195</sup> IACHR - Inter-American Commission of Human Rights Report No. 04/40, Case 12.053, *Mayan Indigenous Communities in the District of Toledo (Belize)*, October 12, 2004. Available at: < <https://www.cidh.oas.org/annualrep/2004sp/Belize.12053.htm> >. Accessed on: 06.10.2020.

*Maya-Mopan and Ke'kchi peoples'* rights to ancestral land and its natural resources. The main violation resulted from the environmental impact on the traditionally occupied land resulting from the failure of the Government to ensure its protection. According to the verdict, the "Committee also considers that **this damage resulted in part from the fact that the State failed to implement proper safeguards and mechanisms, as well as to supervise, monitor and ensure that there was enough staff** to verify that the performance of the timber concessions would no longer cause environmental damage to Mayan lands and communities".

311. In turn, in the case of *Awas Tingni v. Nicaragua*<sup>196</sup>, the Inter-American Court of Human Rights has set an important precedent, applying Article 21 of the Inter-American Convention on Human Rights to rule **against the State for the damage caused within Indigenous Lands, as well as to impose on it the obligation to protect the lands integrity and the community's resources against State or third-party actions**. In the last example, the same Inter-American Court **considered the scenario of environmental illegalities perpetrated in the Yanomami Indigenous Land** to order the Brazilian State to adopt the relevant measures.<sup>197</sup>

312. Notwithstanding the explicit State duty to inspect and guarantee protection to Indigenous Lands and Indigenous Peoples, both in the Constitution and in international legislation enacted by Brazil, the boom in deforestation within these territories generated by the actions and omissions narrated in item V represents an acute and irreversible injury to the fundamental rights of Indigenous Peoples established in Article 231 of the Constitution, Also to the right to an ecologically balanced environment and other violated rights.

#### VI.3.4. OBLIGATIONS TO COMBAT CLIMATE EMERGENCY

313. As noted, the constitutional environmental duties require the adoption of positive measures by the State to fight deforestation in the Legal Amazon and also to

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<sup>196</sup> IACHR - Inter-American Court of Human Rights *Mayagna (Sumo) Awas Tingni vs. Community Case Nicaragua*, judgment of August 31, 2001. Available at: < [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_79\\_por.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_79_por.pdf) >. Accessed on: 06.10.2020.

<sup>197</sup> IACHR - Inter-American Commission of Human Rights Injunctive Relief. 563-20. *Members of the Yanomami and Ye'kwana Indigenous Peoples in relation to Brazil*, July 17, 2020. Available at: < <https://www.oas.org/es/cidh/decisiones/pdf/2020/35-20MC563-20-BR-PT.pdf> >. Accessed on: 27.10.2020.

combat the climate emergency – as already mentioned, the main source of Brazilian emissions comes from deforestation (change in land use). After all, there is no way to consider maintaining the minimum ecological existence without complying with obligations related to climate security or climate stability, under penalty of irreparable injuries not only to Brazil but to all of Latin America and also to the global community.

314. Note, at first, as deliberated by this Supreme Federal Court in the Direct Action of Unconstitutionality – ADI No. 3470, the landmark case on asbestos, which the international agreements promulgated by Brazil in environmental matters have *sub-constitutional status*. According to Justice Rapporteur Rosa Weber:

“Material constitutionality of Rio de Janeiro state Law No. 3579/2001. In light of the accumulated scientific knowledge on the extent of the harmful asbestos effects on health and the environment and on the evidence of the ineffectiveness of the control measures contemplated therein, the tolerance to the use of chrysotile asbestos, as stated in Article 2 of Law No. 9055/1995, does not properly and sufficiently protect fundamental rights to health and a balanced environment (Articles 6, 7, XXII, 196, and 225 of the Constitution), **nor is it in line with the international commitments of sub-constitutional nature taken on by Brazil and which shaped the content of these rights**, especially ILO Conventions 139 and 162 and the Basel Convention. **Unconstitutionality of the protection deemed insufficient.** The validity of legislative initiatives related to its regulation, at any Federal level, even if they result in the banning of any and all use of asbestos. (...) As carriers of protective fundamental rights regimes, ILO Conventions 139 and 162, as well as the Basel Convention, **assume, in our legal system, sub-constitutional status**, as already noted by Justice Ayres Britto, in the vote he cast to the judgment of ADI No. 3357/RS.”

315. Since 1972, the Declaration of the United Nations Conference on the Human Environment, which took place in Stockholm, already stated: “We see around us growing evidence of man-made harm in many regions of the earth: dangerous levels of pollution in water, air, earth, and living beings; major and undesirable disturbances to the ecological balance of the biosphere; destruction and depletion of irreplaceable resources; and gross deficiencies, harmful to the physical, mental and social health of man, in the man-made environment, particularly in the living and working environment.”<sup>198</sup>

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<sup>198</sup> Free translation from English to Portuguese”1. (...) In the long and tortuous evolution of the human race on this planet a stage has been reached when, through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. (...) 3. Wrongly or heedlessly applied, the same power can do incalculable harm to human beings and the human environment. We see around us growing evidence of man-made harm in many regions of the earth: dangerous levels of pollution in water, air, earth and living beings; major and undesirable disturbances to the ecological balance of the biosphere; destruction and depletion of

316. In 1988, the UN created the *IPCC* (Intergovernmental Panel on Climate Change), an official agency that brings together the most committed scientists from around the world aiming to synthesize and spread human knowledge about climate change.<sup>199</sup>

317. After the second World Climate Conference in 1990, countries from all over the globe met in Rio de Janeiro, Brazil, in 1992, for the United Nations Conference on Environment and Development (“Rio-92”), an opportunity in which the **United Nations Framework Convention on Climate Change, promulgated in Brazil by Decree No. 2652/1998**, was drafted.<sup>200</sup> Among the various relevant aspects of the aforementioned international rule, obligations have been laid down for signatory nations, in particular, **the duty to “protect the climate system for the benefit of present and future generations of humankind, on the basis of equity”** (Article 3, ‘1’).

318. To this end, **“the Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects.”** (Article 3, ‘3’); and **“Each of these Parties shall adopt national policies and take corresponding measures on the mitigation of climate change**, by limiting its anthropogenic emissions of greenhouse gases **and protecting and enhancing its greenhouse gas sinks and reservoirs”** (Article 4, ‘2’).

319. At the same time, two other relevant international rules applicable to this ADPF were drafted: The Convention on Biological Diversity and the Convention to Combat Desertification and Mitigate the Drought Effects, all enacted by Brazil.

320. In 1997, the Kyoto Protocol, the first international agreement to set specific goals and objectives for the reduction of emissions, was signed. Such commitments, however, were restricted to thirty-seven industrialized countries, given the “common but differentiated responsibility” adopted as a principle, which focused on

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*irreplaceable resources; and gross deficiencies, harmful to the physical, mental and social health of man, in the man-made environment, particularly in the living and working environment.”*

<sup>199</sup> At the end of the 1970s, the first World Climate Conference was held, organized by the World Meteorological Organization in Geneva, Switzerland, bringing together specialists from fifty-three countries, in addition to international organizations. Society was slowly moving towards the discovery of climate change as the main threat to its survival and dignified life.

<sup>200</sup> Its entry into force at the international level took place in 1994, with the signature of 182 (one hundred and eighty-two) countries, including Brazil.

those considered “developed” (the members of its Annex I). It only entered into force in 2005, including in Brazil (Decree No. 5445/2005).

321. In 2009, the Copenhagen/Denmark World Climate Conference (COP 15) takes place, bringing together 192 countries and 119 heads of state, and its objective was to replace the Kyoto Protocol with new mandatory targets, including countries that previously had no obligations. Its most relevant effect was the consolidation of the climate change theme on the public and corporate agendas of practically all countries in the world. Further, it **explicitly recognized the objective of limiting global warming to a maximum of 2°C, establishing the reduction of deforestation as a fundamental strategy to combat climate change.**<sup>201</sup>

322. It was on that occasion that **Brazil, for the first time, adopted specific climate targets before the international community, to be achieved by 2020.** In general terms, by adopting the proposed measures – the main one being the fight against deforestation in the Legal Amazon –, Brazil committed itself to reduce its emissions between 36.1% and 38.9% by 2020. Immediately after COP 15, Brazil explicitly **included its climate targets in national legislation.** The Brazilian goals are based on the 2010 National Inventory, based on “**studies carried out by around 700 specialists and 150 governmental and non-governmental entities and industry sector entities**”<sup>202</sup>, all submitted before the United Nations.

323. To this end, it published **the National Policy on Climate Change, Law No. 12187/2009**, whose objectives in its Article 4 include: “**reduction of anthropogenic emissions of greenhouse gases in relation to their different sources**” (Item II); “**Strengthening anthropogenic removals by sinks of greenhouse gases in the national territory**” (item IV); “**Preservation, conservation, and recovery of environmental resources, with particular attention to the great natural biomes considered as National Heritage**” (item VI); and “**consolidation and expansion of legally protected areas and incentives for reforestation and the restoration of vegetation cover in degraded areas**” (item VII). It also defined the concept of **sink**, the most relevant example of which

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<sup>201</sup> BODANSKY, Daniel. *The paris climate change agreement: a new hope?* American Journal of International Law, Vol. 10, n. 2, 2016, pp. 288-319.

<sup>202</sup> ALVIM, Carlos Feu; EIDELMAN, Frida; MAFRA, Olga. Inventário brasileiro das emissões de gases de efeito estufa – Valores preliminares. Available at: <[http://ecen.com/eee75/eee75p/inventario\\_brasil.htm](http://ecen.com/eee75/eee75p/inventario_brasil.htm)>. Access on: 06.10.2020.

is the **Amazon Forest**, as being the “process, activity or mechanism that **removes greenhouse gas, aerosol or precursor of greenhouse gas from the atmosphere**” (Article 2, IX).

324. Among the guidelines of this National Policy set forth by Article 5, the following stand out, for the purposes of this ADPF: (i) **“the commitments assumed by Brazil in the United Nations Framework Convention on Climate Change, in the Protocol of Kyoto, and other climate change documents to which it will become a signatory” (item I); “Actions to mitigate climate change in line with sustainable development” (item II); “Integrated strategies for mitigating and adapting to climate change at the local, regional, and national levels” (item IV); “The identification of governmental action instruments already existing able to contribute to protecting the climate system and its articulation with the Policy set forth in this Law”, (item VIII); and “supporting and promoting activities that effectively reduce emissions or promote removals by sinks of greenhouse gases” (item IX).**

325. Several instruments were foreseen and listed by Article 6 of the Law, among which **“the Action Plans for the Prevention and Control of Deforestation in the biomes”**: (item III). It should be noted, therefore, that **the PPCDAm is a public policy set forth in federal law, its compliance is an essential measure to guarantee Amazon’s protection and, therefore, the protection of an ecologically balanced environment.**

326. It is important to note that Article 11 of the aforementioned Law determines that, given the relevance of threats arising from the climate emergency: “Public policies and governmental programs principles, objectives, guidelines, and instruments **shall be compatible with the principles, objectives, guidelines, and instruments of this National Policy on Climate Change.**”

327. Decree No. 7390/2010 was issued to regulate Articles 6, 11, and 12 of Law No. 12187/2009 having been replaced by **Decree No. 9578/2018**. In its Article 3, this Decree states: “The National Plan on Climate Change **will be composed of the action plans for the prevention and control of deforestation in biomes** and by the sectorial plans for mitigation and adaptation to climate change, set forth, respectively, in Article 6 and Article 11 of Law No. 12187, of 2009.”

328. As already mentioned, in its Article 17, item I, **the PPCDAm is defined as the action plan for the prevention and control of deforestation in the Amazon.**

329. Finally, Article 19 detailed the Brazilian climate target, as set forth in Article 12 of Law No. 12187/2009, thus providing:

“Article 19. To achieve the voluntary national commitment referred to in Article 12 of Law No. 12187, of 2009, **actions will be implemented** aimed to reduce between 1,168-million-ton CO<sub>2</sub>eq and 1,259-million-ton CO<sub>2</sub>eq of the total estimated emissions in Article 18.

Paragraph 1 In order to comply with the head of **this Article, the following actions contained in the plans** referred to in Article 17 will initially be considered:

**I – eighty percent reduction in annual deforestation rates in the Legal Amazon regarding the average from 1996 to 2005.**

(...)

Paragraph 3: The actions referred to in this Article **will be implemented in a coordinated and cooperative manner by government agencies** and should be reviewed and adjusted, whenever necessary, to achieve its intended final purposes, subject to the provisions of paragraphs 1 and 2 of Article 3.”

330. Article 23 of the Decree has great relevance for requests to monitor the effectiveness of this public policy, as evidenced by the preliminary injunction claims below. It provides that, in compliance with the actions of Article 19: “Appropriate **methodologies and mechanisms shall be adopted to assess compliance with the commitment** mentioned in Article 19.

331. As noted, considering the conclusions of the Brazilian Emissions Inventory, which confirmed **deforestation in the Amazon as the main vector of greenhouse gas emissions**, the Decree regulated **Brazil’s duty to reduce annual deforestation rates in the Legal Amazon at 80% in relation to the average verified between 1996 and 2005, which corresponds to a maximum of 3,925 km<sup>2</sup>.**

332. As previously stated, **in the year in which it was supposed to meet this target, Brazil abandoned its policy to combat deforestation and deviated from its accomplishment.** The country came very close to complying with it in 2012, with 4,571 km<sup>2</sup> deforested, after which it **started to distance itself until the Federal Government, in the years 2019 and 2020, completely dismantled the actions aimed at combating deforestation in the Amazon and the climate emergency, set forth in the PPCDAm.**

333. As highlighted above, **in 2019, the third-highest deforestation rate in history was recorded, at 34%**, resulting in total deforestation of **10,129 km<sup>2</sup>** in the biome (PRODES-INPE). **In 2020, the DETER-INPE system forecasts a further increase of 34%**, which, if confirmed by PRODES by December, means that Brazil will have deforested more than **13,000 km<sup>2</sup> in the Legal Amazon, three times above the established by the climate target of 3,925 km<sup>2</sup> – with a trend of new highs.** Indeed, the scenario presented in this ADPF leaves no doubt about the **urgency of adopting effective measures to combat the climate emergency, the main threat to humanity in the 21st century.**<sup>203</sup>

334. In 2015, the World Conference on Climate Change, **COP 21, in Paris/France**, took place, and it can be considered as the most relevant Climate Conference. It resulted in the adoption of a **new global climate agreement**, with important innovations concerning previous agreements. Internationally, it came into force in 2016. In Brazil, its enactment took place by Decree No. 9073/2017.

