

Impunity for Environmental Violations in Protected Areas of the Amazon

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The Brazilian federal and state governments have created protected areas to combat deforestation and safeguard the biological and social diversity of the Brazilian Amazon. However, these areas are still threatened by deforestation and illegal logging. In this edition of *The State of the Amazon*, we evaluate the efficiency of the Brazilian administrative and judicial systems to punish these violations at the federal level. Impunity is the rule due to time-consuming investigations, administrative and judicial proceedings. The effective protection of these areas requires: prioritizing preventive measures against environmental violations; intensifying the application of penalties, such as the seizure and auction of cattle found within protected areas; and streamlining and improving the administrative and judicial systems for punishing violators.

Environmental Violations in Protected Areas of the Amazon

Over this decade, the Brazilian federal and state governments have nearly doubled the number of protected areas (conservation units and indigenous lands) in the Amazon in order to promote environmental conservation (Figure 1) and assure indigenous peoples' and local communities' rights over natural resources. Nonetheless, there is growing concern as to the integrity of these areas due to the fact that, from 2000 to 2008, 22,500 square kilometers were deforested within protected areas¹. In fact, in March 2008, there were 1,286 administrative proceedings concerning environmental violations within protected areas or their respective buffer zones in the Amazon, according to the Registration, Collection and

