SOS FLORESTAS

FOREST LEGISLATION IN DANGER

FOREST LAW: AN ANALYSIS OF MAJOR FLAWS IN THE NEW ALDO REBELO REPORT[1]

Yesterday, May 24th the report that effectively revokes the present Forest Law, one of the bases of all Brazilian environmental legislation, was approved by the House of Representatives. The law piece fall far short of what Brazilian society expects of a Forest Law in tune with the demands of the 21st century, and it completely ignores the recommendations of the Brazilian Society for the Progress of Science (SBPC) and the Brazilian Academy of Science (ABC). It legitimates decades of illegal actions carried out against Brazilian forests and deliberately mixes legitimate situations with others that are crimes against the environment, opening up the possibilities for more deforestation. At the same time, it fails to put forward anything directed at establishing new levels of governance over the sustainable use and conservation of Brazil's natural forest heritage.

There follows a presentation of the main problems embedded in the text and the expected consequences for Brazil if no major changes is made by the Senate..

1. **The proposal releases rural properties with areas smaller than 4 fiscal modules from the obligation of recuperating their legal reserve areas (Article 13, §7o), thereby opening the way for an almost generalised exemption**. Although the amendment's proponent argues that this provision is designed to ensure the survival of small-scale farmers and smallholders who cannot afford to give up productive areas of their properties to maintain or re-establish their legal reserves, the text does not restrict this flexibility of the law to benefiting small family-based agriculturalists only, as would be logical and in alignment with the suggestions of rural organisations like the *Via Campesina* (International Peasants Movement) and the Fetraf (Family-based Agricultural Workers Federation). That means that even the owners of rural properties that do not actually make their living from agricultural activities and have various areas of less than 4 fiscal modules, and implicitly, more than enough land for their subsistence, would be excused from recuperating their legal reserve areas. Furthermore, by failing to set any time limit on the registration of applications for exemption form the obligation to recuperate areas, the amendment makes it possible for owners to break the registration of their properties down into small units and thereby get off from the obligation to recuperate anything at all. In this case the law itself creates the mechanisms for evading its own effects. This loophole could mean that 90% of Brazil's rural landholdings would be exempted from the obligation to restore their legal reserve areas.

[1] Note elaborated on May 16 by Tasso Azevedo, holder of a degree in Forest Agronomy from the University of São Paulo -USP; Carlos Alberto de Mattos Scaramuzza, WWF-Brazil Conservation Director, a biologist with a doctorate in Ecology from the University of São Paulo - USP; Raul Silva Telles do Valle, ISA public Policy Coordinator, a lawyer with a Masters in Economic Law from the University of São Paulo - USP; André Lima, a lawyer with a Masters in Environmental Policy and Management from the University of Brasília – UnB. All four are analysts associated to organisations that make up the SOS Florestas Movement – http://www.sosflorestas.com.br/codigo_em_perigo.php

2. **It encourages the deforestation of new areas insofar as it allows illegal deforestation of legal reserve areas being carried out today (or in the future) be compensated for in other regions or be recuperated over a period of 20 years and, even than, making use of exotic (non-native) species to recuperate as much as 50% of the area involved.** As it stands today the law only allows such compensation to be made for illegal deforestation undertaken up until 1998. By failing to restrict compensatory measures to deforestation done in the past, the law is actually encouraging landowners to cut down the vegetation in areas where land values are high and compensate for them in other places (the proposal even allows them to be in other States) where land is cheaper. Furthermore it states that the environmental authorities and inspectors can (and not must) shut down all activities in newly cleared areas (Article 58), contradicting the provision currently in force. If the embargo on activities is not applied, the proprietor will be able to use that part of the legal reserve area that was illegally deforested for another 20 years. Also, only 50% of the legal reserve area needs to be recuperated in fact, because the other half can be occupied by exotic species (like eucalyptus) that currently have a high economic value but almost no environmental benefit; in other words **it is** actually **a way of rewarding illegalities.**

3. **It makes it possible for native vegetation on slopes and hilltops and along the banks of rivers and streams to be cleared in the name of the *'pousio'* (fallow land) concept (Article 3, III).** By extending the concept of consolidated rural area (which legitimises irregular settlement in Permanent Protection Areas) to include fallow land (which is not producing anything at all), the amendment proposal not only impedes their obligatory recuperation but opens up the possibility of clearing whatever vegetation there is on them thereby running contrary to the proposal that law should only "consolidate past forms of usage."

4. **The amendment classifies as consolidated rural area, and therefore eligible for legalisation, all areas that were illegally deforested up until 2008.** The argument used by those defending the proposed amendment, that it is necessary to legalise historical situations whereby areas that were legally deforested at the time have become illegal due to successive changes in the regulations, is actually being used to legitimise all illegalities committed over the period, even those that had nothing to do with the sequence of changes to the legislation. It should be noted that the last piece of such restrictive legislation was enacted in 1996 and only concerned legal reserve areas in the Amazon forest. In other regions of Brazil such restrictive legislation dates back to the 1980s but the proposal embedded in this amendment wants to declare an amnesty for all illegal deforestation done up until just three years ago. That means that in the Amazon and Cerrado biomes alone more than 40 million hectares of deforestation that took place after 1998 would become legalised.

