



**ECOLOGICAL COMPENSATION AND THE BIODIVERSITY
PROTECTION IN MINAS GERAIS**

*A COMPENSAÇÃO ECOLÓGICA E A PROTEÇÃO DA BIODIVERSIDADE
EM MINAS GERAIS*

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ABSTRACT

The purpose of this article is to demonstrate if the Conservation Unit areas of Integral Protection, created in Minas Gerais is receiving the environmental compensation aimed at them, for the protection of its biodiversity. This study will be through of the Environment Operational Audit Report prepared by the Court of Accounts of Minas Gerais, as well as the work of the Federal University of Lavras that evaluated the protected areas managed by the State. Therefore, will be analyzed: the land regularization, the area management plan; the collection and allocation of resources. The Court of Accounts of Minas Gerais having found a critical framework of application for the benefit for these areas, has determined to take urgent steps to remedy the deficiencies, which was accompanied by the Public Prosecutin, through its State Prosecutor of Cultural Heritage and Tourism of Minas Gerais. It was used a technical literature, as well as legal documentary. The research method used was the theoretical and legal, with deductive reasoning.

KEYWORDS: Conservation Unit. Integral protection. Biodiversity.

RESUMO

O objetivo deste artigo é demonstrar se áreas de Unidades de Conservação de Proteção Integral, criadas no Estado de Minas Gerais, estão recebendo a compensação ambiental destinadas a elas, para a proteção de sua biodiversidade. Este estudo se dará por meio do Relatório de Auditoria Operacional do Meio Ambiente, elaborado pelo Tribunal de Contas de Minas Gerais, assim como do trabalho desenvolvido pela Universidade Federal de Lavras, que avaliou a gestão das Unidades de Conservação do Sistema Estadual de Áreas Protegidas. Portanto, serão analisadas: a regularização fundiária, o plano de manejo; o recolhimento e destinação dos recursos. Tendo encontrado um quadro crítico de aplicação do benefício para essas áreas, de proteção, o Tribunal de Contas determinou a adoção de providências urgentes para sanar as irregularidades, o que foi acompanhado pelo Ministério Público, por meio de sua Promotoria Estadual de Patrimônio Cultural e Turismo de Minas Gerais. Foram utilizadas como técnicas de pesquisa a bibliográfica, assim como a documental. O método de pesquisa utilizado foi o teórico-jurídico, com raciocínio dedutivo.

PALAVRAS-CHAVE: Unidade de Conservação. Proteção Integral. Biodiversidade.

INTRODUCTION

With the progress in the use of new technologies since the 18th century and the exponential growth of the human population, the harmful effects of anthropic actions on the environment were intensified, resulting in the huge environmental disasters of our days¹, which favored an enlarged capacity to perceive the risks generated by industrial growth and its many different applications².

Within that context, the bases for the creation of a new legal order to secure environmental protection with an emphasis on prevention actions and policies appeared.

¹ Accident of Seveso, Italy, in 1976, when about 10,000 animals were killed and sacrificed and 193 people underwent chloracne and other symptoms after dioxin leaked from the chemical industry of ICMESA Seveso. (Available at: <https://acidenteambientalreflexoesecriticastecbio.wordpress.com/2011/11/06/acidente-em-seveso-italia-1976/>. Access: fev. 2. 2016.); nuclear accident in Pennsylvania, USA in 1979 (Available at: <http://www.world-nuclear.org/information-library/safety-and-security/safety-of-plants/three-mile-island-accident.aspx>. Access: fev. 20. 2016.); accident at Vila Socó in the city of Cubatão (Chemical accidents involving explosions, large fires and leakages of hazardous substances occurring during transport, storage and industrial production of chemicals constitute a real challenge to health, environmental and industrial safety professionals. (Available at: http://www.scielo.org/scielo.php?script=sci_arttext&pid=S0034-89101995000600012. Access: fev. 2016); accident in Bhopal, India, at the chemical industry of Union Carbide in 1984 (Available at: <http://www.bhopal.com/> Access: fev. 28. 2016); nuclear accident in Chernobyl, Russia, in 1986 (Available at: <http://www.world-nuclear.org/information-library/safety-and-security/safety-of-plants/chernobyl-accident.aspx>. Access: fev. 28. 2016); accident with the Exxon Valdez oil tanker on the coast of Alaska in 1989. (Available at: <https://www.epa.gov/aboutepa/exxon-valdez-oil-spill-report-president-executive-summary> Access: fev. 28.2016).

² Contamination due to the use of DDT pesticide (1939 to 1960), hole on the ozone layer due to the use of CFC gas in refrigerators (1928 to 1978), congenital deformations to unborn children of patients using the medicine Thalidomide (1950 a 1960); use of the “agent orange” during the Vietnam War (1961 to 1971).

The 1972 Stockholm Declaration on the human environment represents the summit of this environmental awareness irradiation at the international level once, although a cogent standard has not been created, it allowed all the countries to get inspired by the twenty-six principles established since that Conference, for the protection of the environment and, logically, of the present and future generations.

The Stockholm Conference did not happen by chance. It was the consequence of debates on the risks of environmental degradation that started sparsely in the 1960's and gained some density in the 1970's. The Club of Rome already demonstrated a concern about environmental issues and the need to set forth limits for growth.

The International Conference of the United Nations, Eco-92 in Rio de Janeiro, reaffirms the Stockholm Conference and progresses in what regards the concept of Sustainable Development. Anyway, the Law of the National Policy for the Environment, Law 6938 dated 1981, was the basis for the innovation of the Brazilian Constitution in what regards environment protection.

