



Hot spots in areas bordering the Kaxarari Indigenous Land in Lábrea state of Amazonas in August, 2020.

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Executive Summary¹

– Organisations take Brazilian government to the Supreme Court over deforestation and human rights abuses

"Everyone has the right to an ecologically balanced environment, which is a public good for the people's use and is essential for a healthy life. The Government and the community have a duty to defend and to preserve the environment for present and future generations."

(Article 225 of the 1988 Constitution of the Federative Republic of Brazil)

¹ - This document is an unofficial translation of the Executive Summary in Portuguese. Link to the official Executive Summary [here](#).

On November 11, 2020, seven political parties brought an Action Against the Violation of a Fundamental Constitutional Right (Arguição de Descumprimento de Preceito Fundamental, hereafter ADPF) before the Federal Supreme Court against the Federal Government and its bodies (hereafter the Government) for their acts and omissions in executing the primary national deforestation policy, the Action Plan for Prevention and Control of the Legal Amazon Deforestation (PPCDAM).² While the lawsuit was formally brought by political parties³ due to procedural requirements of the ADPF legal pathway, its development has been led by a coalition of civil society actors: Artigo 19, Articulação dos Povos Indígenas do Brasil (Apib), Conectas Direitos Humanos, Conselho Nacional das Populações Extrativistas (CNS), Engajamundo, Greenpeace Brazil, Instituto Alana, Instituto Socioambiental (ISA), Observatório do Clima and Associação Alternativa Terrazul.

The lawsuit asserts that the Government, through its inadequate implementation of PPCDAM and uncontrolled deforestation in the Amazon, is significantly contributing to dangerous climate change. The plaintiffs also claim that the Government has violated the fundamental right of the populations living in the Amazon and throughout Brazil, particularly the rights of Indigenous Peoples and traditional communities, as well as those of present and future generations.



Deforestation in Brazil

Despite its obligations under national and international law, Brazil leads in deforestation of tropical forests.⁴ Sixty per cent (60%) of the Amazon is located in Brazil, which means that our country has the largest area of tropical forest and the most abundant biodiversity in the world. However, the Amazon has been the victim of an accelerated deforestation process: Nineteen per cent (19%) of its area in Brazil only has already been destroyed⁵.

We know that a protected forest is fundamental to reduce global warming, since it absorbs and retains carbon through photosynthesis. The Amazon is also fundamental to balance the climate regime in Brazil, Latin America, and other regions of the planet.⁶ It provides a free service to us all. When heavily deforested and burned down, Amazon loses its ability to absorb carbon and becomes a significant emitter, let alone the other social, economic and environmental impacts.⁷ In Brazil, deforestation is the primary source of greenhouse gas emissions and, therefore, the country's largest contribution to climate change.

We are in a moment of extreme urgency. World-renowned scientists have warned that if we have 20% to 25% of deforestation in the biome, the Amazon will reach a tipping point; which will cause irreversible changes and permanent loss of ecosystem services that the forest provides (and which are essential to Brazil), such as the severe imbalance in the hydrological cycle and the permanent disappearance of part of the forest.

2 - Link in Portuguese of the public policy [here](#).

3 - The political parties are: Partido Socialista Brasileiro (PSB), Rede, Partido Democrático Trabalhista (PDT), Partido Verde (PV), Partido dos Trabalhadores (PT), Partido Socialismo e Liberdade (PSOL) and the Partido Comunista do Brasil (PCdoB).

4 - SOS Mata Atlântica. General data. Available at: <<https://www.sosma.org.br/conheca/mata-atlantica/>>.

5 - Current deforestation is substantial and frightening: 17% across the entire Amazon basin and approaching 20% in the Brazilian Amazon." LOVEJOY, Thomas; NOBRE, Carlos. "Amazon tipping point: Last chance for action". Science Advances. v. 5, n. 2, dez. 2019: <<https://advances.sciencemag.org/content/5/12/eaba2949>>

6 - Studies that address this issue: 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

7 - 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: <<https://doi.org/10.1098/rstb.2007.0036>>. Accessed: 27.10.2020.