335. *First*, the Paris Agreement **committed** the Parties to **take all necessary measures** so that the increase in global average temperature does not exceed 2 °C (two degrees Celsius) over pre-industrial levels, making efforts to limit this increase in temperature at 1.5 °C (one and a half degrees Celsius). To that end, all countries must comply with climate targets. Thus, **countries' efforts to implement plans, programs, and measures must be oriented towards this global objective.**

336. *Second*, the Agreement marks a definitive approximation between the **regulation of climate change and the protection of human rights**. In this sense, it was foreseen in its preamble: “[The] climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on **human rights, the right to health, the rights of Indigenous Peoples, local communities, migrants, children, persons with disabilities**

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<sup>203</sup> In this sense, in 2002, the late José de Ávila Aguiar Coimbra brought us an important warning, whose failure to observe will bring irreversible consequences for everyone, present and future generations: “We are facing a critical moment in the history of the Earth, at a time when humanity must choose its future. (...) To move forward, we must recognize that, in the midst of a magnificent diversity of cultures and forms of life, we are a human family and a terrestrial community with a common destiny. We must join forces to generate a sustainable global society based on respect for nature, universal human rights, economic justice, and a culture of peace. To achieve this, it is imperative that we, the peoples of the Earth, declare our responsibility to one another, to the great community of life, and to future generations.” In: “*O outro lado do meio ambiente: uma incursão humanista na questão ambiental.*” Campinas: Millenium, 2002, p. 453.



and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and **intergenerational equity**.”

337. In the wake of the Paris Agreement, Brazil presented as global goals: by 2025, a 37% percent reduction in greenhouse gas emissions in relation to the rates registered in 2005; and, by 2030, a 43% reduction in emissions over the same rates as in 2005. To this end, it **pledged to the world to stop illegal deforestation in the Amazon by 2030**.

338. Finally, it is important to mention the Sustainable Development Goals (SDGs) – a global plan composed of 17 goals and 169 targets to be achieved by 2030 by the 193 UN member States, in order to balance the three dimensions of sustainable development: economic, social, and environmental. Specifically, Goal 13 requires **urgent action against global climate change**. Equally, Goal 15, aimed at protecting life on land, highlights how important biodiversity is for human life and notes: “**The SDGs seek to conserve and restore the use of the terrestrial ecosystem, such as forests, swamps, dry zones, and mountains by 2020. Stopping deforestation is also vital to mitigating the impact of climate change. Urgent action needs to be taken** to reduce the loss of natural environments and biodiversity, which are part of our common heritage.”<sup>204</sup>

339. In a specific publication on the topic, the National Congress Permanent Inter-Ministerial Committee on Climate Change, which brought together parliamentarians from the Lower House and the Brazilian Senate, **expressed extreme concern about the effects of climate change in Brazil**, stating:

“**Climate change would impact vital sectors for economies, such as the supply of water resources, the power generation, the productivity of crops, and the stability of coastal cities (...)** Among climate change scenarios that point to the greatest socio-environmental and economic damage to Brazil are listed: i) the worsening of the scarcity of water supply in the semiarid Northeast; ii) **in the Amazon: loss of biodiversity (extinction of species), replacement of tropical forests (...), desertification, and sanitization of agricultural land**. The scenario of replacing forest areas in the Amazon would also involve **changing the rainfall regime in crop areas located in the Center-South of the country**.”<sup>205</sup>

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<sup>204</sup> UNDP — United Nations Development Programme Goal 15: life on Earth. Available at: < <https://www.br.undp.org/content/brazil/pt/home/sustainable-development-goals/goal-15-life-on-land.html> >. Accessed on: 06.10.2020.

<sup>205</sup> CONGRESSO NACIONAL. Comissão Mista Permanente sobre Mudanças Climáticas – CMMC. Legislação Brasileira sobre Mudanças Climáticas. Brasília: 2013. Available at:

340. Given the above, Brazil, in the figure of its Federal Government, is responsible for complying with international agreements, as well as its own domestic legislation, to combat the climate emergency. Therefore, it must: **(i) by 2020, reduce annual deforestation rates in the Legal Amazon to a maximum of 3,925 km<sup>2</sup>; (ii) by 2030, stop illegal deforestation in the Amazon.**

### **VI.3.5. OBLIGATION OF ABSOLUTE PRIORITY ASSURED TO CHILDREN AND ADOLESCENTS**

341. Once the interdependent relationship between the fundamental rights of children and adolescents and the protection of an ecologically balanced environment has been verified, as explained above, it should be noted that Article 227 of the 1988 Constitution determines that the State **acts with absolute priority to guarantee children and adolescents'** fundamental rights. The assertiveness of the expression "absolute priority" is unique in the Constitution. Based on this, children and adolescents were recognized as subjects with specific rights, which is why **the maximum State effort should be made to protect them.**

342. As will be detailed below, deprivation of the right to develop in a healthy environment has serious consequences, both immediate and long-term, preventing a series of rights from being fully exercised. That is why the **absolute priority also applies to children's rights in relation to public policies for the protection of the environment, directly linked to their life, health, dignity, food and nutrition, among others.**

343. In this regard, the UN Committee on the Rights of the Child<sup>206</sup>, while responsible for monitoring compliance with the Convention on the Rights of the Child, stated in its General Comment No. 16:

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<[http://www.senado.leg.br/comissoes/CMMC/Livro\\_legislacao\\_ambiental\\_Completo\\_Final\\_17\\_09\\_2013.pdf](http://www.senado.leg.br/comissoes/CMMC/Livro_legislacao_ambiental_Completo_Final_17_09_2013.pdf)>. Access on: 06.10.2020.

<sup>206</sup> Comprised of 18 independent experts on four-year terms, the Committee holds question and answer sessions with the respective government delegations, diagnosing the situation of children in each country. The Committee is responsible for monitoring, which takes place through the examination of periodic reports submitted by States Parties - which must clarify the measures to be taken in compliance with the Convention.

“If children are identified as **victims of environmental pollution, immediate steps should be taken by all relevant parties to prevent further damage to the health and development of children and repair any damage done.**” The aforementioned Committee also recognizes “**States’ obligations regarding the rights of the child to a safe, clean, healthy, and sustainable environment**”, which shows the State’s responsibility to **ensure measures capable of mitigating or reversing the effects of deforestation in the Amazon and the climate emergency.**<sup>207</sup>

344. The environmental theme has gained increasing importance within the rights of children and adolescents. In 2016, the Day of General Discussion, promoted by the aforementioned UN Committee,<sup>208</sup> was entirely dedicated to the theme of children’s rights concerning the environment. Its objectives included: (i) “**States’ obligations regarding the rights of the child to a safe, clean, healthy, and sustainable environment**”; and (ii) **States’ responsibility for ensuring measures capable of mitigating or reversing the effects of climate change, especially on children and adolescents.**

345. At the national level, Law No. 13257/2016 can be mentioned, which sets forth **the Legal Framework for Early Childhood, which recognizes, in Article 5, environmental protection as a priority area for public policies.** See:

“Article 5. **Priority areas for public policies for early childhood** are **health, food and nutrition**, early childhood education, family and community coexistence, social assistance to the child’s family, culture, playing and leisure, the space and the **environment**, as well as protection against all forms of violence and consumerist pressure, the prevention to accidents, and the adoption of measures that prevent early exposure to marketing communication.”

346. Among the guarantees to implement the **absolute priority** determined by the Constitution, Article 4 of Law No. 8069/1990 states: (i) **preference in the formulation and implementation of public social policies**; and, especially, (iii) **privileged allocation of public resources in areas related to the protection of children and adolescents.**” Thus, children and adolescents must come first in public services, policies, and budget.<sup>209</sup>

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<sup>207</sup> Center for International Environmental Law (CIEL). *The Right to a Healthy Environment in the Convention on the Rights of the Child*. 2016. Available in: < <https://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2016/CIEL.pdf> >. Accessed on: 23.08.2020.

<sup>208</sup> UNITED NATIONS: HUMAN RIGHTS. *Day of General Discussion: “Children’s Rights and the Environment”*. Office of the High Commissioner. Available at: < <https://www.ohchr.org/en/hrbodies/crc/pages/discussion2016.aspx> >. Accessed on: 25.08.2020.

<sup>209</sup> DALLARI, Dalmo A. Comentários ao art. 4. do Estatuto da Criança e do Adolescente (2010). In: Estatuto da Criança e do Adolescente Comentado, São Paulo: Malheiros, p. 47.

347. In this sense, children and adolescents must necessarily be **privileged within the scope of the allocation and execution of the public budget and also when carrying out public policies in areas related to the protection of their rights**. Such a framework imposes a double duty on the State: Also, to develop policies specifically aimed at children and adolescents and their specific needs, it is essential to consider the impact to implement other policies relevant to the realization of their rights or not, such as those of an environmental nature, as exemplified by the PPCDAm.

348. Brazil incorporated abundant international legislation on the subject. The Convention on the Rights of the Child, ratified by Decree No. 99710/1990, in its Article 4, establishes that States Parties shall undertake **all measures** aimed at implementing the rights of the child<sup>210</sup> recognized in the Convention and shall undertake such measures **using the maximum available resources**.

349. It is also worth mentioning General Comment No. 19<sup>211</sup>, which starts off with **the States Parties' obligation to adopt all possible measures to mobilize, allocate, and execute sufficient budgeting in favor of children, within the maximum limit of their resources**. When implementing the Convention<sup>212</sup>, the Committee pointed to **public budgeting as a key instrument** for a country to put children first<sup>213</sup> and affirms that the need to protect them applies even in the context of economic crises.

350. The right to the environment has been the subject of court consideration internationally, as well as in Brazil, considering the interdependent relationship between the rights of children and adolescents, and present and future generations. In the case *Future Generations v. Ministry of the Environment and Others*<sup>214</sup>, 25 young people from

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<sup>210</sup> Under Brazilian law, a person is considered to be a child when under the age of 12 years old, and a teenager when aged between 12 and 18 years old, according to Article 2 of Law 8069 of 1990 (Statute of the Child and Adolescent). It should be noted that, in international law, every person up to 18 years of age is considered a child under the Convention on the Rights of the Child, to which Brazil is a signatory and has enacted into its legal system through Decree 99710 of 1990.

<sup>211</sup> General Comment No. 19 of the Committee on the Rights of the Child on the role of the public budget in realizing the rights of the child (CRC / C / GC / 19).

<sup>212</sup> General Comment No. 5 of the Committee on the Rights of the Child, on general measures for implementing the Convention on the Rights of the Child (CRC / GC / 2003/5).

<sup>213</sup> General Comment No. 14 of the Committee on the Rights of the Child, on the right of children to have their best interest considered first (CRC / C / GC / 14).

<sup>214</sup> Available at:

< [http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2020/20200731\\_2017-No.-793-JR\\_opinion.pdf](http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2020/20200731_2017-No.-793-JR_opinion.pdf) >. Accessed on: 03.11.2020.

different regions of Colombia (Future Generations) filed a collective action aiming for the government to execute a plan to prevent deforestation in the Colombian Amazon, which is one of the main causes of temperature increase in the country. In April 2018, the Supreme Court of Colombia recognized that the deterioration of the environment that resulted from insufficient State action violates the fundamental rights of present and future generations. With that, it ordered the Colombian government to create an “intergenerational pact for the life of the Colombian Amazon” to reduce deforestation and greenhouse gas emissions – while in Colombia there was no plan against deforestation, in Brazil this plan exists and it is in force, lacking only the determination for its effective enforcement. Among other highlights, it is worth noting the Supreme Court of Colombia understanding of the rights of children and adolescents and the right to ecological balance:

“In terms of **intergenerational equity**, the transgression is obvious, as the forecast of temperature increase is 1.6 degrees in 2041 and 2.14 in 2071; **future generations, including children who brought this action, will be directly affected unless we presently reduce the deforestation rate to zero.**”

351. As already outlined above, the Federal Supreme Court has also recognized that environmental issues raise intergenerational conflicts, which must be resolved under the Constitution. Also, to the case law already mentioned, here is an excerpt by Justice Celso de Mello:

“Everyone has the right to an ecologically balanced environment. This is a typical third-generation right (or a very new dimension), which assists the entire human race (Appeal for the Supreme Court – RTJ 158/205-206). **The State and the community itself have the special obligation to defend and preserve, for the benefit of present and future generations, this trans-individual collective right (Special Appeal to the Supreme Court – RTJ 164/158-161). Complying with this unwaivable obligation represents the guarantee that serious intergenerational conflicts will not be established within the community, due to the disrespect to the duty of solidarity, which is imposed on all, in protecting this essential common use good of people in general.**”<sup>215</sup>

352. As will be detailed below, environmental quality, in a broad sense, is one of the main factors that determine children’s survival, quality of life, health, and dignity in the first years of life, and strongly influences their physical and mental health throughout life. As an example, **as an effect of the forest fires, there is a worsening of children hospitalizations due to respiratory diseases**<sup>216</sup>.

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<sup>215</sup> Federal Supreme Court. En banc. Preliminary Injunction in Direct Unconstitutionality Action - ADO No. 3540-1/DF. Rapporteur: Justice Celso de Melo. DJe 02.03.2006.

<sup>216</sup> Available at:

353. For this reason, there is the need to **recognize that this portion of the population is and will be affected unequally and disproportionately. They deserve to be the focus of efforts to mitigate climate change.**<sup>217</sup> Furthermore, to heal the irreparable injuries presented in this ADPF is imperative to adopt measures, with absolute priority, according to the claims formulated at the end.

