



**FEDERAL PROSECUTION SERVICE**

**OFFICE OF FEDERAL PROSECUTION IN THE STATE OF AMAZONAS**

**LEGAL RECOMMENDATION No. 01/2024**

The **FEDERAL PROSECUTION SERVICE**, through the undersigned Federal Prosecutors, exercising its constitutional and legal attributions;

**CONSIDERING** that the Federative Republic of Brazil, constituted as a Democratic State Ruled by Law, is based on the principle of the dignity of the human person (Article 1, III, CF);

**CONSIDERING** that, under Article 6, item XX, of Supplementary Law 75/93, it is under the Prosecution Service's responsibility to issue "recommendations, aiming to improve public services of public relevance, as well as to respect the interests, rights and assets whose defense is under the institution's responsibility, setting a reasonable period for the adoption of the appropriate measures";

**CONSIDERING** that, pursuant to Article 4 of the National Council of the Prosecution Service - CNMP – Resolution No. 164, of March 28, 2017, MPF Recommendations may be issued, in a preventive, corrective, preliminary or final manner, to any person, natural or legal, under public or private law, who is able to do or fail to do something to safeguard interests, rights and assets entrusted to the Prosecution Service;

**CONSIDERING** that the Prosecution Service should focus on **outcomes that ensure rights and promote social transformation**, encouraging an institutional culture that values actions to resolve in accordance with the spirit of the Brasília Charter, approved by the National Internal Affairs Office of the Prosecution Service of the Union and the General Internal Affairs Offices of both the Prosecution Service of the States and the Prosecution Service of the Union, as well as by Recommendation No. 54/2017 of the CNMP;

**CONSIDERING** that the Federal Constitution of 1988 established the Prosecution Service as a permanent institution, essential to the jurisdictional function of the State, responsible for defending the legal order, the democratic regime, the social and unavailable individual interests, including the rights to education and health;

**CONSIDERING** the attribution of the Federal Prosecution Service to defend traditional and indigenous populations in or out courts, in accordance with Articles 5, item III, subparagraph "e", 6, items VII, item "c", and XI, of Supplementary Law No. 75/93, 127 and 129, item V, of the Federal Constitution;

**CONSIDERING** the MPF actions involving the subject of carbon credit mechanisms and the Reducing Emissions from Deforestation and Forest Degradation (REDD) framework, *especially those taking place in traditional territories (with or without final land regularization)*;



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**CONSIDERING** that since 2007, when the mechanism of Reducing Emissions from Deforestation and Forest Degradation (*REDD*) was launched as the main international policy and tool to combat deforestation, during one of the annual international conferences of governments on climate, there is history of 17 years of real experiences.

**CONSIDERING** that these experiences show that REDD, which mainly promises to reduce emissions released into the atmosphere from deforestation, faces many problems, and that deforestation and forest degradation continues to increase in the world, as well as the fact that the promise to contribute to mitigating the growing chaos of climate change by reducing deforestation emissions has not advanced to date;

**CONSIDERING** the several publications around the world on the subject, and noting the one that brings together 11 articles on real cases in different places on the planet<sup>1</sup>; and another one that consists of a report<sup>2</sup>, whose axis "Financialization of nature and land and territorial conflicts: Reducing Emissions from Deforestation and Forest Degradation (REDD) and the carbon market in Brazil" maps REDD policies and projects in the Amazon region and connected conflicts (please find file attached to this recommendation. It is possible to identify several articles, studies and complaints that report problems faced by peoples and communities, targets of REDD<sup>3</sup> projects and programs);

**CONSIDERING** the lack of documents and evidence pointing to experiences that the communities involved evaluate as successful, for the benefit of the community, especially indigenous women and traditional populations, which, at the same time, have prevented deforestation;

**CONSIDERING** that FUNAI, the official Brazilian agency for indigenous peoples, published an official notice in 2024<sup>4</sup> guiding indigenous peoples not to participate in negotiations, agreements and contracts involving the trade of carbon credits due to all the problems involved;

**CONSIDERING** that the Federal Prosecution Service and the Prosecution Service of the State of Pará have also given their opinion in a notice<sup>5</sup> on the subject of carbon credit contracts, more specifically on violations of the consultation to ILO Convention No. 169 and the territorial rights of indigenous and traditional peoples;

<sup>1</sup> <https://www.wrm.org.uy/pt/publicacoes/15-anos-de-REDD>

<sup>2</sup> <https://rosalux.org.br/relatorio-nome-do-clima-mapeamento-critico/>

<sup>3</sup> File indicating studies, news and decisions around the planet attached.

