

The Brazilian Court of Audit and Control of Environmental Management

Cláudio Sarian Altounian
Luciano Carlos Batista
Márcia de Souza Leite Magalhães
Maria do Perpétuo Socorro

Brazilian Court of Audit
TCU

I - INTRODUCTION

Aware of the high social and economic costs of impacts caused to the environment, most national governments have begun to consider, in the decision making processes, the environmental consequences of human action.

The main characteristic of the environment is its interface with a variety of areas, contributing decisively to the sustainability of our productive activities and to maintain life itself. Thus, we can identify the presence of the environment in the hydrologic cycles that influence the Earth's climate, in the weather processes that shape the landscape, in the cycle of nutrients for agriculture and in the continuous evolution of the species, not to mention the importance of natural resources for other economic activities, such as mining, fishing, tourism, and others.

It is a fact that environmental management has been included in the agenda of Public Administration in an increasingly significant way¹. Its performance in this area is based on the primary obligation to protect the environment or on the obligation to prevent, mitigate or compensate the degradation resulting from the action that it implements. In order to fulfill this duty, the agencies and public entities of the three levels of government must carry out their activities in such a way as to prevent their distinct specific objectives from having a negative impact on the systemic outcome of governmental actions.

In this context, the role of the audit agencies is very important, both in verifying compliance of the management actions with the legal rules and in contributing to ensure coherence between the government's action and the requirements of a sustainable development model.

These lines of action are gradually being adopted by the Supreme Audit Institutions (SAI) in the whole world. There are currently groups of several of these entities focused on developing the methods for environmental auditing and the required knowledge to carry out this function. We can mention, as an example, the Working Group on Environmental Auditing of the International Organization of Supreme Audit Institutions, whose actions are aimed at promoting the proper management of natural resources by means of building the capacity of the SAIs to support their respective governments in improving environmental performance and protecting the health and safety of their citizens.

1. In this sense, amongst the objectives stated by the Federal Constitution, in article 3 the following are highlighted: the guarantee of national development and promotion of the common good. This necessarily includes the preservation of the environmental health and ecologic balance and its essential processes, since this is condition for the well-being and survival of human beings.

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The Brazilian Court of Audit (TCU), aware of these issues, has been developing audits in the entities responsible for the implementation of the Brazilian environmental policies, as well as in other agencies and programs whose action is likely to promote any significant environmental impact.

As from 1996, the TCU began to implement the Project for Development of Environmental Audits. The first measure adopted was the development of a study with a view to defining the strategy for addressing the issue. Later, lines of action for training the staff and environmental audit manuals were designed.

In 1997, in partnership with the Department for International Development - DFID and with the UK SAI (Cooperation Agreement TCU/UK), techniques were developed for operational audits in areas defined as priorities, among which the environmental area was selected.

In 2000, the TCU began to chair the Special Technical Commission on the Environment - Comtema - composed of the following countries of the Organization of Latin American and Caribbean Supreme Audit Institutions (Olacefs): Argentina, Bolivia, Brazil, Chile, Colombia, Honduras, Paraguay, Peru, and Venezuela.

In 2001, as a result of the studies developed in the scope of the Court itself, a specialized technical unit was created to address topics related to the areas of public works, assets and environment, called Secretariat for Control of Public Works and Assets of the Union (Secob). It includes among its competences technical support in the relationship of the TCU with other SAIs, support to the other Audit Secretariats in carrying out environmental audits, and articulation and integration of the control of environmental management by means of actions that encourage the execution of environmental audits.

It should be noted that other Secretariats of the Court are also dedicated to the subject, particularly the External Control Secretariat (4^a Secex), responsible for carrying out audits and instruction of the accounts of the agencies and entailed linked to the Ministry of the Environment; the Secretariat for Control and Evaluation of Government Programs (Seprog), charged with planning and coordinating the evaluations of government programs; as well as all the TCU Secretariats located in the States.

II - COMPETENCE IN THE ENVIRONMENTAL AREA

The external control exercised by the National Congress, with the assistance of the Brazilian Court of Audit, has its guidelines established in articles 70 and 71 of the Federal Constitution. Under these guidelines, the mission of the TCU is to assure the effective and regular management of public resources to the benefit of society. In the environmental area, the Court also exercises external control of the actions under the responsibility of the Federal Government, as well as of the use of federal resources in activities related to the protection of the environment.

In view of its relevance, the environmental issue has been privileged in the Federal Constitution. Article 23, *caput* and numerals VI and VII establish as a common attribution of the Union, the States, the Federal District and the Municipalities, to safeguard the common wealth, protect the environment, fight pollution, preserve the forests, the fauna and the flora. In turn, article 225 defines the environment as a public asset for the common use of the people, essential to healthy quality of life. Thus, it ensures the condition of strategic common wealth for the survival and development of the current and future generations.



