

Environmental Policy in the Bolsonaro Government: The Response of Environmentalists in the Legislative Arena

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This article analyzes the response of Brazil's National Congress to the Bolsonaro government's actions in respect of environmental policy, with an emphasis on the role of the active members of the Congressional Environmental Coalition and the civil society organizations that support it. Congress's three spheres of activity encompass lawmaking, legislative oversight and the budget. The main decision-making processes related to these fields of activity are highlighted and analyzed using a qualitative approach. In general, there is evidence of an appropriate response by environmentalists, the results of which should not be underestimated, but which should have greater reach in view of the gravity of the destruction of environmental protection policy that has taken and continues to take place. The Bolsonaro government has presided over an attempted evisceration of environmental policies by changing non-statutory rules and cutting budgets, but Congress has put the brakes on nationally applicable laws and strengthened Congressional oversight.

Keywords: Environmental policy; National Congress; Bolsonaro government.

<http://doi.org/10.1590/1981-3821202000020005>

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It has been clear since the electoral campaign of 2018 that a Bolsonaro government would seek to undo environmental protection policies, given Bolsonaro's intense criticisms of the environmental inspection system, what he described as 'the fines industry', as well as of the interactions between the government and environmental NGOs. It is unlikely that the Bolsonaro government's failure to follow through on its threat to abolish the Ministry of the Environment (hereinafter 'MMA', as per the Brazilian acronym for the Ministry) was a response to criticisms aired in social media or from important figures in the field, such as former environment ministers. Bolsonaro's proposal at the time was to merge the MMA with the Ministry of Agriculture.

After the Bolsonaro administration took office it became clear that the dismantling of environmental policies did not require the abolition of the MMA. In fact, it is likely that by keeping the Ministry in place, the government was able to make some of the government's actions appear more legitimate than they really were. Behind a smokescreen of 'reorienting priorities', the government set about taking apart Brazil's environmental protection policies, which had been built up progressively over the last four decades¹.

Policy and procedural changes within the MMA have gradually altered the character of national environmental protection policies – even when taking into account the challenges in the consolidation of the National Environment System (hereinafter 'Sisnama') and the competing conceptions of environmental protection within the administration (SABATIER and JENKINS-SMITH, 1999; SABATIER and WEIBLE, 2007). Without a doubt, the period that started in January 2019 has represented much more than just a change – it has been a complete and total rupture.

The first move in this direction came with the reduction of MMA duties in some initial decisions. The National Water Agency ('ANA') was transferred to the Ministry of Regional Development (MDR), thus impeding interaction between Sisnama and the National Water Resources Management System (Singreh); the Brazilian Forest Service, a department with managerial autonomy that oversees

¹Law Nº 6,938/1981, which formalized the National Environmental Policy, created Sisnama and the National Environmental Council (Conama), as well as establishing environmental licensing as an implementation tool throughout the country.

forest concessions and the Rural Environmental Registry (CAR) was transferred to the Ministry of Agriculture, Livestock and Supply (Mapa); the MMA secretariat that focused on climate change was abolished; fisheries oversight was moved to Mapa; and the environmental education department was abolished². Recently, a presidential decree completed the transfer of public forest management to the Mapa, including the overall management of forest concessions³.

Military police officers were placed in high-ranking positions in the autonomous government agencies linked to the MMA. Today, the entire board of ICMBio is comprised of these military police officers, including its president. At Ibama, the director of environmental protection, who is responsible for environmental inspection, and the director of planning, who oversees administrative management including budget resources, are military police officers. In both organizations the military police officers come from the state of São Paulo.

Reducing the available funds has been another important strategy for taking apart environmental protection policies. The 2020-2023 Pluriannual Plan (PPA) makes little mention of environmental protection. The money allocated to environmental protection policies makes up only 0.03% of the BRL 6.8 trillion total budget. This percentage reveals how far the country is from prioritizing environmental protection (ARAÚJO and FELDMANN, 2020). In the 2020 budget, BRL 77 million – 25.3% less than in 2019 – have been set aside for Ibama inspections. These inspections include some 1,200 operations across the country annually. In the budget item related to the creation, management and implementation of Federal Conservation Units, BRL 111 million is budgeted for 2020 – 32.7% less than 2019 – to manage about 9.32% of the Brazilian land area and 25.37% of the Brazilian marine area⁴.