<sup>4</sup> <https://www.gov.br/funai/pt-br/assuntos/noticias/2024/posicionamento-da-funai-sobre-creditos-de-carbono-em-terras-indigenas>

<sup>5</sup> <https://www.mpf.mp.br/pa/sala-de-imprensa/noticias-pa/mercado-carbono-direitos-comunidades>



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**CONSIDERING** that the Federal and State Prosecution Services of Pará explain that the notice refers to *“issues related to agreements in progress or already signed involving companies and traditional communities, affecting public lands without authorization from the managing public agency, in which abusive or illegal clauses may appear, in addition to lack of compliance with the right to Free, Prior and Informed Consultation, as well as sharing of benefits and problems related to lack of transparency. Another point concerns agreements related to carbon credits in public lands that were allegedly taken illegally by third parties, something similar to the concept of “land grabbing”;*

**CONSIDERING** the current scenario of global climate crisis and, in this context, the Brazilian Geological Service<sup>6</sup> data showing that floods and droughts have been much more common in the past decade than in previous periods. Between 2014 and 2023, there were 314 records of floods compared with 182 in the previous decade. Droughts have also reached a dramatic increase, with 406 records between 2014 and 2023, compared with just 92 in the previous ten years;

**CONSIDERING** that in the reference above the comparative table of the records of weather-related events (droughts and floods) in Brazil every 10 years, in which an exponential growth is demonstrated every decade, since the initial record between 1934/1943 (02 floods), following to 06 floods (1944/1953), 13 (1954/1963), 21 (1964/1973), 110 (1974/1983), 134 (1984/1993), 105 (1994/2003), 182 (2004/2013) and finally, 314 (2014/2023). Similar increasing numbers happen with droughts, with a very large increase in the last decade. For example, in the Amazon River, taking into account the top ten floods in the last 100 (one hundred) years, six of them happened in the last decade, the worst historical drought in the Amazon happened in 2023. Other regions of Brazil face similar situations. In Acre, Rio Branco had its two largest floods in 2023 and 2024, while the Madeira River, in Porto Velho (RO), faced its worst drought in 2023 and six of the highest low-flow records in the last decade;

**CONSIDERING** that in March 2024 the World Meteorological Organization (WMO) released its annual Report on the state of the world's climate<sup>7</sup>, which confirmed that 2023 was the warmest year on record, with the global average near-surface temperature at 1.45 °C (with a margin of uncertainty of  $\pm 0.12$  °C) above the pre-industrial baseline and WMO reinforced that it was the warmest ten-year period on record in the world;

**CONSIDERING** it is a (scientific) fact that children and young people today, in 2024, as well as future generations of humanity, will deal with a much more aggressive climate system; and that even if today the average increase in surface temperature decreased at the most ambitious level agreed, researchers from Harvard University and the University of Washington have concluded that

<sup>6</sup> <https://www1.folha.uol.com.br/cotidiano/2024/06/recordes-de-seca-e-cheia-mais-que-dobram-de-2014-a-2023-em-relacao-aos-dez-anos-anteriores.shtml>

<sup>7</sup> The full report "State of the Global Climate in 2023", prepared by the World Meteorological Organization (WMO) can be found at: <https://wmo.int/publication-series/state-of-global-climate-2023#:~:text=the%20WMO%20report%20confirmed%20that,ten%2Dyear%20period%20on%20record.>



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still, exposure of the world's population (of humanity as a whole) to severe heat waves will increase by between 50% and 100% by 2100<sup>8</sup>;

**CONSIDERING** that in October 2022, UNICEF published<sup>9</sup> the Report "The Coldest year of the rest of their lives", which states that almost every country in the world is already experiencing more severe and longlasting heat waves, and that these heat waves are forecast to become even more devastating; the document reinforces that by 2050, virtually every child on earth – over 2 billion children – is forecast to face more frequent heatwaves, regardless of whether the world achieves a 'low greenhouse gas emission scenario' with an estimated 1.7 degrees of warming in 2050;

**CONSIDERING** that researchers from universities in the United Kingdom and the Netherlands Environmental Assessment Agency, in early October 2022, released a research in which they forecast the expected levels of longlasting droughts in six evaluated countries (China, Brazil, Ethiopia, Egypt, Ghana and India); the research forecasts that the probability of severe droughts will increase from now on in all countries compared with the observation period (1961-1990). Even in a scenario of maintaining 1.5°C, according to the research, the probability of droughts will triple in Brazil and China, nearly double in Ethiopia and Ghana, slightly increase in India and substantially increase in Egypt<sup>10</sup>;

**CONSIDERING** that according to another specific research on projections of extreme weather events, future generations are already subject to going through, on average, five times more extreme weather events during their lives than the generation that came before them<sup>11</sup>, which is a clear disrespect for intergenerational equity<sup>12</sup>, according to what had originally been agreed by the legal regime on climate change;

**CONSIDERING** that in 1999, the non-governmental organization Corp Watch released an iconic report named "Greenhouse Gangsters vs. Climate Justice", marking one of the earliest documented uses of the term "climate justice", and indicating that

<sup>8</sup> ZEPPELLO, Lucas R. *et al.* Probabilistic projections of increased heat stress driven by climate change. *Nature Communications Earth & Environment* [S. l.], n. 3. Aug. 2022. Available at: <https://doi.org/10.1038/s43247-022-00524-4>.

