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THE OBLIGATION TO RECOMPOSE THE SUPPRESSED AREA IN ACCORDANCE WITH THE FEDERAL CONSTITUTION AND INFRA-CONSTITUTIONAL FEDERAL LEGISLATION

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ABSTRACT

This work aims to emphasize the obligation to recompose areas of native vegetation suppressed without authorization from a competent environmental agency, in accordance with the Federal Constitution of 1988 and other infra-constitutional federal legal norms, especially the Forest Code of 2012. For this work, for areas of native vegetation, only Legal Reserve and Permanent Preservation Areas were considered. The methodology used was a bibliographic research, where authors who made the theme relevant beyond federal legislation and the Federal Constitution were sought. It was found that the obligation to recompose is "propter rem", and the holder of the use of the property is obliged to recompose the suppressed or degraded area, even if it was not the cause of the environmental liability. Legal Reserve and Permanent Preservation areas must contain a minimum percentage defined according to the 2012 Forest Code, depending on how the rural property was before or after June 22, 2008 and also depending on the size of the property. It is noted that in the national legal system there is a specific law for the recovery of degraded areas, becoming the National Policy for the Recovery of Degraded Areas. Thus, it is the duty of the public authorities and the community to maintain the ecologically balanced environment, in which the restoration of suppressed or degraded areas is one of these duties.

Keywords: Obligation, Recomposition, APP, Legal Reserve.

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INTRODUCTION

The growth of pressure on natural resources, directly related to the population growth of the last century, has left the international community on alert, as countries with advanced economic development have frequently witnessed environmental disasters at their limits, in this same focus, the scientific community has begun to confirm the desolate hypotheses of more environmental disasters such as, for example, the hole in the ozone layer and the greenhouse effect (SAMPAIO, 2013).

Rivero et al. (2009) state that policies to control the expansion of deforestation and promote good practices should consider the differences of small, medium and large producers, as these differences are considerable and need to be identified to establish the best format of a policy for each type of producer, the authors also express that it is necessary to reduce the motivation for the expansion of cattle ranching in areas where in the so-called "areas of the vacant".

Castro (2008) states that deforestation rates increase more in the municipalities to the south and southeast of the legal Amazon, increasing in neighboring areas to the extent that these are incorporated into the dynamics of the frontier more consolidated by the increase in land use for purposes, mainly agricultural use. Since our natural resources are finite, it is unacceptable that economic activities continue to grow regardless of the good management of natural resources and the preservation of the environment (SILVA; COSTA and ARAÚJO, 2018).

Thus, the establishment of competent environmental agencies such as the Municipal Secretariats of the Environment in municipalities that do not have them, together with policies that aim to increase the level of education, reduce income inequality and comply with regulatory laws, aiming to delimit the disorderly expansion of the agricultural frontier, are relevant imperative actions to, if not contain, to reduce the expansion of deforestation in the Brazilian Amazon (ARRAIS; MARIANO and SIMONASSI, 2012).

Fearnside (2015) makes it clear that avoiding deforestation of the remaining forest as much as possible should be the first priority, as the financial cost of recovering one hectare of degraded area is much higher than the cost of avoiding the deforestation of one hectare of native forest.

For decades, the devastation of forests was very pronounced, covering large extensions of important areas for the preservation of the environment, which were not respected. Rural properties are required to conserve and preserve Permanent Preservation

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Areas (APP) and Legal Reserve (RL) areas, as this administrative measure was delimited by the new Forest Code (TNC, 2015). In this work, the areas of native vegetation studied will only be the Legal Reserve Areas (ARL) and the Permanent Preservation Areas (APP) in rural properties, such delimitation is due to the fact of the duty to recompose these areas to reach the minimum percentage of the ARL defined in the legislation or suppressed without the authorization of the competent environmental agency and the APP's also unduly suppressed, which must be recomposed in accordance with the relevant legislation.

The objective of this work is to analyze the duty to recompose the suppressed area without authorization from a competent environmental agency, as this practice generates the duty to recompose the environmental liability, not deviating from the legal processes imposed by environmental laws, in addition to illustrating the federal legislation pertinent to the subject. The methodology was a bibliographic research based on studies by several authors in addition to the research of the Federal Constitution, National Environmental Policy, Forest Code, Environmental Crimes Law, National Policy for the Recovery of Degraded Areas and Federal Decrees for pertinent support to the theme.

THE FEDERAL CONSTITUTION OF 1988 AND THE ENVIRONMENT

Gomes (2008) expresses that global awareness made it possible for the Federal Constitution of 1988 to bring the Environment and the human and social issue closer together, allowing everyone, in the mold of the Constitution, the right that the conditions that govern life are not changed in an unfavorable way, because they are essential. Thus, the Environment began to be treated in an unprecedented way, as a right of all, a good for the common use of the people, and essential to the quality of life, a condition that can still be seen in the preamble of the Federal Constitution. BRASIL (1988), in Article 225 of the Federal Constitution, expresses all its firmness regarding the environmental issue and in Paragraph 1, I, in verbi:

> Article 225. Everyone has the right to an ecologically balanced environment, a good for the common use of the people and essential to a healthy quality of life, imposing on the Government and the community the duty to defend and preserve it for present and future generations.
> Paragraph 1 - To ensure the effectiveness of this right, it is incumbent upon the Public Authority:
> I - to preserve and restore essential ecological processes and to provide for the ecological management of species and ecosystems. (BRAZIL, 1988)

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In the caput of Article 225 itself, it is already very clear that it is everyone's duty to promote the preservation of the environment, and neither the public power nor the community should deviate from this duty and, even more, protect it for present and future generations. In Item I of Paragraph 1, it is incumbent on the government to preserve and restore essential ecological processes, both of species and ecosystems. Also in Item II of the same paragraph, it must preserve the diversity and integrity of the country's genetic heritage. In Item VII, the public power must protect the fauna and flora.