The choice here has been to not act – to engage in public antipolitics. In the categories of governmental inaction identified by McConnell and Hart (2019) – calculated, ideological, imposed, reluctant and inadvertent – there is a mixture of the first, inaction as a product of a conscious decision not to act, and the second, inaction

²See Law N° 13,844/2019, generated by Provisional Measure (MP) N° 870/2019.

³See Decree N° 10,347/2020.

⁴Data available at: <https://www.mma.gov.br/areas-protegidas/cadastro-nacional-de-ucs.html>. Accessed on May, 15th, 2020.

due to ideological conviction. It is impossible to underestimate the effectiveness of the Bolsonaro administration's strategy and tactics in terms of breaking with institutions established in many areas of public policy, including environmental policy.

How has Congress responded to the calculated dismantling of environmental protection policies implemented by the Executive Branch? How have the bills submitted by the Executive Branch been handled? To what extent has the Legislative Branch acted to stop this institutional disruption?

This article seeks to provide answers to these questions covering the areas under the purview of Congress works. It highlights and analyzes the main decision-making processes that took place during the period, using a qualitative approach based on the data available on the websites of the Chamber of Deputies and the Federal Senate, and on the author's 30-year personal experience as a legislative advisor to the Chamber of Deputies until February this year, interrupted only during the period of her Presidency of Ibama between June 2016 and December 2018.

The idea is to reveal the reaction of environmentalists to the institutional dismantling pushed by the Bolsonaro government in the different facets of the legislative arena. Complex games of action and reaction are in play, and the success of environmentalists in some of them have forced a reorientation of Bolsonaro's strategy towards prioritizing non-statutory acts. This was pushed further during the Covid-19 pandemic:

We need to take advantage of the quiet moment we're in as far as press coverage is concerned, while they only talk about Covid, and get the cattle herd in, change all the rules and simplify the regulations [...]

We don't need Congress. Anything that needs Congress, that mare's nest, will never get approved. There are a lot of things that are just report, approval, report, approval. You can't change that without an approval because if there's a report without an approval you're in trouble (SALLES, 2020)⁵.

The rest of this paper will present the following in succession: the process of drafting new laws, the application of legislative oversight tools, budgeting procedures and final considerations.

⁵Excerpts from the speech by the Minister of the Environment, Ricardo Salles, at a ministerial meeting held on 04/22/2020, recently released by the Federal Supreme Court. Available in full at: <http://portal.stf.jus.br/noticias/verNoticiaDetalhe.asp?idConteudo=443959&ori=1>. Accessed on May, 28, 2020.

The legislative process

The Bolsonaro government began its relationship with Congress in 2019 by seeking the support of thematic Congressional Coalitions rather than of political parties, with a particular focus on the ‘Bulls, Bullets and Bible’ supra-party caucus. In 2018, the coordinator of the Congressional Coalition of Agriculture (FPA), Deputy Tereza Cristina (Democratas (DEM)/Mato Grosso do Sul (MS)), became the head of the Ministry of Agriculture, Livestock and Supply (Mapa). Notwithstanding Bolsonaro’s failed attempt to free himself from the need for a coalition of support parties, the FPA has continued to play a prominent role in matters related to environmental policy, as it has for many years.

Cascione (2018) has estimated the number of active FPA members at 118, versus 15 active members for the Congressional Environmental Coalition. Nonetheless, both coalitions are among those with the highest level of institutionalization (CASCIONE, 2018)⁶. The Congressional Environmental Coalition was the first coalition to form when it became possible to register such entities in 2005⁷. Its close collaboration with civil society organizations sets it apart from other coalitions. There are important legislative processes related to environmental protections that can only be politically analyzed effectively if we consider the actions of these two rival coalitions.

In the analysis of the provisional measure that created the law of organization of the Presidency of the Republic and the ministries of the Bolsonaro government⁸, the Legislature did not react to the changes that reduced the MMA’s powers. However, the most active members of the Congressional Environmental Coalition reacted before the provisional measure was issued. This occurred during the transitional administration, when it was announced that the government intended to delegate the powers related to environmental protection to the Mapa. Near the end of 2018, the then coordinator of the Environmental Coalition, Deputy

⁶The Chamber of Deputies requires 1/3 of support for registration of a Congressional Coalition. As a result, all coalitions have a high number of members in their original registration documents, even if these never take any concrete action. Cascione (2018) calculated the number of active members by means of a survey with the participation of 312 deputies and 55 senators.