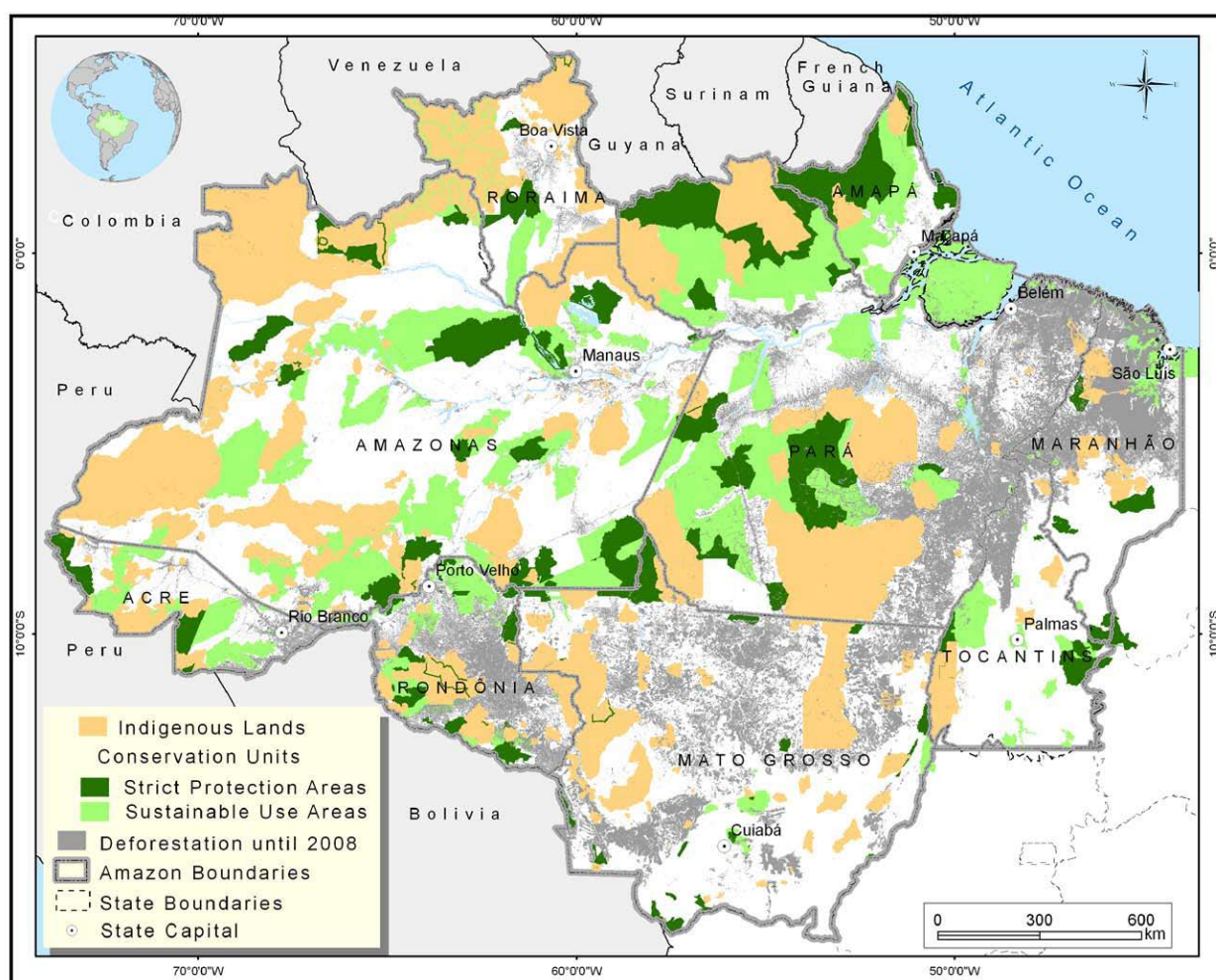


Figure 1. Protected Areas in the Amazon.

Inspection System (Sicafi) of IBAMA – the Brazilian environmental agency. However, the number of environmental violations within protected areas is actually much greater, for the fines are registered in a way that makes it impossible to determine where the violations were committed (whether inside or outside protected areas)². According to the Sicafi data, deforestation, fires or forest exploitation make up 34% of the administrative proceedings concerning protected areas in the Legal Amazon between the years 1998 and 2008; and protected areas near roads are the ones with the largest damages³. In the absence of an effective long-term strategy for conserving these areas, these threats may rise as the federal government invests in infrastructure through its Growth Acceleration Program (PAC), with R\$ 70 billion having been scheduled for the region up to 2010⁴. Even in the presence of preventive measures, certain damages stand to be significant⁵.

Of the options for assuring the integrity of protected areas, one of the most widely employed at the moment is to punish environmental violations at the administrative, civil and criminal levels. In this edition of *The State of the Amazon*, we evaluate the efficacy of the punishment for environmental violations in protected areas of the Amazon, taking into consideration both administrative and judicial proceedings in the State of Pará, which for the last three years has led the statistics in terms of deforestation⁶. The cases analyzed at IBAMA (34) account for 87% of the total value of

the fines issued by the agency in the protected areas of Pará between January 1998 and March 2008. In turn, the judicial proceedings reviewed were drawn from a list provided by the Federal Public Prosecutor's Office (Ministério Público Federal or MPF) in Belém. These proceedings were initiated between 1997 and 2006 and refer to crimes that occurred as of 1991⁷.

Impunity for Environmental Violations

Administrative proceedings (IBAMA)

The analysis of the 34 cases referring to environmental violations in the protected areas of Pará points to various shortcomings in the punishment of those charged by IBAMA. Up to March 2008, only 3% of the cases had been concluded, while 3% were in the administrative fine collection phase and 24% were in the (administrative or judicial) appeal phase. The majority (70%) were still under review prior to confirmation (homologation) by the executive manager or superintendent. Moreover, the accused held the right to appeal from this decision at other stages of the proceedings⁸.

IBAMA failed to observe the legal time limits for all the cases that reached the homologation phase⁹. The agency also failed to meet the legal time limits for a high proportion of the cases in other phases (Table 1). This delay in concluding cases is linked to various factors. In 2008, for example, the shortage of public attorneys at IBAMA stood at 54% for the region¹⁰ and 33% for

Table 1. Average duration (calendar days) of the principal phases of the proceedings initiated by IBAMA against large-scale environmental violations in protected areas in the State of Pará between January 1998 and March 2008. The numbers in parentheses indicate the number of cases used to estimate the average duration of each phase.

Phase of proceedings (n° of cases)	Average	Legal time limit	Failure to meet legal time limit (% of cases)
From issuing the violation notification to entry into IBAMA Information Protocol System - Sisweb (n=34)	145	5	91
From notifying the violator to receiving his defense (n=18)	21	20	39
Preparation of the inspector's report (n=3)	41	5	100
From sending a proceeding to IBAMA Legal Division (Dijur) to issuing the attorney's opinion (n=12)	389	15	75
From issuing the attorney's opinion to the confirmation of the violation notification by IBAMA executive manager or superintendent (n=10)	77	None	-
From issuing the violation notification to its confirmation by IBAMA executive manager or superintendent (n=10)	907	30	100

Pará, where the office had only 8 of the 12 attorneys needed. This shortage is aggravated by poor utilization of professional time. Up to May 2008, these attorneys were required to review any and all records preceding the confirmation phase, including appeals that constituted mere delaying tactics¹¹.