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#### VI.4. CLIMATE CHANGE AND OTHER HARMFUL CONSEQUENCES OF DEFORESTATION IN THE AMAZON

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354. In 2018, Brazil emitted 1.9 billion tons of carbon equivalent (Gt CO<sub>2</sub>eq), making it the **seventh-largest emitter on the planet. Land-use change is the biggest emitter, accounting for 44% of the total emissions. This concept is directly linked to deforestation, forest degradation, and fires.** Emissions derived from agriculture and livestock are second, representing 25%, and the energy industry 21%.<sup>218</sup> Therefore, the relevance of native forests transcends the fundamental maintenance of ecological balance to directly affect the **climatic balance**, on which humanity depends.

355. In this scenario, it is not difficult to conclude that the number of Brazilian emissions per year **depends directly on deforestation rates in the Amazon and, thus, on the public policy implementation aimed at combating it: the PPCDAm.**

356. Considering the deforestation average of the last five years in May to July, **the emissions resulting from the destruction of the forest in 2020 should be 29% higher than in 2018, increasing the level of total emissions to somewhere between 2.1 and 2.3 billion Gt CO<sub>2</sub>eq**<sup>219</sup>. This result distances the country both from complying with the National Climate Change Policy, which has **a target of decreasing emissions**

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<[https://climaesaude.icict.fiocruz.br/sites/climaesaude.icict.fiocruz.br/files/informe\\_observatorio\\_queima\\_das.pdf](https://climaesaude.icict.fiocruz.br/sites/climaesaude.icict.fiocruz.br/files/informe_observatorio_queima_das.pdf)>. Accessed on: 06.10.2020.

<sup>217</sup> Plan International. *Child-centered Disaster Risk Reduction: building resilience through participation*. London: Plan International, 2010. Available at: <<https://plan-international.org/publications/child-centred-disaster-risk-reduction>>. Accessed on: 06.10.2020.

<sup>218</sup> SEEG Brasil. Infográfico Brasil 2018. Available at: <[https://seeg-br.s3.amazonaws.com/SEEG-infografico-Brasil1-BR-2018-rev\\_1.jpg](https://seeg-br.s3.amazonaws.com/SEEG-infografico-Brasil1-BR-2018-rev_1.jpg)>. Access on: 27.10.2020.

<sup>219</sup> Observatório do Clima. Nota Técnica: Impacto da pandemia de COVID-19 nas emissões de gases de efeito estufa no Brasil. 2020, p. 15. Available at: <[http://www.observatoriodoclima.eco.br/wp-content/uploads/2020/05/SEEG-OC\\_Nota\\_Tecnica\\_Covid19\\_Final.pdf](http://www.observatoriodoclima.eco.br/wp-content/uploads/2020/05/SEEG-OC_Nota_Tecnica_Covid19_Final.pdf)>. Access on: 06.10.2020.

**for 2020**, and from the Paris Agreement, which foresees emissions of **1.3 billion tons of CO2 equivalent for 2025**<sup>220</sup>.

357. This theme's relevance goes beyond issues related only to environmental matters, having very serious implications for all economic and social issues. **In January 2020, for the first time in history, the “Global Risks Report 2020”, from the World Economic Forum, pointed out that all five major risks and points of attention to governments and markets are climate/environment-related, placing climate emergency first.**<sup>221</sup>

358. Among other points, as discussed by Justice Luís Roberto Barroso, the **social aspect** cannot be overlooked and **deforestation in the Amazon is made possible through “slave labor, human trafficking, and** enticement. Contemporary slavery in the country, especially in the area of the Amazon Agricultural Frontier, benefits from the scarcity of regular jobs and the existence of a contingent of workers without special qualifications. (...) Commonly, the job offers lures workers with benefits that do not correspond to reality – such as food, salary, and accommodation guarantees –, converting the worker into a debtor, having them acquire products and services from the employer himself. The ‘employer’ also uses physical, moral, and confinement violence as ways to keep employees in such a condition.”<sup>222</sup> In a recent publication, Ricardo Abramovay talked more in depth about the socioeconomic advantages of protecting the Amazon, instead of destroying it.<sup>223</sup>

359. Below, some of the main consequences are addressed if deforestation in the Amazon is not drastically reduced and, consequently, the rates of gas emissions that cause the climate emergency, without intending, of course, to exhaust such a complex and multidisciplinary topic. To this end, we base our considerations on scientific conclusions issued by reference agencies and institutes, well regarded by the global

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<sup>220</sup> Observatório do Clima. Technical note: Impacto da pandemia de COVID-19 nas emissões de gases de efeito estufa no Brasil. 2020, p. 15. Available at: <[http://www.observatoriodoclima.eco.br/wp-content/uploads/2020/05/SEEG-OC\\_Nota\\_Tecnica\\_Covid19\\_Final.pdf](http://www.observatoriodoclima.eco.br/wp-content/uploads/2020/05/SEEG-OC_Nota_Tecnica_Covid19_Final.pdf)>. Access on: 15.10.2020.

<sup>221</sup> World Economic Forum. Global Risks Report 2020. Available at: <<https://www.weforum.org/reports/the-global-risks-report-2020>>. Accessed on: 06.10.2020.

<sup>222</sup> BARROSO, Luís Roberto; MELLO, Patrícia Perroni Campos. Referenced work Cit., P. 345.

<sup>223</sup> ABRAMOVAY, Ricardo. Amazônia: por uma economia de conhecimento da natureza. São Paulo: Elefante, 2019.

community, such as, for example, those periodically launched by the *IPCC*, which base government decisions around the world on tackling climate change.

#### VI.4.1. INCREASED SEA LEVEL AND REDUCED POLAR ICECAP

360. The reduction of polar ice caps, both in the Arctic and Antarctica, has been documented year by year. The two large masses of ice on Earth together contain about 80% of the world's freshwater. Its melting, including that already perceived until today and that predicted by the *IPCC*, results in an increase in sea level, with serious threats to humanity.

361. The acceleration of this melting process is clear when one observes that, **in the South Pole, 40% of the 7.6 mm rise, from 1992 to 2017, occurred only in the last five years.** Research<sup>224</sup> shows that, until 2012, Antarctic ice loss generated an average sea level rise of 0.2 mm per year. **From 2012 to 2017, this rate tripled, jumping to a sea level rise of 0.6 mm per year. Such melting acceleration projects an even greater annual increase in sea level in the coming years.** To be aware of the gravity of the fact: if all the Antarctic ice melted, the sea level would rise approximately **58 meters**.

362. The Arctic case is not as drastic. In January 2019, the extent of ice in the Arctic Sea was just 13.56 million km<sup>2</sup>, which is about 860,000 square kilometers below the recorded average from 1981 to 2010. Since 1979, Arctic sea ice has been declining by an average of 70,000 km<sup>2</sup> per year. A<sup>225</sup> recent study **reinforced predictions that the Arctic will completely lose its ice cover in summers as early as 2035.** Furthermore, it is a fact that this **region has been heating twice as fast as the rest of the planet**, which means that, since the pre-industrial period, **temperatures have already risen between 2 °C and 3 °C. And this process has been accelerating: 0.7 °C of this heating happened in the last decade.** In the Arctic, the situation is aggravated by the thawing of permafrost, the ground frozen for thousands of years, located in the Arctic Circle and immediately south of it, which spills tons of carbon into the atmosphere, with

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<sup>224</sup> SHEPHERD, A; et al. (The IMBIE team). *Mass balance of the Antarctic Ice Sheet from 1992 to 2017*. Nature, v. 558, 2018, pp. 219–222.

<sup>225</sup> Guarino, Maria-Vittoria *et al.* *Sea-ice-free Arctic during the Last Interglacial supports fast future loss*. Nature Climate Change, Vol. 10, p. 928-932, Aug. 2020. Available at: < <https://www.nature.com/articles/s41558-020-0865-2> >. Accessed on: 06.10.2020.



the release of organic matter in the soil, accelerating climate change<sup>226</sup>. Finally, scientists have been studying whether the melting of the North Pole is currently already resulting in the **emission of methane gas, which is far more damaging to the global climate than carbon dioxide, which would mean an unprecedented climatic tragedy.**<sup>227</sup>

363.           **The increase in sea level will reshape the planet’s entire coastline.** Coastal cities such as **Rio de Janeiro, Recife, Florianópolis, Shanghai, New York, Amsterdam, and many others would disappear or become largely uninhabitable.** **Island countries in the Atlantic and Pacific would be submerged.** Also, there would be unprecedented **human migration (climate refugees<sup>228</sup>) and loss of agricultural areas.** It is worth noting that the Superior Court of Justice is aware of the effects of climate change and its devastating effects on the Brazilian coast. According to the Court: “With special emphasis, our Law protects the **Coastal Zone, a territory that harbors ecosystems harassed by direct anthropic activities and, more recently, by harmful and relentless effects of climate change.**”<sup>229</sup>

#### VI.4.2. IMPACTS ON WATER AVAILABILITY

364.           A recent World Bank report<sup>230</sup> on the impacts of climate change on water resources shows that **hydrological cycles are the first to be hit, with serious and uneven consequences across the planet.** Climatic risks associated with water **affect food, energy, industrial products, and other production systems.**

365.           With the tendency to increase water demand related to population and city growth, **the decrease in water supply should cause a major scarcity crisis.** The

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<sup>226</sup> NATALI, Sue. Expert: Q&A. Thawing Permafrost, v. XV - Edition 4, Winter Solstice, 2017. Available at: < <https://www.biohabitats.com/newsletter/thawing-permafrost/expert-qa-sue-natali/> >. Accessed on: 06.10.2020.

<sup>227</sup> Available at: < [https://amp.theguardian.com/science/2020/oct/27/sleeping-giant-arctic-methane-deposits-starting-to-release-scientists-find?CMP=tw\\_t a-environment b-gdneco&\\_twitter\\_impression=true](https://amp.theguardian.com/science/2020/oct/27/sleeping-giant-arctic-methane-deposits-starting-to-release-scientists-find?CMP=tw_t a-environment b-gdneco&_twitter_impression=true) > . Access on 30.10.2020.

<sup>228</sup> On the topic, among others: : “Refugiados Ambientais.” JUBILUT, Liliana Lyra *et al.* (orgs.). Boa Vista: Editora da UFRR, 2018.

<sup>229</sup> Superior Court of Justice. Appeal to the Superior Court of Justice No. 1410732/RN. Rapporteur: Justice Herman Benjamin. DJe 06.12.2016.

<sup>230</sup> World Bank Group. *High and Dry: Climate Change, Water, and the Economy* . Washington: 2016. Available at: < <https://www.worldbank.org/en/topic/water/publication/high-and-dry-climate-change-water-and-the-economy> >. Accessed on: 06.10.2020.

magnitude of the impacts can be assessed by data showing that **water availability in cities is expected to fall by about 30% by 2050** when compared to current levels<sup>231</sup>.

366. At the same time, projections show that **rainfall patterns will become more variable and less predictable, with extended drought periods; and warmer seas will result in more floods and storms**. Meeting the simultaneous increase in demand for water for food production, energy generation, urban growth, and ecosystem services will be impossible<sup>232</sup>. Water scarcity will affect regions where there is not current scarcity and will worsen greatly in regions where it already occurs. These hydrological changes will have significant impacts on **agricultural productivity**, as well as **in cities** that concentrate people and economic activities.<sup>233</sup>

367. The UN report<sup>234</sup> released at the World Water Forum in Brazil points out that **the number of people living in areas with the potential to experience water scarcity** at least once a year can jump from the current 3.6 billion to somewhere **between 4.8 billion and 5.7 billion by 2050**. The changes already foreseen regarding the flood and drought risks are added to these water unavailability trends. The number of people who will be at **risk of flooding** will be about **1.6 billion in 2050 – approximately 20% of the world population**. UN data also shows that **extreme climate events represent one of the most significant impacts of climate change**, which was calculated based on the respective mortality rates and the socioeconomic impact related to the Gross Domestic Product (GDP) per capita.

368. Despite the relevance of ecosystems and forests to water availability, already mentioned above, **the current levels of forest destruction, which are absolutely alarming, represent one of the main threats to water availability**. According to the UN:

“Ecosystem degradation is one of the **main causes of the growing challenges related to water management**. Although about 30% of the land worldwide remains covered by forest, **at least two thirds of this area are in a state of degradation**. The majority of soil resources worldwide, especially on land destined for agricultural production, is

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<sup>231</sup> Ibid., p.8

<sup>232</sup> Ibid., p. 23.

<sup>233</sup> Ibid., p. 40.

<sup>234</sup> United Nations World Water Assessment Program - Office of the Global Water Assessment Program. “United Nations World Report on Water Resources Development.” 2018. Available at: < <http://unesdoc.unesco.org/images/0026/002615/261594eng.pdf> >. Accessed on: 27.10.2020.

found only in reasonable, precarious, or very precarious conditions, and **the current perspective is that this situation will worsen, with serious negative impacts on the cycle of water**, due to increased evaporation rates, reduced groundwater storage capacity, and increased surface runoff, accompanied by increased erosion. It is estimated that, **since 1900, between 64% and 71% of wetlands worldwide have been lost due to human activities. All of these changes have had negative impacts on hydrology, from a local to regional and world scale.**<sup>235</sup>

369. Finally, regarding the relationship between water availability, the preservation of the Amazon, and the harmful risks for Brazil in all its regions, scientist José Antônio Marengo, a member of CEMADEN and *IPCC*, states<sup>236</sup>:

“Scientific evidence points to the fact that **climate change represents a serious risk to water resources in Brazil**. It is not just about future climate changes, but also about climate variability; **an example is the droughts in the Amazon**, the Northeast, the South, and the Southeast of Brazil over the past ten years, which **have affected the regional and national economy**. (...)

**The situation is chaotic and worrying in the Amazon.** The entire hydrographic basin of the Amazon River, which covers several countries besides Brazil, contains 70% of the world’s freshwater availability and is formed by more than a thousand rivers. **But that exuberant and essential presence is threatened.**

(...)

According to IPCC (Magrin et al., 2007) and INPE (Marengo et al., 2007; Ambrizzi et al., 2007) reports, **the semi-arid region will tend to become more arid. Droughts frequency and intensity will increase, and water resource availability will be reduced.**

(...)