Article 225 of the Constitution of the Republic, of 1988, imposes to the Public Power and to the collectivity the obligation to preserve the environment and that is one of the pillars of environmental protection once it implies in the creation of a kind of current and intergenerational pact through the attribution of responsibilities for damages, possible prevention and precaution, restrictions on the use of environmental assets and competences related to environmental management by the Public Power.

This pact of solidarity legitimates the creation of internal mechanisms for precaution, prevention³ and repression of environmental damages⁴ among which are the standards related

³ The principles of precaution and prevention are the basis for the modern environmental protection. Chris Wold, listing law makers such as Prieur, Milaré, Antunes, Rodrigues, emphasizes that the principles of precaution and prevention do not mix, although they are closely related because when prevention applies to already known environmental impacts, precaution would be related to environmental reflections not yet scientifically known SAMPAIO, José Adércio Leite; WOLD, Chris; NARDY, Afrânio. **Princípios de Direito Ambiental na Dimensão Internacional e Comparada**. Belo Horizonte: Del Rey, 2003. Progressing in the interpretation of the two principles, Chris Wold stands next to Cranor, understanding that “precaution applies not only to actions under uncertain conditions, but it has a consequence even when the deciding authority is not facing considerable doubt”, once the “complexity of ecosystems always introduces some degree of uncertainty, including supposedly known and forecastable damages”. WOLD, Chris. Introdução ao estudo dos princípios de direito internacional. In: SAMPAIO, José Adércio Leite; WOLD, Chris; NARDY, Afrânio. **Princípios do Direito Ambiental, na dimensão internacional e Comparada**. Belo Horizonte: 2003. p.71-72. José Rubens Morato Leite lists the following examples of the use of the principle of precaution in international law: Protocol of Montreal on substances that degrade the ozone layer, Treaty of the European Union, with insertions from the Treaty of Maastricht. LEITE, José Rubens Morato; AYALA, Patryck de Araújo. **Dano ambiental: do individual ao coletivo extrapatrimonial**. Teoria e prática. 5.ed. São Paulo: Revista dos Tribunais, 2012. p. 48.

⁴ Environmental damages are changes caused to the environment that are able to cause harmful unbalances to natural, artificial or cultural ecosystems, opposing the existing legal protection. MOREIRA, Lilian M. F.

to environmental compensation, an important tool to protect biodiversity and ecological balance, which is the purpose of this study.

To develop this paper, the Report on the Environment Operational Audit – Full Protection Conservation Units – prepared by the Court of Accounts of the State of Minas Gerais is going to be assessed. It detailed the situation of the existing full protection conservation units in the State between 2006 and 2010. We are also assessing the paper prepared by the Federal University of Lavras that evaluated the management of the Conservation Units in the State System of Protected Areas in Minas Gerais. At the end, we are describing the strategy of the state Public Prosecution to improve the management and application of those huge and essential resources. The research method used was the theoretical and legal, with deductive reasoning.

1 ENVIRONMENTAL COMPENSATION IN THE BRAZILAIN LEGAL SYSTEM

To better understand the meaning of compensation in Environmental Law, it is important to understand the word compensation. According to the dictionary in the British Encyclopedia, compensation is the action or the effect of compensating, balance, equality. However, it is not simply giving something in exchange of something that exists, it is more than simply bargaining, as Machado teaches:

Environmental compensation has its ethical foundations based on the ecological awareness of what one intends to do or is already doing, something inappropriate: and thus, an exchange is arranged. It looks like a transaction: I do something – pollute, destroy or deforest -, but I give something in exchange. We cannot hide the fact that the act of compensating encompasses an environmental risk – and, thus, it has to be performed with clear administrative morality and wide publicity, taking the principle of precaution into account.⁵

It is important to emphasize the fact that the Brazilian environmental law talks about different kinds of compensation. The one resulting from the environmental civil responsibility and the compensation due to article 36 of Law 9.985 dated 2000.

Marotta. **The legal protection of wildlife in Brazil**: Philosophical foundation and constitutional duties. Belo Horizonte: Dom Helder Editora, 2015. p. 65.

⁵ MACHADO, Paulo Affonso Leme. **Direito Ambiental Brasileiro**. 21.ed. São Paulo: Malheiros, 2013. p. 96.

Pinho teaches us that claims for unfair environmental damages started in 1992 through public civil claims and also in terms of conduct adjustment in 1997⁶. According to Pinho, one of the first papers to address environmental compensation was the one written by Filipe Augusto Vieira de Andrade and Maria Aparecida A. U. Gulin. That paper was written before Law 9.985 and it is very important once it sets forth the concept and the applicability of the institute:

Compensation is a kind of reparation by equivalent that may be required from the person in charge of it in face of unrecoverable damages. Compensation can only be used if a *sine qua non* condition is met, which is the clear demonstration of total or partial technical irrecoverability of the environment that was negatively affected. Environmental compensation is applicable both during the investigatory phase through the extrajudicial enforceable title with a penalty clause (Law 7347/85, art. 5, § 6, and CPC, art. 585, item II) and at the judicial level.⁷

This paper is only addressing the environmental compensation in article 36 of Law 9.985/00.

2 ANALYSIS OF THE CIVIL REMEDY AND ENVIRONMENTAL COMPENSATION FORECASTED IN ARTICLE 36 OF LAW 9.985/00

Environmental compensation in Law n. 9.985/00, known as the Law for the National System of Conservation Units - SNUC, has to be seen through the context in which it is inserted.