In this way, the Federal Constitution encompasses that no one can use the environment in an unbridled way, but always use it within the molds of the Constitution and in the forms of the pertinent Laws. Everyone, therefore, has a fundamental right (in Environmental Law) that fulfills the function of integrating the rights to a healthy quality of life, economic development and the protection of natural resources, that is, sustainable development, with the quality of the Environment being a valuable heritage that must be preserved and recovered, and it is up to the Public Power, the duty to ensure the quality of life, which consequently implies good conditions of work, leisure, education, health, safety which promote the dignity of the human person (GOMES, 2008).

The right to the environment is classified as a fundamental and third-dimensional right and of collective protection. The chapter provided for in Article 225, brought by the Federal Constitution of 1988, guarantees an ecologically balanced environment, which meets the needs of the present without compromising future generations, in addition to providing mechanisms for protecting the environment (CORREA, LUCENA and MONTEIRO, 2017).

RIGHT OF FLORA

The Federal Constitution, in its Article 225, VII, makes it clear that the protection of flora and fauna is a constitutional duty and that it is up to the public power and the community to guarantee this protection (BRASIL, 1988). Brasil (2019), through the Brazilian Forest Service, informs that on a daily basis, forest is any vegetation that presents a predominance of woody individuals, where the treetops touch each other forming a canopy, having as synonyms: forest, bush, woods, capoeira, jungle.

According to Brasil (2019), through the Brazilian Forest Service, the FAO (Food and Agriculture Organization of the United Nations) takes into account aspects of land use and occupation, and the UNFCC (United Nations Framework Convention on Climate Change)

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that deals with forests in the aspect of climate change, which defines forest as "an area measuring more than 0.5 ha with trees greater than 5 m in height and canopy cover greater than 10%, or trees capable of achieving these parameters in situ".

Another definition of forest that Brazil (2019), through the Brazilian Forest Service, puts is that the FAO - Food and Agriculture Organization of the United Nations Terms and definitions, used in the Global Forest Resources Assessment (FRA) leaves the definition of forest as:

> Area of at least 0.05-1.0 ha with canopy cover (or equivalent density) of more than 10-30%, with trees with the potential to reach a minimum height of 2-5 meters at maturity in situ. A forest can consist of either closed (dense) forest formations, where multi-strata and suppressed trees cover a high proportion of the soil, or open forests. Young natural stands and all plantations that will still reach a density of 10-30% and a height between 2 and 5 meters are included as forest, as well as areas that are normally part of the forest area and that are temporarily deforested as a result of human intervention, such as harvesting or natural causes, but whose forest reversal is expected (BRASIL, 2009, p. 2).

Brasil (2019), through the Brazilian Forest Service, also explains that these definitions of forests cannot encompass the complexity of Brazilian forests, as typologies such as the Cerrado and Caatinga do not meet the requirements of the definitions mentioned above, because in practice they are used as forests, in this way, to contemplate the complexity of forest resources in Brazil, a definition that also considers the use could cover vegetation other than forests.

Thus, Brazil (2019), through the Brazilian Forest Service, in the development of its work, has considered as forest the typologies of woody vegetation that come closest to the definition of forests of the Food and Agriculture Organization of the United Nations (FAO), in this way the Brazilian vegetation is classified by the Brazilian Institute of Geography and Statistics (IBGE) as: Open Ombrophilous Forest; Mixed Ombrophilous Forest; Seasonal Semideciduous Forest; Seasonal Deciduous Forest; Campinarana (forested and wooded); Savannah (forested and wooded) - Cerradão and Campo-Cerrado; Steppe Savannah (forested and wooded) - Arboreal Caatinga; Steppe (wooded); Vegetation with marine, fluvial, fluvial and/or lacustrine (arboreal) influence - Restinga, Mangrove and Palm Grove; Remaining vegetation in contacts where at least one formation is forest; Secondary vegetation in forest areas; and Reforestation.

Law No. 12,651, of May 25, 2012, also known as the New Forest Code, is the national regulation that regulates the protection of native vegetation, where Article 1 establishes general rules on the protection of vegetation, Permanent Preservation areas

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and Legal Reserve areas; forest exploitation, the supply of forest raw material, the control of the origin of forest products and the control and prevention of forest fires, and provides economic and financial instruments to achieve its objectives (BRASIL, 2012).