<sup>9</sup> Full report published by UNICEF, "The Coldest year of the rest of their lives" can be found at: UNITED NATIONS CHILDREN'S FUND (UNICEF), 2022. Available at: <https://www.unicef.org/reports/coldest-year-rest-of-their-lives-children-heatwaves>.

<sup>10</sup> PRICE, J. *et al.* Quantification of meteorological drought risks between 1.5 °C and 4 °C of global warming in six countries. *Climatic Change*, [S. l.], n. 174, n. 12, 2022. Available at: <https://doi.org/10.1007/s10584-022-03359-2>.

<sup>11</sup> THIERY, Win *et al.* Intergenerational inequities in exposure to climate extremes. *Science*, [S. l.], Sep. 26, 2021, v. 374, n. 6564, p. 158-160. Available at: [https://www.science.org/doi/10.1126/science.abi7339?\\_ga=2.140428851.1086394533.1632749462-1575527405.1631121912&](https://www.science.org/doi/10.1126/science.abi7339?_ga=2.140428851.1086394533.1632749462-1575527405.1631121912&).

<sup>12</sup> RAYMOND, C.; MATTHEWS, T.; HORTON, R. M. The emergence of heat and humidity too severe for human tolerance. *Sci. Adv.*, [S. l.], n. 6, p. 1838, 2020.



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a significant share of global greenhouse gas emissions came from a single activity: the fossil fuel industry<sup>13</sup>;

**CONSIDERING** that from 1999 to the present day, due to a robust advance in scientific studies<sup>14</sup> addressing the individual emitters sources of greenhouse gas emissions, it was strongly confirmed that **a small number of corporations (private or public) in the world are responsible for a significant percentage of all emissions ever released into the atmosphere.**<sup>1516</sup>; this advance now adds to the documented deceptive behavior of the past<sup>17</sup> and present of these agents, undoubtedly revealing the way in which data have been and continue to be manipulated to discredit scientific certainty as to the anthropic cause (human being) of climate change and the share of contribution of emitters such as the fossil industry<sup>1819</sup>;

**CONSIDERING** the increasing number of studies and publications demonstrating overestimation of supposedly avoided emissions and possible fraud in the calculation of the generation of carbon credits, casting doubt on the very effectiveness of the REDD mechanism. Within the available information, *a study carried out by the association of international press*

13 Full publication prepared by Corp Watch can be found at:

<https://www.corpwatch.org/sites/default/files/Greenhouse%20Gangsters.pdf>

14 BURGUER, Michel; WENTZ, Jessica Wentz; HORTON, Radley. The law and science of climate change attribution. Columbia Journal of Environmental Law, [S. l.], v. 45, n. 1, Feb. 13, 2020. Available at: <https://doi.org/10.7916/cjel.v45i1.4730>.

15 There are three previous studies in identifying the contributions of individual private emission sources: HEEDE, R. Tracing anthropic carbon dioxide and methane emissions to fossil fuel and cement producers, 1854– 2010. Climatic change, [S. l.], 122, 229–241, 2014. Available at: <https://doi.org/10.1007/s10584-013-0986-y>.-FRUMHOFF, Peter C., HEEDE, Richard, ORESKES, Naomi. The climate responsibilities of industrial carbon producers. Climatic Change, [S. l.], v. 132, n. 2, July 2015, DOI:[10.1007/s10584-015-1472-5](https://doi.org/10.1007/s10584-015-1472-5). Available at: [https://www.researchgate.net/publication/280576648\\_The\\_climate\\_responsibilities\\_of\\_industrial\\_carbon\\_producers](https://www.researchgate.net/publication/280576648_The_climate_responsibilities_of_industrial_carbon_producers). - EKWURZEL, B., J. *et al.* The rise in global atmospheric CO<sub>2</sub>, surface temperature and sea level from emissions traced to major carbon producers. Climatic change, [S. l.], v. 144, p. 579–590, 2017. Available at: <https://climateaccountability.org/publications.html>.

The most striking finding of these studies is that about 2/3 of global industrial carbon dioxide emissions and methane emissions released into the atmosphere between 1751 and 2015 can be traced back to the activities of no more than 100 corporations worldwide. Two-thirds of all CO<sub>2</sub> ever released into the atmosphere was, according to these surveys, generated by the activities of less than a hundred corporations worldwide.

16 Richard Heede, Carbon Majors: Update of Top Twenty companies 1965-2017, CLIMATE ACCOUNTABILITY INSTITUTE (Oct. 9, 2019), <https://climateaccountability.org/wp-content/uploads/2020/12/CAIPressRelease-Top20- Oct19.pdf>.

17 FRANTA, B. Early oil industry knowledge of CO<sub>2</sub> and global warming. Nature Clim Change 8, 1024–1025 (2018). <https://doi.org/10.1038/s41558-018-0349-9>.

18 ORESKES, Naomi; CONWAY, E.; SHINDELL, M. From chicken little to Dr. Pangloss: William Nierenberg, global warming, and the social deconstruction of scientific knowledge. Historical Studies in Natural Sciences, of doubt: how a handful of scientists obscure the truth on issues from tobacco smoke to climate change. [S. l.], v. 38, n. 1, p. 109-152, Feb. 2008; ORESKES, Naomi; CONWAY, E. Merchants of doubt: how a handful of scientists obscure the truth on issues from tobacco smoke to climate change. [S. l.]: Bloomsbury Press, 2010.