As already pointed out, the TCU's area of action includes all the actions under the responsibility of the Federal Government that are related to the protection and use of the environment – including those resulting from transfer of resources to States and Municipalities through agreements and other such instruments.

It should be emphasized that environmental management, understood as the task of managing the productive use of environmental resources while preventing the reduction of environmental quality and the productivity of renewable resources (TCU, 2001), not only encompasses actions aimed at environmental protection, but also those related to activities that potentially or effectively cause negative environmental impacts.

In order to exercise this control, the Court uses various mechanisms, such as inspections, judgment of processes of rendering of accounts, as well as analysis of denunciations and representations.

In the field of inspections, which includes audits, inspections, surveys and tracking, the work focuses on verification of aspects related to accounts, finances, budget, assets and operation in the administrative units of the three branches of the Union, involving issues of legality, legitimacy and economy in the use of federal public resources. In the scope of this work, the environmental issue could also be the object of analysis. For example, in the case of audits of public works that potentially cause environmental impacts, the concession of the proper environmental licenses might be analyzed; or in operational audits, recommendations are made to the responsible agencies and entities on how to improve the process of management of environmental resources.

Regarding rendering of accounts, in government programs or projects and activities with environmental impacts, aspects related to legal compliance and the results of these actions are identified, and recommendations are made for improving previous work. With a view to conferring greater effectiveness to the processes of rendering of accounts, the TCU is currently analyzing, in the light of guideline contained in Decision N. 516/2003- TCU/Plenary, the adaptation of Normative Instruction N. 12/96 to include the obligation to present indicators that allow analysis of the environmental management of Federal Government agencies and entities.

It should also be noted that the analysis of representations and denunciations, forwarded by authorities or by society, allows verification of aspects pertaining to any failure to comply with the legislation in force, mismanagement or activities that are damaging to the environment.

the control over actions that potentially or actually cause environmental degradation will be exercised in such a way as to ensure compliance with the obligation to carry out previous environmental audit and to implement the proper mitigating and compensatory measures.

III – ACTION STRATEGY

The Court has been developing work in the environmental area since the beginning of the nineties. In 1998, it established a strategy for systemic action in the area and, as from that year, has been attempting to update and review its terms.

For exercising control of environmental management, the following guidelines were adopted (TCU, 1998):

The preservation of the quality of the environment and of ecological balance are goals of the Public Power; guaranteed through the rational use of environmental resources, with a view to their equitable and permanent availability, enabling social and economic development;

I- Poverty is one of the main causes of environmental degradation. Thus, its eradication is one of the ways to protect the environment. Therefore, there needs to compatibility between enters the promotion of social and economic development and the preservation of environmental quality and ecological balance.

In 2003, a broad institutional diagnosis was carried out, with a view to identifying characteristics of the organization in the area of environmental control based on its internal setting, as well as opportunities and threats faced in the fulfillment of its mission, based on the knowledge of the external setting. As result of this diagnosis, a biannual action plan for 2004/2005 was approved through Decision N. 217/2004 – TCU/ Plenary.

Regarding the government actions aimed at environmental protection, the Court will focus on priority actions as defined by the Federal Government, in order to guarantee that the scarce available resources are appropriately and efficiently allocated to these areas. Moreover, as environmental management is characterized by the participation of multiple agencies in its implementation, coordination and articulation among all the actors involved will be pursued.

In turn, the control over actions that potentially or actually cause environmental degradation will be exercised in such a way as to ensure compliance with the obligation to carry out previous environmental audit and to implement the proper mitigating and compensatory measures.

Another objective that will permeate the work will be the evaluation of the costs of negative impacts to the environment resulting from absence of prevention measures to protect the environment, in light of the fact that lack of this type of information sometimes leads public managers into making inadequate choices when deciding upon allocation of resources. This will enable comparison of the costs of correcting the impacts caused by government action with the costs of the measures that, if implemented, would allow mitigation or compensation of the impacts.

It is also envisaged that work will be done on themes that will receive special attention from the National Congress and society, with the aim of presenting a picture of the situations that are revealed and suggestions to the managers in charge for the adoption of improvement actions.

In the design of the strategy for the systemic action of the TCU in the environmental area, the following inputs and information were considered:

III. 1 - EXTERNAL SETTING

Regarding environmental issues, Brazil stands out in the international scenario due to several characteristics: its territorial and demographic size, being among the ten largest nations in the planet; the presence of the immense continuous mass of pluvial forest, still quite preserved; and the inequality of social and territorial distribution of income, which explains the speed and the extension of the alterations in the covering and the use of the land. (Ibama, 2002)

As regards the situation of environmental management in Brazil, it is necessary to improve the links between agencies that make up the National System of the Environment, as well as to adopt measures to encourage the inclusion of the environmental variable in the decision making process of related to government actions that potentially or actually cause degradation, particularly those pertaining to government policies, plans and programs.

