

Difficulties in the Control of Environmental Crimes in the Amazon

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Abstract— *Amazonas is a Brazilian state of continental territorial extension, composed of a rich biodiversity and priceless natural resources for the maintenance of the Amazonian biome. Its incalculable wealth is an asset for the evasion of biological material, mainly by the audit deficiency of the Government that still benefits the polluting agent. This article presents a bibliographical review on biopiracy, water pollution and the mismanagement of solid waste, three major sources of environmental degradation, whose practice is very widespread in the State of Amazonas. The article aims to analyze potential environmental crimes practiced in the State of Amazonas and the difficulty that environmental organizations have in punishing them properly. Specific objectives are to analyze some of the main environmental crimes practiced in the State of Amazonas, as well as to analyze the forms of environmental licensing. As for the Methodology, the inductive method was used with reference, category, operational concept and bibliographic research techniques.*

Keywords— *About five key words in alphabetical order, separated by comma.*

I. INTRODUCTION

Amazonas is the largest state of the federation, composed of 62 municipalities spread over 1,571,000 km², greater territory than Germany, Spain, Italy, United Kingdom and Greece together, but with the population corresponding to just less than 0.1% of these countries (IBGE, 2017). with 2,747km of border with Venezuela (538km), Colombia (1,644km), Peru (1,565km) (FILHO, 2018).

According to Amin (2015), the supremacy of countries such as England, France, Germany and the United States depend on access to areas rich in natural resources and the Amazon, given its size and the difficulties that the public power has in monitoring it makes it a attractive for environmental crimes. The availability of water and the way in which it is to be used in the near future.

In 2008, The New York Times, a leading American newspaper proposed a heated debate about the

internationalization of the Amazon, with the following question: "Who is the Amazon?", Putting the sovereignty of the Amazonian countries in check (ARAGÓN, 2008). The newspaper quoted former US Vice President Al Gore as saying that "contrary to what Brazilians believe, the Amazon is not their property, it belongs to all of us" (BARRIONUEVO, 2018).

For Lemos (2013), the environment should not be a private good since it belongs to the whole of humanity in an indistinct way and therefore tends to be a matter of international protection. It justifies its thinking by stating that "internal instruments are not sufficient to prevent environmental damage."

This thought is opposed to the ideas of Hermann Heller (1995) when he states in his classic study on the subject that "sovereignty consists in the ability, both legal and real, to decide definitively and effectively any conflict that changes unity of territorial social cooperation ". In a much simpler but no less instructive way, "territory is a portion of the geographical space that coincides with the spatial extent of the jurisdiction of a government" (GOTTMANN, 2012).

From the above thoughts it is reasonable to conclude that only the word "sovereignty", in itself, does not guarantee autonomy without external interventions. Even a sovereign state has obligations towards other nations, since they must be recognized and consolidated, regardless of their origin, and may be subject to sanctions. In its article 225, the Federal Constitution of 1988 establishes the society's right to a balanced environment, nevertheless it also determines that the protection of the environment is the duty of the State and of the community, made all without exception responsible for its preservation for the present and future generations (BRAZIL, 1988).

Thus, the main problem of the present study is the main difficulties regarding the inspection of environmental crimes committed in the State of Amazonas.

About the objectives, the general objective is to analyze the difficulties in the monitoring of environmental crimes

in the State of Amazonas. And specific objectives are to analyze some of the main environmental crimes practiced in the State of Amazonas, such as Biopiracy crimes, water pollution, mineral exploration, as well as to analyze the forms of environmental licensing.

As for the Methodology, the report of the results will be composed on the Inductive Logical basis. In the various phases of the Research, the Referent Techniques, Category, Operational Concept and Bibliographic Research will be used (PASSOLD, 2008, p. 86).

II. THEORETICAL FRAMEWORK

2.1. Biopiracy

The illegal trade in wild animals, fauna, flora and genetic material in general is considered a very profitable practice worldwide, being the third largest illegal activity on the planet, moving approximately 2.5 billion reais in Brazil alone (DESTRO, 2012).

The network of trafficking in genetic material is extremely complex, and may be involved in other illicit practices such as drug trafficking and precious stones, for example, and not for that, these gangs are still involved in bribery of government officials, evasion of taxes, fraudulent customs declarations among others that facilitate their practice (RENCTAS, 2011).

Giovanini divides the trafficking of wild fauna into three main categories: animals for private collectors and zoos, animals for scientific purposes and animals for pet shops (GIOVANINI, 2000).

In relation to the flora there are several cases that have generated billions of dollars in damages for the Amazon. A special case was the theft of 70,000 rubber tree seeds (*Hevea brasiliensis*), very well reported by the journalist J. Jackson (2011), in his biography of Henry Alexander Wickham, contracted in mid-1873 formally by the Royal Botanical Garden of England, the well-known Kew Gardens, to steal the seeds. For Pozzetti (2014), the Amazon concentrated all its economy in the production of "wild rubber", that completely lost its international competitiveness since in Malaysia the planting was made of industrial form and the transport was much easier.

