

International Workshop

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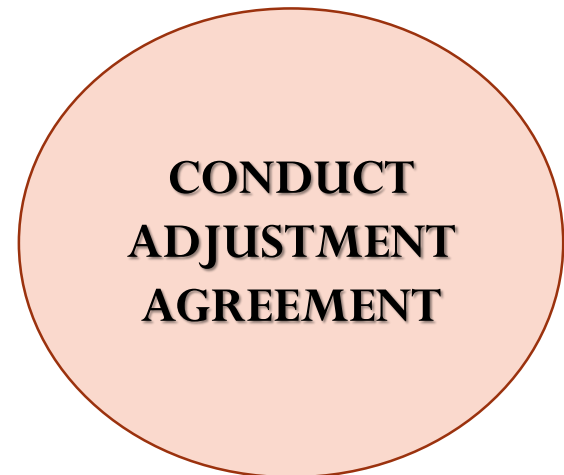
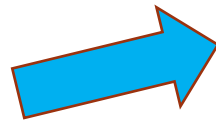
Public Civil Action: Access to Environmental Justice in Brazil

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Environmental Legislation in Brazil

- Decree 83.540, of June 4th, 1979
- Law 6.938/1981: National Environmental Policy

Article 14, §1º: ensures legitimacy for the Public Prosecution Office to propose lawsuit for civil liability for environmental damage, in order to oblige the polluter to indemnify or repair the damage done to the environment and to third parties affected by their activity, regardless of the existence of guilt.

- Law 7.441/1985: Public Civil Action Law
civil inquiry and public civil legal actions
- 1988 Federal Constitution
- Consumer Protection Code (Law 8.078/90)
- 1973 Civil Procedures Code

“Passarinhada de Embu”

First Public Civil Action - 1984

The conviction of a polluter for environmental damage resulted in an agreement between the prosecution office and the convicted party during the execution phase, setting the payment of multiple installments, with statutory interest and monetary correction

1988 Federal Constitution

- Concept of environment
- Strict liability of the polluter in repairing the environmental damage
- Public Prosecution Office:
 - permanent and independent institution, essential to the jurisdictional function of the State, with the task of protecting the legal order, the democratic regime and the inseparable social and individual interests (art. 127);
 - function of promoting civil inquiry and public civil action for the protection of the environment and other diffuse and collective interests (art. 129, III).

Civil Inquiry

Characters:

1. pre-trial
2. Investigative (administrative investigation)

Objectives:

- a) gathering conviction elements to enable the proposition of a public civil action;
- b) subsidize the signing of conduct adjustment agreements to fully compensate the environment damage;
- c) substantiate the expression of recommendations;
- d) hold public hearings for the protection of the safeguarded collective rights
- e) to justify its own archiving

Civil Inquiry

Three possible solutions:

- a) the filing of a public civil action for holding the polluter accountable
- b) the signature of a **conduct adjustment agreement** for full environmental damage compensation
- c) archiving the procedure due to the absence of environmental degradation to be repaired

Civil Inquiry

Archiving the procedure:

- No basis for filing the public civil action
- Review by the Council of the Public Prosecution Office
- Do not compromise the criminal investigations

Environmental Public Civil Action Legitimation

1. Public Prosecution Office
2. Public Defender's Office
3. Federate entities
4. Local authorities
5. Public corporations
6. Foundations and institutions of mixed economy,
and civil associations

(Law n° 7,347/85, art. 5, § 1)

Environmental Public Civil Action Fundamentals of Liability

Environmental Liability:

- Objective
- *Propter rem*
- Solidary
- Integral

Environmental Strict Liability

1. Damage
2. Action or omission of whom is being held accountable for the repairs
3. Causal link

It is irrelevant for accountability:

- subjective element of the agent
- legal regularity of the activity
- exclusive causes of guilt, such as unpredictable circumstances, force majeure or third party actions

Objective liability founded on the theories *of activity risk and full risk.*

Liability propter rem

The owner or possessor of the property, that, simply as a result of this condition, shall be responsible for repairing the environmental damage in their property, regardless of causing directly the degradation.

Solidary Liability

Direct,
indirect,
or both agents of the damage.

Integral Liability

Environmental damage includes: injury to natural, artificial and cultural elements

- **Repairing the environmental damage:**
 - the injury itself
 - all other damages (current, emerging, intercurrent, and moral damages)

Principle of *integral environmental damage reparability*

Conduct Adjustment Agreement

Concept:

extrajudicial enforcement in favor of the victim group

Object:

full compensation of the environmental degradation:

Obligations to-do;

Obligations don'ts;

Obligation to compensate;

Obligation to indemnify;

Convictions in money => compensation will revert to a Fund

Conduct Adjustment Agreement

Important:

- daily fine (*astreinte*)
- Internal control

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Conclusion

Thank you !

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