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## EXECUTIVE SUMMARY



# Are Courts punishing illegal deforesters in the Brazilian Amazon?



Results of the Amazônia Protege Program



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# Executive Summary

In 2017, the Federal Public Prosecution Service (MPF) launched the Amazônia Protege program (The Amazon Protects) to hold illegal deforesters liable for environmental damages through lawsuits. By 2020, the MPF had brought

**3,561**  
**public civil suits**  
**(ACPs, in Portuguese)**

in the nine states of the Brazilian Amazon, covering more than

**231,456**  
**hectares**  
**deforested**

and compensation claims that total

**BRL 3.7 billion.**

One of the innovations of this program is the confirmation of deforestation and the deforesters identities by crossing two pieces of information: i) satellite images that indicate the environmental damage, and ii) public databases naming those responsible for the deforested area. First, the MPF selects deforestation events above 60 hectares from the Prodes system at the National Institute for Space Research (Inpe). Those data are overlaid on maps of properties registered in the Rural Environmental Registry (CAR) or the Sigef, a system from the National Institute for Agrarian Reform (Incra). The information on land occupation makes it possible to link a CPF (individual tax identification number) or CNPJ (corporate tax registry number) to deforestation.

In cases where the MPF does not find the name of a person or company connected to the deforested area, the prosecutors bring lawsuits against unknown defendants, a possibility provided for in the Brazilian Civil Procedure Code. In that situation, they request judges to publish a service notice to discover who is responsible for the environmental damage. The prosecutors also seek an embargo on the area and court orders to apprehend the machinery used for the deforestation.

This study is the first survey of the progress of the lawsuits under Amazônia Protege program, with the main objectives of: i) identifying if the Court system in Brazil is accepting the deforestation evidence obtained remotely and the unknown defendant's legal strategy; ii) assess the main legal arguments judges are using to support their verdicts; and iii) propose recommendations for increasing the environmental liability for illegal deforestation in the courts.



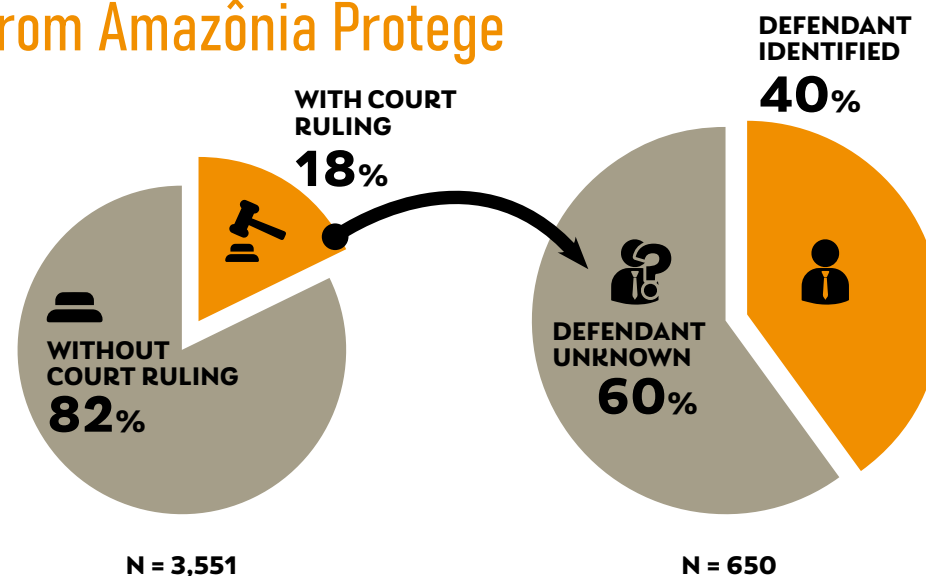
# Methodology

We collected data on the procedural progress of the **3,561 lawsuits** up to October 20, 2020, to identify suits with a court ruling issued up to that date. First, we used a service for automated data collection in the Federal Courts and 1st Region Federal Regional Court (TRF1) systems. We excluded ten lawsuits that were not available via the system, leaving us with **3,551 cases**.

Next, we validated the existence of court decisions by consulting the digital case files in two other systems: i) the electronic Legal Proceedings file (PJe), in which we can consult the full content of most cases, and ii) the MPF procedural transparency system (AptusMPF). We identified **650** lawsuits with verdicts for this study. We selected a sample of **68%** to assess the main arguments and the legal grounds accepted by the courts in the first instance rulings.