Brasil (2012) states that one of the guiding principles is the restoration of native vegetation given by the Sole Paragraph of Article 1, IV, of Law No. 12,651, of May 25, 2012 in verbi:

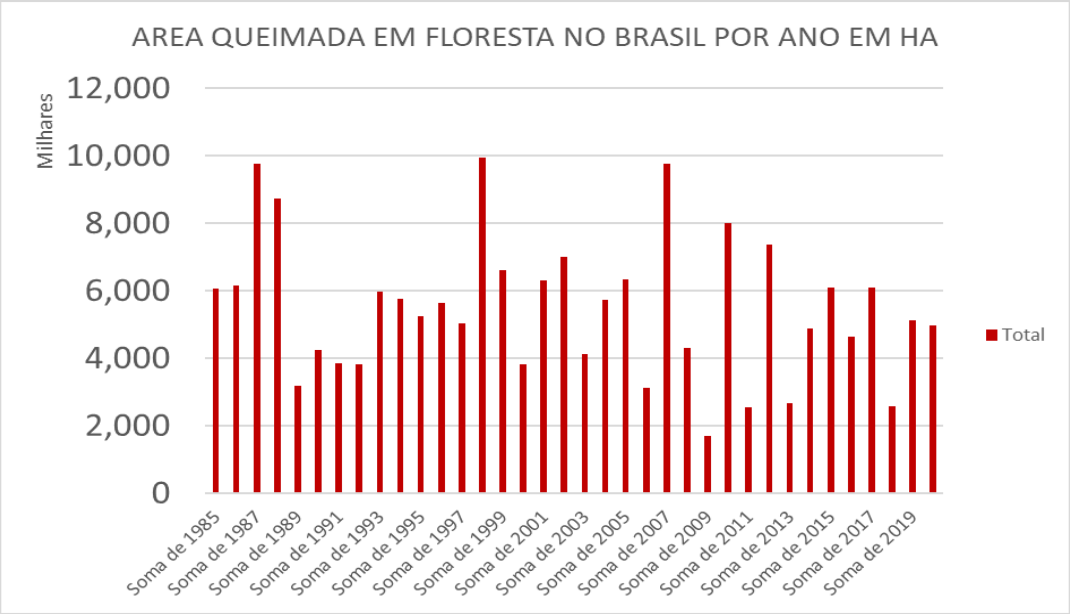
> Sole Paragraph. With the objective of sustainable development, this Law will meet the following principles:
> IV – common responsibility of the Union, States, Federal District and Municipalities, in collaboration with civil society, in the creation of policies for the preservation and restoration of native vegetation and its ecological and social functions in urban and rural areas; (BRAZIL, 2012).

AREAS OF NATIVE VEGETATION

Oliveira et al, (2019) state that deforestation is one of the main problems today and that this problem leads to a large loss of trees and all native forest, due to the ambition of profit, where the forest is replaced by pastures for cattle raising, monocultures and large-scale works, with numerous consequences, such as the reduction or loss of diversity, erosion, desertification, rising temperatures, and intensification of the greenhouse effect.

The MapBiomas Project (2021) calculated and made available data on the area, in hectares, of burning in native forest per year, from 1985 to the year 2020. The data is placed on thousands of hectares, so the graph below was generated:

Graph 1 - Burned area in native forest



Source: MapBiomas Project – Mapping Fire Scars in Brazil (2022)

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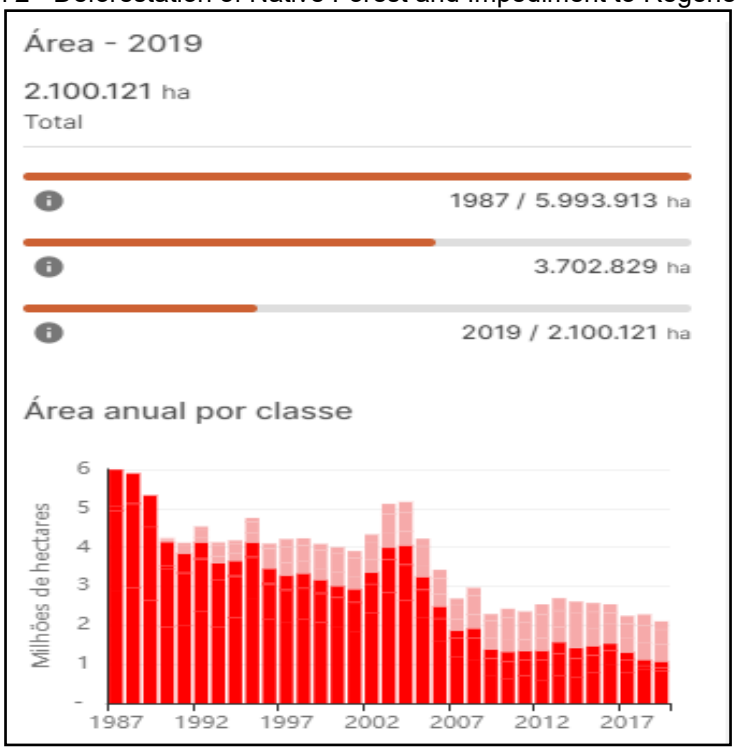
It is noted that the years 1987, 1998 and 2007 were the years that had the largest fires in Brazil in forest areas, with approximately 10 million hectares burned in 1998. It is also important to note that in the years 2019 and 2020 there was a sharp growth in fires in these areas, with approximately 5 million hectares burned.