The first point to be clarified regards the environmental damage, which is featured as

the damage to a legally protected asset that imposes sacrifice to the victim that is not required by Law, which means: it harms a RIGHT [highlighted by the author] that belongs to the victim and not a simple interest under no legal protection.⁸

Every harmful action that fails to comply with the legal order imposes the need for compensation as a way to indemnify the person who underwent losses, the victim/society, for the undue changes imposed to the previous situation.

⁶ PINHO, Hortência Gomes. **Prevention and Repair of Damages on Environment**. Rio de Janeiro: GZ, 2010. p. 391.

⁷ ANDRADE, Filipe Augusto Vieira de; VILLAR GULIN, Maria Aparecida Alves. **The compensation as a Way of reparation for Environmental damages**, 1997. Available at: <<http://www5.mp.sp.gov.br.8080/caouma/doutrina/Amb/Tese/A%20compensa%C3%A7%C3%A3o%dos20danos%20-%20Andrade.htm>>. Access: jan. 25. 2016.

⁸ BECHARA, Erika. **Licenciamento e a compensação ambiental na lei do Sistema Nacional das Unidades de Conservação (SNUC)**. São Paulo: Atlas, 2009. p. 49.

To indemnify that damage, the traditional civil law establishes the full civil reparation of the damage so as to insure maximum reparation of the unduly caused damage.

The environmental law fully absorbed the full reparation through the need to compensate all kinds of damages generated such as ecological and environmental effects “resulting from the destruction of species, *habitats*, ecosystems interrelated to the affected environment”, temporary damages, that is, the ones taking place between the initial harm and the effective recomposition, future damages, irreversible damages to the environmental quality and collective moral damages “resulting from the environmental harm”⁹.

For Álvaro Luiz Valery Mirra, civil reparation is just one of the effects of the civil responsibility that cannot be confused with a sanction over behavior [civil penalty], nor with the measure to stop the activity that is at the origin of the damage, once environmental reparation always embeds the idea of compensation because no reparation, even *in natura*, can erase the effects generated by the damage so that the ecosystem is never going to be the same, or still, there are always losses related to the environmental services not offered during the degradation period¹⁰.

When José Rubens Morato Leite and Patryck de Araújo Ayala assess the forms of environmental reparation, they conclude that “nature, when its physical and biological compositions are modified by aggressions that it cannot tolerate, can never be truly reestablished from the ecological point of view”¹¹ and following that line of thought, they conclude that “environmental reparation, even in the form of recovery, recomposition and replacement of the damaged environmental asset, is a substitute due to the fact that it is extremely difficult to fully return the damaged asset, that is, it is equivalent to a way to compensate the loss”¹².

For Erika Bechara, differently from what Álvaro Luiz Valery Mirra, José Rubens Morato Leite and Patryck de Araújo Ayala say, the *in natura* reparation is the “specific reparation that seeks returning to the *status quo ante*”, although it has some compensatory content, it cannot be legally confused with the instrument of environmental compensation, which relates more to other kinds of reparation: “reparation by equivalent (that the doctrine usually calls environmental compensation or ecological compensation) and monetary

⁹ MIRRA, Álvaro Luiz Valery. **Ação civil pública e a reparação do dano ao meio ambiente**. 2.ed. São Paulo: Juarez de Oliveira, 2004. p. 315.

¹⁰ MIRRA, op. cit., p. 303-304.

¹¹ LEITE, José Rubens Morato; AYALA, Patryck de Araújo. **Dano ambiental: do individual ao coletivo extrapatrimonial**. 5.ed. São Paulo: Revista dos Tribunais, 2012. p. 207.

¹² LEITE, op. cit., p. 207.

reparation (or cash compensation or, as it is better known, indemnity)”, which may be used successively or cumulatively, as required by the concrete case¹³.

Another point to be emphasized is that environmental compensation “is only taking place when preventive or mitigating measures cannot be implemented”¹⁴.

In general, compensation always comes after the damage resulting from unfair harm. However, in the environmental field, due to the essentiality and the transcendentality of the legal asset being protected, the possibility to compensate before the effective damage is becoming more accepted.

According to Erika Bechara¹⁵ “*lato sensu* environmental compensation– which encompasses all measures to replace a damaged asset for another one of equivalent value – can be divided into the following specific modalities:

- a) environmental compensations established after the damage, such as: compensation for irreversible environmental damage¹⁶; compensation for the suppression of a Permanent Preservation Area – APP, compensation of Legal Reserve and compensation for the suppression of the Atlantic Forest; b) compensations before [*ex ante*] the damage takes place [future], such as the compensation due to the implementation of projects causing significant environmental impact, set by article 36 of Law 9.985/00, object of this study.

It is important to highlight the fact that those future environmental damages cannot be seen just as a simple risk of damages because they are not mere hypothesis but certain and forecastable damages to be necessarily generated together with project implementation to go through permitting.¹⁷

For Bechara, setting that kind of previous civil reparation fails to represent a right – such as the civil reparation after damage – but an onus for the entrepreneur because he/she is not forced to fulfill it in case he/she gives up project implementation and doing so, avoids the generation of the future damages.