**By 2050, experts say that half of the agricultural land could be damaged with a ‘high’ degree of certainty, exposing millions of people to hunger. From 60 million to 150 million people will suffer from water shortages (up to 400 million in 2080). Groundwater deposits in Northeastern Brazil may receive 70% less recharge. The Northeastern semi-arid region would move towards desertification.”**

#### VI.4.3. IMPACTS OF CLIMATE CHANGE ON HUMAN HEALTH

370. Climate conditions and diseases are linked in several ways. Animal populations are a part of the transmission cycle of some diseases. Insects are vectors of diseases caused by viruses, such as yellow fever and dengue fever, or by protozoa, such as malaria, leishmaniasis, and Chagas disease. With the expansion of the vectors’ incidence area, as well as the acceleration of their life cycle and changes in the distribution of animals that serve as wild repositories of diseases, caused by the

<sup>235</sup> CONNOR, Richard; *et al.* The United Nations world water development report 2018: nature-based solutions for water; executive summary. World Water UN Assessment Programme, 2018, p. 3.

<sup>236</sup> MARENGO, José Antônio. Água e mudanças Climáticas. In: Estudos Avançados, São Paulo, v. 22, n. 63, 2008. Available at: <<http://www.scielo.br/pdf/ea/v22n63/v22n63a06.pdf>>. Access on: 07.10.2020.

transformation of the climate, these diseases tend to become more common. This equation also includes **deforestation**, which accelerates the climate crisis and creates **conditions for spreading serious diseases**.

371. In Brazil, as well as in several other places, it is possible to trace a **numerical relationship between the deforested area and cases of diseases**. An IPEA survey<sup>237</sup> raised the deforestation impact on the incidence of diseases in the Amazon, assessing the relationship between compulsory notification diseases in the Public Healthcare System (SUS) and INPE deforestation data in 773 municipalities in the Legal Amazon. Diseases of greater epidemiological interest were considered between the years 2004 and 2012. **The results showed that an increase of a mere 1% in the deforested area of a municipality leads to an expressive increase of 23% in cases of malaria and of 8% to 9% in cases of visceral and cutaneous leishmaniasis**.

372. In a dossier on urban health and climate change published by Revista da Universidade de São Paulo (USP)<sup>238</sup>, it is pointed out that many infectious diseases whose agents are transmitted by vectors are sensitive to changes in temperature. **Rising temperatures can lead to the emergence and expansion of geographic spaces to greater latitudes and altitudes and the extension of periods favorable to diseases**. Recent outbreaks of diseases that have mosquitoes as vectors, such as *rift valley* fever and *chikungunya*, show how interannual climate variability affects outbreak risk patterns. In such cases, **extreme climatic conditions, such as severe droughts and floods, create the ideal scenario for the emergence of these diseases' vectors. With the increase in extreme weather events frequency and severity, the risk of the global expansion of these diseases and their vectors is growing**.

373. Also, as seen today with the coronavirus pandemic, many diseases are of animal origin. It is estimated that about 65% of all human pathogens discovered since 1980 are viral zoonoses, which “jump” from another animal species to humans<sup>239</sup>. In

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<sup>237</sup> JUNIOR, N. L. S.; MATION, L. F.; SAKOWSKI, P. A. M. Impacto do desmatamento sobre a incidência de doenças na Amazônia. IPEA. Textos para discussão, Brasília, 2015, p. 2142. Available at: <[http://www.ipea.gov.br/portal/images/stories/PDFs/Tds/td\\_2142.pdf](http://www.ipea.gov.br/portal/images/stories/PDFs/Tds/td_2142.pdf)>. Access on: 07.10.2020.

<sup>238</sup> GALATI, Eunice, et al. Mudanças climáticas e saúde urbana. Revista USP, São Paulo, n. 107, p. 79-90, out. 2015. Available at: <<http://www.revistas.usp.br/revusp/article/view/115116>>. Access on: 07.10.2020.

<sup>239</sup> United Nations Environment Program and International Livestock Research Institute. *Preventing the Next Pandemic: Zoonotic diseases and how to break the chain of transmission*. Nairobi, 2020, p. 7.

many cases described, such as the Spanish flu and H1N1, the animal protein production system was responsible, creating the conditions for the spread of diseases, and the eventual overflow of animals to humans. In the case of diseases like Covid-19<sup>240</sup>, the “jump” of a virus from one species to another is facilitated by the encounters between these species, which often do not happen in natural environments.

374. With deforestation and climate change, these encounters become common, and the possibility of new zoonoses emerging increases greatly. Scientist Carlos Nobre has warned of the problem: **“Not having a massive epidemic in the Amazon is pure luck, because the elements are there. We are playing with fire.”**<sup>241</sup>

375. On the subject, **researchers have<sup>242</sup> cataloged more than 3,200 types of coronavirus in bats in the Amazon. In the face of deforestation and climate change, the region could become a new epicenter of global pandemics**, putting together species that were previously not in contact, expanding the possibilities of these pathogens to “jump” to new hosts, and fostering opportunities for the emergence of new diseases. **According to researchers from Fiocruz<sup>243</sup>, the prevalence of viruses among bats in deforested areas in the Amazon is almost three times higher when compared to the whole forest.**

376. Even before the new coronavirus pandemic, the World Health Organization (WHO) had already been warning about the risks that climate change poses to human health, as they affect social and environmental factors that determine health: clean air, drinking water, sufficient food, and safe shelter, Also to adequate temperatures.

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Available at: < <https://www.unenvironment.org/resources/report/preventing-future-zoonotic-disease-outbreaks-protecting-environment-animals-and> >. Accessed on: 07.10.2020.

<sup>240</sup> World Wide Fund for Nature *Covid-19: urgent call to protect people and nature*. World Wild Fund, 2020. Available at: < <https://www.worldwildlife.org/publications/covid19-urgent-call-to-protect-people-and-nature> >. Accessed on: 07.10.2020.

<sup>241</sup> LIMA, Leila. ‘Estamos brincando com fogo’, diz Carlos Nobre sobre risco de Amazônia gerar eplbid.ia. O Valor Econômico. 12.05.2020. Available at: <<https://valor.globo.com/live/noticia/2020/05/12/estamos-brincando-com-fogo-diz-carlos-nobre-sobre-risco-de-amazonia-gerar-eplbid.ia.ghtml>>. Access on: 07.10.2020.

<sup>242</sup> AFELT, Anita; FRUTOS, Roger; DEVAUX, Christian. *Bats, Coronaviruses, and Deforestation: Toward the Emergence of Novel Infectious Diseases?* Front. Microbiol., 11.04.2018. Available at: < <https://www.frontiersin.org/articles/10.3389/fmicb.2018.00702/full> >. Accessed on: 07.10.2020.

<sup>243</sup> ‘Promiscuous treatment of nature’; will lead to more pandemics - scientists. The Guardian. 07.05.2020. Available at: < <https://www.theguardian.com/environment/2020/may/07/promiscuous-treatment-of-nature-will-lead-to-more-pandemics-scientists> >. Accessed on: 07.10.2020.

Aside from the emergence of new diseases, the WHO<sup>244</sup> foresees the expansion of the area distribution of the aedes aegypti mosquito, the main vector of zika, dengue fever, and chikungunya, due to the temperature rise. Also, global warming is expected to worsen the situation of atmospheric pollution, which now kills about 7 million people a year.

377. A recent report assessed the health impact that the fires burns associated with deforestation in the Brazilian Amazon had on the local population in 2019, showing a significant negative impact on the region's public health. This includes 2,195 hospitalizations due to respiratory diseases attributable to the fires, of which 467 (21%) were in infants aged 0 to 12 months of age and 1,080 (49%) were in elderly people, aged 60 or over. The data revealed that patients spent a total of 6,698 days in the hospital in 2019 due to exposure to air pollution from the fires. Despite the difficulty in obtaining information, the report points out that “in August 2019, about three million people, residing in 90 municipalities in the Amazon region, were exposed to harmful levels of fine particulate matter – known as PM 2.5 –, which exceeded the recommended limit by the World Health Organization (WHO). Given the already mentioned increase in fires in **September 2019**, this number increased to 4.5 million people exposed in 168 municipalities.”<sup>245</sup>

378. Thus, also due to the impacts on human health, another constitutionally guaranteed right, the Government must intensively and continuously combat deforestation in the Amazon and the consequences of the ongoing destruction are disastrous, notably from 2019 on.

#### VI.4.4. IMPACTS OF CLIMATE CHANGE ON SPECIES AND ECOSYSTEMS

379. Climate change is the greatest threat to biodiversity in the 21st century and has already had profound effects on today's natural systems. Also, several studies

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<sup>244</sup> World Health Organization. *Climate change and death*. 01.02.2018 Available at: <<http://www.who.int/news-room/fact-sheets/detail/climate-change-and-health>>. Accessed on: 07.10.2020.

<sup>245</sup> O ar é insuportável – Os impactos das queimadas associadas ao desmatamento da Amazônia brasileira na saúde, realizado em parceria entre o Instituto de Estudos para Políticas de Saúde (IEPS), o Instituto de Pesquisa Ambiental da Amazônia (IPAM) e a Human Rights Watch. Available at: <<https://ipam.org.br/bibliotecas/o-ar-e-insuportavel-os-impactos-das-queimadas-associadas-ao-desmatamento-da-amazonia-brasileira-na-saude/>>. Access on: 27.10.2020.

show that their impacts tend to increase, affecting different species and habitats worldwide<sup>246</sup>.

380. One of the greatest impacts of climate change on organisms and ecosystems is the change in distribution patterns, a situation that will particularly affect species that have nowhere to migrate, due to the conversion of natural areas into areas for human use (deforestation), which should cause extinction rates even higher than those already reported at the end of the last century and the beginning of this new century. Even when the comparative references are the glacial periods, species disappearance rate may be higher, because Also to the lack of areas with adequate climate to migrate to, there is also an accelerated change in climatic conditions that hinder adaptation.<sup>247</sup> Another impact already documented is on pollinating insects, such as bees, seed dispersers, and insects that act as pest and disease controllers<sup>248</sup>, essential for maintaining ecological balance.

381. Although the impacts have not yet been fully calculated, **it is certain that all species are being and will be affected by climate change**. Three recent studies, published in worldly recognized magazines, reveal the extent of the impact of climate change on life on Earth. One of them<sup>249</sup> analyzed 32 terrestrial, 31 marine, and 31 freshwater processes. **It is concluded that 82% of the 94 processes analyzed have already been affected by climate change, even with a 1 °C warming only**. Several relevant changes were noted: aquatic and terrestrial organisms decreased in size; birds had reduced pigmentation of their skins, as well as the length of their wings and beaks changed; there were changes in phenology, in the abundance and distribution of species; with this, plants in temperate zones bloom and bear fruit earlier; animal migration stations around the world have changed; and species became rare where they were abundant and common where they did not exist. **All of these changes transform ecosystems, having a domino effect impact on other species, including humans, which can already be**

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<sup>246</sup> PACIFI, Micela, *et al.* *Assessing species vulnerability to climate change*. Nature Climate Change, n. 5, Feb. 2015, pp. 215-224. Available at: < <https://www.nature.com/articles/nclimate2448> >. Accessed on: 07.10.2020.

<sup>247</sup> BARNOSKY, Anthony D., *et al.* *Has the Earth's sixth mass extinction already arrived?* Nature, n. 471, sea. 2011. pp. 51:57 Available at: < <https://www.nature.com/articles/nature09678> >. Accessed on: 07.10.2020.

<sup>248</sup> PETERSON, AT, *et al.* *Distributional Modelin Shifts of Individual Species and Biomes*. In: TE Lovejoy and L. Hannah (org.) *Climate change and biodiversity*. Yale University Press.

<sup>249</sup> SCHEFFERS, Brett R., *et al.* *The broad footprint of climate change from genes to biomes to people*. Science, v. 354, n. 6313, Nov. 2016. Available at: < <http://science.sciencemag.org/content/354/6313/aaf7671> >. Accessed on: 07.10.2020.

observed in the present generations, with potentially more serious effects on future ones.

382. A second study<sup>250</sup>, from 2016, noted that **more than 450 plants and animals were extinct locally because of climate change. As temperatures rise, species that cannot move quickly can become completely extinct.** This study is particularly worrying, as it demonstrates that **local extinctions occur more in the tropics than in temperate zones, which is especially serious regarding threats to biodiversity and the ecological balance of the Amazon.** These changes further compromise the survival of the species and consequently the set of biological processes, such as the preservation of water quality and availability, pollination, soil fertility, pest, and disease control, among other factors.

383. More recently, in a historic effort, researchers<sup>251</sup> have examined the impact of climate change on nearly 80,000 species of plants and animals in 35 of the world's most biodiverse areas. Results show that, in certain forest regions, **considering a scenario of temperature increase of 4.5 °C,<sup>252</sup> 90% of amphibians, 86% of birds, and 80% of mammals can be extinct locally.**

384. A recent report by the UN International Platform for Biodiversity and Environmental Services (<sup>253</sup>IPBES), emphasized that **there is a negative correlation between climate change and the loss of biodiversity.** It also pointed out that, around 2050, **climate change may become the biggest cause of species extinction, overcoming deforestation, the current main cause.** In several places on the planet, the **loss of biodiversity threatens human life, compromising water supply, food**

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<sup>250</sup> WIENS, John J. *Climate-Related Local Extinctions Are Already Widespread among Plant and Animal Species*. PLoS Biology, 2016. Available at: < <https://doi.org/10.1371/journal.pbio.2001104> >. Accessed on: 07.10.2020.

<sup>251</sup> WARREN, R., et al. *The implications of the United Nations Paris Agreement on climate change for globally significant biodiversity areas*. Climatic Change, n. 136, Mar. 2018. pp. 395-409. Available at: < <https://doi.org/10.1007/s10584-018-2158-6> >. Accessed on: 07.10.2020.

<sup>252</sup> It is worth mentioning that the risk of local species extinction is also related to its possibility to move quickly and freely to other places, where living conditions are more favorable. Like many species, mainly plants, but also animals, they cannot move fast enough to keep up with climate changes and in many places there are no longer natural areas where these species can move, the risk of species extinction due to climate change is very large.