Pozzetti recalls a recent fact that Japan, after discovering in laboratory that the seed of Cupuaçu (*Theobroma grandiflorum*), generates a chocolate more profitable and tasty than Cocoa, decided to patent the name cupuaçu preventing Brazil, where the fruit is native, to use it, in an attempt to monopolize the fruit and its derivatives (POZZETTI, 2014).

In view of the above, Gomes, in his study on the control and repression of biopiracy in Brazil, affirms that one of the reasons for biopiracy to be a very attractive crime in the country is that biopiracy is not criminalized as a criminal offense. other forms of smuggling, being treated

only as an administrative offense, so that the offender is subject only to the payment of fines (GOMES, 2007, p.21).

2.2. Water pollution

According to Law 9.433 / 97, which instituted the National Water Resources Policy, and created the National Water Resources Management System, water is a public domain property, as well as a limited natural resource, endowed with economic value and its management must be decentralized with the participation of the Public Power and the communities (BRAZIL, 1997; MUÑOZ, 2000).

Even though it has its own legal framework, water remains the most contaminated natural resource in the Amazon, especially in the capital Manaus, where so-called "igarapés". As mentioned by Horbe (2005, p.20), "the streams that drain the city are completely degraded by the supply of domestic effluents."

For Falcão, there is a search of the companies by the banks of the water bodies, to use them like sewers (FALCÃO, 2008, p. 02).

The pollution of the "igarapés", in the capital of the State of Amazonas, although it has reached a troubling degree, is observed and, to a certain extent, controlled by several governmental agencies. However, there are cases of water contamination that are unknown to the authorities or are poorly observed, such as the case of Leticia's Thermoelectric Power Plant in the extreme southwest of Amazonas, which uses an important effluent as a discarding area for lubricating oil (BANDEIRA, 2018, p. 49).

In the case of Tabatinga, the Federal Public Ministry filed a public civil action no. 7993-83,2010.4.01.001, as a victory for the environment, however, Bandeira (2018, page 53) points out that there is a bureaucratic barrier to be overcome, because it is a plant located on the Colombian side of the border and has an institutional security.

There are countless other cases of water pollution in the Amazon. One of the most severe degrading elements of the whole system, the mercury from the garimpos, can be cited. Herraiz (2015, p.206) estimates that 200-300 tons of mercury were discharged into the Madeira River between 2005 and 2015. For himself with the technological advancement in mining, some procedures can not be avoided, generating physical alterations and chemical properties to the environment. Metals such as mercury in contact with the soil or dumped into the environment are drained to the water bodies by surface water flow from precipitation (LIMA, 2013, p. 24). This metal is a serious contaminant for fish and aquatic animals, and with the process of bioaccumulation,

animals at the top of the food chain suffer more from this pollutant, affecting even the riverine population that incorporates these animals into their diet.

2.3. Inadequate solid waste disposal

Solid waste has been shown to be one of the major challenges to be faced by Brazilian municipalities, especially the confrontation of open dumps (OLIVEIRA, 2016, p. 593). The Amazon is composed of 62 municipalities, and until 2006 it did not have a properly sanitary landfill license, a situation that changed after a long legal relationship between the Environmental Protection Institute of Amazonas and the Municipal Environment Secretariat of Manaus (ARAÚJO, 2008, p. 16). Eight years after the enactment of Law 12,305 of August 2010, which instituted the National Solid Waste Policy, a milestone in the waste situation that remains practically the same, with the State having only one (1) landfill, of Santa Catarina that extinguished the use of dumps still in the year 2012 (OLIVO, 2018, p. 12). The municipalities of Amazonas suffer from lack of area for the construction of their sanitary landfills. Even with a large amount of land, the State has many peculiarities such as the existence of large areas of indigenous land and difficult to access. For Lollo (2001, p. 130), legislation is one of the factors that make it difficult to choose areas for landfill. Some cases like Tabatinga, there are at least half a dozen laws that make it impossible to build a landfill. We can briefly mention CONAMA N.º 004/95, which deals with the Airport Security Areas (BRASIL, 1995) and, in this particular case, it should be noted that the municipality of Leticia in Colombia has an aerodrome dangerously close to the area of the Brazilian dump.

2.4. The difficulty in environmental crimes in the amazon

The Federal Constitution of 1988 granted the Police Power in article 225, to the Public Power, as well as to the collectivity, to defend and preserve the environment: Article 225. Everyone has the right to an ecologically balanced environment, a common use of the people and essential to a healthy quality of life, imposing on the Government and the community the duty to defend and preserve it for the present and future generations. (...).