From the author’s point of view, environmental compensation in Law 9.985/00 fails to have the legal nature of tax or public price required due to the user-payer principle, as vaguely defended by the Federal Supreme Court in ADIN n. 3378-6¹⁸ or by part of the

¹³BECHARA, Erika. **Licenciamento e a compensação ambiental na lei do Sistema Nacional das Unidades de Conservação (SNUC)**. São Paulo: Atlas, 2009. p. 139.

¹⁴ BECHARA, Erika. **Licenciamento e a compensação ambiental na lei do Sistema Nacional das Unidades de Conservação (SNUC)**. São Paulo: Atlas, 2009. p. 167.

¹⁵ BECHARA, op. cit., p. 137.

¹⁶ Environmental compensation for irreversible damages can be divided into: *in natura* reparation, reparation by equivalent (or ecological compensation), monetary reparation (or financial compensation – indemnity).

¹⁷ BECHARA, op. cit., p. 201.

¹⁸ BRAZIL. Federal Supreme Court. **Constitutionality of the compensation due for the implementation of projects having significant environmental impacts**. Partial unconstitutionality of § 1 of article 36 of Law

doctrine. In fact, it is a kind of previous civil reparation of the damage established due to the identification of future environmental damages of irreversible, non-avoidable or mitigable nature to be generated with the implementation of a project with large degrading potential¹⁹.

Finally, it is worth saying that the environmental compensation set forth by article 36 of the law that created the National System of Conservation Units, Law n. 9.985/00, was confirmed as constitutional by the Federal Supreme Court in the judgment of the above mentioned ADIN 3378-6²⁰.

The emblematic court decision that consolidates the principle of the prevention of environmental damages in the 1988 constitutional scenario was very useful to explain to legal operators, as we can see, for example, in the debate between Minister Marco Aurélio and the other ministers in the Federal Supreme Court. In it, we can clearly see that the basic environmental concepts are not always attained by the members of the Judicial Power who many times analyze the environmental issue under the restrictive bias of civil or administrative law, failing to consider its specificities, especially in what regards the need to broaden the traditional paradigms in face of the risks brought up by the globalized society.

3 STATUS OF THE FULL PROTECTION CONSERVATION UNITS AND THE APPLICATION OF RESOURCES IN MINAS GERAIS

We are now going to analyze the situation of the Full Conservation Units in Minas Gerais from two different studies carried out by the State Court of Accounts - TCE and by the Federal University of Lavras – UFLA and that depict a concerning scenario of bad management of the conservation units in general and the unsuitable resource collection and destination.

9.985/00. ADIN 3378-6, of the Federal District. National Confederation of the Industry and Others *versus* the Federal Government. Reporteur: Carlos Brito. Judged on April 08, 2008. Electronic files of STF's jurisprudence. Available at: <<http://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=AC&docID=534983>>. Access: 20 jan. 2016.

¹⁹ BECHARA, Erika. **Licenciamento e a compensação ambiental na lei do Sistema Nacional das Unidades de Conservação (SNUC)**. São Paulo: Atlas, 2009. p. 169-194.

²⁰ BRAZIL. Federal Supreme Court. Constitutionality of the compensation due for the implementation of projects having significant environmental impacts. Partial unconstitutionality of § 1 of article 36 of Law 9.985/00. ADIN 3378-6, of the Federal District. National Confederation of the Industry and Others *versus* the Federal Government. Reporteur: Carlos Brito. Judged on April 08, 2008. *Electronic files of STF's jurisprudence*. Available at: <<http://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=AC&docID=534983>>. Access: 20 jan. 2016.

3.1 Evaluation of conservation units in the State of Minas Gerais

The situation of the existing state and federal conservation units in Minas Gerais was subject to a survey carried out in 2009 by the Federal University of Lavras in seventy-four conservation units²¹ in the State of Minas Gerais and portrayed in the article called the Evaluation of the Management of Conservation Units in the State System of Protected Areas in Minas Gerais²².

The above mentioned survey listed the following conclusions: there were 74 CUs that took significant and representative areas of all biomes in the State; there was a lack of human resources to manage the CUs, especially managers; there was a function overlapping and not enough qualified employees working in specific positions; there was a lack of infrastructure in 86.8%, eighty-six point eight per cent, of the (46) CUs in Minas Gerais and only seven, or 13.2% (thirteen point two per cent) of the CUs had enough management infrastructure; the lack of land regularization regarding the CUs was the most significant bottleneck for management and the main reason for conflicts; the full protection CUs were the ones that had more issues regarding land regularization; the CUs that had more area representativity were the “Environmental Protection Areas” (APA), which faced the most acute lack of human, material and financial resources in addition to difficulties managing the territories together with landowners; there were no handling plans for most of the CUs; the situations of conflicts between the community and CUs were exclusively connected to the CUs that had no consultative council²³.

The Court of Accounts of the State of Minas Gerais also carried out a detailed diagnosis of the conservation units with a focus on the full protection units, considering the

²¹ UFLA’s study, which encompassed a period of time before the one surveyed by TCE, determined that from the 74 conservation units existing in Minas Gerais, at that time, 56 were in the group of full protection and 18 were in the categories of the sustainable use group. From the 56 in the full protection group, 33 were parks, of which only 7 were open to visitation, 10 were ecological stations, 9 were biological reserves, 3 were wildlife refuges and 1 was a natural monument. From the 18 units of sustainable use, 15 were environmental protection areas, 2 were state forests and 1 was a sustainable development reserve. REZENDE, Luiz Pereira, *et al.* Evaluation of CUs management in the State System of Protected Areas in Minas Gerais. **Geografias Magazine: Scientific Articles**, v. 6, n. 1, p. 87-106, jan./jul. 2010. Available at: <<http://www.cantacantos.com.br/revista/index.php/geografias/article/view/105>>. Access: jan. 25. 2016.