19 R. J. Andres et al., A synthesis of carbon dioxide emissions from fossil-fuel combustion, 9 BIOGEOSCIENCES 1845, at 1851 (2012), <https://bg.copernicus.org/articles/9/1845/2012/bg-9-1845-2012.pdf>.



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of the British newspaper *The Guardian*, the German *Die Zeit* and the organization *SourceMaterial* of investigative journalism, questions the effectiveness of the carbon offset market in balancing greenhouse gas emissions, indicating that the purchase of carbon credits in tropical forests is essentially "useless"<sup>20</sup>. Also regarding overestimates and fraud, there is a recent case of carbon credit project in Malawi, Africa, implicating the Company C-Quest and its former CEO, Ken Newcombe, millions of ghost carbon credits circulating<sup>21</sup>;

**CONSIDERING** that in addition to the increasingly frequent news and studies demonstrating the uselessness and overestimations regarding this subject, there is still confusion about whether it is in fact possible to balance/offset biotic carbon from natural cycles involving trees with carbon stored underground for millions of years in the form of oil, coal and natural gas<sup>22</sup>, that is, the creation of equity;

**CONSIDERING** that on Environment Day (June 5, 2024) the Brazilian Federal Police started Operation Greenwashing revealing the scenario of crimes and irregularities behind large carbon credit contracts in the Brazilian Amazon, carbon credits used by large multinational companies<sup>23</sup>. In this operation alone, an estimate of 180 million reais in carbon credit generated and traded in federal government lands, illegally, with practices of land grabbing, deforestation, fraud, corruption of public officials and others;

**CONSIDERING** that there is information about large companies and world brands using these irregular credits to appear sustainable before their consumers<sup>24</sup> and that "*Between 2022 and 2023, the Fortaleza Ituxi project sold more than 1.2 million carbon credits to companies, according to Verra*<sup>25</sup>. The main customer is Moss, which sold part of these credits to the airline Gol"; even with "*iFood, Itaú, Hering, among the main customers of Fortaleza Ituxi*" and "*An even larger number of credits (2.3 million) being sold by the REDD+ Unitor project. Its three main customers are the Colombian state oil company Ecopetrol, the Canadian mining company Sigma Lithium Resources and the British audit firm PwC International. The list also includes other transnationals, such as Nestlé.*" ;

<sup>20</sup> <https://www.theguardian.com/environment/2023/jan/18/revealed-forest-carbon-offsets-biggest-provider-worthless-verra-aoe>

<https://canaltech.com.br/meio-ambiente/compensacao-de-carbono-pode-ser-inutil-aponta-midia-internacional-236716/>

<sup>21</sup> <https://reddmonitor.substack.com/p/over-issuance-of-millions-of-carbon>

<sup>22</sup> <https://www.wrm.org.uy/pt/15-anos-de-REDD-Todo-o-carbono-e-igual>

<sup>23</sup> <https://www.gov.br/pf/pt-br/assuntos/noticias/2024/06/pf-deflagra-operacao-greenwashing-para-investigar-venda-irregular-de-creditos-de-carbono>

<sup>24</sup> <https://sumauma.com/grandes-marcas-compram-creditos-de-carbono-de-esquema-suspeito-na-amazonia/>

<sup>25</sup> Verra is the world's leading certifier for REDD projects that sell carbon credits. Surprisingly, the REDD projects identified in operation Greenwashing have been the subject of several audits linked to Verra's standards and the auditors have all stated that the projects were implemented according to Verra's methodologies, without pointing out the irregularities previously.



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**CONSIDERING** Bloomberg Green's 2022 investigation suggesting that many carbon credits, mostly from renewable energy projects and sold to companies to offset their carbon emissions, were "junk"; and that a joint investigation by the New Humanitarian and Mongabay in September 2023 raised serious questions about the United Nations' own claims to be almost entirely carbon neutral based on its purchases of carbon credits<sup>26</sup>;

**CONSIDERING** a study published in the Science<sup>27</sup> journal in 2023 showing that millions of carbon credits may have been generated based on exaggerated estimates on the benefits of the projects to forest protection and that, according to the study itself: “We found that most projects have not significantly reduced deforestation. For projects that did, reductions were substantially lower than claimed”;

**CONSIDERING** that even REDD initiatives of forest planting and reforestation, present serious problems and inconsistencies; the vast majority of such initiatives that generate carbon credit today are based on planting trees in monoculture (such as eucalyptus), the so-called "green deserts" that, far from bringing better quality of life and sustainability, are sometimes involved in perverse scenarios of violations of traditional territories,<sup>28</sup> possession rights of family farmers, negatively impacting water resources; moreover, carbon credit projects with family farmers can harm their autonomy and subsistence, represent new forms of pressure, among others problems;<sup>29</sup>