The legal action

This legal action was developed in the public interest of protecting the Amazon, based on the Constitution. The coalition is demanding that the Government preserves the Amazon for current and future generations, in order to combat the climate emergency and protect fundamental human rights.

We are civil society organisations united to bring an action before the Supreme Court against the Government. Since 2019, the Government has abandoned its main deforestation policy. Created in 2004, the PPCDAM has been the most successful Brazilian environmental policy, resulting in a 83% reduction in deforestation between 2004 and 2012 (from 27,772 km² to 4,571 km²).⁸ By failing to implement it, the Government is directly affecting the fundamental rights of Brazilians and failing to meet its obligations to reduce greenhouse gas emissions.

As a coalition of civil society organisations, have led the development of the complaint collectively. We have decided to use an ADPF in order to have the application heard directly at the Federal Supreme Court, the highest court in the country. Due to the procedural requirements of ADPFs, political parties must serve as the official plaintiffs representing the coalition. We will now act as *amici curiae* or "friends of the court".⁹

The lawsuit demands urgent precautionary injunctive measures. We ask the Federal Supreme Court of Brazil to order the Federal Government and its bodies, namely the Brazilian Institute of Environment and Renewable Natural Resources (IBAMA), Chico Mendes Institute for Biodiversity Conservation (ICMBio), Brazil's National Indigenous Foundation (FUNAI) and other bodies involved in the immediate execution of the PPCDAM, to take action and meet their obligations under the PPCDAM. The lawsuit also claims serious violations of fundamental rights of Brazilians, especially those of Indigenous Peoples and traditional communities, in addition to the rights of present and future generations.



The demands

We demand that the Federal Supreme Court directs the Government to implement the PPCDAM. We suggest the following benchmarks for compliance with the PPCDAM and other legal obligations:

- By 2021, meet the annual goal to decrease the rate of deforestation to 3,925 km² in the Legal Amazon,¹⁰ corresponding to an 80% reduction of annual deforestation rates in relation to the average verified between 1996 and 2005 – which should have been completed by 2020.
- In case the government does not comply, it is requested that more stringent measures be applied in the following year, such as a temporary moratorium for any and all deforestation and other measures that the Supreme Court deems valid, to reach the target of 3,925 km² by no later than 2022;

8 - Federal Senate. Assessment of National Policy on Climate Change: Consolidated Report. 2019, p. 38. Available at: <<http://legis.senado.leg.br/sdleg-getter/documento/download/be24ff00-0608-4f8b-9d57-804c33097882>>.

9 - Pending our request to act as *amici curiae* being accepted by the Federal Supreme Court.

10 - The Legal Amazon is an administrative unit and socio-geographic division in Brazil, containing all nine states in the Amazon Basin. It contains all of Brazil's Amazon biome.

- Continuously reduce the rate of deforestation in indigenous lands and federally protected areas in the Legal Amazon, until there is no more illegal deforestation in those protected areas;
 - Increase the power of the competent federal authorities (IBAMA, ICMBio, FUNAI, etc.) to issue administrative penalties for illegal deforestation in the Legal Amazon.
 - Implement actions to fulfill the expected results foreseen in the PPCDAm.
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We also request that the Federal Supreme Court orders the Government to enact a series of measures to enable the adequate implementation of the PPCDAm, such as:

- Devise a specific plan to empower the primary entities involved in controlling and combating deforestation (IBAMA, ICMBio, and FUNAI) so that these bodies are able to comply with their legal obligations to effectively and continuously combat illegal deforestation in the Legal Amazon and its protected areas;
 - Provide to the Supreme Court and the public online, actions and results of the measures adopted by the Government for the effective execution of the PPCDAm in language easily understood by the general public, on a monthly basis. These records have to be objective, transparent and clear, and illustrated with maps, graphs, and other visual communication tools, when possible.
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We also demand that the Federal Supreme Court creates an Emergency Commission for Monitoring, Transparency, Participation, and Deliberation:

- This Commission would be coordinated and mediated by the Rapporteur of the Supreme Court, attributed to establishing mechanisms and instruments of transparency and participation analysing, and monitoring the actions taken and their effectiveness.



