

### **13 Reasons for President Rousseff to veto the new Brazilian forestry code**

André Lima, Raul Valle and Tasso Azevedo\*

A detailed analysis of Bill 1876/99, in light of President Rousseff's 2010 election compromise.

To fulfill the environmental commitments made during her election campaign and not allow the encouragement for more deforestation and further harmful impacts of the weakened legislation which includes the reduction of protected areas and amnesty to environmental criminals, President Dilma will have to fully veto the Bill approved by the Congress.

In the hypothesis of partial veto, not only the central issues will not be solved, but the result would be a Bill lacking clearness of goals, reason, proportionality and social justice, thus, vulnerable to the likely questioning of its constitutionality. Besides, the legislation would leave a gap in the protection of sensitive areas in the cerrado (Brazilian savanna) and mangroves regions.

To fill the gaps, a Provisory Measure\* (a legal act through which the President of Brazil can enact laws without approval by the National Congress) is discussed as an option alongside a possible partial veto. However, this is not a solution, for it would too depend on the organized coalition of rural agricultural interests in the Chamber of Deputies that has the power of ruling over the same issue. Unfortunately, the Chamber of Deputies has by now shown twice - in less than a year - that it lacks the commitment and the responsibility with the forest code. Opposing parties to the Government have elected the forest code as an "affair of honor" to politically defeat the government for reasons outside the matter.

By not meeting the national public interest with a legislation that will protect ecological balance, the sustainable use of natural resources and social justice, and by directly hurting innumerable principles of sustainable development, social function of rural property, public interest, reasoning and proportionality, the text approved by the Chamber of Deputies deserves to be fully vetoed by the President.

A new, comprehensive Forestry Policy should be presented in the Federal Senate to replace the current forest code, leveraging the degree of forest conservation and increasing in a decisive way the opportunities for those who wish to make Brazil prosper regarding sustainable rural activity; one that it makes us proud not only for what we produce, but also for how we produce it.

#### **13 reasons for Complete Veto of Bill 1876/99**

**1. Suppression of article of that established jurisdictional principles for interpreting the law that guaranteed the environmental essence in the case of judicial or administrative controversies.** Without this device, and considering all of the problems listed below, it is explicit that the proposal of the law is to simply consolidate illegal agricultural activities in areas that are environmentally sensitive, that is, a law of forestry amnesty.

**2. Usage of the improper and generic concept of fallows and suppression of the concept of abandoned and sub used areas.** By defining fallows as the period of non-cultivation (for soil resting) without a time limit, the project will allow for new deforestation in preservation areas (slopes, water

springs) under the allegation that a recovering forests (for 10 years or more) are actually a "resting" agricultural area. This poses a huge risk in the democratization of access to land, because poorly used areas, destined only for speculative ends, will overnight become "productive lands hibernating".

**3. Dismisses the protection of 50 meters in ENTORNO DAS VEREDAS.** This means the consolidation of illegal occupations made on these areas as well as new deforestation on the surroundings of veredas that are currently protected. Since the VEREDAS are one of the main sources of water for the Cerrado, the damage is significant, and cannot be solved by presidential veto.

**4. Unprotect Brazilian humid areas.** With the change in the calculation of preservation areas alongside rivers, the text leave unprotected 400,000 km<sup>2</sup> of lowlands and igapós. This will allow for these rich ecosystems to be occupied by intensive agricultural activities, affecting not only biodiversity, as well as the survival of hundreds of thousands of families that use it sustainably.

**5. Increase of legal possibility for new deforestation without permanent preservation areas (PPAs).** The new text freely authorizes new deforestation in PPAs for the implementation of new aquiculture projects in properties up to 1500ha in the Atlantic Forest, and 1000ha in the Amazon Forest. It also changes the definition of areas on hill tops significantly reducing its application area.

**6. Increase in a wide and indiscriminate way the deforestation and occupation in mangroves.** Each state will have autonomy and power to legalize and free new occupations in these areas. Result - great risk of important loss of mangrove area that are crucial for the conservation of biodiversity and marine production in the coast zone.

