

Fines in Mato Grosso after Curupira Operation

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Illegal deforestation is still a serious problem in the Amazon, and the enforcement system remains weak. In this *The State of the Amazon*, we demonstrate that only 1% of the 421 fines issued by Ibama and Sema in Mato Grosso in 2005-2006 were collected by March 2008. These fines were issued the year following the Curupira Operation against corruption in environmental agencies in the state. The cancellation of fines in areas of different sizes without title deeds also indicates the inadequate enforcement of the law. Suggestions for reducing impunity include maintaining the fines against landholders who deforest illegally and adopting an efficient strategy for collecting these fines.

Decentralization of Environmental Administration

Until 2006, the Brazilian Institute for the Environment and Renewable Natural Resources (Ibama) was the primary responsible for managing forests and combating illegal deforestation in the Amazon under Law n° 9.605/1998, which prescribes against environmental crimes. The exception was in Mato Grosso, where the State Foundation for the Environment (Fema) acted alongside Ibama as of 1999¹. When forest management was decentralized in late 2006², Mato Grosso was one of the few states with experience in forest administration. However, in 2005, Operation Curupira – conducted in the state by the Federal Police, the Ministry for the Environment (MMA), Ibama and the Federal Prosecution Service (MPF) – unveiled cases of fraud and corruption in the licensing of forest activities, leading to the arrest of approximately 80 individuals, including the executive manager of Ibama and the president of Fema³. As a result, the state government closed down Fema and created the State Agency for the Environment (Sema). In our analysis, we considered the fines for illegal deforestation issued during the 13 months following Operation Curupira. The objective of the study was to evaluate how Ibama and Sema were acting in the area of enforcement in this new phase of the fight against environmental crime.

Fines for Deforestation in Mato Grosso

We identified all the fines against illegal deforestation issued by Ibama and Sema⁴ after the end of Operation

Curupira until March 2008. We then analyzed the 229 fines issued by Ibama (about R\$ 194 million) and the 192 issued by Sema (about R\$ 130 million) between July 2005 and July 2006. The data were collected from the online systems available on the websites of the two environmental agencies.⁵ In addition, for fines related to the deforestation above 1,000 ha (19 cases at Ibama and 15 at Sema), we collected more detailed information from the respective agencies in Cuiabá. Among the data gathered between August 2007 and February 2008 were copies of the defenses presented by the alleged violators. Of the 28 defenses referring to large-scale deforestation (over 1,000 ha), we were able to obtain copies of 18 from the case files.

Overall Situation of Fines for Deforestation

Between 2005/2006 and March 2008, only one fine – corresponding to merely 1% of the total value of the fines shown in Figure 1 – was actually collected by each of the agencies. In addition, only two of the alleged violations at Ibama were at more advanced stages of collection. At Sema, 4% of the violators were condemned in the first instance, but another 3% had their fines rescinded after deferring defense.

Most of the cases were in the hands of the legal departments of the environmental agencies. For example, 39% of the cases at Ibama were awaiting analysis of the legal department, possibly of the defense, while 83%

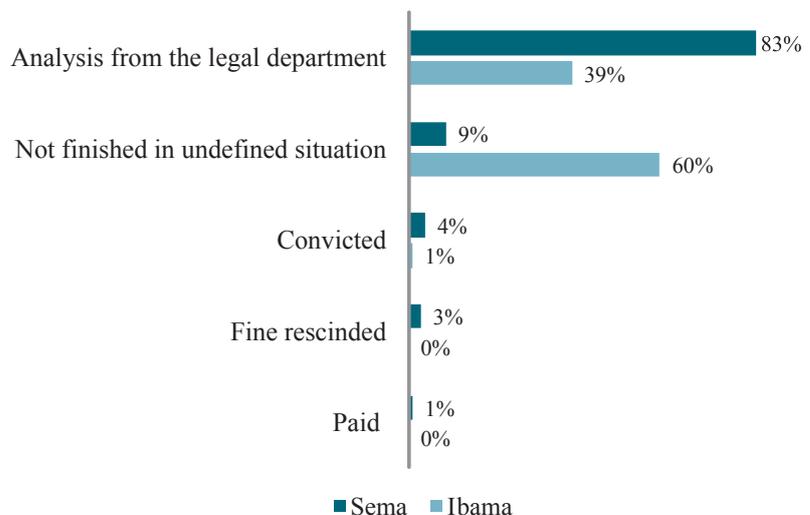


Figure 1. Status in March 2008 of fines for illegal deforestation issued by Ibama (n=229) and Sema (n=192) in Mato Grosso between July 2005 and July 2006.

of those at Sema were in this same stage (Figure 1). Nevertheless, due to the limited information available on the internet, we could not determine in which cases awaited defense analysis and which ones were waiting other types of legal analyses⁶. It was possible to verify that 60% of the cases at Ibama and 9% of those at Sema had not been closed, nor had the fines been collected or rescinded. Nonetheless, since the agency websites information is not complete enough to determine the exact phase of the cases, they were classified as *not finished in undefined situation*.