<sup>253</sup> IPBES - Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services. *Human well-being at risk*. 2018. Available at: < <https://www.ipbes.net/news/media-release-updated-biodiversity-nature&#39;s-contributions-continue-dangerous-decline-scientists> >. Accessed on: 07.10.2020.



production, and **housing** availability. Furthermore, it creates a greater vulnerability to **extreme weather events**, which tend to become more frequent.

#### **VI.4.5. IMPACTS OF DEFORESTATION ON CLIMATE CHANGE AND ITS CONSEQUENCES FOR AGRICULTURE**

385. Greenhouse gas emissions from deforestation contribute significantly to global warming, which in turn creates challenges for various human activities, **especially for agriculture**, which can put **humanity's own food security** in check. Also to Brazilian GDP. A broad study review<sup>254</sup> on the topic has shown that **deforestation in tropical forests has serious consequences in agricultural areas adjacent to the deforested area and, to a large extent, in other continents**, given the relevant changes in temperature and precipitation levels.

386. Climate changes resulting from deforestation and forest degradation interact with rising temperatures making **each other worse**: the models suggest that there are **certain levels of local/regional deforestation** after **which impacts accelerate**, causing more forest degradation and **more risks for agriculture**. In this sense, a scientific study<sup>255</sup> analyzed the relationship between deforestation in the Amazon and agricultural production and concluded: **pasture productivity declines about 30% in locally/regionally deforested areas**. **The increase in the average temperature, the decrease in the average rainfall, and rainfall spatial and temporal redistribution in a region are the greatest risks to agriculture associated with deforestation.**

387. Agribusiness faces the consequences of a process for which it is also responsible: **changes in the water regime**. Deforestation in the Amazon, largely associated with the opening of areas for livestock and agriculture, also to logging and mining, **has as a consequence the decreasing of rainfall in Brazil and other Latin American countries.**

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<sup>254</sup> LAWRENCE, Deborah; VANDECAR, Karen. *Effects of tropical deforestation on climate and agriculture*. Nature Climate Change, Vol. 5, ten. 2014, pp. 27:36 Available at: < <https://www.nature.com/articles/nclimate2430> >. Accessed on: 07.10.2020.

<sup>255</sup> Ibid.

388. In the Northeast and North, a study<sup>256</sup> published by the United Nations Development Program (UNDP), the Institute of Applied Economic Research (IPEA), and the International Fund for Agricultural Development (IFAD) shows that soybeans and coffee will be the most impacted crops in family farming. The semi-arid region of the Northeast and the Cerrado region of the Northeast – southern Maranhão, southern Piauí, and western Bahia – will be the most affected areas. It is worth remembering that family farming is responsible for producing much of the food consumed in Brazil, so the losses will affect not only the farmers' food security but also the Brazilian population's.

389. A recent official bulletin<sup>257</sup> by the National Center for Monitoring and Natural Disaster Alerts (CEMADEN), from the Ministry of Science, Technology, Innovations, and Communications, points out that **the Midwest, South and a part of the Southeast of Brazil, including the state of São Paulo, show rainfall levels below the historical average**. With increasing deforestation in the Amazon, agribusiness may **face a serious decline** in Brazil.<sup>258</sup>

#### VI.4.6. CLIMATE CHANGE AND CITIES

390. The IPCC<sup>259</sup> and other scientific centers have raised relevant concerns about the effects of climate change on cities. The magnitude of the problem is verified when it is recalled that 85.7% of the Brazilian population lives in urban areas, and this is expected to reach 91% in 2050, according to UN assessments.<sup>260</sup>

391. The Brazilian Panel on Climate Change special report, entitled “Cities and Climate Change”, carefully analyzed the impacts of climate change on urban areas

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<sup>256</sup> Centro Internacional de Políticas para o Crescimento Inclusivo. Mudanças no clima e os impactos na agricultura familiar do Norte e Nordeste do Brasil. 2016. Available at: <[http://www.ipc-undp.org/pub/port/Mudanca no clima e os impactos na agricultura familiar.pdf](http://www.ipc-undp.org/pub/port/Mudanca%20no%20clima%20e%20os%20impactos%20na%20agricultura%20familiar.pdf)>. Access on: 07.10.2020.

<sup>257</sup> Centro Nacional de Monitoramento e Alertas de Desastres Naturais. Boletim de Impactos em Áreas Estratégicas para o Brasil. 18.06.2020. Available at: <<http://www.cemaden.gov.br/boletim-de-impactos-em-areas-estrategicas-para-o-brasil-10062020/>>. Access on: 07.10.2020.

<sup>258</sup> BRANDO, PM, *et al.* *The gathering firestorm in southern Amazonia*. Science Advances, v. 6, n. 2, Jan. 2020. Available at: <<https://advances.sciencemag.org/content/6/2/eaay1632>>. Accessed on: 07.10.2020.

<sup>259</sup> IPCC — Intergovernmental Panel on Climate Change. *Climate Change 2014: Mitigation of Climate Change. Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*. Cambridge University Press, 2014. Available at: <<https://www.ipcc.ch/report/ar5/wg3/>>. Access on: 07.10.2020.

<sup>260</sup> United Nations. *World Urbanization Prospects*. 2014. Available at: <<https://esa.un.org/unpd/wup/Publications/Files/WUP2014-Report.pdf>>. Accessed on: 07.10.2020.

in Brazil. According to the report: (i) **cities are considered “highly vulnerable to climate change. Urban centers are already feeling climate change impacts which have been increasing in recent years** (...); (ii) “the main problems involving climate change and cities are the **increase in temperature, sea level rise, heat islands, floods, water and food shortages, ocean acidification, and extreme events**”<sup>261</sup>; and (iii) “exacerbated changes in the hydrological cycle due to global warming tend to **accentuate the risks of existing hazards, such as floods, landslides, heat waves, and limitations in drinking-water supply.**”<sup>262</sup> It should be noted that these effects of climate change have a greater impact on children up to five years old and the elderly<sup>263</sup>.

392. The aforementioned exemplifies a few situations in Brazil, reinforced by recent all-time high-temperature records in other parts of the world. On October 7, 2020, **the state of São Paulo recorded the highest temperature** since the beginning of measurements by the National Meteorological Institute (INMET), **over 100 years ago**. The record was in the city of Lins, in the interior of the state, with the mark of 43.5 °C. On October 2, 2020, **the city of São Paulo recorded the second-highest temperature** recorded in the city, at 37.4°C.<sup>264</sup> On September 29, 2020, INMET recorded temperatures above 40° C in at least eight states: MT, MS, GO, TO, PI, BA, MG, and SP.<sup>265</sup> On October 7 of that year, **Belo Horizonte/MG broke the record high temperature, with 38.4 °C, on the hottest day in its history since 1910.**<sup>266</sup> On September 30, 2020, **Cuiabá/MT also broke its historical record, reaching 44°C. Scientists revealed that September 2020 was the hottest month on record in Brazil.**<sup>267</sup> **The previous record was in September 2019.** INMET has put out a **death risk alert** in much of the country.

<sup>261</sup> Painel Brasileiro de Mudanças Climáticas. Mudanças Climáticas e Cidades. Relatório Especial do Painel Brasileiro de Mudanças Climáticas. PBMCM, COPPE – UFRJ. Rio de Janeiro, 2016. Available at: <[http://www.pbmc.coppe.ufrj.br/documentos/Relatorio\\_UM\\_v8\\_sumario-executivo.pdf](http://www.pbmc.coppe.ufrj.br/documentos/Relatorio_UM_v8_sumario-executivo.pdf)>. Access on: 07.10.2020.

<sup>262</sup> Ibid., p. 3.

<sup>263</sup> RIBEIRO, Wagner Costa. Impactos das mudanças climáticas em cidades no Brasil. Parcerias Estratégicas, v. 13, n. 27, 2008. Available at: <[http://seer.cgee.org.br/index.php/parcerias\\_estrategicas/article/viewFile/335/32](http://seer.cgee.org.br/index.php/parcerias_estrategicas/article/viewFile/335/32)>. Access on: 07.10.2020.

<sup>264</sup> Cidade do interior de SP bate recorde e tem maior temperatura da história. Exame, 07.10.2020. Available at: <<https://exame.com/brasil/cidade-do-interior-de-sp-bate-recorde-e-tem-maior-temperatura-da-historia/>>. Access on: 27.10.2020.

<sup>265</sup> Brasil registra temperaturas acima dos 43°C nesta quarta; calor vai continuar. Correio Braziliense, 30.09.2020. Available at: <<https://www.correiobraziliense.com.br/brasil/2020/09/4879093-brasil-registra-temperaturas-acima-dos-43-c-nesta-quarta-calor-vai-continuar.html>>. Access on: 27.10.2020.

<sup>266</sup> Belo Horizonte bate novo recorde e tem dia mais quente da história com 38,4°C. O Tempo, 07.10.2020. Available at: <<https://www.otempo.com.br/cidades/belo-horizonte-bate-novo-recorde-e-tem-dia-mais-quente-da-historia-com-38-4-c-1.2395888>>. Access on: 27.10.2020.

<sup>267</sup> Climate Change Service. Surface air temperature for September 2020. Available at: <<https://climate.copernicus.eu/surface-air-temperature-september-2020>>. Accessed on: 27.10.2020.

393. Another alarming issue related to climate change refers to the **exponential increase in climate refugees**, considered as those whose resettlement occurs due to extreme weather events. Current data show that **climate change is related to a large part of migratory flows on the planet**. According to the Internal Displacement Monitoring Center (IDMC)<sup>268</sup>, between 2008 and 2015, an **average of 26 million people were displaced for reasons related to climate**, totaling **almost one person per second**.

#### VI.4.7. IMPACTS OF CLIMATE CHANGE ON CHILDREN AND ADOLESCENTS

394. According to the WHO, **80% of the mortality resulting from extreme weather events impacts children, having a** more destructive impact on the poorest and most vulnerable areas of the planet. According to projections, reported in the study carried out by the International Organization *Terre des Hommes*, in 2012, **climate change annually affects about 175 million children worldwide**.<sup>269</sup> Furthermore, studies have found that, among victims of climate disasters, children are two to three times more likely than adults to develop symptoms of post-traumatic stress disorder.

395. Because children and adolescents are vulnerable and undergoing a peculiar developmental process, they tend to suffer more acutely the impacts of climate change, especially in early childhood, with their development affected for life. The climate crisis causes children to suffer disproportionately, having their development impaired or even interrupted in situations of food insecurity, high pollution, and greater risks of epidemics or natural disasters<sup>270</sup>.

396. The reasons for this scenario are many. Due to their special condition of vulnerability and development, children are more susceptible to any negative impact on the environment. Because they are still in development, children have weaker immune

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<sup>268</sup> International Displacement Monitoring Center. Available at: <<http://www.internal-displacement.org/>>. Accessed on: 07.10.2020.

<sup>269</sup> Terres des Hommes. *Protecting Environmental Child Rights*. Available at: <[http://www.terredeshommes.org/wp-content/uploads/2013/01/tdh\\_Environmental-Child-Rights\\_2012-11-final.pdf](http://www.terredeshommes.org/wp-content/uploads/2013/01/tdh_Environmental-Child-Rights_2012-11-final.pdf)>. Access on: 10.08.2020.

<sup>270</sup> UN Committee on the Rights of the Child (CRC). *General Comment n° 7 (2005): Implementing child rights in early childhood*. 2006.

systems. Notably, during early childhood, children are more susceptible to viral infections and bacterial infections, which increases the risk of respiratory infection and reduces the child's ability to overcome them<sup>271</sup>. Still, the infant's brain is in formation and, especially until the age of five, pollution microparticles more easily permeate children's blood system and negatively impact their cognitive development. Added to this is the fact that children up to 12 years old breathe twice as fast as adults, inhaling proportionally much more air laden with pollutants.<sup>272</sup> Thus, the younger the children, the greater the impact of the pollutants absorbed.

397. Recent research also found that **exposure to toxic gases from forest fires in the last months of pregnancy leads to premature births, underweight, increased risk of malformations, and increased fetal mortality rates**. These babies are also **more likely to die in infancy or to develop respiratory, digestive, or brain disorders, which can extend throughout life**. Worldwide, air pollution from burning forests and other vegetation can cause up to 435,000 premature deaths each year.<sup>273</sup>

398. As children make up for 30% of the world population and considering their special characteristics, they can be considered to be the most vulnerable to the effects of climate change. **Today's children are the generation that will inherit climate damage on a scale never before seen by humanity**, it is imperative to preserve their rights and well-being consistently with the intergenerational justice set forth in Article 225 of the Constitution. If it is obvious that all people deserve protection from the negative impacts of climate change, it is also certain that the most vulnerable portion of the population, such as children, should be the focus of special protection.

399. Given the above, the right of children and adolescents to "have a future in the present" is recognized. Environmental quality in a broad sense is one of the main factors that determine children's survival in the first years of life and strongly influences their physical and mental development. For this reason, "environmental and climate

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<sup>271</sup>WHO. Health and the environment: addressing the health impact of air pollution. Available at [http://apps.who.int/gb/ebwha/pdf\\_files/WHA68/A68\\_R8-en.pdf](http://apps.who.int/gb/ebwha/pdf_files/WHA68/A68_R8-en.pdf). Accessed on June 23, 2018

<sup>272</sup>World Health Assembly. *Health and the environment: addressing the health impact of air pollution*. 2015. Available at: < [http://apps.who.int/gb/ebwha/pdf\\_files/WHA68/A68\\_R8-en.pdf](http://apps.who.int/gb/ebwha/pdf_files/WHA68/A68_R8-en.pdf) >. Accessed on: 10.08.2020.

<sup>273</sup>Jacobson, M. *Effects of biomass burning on climate, accounting for heat and moisture fluxes, black and brown carbon, and cloud absorption effects*. Journal of Geophysical Research: Atmospheres, n. 119, 2014. Available at: < <http://web.stanford.edu/group/efmh/jacobson/Articles/VIII/bioburn/14BburnJGR.pdf> >. Accessed on: 10.08.2020.

justice” can no longer ignore the context of socio-environmental protection of children and adolescents and must recognize that this portion of the population has been unequally and disproportionately affected, deserving a closer look and effective and full protection with absolute priority of their fundamental rights, as inferred from the interpretation of Articles 225 and 227 of the Constitution.