The cases analyzed at IBAMA reflect the generalized impunity of those who disregard federal administrative rules and regulations. Only 10% of the fines issued by the federal inspection agencies are collected – and among these agencies, IBAMA has the worst record in the country, having failed to collect R\$ 11.8 billion, or 58% of the total value of federal fines not collected¹².

Judicial Proceedings

Impunity for crimes against federal protected areas in the State of Pará also prevails in the judicial sphere. In our analysis of 51 proceedings, we verified that two-thirds were in progress, 15.5% had been dismissed because the statute of limitations had expired¹³ and 4% had been dismissed for lack of proof. Only 14% had resulted in some type of punishment. Of these, 4% involved settlement agreements into which the accused had voluntarily entered and with which they had fully complied in order to avoid criminal procedures or have them conditionally suspended. The other 10% referred to cases in which the violators were still complying with the terms and conditions of the settlement agreements.

The prevalence of cases in progress resulted from time-consuming procedures, including those prior to the beginning of legal action (Figure 2). The sum of the averages for the various phases – from the pre-investigation phase (i.e. from the time the crime occurred until the time it was reported to the Federal Police or the MPF) to the judgement phase – indicates that it takes an average six years for an environmental crime case to be judged. Consequently, if the accused were convicted and sentenced to the minimum penalty, they would go free, because the statute of limitations (of two or four years) is shorter than the average time of the proceedings analyzed in the current study.

The delays in criminal proceedings are due to various reasons. The time lag in reporting the crimes to the agencies responsible for the investigation and for the proposal of legal action retarded the beginning of these procedures. Moreover, in the face of such lags, it becomes harder to locate the authors and witnesses of the crimes and to collect evidence at the scene of the damages, whether during the police investigation or the judicial proceeding. From the standpoint of the Federal Police, delay in concluding investigations (police inquiries) is also due to the numerous tasks (managing the police department, consulting the law, investigating and coordinating operations) assigned to the police commissioner. From that of the judicial authorities, delay is related to complex clerical procedures (manual and electronic record), which consume an average 73% of the total time required for judicial proceedings.



Figure 2. Average duration (calendar days) of legal phases for 51 cases referring to environmental crimes committed in protected areas in the State of Pará between 1991 and 2006. The numbers in parentheses indicate the number of cases used to estimate the average duration of each phase.

Such problems, typical of the Brazilian police and judicial system, tend to create backlogs. In 2007, the rate of congestion¹⁴ on the first level for the federal courts of the 1st Region, which includes the states in the Amazon, was 74.2%, a figure similar to that for the state courts in the region (71.2%).¹⁵

Initiatives for improving enforcement of environmental laws

Steps taken by the federal government

In late 2007, the federal government adopted new measures to combat deforestation in the Amazon. As of July 2008, there has been a significant drop in deforestation rates thanks to two initiatives. 1) Restriction on access to credit for landowners holding more than 400 ha without neither title deeds nor environmental licenses in the Brazilian Amazon. 2) The increasing number of field inspections which led to the seizure and auction of 3,000 head of cattle illegally raised in protected areas of Pará and to the voluntary removal of another 30,000 head from the mosaic of conservation units in the Terra do Meio, southeastern Pará. It is important to note that the reduction in deforestation rates in this period happened despite the rising agricultural commodity prices in the preceding year (historically, rising agricultural commodity prices have been a driver of deforestation).

In addition, the Office of the National Attorney General (AGU) mounted a task force to collect the fines issued by the federal agencies. During the first half of 2009, six AGU attorneys would have to analyze 3,739 proceedings, of which 1,200 corresponded to the largest fines issued by IBAMA/PA. By focusing on major cases, they would reduce the number of proceedings to be analyzed, thereby facilitating conclusion of the cases and subsequent collection of the fines.¹⁶ Another initiative taken by AGU was to center the activities of IBAMA attorneys exclusively on analyzing the administrative proceedings. The other tasks (posting debts as Active Debt and judicially collecting the fines) are now to be performed by other AGU units operating at the federal, regional and local levels.