Another point to be taken into account is deforestation in native forest and the impediment to regeneration, highlighted in graph 2 below, where the red color represents the deforested area of native forest and the pink color represents the suppressed regeneration area, where MapBiomas (2022) places in the graph:

Graph 2 - Deforestation of Native Forest and Impediment to Regeneration



Source: MapBiomas Brasil (2022)

It can be seen in graph 2 that in the first years measured, 1987, 1988 and 1989, there was the highest rate of deforestation in native forest in Brazil, with between 6 and 5.3 million hectares deforested. It is verified that from the year 2007 to 2019 there is a uniformity of deforestation and impediment of forest regeneration, but still very high. In the years 2018 and 2019, it is verified that the suppression of forest and the impediment to regeneration are practically 50% of each, and it is quite significant that for the year 2019 deforestation and impediment to regeneration together totaled 2,100,121.00 hectares. The rate of accumulation of deforestation in Brazil is illustrated in graph 3 below:

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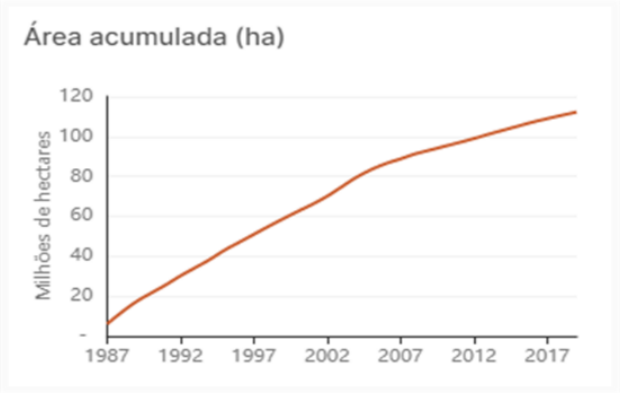
Graph 3 - Accumulation of Deforestation in Brazil



Source: MapBiomas Brasil (2022)

From the 1987 measurement, it was found that in that year deforestation was approximately 6 million hectares. On an upward curve, it is possible to see that from 1987 to 2019 there was an accumulated 112,187,912 million hectares deforested in Brazil, with an average of 3,505,872.25 hectares per year.

The areas of native vegetation are those defined in Law No. 12,651, of May 25, 2012, which provides for the protection of native vegetation at the national level. The areas of native vegetation emphasized in this work will be the Legal Reserve Areas (ARL's) and the Permanent Preservation Areas (APP's), where in Art. 3, II and III, of the referred law, Brasil (2012) conceptualizes these areas as:

> II – Permanent Preservation Area – APP: protected area, covered or not by native vegetation, with the environmental function of preserving water resources, landscape, geological stability and biodiversity, facilitating the gene flow of fauna and flora, protecting the soil and ensuring the well-being of human populations;
> III – Legal Reserve: area located within a rural property or possession, delimited under the terms of article 12, with the function of ensuring the sustainable economic use of the natural resources of the rural property, assisting in the conservation and rehabilitation of ecological processes and promoting the conservation of biodiversity, as well as the shelter and protection of wild fauna and native flora (BRASIL, 2012).

PERMANENT PRESERVATION AREAS (APP'S)

Brasil (2019), through the Brazilian Forest Service, defines Permanent Preservation Areas (APP) as areas protected by Law 12.651 of 2012 covered or not by native vegetation, with the environmental function of preserving water resources, landscape, geological stability, biodiversity, gene flow of fauna and flora, protecting the soil and ensuring the well-being of human populations.

Brasil (2012) considers APP's, in urban or rural areas, to be areas located in accordance with Law 12.651 of 2012, in its Article 4. Article 6 of the aforementioned law

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also makes it explicit that APP's can be declared of social interest by act of the Head of the Executive Branch, areas covered with forests or other forms of vegetation intended for one or more of the following purposes.

TNC - The Nature Conservancy (2015, p. 22) places the importance of the concept of APP, as its location is defined according to the water resource, slope and altitude, in this way it exposes:

> The analysis of the legal concept of PPA shows that these areas are closely correlated with the conservation of localities that are naturally fragile due to their proximity to water systems (springs, rivers, lakes, lagoons, reservoirs, paths, salt flats, apicuns, mangroves, sandbanks), as well as landforms weakened by slope (slopes, hilltops, mountains and mountain ranges, edges of tablelands or plateaus), forests above 1,800 meters of altitude, whose species are peculiar, biodiversity, ecological processes, soil and human well-being. (TNC, 2015, p. 22).

The intervention or suppression of native vegetation in APP will only occur in cases of public utility, social interest or low environmental impact provided for in said Law. In the event of suppression of vegetation located in an APP, the owner, possessor or occupant will be obliged to recompose the vegetation, except for the authorized uses provided for in the same Law. In the Permanent Preservation Areas, the continuity of agroforestry, ecotourism and rural tourism activities in consolidated rural areas until July 22, 2008 is authorized. In these cases, the range to be recomposed depends on the size of the property and the methods of recomposition are also defined in Law 12.651 of 2012 (BRASIL, 2019).