#### **VI.4.8. AN ILLUSTRATIVE EXAMPLE OF THE IMPACTS OF CLIMATE CHANGE AT A LOCAL SCALE: THE XINGU RIVER BASIN**

400. Between 2001 and 2010, about 12% of<sup>274</sup> the forests in the Xingu region were converted into agricultural<sup>275</sup> crops or pastures<sup>276</sup>, reducing the region’s forest cover from 61% to 49%. Also, pastures were converted into agricultural fields.<sup>277</sup> The absolute majority of this forest loss occurred in lands that surround the Xingu Indigenous Land. All of these land-use changes, especially deforestation, **have significantly altered the local energy balance of the surface, the hydrological cycle, and the terrestrial temperature**. As a result of this forest destruction process, **it is estimated that 35 trillion liters of water stopped reaching the atmosphere in the Xingu region in the 2000s**.<sup>278</sup>

401. To assess the role that Protected Areas play in the climate change scenario at the local level, a comparison was made between **changes in evapotranspiration and the terrestrial surface temperature inside and outside the Xingu Indigenous Land**, during the same decade of 2000.<sup>279</sup> Although the Xingu Indigenous Land represents 19% of the analyzed territory, its evapotranspiration accounted for 29% of the total perceived in the region in 2010. The surface temperature **inside the Indigenous Land in 2001 was 1.9 °C lower than outside the Protected Area**. In 2010, a year with a very high burn rate, **this difference reached 2.5 °C**. Another relevant data is **the increase of up to 6 °C in the average temperature of the headwater**

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<sup>274</sup> A total of 1,883,800 hectares.

<sup>275</sup> 334,700 hectares.

<sup>276</sup> 1,549,100 hectares.

<sup>277</sup> 496,200 hectares.

<sup>278</sup> Of this total, conversions from forests to pastures accounted for a decrease of 25.5 trillion liters in the total reduction in evapotranspiration, while those areas of forests converted into agricultural cultivation fields resulted in a reduction of 7 trillion liters of evapotranspired water. The residual 2.5 trillion liters was lost by converting pastures to agricultural fields.

<sup>279</sup> SILVÉRIO, Divino V.; *et al.* *Agricultural expansion dominates climate changes in southeastern Amazonia: the overlooked non-GHG forcing*. Environmental Research Letters, v. 10, n. 10, out. 2015. Available at: <<https://iopscience.iop.org/article/10.1088/1748-9326/10/10/104015/meta>>. Access on: 27.10.2020.

streams in the Xingu region, resulting in a reduction of up to 16% in fish weight and 36% in fish size.<sup>280</sup>

402. The Xingu case shows that, at a local level, deforestation has even more immediate climatic consequences than at a regional or planetary scale.

## VII. NECESSARY COURT ORDER FOR THE EFFECTIVE IMPLEMENTATION OF THE PPCDAm AND THE CESSATION OF INJURIES TO FUNDAMENTAL PRECEPTS

403. The search for the effectiveness of the fundamental rights found in the Constitution started to transcend the discretion of the Government, resulting in the imposition of **binding positive obligations**, aimed at **guaranteeing its minimum existence**, whose **breach directly violates the Constitution for insufficient protection** of the legal interest specially protected – **either by omission or by contrary action**.

404. This Federal Court of Justice has ruled in cases similar to the one in analysis, in which the enforcement of socio-environmental fundamental duties is sought, in which the Government neglects through acts and omissions threats to the essential core and the minimum necessary for the existence of everyone's fundamental right to an ecologically balanced environment:

**“If the State fails to adopt the necessary measures for the concrete enactment of Constitutional provisions** to make them effective, operative, and feasible, refraining, consequently, from complying with the duty of performance imposed by the Constitution, **it will be in negative breach of such provision**. This *non facere* or *non praestare* will result in **unconstitutionality by default**, which can be total, when there is no measure taken, or partial, when the measure taken by the Government is insufficient. **The State's omission** – which fails to comply, to a greater or lesser extent, with the constitutional imposition – **qualifies as a behavior of the greatest political and legal gravity**, since, through inertia, the Government also disrespects the Constitution, **offends its rights, and prevents, due to the absence of concrete measures, the very applicability of its provisions and principles.**”<sup>281</sup>

“This Court's **understanding is firm** that **the Judiciary can**, without violating the principle of separation of Powers, **determine the implementation of public policies**

<sup>280</sup> ILHA, P. ; *et al.* Deforestation and stream warming affect body size of Amazonian fishes. PLoS One, v. 13, n. 5, 2018. Available at: <https://doi.org/10.1371/journal.pone.0196560> >. Accessed on: 27.10.2020.

<sup>281</sup> Federal Supreme Court. En banc. RTJ No. 185/794-796. Rapporteur: Justice Celso de Mello.

**in matters relating to the preservation of an ecologically balanced environment for present and future generations.**<sup>282</sup>

**“Environmental Protection. Public Policy Implementation. Possibility. Violation of the principle of the separation of powers. Nonoccurrence. Insufficient public budgeting. Invocation. Impossibility. Precedents.**

**1. The Supreme Court has already set a precedent that the Government and the society have the obligation to defend an ecologically balanced environment for present and future generations.**

**2. Thus, the Judiciary Branch, in exceptional situations, may determine that the Government adopts measures to ensure this right, considered essential by the Constitution, without this constituting a violation of the principle of separation of powers.**

**3. The Government cannot justify not complying with the rights set forth in the Constitution on the grounds of insufficient public budgeting.”**<sup>283</sup>

405. Also, regarding the rights of Indigenous Peoples, the Federal Supreme Court states:

**“The appellate decision under analysis is in line with the precedents of the Federal Supreme Court granting, in emergency cases, the possibility of implementation of public policies by the Judiciary, considering the inertia or slowness of the Government, as a measure to guarantee fundamental rights. Here, it is not a matter of interfering in the competence of the Executive Branch as to the convenience and opportunity for making public policies and the consequent allocation of resources for that purpose, but rather of guaranteeing the protection of indigenous communities.”**<sup>284</sup>

406. Said Supreme Court ruling was rendered in the case of Indigenous Land illegally occupied by non-indigenous people, resulting in territorial loss and deforestation. Government omission was promptly halted by the Judiciary, which determined that the Federal Government and FUNAI took the necessary measures able to guarantee the effective protection of the traditional territory. See appellate decision issued by the Court of Appeals for the 4th Circuit in this case:

**“1. The Federal Government and FUNAI are jointly liable for protecting the possession of indigenous communities over the demarcated areas.**

**2. A large part of the Guarita’s indigenous reserve, demarcated in favor of the Guarani and Kaingang Communities, was occupied by farmers, through irregular lease agreements for the area, which resulted in deforestation of the forests, impoverishment of the soil and confinement of most indigenous people, which have been subsisting in conditions of absolute poverty, in a diminished area of their lands.**

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<sup>282</sup> Federal Supreme Court. 2nd Panel. Regulatory Appeal in Appeal to the Supreme Court No. 903241. Rapporteur: Justice Edson Fachin. DJe 01.08.2018.

<sup>283</sup> Federal Supreme Court. 1st Panel. Regulatory Appeal in Appeal to the Supreme Court No. 658.171/DF. Rapporteur: Justice Dias Toffoli 28.04.2014

<sup>284</sup> Federal Supreme Court. 1st Panel. Regulatory Appeal in Appeal to the Supreme Court No. 554.446 / RS. Rapporteur: Justice Roberto Barroso. DJe 16.04.2018.



(...)

4. **The need to grant effective usufruct to indigenous people of their lands**, with the reforestation of the Reserve Area, the recovery of the soil, and the provision of adequate resources to their degree of integration with our community.

5. **The court's decision does not offend the principle of independence and harmony between the Powers by identifying the protective entities' omission and neglect and the consequent situation of profound poverty in which the indigenous communities live** due to the excessive, disorganized, and irresponsible nature of our culture in its uses, customs, and traditions. The court **determines the responsible public entities, the Federal Government and FUNAI, to comply with their obligations by doing the obvious**, allocating budgetary resources and adopting practical measures to guarantee dignified possession of land and subsistence of these communities, in order to maintain the uses, customs, and traditions they still preserve.”<sup>285</sup>

407. Scholars do not contradict this understanding. José Joaquim Gomes Canotilho points out that, among the essential dimensions of environmental legality arising from Article 225 of the Constitution, its “positive-provider dimension” stands out, as it **is up to the State and all public entities to ensure the organization, procedure, and realization of the right to the environment**”<sup>286</sup>, being certain that “**the State (and other public and private operators) must act actively and positively in protecting the environment.**”<sup>287</sup> Also according to Canotilho, “the successive and repeated failure to comply with the environmental constitutional provisions (at the various levels: national, European, and international) may create constitutional omission situations leading to an ecological and environmental responsibility of the State.”<sup>288</sup>

408. As noted, both this Federal Supreme Court case law and specialized scholars' opinion are firm about the need for the Judiciary to act in the face of acts and omissions that injure fundamental rights, such as the fundamental rights addressed in this ADPF. In the words of Ingo Wolfgang Sarlet and Tiago Fensterseifer, “whenever the Government acts in a negative way, refraining from adopting a behavior imposed by the Constitution or the Law, **there is a scope for its insufficient performance (...) or omission is questioned and corrected through the courts, including by imposing**

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<sup>285</sup> Court Of Appeals for the 4th Circuit. 3rd Panel. Civil Appeal No. 91.484/RS. Process No. 2000.04.01.091484-5. Rapporteur: Tafs Schilling Ferraz. DJe 05.05.2003.

<sup>286</sup> CANOTILHO, José Joaquim Gomes. “O Princípio da sustentabilidade como Princípio estruturante do Direito Constitucional.” *Revista de Estudos Tékhne*, n. 13, jun. 2010. Available at: <[http://www.scielo.mec.pt/scielo.php?script=sci\\_arttext&pid=S1645-99112010000100002](http://www.scielo.mec.pt/scielo.php?script=sci_arttext&pid=S1645-99112010000100002)>. Access on: 27.10.2020.

<sup>287</sup> Ibid.

<sup>288</sup> Ibid.

**specific actions on the Government to ensure a minimum level of environmental quality.”<sup>289</sup>**

409. Certainly, based on the separation of powers, if the infeasibility of judicial actions to correct violations to comply with environmental constitutional duties is admitted, it would result in unrestricted freedom for the Government. This is disconnected from the constitutional spirit, allowing the essential core of the fundamental right and its effectiveness to become empty, making the compliance with fundamental obligations a mere choice, depending only on the political will and the unpleasantness of the rulers.<sup>290</sup> As decided by the Superior Court of Justice based specifically on socio-environmental matters:

**“There is no discretion on the part of the public administrator regarding established rights, and even less room for this discretion when it comes to constitutional ones. Thus, the activity is linked to the entrenched clause and does not admit a contrary interpretation.”<sup>291</sup>** In another passage: **“it would be a distortion to think that the principle of separation of powers, originally conceived with the scope of guaranteeing fundamental rights, could be used precisely as an obstacle to the realization of social rights, which are equally fundamental.”<sup>292</sup>**

410. Furthermore, especially in the case herein, there could be no claim of insufficient financial resources for the implementation of the policy to prevent and combat deforestation in the Amazon. One, because this policy is of an essential character, so that its non-execution would undermine the effectiveness of Article 225 of the Constitution and other fundamental rights dealt with in this ADPF. Two, because, as mentioned in Chapter V, there are resources available, but with very low budget execution by MMA, IBAMA, ICMBio, and FUNAI. Three, because, as explained, the MMA programs and their agencies account for a tiny 0.03% of the proposal foreseen in the PPA 2020-2023, an amount that is below what has always been seen in the country. As supported by Justice Dias Toffoli’s opinion, in a case aimed at implementing public environmental policies:

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<sup>289</sup> SARLET, Ingo Wolfgang; FENSTERSEIFER, Tiago. Referenced work Cit., P. 337.

<sup>290</sup> In this sense, among others: Ibid., p. 339-345.

<sup>291</sup> Superior Court of Justice. 1st PANEL Special Resource No. 575998/MG. Rapporteur: Justice Luiz Fux. DJe 16.11.2004.

<sup>292</sup> Superior Court of Justice. 2nd PANEL Appeal to the Superior Court of Justice No. 1367549/MG. Rapporteur: Justice Humberto Martins. DJe 09.09.2014.

“The Federal Supreme Court has also understood that **the Government cannot justify the frustration of essential rights set forth in the Constitution on the grounds of insufficient public budgeting.**”<sup>293</sup>

411. This understanding has been repeatedly adopted by this Federal Supreme Court in cases like this.<sup>294</sup> See the landmark vote of Justice Celso de Mello on this topic:

“In line with scholars’ opinions, it is necessary to warn (...), that the ‘proviso of the possible’ clause - except for the occurrence of a justifiable reason - cannot be invoked by the State for deliberately exonerating itself from complying with its constitutional obligations, especially when this negative governmental conduct can result in nullification or even the annihilation of constitutional rights impregnated with a sense of essential fundamentality.”<sup>295</sup>

412. Internationally, as well as in Brazil (*i.e.*, *ADPF* No. 708 - Climate Fund; and *ADO* No. 59 - Amazon Fund), the Courts have been considering disputes with direct or indirect reflections on the theme of climate emergency, which has been called “climate litigation”<sup>296</sup>. This fact has been the subject of analysis at National Contact Points (NCPs - *OECD Guidelines*), the UN Committee on the Rights of the Child, and the UN special rapporteurships. There are climatic cases in progress in Ireland, France, Belgium, Sweden, Switzerland, Germany, United States, Canada, Peru, South Korea, among others.<sup>297</sup>

413. Among the cases already discussed, the aforementioned case *Future Generations v. Ministry of the Environment*, in which the Supreme Court of Colombia upheld a collective action aimed at **compelling the competent agencies to guarantee the protection of the Amazon against deforestation**, stated:

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<sup>293</sup> Federal Supreme Court. 1st Panel. Regulatory Appeal in Appeal to the Supreme Court No. 658.171/DF. Rapporteur: Justice Dias Toffoli 28.04.2014

<sup>294</sup> See, among others: Federal Supreme Court. 2nd Class. Regulatory Appeal in Appeal to the Supreme Court No. 768825/BA. Rapporteur: Justice Ricardo Lewandowski. DJe 08/21/2014

<sup>295</sup> Federal Supreme Court. 2nd Class. Interlocutory Appeal No. 598212/PR. Rapporteur: Justice Celso de Mello. DJe 24.04.2014.