We also evaluated all the **117 rulings of appeals** from the first and second instances decided up to February 2021, and 13 appeals to the Superior Court of Justice decided up to June 2021. There were no appeals to the Supreme Court up to the latter date.

## Overall results for ACPs from Amazônia Protege



**Figure 1**

Distribution of lawsuits against illegal deforestation according to the existence of court ruling and type of defendant up to October 2020 under the Amazônia Protege program

We found 650 out of 3,551 lawsuits against illegal deforestation with a first instance verdict as of October 2020 (18% of the total number of cases).

The cases with decisions involve a deforested area of 74.447 hectares. The compensations sought by the MPF in those cases totaled approximately BRL 1.17 billion.

**ONLY 8% OF THE FIRST INSTANCE COURT RULINGS CONVICTED THE DEFENDANTS (51 CASES).**

## TRIALS BY STATE

Pará and Mato Grosso states have

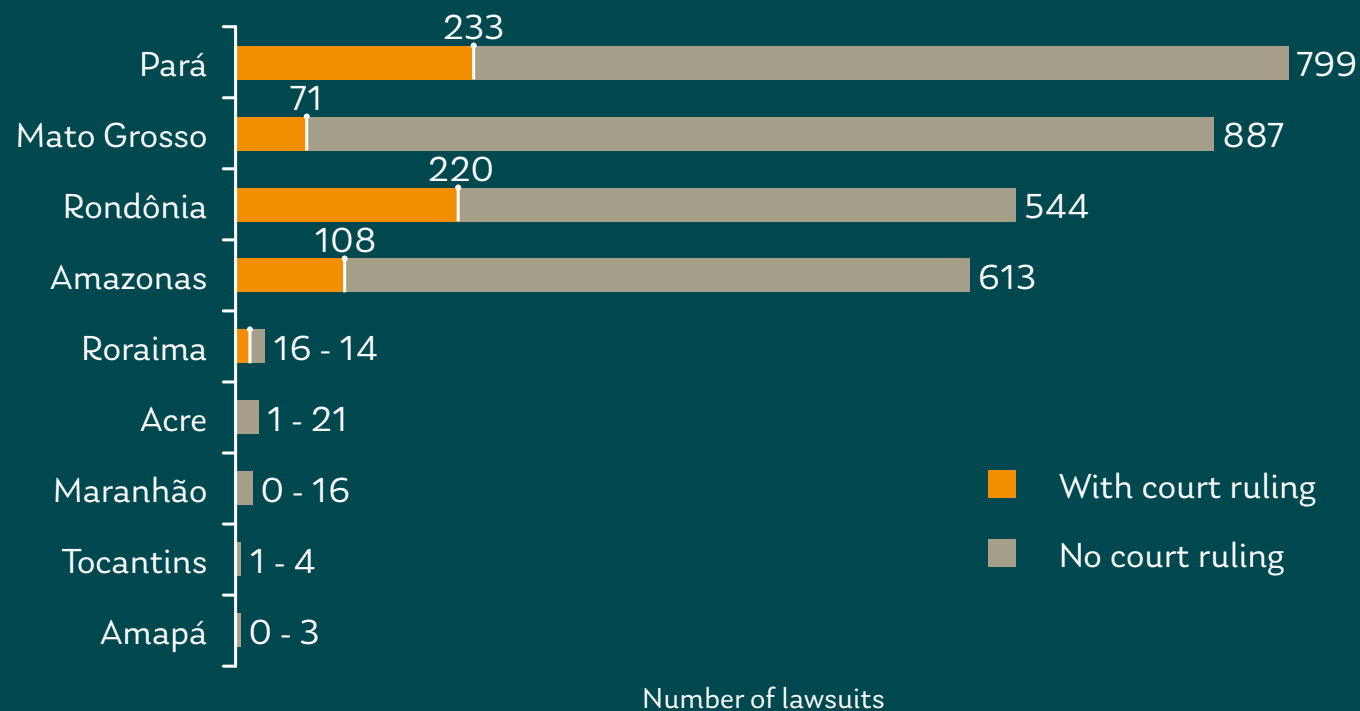
**56%**  
**of the lawsuits**

from Amazônia Protege.

Pará and Rondônia states total

**70%**  
**of the cases**

with a first instance court ruling.