**7. Allowance for the decrease of Legal Reserve areas in the Amazon, even for future deforestation,** by not establishing a time limit for the Economic Ecologic Zoning to authorize the reduction of 80% to 50% of the real state. The current law is already flawed regarding this point, encouraging illegal deforestation on the premise that future zonings will legalize them.

**8. Dismisses the recovering of PPAs.** This new text consolidates every agricultural occupation in river basins, something that Science has been urging to be a huge mistake. Despite stating the minimum recovery of 15 meters to be mandatory for rivers under 10 meters of width, PPAs of large rivers are still in the open, which generates not only a possibly paradox (only parts of rivers would be protected), as it opens a huge jurisdictional gap. This by itself will condemn over 70% of watersheds in the Atlantic Forest, whose native vegetation have already been over 85% deforested. Moreover, although the premise is to legalize areas that were already "productive", the bill provides amnesty to all deforestation prior to 2008. Therefore, those who have protected the PPAs in their property (according to the law) and those who have deliberately deforested protected areas (criminals) will receive the same treatment. Therefore, it is flagrant the lack of reason and proportionality, and a monumental setback regarding the protection of our water sources.

**9. Consolidation of unproductive livestock in slopes, edges of plateaus, hilltops and areas in altitude above 1800 meters,** which represents a severe environmental problem specially in the southeast region of the country due to the instability of the areas (risk zones), inadequacy and non productivity of these spaces.

**10. Lack of mechanisms that induce environmental regulation and give privilege to the producer who preserves when compared to those who deforest and degrade natural resources.** The revised text has suppressed an important article that refrain access to rural credit for properties that were not registered in the Rural Environmental Register (CAR in Portuguese) - after 5 years of the law coming into force. The new text also took away the article that would refrain producers who illegally deforested after 2008 to access economic subsidies. This, again, awards those who have broke the law and makes environmental governance improbable.

**11. Allowance for "small" properties** (up to 1500ha in the Atlantic Forest, and 1000ha in the Amazon Forest) **to not recover their legal reserves, leaving gaps for an almost generalized exemption.** Although the defenders of the bill argue that this device will aid the survival of small producers, the bill does not limit this flexibility to family producers. In fact, it allows that even owners of several small properties--and, therefore, possess more than enough land for their survival--will be exempt from Legal Reserve recovery. Furthermore, it opens gaps for even bigger properties, with irregular papers, to benefit from this. This, by the way, will make over 90% of properties in the country to be dismissed of recovering their legal reserves and would bury the goal of recovering the Atlantic Forest.

**12. Space for never ending judicial arguments on the necessity of recovering Legal Reserves.** According to the new text, with simple documents, the land owner will be free from having to recover LRs, without having to prove with official documents or with satellite images that the area was indeed legally deforested.

**13. Dismantle of the control system for the management of native forests and timber transportation in the country.** The new text allows for the management of legal reserves for forest exploitation without the approval of a management plan (which is equivalent to the mandatory licensing for areas that are not located in a legal reserve). It dismantles the control system over forest products origin (Forest Origin Document - DOF, in Portuguese) by allowing several systems (States and Federal) to coexist without integration. This means that the federal government completely loses governance on the traffic of wood extracted illegally (including within Federal Conservation Unities and Indigenous Lands) and of other forest products in the Country.

There are not the only problems in the current text. But to these 13 points are added incurable vices such as the unjustifiable definition of July 22, 2008 as ground zero for the consolidation of amnesty for all crime done against the forest code, in effect since 1965.

**Due to these reasons we don't see other reasonable alternative for President Dilma Rousseff if not to completely veto Bill 1876/99.**

\*André Lima - Attorney, master in Politics and Environmental Management by the Brasilia University (UnB), Public Policy Advisor at the Amazon Environmental Research Institute (IPAM), Judicial Consultant of the Atlantic Forest SOS Foundation and Co-founder of the Democracy and Sustainability Institute, Raul Valle - Attorney, master in Economic Law by São Paulo University (USP) and Assistant Director of the Socio Environmental Institute (ISA) and Tasso Azevedo - Forest Engineer, Consultant and Socio Environmental Entrepreneur, Former General Director of the Brazilian Forest Service.