§ 3 Conduct and activities considered harmful to the environment shall subject the offenders, individuals or legal entities, to criminal and administrative sanctions, regardless of the obligation to repair the damages caused. For Meirelles (1987, p.93), Police Power "is a faculty that disposes the public administration to condition and restrict the use and enjoyment of individual goods, activities and rights, for the benefit of the collectivity and

of the State itself." The power of the Police in the environmental area can be exercised through inspection actions, such as preventive measures, monitoring, inspection, warning, punitive and corrective measures. In this way, the "coercive logic of environmental control resides in the application of sanctions imposed by an authority constituted by society, the State, and its organizational structures" (SCHMIT, 2015, p.10). The guarantee of the fundamental right to the ecologically balanced environment is a common competence between federative entities:

(...) it can be said that environmental police can (and should) be exercised cumulatively by all federative entities, generically referred to as Public Power; This, moreover, is clear from Art. 225, caput, of the Magna Carta. (...)

In line with the common cooperation of federative entities, the Law on Environmental Crimes includes, as authorized, for the purpose of drawing up infraction notices and instituting administrative proceedings, all environmental agencies that are members of SISNAMA, within the three spheres of Brazilian Federation (MILARÉ, 2011, p. 1135).

Therefore, activities that use licensed environmental resources, should also be inspected by the environmental agency licensed. This is because, in principle, such a body has better technical-administrative conditions to supervise.

Based on this, we have article 17 of Complementary Law 140 that reads as follows:

Article 17. The body responsible for licensing or authorizing, as the case may be, an undertaking or activity, drawing up an environmental infraction notice and instituting an administrative proceeding for the determination of infractions to the environmental legislation committed by the undertaking or licensed or authorized activity.

From this article the principle of the first licensor-inspector is extracted, which establishes the attribution of the effective exercise of inspection of a certain organ, thus avoiding "that the controlling entity interferes in the administrative discretion of another environmental body, by interfering in the merit of the license issued, to conclude for the fulfillment or non-compliance of the terms thereof" (CARIB, 2018). However, it is perceived that in relation to Biopiracy, water pollution and the inadequate disposal of solid waste, inspection is sometimes precarious. The Federal Audit Court carried out an operational audit in 1998 and identified that there are problems in the collection of fines that were applied by IBAMA, as well as an error in filling the case file. Already in 2008, another audit identified that the federal

agencies suffer from a lack of infrastructure, which makes it difficult to supervise:

The audit of bodies such as IBAMA National Institute of Colonization and Agrarian Reform (INCRA), National Health Foundation (FUNASA), National Indian Foundation (FUNAI) and ICMBio identified that the scarcity of resources and the lack of an integrated policy for the dramatic consequences resulting in the waste of public money and the rapid devastation of the forest. As an example, IBAMA's inefficiency is pointed out, reflected in the lack of inspectors, the delay in allocating seized assets and in the collection of fines imposed on those responsible. Faced with these problems, the picture reveals the precarious inefficiency and inefficiency of environmental control, which may compromise the deterrent effect sought by coercive logic.

Thus, it can be verified that environmental crimes in the State of Amazonas are undermined by the lack of infrastructure, both in economic, professional and organizational terms, which, consequently, undermine the effectiveness of environmental standards.

III. CONCLUSION

Historically the state of Amazonas has been a victim of constant losses of natural and economic resources, mainly due to the difficulty of the authorities to inspect it in its totality, either by the lack of professionals or by the logistical complexity.

In cases of biopiracy, it is possible to observe that the participants of this type of crime often have power over the enforcement agents, either through kickbacks or intimidation, using political "godfathers" to perpetuate the functioning of this mechanism. This type of crime has generated real economic crises in the state.

Traditionally the Amazon has been dependent on only one sector of the economy. In the middle of 1879 to 1920 Manaus was almost exclusively dependent on latex production, and saw its economy decline after the production of this product by Asian countries.

With the implementation of the Manaus Free Trade Zone and the Industrial Pole, the economy has once again strengthened and strengthened over time, although it has suffered constant attacks in the so-called Fiscal War.

Both water pollution and the crisis in solid waste management may, a priori, appear to be environmental problems that have little to do with the loss of economic resources, but these two crimes generate an equal or greater amount in the increase of financial losses for the State, since in the case of dumps, large volumes of money are being lost due to lack of recycling. In the case of the Igarapés the government has generated a lot of expense for cleaning up.

In this context, it is necessary to strengthen the fight against environmental crimes, increasing the number of technicians involved in law enforcement 9,605 / 98, increasing the budget of environmental protection agencies, investing in passive detection technologies, such as remote sensing programs, measurements among others and to massify in society the importance of a balanced environment.

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