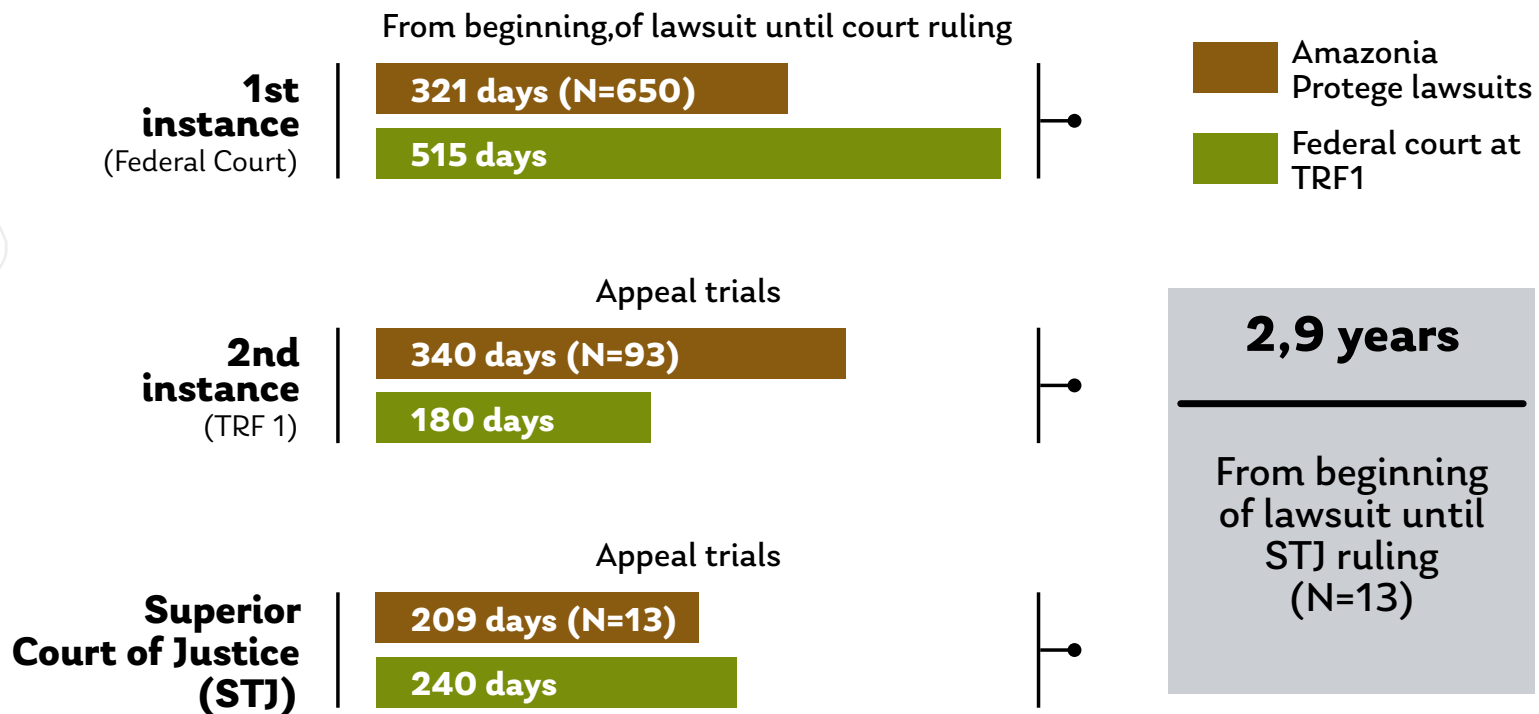


**Figure 2**

Number of lawsuits against illegal deforestation with and without court ruling up to October 2020 by the state of the Brazilian Amazon under the Amazônia Protege program



## DURATION OF THE PROCEDURAL FLOW OF AMAZÔNIA PROTEGE CASES



**Figura 3**

Average duration of concluded procedural phases for 650 lawsuits with court rulings under the Amazônia Protege program, compared with the average time observed in the TRF1 federal courts in 2020<sup>[1]</sup>

<sup>[1]</sup> CNJ. 2021. Justiça em números 2021 - Brasília: CNJ. Available at: <https://www.cnj.jus.br/pesquisas-judiciarias/justica-em-numeros/>. Access on Oct. 11, 2021.