**CONSIDERING** the initiative of the Amazonas state government to select the first 21 public concessions for REDD+ projects in specially designated areas in the state's public forests. In total, the Amazonian government estimates that REDD+ projects in the 21 UCs granted so far, covering 11.9 million hectares of public lands, 483 communities and 8,050 families, could generate BRL 8 billion (USD 1.6 billion) in revenues. The biggest winner of this bidding round is Future Carbon (Brazil), which received 12 concessions; followed by EcoSecurities (Switzerland), with three; BR Carbon (Brazil), Carbonext (Brazil) and Permian Global (England) with two each. Carbonext appears among the companies with projects in areas involved in the Federal Police's Greenwashing operation in June 2024. The contract will last for 30 years and the companies will be responsible for the preparation and monitoring of the projects, as well as for their certification and for the sale of credits;

<sup>26</sup> In <https://news.mongabay.com/2024/01/forest-carbon-credits-and-the-voluntary-market-a-solution-or-a-distraction/>

<sup>27</sup> [https://www.science.org/doi/10.1126/science.ade3535?adobe\\_mc=MCMID%3D29544851848110803661837414050492531572%7CMCORGID%3D242B6472541199F70A4C98A6%2540AdobeOrg%7CTS%3D1692900096](https://www.science.org/doi/10.1126/science.ade3535?adobe_mc=MCMID%3D29544851848110803661837414050492531572%7CMCORGID%3D242B6472541199F70A4C98A6%2540AdobeOrg%7CTS%3D1692900096)

<sup>28</sup> <https://www.mpf.mp.br/ba/sala-de-imprensa/noticias-ba/mpf-ajuiza-acao-para-protoger-territorios-tradicionais-do-sul-da-bahia-contra-o-plantio-de-eucaliptos>

<https://apublica.org/2023/06/aracruz-celulose-teria-usado-prisoos-arbitrarias-para-obter-terras-indigenas-na-ditadura/>

<sup>29</sup> <https://www.wrm.org.uy/pt/boletins/nro-270>



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**CONSIDERING** that, despite having already won the bid of the Government of the state of Amazonas, neither the companies nor the government made any contact or consultation with the traditional and indigenous communities on the subject, totally violating the requirements of prior and free consultation, according to ILO Convention No. 169, since it defines practically all the characteristics of the enterprise, and even the companies that will render services, before any dialogue with traditional peoples and communities, that is, they act as always by merely confirming decisions that have already been taken.

**CONSIDERING** that the MPF in Amazonas came into contact with several traditional leaders of these state conservation units, which have been traditional territories of these peoples for decades or centuries, and was informed by them that there was no consultation or contact, that they do not know the proposal or even the operating model of carbon credit or REDD+ contracts. They also reported a complete abandonment of the Government of the state of Amazonas regarding the management of conservation units, without resources or support for managers, today extremely overloaded;

**CONSIDERING** that this initiative of the Government of Amazonas opens another door for the control of foreign companies on public lands, although indirectly. In addition to the problem of crime, fraud, the potential inefficiency of the use of REDD+ to combat the climate crisis, the lack of consultation with indigenous peoples and traditional communities, in this case, the Amazon government's forest concessions for the sale of carbon, the Articulation of Organizations and Indigenous Peoples of the Amazon (APIAM) filed a request before the MPF/AM (Letter No. 090/APIAM-2024) requesting that the notice and public call made by the government with the chosen companies, including mentioning the inconsistencies of the REDD+ model be revoked:

If we want to control climate change, we need urgent changes of sustainable actions and integrated policies, and this change needs to happen soon, you cannot go slow, extreme events linked to climate are happening in shorter spaces of time and the peoples of the forest are the most directly impacted. **Researchers argue that instead of allocating money for the acquisition of carbon credits, these resources will be better invested in forest conservation projects inhabited by traditional and indigenous communities.** We have great potential for bioeconomy in the Amazon, the government does not even invite us to discuss our way of producing, our knowledge, our ancestry. We need to be constantly vigilant so that we are not swallowed up or decimated all at once.

*"The focus should be on putting money in the right place, rather than buying as much credit as possible."*

**CONSIDERING** that, by doing that, we reach a complex scenario: instead of encouraging reduction and even aiming to reach zero emissions from burning fossil fuels definitively, in the face of the severity of the climate crisis, we encourage the current search for

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companies and entities of the so-called "neutrality" in carbon<sup>30</sup>. Such neutrality is another concept being deeply questioned by scientists, researchers, jurists and actors;