⁷See Decree N^o 69/2015. Available at: <https://www2.camara.leg.br/legin/int/atomes/2005/atodamesa-69-10-novembro-2005-539350-publicacaooriginal-37793-cd-mesa.html>. Accessed on May, 15, 2020.

⁸See Law N^o 13,844/2019, generated by Provisional Measure N^o 870/2019.

Alessandro Molon (Brazilian Socialist Party (PSB)/Rio de Janeiro (RJ)), led Congressional criticism of the proposed merger of the Mapa and the MMA and was supported on social media by a forceful reaction from civil society organizations. The successive coordinators of the Environmental Coalition, Nilto Tatto (Workers' Party (PT)/São Paulo (SP)) and Rodrigo Agostinho (PSB/SP), continued to show leadership in 2019 and 2020 on matters related to environmental protections.

What had seemed to be a victory – maintaining an autonomous MMA in the ministerial structure – ended up reducing the opportunities for environmentalists to push Congress to change the MMA powers provided for in the provisional measure. The ministry was saved but with a much-reduced purview. It should be noted that keeping the MMA was also supported by the FPA, as they were concerned with the negative repercussions for Brazilian agricultural commodities.

Bolsonaro fulfilled campaign promises and submitted proposals to the Legislature that have had a negative impact on environmental protection. The two most relevant proposals took some time to be sent: a provisional measure that seeks to facilitate the legalization of irregular occupations of Federal land, dubbed by environmentalists the 'MP da Grilagem'⁹; and a bill that would regulate mining as well as the use of water resources to generate electricity on indigenous land¹⁰.

The main objective of the 'MP da Grilagem' was to increase the size of occupations eligible for simplified registration rules from four 'fiscal modules' – the size of a small rural property – to 15 fiscal modules, which in the Amazon can represent 1,500 hectares. The simplified legalization system would be based on a declaration by the occupier of the land, cross-checked with public data, especially the Rural Environmental Registry (CAR), which also has a declaratory character. Legalizations are monitored remotely with inspection occurring only in exceptional

⁹See MP N° 910/2019. 'Grilagem' is an expression derived from the historical practice of aging forged documents to obtain possession of land, usually public lands. Counterfeit documents were placed in a box with a few grasshoppers ('grilos' in Portuguese), whose urine would age them. Fraud techniques are much more sophisticated today, but this unlawful act is still a common practice in Brazil, especially in the Amazon. See: https://www.wwf.org.br/natureza_brasileira/areas_prioritarias/amazonia1/ameacas_riscos_amazonia/desmatamento_na_amazonia/grilagem_na_amazonia/. Accessed on May, 10, 2020.

¹⁰Bill of Law N° 191/2020.

cases. The provisional measure also extended the timeframe, from 2008 to 2018, for occupations to be legalized through the more flexible rules.

Even under intense pressure from the FPA, the Special Secretariat of Land Affairs (Seap) of the Mapa and the president himself, the vote on the measure was delayed until it expired on 19 May 2020. A forceful response from civil society contributed to the victory. In addition to the organizations that traditionally support the work of the Congressional Environmental Coalition, this response included well-known artists, unions, research entities and others. Eight former environment ministers signed a letter to the Speaker of the Chamber. Environmentalists' worries stem from the fact that illegal occupation of public lands is usually accompanied by deforestation and other forms of environmental degradation, which further accelerates the deforestation of the Amazon and other biomes that was set in motion at the beginning of the current government.

The failure of that provisional measure was quickly followed by the presentation by its rapporteur of a slightly diluted version of the same bill, this time scheduled for an urgent vote. As of the writing of this article, the Congressional vote on the bill had not yet taken place. The FPA and the Mapa have applied considerable pressure for it to be approved. The mere inclusion of this proposal in the decision-making agenda demonstrates the power of Brazil's so-called 'ruralistas'. A political agreement has been arrived at to not bring up issues not directly related to combatting the effects of the Covid-19 pandemic in the system by which Members of Congress vote remotely, as remote voting makes it difficult for them to engage in debates and for civil society to participate.

A bill on mining in indigenous lands was tabled in February 2020 by the Bolsonaro government, after months of internal discussions within the Executive Branch. As some of the draft versions of the bill had been leaked, there was time for opposition Members of Congress, the Congressional Environmental Coalition, the Congressional Coalition in Defense of the Rights of Indigenous Peoples and civil society organizations to react. The bill has not made any progress in the Chamber of Deputies – so far only the first steps towards setting up a committee to consider it have been taken.