When the APP's are already consolidated activities by June 22, 2008, the continuity of agroforestry, ecotourism and rural tourism activities is authorized, as determined by Article 61-A of Law 12.651 of 2012 (BRASIL, 2012).

Tereza and Casatti (2010) expose that while PPA recovery programs are not able to serve a representative number of localities, it is believed that a first mitigating measure is the isolation of PPAs, which contributes to their natural regeneration while reducing the interference of degrading agents.

LEGAL RESERVE AREAS (RL)

Article 12 of Law 12,651 of 2012 explains that every rural property must maintain an area with native vegetation cover, to compose the Legal Reserve, without prejudice to the application of the rules on Permanent Preservation Areas, observing the following minimum

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percentages in relation to the area of the property, except for the cases provided for in article 68 of the same Law, where the percentages are:

a) located in the Legal Amazon:
   - 80% (eighty percent), in the property located in a forest area;
   - 35% (thirty-five percent), in the property located in a cerrado area;
   - 20% (twenty percent), in the property located in the area of Campos Gerais;

b) located in the other regions of the country: 20% (twenty percent).

The same Law also provides, according to Brazil (2019), through the Brazilian Forest Service, the percentage of areas included as Legal Reserve in the Amazon may be changed to up to 50% in some cases provided for in this Law and that the calculation of Permanent Preservation Areas is admitted in the calculation of the Legal Reserve, as long as it does not imply conversion of new areas to alternative land use, the area to be computed is conserved or in the process of recovery and the property is registered in the Rural Environmental Registry.

It is important to expose that the Legal Reserve can be economically exploited in a sustainable way, that is, the rural property can carry out economic activity as long as it licenses the activity in bodies of the National Environmental System (SISNAMA), thus being free from criminal sanctions when executed in accordance with the Law, always observing the maximum limits of exploitation according to the environmental license granted (TNC, 2015).

Oliveira and Wolski (2012) express that Legal Reserve areas can never be considered as a piece of land lost within the property, and it is necessary for the producer to find means of managing these areas that best suits him, such as: during the recomposition of the Legal Reserve, there is the possibility of carrying out commercial plantations of exotic agricultural and forest species in intercropping with native trees, taking advantage of these areas commercially.

Oliveira and Wolski (2012) also express the importance of preserving and maintaining Legal Reserve areas on all properties, and it is necessary to provide support information to rural producers so that they can comply with the laws and that these are effectively obeyed, in addition to information on the management and use of forests, natural

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or planted, to happen in perfect balance and harmony with Nature, allowing the producer to reap all the benefits that forests have to offer.

DEFINITION OF SUPPRESSED AREAS AND DEGRADED AREAS

Suppression is defined as the act of suppressing, which refers to the act of cutting, annulling, making disappear or even preventing from existing. Thus, vegetation suppression can be defined as the removal of a portion of vegetation from a given urban or rural space, with the objective of using the area previously occupied by native vegetation for alternative purposes. (BRAZIL, 2012).

BRAZIL (1989) through Federal Decree No. 97,632, of April 10, 1989, in Article 2, considers degradation as the processes resulting from damage to the environment, by which some of its properties are lost or reduced, such as the quality or productive capacity of environmental resources.

In the Manual for the recovery of areas degraded by mining of the Brazilian Institute of Environment and Renewable Natural Resources (IBAMA, 1990, p.13) it defines the degradation of an area as:

> The degradation of an area occurs when native vegetation and fauna are destroyed, removed or expelled; the fertile layer of soil was lost, removed or buried; and the quality and flow regime of the hybrid system are changed. Environmental degradation occurs when there is a loss of adaptation to physical, chemical and biological characteristics and socioeconomic development is made unfeasible (IBAMA, 1990, p.13)

The Chico Mendes Institute for Biodiversity Conservation - ICMBio (2014) through its Normative Instruction 11, of December 11, 2014, which establishes the procedures for the preparation, analysis, approval and monitoring of the execution of the Degraded or Disturbed Area Recovery Project - PRAD, defines degraded area as that which is unable to return by a natural trajectory to an ecosystem that resembles the initial state, hardly being restored, only recovered.

In the same Normative Instruction 11, of December 11, 2014, ICMbio (2014) gives a definition for resilience that is the ability of a system to withstand environmental disturbances and return to its successional tendency, maintaining its structure and general pattern of behavior, while its equilibrium condition is modified, being evaluated by the time necessary for the system to move from one phase to another of the successional process, the longer this time, the less resilience. Another important definition is that of disturbed

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area, which this same regulation defines as that which after the impact still maintains the capacity for natural regeneration and can be restored.

OBLIGATION TO RECOMPOSE ACCORDING TO THE FEDERAL CONSTITUTION AND FEDERAL INFRA-CONSTITUTIONAL REGULATIONS

It is important to define recovery and restoration, in this way, Brazil (1989), through Federal Decree No. 97.632, of April 10, 1989, places as the objective of recovery the return of the degraded site to a form of use, according to a pre-established plan for the use of the soil, aiming to obtain stability of the environment.