²² The article published in 2010 was developed by a team of UFLA’s professors: *José Luiz Pereira Rezende* (Full Prof. UFLA. Department of Forest Sciences. Forest Handling Sector) *Rafael Guimarães Alves* (Federal Criminal Expert) *Luís Antônio Coimbra Borges* (Adjunct Prof. UFLA. Department of Forest Sciences. Nature Conservation Sector) *Marco Aurélio Leite Fontes* (Adjunct Prof. UFLA. Department of Forest Sciences. Nature Conservation Sector) *Luis Wagner Rodrigues Alves* (Agronomist Engineer. Embrapa’s Researcher Eastern Amazon).

²³ REZENDE, Luiz Pereira, *et al.* Avaliação da gestão das UCs do Sistema Estadual de Áreas Protegidas de Minas Gerais. **Revista Geografias**, v. 6, n. 1, p. 87-106, jan./jul. 2010. Available at: <<http://www.cantacantos.com.br/revista/index.php/geografias/article/view/105>>. Access: jan. 25.2016.

period of time between 2006 and 2010. It encountered issues on land regularization, unit handling and financial resource management, concluding by suggesting actions to allow for more effective actions by the conservation units.

As we know, the Protection Conservation Units are divided into full use and sustainable use. The full use ones interest us more and they are divided into five categories, that is: Ecological Station; Biological Reserve; National Park; Natural Monument and Wildlife Refuge, which, according to the concepts on the Report issued by TCE, can be defined as follows:

Ecological Stations aim at preserving nature and allowing for scientific research. They are public possession and domain. Public visitation is forbidden except on educational purposes according to the Handling Plan set forth for the unit or specific regulations. Scientific research depends on previous authorization issued by IEF. Biological Reserves aim at the full preservation of the biota and other existing natural characteristics within their limits, with no direct human intervention or environmental modifications, except for the measures to recover changed ecosystems and the necessary handling actions to recover and preserve natural balance, biological diversity and natural ecological processes. The Biological Reserve is public possession and domain. Public visitation is forbidden except on educational purposes according to specific regulations. State Parks aim at preserving natural ecosystems that are highly important from an ecological and scenic point of view. Scientific researches and the development of education and environmental interpretation, recreation in contact with nature and ecological tourism activities are allowed. They are public possession and domain. Natural Monuments basically aim at preserving rare, singular and extremely beautiful natural sites. They can be public or private areas since it is possible to match the objectives of the unit and the use of the soil and natural resources by the landowners. Public visitation is subject to the conditions and restrictions set forth on the unit's Handling Plan, the standards established by IEF and the ones covered by the unit's regulations. Wildlife Refuges aim at protecting natural environments where conditions for the existence or reproduction of species or communities of the local flora and the resident or migratory fauna are insured. It may consist in public or private areas since it is possible to match the objectives of the unit and the use of the soil and natural resources by the landowners.²⁴

According to the Report issued by TCE, those conservation units are distributed according to their kind as follows:

Table 1 – State Full Protection Conservation Units

UCPIs	Number
State Park	38
Ecological Station	11
Natural Monument	11
Biological Reserve	9
Wildlife Refuge	4
Total	73

²⁴ MINAS GERAIS. Tribunal de Contas do Estado. **Processo nº 872163**. Relatório de Auditoria Operacional. Meio ambiente: Unidades de Conservação de Proteção Integral, de 18 set. 2012.

Source: IEF
Preparation: TCEMG.²⁵

TCE's audit elected three pillars that are considered fundamental for a better evaluation of the situation of the Full Conservation Units in the State of Minas Gerais: analysis of the handling plan, of the land regularization and of resource destination.

3.2 Land regularization

Land regularization aims at legally insuring the domain and the possession by the State over the land within conservation limits so that the objectives of the land are fulfilled²⁶.

The studies demonstrated that several Full Protection Conservation Units were only created on paper, once they are nothing but a virtual spectrum on state maps with no legal definition regarding the ownership over the areas that form it.

In Minas Gerais, the responsibility over the effective land regularization belongs, after Decree 45.432/2010 issued by the State Institute of Forests, to the State Attorney Office, which generated some issues regarding the definition of criteria for land regularization.

There is significant difference between the amounts collected from environmental compensation and the ones for land regularization.

According to information gathered by TCE, “between 2005 and 2011, only 11 units became regular, corresponding to 11,569.25 hectares, (eleven thousand, five hundred and sixty-nine point twenty-five), and only 3.77% (three point seventy-seven per cent) of the total area of parks to be made regular, with expenses of R\$ 22,509,949.77 (twenty-two million, five hundred and nine thousand, nine hundred and forty-nine reais and seventy-seven cents)”²⁷.

In that same period of time, the resources collected from environmental compensation totaled R\$ 53,070,844.57 (fifty-three million, seventy thousand, eighty hundred

²⁵MINAS GERAIS. Tribunal de Contas do Estado. **Processo nº 872163**. Relatório de Auditoria Operacional. Meio ambiente: Unidades de Conservação de Proteção Integral, de 18 set. 2012. p. 16.