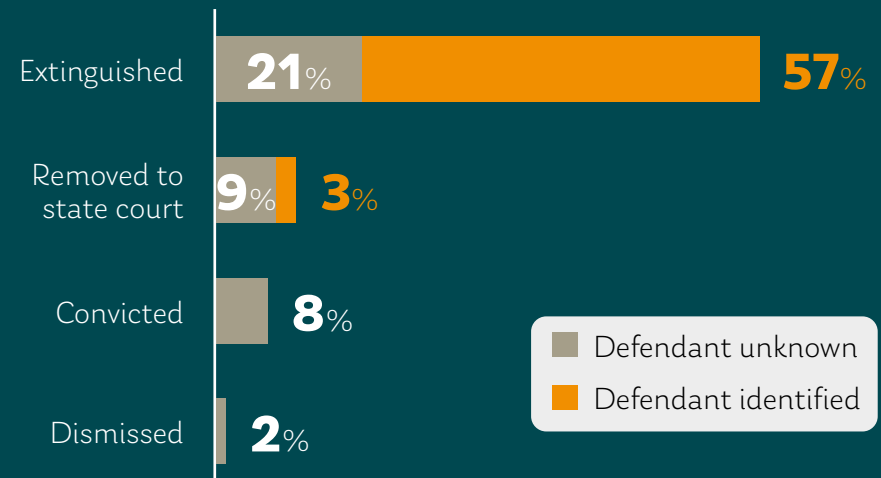
# Overall results of cases with court decisions



## CLASSIFYING COURT RULINGS

We classified the court decisions into four types:

- i) **Conviction:** when the court ruling accepted one or more requests from the MPF or when there was an agreement between the defendant and the prosecutors.
- ii) **Dismissed:** when the judge denied all requests from the MPF after evaluating the arguments and evidence presented.
- iii) **Extinguished:** when the judge decided that the MPF failed to present the elements necessary for filing a lawsuit. In such cases, the judge does not assess the case's merits, so the MPF may file a new lawsuit with complementary information or appeal the decision to extinguish.
- iv) **Removed:** when the federal judge understands that a state-level judge should hear the case and sends it for the State Court jurisdiction.



**Figure 4**

Distribution of the 650 lawsuits against illegal deforestation with court ruling as of October 2020, by type of decision and defendant under the Amazônia Protege program

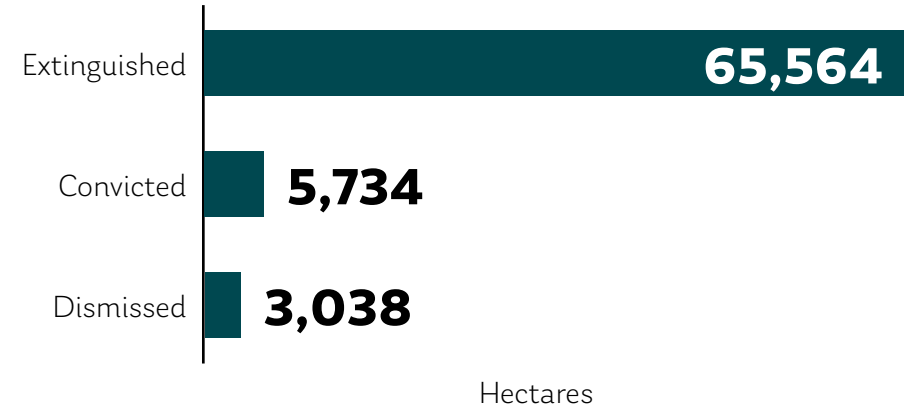


## ASSESSMENT OF 650 CASES WITH COURT RULING

- 78% of the lawsuits were extinguished (506 cases), and most of them had unknown defendants (Figures 4 and 5). Those lawsuits involved at least 65,564 deforested hectares (Figure 6).
- 12% of the decisions (80 cases) were removed to State Courts.
- 8% of the cases were convicted (51 lawsuits), including one case with an Agreement Term between the prosecutors and defendant. Those 51 lawsuits involved 5,734 hectares deforested.

### ► ONLY TWO CONVICTED CASES HAD PAID THE COMPENSATION FOR THE ENVIRONMENTAL DAMAGE BY OCTOBER 2020.

- 2% of the sentences were dismissed. The total area deforested in those cases was 3,038 hectares.