**CONSIDERING** that there are court decisions and government agencies in countries such as Germany, the Netherlands and Sweden that question the effectiveness of credits generated by REDD projects to offset the impact on the climate caused by CO<sub>2</sub> emissions of its products and services. In the Netherlands, the Stichting Reclame Code (a commission that determines rules for advertisements) banned advertisements from the KLM<sup>31</sup> airline and the Shell Oil Company<sup>32</sup> claiming that CO<sub>2</sub> emissions of their products and services were offset with REDD credits. In Germany<sup>33</sup>, court decisions recognized that companies (including the Total oil company and the Eurowings airline) are misleading consumers if they claim that products or services emissions have been neutralized through carbon credits from REDD projects. A key argument in these court decisions was the fact that part of the fossil carbon will interfere with the climate for centuries and millennia, while REDD projects last at most a few decades, and after the project ends, it is not possible to ensure the continuous storage of carbon in trees for hundreds or even thousands of years, as it would be necessary to offset the climate impact of fossil carbon. The European Consumer Organization (BEUC) also demanded the end of the label of food as carbon neutral, which "misleads" the consumer because it is not a climate neutral production, giving examples of products in Portugal,<sup>34</sup>

**CONSIDERING** that even within the scope of spirituality the topic has been debated for some time and, in 2015, the leader of the Catholic Church, Pope Francis, published a letter called *Laudato Si*, on topics of sustainability and spirituality based on information from scientists and theologians from around the world. In its paragraph 171 it says: "*171. The strategy of buying and selling "carbon credits" can lead to a new form of speculation which would not help reduce the emission of polluting gases worldwide. This system seems to provide a quick and easy solution under the guise of a certain commitment to the environment, but in no way does it allow for the radical change which present circumstances require. Rather, it may simply become a ploy which permits maintaining the excessive consumption of some countries and sectors.*";

**CONSIDERING** that the Federal Prosecution Service of Brazil held an event online<sup>35</sup> on the topic on June 5, 2024 with leaders of indigenous peoples and traditional communities, public agencies, researchers and experts from Brazil and other countries, addressing

<sup>30</sup> That is, of the total emissions, it is reduced "where possible", balancing the rest with compensation. One can thus buy the right to continue deforestation, pollution, the use of fossil fuels, the worsening of the climate crisis, the generation of various conflicts, while selling the image of companies, bodies, countries committed to the climate, to sustainability.

<sup>31</sup> <https://www.reclamecode.nl/uitspraken/shell/reizen-en-toerisme-2021-00553/338478/>

<sup>32</sup> <https://www.reclamecode.nl/uitspraken/resultaten/vervoer-2021-00190/304997/>

<sup>33</sup> <https://reddmonitor.substack.com/p/german-court-rules-that-totalenergies>

<sup>34</sup> <https://sicnoticias.pt/economia/2023-03-09-Consumidores-da-UE-querem-fim-de-falsa-etiqueta-de-alimentos-neutros-em-carbono-76767a31>

<https://www.beuc.eu/press-releases/climate-neutral-claims-food-must-be-banned-shows-consumer-groups-report>



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both violations related to indigenous peoples and traditional populations, as well as data, research and information on the potential inefficiency of the REDD+ mechanism in addressing the climate crisis.

**CONSIDERING** that in July 2024 more than 80 environmental organizations around the world released a joint statement<sup>36</sup> **calling for an end to offsets of greenhouse gas emissions with carbon credits** (also known as mechanisms of offset decarbonization of companies). The title of the letter is **"Why carbon offsetting undermines climate targets"** and the letter says that: *"Climate targets must focus primarily on reduction of greenhouse gas emissions within companies' and countries' own boundaries, including the phasing out of fossil fuel production"*, signed by entities such as Amnesty International, Amazon Watch, Greenpeace, ClientEarth, New Climate Institute and Oxfam. Among the letter's arguments are: 1) Offsetting could delay climate action; 2) Carbon offsetting inherently lacks credibility; 3) The climate funding gap will not be solved by offsetting. The statement notes that *"Companies therefore have a responsibility to deeply and immediately reduce their own footprint by taking concrete measures to address the emissions in their global value chains, rather than simply buying credits to avoid tackling their own emissions problems. The difficulty to achieve these massive emission reductions cannot justify widely opening the door to creative accounting and climate distractions"*. It also notes that **the "technology-neutral" IPCC in its last Synthesis Report (2023) did not support or even mention offsetting as a viable option for combating the climate crisis;**

**CONSIDERING** that lack of clear information on the potential inefficiency of the model of offsetting via carbon credit / REDD+ to mitigate the climate crisis, in addition to affecting and deceiving consumers, citizens, and placing the entire planet at serious risk with a mechanism that lacks proof of effectiveness, also deepens the scenario of violations of ILO Convention No. 169 regarding traditional peoples and communities because, although apparently/superficially some peoples (or at least their leaders) are favorable to the development of carbon credit projects in their territories, there is lack of transparent and good faith information to the same peoples about these projects, as already explained;

**CONSIDERING** that there is a scientific consensus around the world, in the sense that it is necessary to reduce the emission of gases that cause global warming, the climate crisis and, consequently, the extreme weather events that we are experiencing; and that there is

<sup>35</sup><https://www.mpf.mp.br/pgr/noticias-pgr2/2024/evento-discute-problemas-do-mercado-de-carbono-e-impactos-sobre-povos-tradicionais>

<sup>36</sup> <https://climainfo.org.br/2024/07/02/organizacoes-pedem-exclusao-de-offset-de-carbono-em-metas-climaticas-corporativas/>