The evidence

The lawsuit is based on an analysis of official data and shows the following governmental acts and omissions in 2019 and 2020. All documentation concerning the evidence summarized below is contained in the official Action Against the Violation of a Fundamental Constitutional Right filed with Federal Supreme Court:

- For context, the National Policy on Climate Change - PNMC (Law No. 12187/2009), regulated by Decree No. 7390/2010 (replaced by Decree No. 9578/2018), embedded in our domestic laws the climate goals committed to by Brazil before the international community. In particular, it enshrines the goal of reducing deforestation in the Amazon by 80% in relation to the 1996-2005 verified average, corresponding to 3,925 km²/year until 2020.
- Despite the PPDCAm being fully in force for years, the Government has effectively suspended its enforcement with a series of acts aimed at making the execution of this public policy unfeasible since the beginning of 2019;



Indigenous family impacted by the destruction of forests neighbouring their home.

- Deforestation rates have broken historical records. Consolidated by the Satellite Deforestation Monitoring Project of the Legal Amazon (PRODES), from the Brazilian Institute for Space Research (INPE), the 2019 deforestation rate was 10,129 km², 34% more than 2018. It was the highest deforestation rate since 2008 and also the third-highest percentage increase in history.¹¹ In 2020, the scenario is going to be even worse. Based on Brazil's Real-time Deforestation Detection System (DETER), INPE estimates a further 34% increase in the annual deforestation rate.¹² If confirmed, Brazil could exceed the mark of 13 thousand km² of deforested area, which is three times more than the country's commitment for 2020 (3,925 km²) for its climate goals. This year will also be the first time in history that deforestation in the Amazon has had two consecutive increases of around 30% per year.
- One of the immediate effects of the increase in deforestation is the escalation of slash-and-burn technique used to destroy vegetation felled by deforestation. In 2019, there were 129,089 active fires in the Legal Amazon, 39% more than in 2018, and 81% higher than the 2011-2018 average. Data compiled by INPE up to October 14, 2020 show 128,420 active fires in the region, 26.5% more than that registered in the same period in 2019;
- In 2019-2020, despite environmental crimes increasing and deforestation rates rising sharply, the Government has significantly reduced its enforcement and control of illegal deforestation in the Amazon. According to official public data, the enforcement of penalties and inspection of illegal activities in the Amazon fell 61% compared to 2018 (down 29% in 2019 and 46% in 2020). There was a drastic reduction in embargo terms, one of the most applied sanctions in case of illegal deforestation: 21% in 2019 and 80% in 2020 (year-over-year). The total reduction compared to 2018 is 84%;
- An analysis of the budgets of the Government shows almost negligible budgetary execution on measures to combat deforestation in 2019 and 2020, at levels that are at odds with previous years. The low expenditure in measures to combat deforestation shows government inaction in the implementation of the PPCDAm;

11 - National Institute of Space Research. PRODES: Satellite Monitoring of Deforestation of the Brazilian Amazon Forest. Available at: < <http://www.obt.inpe.br/OBT/assuntos/programas/amazonia/prodes> >.

12 - INPE - National Institute for Space Research. Terrabrasilis Portal. Available at: < <http://terrabrasilis.dpi.inpe.br/> >.