²⁶MINAS GERAIS. Tribunal de Contas do Estado. **Processo nº 872163**. Relatório de Auditoria Operacional. Meio ambiente: Unidades de Conservação de Proteção Integral, de 18 set. 2012. p. 30

²⁷MINAS GERAIS. Tribunal de Contas do Estado. **Processo nº 872163**. Relatório de Auditoria Operacional. Meio ambiente: Unidades de Conservação de Proteção Integral, de 18 set. 2012. p. 30

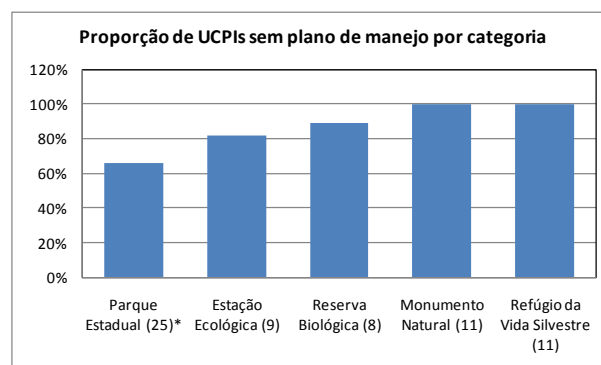
and forty-four reais and fifty-seven cents), that is, only 42% (forty-two per cent) of the percentage of resources from compensation were used on land regularization purposes²⁸.

Another difficulty regarding land regularization concerns traditional populations inside and in conservation units surrounding areas.

3.3 Handling plan

In what concerns the preparation and implementation of the handling plan²⁹, TCE's audit found out that there are problems regarding the structure necessary for the good execution of most of the UCPIs (Full Protection Conservation Units) in the State, which confronts the legislation in force and compromises the objectives according to which the units referred to have to operate.

Based on the evaluation of the documents provided by the State Institute of Forests - IEF, TCE's audit found out that 58 (fifty-eight), that is, 79% (seventy-nine per cent) of the 73 (seventy-three) Full Protection Conservation Units under IEF's jurisdiction had no handling plan, 58% (fifty-eight per cent) of them had been created over five years ago and, from the 15 (fifteen) units that had a plan, seven, that is, 46% (forty-six per cent) had outdated plans that had not been reviewed for over five years.



(*) - number of UCPIs having no handling plan
Source: IEF –Preparation: TCEMG³⁰

²⁸MINAS GERAIS. Tribunal de Contas do Estado. **Processo nº 872163**. Relatório de Auditoria Operacional. Meio ambiente: Unidades de Conservação de Proteção Integral, de 18 set. 2012. p. 33

²⁹ The Handling Plan is a set of actions to manage the conservation units that aims at the harmonic conservation of the biological and ecosystem diversity. MINAS GERAIS. Tribunal de Contas do Estado. **Processo nº 872163**. Relatório de Auditoria Operacional. Meio ambiente: Unidades de Conservação de Proteção Integral, de 18 set. 2012. p. 37.

³⁰MINAS GERAIS. Tribunal de Contas do Estado. **Processo nº 872163**. Relatório de Auditoria Operacional. Meio ambiente: Unidades de Conservação de Proteção Integral, de 18 set. 2012. p. 38.

As informed on the table above, another concerning datum is the situation of the conservation units related to natural monuments and wildlife refuges: in 100% of the cases, they had not developed the handling plan yet.

Besides the lack of a handling plan, TCE has also detected problems regarding the creation of the plans and also that the existing ones were outdated.

Another issue was the inappropriate infrastructure of the units, in addition to the little popular participation when managing them.

3.4 Resource collection and destination

In this topic, TCE assessed the financial resources aimed at the Conservation Units under the effectiveness, equity and transparency aspects in order to evaluate the administration of the resources.

The Court of Accounts detected issues regarding the amount of money invested, the inefficient planning of financial, human, material and technological resources, the use of collection instruments, as well as the lack of transparency when collecting and distributing the resources.

The Conservation Units are maintained through the application of resources from environmental compensation foreseen on article 36 of Law 9.9985/00, but also through payments for environmental services [resources collected from agencies and companies in charge of water supply and electric power generation and distribution pursuant to provisions in articles 47 and 48, Law 9.985/00³¹, as well as through resources from carbon credit projects according to article 34, Law 9.985/00³². However, 52% (fifty-two per cent) of the managers told TCE that the unit was not able to collect external resources. Another source of resources

³¹ Art. 47. The public or private agency or company in charge of water supply or that uses water resources, benefiting from the protection offered by a conservation unit, has to financially contribute for the protection and implementation of the unit according to provisions in the specific regulations. Art. 48. The public or private agency or company in charge of power generation and distribution, benefiting from the protection offered by a conservation unit, has to financially contribute for the protection and implementation of the unit according to provisions in the specific regulations. (Law 9.985, dated July 18, 2000. Regulates art. 225, § 1, items I, II, III and VII of the Federal Constitution, creates the National System of Nature Conservation Units. **Electronic legislation files of Planalto**. Available at: <http://www.planalto.gov.br/ccivil_03/leis/19985.htm>. Access: 20 jan. 2016.

³² Art. 34. The agencies in charge of the administration of the conservation units can receive resources or donations of any nature, national or international, with charges or not, from private or public organizations or from individuals that wish to collaborate to conservation. Paragraph only. The administration of the resources obtained is a responsibility of the agency that manages the unit and they are exclusively used in its implementation, management and maintenance (Law 9.985, dated July 18, 2000. Regulates art. 225, § 1, items I, II, III and VII of the Federal Constitution, creates the National System of Nature Conservation Units. **Electronic legislation files of Planalto**. Available at: <http://www.planalto.gov.br/ccivil_03/leis/19985.htm>. Access: 20 jan. 2016.

suggested by TCE's audit was the ecological ICMS – Tax on the Commercialization of Goods and Services³³ and conservation units located within its limits.