The Federal Constitution¹¹ assures the indigenous people of Brazil exclusive access to the resources found in the land, rivers and lakes that they have traditionally occupied. According to the National Indigenous Foundation (Funai) and including the areas formally recognized and those in the process of recognition, Brazil has 567 indigenous territories covering 117 million hectares and six areas with interdiction ordinances totaling over 1 million hectares, in addition to 117 areas under review¹². In total, 13.8% of the Brazilian national territory is to some extent recognized as indigenous land.

More than 115 million hectares of the areas recognized as indigenous lands are in the Amazon. For the most part, these areas have intact native forest cover, and thus serve as an important resource for indigenous communities but also for the protection of biodiversity and the climate. This ecological importance attracts international attention to the issue and drives international environmental protection campaigns. Without question, this is the reason that the Speaker of the Chamber of Deputies declared that he does not intend to allow a reading of the mining bill while he is in office.

Another relevant process that must be mentioned is that of the provisional measure¹³ tabled in October 2019 that authorized the creation of a private fund, in a public bank, to bring together the funds for the conversion of fines into environmental services, and which failed to meet the deadline for being voted on.

The conversion of fines into environmental services has been provided for in law for more than twenty years¹⁴. It was applied for some time by Ibama but suspended in 2012 due to the difficulties that the agency had in monitoring so many projects spread across such a large area. In 2017, conversion of fines was resumed. A Presidential Decree¹⁵ created an indirect fine conversion option, under which the fined party is required to undertake tranches of projects previously selected in public Ibama or ICMBio calls. The idea was to attract projects that would be more capable of fulfilling the targets that Brazil has agreed to in international

¹¹See Art. 231 of the Federal Constitution.

¹²Data available at: <http://www.funai.gov.br/index.php/indios-no-brasil/terras-indigenas>. Accessed on May, 16, 2020.

¹³Provisional Measure N° 900/2019.

¹⁴See Art. 72 of Law N° 9,605/1998 (Law on Environmental Crimes).

¹⁵Decree N° 9,179/2017.

climate agreements, without prejudice to the possibility of carrying out direct conversion through projects developed by the fined party.

The first public call for the indirect conversion of fines by Ibama selected fourteen projects aimed at environmental recovery at the sources of the São Francisco River and twenty projects aimed at supporting the adaptation of production to semi-arid conditions in small rural properties in the middle and lower Parnaíba River. These 34 projects would have a total budget of about around BRL 1.1 billion, with at least BRL 800 million going to projects in the São Francisco basin (FELDMANN and ARAÚJO, 2019). In keeping with his strategy of tearing down initiatives developed by previous administrations, as pointed out in the introduction, the Bolsonaro government did not publish the result of the public call and consequently did not sign the partnership agreement with the non-profit entities whose projects had been selected. The government's main criticism was that the public call selected projects from non-profit entities, a practice that had been criticized by Bolsonaro since the beginning of his presidential campaign. In an April 2019 decree, the possibility of fine conversion resources being directed to private companies was opened¹⁶. In the first public call the decision was to not act – not even to cancel the call, making use of the strategy described by McConnell and Hart (2019) as 'calculated inaction'. The process has been stalled since April 2019.

With the publication of the provisional measure authorizing the creation of the private fund, the strategy that the government would adopt for the fines conversion program became evident: personally centralizing in the Ministry of the Environment the power to pick which projects would receive funding. The original text of the provisional measure was a blank check to the head of the MMA. Under the coordination of Senator Alessandro Vieira (CIDADANIA/Sergipe (SE)), Congress began work on an alternative text that maintained the idea of a centralized fund but established constraints on MMA decisions.

This proposal was never voted on, the provisional measure failed because it was not voted on before its deadline of March 26, 2020. Provisional measures with

¹⁶Decree N° 9,760/2019.

similar content cannot be voted on during 2020. During this process, the active members of the Congressional Environmental Coalition, as well as the civil society organizations that support it, responded in a divided fashion to the improvements made by the rapporteur. The fact of it being impossible to predict which sections of the bill would be vetoed by the president, which meant that the text could be reverted to its original draft form, weighed heavily on political calculations. The amount of money that could potentially be leveraged by the MMA in an election year was another key political factor. The value of unpaid Ibama fines amounts to more than BRL 30 billion.