<sup>296</sup> SETZER, Joana; CUNHA, Kamyla; FABBRI, Amália S. Botter (Coords.). “Litigância climática: novas fronteiras para o Direito Ambiental no Brasil.” São Paulo: Thomson Reuters Brasil, 2019; e WEDY, Gabriel. “Litígios climáticos: de acordo com o direito brasileiro, norte-americano e alemão.” Salvador: Jvspodium, 2019.

<sup>297</sup> London School of Economics and Political Science. *Global trends in climate change litigation: 2020 snapshot*. 03.07.2020. Available at: < <https://www.lse.ac.uk/granthaminstitute/publication/global-trends-in-climate-change-litigation-2020-snapshot/> >. Accessed on: 27.10.2020.

“The principle of solidarity, for the specific case, is determined by the **duty and co-responsibility of the Colombian state to stop the causes of the GHG emissions from the abrupt forest reduction in the Amazon; thus, it is imperative to adopt immediate mitigation measures**, and to protect the right to environmental welfare, both of the plaintiffs, and to the other people who inhabit and share the Amazonian territory, not only nationals but foreigners, together with all inhabitants of the globe, including ecosystems and living beings.”<sup>298</sup>

414. More recently, the Supreme Court of Justice of Argentina, unanimously granted the claim to **order the adoption of measures capable of stopping significant fires** in the Paraná Delta region based on public policy already foreseen by the legislation - similar, therefore, to this ADPF. The Court, which **also ordered the installation of an Environmental Emergency Committee to monitor the judicially determined measures**, justified its decision based on the inadmissibility of acts that affect the environment, the health of the population, and climate stability.<sup>299</sup>

415. Another emblematic example, known as the *Urgenda Case*, occurred in the Netherlands, where the Supreme Court upheld the action and **ordered the Dutch government to adopt measures to reduce the gases that cause climate change**, recognizing the possibility of the Judiciary impose executive measures to combat the climate crisis.<sup>300</sup>

416. In the case of Pakistan (*Leghari vs. Pakistan*), before the authorities' omission, the Court accepted the initial claim to **order the monitoring and implementation of the Climate Policy**, for which it ordered the **creation of a Commission**, formed by representatives of government agencies, technical experts, and civil society organizations.<sup>301</sup>

417. Finally, in the United States, the Oregon District Court made some assumptions on the subject, notably the following: (i) “There is a scientific consensus that

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<sup>298</sup> Supreme Court of Justicia of Colombia. Radicación nº 11001-22-03-000-2018-00319-01. Acción Popular, 2018, p. 37.

<sup>299</sup> Centro de Información Judicial. *La Corte Suprema ordena constituir un “Comité de Emergencia Ambiental” para detener y controlar los incendios irregulares en el Delta del Paraná*. 11.08.2020. Available at: <<https://www.cij.gov.ar/nota-38022-La-Corte-Suprema-ordena-constituir-un--Comit--de-Emergencia-Ambiental--para-detener-y-controlar-los-incendios-irregulares-en-el-Delta-del-Paran-.html>>. Access on: 27.10.2020.

<sup>300</sup> Urgenda. *The Urgenda Climate Case Against the Dutch Government*. Available at: <<https://www.urgenda.nl/en/themas/climate-case/>>. Accessed on: 27.10.2020.

<sup>301</sup> Climate Case Chart. *Leghari v. Federation of Pakistan*. Available at: <<http://climatecasechart.com/non-us-case/ashgar-leghari-v-federation-of-pakistan/?cn-reloaded=1>>. Accessed on: 27.10.2020.

climate change endangers humanity and nature”; (ii) “The current level of atmospheric CO2 concentration caused by human-made climate change has already taken our country into the danger zone”; and (iii) “climate change already damaging human and natural systems, causing loss of life and pressing species to extinction. **Unless arrested by government action informed by science, climate change will impose increasingly severe impacts on our nation and others, potentially to the point of collapse.**”<sup>302</sup>

418. Also, it must be noted that **the scenario narrated in this ADPF constitutes an unconstitutional state of affairs.**

419. In September 2015, at ADPF No. 347, this Federal Supreme Court recognized the unconstitutional state of affairs in the Brazilian prison system, caused by widespread violations of fundamental rights and repeated State inertia. Now, with the destruction of the Brazilian environmental policy, we are facing a heterogeneous set of actions and omissions that harm the Constitution because they leave the environment and the climate unprotected, demanding the recognition of the unconstitutional state of affairs.

420. The declaration of the unconstitutional state of affairs in environmental matters has scholarly support.<sup>303</sup> Furthermore, in 2020, on three occasions, this Supreme Court ruled on the topic. In a single judge decision of June 28, 2020, in the course of ADPF No. 708, Justice Luís Roberto Barroso, when assessing the last years’ environmental and climate policies, raised the correct hypothesis of a progressive state of unconstitutional affairs in environmental matters:

“Therefore, everything points to a **continuous, progressive, and worrying trajectory of the emptying of Brazilian public policies in environmental matters, which has worsened exponentially in the last year and a half. In fact, such a state of affairs involves not only everyone’s right to a healthy environment in itself (Article 225 of the Constitution), but it also reflects on a wide range of other fundamental rights protected by the 1988 Constitution.**”

421. The same notion was conveyed by Justice Rosa Weber in her opening statement during the public hearing held at ADO No. 59, which questioned the functioning of the Amazon Fund. In another environmental case, within the scope of actions that question the revocation of important CONAMA rules (ADPFs No. 747, No.

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<sup>302</sup> UNITED STATES DISTRICT COURT District of Oregon - Eugene Division. Case No. 6: 15-cv-01517-TC. First amended complaint for declaratory and injunctive relief, 2015, p. 74.

<sup>303</sup> See, for example: CAÚLA, Bleine Queiroz; RODRIGUES, Francisco Lisboa. “O estado de coisas inconstitucional ambiental.” *Revista de Direito Público Contemporâneo*, v. 1, n. 2, 2019.

748, and No. 749), Justice Rosa Weber signaled a state of affairs that suggests worsening environmental protection in Brazil. In a preliminary ruling within the scope of ADPF No. 747, issued on October 29 of this year, Justice Rosa Weber stated:

“The state of affairs inaugurated by the revocation of CONAMA Resolutions 284/2001, 302/2002, and 303/2002 suggests a worsening of Brazil’s default situation regarding its constitutional and conventional environmental protection obligations. The suppression of environmental regulatory frameworks, a procedure that is not to be confused with its updating, constitutes a normative framework of apparent setback in the field of protection and defense of the right to an ecologically balanced environment (Article 225, head, of the Constitution) and, consequently, of the fundamental rights to life (Article 5, head, of the Constitution), and health (Article 6 of the Constitution), to the point of giving the impression of the effective dismantling of the State structure for damages prevention and repair to the integrity of the common environmental heritage.”

422. In the present case, it is intended that this Federal Supreme Court orders the Federal Government authorities involved to implement the PPCDAm, an existing, successful, and in full force public policy qualified as: (i) **essential**, since its non-execution generates the impossibility of guaranteeing the protection of the essential core of the right to an ecologically balanced environment and other fundamental rights in question; (ii) arising directly from the **State constitutional** obligation, **explicitly set forth** in Federal Laws and Decrees; and (iii) **consolidated**, since it **was created in 2004 and has been implemented since 2007**, having produced **results never obtained anywhere in the world**, reducing 83% deforestation rates in the Legal Amazon in just six years of its implementation. It should be reiterated: in any of the claims of this ADPF, no additional measures are required for the effective execution of the public policy already existing and in force.

423. In light of the foregoing, supported by the understanding of the Federal Supreme Court, the Superior Court of Justice, and Supreme Courts of other countries, there is no doubt about the need for court determination in the case in question, in order to stop a serious and irreparable injury to the fundamental rights exposed on this ADPF, arising of actions and omissions perpetrated by the Federal government authorities, in clear breach of constitutional duties aimed at guaranteeing the effectiveness of fundamental social-environmental rights.

## VIII. PRELIMINARY INJUNCTION

424. The requirements for the granting of the preliminary injunction claimed are present. The likelihood of success on the merit of the case (*fumus boni iuris*) is based on the reasons set out in the present petition and on the factual data provided.

425. The *periculum in mora*, in turn, is also evident. This ADPF seeks the effective and immediate enforcement of the PPCDAm as a measure of utmost urgency to avoid the continuity of serious and irreparable damage to the fundamental rights examined herein, as narrated in Chapter VI, based on the factual elements about the exponential increase in deforestation in the Legal Amazon, including in Indigenous Lands and Conservation Units, and other irreversible damages described above. These consequences are the emptying of the essential core of the collective right to an ecologically balanced environment for the present and future generations of Brazil and Humanity, with serious consequences for the life, dignity, and health, as well as for the fundamental rights of Indigenous Peoples, traditional communities, children, and adolescents. **Avoiding the “point of no return” in the Amazon is a measure that can no longer wait.**

426. Furthermore, it should be noted that the urgent determination, before the end of 2020, gains even more relevance when **it is verified that the Federal Government is institutionally and budgetary organizing itself for State action in 2021**. The sooner the measure is approved, the more possibility the Federal Government and its federal entities will have to organize and, in fact, implement the PPCDAm in 2021.

427. Casting an exemplary vote on the issue, Justice Celso de Mello well established the elements that reflect the essence of the present preliminary requests: “**The Government will need, then, with support in said principle [*precautionary principle*], the adoption of preliminary measures aimed at preserving the safety of the environment and thereby protecting the integrity of human life and health.**”<sup>304</sup>

428. In the dramatic scenario explained in this Petition, especially in Chapters V and VI, **it is not possible to wait for the final judgment of this ADPF for the adoption of the emergency measures claimed by the Petitioners. By then, irreversible damage will have been consummated, definitively compromising the**

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<sup>304</sup> Federal Supreme Court. En banc. Direct Unconstitutionality Action - ADO No. 4066/DF. Rapporteur: Justice Rosa Weber. 07.03.2018

**ecological balance and, consequently, life, dignity, health, Indigenous Peoples, traditional communities, and children and adolescents.** The extreme urgency justifies that the measure be granted by a single judge, as expressly authorized by Article 5, paragraph 1, of Law 9882/1999.

429. The Petitioners, supported by the Entities that claim admission as an *amici curiae*, **request the preliminary injunction to be granted, in the terms that follow.**

430. Regarding the Federal Government and the competent federal entities (IBAMA, ICMBio, FUNAI and others eventually indicated by the federal Executive Branch) obligations aimed at **effectively combating deforestation in the Legal Amazon** and the consequent **achievement of climate targets for the reduction of gas emissions that cause climate emergency assumed internationally by Brazil and expressly set forth in the Brazilian legislation**; considering that the Brazilian climate target assumed at COP 15, enacted in Brazilian legislation by Article 6, III, of Law No. 12187/2009 and Article 19, paragraph 1, I, of Decree No. 9578/2018; considering the *exponential increase in deforestation nowadays keeps Brazil away from meeting the Brazilian climate target of stopping illegal deforestation by 2030*, adopted under the Paris Agreement, enacted by Decree No. 9073/2017; as well as considering the other constitutional facts and foundations explained in this ADPF:

- (i) They claim **that the Federal Government and the competent federal agencies and entities (IBAMA, ICMBio, FUNAI and others eventually appointed by the federal Executive Branch) are ordered, within their legal powers, to effectively and satisfactorily execute the PPCDAm, notably inspection, environmental control, and other measures set forth in that policy, at levels sufficient to effectively combat deforestation in the Legal Amazon and the consequent achievement of the Brazilian climate goals assumed before the global community.** To that end, Petitioners claim the following *objective measurement parameters are adopted to comply with the preliminary order*, to be marked by the **progressiveness of actions and results**:

- (i.1) **By 2021, the effective reduction of deforestation rates in the Legal Amazon**, according to official data made available by INPE/PRODES, **at levels sufficient to comply with the target of 3,925 km<sup>2</sup> of annual**



**deforestation rate in the Legal Amazon**, corresponding to the 80% reduction in annual rates in relation to the average verified between 1996 and 2005 - **which should have been achieved by the current year of 2020**. The Petitioners also record a claim to be considered in the future only in case of failure to meet the aforementioned target for 2021, in the sense that, in the event of such a hypothesis, more strict measures are applied for the following year, allowing the target of 3,925 km<sup>2</sup> to be achieved up to a maximum of 2022, as a temporary moratorium for any and all deforestation in the Amazon and others to be assessed and required in due course, if necessary.

(i.2) **The effective and continuous reduction, until its elimination, of illegal deforestation levels in Indigenous Lands and Federal Conservation Units in the Legal Amazon**, according to official data provided by INPE/PRODES, respecting the rights of Indigenous Peoples and traditional communities.

(i.3) **The increase in the punishment of environmental infractions based on competent federal entities (IBAMA and, when applicable, ICMBio and FUNAI) actions** against illegal deforestation in the Legal Amazon, which is one of the expected results of the Monitoring and PPCDAm control; and

(i.4) The immediate (by 2021) or progressive **compliance**, – as stated in the PPCDAm itself –, **of the other expected results foreseen in the Central Themes of the PPCDAm, presenting a schedule for this purpose.**

431. To effectively enforce the PPCDAm, according to the main preliminary claim above, Petitioners require the granting of the following supplementary preliminary injunction:

- (ii) Considering the seriousness of the situation of *absolute structural insufficiency* of the competent public entities to combat deforestation in the Legal Amazon, as shown above, which makes the implementation of the PPCDAm unfeasible, Petitioners claim the **Government is ordered to present, within 60 (sixty)**

**days**, in the case records, and on the internet website designated by it, **specific plan for institutional strengthening of IBAMA, ICMBio, and FUNAI and others to be eventually appointed by the Federal Executive Branch, with a continuous and gradual schedule, including the guarantee of budget allocation and human resources, according to a feasibility proposal to be presented by the Federal Government, at levels such that it is possible to comply with its legal attributions aimed at the effective and uninterrupted fight against deforestation in the Legal Amazon and its Protected Areas.** All the acts (both the presentation of the institutional strengthening plan and its execution) shall have wide active transparency of information, mechanisms for public participation, and other instruments deemed necessary to ensure social control over such acts.