In order to improve the efficiency in resolving administrative proceedings, since May 2009, IBAMA superintendents must appoint IBAMA employees to decide on some cases without consulting the specialized attorney assigned to the agency. Those appointed can decide about cases involving fines of up to R\$ 2 million. The attorneys must only analyze proceedings under two circumstances: if there is legal controversy or if the fines exceed R\$ 1 million. Considering that there are more environmental analysts than attorneys and that they can now be appointed judging authorities, it will be pos-

sible to increase the number of decisions. Furthermore, IBAMA superintendents are now authorized to decide on appeals involving fines of up to R\$ 2 million¹⁷.

Steps taken in the judicial system

Various measures have also been adopted within the judicial system to hasten proceedings. For example, the virtualization of judicial proceedings (cases can be accessed via the internet and processed electronically) which has enabled a 25% average reduction in the duration of proceedings before federal small claims court. However, the widespread use of electronic judicial proceedings still lies in the future, given that it depends on investments in equipment and training.

Certain legislative changes are also likely to enhance judicial efficiency. Among these should be cited Law n° 11.719/2008, which prescribes that all procedural acts be performed in a single hearing, and Law n° 11.900/2009, which authorizes the use of videoconferences (in place of letter rogatory¹⁸) for hearing defendants and witnesses who reside outside the jurisdiction of the judge. Once again, however, full implementation of the measure will require that the local courts of the country be duly equipped.

Also promising is cooperation among institutions responsible for the application of the law, such as that observed in Cujubim (Rondônia State) during Operation Arc of Fire in early 2008. The Federal Police, the Rondônia State Public Prosecutor's Office (MPE), the State Public Defender's Office (Defensoria Pública) and the state court coordinated their efforts so as to hasten the legal proceedings and determine the destination of the seized timber.

The backlog of environmental crime cases in federal courts in the North of Brazil¹⁹ led to a proposal to specialize the federal courts in the region to better enable them to deal with such crimes. The first of these specialized courts would be located in Belém and Manaus. The proposal, which is to be analyzed by the Special Court of the Federal Regional Court for the 1st Region (TRF1), is based on the fact that in the South of Brazil, where federal courts were partially specialized²⁰ in environmental law, the duration of environmental proceedings has declined by half since 2005.

Despite the advances observed in both the administrative and judicial spheres, most of the initiatives are recent and their outcomes incipient. In the judicial system, the impact of these measures will initially be limited by the insufficient number of federal courts and judges, especially in remote districts of the states. To insure that the investments in transport infrastructure in the Amazon planned in the Growth Acceleration Program (PAC) do not further threaten the protected

areas in the region, it will be necessary to accelerate, improve and amplify these promising initiatives against environmental crime.

Steps taken by the public prosecutors offices

Among the initiatives adopted by the Federal and State Public Prosecutor's offices (the MPF and MPE, respectively) are: 1) legal actions against the beef supply chain for joint liability (according to the regulations of Decree 6.321/07); and 2) the publication, since April 2008, of a list of areas where economical activities are prohibited due to illegal deforestation. In June 2009, for example, the MPF in Pará took legal actions against 21 ranchers that had been fined by IBAMA for illegal deforestation or had continued to raise cattle in prohibited areas. The MPF also took legal actions against abattoirs that bought cattle from these areas and advised 69 of their customers to suspend purchases from these abattoirs under the penalty of being charged for the damages in joint liability²¹. As a result, three major retail chains announced that they would stop purchases from the abattoirs listed, while adding that they promised to request an independent audit, of international recognition, to assure that none of their commercialized products came from devastated areas of the Amazon²².

In addition, in July 2009, the MPF and the abattoirs signed a consent order according to which the latter promised to avoid purchasing products from ranchers involved in socio-environmental misconduct. The abattoirs pledged, for example, not to acquire cattle from prohibited areas or from ranches accused of exploiting slave labor. To assure that the terms are obeyed, the MPF will conduct an annual independent audit for the purpose of inspection. The audit will be financed by the State of Pará²³. As a result of this agreement, the Brazilian Development Bank (BNDES) announced new socio-economic criteria for supporting the cattle industry, including requiring independent audits to check compliance with the new guidelines²⁴.