5. **Mangrove swamps and Palm swamps** are extremely important in environmental terms and are now **no longer to be considered protected areas** thereby opening up the possibility of draining and occupying them and using the areas for crop farming and livestock production or cultivated shrimp production or even urban settlement. These areas have simply vanished from the part of the text that defines Areas of Permanent Protection (Art. 4) and furthermore it states quite clearly that the areas of transition between the mangrove and dry land known as '*salgados*' or '*apicuns*' (inundated only by equinoxial tides), which are an integral part of the mangrove ecosystem, are not protected areas.

6. The amendment 164, approved separately, after the report, **regulate issues concerning the suppression of native vegetation in Permanent Protection Areas (Art. 8).** River borders deforested before July 22nd, 2008, will not have to be recover when occupied with ecoturism,

rural turism and agro-silvi-pastoral activities, and also in the case of public use, social interest or low impact activieties, observing technical aspects of soil and water conservation to mitigate impacts. Other activiest can be authorized through the Environmental Regularization Program to be developed by states and municipalities. Again the argument used, that it is necessary to legalise historical situations whereby areas that were legally deforested at the time have become illegal due to successive changes in the regulations, is actually being used to legitimise all illegalities committed over the period, even those that had nothing to do with the sequence of changes to the legislation. This amendment pose great risk to water conservation.

7. **It allows for the recuperation of a mere 15 metres wide strip of gallery forest areas along the courses of small rivers and streams** whereas the legislation in force refers to 30 metres (Art. 35). A study backed by the Brazilian Society for the Progress of Science (SBPC) and the Brazilian Academy of Science[2] (ABC) shows that these areas are of fundamental importance for ensuring the quality of the waters and the survival of many aquatic fauna and flora species and that even the currently specified width of gallery forest vegetation (which was diminished) is not sufficient to guarantee most of the environmental services expected to be provided by such areas. A recent technical opinion issued by the National Water Resources Board [3] (ANA) underscores that position of the SBPC that "marginal gains accruing to rural property owners stemming from the reduction of vegetation cover in such areas may eventually generate a tremendous burden for society as a whole and especially for urban populations living in the respective river basin or region."

8. In addition to all that has been set out above, **the new law does away with the need to conserve gallery forest vegetation on the shores of natural lakes** - important nursery areas for the fish species that inhabit Brazilian rivers - and of the **reservoirs of small dams** constructed along the courses of rivers (Art. 4, §4). That would lead to an absurd situation whereby a river with no dams in its course would need protection for its gallery forest vegetation but once a dam had been constructed on it, it would no longer do so and could be legally subjected to processes that would lead to its silting up.

9. The new text **permits cattle-raising activities on hilltops and slopes that were occupied by such activity up until 2008 (Art. 10 and 12)** even though it is now well known that such activity is the main cause of erosion processes in those areas. According to an SBPC study the country suffers an annual economic loss to the order of 9.3 billion Brazilian Reals in the form of soil–loss through rainfall erosion in those areas and so their conservation is of extreme importance to curb and avoid that pernicious phenomenon

10. The text **greatly alters the legal reserve compensation system by de-activating governance of its mechanisms**. Although the present system, which allows for compensation of areas within the same micro-basin, could readily be modified to facilitate its application, the new law heads off in a wrong direction. By allowing for compensation to be made in another state altogether, without demanding the integrated registration of the area to be compensated and the new compensatory area, both duly geo-referenced, the draft amendment effectively removes any possibility of exercising control over the state of conservation of the area being compensated for. It also provides for quitting legal reserve obligations by making financial

[2] O Código Florestal e a Ciência: contribuições para o diálogo. São Paulo, SBPC, 2011.

[3] Technical Opinion no 045/2010 – SIP-ANA deforestation could allowed in cases for example where the property still has 60% of its legal reserve standing and could clear more vegetation to the level of 50%.

contributions to a public fund, which virtually means exchanging protected areas for money with no specific destination. The proposal itself offers another, much better compensatory mechanism (Environmental Reserve Quota) definitively linked to an area effectively conserved or undergoing recuperation.

11. It permits **a reduction of the legal reserve requirement for the Amazon region,** even in the case of future deforestation, by establishing, in Article 14, a time limit for Ecological-economic Zoning to authorise a reduction from 80% to 50% of a given property. The legislation in force already has this defect in that it encourages illegal deforestation carried out in the hopes that future Zoning processes will legalise them and the new text does nothing to solve that problem, even though the report's proponent was made fully aware of it. In fact, to make matters worse, he substituted the phrase " for the purpose of re-composition" by the word "regularisation" which introduced an ambiguity that make s it possible to interpret that more deforestation could be done on a property that still has say 60% of its legal reserve standing but can apparently legally reduce that to 50%.