As can be seen, the active members of the Congressional Coalition for Agriculture (FPA) and the Congressional Environmental Coalition are key players in the legislative deliberations related to environmental policy. Historically, they could count on partners in the Executive Branch – the Mapa and the MMA respectively. There are important legislative processes related to environmental protection that can only be understood by reference to the proceedings of these two congressional coalitions, such as that of the Forest Law of 2012¹⁷ (PEREIRA, 2013). In these cases, the role of the political parties within the legislature (AMORIM NETO, 2006; FIGUEIREDO and LIMONGI, 2001; VIANA and OLIVEIRA, 2018) cannot be entirely ignored, but is clearly less relevant when contrasted with the prominence of these two congressional coalitions and the civil society organizations that support them.

Under the Bolsonaro government, the relationship between the Congressional Environmental Coalition and the MMA has deteriorated into one of conflict. In the light of this new reality, the perception is that the coalition's relationship with the environmental organizations that have always supported it has been strengthened. Thus far in 2020, the coalition and these organizations have had meetings twice per week, held remotely in view of the pandemic. There is also evidence of a realignment of various environmentalist networks in the hope that they may consolidated into a single group that could confront the tidal wave of environmentally destructive policies promoted by a group that has risen to power espousing a traditional developmentalist mindset that, if

¹⁷Law N° 12,651/2012.

implemented, could lead to the implosion of the environmental policy subsystem (CAPELARI et al., 2020).

Beyond the legal changes made during the early days of the Bolsonaro government that led to the organizational de-structuring of the Ministry of the Environment and its autonomous government agencies, environmentally destructive bills sponsored by the Executive that would imply approval of laws regarded by environmentalists as harmful to Brazilian environmental legislation have not made it through Congress. Realizing this, the Executive Branch began to loosen environmental regulations falling outside of the purview of Congressional oversight. Recent examples include: the directive from the Ministry of the Environment that loosens the application of the Atlantic Forest Law in respect of illegally occupied land by July 2008¹⁸ – the subject of judicial litigation proposed by the Office of the Federal Public Prosecutor and civil society organizations; and the interpretative directive of the President of Ibama that eliminated the need for specific authorization for the export of native wood¹⁹, in view of the new system of authorization and transport oversight and the Economic Freedom Act²⁰, in spite of a report opposing the change issued by the technical team.

In keeping with Congressional efforts to improve current environmental legislation, and even within the framework of Bolsonaro's dismantling of environmental policy, the Chamber of Deputies will pass a bill designed to regulate Payment by Environmental Services (PSA)²¹. The bill was submitted to the Federal Senate in September 2019. The delay in approval of the bill stems from doubts about funding for PSA. Regardless of these complications, the passage of a national law stabilizes and controls behavior by the Executive, at the very least by regulating PSA contracts.

Congressional oversight

The intensification of conflicts between, on one side, the Members of Congress linked to the Congressional Environmental Coalition and the civil society

¹⁸Ordinance N° 4,410/2020, by the Minister of the Environment, published in the Official Gazette (DOU) of April 06, 2020, which links decisions on the subject of Ibama and ICMBio.

¹⁹Ordinance N° 7036900/2020-GABIN, signed by the President of Ibama on 02/25/2020.

²⁰Law N° 13,874/2019.

²¹See Bill N° 312/2015 at the Chamber of Deputies.

organizations that support it, and on the other, the Presidency, the Mapa, the MMA and the FPA and the organizations that support them, has led to a series of actions regarding horizontal accountability (O'DONNELL, 1998). However, given the scale of the evisceration of the MMA and the autonomous government agencies linked to it, the response has been insufficient and reflects the strength of the FPA in the National Congress.

Several Members of Congress, mostly from the opposition, have directed constant criticism at the Minister of the Environment, Ricardo Salles. A search on the Chamber of Deputies website for the words 'Ricardo Salles' carried out on May 15, 2020, found 651 references, most of them critical. However, Salles has only participated in the following public hearings in the Chamber since January 2019²²: 01. on April 10, 2019 at a joint meeting of the Environment and Sustainable Development Committee and the Committee for National Integration, Regional Development and the Amazon, to discuss actions taken by the MMA; 02. on July 08, 2019 in a joint meeting of the Committee for National Integration, Regional Development and the Amazon, and the Environment and Sustainable Development Committee, to clarify the changes made to the management of the Amazon Fund and its funds deployment regulations; 03. on June 11, 2019, in a joint meeting of the Labor, Administration and Public Service Committee, the Committee for National Integration, Regional Development and the Amazon and the Environment and Sustainable Development Committee, to deal with the oil spill on beaches in the Northeast region; and 04. on November 27, 2019, in a meeting of the Committee for Agriculture, Livestock, Food Supply and Rural Development, to present the programs developed at the MMA involving agriculture and animal husbandry.