In Law No. 9,985, of July 18, 2000, which regulates article 225, § 1, items I, II, III and VII of the Federal Constitution, establishes the National System of Nature Conservation Units, in Article 2, Brazil (2000) defines recovery as the restitution of a degraded ecosystem or wild population to a non-degraded condition, which may be different from its original condition. It also defines restoration as the restitution of a degraded ecosystem or wild population as close as possible to its original condition.

In Normative Instruction 11, of December 11, 2014, which establishes procedures for the preparation, analysis, approval and monitoring of the execution of the Degraded or Disturbed Area Recovery Project – PRAD, ICMBio (2014) has the same definitions for recovery and restoration defined in Law No. 9,985, of July 18, 2000, showing the interrelationship between the norms.

According to REsp 1.090.968/SP, Rel. Min. Luiz Fux, First Panel, DJe 3.8.2010 The obligation to repair environmental damage is "propter rem", that is, the damage is joint and several between the various causes of the damage, and it is not appropriate to speak of an acquired right to degradation, in this way the new acquirer assumes the burden of maintaining environmental preservation, becoming responsible for the replacement, even if it has not contributed to deforestation on the property (BRASIL, 2011).

Thus, BRAZIL[3] (2011):

> ENVIRONMENTAL. ADMINISTRATIVE LIMITATION. ECOLOGICAL FUNCTION OF THE PROPERTY. PERMANENT PRESERVATION AREA. ECOLOGICAL MINIMUM. DUTY OF REFORESTATION. PROPTER REM OBLIGATION. ART. 18, § 1, OF THE FOREST CODE of 1965. TRANSITION RULE.
> 1. There is no unlimited or absolute right to use the economic potential of real estate, because before "the promulgation of the current Constitution, the legislator was already taking care to impose some restrictions on the use of property with the aim of

[3] BRAZIL. Superior Court of Justice. Resp nº 1240122, Social Function of Property, Ecological Function of Property, App. Rapporteur: Minister HERMAN BENJAMIN

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> preserving the environment" (EREsp 628.588/SP, Rel. Min. Eliana Calmon, First Section, DJe 9.2.2009), a task that, in the constitutional regime of 1988, It is based on the ecological function of domination and possession.
> 2. Internal assumptions of the right to property in Brazil, the Permanent Preservation Areas and the Legal Reserve aim to ensure the ecological minimum of the property, under the mantle of the inalienable constitutional guarantee of "essential ecological processes" and "biological diversity". Genetic and inalienable components, because they merge with the text of the Constitution, are externalized in the form of administrative limitation, a legal technique of state intervention, in favor of the public interest, in human activities, in property and in the economic order, with the aim of disciplining, organizing, circumscribing, adapting, conditioning, controlling and supervising them. Without configuring dispossession or indirect expropriation, the administrative limitation operates through the imposition of obligations not to do (non facere), to do (facere) and to bear (pati), and is usually characterized by the generality of the primary provision, public interest, imperativeness, unilaterality and gratuitousness. Precedents of the STJ.
> 3. "The obligation to repair environmental damage is propter rem" (REsp 1.090.968/SP, Rel. Min. Luiz Fux, First Panel, DJe 3.8.2010), without prejudice to the solidarity between the various causes of the damage, and it is not appropriate to speak of an acquired right to degradation. The "new owner assumes the burden of maintaining preservation, becoming responsible for replacement, even if he has not contributed to deforestation. Precedents" (REsp 926.750/MG, Rel. Min. Castro Meira, Second Panel, DJ 4.10.2007; in the same sense, among others, REsp 343.741/PR, Rel. Min. Franciulli Netto, Second Panel, DJ 7.10.2002; REsp 843.036/PR, Rel. Min. José Delgado, First Panel, DJ 9.11.2006; EDcl no Ag 1.224.056/SP, Rel. Min. Mauro Campbell Marques, Second Panel, DJe 8.6.2010; AgRg in REsp 1.206.484/SP, Judge Humberto Martins, Second Panel, DJe 3.29.2011; AgRg in the EDcl in REsp 1.203.101/SP, Rel. Min. Hamilton Carvalhido, First Panel, DJe 18.2.2011). Therefore, the obligation to reforest with native species may "be immediately enforceable from the current owner, regardless of any inquiry regarding the good faith of the purchaser or any other causal link other than that established by the ownership of the domain" (REsp 1.179.316/SP, Rel. Min. Teori Albino Zavascki, First Panel, DJe 29.6.2010).
> 4. "Paragraph 1 of article 18 of the Forest Code, when it provided that, 'if such areas are being used for crops, the owner must be compensated for their value', only created a transition rule for owners or possessors who, at the time of the creation of the administrative limitation, still owned crops in these areas" (REsp 1237071/PR, Rel. Min. Humberto Martins, Second Panel, DJe11.5.2011).
> 5. Special Appeal not granted. (BRAZIL, 2011).

Araújo (2018) emphasizes that the damage caused to the environment can be difficult or impossible to repair, although this has been seen as an asset of paramount importance for humanity for some time.