Public Policy Recommendations

Prioritize prevention. Given that improvements in the punishment system tend to be gradual, it is necessary to strengthen preventive measures. This involves demarcating protected areas to clearly define their physical limits and the posting of warning signs to inform of prohibited activities. In addition, it is important to invest in the surveillance of these areas by means of systematic field inspections in critical areas. The ImazonGeo website (<http://imazongeo.org.br>) provides information useful for establishing

prevention guidelines, such as maps of unofficial roads and for identifying the protected areas most threatened by deforestation and fires.

Reinforce command and control. To reduce deforestation, it is essential to maintain the measures set forth by the government (credit restriction, the seizure and auction of cattle found within conservation units, and the focus on major cases, as recommended by the AGU). In addition, it is necessary to offer further support for the economic development of regions where illegal activities prevail. It is important, for example, to promote land regularization and elaborate management plans for conservation units where forest exploitation is permitted, such as national and state forests.

Cooperate to enhance legal responsibility. The institutional cooperation to punish environmental crimes in Cujubim (Rondônia State) achieved promising results but it happened casually. It is now necessary to create favorable conditions to reproduce such experience in other parts of the Amazon by, for example, investing in judiciary programs similar to Operation Quick Justice in Rondônia, and by encouraging the environmental agencies, the Federal Police, the Public Prosecutor's Office and the Judiciary to engage in joint strategic planning and joint action in critical regions.

Speed up judicial processes. Improving the efficiency of the Brazilian judicial system is crucial for accelerating judicial and administrative punishment, especially considering that many violators start legal actions challenging the legality of administrative fines. Among the necessary changes are: 1) an increase in the number of federal judges and courts,²⁵ particularly in the states of the Amazon (which depends on federal law); 2) the expansion of the use of electronic judicial proceedings and videoconferences to hear defendants and witnesses who reside outside the jurisdiction of the judge (which depends on investments in equipment, software and training); and 3) the specialization of federal courts in environmental law (which depends on a decision by the Special Court of the Federal Regional Court for the 1st Region).

Start legal actions against financiers and consumers of products of illegal origin. MPF and IBAMA actions and recommendations to curb the commercialization of cattle of illegal origin in Pará demonstrate the potential impact of prohibiting economic activity in illegally deforested areas while simultaneously attributing joint responsibility to the financiers and purchasers of goods from these areas. Extending this type of initiative to other states in the region and obliging retailers to observe their promises are critical factors to combat environmental crimes in protected areas of the Amazon.

NOTES

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¹ According to data generated by the Imazon Geoprocessing Laboratory.

² IBAMA inspectors use codes to make it easier to control violations through Sicafi. In the table provided by Sicafi, these codes are grouped by type of violation, e.g., against flora, against fauna, in conservation units. The system does not allow, however, for simultaneous identification of the type of illegal activity and the place of its occurrence (whether in protected areas or not).

³ Adeney, J. M.; Christensen Jr., N. L.; Pimm, S. L. 2009. Reserves protect against deforestation fires in the Amazon. *Plos One*. Available at: <<http://www.plosone.org/article/info:doi%2F10.1371%2Fjournal.pone.0005014#pone.0005014-Alencar1>>. Accessed on: 15 April 2009.

⁴ Information obtained from: <http://www.brasil.gov.br/pac/relatorios_estaduais/>. Accessed on: 09 December 2008.

⁵ Fleck, L. 2009. *Eficiência econômica, riscos e custos ambientais da reconstrução da rodovia BR-319*. Série Técnica. Ed. 17. Conservação Estratégica: Brasil. Available at: <http://conservation-strategy.org/files/CSF_Eficiencia_economica_BR319.pdf>. Accessed on: 09 July 2009.

⁶ The data on deforestation are from the National Institute for Space Research (INPE). Available at: <http://www.obt.inpe.br/prodes/prodes_1988_2008.htm>. Accessed on: 16 March 2009.

⁷ For details on the sources of information and analyses referring to the judicial proceedings, see Barreto, P.; Araújo, E.; Brito, B. 2009. *A impunidade de crimes ambientais em áreas protegidas federais na Amazônia*. Belém: Imazon. 55 p. Available at: <<http://www.imazon.org.br/novo2008/arquivosdb/ImpunidadeAreasProtegidas.pdf>>. Accessed on: 12 May 2009.