12. It leaves **a loophole open for interminable legal discussions on the need to recuperate legal reserve areas (Article 40).** On the pretext of making it clear that those who respected the legal reserve limits determined by the legislation in force at the time are free of obligation to recuperate part of them, because the law subsequently altered the specifications of the legal reserve area (as was the case in Amazon Forest areas in 1996), the proposed amendment simply states that no recuperation will be necessary and that legality will be considered proven on the presentation of "a description of the history of land settlement in the region in question, sale and purchase registrations, and data on livestock and agricultural activities." That means that the proprietor can free himself of all Legal Reserve obligations by means of a simple declaration without any onus to provide proof in the form of authorisations issued, satellite images or other ways of effectively proving that the area was legally deforested at the time.

13. Article 27 opens another loophole that would **allow municipal governments to authorise deforestation** and lead to **total loss of control over Brazilian Forest policy**. All a municipality would have to do is create an Area of Environmental Protection that does not involve dispossession or necessarily involve any restrictions to the proprietors and then all and any deforestation undertaken within its limits would come under the aegis of the Municipal Authority. With the application of this provision in the region of the Deforestation Crescent where the pressure of landowners on local mayors is even more intense than in other regions, then we can be sure that the current tendency to a decrease in deforestation in Brazil will be immediately reversed, and worse, a good part of the deforestation that results will be backed by a supposedly legal authorisation.

14. The text provides for **the creation of a new Rural Environmental Register**, a long-standing civil society demand, to improve territorial planning and monitoring of the effective enforcement of the environmental legislation, but it does so in such a way as to **render it practically useless** by permitting that the descriptive technical document of the area presents **only a single geo-referenced tie line or tie point** (Article 30, §1) instead of a complete geo-referenced survey croquis like the ones demanded by the systems that several states have already installed. Thus the project calls for a less-accurate system that eventually costs more because it leaves space for possible inconsistencies in the data registered (such as overlapping) and makes it impossible for the Rural Environmental Register to effectively fulfil its intended role in the functions of environmental and economic monitoring, control and planning and in combating deforestation. Furthermore, many of the actions foreseen in the legislation (like legal

reserve compensation, and the creation of the environmental reserve) do not depend on whether the property is registered or not and that only weakens a mechanism that otherwise could be of great interest.

15. The proposal is correct in allowing for the **creation of an environmental regularisation programme** (Article 33) but it also **opens up the prospect of an eternal amnesty**. The proposal establishes a period of one year for property owners to adhere to the programme (§2) during which time no administrative sanctions for deforestation or irregular use of Permanent Protection Areas and Legal Reserve areas that took place up to 2008 (§4o) will be applied to anybody (whether they adhered to the programme or not). That will be an incentive for proprietors to try and regularise their situations as has already taken place in the state of Mato Grosso. However, the proposal makes the period of one year extendable by decree, and such a decree may even be issued by State Governments, which means that State Governors, if they wish, can go on and on renewing the amnesty and enabling whoever wishes to carry on their illegal occupation of protected areas, to do so without fear of being fined or interfered with. Furthermore, according to the terms of Article 34, the mere act of signing the Term of Commitment suspends the applicability of legal sanctions for environmental crimes associated to illegal deforestation, but it fails to link that fact to a time frame (crimes committed up until 2008, for example, the reference date adopted throughout the proposed amendment for defining the supposed 'consolidated areas') so that any new deforestation would immediately become un-punishable on the act of signing the said Term.

16. According to the new version containing the proponents modifications rural proprietors would be able to, "legalise the areas that continue to be occupied by agro-silvi-pastoral activities as all-purpose consolidated rural areas", which opens yet another **loophole that would allow such programmes to legitimise irregular land settlements other than those already foreseen in the legislations.**

17. The text fails **to incorporate any new economic instruments designed to stimulate environmental recuperation and conservation** and it also fails to introduce any new instruments for deforestation control. According to the rules set out in the proposed amendment, anyone that has pastureland on slopes and recuperates a strip of gallery forest vegetation just 15 metres wide will be just as eligible for economic benefits as those that took the pains to recuperate the areas with natural vegetation.

18. The proposed **text reneges on current policies designed to curb illegal deforestation** by stating that illegally deforested areas "could" be placed under embargo (Article 58) whereas Decree 6514/08 determines that an embargo – the prohibition of the use of an illegally deforested area for profit-making activities – is obligatory. By stripping the environmental authorities of the right to embargo the illegally deforested area, the proposed amendment tacitly allows to the culprit to use it for economic purposes and reap a profit form an environmental offence. The existence of an embargo is a key factor in the concession or not of rural credit and the backbone of policies designed to control illegal deforestation.

19. By establishing a considerable set of amnesties and making the law more flexible in addressing those that break it, the amendment **will make the task of those bodies endeavouring to exercise control over the environment immensely more difficult** as there will no longer be any clear parameters to point to when demanding compliance with the regulations and it will also make it **more difficult for those producing in rural areas to understand.** It will not be clear whether they should recuperate 15 metres or 30 metres of

Permanent Protection Areas; whether they can or cannot make use of land on hilltops, and so on. A set of legislation that was already quite complicated would become even more so instead of achieving greater simplicity as was originally intended and expected. Furthermore, it will end up creating two categories of rural proprietors: those that comply with the law and will be obliged to carry on doing so; and those that do not comply with it and will be benefited by the lowered standards of protection.

(END)