Status of the largest cases of deforestation

The fines for the deforestation of areas above 1,000 hectares in the period under analysis followed the same pattern, with few concluded cases initiated in Mato Grosso between July 2005 and July 2006. Moreover, not a single fine had been paid at the time the final data were collected for this study.

Most (58%) of these major cases at Ibama – which accounted for 59% of the value of the fines in this large cases researched – were awaiting analysis of the defense in the first instance for a mean period of 493 days (Figure 2). Other 21% of the cases were still awaiting the analysis of the legal department regarding the formal aspects of the fine notification. These cases accounted for 19% of the total value of these large fines. Of the 19 cases considered, only 16% had been condemned in the first instance, since the defense had been denied or the fine had been ratified after legal analysis of formal requirements (Figure 2).

At Sema, the situation was similar to Ibama, since no fines had been collected (Figure 3). In addition, most of the cases involving large-scale deforestation, which accounted for 90% of the value of the fines in the sample analyzed at Sema, were awaiting for defense analysis for an mean period of 497 days. However, as opposed to Ibama, two cases (13%) had already been decided by the agency in favor of the alleged violator. The reasons for these decisions are analyzed in the next section.

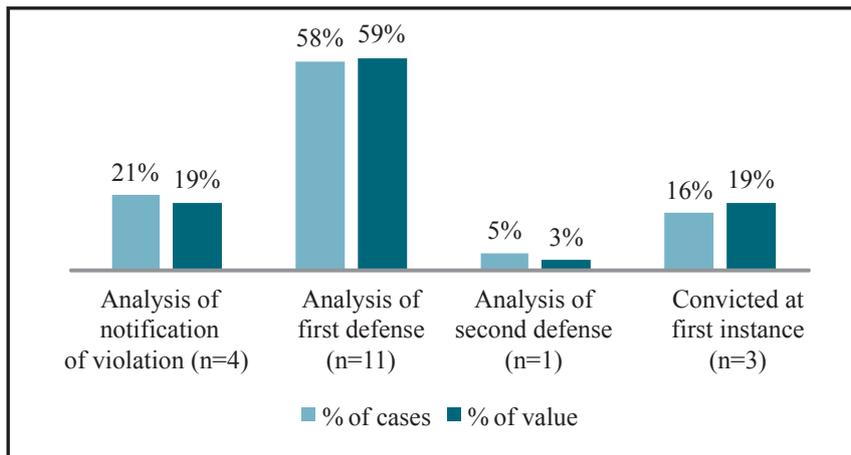


Figure 2. Status in March 2008 of fines for illegal deforestation of areas exceeding 1,000 ha issued by Ibama between July 2005 and July 2006 (n=19).

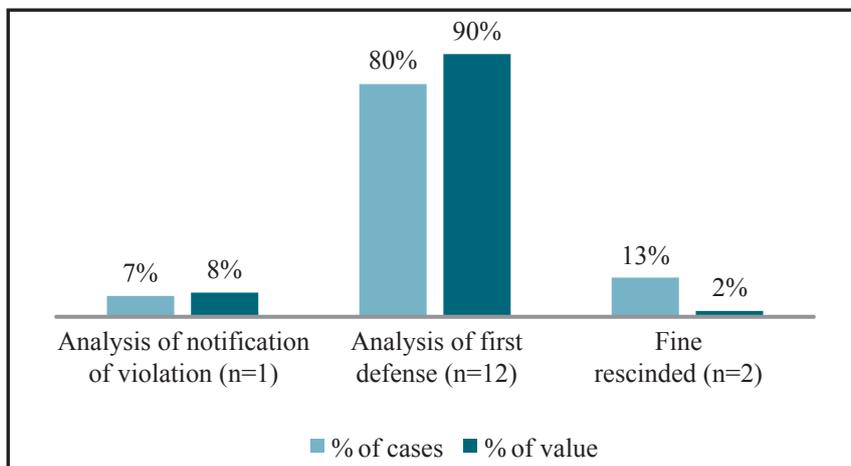


Figure 3. Status in March 2008 of fines for illegal deforestation of areas exceeding 1,000 ha issued by Sema between July 2005 and July 2006 (n=15).

Uncertainty of land property rights results in fines rescinded

Most of the alleged violators above 1,000 hectares filed defenses against the fines: 73% at Ibama and 94% at Sema). Among the 18 defenses considered, the most common argument used in the defenses at both agencies (50% of cases in the sample) was that the alleged violator was not the owner of the land where the deforestation occurred, and hence could not be fined for this crime⁷.

In fact, the land ownership situation for roughly half of the Legal Amazon is uncertain. As a result it is estimated that less than half of the region (47%) has somewhat more certainty about it, with 4% being private property validated by the National Institute for Colonization and Agrarian Reform (Incra) and the other 43% comprising protected areas, including conservation units and indigenous lands. The remaining 53% is either allegedly private properties (32%), but those lack any validation in the land cadastre maintained by the National Institute for Colonisation and Land Reform; or allegedly public (21%), including areas without any formal title deeds but that may or may not be under informal occupation by a range of actors (traditional communities, indigenous people or small to large landholders)⁸.