The Federal Constitution in Article 225, § 1, I, emphasizes that in order to ensure the effectiveness of the ecologically balanced environment, a good for the common use of the people and essential to a healthy quality of life, it is incumbent on the Government to preserve and restore essential ecological processes and provide for the ecological management of species and ecosystems (BRASIL, 1988). This demonstrates that in Brazil's highest law (Federal Constitution) the restoration of ecological processes already includes the principle of the obligation to recompose degraded and/or altered areas.

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Brasil (1981) states that Law 6.938 of August 31, 1981, which instituted the National Environmental Policy, brings as one of its principles the recovery of degraded areas, since Article 2, VIII, makes it clear that this principle is essential for the recovery of degraded areas.

Also in Article 4, VI, of the National Environmental Policy, one of the explicit objectives is the preservation and restoration of environmental resources with a view to their rational use and permanent availability, contributing to the maintenance of the ecological balance conducive to life (BRASIL, 1981). In this way, the restoration of environmental resources is a clear manifestation of the recovery of degraded and/or altered areas, so it is an obligation for the restoration, recovery or restoration by the offender.

Another legislation of great importance is the one that highlights the obligation to recompose the suppressed area without authorization from the competent environmental agency is Law 12.651 of May 25, 2012, where the obligation to restore APP's and Legal Reserve is explicitly placed (BRASIL, 2012).

> In view of the obligation to recompose, the Federal Superior Court (STF), judged Extraordinary Appeal No. 654833 / AC- ACRE, where the Rapporteur was Justice Alexandre de Moraes, on 04/20/2020 and published on 06/24/2020, where the thesis was the imprescriptibility of the claim for civil reparation of environmental damage Summary: EXTRAORDINARY APPEAL. GENERAL REPERCUSSION. TOPIC 999. CONSTITUTIONAL. ENVIRONMENTAL DAMAGE. REPARATION. NON-STATUTE OF LIMITATIONS. 1. It is debated in these records whether the principle of legal certainty should prevail, which benefits the author of the environmental damage in the face of the inertia of the Public Power; or whether the constitutional principles of protection, preservation and repair of the environment, which benefit the entire community, should prevail. 2. In our legal system, the rule is the prescription of the claim for reparation. The imprescriptibility, in turn, is an exception. It depends, therefore, on external factors, which the legal system considers non-derogable over time. 3. Although the Constitution and ordinary laws do not provide for the statute of limitations for the reparation of civil environmental damages, and the stipulation of a deadline for a claim for compensation is a rule, the constitutional protection of certain amounts imposes the recognition of non-statute of limitations claims. 4. The environment must be considered the common heritage of all humanity, in order to guarantee its full protection, especially in relation to future generations. All conducts of the State Government must be directed towards full internal legislative protection and adherence to international pacts and treaties protecting this 3rd generation fundamental human right, to avoid harm to the community in the face of an allocation of a certain good (natural resource) to an individual purpose. 5. Compensation for damage to the environment is an inalienable fundamental right, and it is imperative to recognize the imprescriptibility with regard to the restoration of environmental damage. 6. Extinction of the proceeding, with judgment on the merits, in relation to the Estate of Orleir Messias Cameli and Marmud Cameli Ltda, based on article 487, III, b of the Code of Civil Procedure of 2015, with prejudice to the Extraordinary Appeal. Affirmation of the thesis according to which the claim for civil reparation of

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environmental damage is not subject to statute of limitations (BRASIL, 2020).ntal, judging the thesis in favor, whose summary Brasil[4] (2020) states:

RECOMPOSITION OF APP'S AND LEGAL RESERVE AREAS ACCORDING TO THE FOREST CODE

The Forest Code (Law 12.651 of 2012) requires the maintenance of APP's on rural property by the possessor, holder, occupant, holder in any capacity, and in case of suppression, there is an obligation to recompose the vegetation of these areas, except for the uses provided for in the code itself. It should be noted that Brasil (2012) also makes it clear that the obligation to recompose the suppressed APP area is of a real nature and, except in the cases provided for in the Law, is transmitted to the successor.

For rural properties of up to 4 (four) modules, Brasil (2012) exclusively authorizes the continuity of agroforestry, ecotourism and rural tourism activities in consolidated rural areas until July 22, 2008, requiring the recomposition of APP's according to the size of the fiscal module in accordance with Article 61 of the Forest Code. Another important factor that Brasil (2012) exclusively authorizes is the continuity of agroforestry, ecotourism and rural tourism activities in consolidated rural areas until July 22, 2008, forcing the recomposition of APP's, and in areas of settlements of the Agrarian Reform Program.

Brasil (2012), in Law 12.651 of 2012, which requires the conservation of native vegetation of the Legal Reserve on rural properties, also makes it clear that the activities licensed in the Legal Reserve must be suspended immediately in case of illegal deforestation. In the event of illegal deforestation, the process of restoring the Legal Reserve must be initiated within two (2) years from the date of publication of Law 12,651 of 2012, without prejudice to the applicable administrative, civil and criminal sanctions.