**Figure 5**

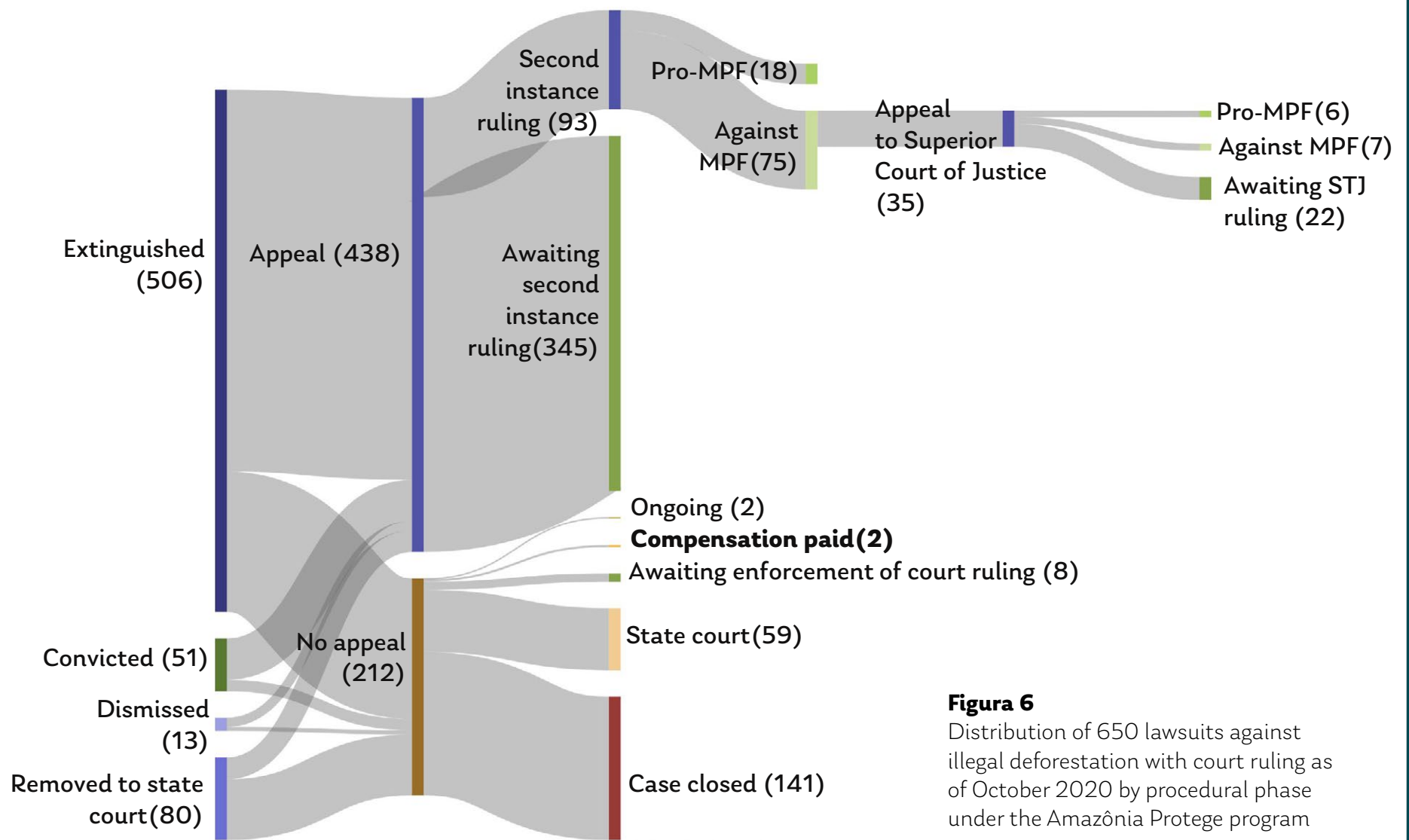
Deforested area in 557 lawsuits against illegal deforestation with court ruling as of October 2020 by type of decision under the Amazônia Protege program<sup>[2]</sup>

## APPEALS

**438** lawsuits had filed appeals to the second instance courts, and the majority (**79%**) were awaiting trial. Of the **212** cases without appeals, **67%** of the lawsuits were closed, while **28%** were removed to state courts. Figure 6 presents the status of cases with first instance court rulings and appeals.

<sup>[2]</sup> In 93 ACPs the documents with data for the deforested area were not available in the systems consulted for this study, especially in the cases declined and in all cases in the district court of Juína (MT).