432. Regarding Procedural Law, it should be noted that the present case leads to claims related to the implementation of essential public policy aimed at safeguarding the essential core of constitutional rights and duties that are the object of the ADPF. It can be inferred that the solutions to be adopted, especially regarding compliance with the preliminary order of this Federal Supreme Court, have a *public, structuring character, which is in the interest of all society, whose legal goods are unavailable and whose essential fundamental rights involve the pillars of life, dignity of the human person, health, Indigenous Peoples, traditional communities, and children and adolescents; in short, the effectiveness of the Constitution.* In this factual-procedural context, and always to collaborate with the maximum effectiveness of the **remedy, the Petitioners claim that the proceedings, from the beginning to the end of its enforcement phase, be carried out with the highest standards of transparency, public participation, and social control, and the measures indicated below and/or others that you consider appropriate for the best resolution of this ADPF may be adopted, namely:**

**(iii) To guarantee the effectiveness and the continuous progressiveness of State actions** in compliance with the preliminary injunctions **required in this ADPF: Petitioners claim that Federal Government, in partnership with its federal entities IBAMA, ICMBio and FUNAI, and others possibly indicated by the federal Executive Branch, specifically on compliance with the preliminary injunction, is ordered to, following the PPCDAm, present schedules, goals, objectives, deadlines, expected results, monitoring indicators, and other information necessary to guarantee the maximum effectiveness of the**

**process and the effective execution of the public policy herein, considering the objective parameters mentioned in item “(i)”, above, subject to be approved by this Federal Supreme Court;**

- (iv) *In order to guarantee the transparency and participation of Brazilian society, which has fundamental rights to an ecologically balanced environment, health, dignified life, and life, as well as to specific groups whose fundamental rights are involved in this demand - such as Indigenous Peoples, traditional peoples and communities, and children and adolescents - as well as to allow *social control*, including the organized civil society and the scientific community, among others: Petitioners claim **that the Federal Government and federal entities IBAMA, ICMBio and FUNAI and others eventually indicated by the Federal Executive Branch are ordered to present in court and on the Internet website to be indicated by the Federal Government, objective, transparent, clear, and in plain language, on a monthly basis, if possible illustrated by maps, graphs, and other visual communication techniques, the actions and results of the measures taken in compliance with the preliminary order determined by this Federal Supreme Court, to be made publicly available in an open format, if possible integrated with the National Environment Information System (SINIMA), which should be given wide publicity;***
- (v) *Aiming to create a space for technical assessment, consultation, and deliberation, especially due to the scope of the matter and its essentiality for the entire community: an **Emergency Monitoring, Transparency, Participation, and Deliberation Committee must be created**<sup>305</sup>, to be coordinated and mediated by this honorable Justice or your office representative, guided by the principles of accessibility, participation, and transparency, and equal conditions, formed by means of equal composition, whose duties are to establish mechanisms and instruments for transparency and participation, as well as analyze the actions adopted and their effectiveness, among other elements to be determined by you. It is suggested, therefore, that the composition of the said Committee contemplates, at least: the public authorities involved (as indicated by the Federal Executive Branch and Your Honor’s decision); the Petitioners*

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<sup>305</sup> Like the one the Supreme Court of Argentina has adopted in a structural case in environmental matters. Available at: <http://www2.stf.jus.br/portalStfInternacional/cms/destaquesNewsletter.php?sigla=newsletterPortalInternacionalJurisprudencia&idConteudo=450502> > . Access in 29.10.2020.

and *amici curiae* Entities of this ADPF, including Entities representing Indigenous Peoples and traditional communities (at least APIB and CNS), as well as representatives and entities of the national scientific community, specialists, and other institutions and personalities designated by you;

- (vi) Furthermore, *considering the relevance of the present demand for the whole Brazilian society, in its present and future generations*: **they claim that, throughout the course of the process, all other procedural measures necessary are adopted in order to respect the pillars of participatory democracy, active transparency, and social control, aiming to monitor and assess the results of State's actions**, including through, for example, public hearings and meetings, preparatory meetings, expert hearings or other mechanisms that you believe are appropriate for ensuring the effectiveness of the process.

433. Also, they require that the terms of this preliminary injunction - aimed at **enforcement** of the actions - be sustained in the event of possible partial or total replacement or any other change in the factual situation related to the denomination of the policy to prevent and combat deforestation in the Amazon. Should this happen, they shall be included in any new governmental planning instruments, strategic guidelines, lines of action, concrete goals, actions defined for each goal, timetable for achieving each goal, distribution of competencies and responsibilities in each government agency - crossing different ministries -, articulations with other actors besides the federal government (in particular, with state governments), clear sources of funds, expected results and indicators for monitoring results, all specific to the Amazon biome and aiming compliance with Brazilian climate targets, as specified in the claims. Given the principle of the prohibition against retrogression and other applicable constitutional provisions, new plans to prevent and combat deforestation in the Amazon must at least include the environmental rigor and technical robustness of the last phase of the PPCDAm, never less.

434. They also claim that the adoption of measures to comply with the precautionary decision does not compromise the effectiveness of the federal government's actions in other biomes and in its other areas of activity beyond deforestation.

435. Finally, they claim that it be determined that this ADPF does not prevent the regular course of lawsuits related to combating deforestation and other illegal activities in the Amazon in trial and appellate courts, since such actions, if any, may be subjected to discussing new objective factual situations, usually restricted to a specific location, without unrestricted and binding effects of national scope.

## IX. PRAYER FOR RELIEF

436. In light of the foregoing, Petitioners claim that, after the information provided by the Federal Government, MMA, INPE, IBAMA, ICMBio, and FUNAI, among others appointed by the federal Executive Branch, the Federal Solicitor General (Article 103, paragraph 3, of the Constitution, 1988); and the Federal Attorney General (Article 103, paragraph 1, of the Constitution, 1988).

437. The organizations that **sign this ADPF claim their admission as *amici curiae***, including to present possible new contributions before this Federal Supreme Court, including oral arguments.

438. Based on Article 9, paragraph 1, of Law No. 9868/1999, they also require [a] **public hearing(s) to be held**, with the presence of specialists and authorities in the subject matter of the case, considering the multidisciplinary nature of Socio-Environmental Law and the subject matter of this ADPF, especially to discuss, among other points to be decided by the court, factual elements of a scientific, socioeconomic, and socio-environmental nature related to the actions and omissions described in Chapter V and the injuries to fundamental rights explained in Chapter VI.

439. In the end, the Petitioners, corroborated by the Entities that claim admission as *amici curiae*, **request the final claims be** granted, as follows:

- (i) They claim **that the Federal Government and the competent federal agencies and entities (IBAMA, ICMBio, FUNAI and others eventually appointed by the federal Executive Branch) are ordered, within their legal powers, to effectively and satisfactorily execute the PPCDAm, notably inspection, environmental control, and other measures set forth in that policy, at levels sufficient to effectively combat deforestation in the**

**Legal Amazon and the consequent achievement of the Brazilian climate goals assumed before the global community.** To that end, Petitioners claim the following *objective measurement parameters are adopted in order to comply with the preliminary order*, to be marked by the **progressiveness of actions and results**:

(i.1) **By 2021, the effective reduction of deforestation rates in the Legal Amazon**, according to official data made available by INPE/PRODES, **at levels sufficient to comply with the target of 3,925 km<sup>2</sup> of annual deforestation rate in the Legal Amazon**, corresponding to the 80% reduction in annual rates in relation to the average verified between 1996 and 2005 - **which should have been achieved by the current year of 2020**. The Petitioners also record a claim to be considered in the future only in case of failure to meet the aforementioned target for 2021, in the sense that, in the event of such a hypothesis, more strict measures are applied for the following year, allowing the target of 3,925 km<sup>2</sup> to be achieved up to a maximum of 2022, as a temporary moratorium for any and all deforestation in the Amazon and others to be assessed and required in due course, if necessary.

(i.2) **The effective and continuous reduction, until its elimination, of illegal deforestation levels in Indigenous Lands and Federal Conservation Units in the Legal Amazon**, according to official data provided by INPE/PRODES, respecting the rights of Indigenous Peoples and traditional communities.

(i.3) **The increase in the punishment of environmental infractions based on the competent federal entities (IBAMA and, as appropriate, ICMBio and FUNAI) actions** against illegal deforestation in the Legal Amazon. This is one of the expected results of the PPCDAm Monitoring and Control; and

(i.4) The immediate (by 2021) or progressive **compliance**, – as stated in the PPCDAm itself –, **of the other expected results foreseen in the Central Themes of the PPCDAm, presenting a schedule for this purpose.**

- (ii) Considering the seriousness of the situation of *absolute structural insufficiency* of the competent public entities to combat deforestation in the Legal Amazon, as shown above, which makes the implementation of the PPCDAm unfeasible, Petitioners claim the **Government is ordered to present a specific plan for institutional strengthening of IBAMA, ICMBio, and FUNAI and others to be eventually appointed by the Federal Executive Branch, introduced as a consequence of the preliminary injunction aforementioned, with a continuous and gradual schedule, including the guarantee of budget allocation and human resources, according to a feasibility proposal to be presented by the Federal Government, at levels such that it is possible to comply with its legal attributions aimed at the effective and uninterrupted fight against deforestation in the Legal Amazon and its Protected Areas.** All the acts (both the presentation of the institutional strengthening plan and its execution) shall have wide active transparency of information, mechanisms for public participation, and other instruments deemed necessary to ensure social control over such acts.

440.                      Regarding procedural conduct, they require

- (iii) *In order to guarantee the effectiveness and the continuous progressiveness of State actions* in compliance with the preliminary injunctions **required in this ADPF: Petitioners claim that Federal Government, in partnership with its federal entities IBAMA, ICMBio and FUNAI, and others possibly indicated by the federal Executive Branch, confirming the preliminary injunction, is ordered to, following the PPCDAm, present schedules, goals, objectives, deadlines, expected results, monitoring indicators, and other information necessary to guarantee the maximum effectiveness of the process and the effective execution of the public policy herein, considering the objective parameters mentioned in item “(i)”, above, subject to be approved by this Federal Supreme Court;**
- (iv) *In order to guarantee the transparency and participation of Brazilian society,* which has fundamental rights to an ecologically balanced environment, health, dignified life, and life, as well as to specific groups whose fundamental rights are involved in this demand - such as Indigenous Peoples, traditional peoples and communities, and children and adolescents - as well as to allow *social*

*control*, including the organized civil society and the scientific community, among others: Petitioners claim **that the Federal Government and federal entities IBAMA, ICMBio and FUNAI and others eventually indicated by the Federal Executive Branch are ordered to present in court and on the Internet website to be indicated by the Federal Government, objective, transparent, clear, and in plain language, on a monthly basis, if possible illustrated by maps, graphs, and other visual communication techniques, the actions and results of the measures taken in compliance with the preliminary order determined by this Federal Supreme Court, to be made publicly available in an open format, if possible integrated with the National Environment Information System (SINIMA), which should be given wide publicity;**

- (v) **Petitioners require the creation of an Emergency Monitoring, Transparency, Participation, and Deliberation Committee<sup>306</sup>, to be coordinated and mediated by this court, guided by the principles of accessibility, participation and transparency, and equal conditions, formed by equal composition, whose attributions are to establish mechanisms and instruments for transparency and participation, as well as analyze the actions taken and their effectiveness, among other elements to be determined this court. It is suggested, therefore, that the composition of the said Committee contemplates, at least: the public authorities involved (as indicated by the Federal Executive Branch and Your Honor's decision); the Petitioners and *amici curiae* Entities of this ADPF, including Entities representing Indigenous Peoples and traditional communities (at least APIB and CNS), as well as representatives and entities of the national scientific community, specialists, and other institutions and personalities designated this court;**
- (vi) *Furthermore, considering the relevance of the present demand for the whole Brazilian society, in its present and future generations: they claim that, throughout the course of the process, all other procedural measures necessary are adopted in order to respect the pillars of participatory democracy, active transparency, and social control, aiming to monitor and assess the results of State's actions, including through, for example, public*

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<sup>306</sup>Like the one the Supreme Court of Argentina has adopted in a structural case in environmental matters. at: <http://www2.stf.jus.br/portalStfInternacional/cms/destaquesNewsletter.php?sigla=newsletterPortalInternacionalJurisprudencia&idConteudo=450502> > . Access on 10.29.2020.



hearings and meetings, preparatory meetings, expert hearings or other mechanisms that you believe are appropriate for ensuring the effectiveness of the process.

441. Besides, they require that the terms of this preliminary injunction - aimed at **enforcement** of the actions - be sustained in the event of possible partial or total replacement or any other change in the factual situation related to the denomination of the policy to prevent and combat deforestation in the Amazon. Should this happen, they shall be included in any new governmental planning instruments, strategic guidelines, lines of action, concrete goals, actions defined for each goal, timetable for achieving each goal, distribution of competencies and responsibilities in each government agency - crossing different ministries -, articulations with other actors besides the federal government (in particular, with state governments), clear sources of funds, expected results and indicators for monitoring results, all specific to the Amazon biome and aiming compliance with Brazilian climate targets, as specified in the claims. In view of the principle of prohibition against retrogression and other applicable constitutional provisions, new plans to prevent and combat deforestation in the Amazon must at least include the environmental rigor and technical robustness of the last phase of the PPCDAm, never less.

442. They also claim that the adoption of measures to comply with the precautionary decision does not compromise the effectiveness of the Federal Government's actions in other biomes and in its other areas of activity beyond deforestation.

443. Finally, they claim that it be determined that this ADPF does not prevent the regular course of lawsuits related to combating deforestation and other illegal activities in the Amazon in trial and appellate courts, since such actions, if any, may be subjected to discussing new objective factual situations, usually restricted to a specific location, without unrestricted and binding effects of national scope.

Terms of approval.

Brasília, DF, Brazil, 11 November 2020.

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– APIB

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