BRAZIL (2012) to give the owner or possessor of the rural property a benefit, and the owner or possessor with an area of Legal Reserve in an extension smaller than that established in article 12 of the Forest Code (Law 12.651 of 2012) may until July 22, 2008, alternatives, alone or jointly to recompose, allow the natural regeneration of vegetation or compensate the Legal Reserve. The recomposition must meet the criteria stipulated by the competent body of Sisnama and be completed within 20 (twenty) years, covering, every 2 (two) years, at least 1/10 (one tenth) of the total area necessary for its completion.

[4] BRAZIL. Superior Federal Court. Extraordinary Appeal No. 654833 / Acre No. 654,833. Rapporteur: Justice ALEXANDRE DE MORAES

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NATIONAL POLICY FOR THE RECOVERY OF DEGRADED AREAS

Another policy instituted by the government was the National Policy for the Recovery of Native Vegetation (Proveg), through Federal Decree No. 8,972 of January 23, 2017, where the objectives of this policy are to articulate, integrate and promote policies, programs and actions that induce the recovery of forests and other forms of native vegetation and boost the environmental regularization of Brazilian rural properties, under the terms of Law No. 12,651, of May 25, 2012, in a total area of at least twelve million hectares, until December 31, 2030 (BRASIL, 2017).

Brasil (2017) states that Proveg will be implemented by the Federal Executive Branch in cooperation with the States, Municipalities, the Federal District and civil society and private organizations, that is, the integration of the public power with the collectivity. Proveg's guidelines are: the promotion of adaptation to climate change and the mitigation of its effects; the prevention of natural disasters; the protection of water resources and soil conservation; the incentive for the conservation and recovery of biodiversity and ecosystem services; the incentive to the recovery of Permanent Preservation Areas, Legal Reserves and Restricted Use Areas; and the stimulus to the recovery of native vegetation with economic use and social benefit (BRASIL, 2017).

Proveg will be implemented through the National Plan for the Recovery of Native Vegetation – Planaveg, in integration with other instruments, mentioned in Article 5 of Decree 8,972 of January 23, 2017, and Planaveg must contemplate, at least, the following guidelines: I - raising awareness of society about the benefits of the recovery of native vegetation; II – the promotion of the chain of inputs and services related to the recovery of native vegetation; III – the improvement of the regulatory environment and the increase of legal certainty for the recovery of native vegetation with economic use; IV – the expansion of technical assistance and rural extension services for the recovery of native vegetation; V – the structuring of a spatial planning and monitoring system that supports decision-making aimed at the recovery of native vegetation; and VI - the promotion of research, development and innovation of techniques related to the recovery of native vegetation (BRASIL, 2017).

Rezende, et al., (2020) states that one of the strategies of the National Plan for the Recovery of Native Vegetation is to implement a spatial planning and monitoring system to support the decision-making process with regard to the recovery of native vegetation.

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FINAL CONSIDERATIONS

The Federal Constitution of 1988 expressively states that everyone has the obligation to maintain an ecologically balanced environment, this time, in order to maintain the principle of environmental balance, the recomposition of areas suppressed in disagreement with the legislation is the obligation of the owner, possessor, lessee or other agent who holds the use of the rural property, and the claim for civil reparation of environmental damage is not subject to statute of limitations according to the jurisprudence of the Federal Superior Court (STF).

In federal infra-constitutional legislations such as the National Environmental Policy, the 2012 Forest Code, the Environmental Crimes Law, the Decree that regulates the Environmental Crimes Law, Federal Decrees, Normative Instructions of IBAMA (Brazilian Institute of Environment and Renewable Natural Resources) and National Policy for the Recovery of Degraded Areas, they draw lines that require the recovery of degraded areas whose purpose is to make the recovered area as close as possible or recompose the area with new vegetation so that the soil is not bare and returns to its ecological function.

The Legal Reserve Areas and Permanent Preservation Areas were the areas of native vegetation considered in this work, which emphasized the obligation to maintain and/or recompose according to the percentages originally established in the 2012 Forest Code, not taking attention away from the percentages of the recomposition of Legal Reserves and APP's in properties below 4 fiscal modules as of the milestone of June 22, 2008.

The restoration of suppressed areas without the proper authorization of the competent environmental agency is a criminal offense, and the cause of the infraction has the duty to recompose the liabilities without prejudice to criminal, civil and administrative actions. The recovery of suppressed areas is a "propter rem" obligation, that is, whoever is using the property will have the obligation to repair the environmental liability, regardless of whether or not they were the cause of the liability.

In this way, recomposing and maintaining the Legal Reserve and Permanent Preservation areas in the minimum percentages defined in the 2012 Forest Code, aim to seek and maintain an ecologically balanced environment, a good of common use for present and future generations, for this, the public power and the community must make mechanisms for this to happen. In the case of the public power, it issued the National Policy for the Recovery of Degraded Areas, with objectives and goals for degraded areas to be

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recomposed, in the case of the collectivity, the duty is to follow the legislation and apply its precepts.

Despite the extensive federal legislation that requires the restoration of deforested areas without the proper authorization of the competent environmental agency, it can be observed that this practice has increased, where investments in inspection agencies have decreased and consequently there has been a decrease in inspections, adding to the little punishability, it can be assumed that these factors encourage environmental offenders to continue with this practice.

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