**Figura 6**

Distribution of 650 lawsuits against illegal deforestation with court ruling as of October 2020 by procedural phase under the Amazônia Protege program



Results of the  
**259** lawsuits  
with **defendants**  
identified

**57%**

extinguished (**137** out of  
**259 cases**) or dismissed  
(**11 lawsuits**).

**23%**

removed to State  
Courts.

**20%**

convicted



The lack of confirmation of the deforestation authorship was one of the main justifications for extinguishing or dismissing the lawsuits. The judges in these cases demanded a copy of the Environmental Rural Registry (CAR) or another type of valid land registration or notices of environmental violation. Some judges explicitly stated that satellite images were insufficient to prove environmental damages and that a field inspection would be necessary. However, rulings from the second instance court have overturned some of these decisions. We highlight two excerpts from an overturned verdict<sup>[3]</sup>:

“ The materiality of the violation is supported by satellite images, which have undeniable accuracy, more so, in fact, that if it had been detected by an agent during an inspection activity *in loco* ”



“ The public registries (Rural Environmental Registry - Car; Sigef-Incra; SNCI-Incra; Terra Legal) are suitable mechanisms for identifying any persons who may, perhaps, have made use of the area and may be held liable for environmental damages confirmed by satellite images, even if such information is found only in reports together with the parameters found in such registries, whose data are presumed to be true. ”



<sup>[3]</sup> Brasil. 2020a. Tribunal Regional Federal da 1ª Região (TRF1). Apelação Cível n.º 1002789-31.2017.4.01.3900. Rel. Des. Daniele Maranhão. Tied on 05/06/2020.

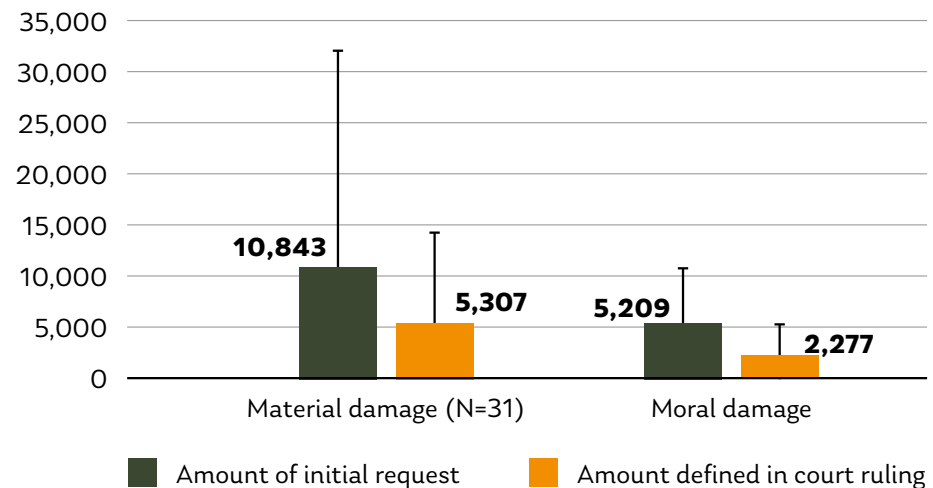
# Analysis of 51 convicted cases

There were three main types of sanctions applied in the 50 convicted cases and 1 with a signed judicial agreement:

- I. recovery of the degraded area in all **51 cases** involving **5,412 hectares**, requesting the defendant to present a Plan for Restoring the Degraded Area (PRAD, in Portuguese);
- II. payment of compensation for environmental material harm in **61% of 50 cases**, totaling **BRL 12.6 million**; and
- III. payment of compensation for environmental moral harm in **37% of 50 lawsuits**, totaling **BRL 4.1 million**.

Those judges who did not rule in favor of material or moral environmental harm compensation contradicted the Superior Court of Justice (STJ) in the Precedent 629. The STJ allows judges to combine the obligation for repairing environmental damage with the payment of environmental compensation in the same decision. We identified second instance decisions overruling the denial of compensation and applying the STJ precedent, indicating that higher courts will strengthen the sanctions.

However, in the cases with a decision in favor of environmental compensation, the judges reduced the initial values requested by the MPF to less than a half on average (Figure 7).