<https://capitalreset.uol.com.br/carbono/creditos-de-carbono/ongs-internacionais-pedem-fim-de-creditos-de-carbono/>  
<https://newclimate.org/sites/default/files/2024-07/Joint-CSO-Statement-Offsetting.pdf>



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also a consensus that these emissions are largely due to the burning of fossil fuels, deforestation and agribusiness<sup>37</sup>;

**CONSIDERING** that there is also a consensus that the countries, companies and entities that have contributed the most to this climate crisis, that is, in general, the rich countries that emit most of the greenhouse gases (GHGs), companies that use the most fossil fuels and the like, should both reduce their emissions more, and subsidize more strongly the costs and changes necessary to combat the climate crisis, energy transition and the like;

**CONSIDERING** that, however, scientific data and accumulated experience show that such a subsidy should not be made through the use of complex mitigation/carbon offset calculations that, in practice and by the elements demonstrated above, do little or nothing concretely to reduce the serious climate crisis scenario we are experiencing. On the contrary, they can even aggravate this scenario by diverting attention and efforts so that the necessary changes in personal and institutional habits may happen;

**CONSIDERING** that the time and effort spent by governments, companies and institutions, could be prioritized for example with land regularization of territories of indigenous peoples and traditional populations, of family farmers, for strengthening surveillance and other measures to combat deforestation, environmental degradation, to effectively combat the climate crisis;

**CONSIDERING** that the Federal Constitution of Brazil, the ILO Convention No. 169, the Decree No. 6040/07 and other legal and regulatory documents in force in Brazil, as well as national and international case law, guarantee the territorial right of indigenous peoples and traditional communities in Brazil, regardless of definitive land regularization, including as a traditional territory their places of hunting, fishing, gathering, cultural uses and customs, and housing;

**CONSIDERING** that in the state of Amazonas, there is an estimate of more than one million inhabitants identified as indigenous peoples and traditional communities, among them riverside dwellers, extractivists, quilombolas and others, who live in urban centers and along territories oriented by rivers and streams of practically the entire state, with rare exceptions of areas not inhabited or not considered of traditional use;

**CONSIDERING** that in a survey carried out by SEMA-AM, in the context of the extreme drought of 2023, at least 2468 traditional communities were registered in the state of Amazonas, along several river channels, in areas with complete land regularization or even without such complete regularization<sup>38</sup>.

<sup>37</sup> <https://www.un.org/pt/climatechange/science/causes-effects-climate-change>

<sup>38</sup> [https://app.powerbi.com/view?](https://app.powerbi.com/view?r=eyJrIjoiYjE5ZDgwZGYtMGM1Yy00NjlkLTkxNDgtZDgyZjNlZWZhZmU1IiwidCI6Ijg1NDczOTk4LTFmODEtNDAxMS1iYzlkLTg3YWUwNGU2MTIwNCJ9)

[r=eyJrIjoiYjE5ZDgwZGYtMGM1Yy00NjlkLTkxNDgtZDgyZjNlZWZhZmU1IiwidCI6Ijg1NDczOTk4LTFmODEtNDAxMS1iYzlkLTg3YWUwNGU2MTIwNCJ9](https://app.powerbi.com/view?r=eyJrIjoiYjE5ZDgwZGYtMGM1Yy00NjlkLTkxNDgtZDgyZjNlZWZhZmU1IiwidCI6Ijg1NDczOTk4LTFmODEtNDAxMS1iYzlkLTg3YWUwNGU2MTIwNCJ9)



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**CONSIDERING** that often the traditional use of territories can happen for tens or even hundreds of kilometers away from housing areas, with seasonal displacement for extraction of rubber, nuts, *copaiba*, for example; such continuous use taking place for decades or more than a century, and in much of the state of Amazonas without any type of land regularization that generates legal security to traditional peoples (or even to private actors who, sometimes when not in bad faith, can be deceived and “buy” real estate titles registered in a notary's office but overlapping these same territories and, therefore, void or voidable);

**CONSIDERING** that, in the case of said notarized land titles (real estate deeds), supposedly belonging to private owners, but overlapping areas of traditional use of traditional peoples and communities (whether areas of housing, hunting, fishing, extraction of nuts or other forest products), only two situations in general happen:

i. these deeds are “grabbed land”, that is, they are fraudulent, and have no legality (as in the case of the operation of the Federal Police “Greenwashing”);

ii. the aforementioned deeds may actually be legally registered, which, in theory, could belong to a private individual. However, traditional peoples and communities have already used the area for decades or more than a century and, therefore, have obtained the right of ownership of the property via usucaption (in the case of a private area used in good faith for a period longer than the relevant legal or constitutional provision); such acquisition via usucaption is immediate with the elapsed time and continuous use, and only needs to be declared by judicial or administrative decision;

**CONSIDERING** the existence of the principles of prevention and precaution within the scope of socio-environmental law, which in summary determine the non-adoption or suspension of measures/activities that may cause serious damage or do not have the adequate calculation of the extent of damage;