- An analysis by the Office of the Federal Comptroller General (CGU) of the 2019 budget of the Ministry of the Environment (MMA) including three of its main budget programs (Climate Change, Conservation and Sustainable Use of Biodiversity, and Environmental Quality) revealed: "a significant reduction in the budgetary allocation, in the last four years (2016 to 2019) for these three MMA programs, going from just over 175 million BRL to about only 20 million BRL. There was a reduction of almost 90% in terms of endowment." According to the CGU, the reductions in budgetary execution in 2019 were as follows: 13% in Climate Change, 14% in Conservation and Sustainable Use of Biodiversity, and 6% in Environmental Quality;¹³
- As of 2019, the Government formally halted the Amazon Fund, which finances a substantial part of the environmental agencies' measures, such as IBAMA, in the fight against deforestation. In addition to stopping new donations, the Government has not allocated at least 2.8 billion BRL that is already available for new hires;
- Data on budget failures in 2020 are even more egregious. As of August 31, 2020, the MMA's Direct Administration had settled only 0.4% of the authorised amount for actions destined to the execution of public policies, such as PPCDAm, totaling a mere 105,410 BRL;
- The non-execution of authorised budgetary resources in 2020 speaks for itself. As of October 5, 2020, a period after which most of the deforestation and fires have already happened, IBAMA has only executed 35.3% of the budgetary funds for environmental inspection and merely 41.6% in forest fire prevention and control;
- IBAMA, ICMBio, and FUNAI have a significant deficit of employees. Despite the agencies' demands to hire civil servants to replace lost personnel, the Government has refused to staff them. IBAMA has 2,821 open positions, which corresponds to 50% of the staff; ICMBio has 1,317 unfilled vacancies, and FUNAI has a deficit of more than 2 thousand civil servants;
- Throughout Brazilian history, environmental authorities have strived to improve environmental legislation and, in doing so, effectively protect the environment. As of 2019, however, an unprecedented event began to take place: the environmental authorities themselves have weakened environmental standards. Three examples are pointed out in the application, within a broad set of environmental deregulation:
 - > Decree No. 9760/2019, which included a new phase (conciliation hearing), that effectively suspends the administrative sanctioning process until the conciliation is completed. Indeed, since the issuance of the Decree, IBAMA has held a mere five conciliation hearings (7,205 hearings are expected), and ICMBio held zero.
 - > Decree No. 10084/2019, which eliminated the prohibition on sugarcane activities in the Amazon and the Pantanal and therefore increased the pressure on the Amazon and the people that depend on it.
 - > Interpretative Rule No. 7036900/2020, issued by the president of IBAMA, which extinguished the possibility of carrying out inspections in loco on the export of native wood, restricting such activity to self-declared information of loggers.
- There are serious violations of the right to access to information that subsequently make monitoring the PPCDAm impossible.

13 - Ministry of Transparency, Supervision and Control General of the Federal Government. Evaluation Report on the Implementation of Government Programmes No. 69 - Actions relating to environmental monitoring under the responsibility of IBAMA. Brasília, 2017, p. 12.



A wave of climate litigation in Brazil

This lawsuit is not the first climate and deforestation complaint brought before the Federal Supreme Court. Two actions of unconstitutionality by omission that were filed before this lawsuit relate to the Amazon Fund (ADO 59) and the Climate Fund (ADPF 708). The earlier legal actions were filed by political parties against the Government, and demand declarations of unconstitutional omission by the Government due to the paralysis of the Funds' operations and governance and an injunction compelling the Government to reactivate the Amazon Fund and the Climate Fund.¹⁴ On September 21 and 22, 2020, the Supreme Court heard 66 experts in the course of a public hearing of ADPF 708. Both of the previous actions related to the present lawsuit point out to the inadequacy of those funds as part of the first overarching complaint against the Government's actions and omissions on deforestation at the Federal Supreme Court. The power of the new lawsuit is that it represents the voices of a large group of organisations and grassroots movements, which shows the will that the government complies with the law of a large group of people.



Overflight in the state of Pará to record illegal activities in 2019.

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14 - For more information <https://www.lse.ac.uk/granthaminstitute/news/first-climate-case-reaches-brazils-supreme-court/> and <https://www.lse.ac.uk/granthaminstitute/news/first-climate-case-reaches-brazils-supreme-court/>



Activist at the Global Climate Strike in Brazil, in September 2019. In several countries, the youth-led mobilization called for measures to combat global warming

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– Conclusion

The Brazilian Federal Constitution of 1988 recognises the direct relationship between a protected and balanced environment and the rights to life and health of current and future generations. Therefore, the coalition of non-governmental organisations demands that the Government meets its legal obligations and protects the environment and fundamental rights of Brazilians of today and tomorrow. We know that the climate crisis is just beginning, and future generations will be the most vulnerable to and impacted by the consequences of our carelessness with the environment today.¹⁵

Our application also identifies violations of the fundamental rights of Indigenous Peoples and traditional peoples to their lands, in addition to the rights that present and future generations have to life, human dignity, and health. Throughout the action, we show the deliberate acts and omissions that go against the fulfilment of the duty to protect the Amazon Forest.

15 - 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>. Acesso em: 25.08.2020.