Under the Bolsonaro administration, the number of draft legislative decrees (PDLs) designed to stymie the Executive's legal maneuvers vis-à-vis environmental protection has greatly increased²³. In 2019 alone, eighteen PDLs containing the term

²²Data from the Chamber of Deputies' shorthand banknote database, available at: <https://www2.camara.leg.br/atividade-legislativa/discursos-e-notas-taquigraficas>. Accessed on May, 10, 2020.

²³See Art. 49, section V of the Federal Constitution.

‘environment’ were tabled²⁴ in the Chamber of Deputies; as of May 15, 2020, there have been seven. By comparison, only two such PDLs were tabled in 2018; in 2017 there were only four. This increase in PDLs, the majority of them tabled by opposition Members of Congress, is a direct result of the Executive Branch’s practice of making regulatory changes without changing the relevant laws themselves.

A relevant example is the PDL presented by Deputy Nilto Tatto (PT/SP) and other Members of Congress²⁵ in order to prevent Resolution N^o 4,410 of 2020 of the Minister of the Environment taking effect. This resolution aimed to formalize a major change vis-à-vis the MMA’s position on the application of the rules on consolidated occupations set forth in the Forest Law of 2012²⁶ in respect of the Atlantic Forest, the protection of whose remnants is governed by a specific law²⁷ that confers the highest degree of protection.

In our legal system, the adoption of a general law on a topic does not preclude a special, more protective law. Resolution N^o 4,410/2020 clashes with this well-established practice and sets a precedent that could open the door to attacks on other rules protecting the biome, leading to the effective gutting of the legislation that protects the Atlantic Forest.

The Federal Public Prosecutor, the SOS Mata Atlântica Foundation and the Brazilian Association of Members of the Office of the Public Prosecutor for the Environment (Abrampa) have taken legal action against Resolution N^o 4,410/2020 – and other measures involving the State Public Prosecutors have been announced. The Congressional Environmental Coalition has held several public and private meetings on this resolution, supported the proposal that it be tested in court and coordinated its actions in this regard with state environmentalist congressional coalitions. This case demonstrates the extent to which legislative oversight can involve a diverse set of actors.

The number of information requests related to environmental policy has also increased. In 2019, the Chamber of Deputies received and sent to the Executive Branch 108 information requests containing the word ‘environment’; as of May 15,

²⁴The search was restricted to the term ‘environment’. There were other PDLs related to environmental policy in addition to those contained in these results.

²⁵PDL N^o 155/2020.

²⁶Law N^o 12,651/2012.

²⁷Law N^o 11,428/2006.

2020, nineteen such requests have been sent. By way of comparison, 2018 saw a mere 11 such requests and in all of 2017 there were only 17²⁸.

Another key case of legislative oversight during this period was the appointment of a Congressional Commission of Inquiry (CPI) on the oil spill in the Northeast in the Chamber of Deputies. The commission was established in November 2019, with Congressman João H. Campos (PSB/Pernambuco (PE)) as rapporteur. The CPI has focused its investigations on four lines of inquiry: identifying the source of the oil spill; evaluating the response of the public authorities; assessing the damage caused as well as remedial and compensation measures; and formulating proposals for improvements to the relevant legislation²⁹.

In terms of the federal government's response, the most prominent line of investigation has been the woefully insufficient action of the Ministry of the Environment in the initial phase, when the oil patches first began to appear. Ibama followed events from the beginning of the spill, but the MMA, the national authority responsible for the National Contingency Plan (PNC)³⁰, only took concrete measures some forty days after the first oil patches had been found.