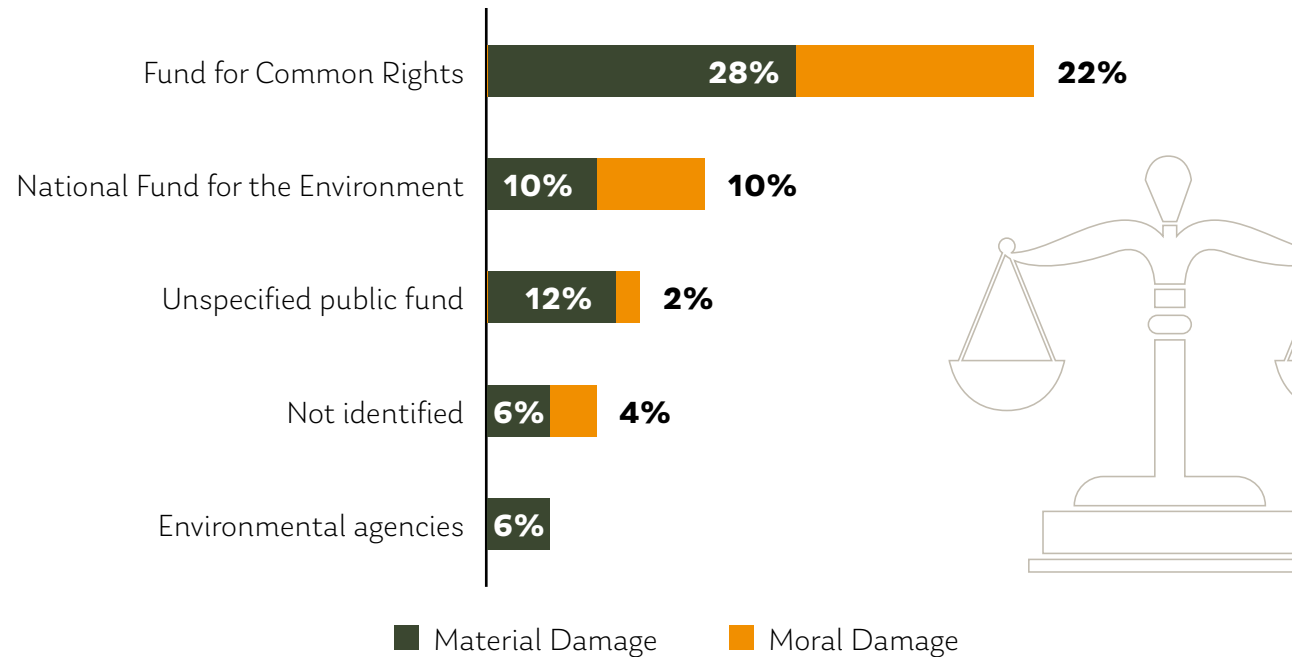
**Figure 7**

Average value initially requested as material and moral environmental compensation and final amount defined in 50 court rulings under the Amazônia Protege program, with an indication of minimum and maximum amounts





In their rulings, the judges send the compensation values to funds in Brazil that do not guarantee their use in the Amazon biome. In addition, such funds are subject to the public expenditure ceiling, which may hinder their use (Figure 8). Thus, it is necessary to regulate the allocation of such resources and direct them to environmental actions in the Amazon.



**Figure 8**

Allocation of compensation funds related to material harm (31 cases) and moral damage to the environment (19 cases) in convicted cases from lawsuits against illegal deforestation under the Amazônia Protege program

# Results of the lawsuits with unknown defendants

None of the **391** cases with unknown defendants were successful in the first instance court rulings.

**94%** extinguished

**5%** removed to State Courts.

**1%** dismissed

The judges' main reason for extinguishing the cases was the absence of elements considered essential for filing the lawsuit (**95% of the 189 cases analyzed**), i.e., lacking the identification of the defendants.

In **70%** of cases, the judges refused to issue a public notice for locating the offenders, which is a request from the MPF to communicate about the lawsuit through the Court Gazette to get the defendants to present themselves. Thirty days after issuing the public notice, the judge may rule the case, even if the defendant has not identified himself.

However, the STJ has overturned this type of decision and ruled in favor of issuing public notices in lawsuits with unknown defendants. In such cases, the lawsuits will return to the first instance court, and the judges are to authorize the publication of the public notice.