TCE's study found out that, in the fiscal year of 2010 and from the resources foreseen in Minas Gerais State budget for conservation units, only 48% (forty-eight per cent) were used.

TCE's audit was concluded by suggesting the following measures:

To SEPLAG³⁴, SEMAD³⁵ and IEF:

1. Creation of a specific budget action for UCPIs³⁶;
2. Action plan that aligns implementation means to corresponding resources together with action evaluation and monitoring;
3. Inclusion of the product related to the creation of new UCPIs so that action results are encompassed;
4. Promotion of effective, transparent and ongoing team policy that makes the creation and implementation of UCPIs possible and that is coherent and linked to intended results.

To IEF:

1. Implementation of CEUC³⁷ and SISEMANET³⁸;
 2. Feed CNUC³⁹ by adding UCPIs that have not been registered yet and completing information on registered UCPIs;
 3. Preparation of a protocol for the creation of UCPIs and standards that help its implementation;
 4. Set forth objective criteria for the distribution of financial resources to UCPIs;
 5. Review the handling categories for UCPIs, making the necessary changes regarding limits, jurisdiction, among others;
 6. Adopt emergency measures to protect UCPIs, especially in what concerns biodiversity and infrastructure and, having the handling plans, implement the necessary infrastructure for handling actions;
 7. Promoting the involvement and mobilization of the surrounding population in the discussions regarding UCPIs;
 8. Qualification of counselors to meet the needs of UCPIs;
 9. Mobilization of representative sectors of the consultation council for parity between participants of the civil society and the public power;
 10. Implementation of qualification programs/actions for the communities as an alternative for predatory and illegal activities;
- Implementation of actions that raise awareness and educate the population regarding the environment;
11. Prepare a manual to create the procedures to be adopted by landowners and squatters.

To AGE⁴⁰, SEMAD and IEF:

³³ “The Ecological ICMS was born to compensate the cities for the restrictions to the use of the soil in protected locations (conservation units and other specific preservation areas) and it aims at giving incentive to the creation and improvement of the quality of the already protected ones in order to increase collection”. MINAS GERAIS. Tribunal de Contas do Estado. **Processo nº 872163**. Relatório de Auditoria Operacional. Meio ambiente: Unidades de Conservação de Proteção Integral, de 18 set. 2012.

³⁴ SEPLAG – State Secretary for Planning and Management.

³⁵ SEMAD – Secretary for Environment and Development.

³⁶ UCPIs – Full Protection Conservation Units.

³⁷ CEUC – State Register of Conservation Units.

³⁸ SISEMANET – Integrated Environment System.

³⁹ CNUC – National Register of Conservation Units.

⁴⁰ AGE – General State Attorney Office.

1. Standardization of technical and administrative procedures to indemnify improvements and expropriation of rural real estate located inside UCPIs in the State of Minas Gerais;

2. Prepare a schedule for land regularization that encompasses all UCPIs.

To IEF:

1. Presentation of a schedule for the creation of the handling plans for all UCPIs and updating the ones that are outdated;

2. Appoint managers for UCPIs that do not have one;

3. Carry out a public consultation to include the communities in the process to create the UCPIs;

4. Implement the consultation council in all UCPIs that lack one.

Forward a copy of the legal decision and documents to the following recipients:

a) State Secretary for Planning and Management;

b) State Secretary for Environment and Sustainable Development;

c) General Director of the State Institute of Forests;

d) State General Attorney;

e) State Secretary of the Civil Cabinet and Institutional Relations;

f) General State Controllorship;

g) Legislative Assembly of the State of Minas Gerais;

h) To the Public Prosecution of the State of Minas Gerais – Center for the Operational Support of Prosecution Offices for the Defense of the Environment, Cultural Heritage, Urbanism and Housing. (highlighted by us).

The work of TCE-MG is impressive once it defines pragmatic actions for the agencies in charge.

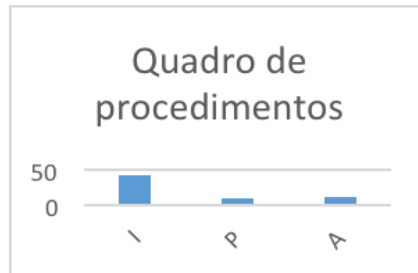
4 THE PUBLIC PROSECUTION

The Public Prosecution Office, through its State Prosecution Office for the Cultural and Tourism Heritage of the State of Minas Gerais, the Coordination of the Prosecution Offices for Hydrographic Basins and the Prosecution Office for the Environment in the Capital City, got acquainted with the problem after a headline published on the Ecologic Magazine on October 2012 and called “SOS SEMAD – Ecologists question the government on the contingencies imposed to almost all the resources aimed at the environment” and it started proceedings to determine the facts.

During the civil inquiry, the State Public Prosecution Office had access to the final report of TCE’s Operational Audit and to the evaluation of the administration of the conservation units carried out by the Federal University of Lavras. The documents started guiding the actions taken by the ministry.

The follow up regarding the situation of the conservation units within the entire state generated, by November 2013, about 53 proceedings of the following types: PAAF – Procedure to Follow Up an Activity, under the responsibility of Hydrographic Basin coordinations, NF – News De Facto, PP – Preparatory Procedure, IC – Civil Inquiry, those ones at the level of local prosecution offices, in addition to 11 public civil claims.