This delay seems to have been due to a lack of any coherent division of responsibilities among the three collegiate bodies that co-ordinate the PNC: the Executive Committee; the Monitoring and Evaluation Group; and the Support Committee. With the abolition of government collegiate bodies that had not been created by law and had not yet been confirmed by June 28, 2019³¹, the three collegiate bodies responsible for the governance of the PNC had ceased to exist in legal terms. The various explanations for this administrative limbo that were presented at meetings were confusing. The impression given was that the government did not consider it relevant to retain the PNC collegiate bodies and had only been made aware of their relevance thanks to the oil spill crisis. Once again, governmental inaction was the order of

²⁸The search was restricted to the term 'environment'. There were other requests for information related to environmental policy in addition to those included in these results.

²⁹See CPI work plan available at: <https://www2.camara.leg.br/atividade-legislativa/comissoes/comissoes-temporarias/parlamentar-de-inquerito/56a-legislatura/cpi-derramamento-de-oleo-no-nordeste/documentos/outros-documentos/plano-de-trabalho-do-relator>. Accessed on May, 12, 2020.

³⁰See the only paragraph of Art. 5 of Decree N° 8,127/2013.

³¹See Decree N° 9,759/2019.

the day (McCONNELL and HART, 2019), this time within a mixture of ideological categories, characterized by the abolition of a large number of collegiate bodies and inadvertent inattention to the PNC.

The Oil Spill CPI in the Northeast has held 15 public meetings to date. Its public activities were suspended during the pandemic, a situation that has hindered the inquiry into the origin of the oil spill, but not the other lines of inquiry.

Finally, in the field of horizontal accountability it is worth mentioning the assessment of the National Climate Policy carried out by the Federal Senate Environment Committee and completed in December 2019. The report includes a passage that deserves repeating from the pen of Senator Fabiano Contarato (REDE/Espírito Santo (ES)), then President of the CMA and rapporteur of the assessment:

2019 is a watershed year because it represents a break with the trajectory followed since the approval of the National Climate Change Policy Law (PNMC) in 2019. The PNMC laid the groundwork for us to plan a series of initiatives, with sectoral plans, target setting and funds allocations. And then along comes 2019. Since the inauguration of the current president, the PNMC has been ignored and all of the mechanisms created by it are in the process of being systematically dismantled. The Ministry of the Environment in particular has become strongly determined to dismantle everything representing effective action by Brazil to honor its national and international commitments to the reduction of greenhouse gas emissions. (SENADO FEDERAL, 2019, p. 02).

This type of public policy evaluation effort is not usually included in the list of legislative oversight tools, but it is clearly within the purview of Congress. The report also includes proposals for improving legislation, by bringing together the spheres of oversight and law enforcement.

The public budget and other resources

As mentioned in the introduction, environmental protection policies receive only 0.03% of the BRL 6.8 trillion to be disbursed under the 2020-23 Pluriannual Plan (PPA). Such a meager budget spells disaster for national environmental protection policies. While it is true that the MMA and other associated government agencies have historically worked with modest budgets and faced great challenges in executing their missions, the cuts made since 2020 have aggravated the situation and made it extremely difficult to meet major

targets. The government plans to spend more than BRL 100 billion on sustainable agriculture projects overseen by the Mapa, while only BRL 2.2 billion over four years has been allocated to the MMA and its associated autonomous government agencies (ARAÚJO and FELDMANN, 2020).

It is well known that Brazil is suffering a financial crisis that has led to budget cuts in most departments, but linear cutting, in practice, has had worse effects on units with smaller budget. Their situations could become untenable. Calculated and ideological inaction have become hallmarks of the Executive Branch under Jair Bolsonaro (McCONNELL and HART, 2019).

Deputies and senators with active roles in the Congressional Environmental Coalition have expressed concern about the situation. Their efforts in terms of proposing additional amendments to budget legislation have had little effect. Within the PPA, Members of Congress have included a new program for the prevention and control of deforestation and fires, with a budget of BRL 506 million over four years – but there was a reduction in other programs, leaving the total approved budget for MMA programs basically the same as in the original proposal issued by the Executive. The complex mechanisms for approving budget legislation make it difficult to make structural changes to proposals issued by the Executive, which in turn further concentrates power in the general rapporteur. The environmental protection funding outlooks for the foreseeable future is grim.

Individual amendments by Members of Congress that provide some support to federal environmental agencies, even if modest in number and budget, do help. In some years, these amendments have saved important projects such as Ibama's Wild Animal Screening Centers (Cetas) from the chopping block.

The Ministry of the Environment's reduction of extra-budgetary financing for specific projects, especially the Amazon Fund, is another noteworthy example of deliberate inaction (McCONNELL and HART, 2019).