# STJ ruling on unknown defendant case

Justice Herman Benjamin issued the vote that underpinned the first STJ ruling in favor of the Amazonia Protege lawsuits with unknown defendants<sup>[4]</sup>. That vote confirms several aspects of the strategy for the Amazônia Protege program, such as the use of satellite images and land databases for assigning the liability for illegal deforestation. We highlighted two excerpts from that vote:

“As with the fight against organized crime, without employing bold work methods and cutting-edge technologies, e.g., satellites and drones, it is unrealistic (...) to satisfactorily oversee the large and mega-diverse biomes of Brazil. Consequently, (...) imposing (...) onsite inspections in some of the most remote and inaccessible places on the Planet, measures that are highly burdensome and ineffective, represent, in an analogy with History ages, insisting on using flint knives when one is living in an age of steel and titanium. In the records, images obtained by satellite (...) confirm the materiality and quantify of the deforestation area using a geographical polygon, with absolute coordinates.”

“The positive impact of filing a lawsuit (...) is also felt when there are attempts later on to regularize illegal land and ecological grabbing. That is because judicialization halts the issuance of invoices, cattle and timber transport permits, and public and private financing, and the property remains recorded as an illegal deforestation polygon and as a tool for public consultation provided on the internet by MPF registries and land registries.”

<sup>[4]</sup> Brasil. 2020. Tribunal Superior de Justiça (STJ). Recurso Especial (RESp) n.º 1.905.367 – DF. Rel. Min. Herman Benjamin. Decided on 24/11/2020, Segunda Turma. DJe 14/12/2020. Available at: [https://lawsuit.stj.jus.br/lawsuit/revista/documento/mediado/?componente=ITA&sequencial=2006583&num\\_registro=202001021941&data=20201214&formato=PDF](https://lawsuit.stj.jus.br/lawsuit/revista/documento/mediado/?componente=ITA&sequencial=2006583&num_registro=202001021941&data=20201214&formato=PDF). Access on Jan.12 2022.



# Conclusions and recommendations

The main result of the Amazônia Protege lawsuits as of 2020 was the legal precedents at the second instance courts and the STJ in favor of the innovative evidence against deforesters.

Such courts have emphatically attributed greater accuracy and reliability to evidence obtained from public databases and satellite images for identifying illegal deforestation events. They have also waived the need for onsite inspections.

However, punishment for illegal deforesters in first instance courts was limited as of 2020. Most judges rejected the reports based on satellite images without field inspections and the lawsuits lacking defendants' identification.

Our main recommendations for strengthening the judicial enforcement of laws against illegal deforestation in the Brazilian Amazon are:

## **Federal Public Prosecution Service (MPF):**

- For immediate sanctions against deforesters, prosecutors should ask for a preliminary injunction, a request the judge assesses at the beginning of the lawsuit. We suggest asking for injunctions to suspend the CAR registration and the Animal Transport Permits linked to the property with deforestation. Also, suspend any procedures at land agencies to issue land titles in the illegally deforested parcel without a signed commitment to repair damages.
- In unknown defendants' cases: i) include as a defendant the land agency responsible for the area to prevent them from issuing land titles in the illegally deforested parcels; ii) group several cases of nearby deforestation into one lawsuit to optimize the judicial effort.
- Issue recommendations to environmental agencies to regulate the possibility of issuing administrative sanctions for illegal deforestation without the need for field inspection, using satellite images and public databases, and data confirming the land use of deforested areas.



### **National Justice Council (CNJ):**

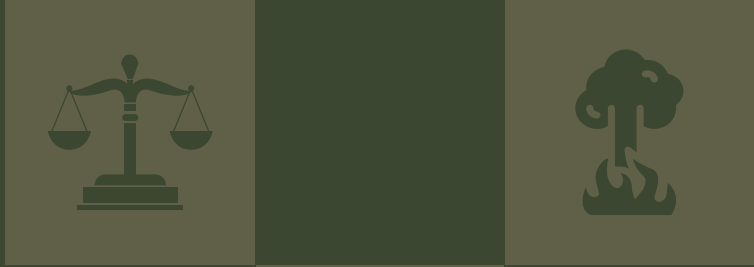
- Issue a decision to direct environmental compensations to forest conservation and restoration projects in the Amazon region.

### **National Justice Council, associations of judges, universities, and civil society institutions:**

- Organize training on environmental liability and legal precedents, including: i) legality of evidence obtained through public databases and satellite images to assign illegal deforestation liability; and ii) possibility to combine the obligation to restore the deforested area with the payment of material and moral environmental harm compensation.

### **Environmental agency:**

- Regulate the enforcement of administrative sanctions based on evidence obtained remotely by using public databases and satellite images to identify illegal deforestation events, adding data on the land use activities in the deforested areas.



Realization



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