**CONSIDERING:** i. the serious doubts about the real and effective way the carbon credit / REDD+ model to combat the climate crisis works; ii. the various violations in Brazil and around the world against the rights of indigenous and traditional peoples, their territories, in existing carbon and REDD+ projects; III. the potential to encourage a new wave of land rush, taking into account the participation of international capital and the fraud on the subject;

**WE DECIDE TO RECOMMEND** to the governor of the state of Amazonas, to the Secretary of State for the environment of Amazonas (SEMA/AM) and to the other secretaries of the state of Amazonas, to the mayors and Municipal Secretaries of the city halls of the state of Amazonas, to companies, institutions, NGOs, certifiers and all public or private actors that act in the carbon credit / REDD+ market with the use of indigenous territories and communities in Amazonas (with or without definitive land regularization) that they:



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I - suspend all ongoing operations, contracts and negotiations involving the carbon credit / REDD+ subject in the state of Amazonas, inside indigenous and traditional territories in the state, with or without definitive land regularization (including areas of alleged private titles but inside traditional areas of housing, hunting, fishing, extractivism of riverside, *quilombola* and indigenous communities);

II - suspend the trade of carbon credits in Brazil or abroad coming from indigenous and traditional territories in the state of Amazonas, with or without definitive land regularization;

III - forward this Legal Recommendation to all actors involved in ongoing negotiations and those already initiated or completed, from community, leadership, companies and national or international institutions for acknowledgement and adoption of the recommended measures;

IV - give wide publicity to this Legal Recommendation on all social media, internet webpages and groups of applications belonging to said agencies and companies or those in which they participate;

V - inform the MPF in the state of Amazonas of all negotiations, initiatives, contracts under negotiation, ongoing or already completed contracts, involving the subject of carbon credit / REDD+ in the state, as well as the geographical coordinates of activities, periods of generation of credits and all other data relevant to said projects; as well as the measures adopted for their suspension and their implementation;

VI - keep negotiations, contracts, and trade suspended while (all the requirements below must be met for negotiations on the subject to continue):

1. concrete effectiveness of mitigating climate impacts via offsetting carbon credits / REDD+, through suitable and internationally recognized scientific studies is not recognized;

2. non-violation of the rights of indigenous peoples and traditional communities in the state of Amazonas, as well as their traditional territories, resulting from the negotiations and application of such projects is not recognized

3. prior, free, informed and good faith consultation with indigenous peoples and traditional communities potentially affected by the projects, in accordance with ILO Convention 169, does not take place;

4. the subject, with respect to the above three items is not regulated, in order to ensure legal security to the peoples and guarantee enforcement of the principles of prevention and precaution;



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Failure to comply with this Recommendation shall constitute acknowledgment and responsibility of the recipients regarding the measures indicated. **Non-compliance with** the aforementioned measures shall result in holding the recipients and directors liable for their conducts or omissions, subjecting them to the consequent appropriate in or out of court measures.

**A period of 15 days is fixed, counted from the receipt and/or wide publicity of this Legal Recommendation in the press, to provide information on the recommended measures, sending the MPF supporting documents to prove that trade, operations and negotiations, related to ongoing cases have stopped.**

Refer to ASCOM PR/AM and SECOM PGR for publication and dissemination to national and international media.

Support is requested from the SCI/PGR for English language translation and dissemination.

Please forward this recommendation to the government of the state of Amazonas, to the Chief of Staff, to SEMA/AM and other state secretariats, to the city halls and municipal Secretariats of the state of Amazonas (also using their representative institutions such as the Amazonian forum of municipalities, UNDIME and others), to the carbon credit certifiers active in Brazil (Verra, Gold Standard, Indigo, CerNGOs and civil society institutions active with the subject in the AM (FAS - Amazonas Sustainable Foundation, IDESAM, among others) for notification and to inform the measures adopted to the MPF/AM in order to stop the negotiations, contracts or negotiations in progress (if any), forwarding the relevant supporting documents.

Please forward this recommendation for acknowledgement and dissemination among indigenous and traditional leaders and peoples to APIB, COIAB, APIAM, CONAQ, CNS, CNPCT and other groups and entities representing indigenous peoples and traditional communities in the Amazon.

This Recommendation shall be sent to the 6<sup>th</sup> Chamber of Coordination and Review (CCR) of the MPF, FUNAI, MPI ICMBio, MMA, INCRA, Palmares Foundation, MDA, MDS, CONAREDD and public entities with an interest in the topic for acknowledgment.

Manaus/AM, Tabatinga/AM, August 8, 2024

Eduardo Jesus Sanches  
Federal Prosecutor - PR/AM

Fernando Merloto Soave  
Federal Prosecutor - PR/AM



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Guilherme Diego Rodrigues Leal  
Federal Prosecutor - PRM Tabatinga

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Federal Prosecutor - PR/AM



## FEDERAL PROSECUTION SERVICE

Signature / Document certificate **PR-AM-00060146/2024 RECOMMENDATION No. 1-2024**

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