Since the beginning of his term in office, Environment Minister Ricardo Salles has criticized the Amazon Fund, especially the distribution of funds to non-government organizations. He has claimed to have performed an 'audit' of 25% of the Fund's contracts, and to have found problems with '100% of the NGO contracts'. These criticisms led to the removal of the manager from the Fund's

technical team at the BNDES in May 2019. However, the Federal Internal Affairs Office and the embassies of Norway and Germany have denied the alleged irregularities. Furthermore, there is no record of there ever having been any problems in the history of the assessments carried out by the National Court of Auditors.

In 2019 and 2020, with the dismantling of the governance structure of the Amazon Fund and the crisis created by the Minister of the Environment, no new funds were disbursed and no new hires were made. Fortunately, contracts in progress continue to be fulfilled. Analyzing the numbers in the Amazon Fund Portfolio Report of December 31, 2019, we see BRL 1,860,000,000.00 distributed across 103 projects. Taking into consideration the BRL 3,396,694,793.53 deposited in the fund, its balance stands at approximately BRL 1.5 billion³², without being destined for environmental projects. Inaction then, has been a deliberate choice.

In the first days of the Bolsonaro administration, the environmental committees of the Chamber of Deputies and the Federal Senate followed the issue closely, but more recently Congressional debates about the Amazon Fund have become rare. Legislative oversight of the budget and the application of extra-budgetary resources by the MMA and related government agencies need to become a priority.

Final considerations

Compared to the Congressional Coalition for Agriculture and Livestock (FPA), historically the strongest supra-partisan group in Congress, the current members of the Congressional Environmental Coalition and the organizations that support it have limited powers to combat the large-scale dismantling of environmental protection policies by prosecuted by the Bolsonaro government. Nonetheless, the power of environmentalists must not be undervalued.

It is remarkable that no changes in the national environmental protection laws have been effected under this government. The only legislative setbacks were the changes to the administrative structure of the Ministry of the Environment and

³²Data available at: <http://www.fundoamazonia.gov.br/pt/home/>. Accessed on May, 12, 2020.

the stripping of its powers. These very serious setbacks imply disastrous effects for national environmental protection policies but the picture could be worse. For instance, the 2012 Forest Law has yet to be modified. There have been attempts to amend this law using provisional measures related to other issues but without success. Furthermore, the Environmental Crimes Law has not been altered. Its regulations³³ provide for the high fines criticized by Bolsonaro and allow for the controversial practice of empowering environmental inspectors to destroy the equipment used in environmental crimes that they apprehend in the course of their investigations.

The resilience of environmentalists and public opinion have helped during the most critical moments in the ongoing assault on environmental legislation. The FPA and the Mapa's fears of an international backlash and ensuing reduced commodities exports have also helped. For these reasons, it has been possible to block approval of the law on mining in indigenous lands. It is not known, however, whether this blocking power will be successful in relation to the bill that seeks to facilitate the legalization of irregular occupations of Federal land.

The government has promoted the large-scale deinstitutionalization of environmental policy governance, the modification of non-statutory rules and the cutting of budgetary resources. These actions can be characterized as a calculated and ideological form of inaction and a systematic dismantling of national environmental protections. The choice is to not have an environmental policy. However, Congress has managed to curb setbacks at the national level. The success of environmentalists working in the legislative arena in removing certain proposals from the agenda and delaying votes on provisional measures until they have expired seems to have incentivized the Executive to act, whenever possible, at the regulatory rather than the legislative level. As a result, Congress's horizontal oversight has been fortified, especially by means of proposed legislative decrees. Environmentalists will certainly be even more attentive to this oversight after the recent statement by the Minister of the Environment to the effect that he wished to take advantage of the pandemic to approve non-statutory acts that weaken environmental regulations.

³³Decree N° 6,514/2008.

In general, it is clear from the picture presented above that it is necessary to support the current Members of Congress in the Congressional Environmental Coalition, who could leverage the coalition's ability to halt the death by a thousand cuts of environmental policy. It will not be easy to increase the number of Members of Congress that are willing to participate in this sense, but it is possible. My reading is that the excesses of the Bolsonaro government have contributed positively to this and to collective efforts undertaken by environmentalists.

Translated by Robinson Fraser
Submitted on May 29, 2020
Accepted on June 08, 2020

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