The table below shows that most of the claims are related to civil inquiries.



Source: data made available by State Prosecution Office for the Cultural and Tourism Heritage of the State of Minas Gerais.⁴¹

Another important item of information is the distribution of the number of procedures and claims per Hydrographic Basin. The highest number of procedures was started at the Verde Grande and Pardo de Minas River Basins, with 17 administrative procedures, and the lowest number, at Paranaíba and Baixo Rio Grande River Basins, with only 1 procedure.



Source: Information provided by the State Prosecution Office for Cultural Heritage of the State of Minas Gerais.⁴²

Public civil claims were started at the Jequitinhonha and Mucuri River Basins (7), at Velhas and Paraopeba River Basins (3) and at Alto São Francisco Basin (1).

It is important to emphasize the fact that the work of the State Public Prosecution was not restricted to the full protection units, but it also encompassed the sustainable use conservation units, such as the civil inquiry and the public civil claim (proceedings n. 1.0024.13.250739-3) started to protect the Environmental Preservation Area - APA-SUL, in the metropolitan area of the capital city and that counted on the approval of a preliminary injunction that was suspended by the bill of review proposed by IEF and by the State of Minas Gerais (proceedings n. 1.0024.13.250739-3/002).

In a judicial agreement signed in 2007 in the middle of the public civil claim to protect Moeda Hills, an important natural and cultural monument in the metropolitan area of the city of Belo Horizonte, the Public prosecution included several clauses related to the

⁴¹ **MINISTRY OF MINAS GERAIS.** Available at: <<https://www.mpmg.mp.br/>>. Access: 03 mar.2016.

⁴² **MINISTRY OF MINAS GERAIS.** Available at: <<https://www.mpmg.mp.br/>>. Access: 03 mar.2016.

creation of a Full Protection Conservation Unit, in the category of Natural Monument, as well as of Ecological Corridors and Park Road, for compliance by the mining company and by the environmental manager State Institute of Forests - IEF, which implied the payment of compensatory measures for past, future and collective moral environmental damages amounting to about R\$ 14,000,000.00 (fourteen million reais), besides donating items to environmental protection agencies and paying for environmental studies.

A claim to stop omission by the public power to create a conservation unit was started by the Federal Public Prosecution in the State of Ceará, referred to in Bill of Review 88338 – CE (proceedings n. 2008.05.00.035309-8) by the Federal Regional Court of the 5th Region where an injunction was confirmed to forbid the State to issue permitting related to a restricted area of untouched ecosystem so as to guarantee the preservation of the Cocó Ecological Park in the city of Fortaleza.

Although it is not possible to forecast the duration of claims, it is essential to start the processes as soon as possible to recognize inadequacy or omission by the state public policies dealing and managing conservation units to make sure that changes are going to be made, even if it is in the future, from the administrative-financial immobility of the State Administration.

The misuse of resources the legislation directs to the protection of conservation units in Minas Gerais puts biodiversity protection at risk and makes the public administration inefficient, justifying both the interference of the Court of Accounts and of the Public Prosecution Office that has to act as an inspector of the law and the probity and to protect the State's natural resources.

FINAL CONSIDERATIONS

The concern about the preservation of the ecosystemic balance in this generation and the future ones is increasing and it has to lead to the progress of national and international doctrine, legislation and jurisprudence.

Thus, the Report of the Operational Audit: Environment – Full Protection Conservation Units, by the State Court of Accounts, as well as the Evaluation of the Management of Conservation Units in the State System of Protected Areas in Minas Gerais by the Federal University of Lavras, pointing out at the inappropriate management and the lack of resources and land regularizations lead to the conclusion that urgent changes are

necessary to the state system for conservation units, under the penalty of spoiling the biodiversity that should be protected.

The creation and due management of Full Protection Conservation Units through the application of the resources established by article 36 of the Law of the National System for Conservation Units – no harm to other legal costing sources –is fundamental for the protection of the environment in the State of Minas Gerais and resource contingency by the central State power puts at risk the effectiveness of administrative actions in that area and has to be reviewed as soon as possible by public managers.

Within that context, it is extremely important that the civil society participates through the press, making facts that harm the environment public, through the Academy that, from a doctrinal and scientific point of view, evaluates the administration of conservation units, through the State Court of Accounts [carrying out a detailed diagnosis of the Full Protection Conservation Units, under State management, pointing out problems and suggesting actions for solution], through the Public Prosecution Office [listening to the society and trying to carry out strategies to insure the implementation of the environmental legislation at the short, medium and long terms, making biodiversity protection effective in the State] and, finally, through the Judiciary Power [as the last decision instance that insures the fundamental right to a balanced environment].

As we know, however, the simple doctrinaire, legal and jurisprudential recognition of the right is not enough for its implementation and it is essential that the civil society and the management agencies are committed and care for the correct application of resources and the implementation of the best environmental protection policies.

Thus, the ongoing inspection of compensations by the Public Prosecution Office, by the Court of Accounts, by the press, by the civil society and, especially, by the servers in the conservation units is vital.

Even if not all administrative management actions get the desired outcomes, they certainly represent huge progresses in the search for better balance and solidarity among human beings, the other beings in the biotic community and *stricto sensu* natural resources.

The challenge is thrown and the present and future generations have to consolidate the protection that has already been started making sure that the compensation is really compensated.

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