Unfortunately, this uncertainty of rights has been used to excuse environmental violators from their liability in Mato Grosso. In two of the cases deferred by Sema (of the 18 analyzed), the alleged violators stated that they should not be punished for deforesting the areas in question because they were not their owners. As proof, one of the parties presented a declaration from the land registry office stating that he did not own any property in the city the deforested area was located. In the other case, since the alleged violator was an Incra settler, Sema decided to rescind the fine against him and issue a new one against Incra. This decision is open to question, given that the settler shares with Incra the responsibility for the rational use of the parcel he occupies.

Although only two of these defenses were judged in the sample analyzed, the high frequency of the argument serves as a warning as to the destiny of the fines that have not yet been analyzed. In fact, considering the extent of the chaos of the property rights in the Amazon, this type of legal decision from an environmental agency threatens not only to the maintenance of fines, but all efforts of environmental enforcement in the region.

Public Policy Recommendations

Punish landholders for illegal deforestation.

Under Brazilian law, the concept of environmental violations does not limit their occurrence to areas in which proof of ownership exists⁹. Furthermore, Sema recognizes the existence of potentially harmful activities to the environment taking place on untitled lands. For instance, it is possible to obtain an environmental permit to undertake economical activities on such lands and include these areas in the Rural Environmental Cadastre maintained by Sema¹⁰. Thus, one measure that the agency should adopt in the short run is to cease mentioning in its inspection reports that parties charged with violations are owners of the deforested areas, since this is the basis of the arguments deferred in the defenses analyzed. In addition, considering that the environmental inspector has no way to verify the ownership of a deforested property during a field inspection, it would be more accurate to identify those charged as *occupants* of the areas, since this terminology includes not only owners, but other landholders as well. As to notification of violation in which the term *owner* has already been used, the fine should not be rescinded and Sema should not be obliged to conduct a new field inspection at the site of the deforested area to locate the real owner (if such a person exists). In these cases, Sema should correct the notification to exclude the term *owner*, given that the party charged was already identified by the inspectors as the person responsible for the deforestation. Such corrections should be made by rectifying the original notification or by issuing a new notification of violation against the same party (subsequent to cancellation of the previous notification)¹¹.

Assign priority to levying fines for large-scale deforestation. In this study, 25% of the cases at Sema accounted for 75% of the value of the fines in the sample, while 29% of those at Ibama represented 81% of the respective value. These cases involved deforestation of areas above 500 hectares. For this reason, the environmental agencies should prioritize large cases in their enforcement actions. This suggestion is valid for all stages of the enforcement process, from the initial inspection to the issuance of fines. Following this basic guideline would potentially allow environmental agencies to reduce the time to collect fines.

NOTES

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¹ Lima, A. Irigaray, C.; Figueira, J.; Silva, R.; Guimarães, S. & Araújo, S. 2005. *Sistema de licenciamento ambiental em propriedades rurais do estado de Mato Grosso: análise de lições na sua implementação*. Brasília: Ministério do Meio Ambiente. Available at: <http://www.icv.org.br/publicue/media/slpr_final.pdf>. Accessed on: 11/2/ 2008.

² The decentralization observed in 2006 was the result of Law n° 11.284/2006 (Law of Forest Concession), which explicitly delegates to the states the right to evaluate requests to exploit forestlands and that altered Art. 19 of Law n° 4.771/1965 (Forest Code) about this matter (Art. 83 of Law n° 11.284/2006).

³ Lima, A. 2006. *A política ambiental no Mato Grosso, um ano depois da Operação Curupira*. Available at: <<http://www.amazonia.org.br/noticias/noticia.cfm?id=212359>>. Accessed on: 2/ 5/ 2007; and Elia, C. 2006. Corte na corrupção. *O Eco*. Available at: <http://www.oeco.com.br/preview/37-reportagens/1150-oeco_12577>. Accessed on: 10/ 7/ 2009.

⁴ The cases analyzed were related to articles 25, 27, 33, 37, 38 and 39 of Decree n° 3.179/99 (in effect at the time of research). With regard to Sema, only cases related to the deforestation above 100 hectares or more were considered.

⁵ See <<http://www.ibama.gov.br/protocolo>> and <<http://www.protocolo.sad.mt.gov.br/consulta/cp.php>>.

⁶ For example, these cases may have been awaiting analysis of formal requirements required by law for its validity.

⁷ Other arguments presented to cancel the fines included: non compliance with formal requirements in the notifications of violations (44%); denial of responsibility for the deforestation (33%); and authorization for deforestation granted by another environmental agency (Ibama, for example, in the case of a Sema fine).

⁸ Barreto, P. et al. 2008. *Quem é dono da Amazônia? Uma análise do cadastramento de imóveis rurais*. Belém: Imazon. 74 pp.

⁹ Art. 70 of Law n° 9.605/1998.

¹⁰ Art. 12 of Sema Normative Instruction n° 05/2006 and Art. 5.I of State Law n° 8.961/2008.

¹¹ Arts. 10 and 11 of Sema/MT Normative Instruction n° 05/2006 foresee the possibility of correcting problems in notification of violation by issuing new records or simply rectifying existing records.

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