⁸ Until July 2008, depending on the amount of the fine, the accused could appeal up to four times. Under the current legislation (IBAMA regulation IN nº 14, issued on 15 May 2009), he can appeal only twice. He has the right, however, to legally contest the administrative fine at any stage of the proceedings.

⁹ Legal time limits established by the Environmental Crime Law (Lei nº. 9.605/98) and IBAMA regulation IN nº 08/2003.

¹⁰ According to Administrative Rule (Portaria) nº 956/2008 of the Federal Attorney General Office (Procuradoria Geral Federal), there were only 22 attorneys when 48 were needed.

¹¹ Vulcanis, A. Electronic communication [personal message]. Message received by <marilia@imazon.org.br> on 17 April 2009.

¹² For further details, see Cabral, O. Calote bilionário. *Revista Veja*. Available at: <http://veja.abril.com.br/180209/p_062.shtml>. Accessed on: 25 February 2009.

¹³ The State must comply with the statute of limitations for prosecuting violators and applying penalties. Otherwise, the State loses the right to punish the accused even when judged guilty (see Art. 109 of the Brazilian Penal Code – Decree-Law nº 2.484/1940).

¹⁴ The annual rate of court congestion takes into account the total number of first-degree sentences, the number of new cases and the number of cases awaiting judgment. See CNJ Resolução nº. 15 of 20 April 2006. Available at: <http://www.cnj.jus.br/images/stories/docs_cnj/resolucao/resenj_15.pdf>. Accessed on: 09 March 2009.

¹⁵ CNJ (Conselho Nacional de Justiça). 2009. *Justiça em Números 2007*. Available at: <http://www.cnj.jus.br/images/stories/docs_cnj/relatorios/justica_em_numeros_2007.pdf>. Accessed on: 05 March 2009.

¹⁶ According to information collected from the IBAMA system, 34 out of the 179 cases referring to violations committed within protected areas of Pará accounted for 90% of the total value of the fines.

¹⁷ Clause V, Art. 3 of IBAMA regulation IN nº. 14 of 15 May 2009.

¹⁸ A letter rogatory is a written formal request in which a judge of one district asks another to conduct procedures in relation to parties involved in a case being decided by the former but who are under the jurisdiction of the latter – such as summoning and hearing the accused or notifying witnesses and taking their testimony.

¹⁹ Between June 2007 and March 2009, the number of environmental cases in progress in the federal courts under the jurisdiction of the Federal Regional Court for the 1st Region (TRF1) climbed from 8,983 to 21,105, with 70% being from the Amazon; and the number of appeals to TRF1 rose by 235% (from 681 to 1,952) over the same period. Information received via electronic communication from the TRF1 Communications Department [personal message]. Message received by <elis@imazon.org.br> on 07 April 2009.

²⁰ Such specialization is called partial because the court continues to judge cases related to the other matters that had already been put under its responsibility.

²¹ PR/PA (Procuradoria da República no Pará). 2009. *Frigoríficos e fazendeiros podem pagar indenizações bilionárias*. Available at: <<http://www.prpa.mpf.gov.br/noticias/mpf-e-ibama-processam-empresas-que-lucram-com-os-bois-da-devastacao/>>. Accessed on: 17 June 2009.

²² Greenpeace. 2009. *1ª Vitória: Pão de Açúcar, Carrefour e Wal-Mart suspendem compra de carne de desmatamento na Amazônia*. 10 June 2009. Available at: <<http://www.greenpeace.org/brasil/amazonia/noticias/p-o-de-a-car-suspende-compras>>. Accessed on: 19 June 2009.

²³ Have access to the consent order at: <http://www.prpa.mpf.gov.br/noticias/TAC_Coopermeat.pdf>. Accessed on: 31 July 2009.

²⁴ For further information, see <http://www.bndes.gov.br/SiteBNDES/bndes/bndes_pt/Institucional/Sala_de_Imprensa/Destaques_Primeira_Pagina/20090722_frigorifico.html>. Accessed on 31 July 2009.

²⁵ According to a study conducted by the Council for Federal Justice (Conselho da Justiça Federal) entitled *Subsídios para a Ampliação do Número de Juízos Federais* (2005), 17 new federal courts are needed in the Amazon. Available at: <<http://daleth.cjf.jus.br/revista/pesquisa13.pdf>>. Accessed on: 23 June 2008.

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