The difficulties faced are largely due to the scarcity of resources allocated to environmental management, even in comparison with other sectors of the Federal Administration. To tackle this situation, the possibility of establishing partnerships with other public agencies involved in environmental control must be addressed.

Moreover, the control exercised by audit institutions must be carried out in an integrated manner, including the institutions that control the various spheres of government, as well as international entities. Such measure is especially important because the environmental problems cannot be limited to specific geopolitical spaces, and usually reach beyond regional borders.

III.2 – INTERNAL SETTING

The TCU has been seeking to stimulate strategic thinking and action, developing the foundation for the full accomplishment of the public mission assigned to the organization. This is especially important as regards environmental management, since it encompasses a huge scope and involves a significant number of agencies and public entities. Without the establishment of clear objectives, as well as the way to reach them, success is very unlikely in this area of control.

The policy of incentive to the qualification of the staff also support control in the environmental area. In this sense, the Court has already promoted a series of courses and sponsored qualification at *strictu sensu* post-graduate level staff members involved in the area.

It should be noted that the successive improvement observed in the TCU in relation to the establishment of routines for the implementation of its control processes benefits the control of environmental management directly. The existing manuals, both in the specific area of environmental audits and those pertaining to operational and compliance audits, enable greater efficiency and effectiveness in the accomplishment of the work.

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IV - MAIN RESULTS

Next, some of the relevant work already appreciated by the TCU in the environmental area is summarized. The full content of the reports, the votes and decisions is available at www.tcu.gov.br (*Link: Jurisprudence*)

IV.1 – CONTROL OF ENVIRONMENTAL IMPACTS OF ACTIONS IMPLEMENTED BY THE FEDERAL GOVERNMENT

Since 1999, inquiries of an environmental nature have been included in the scope of audits that are aimed at government actions that potentially or effectively cause negative impacts on the environment. The goal is to identify whether these impacts are previously analyzed.

Initially, only the audits of public works² included such inquiry, with a view to the verification of compliance with environmental legislation regarding the development of environmental impact study and licensing. In this case, information referring to serious irregularities are forwarded to the National Congress, which can determine the interruption of the execution of the budgetary resources until corrective measures are adopted by the managers in charge.

As from 2003, this analysis began to take place in all the audits carried out by the Secretariats of External Control whose object has the potential to cause significant environmental degradation. In this line, it also began to be analyzed whether the implementation of public programs was preceded by strategic environmental evaluation. This type of analysis is a pioneer instrument in the field of evaluation of environmental impact, which has been defined as the systematic process to foresee and evaluate the consequences of decisions adopted at strategic planning stages.

Based on the results of work that has already been done, the conclusion is that much of the government actions do not receive adequate environmental treatment. For example, approximately 30% of the works inspected throughout 2003 presented significant failures in the process of evaluation of this nature.

In the area of public works, it is worth pointing out the audits for the evaluation of compliance with environmental rules in water and road works, which were appreciated by Decisions N. 1572 and 1846/2003-TCU Plenary, respectively.

IV 2 - AUDIT ON THE PERFORMANCE OF THE FEDERAL GOVERNMENT IN THE MANAGEMENT OF WATER RESOURCES

Between 2001 and 2002, the TCU carried out an environmental audit with the aim of analyzing the issue referring to the management of water resources and the water supply crisis that some Brazilian localities were facing.

Based on the analysis of the causes of this crisis, it was found that the characteristics that surround it are present in all the regions of the country. One of most important is the launching of sewer *in natura* into water bodies that are used for supplying water to the population. Moreover, there were already problems related to increased costs of capture and distribution, reduction of the amount and quality of the water for human supply, and wastefulness, signaling the crisis perspective.

According to the National Water Agency (ANA), 19 metropolitan regions of the country (where 1/3 of the population lives) presented, in common, “deficiencies in the collection, treatment and final disposal of sanitary sewers, [resulting] in loss of the quality of source water and consequent reduction of water available for supplying”.

Based on the audit’s findings, the Court formulated, by means of Plenary Decisions N. 566/2002 and 1259/2002, several determination and recommendations to the agencies and entities in charge. Considering the importance of the subject, the TCU is supervising the implementation of these measures.

In this supervision, some important advances have been verified. Experts from audited agencies have even claimed that some issues raised in the audit process helped in the development of ideas that had been previously conceived, such as:

2. The TCU annually keeps track of the execution of over 400 public works with the objective of informing the National Congress on the occurrence of serious irregularities, so that it can analyze the convenience of interrupting budgetary resources until the problems identified are solved.

- Preparation of the Reference Base of the National Plan for Water Resources;
- Beginning of the preparation of the Strategic Plan for Water Resources;
- Beginning of the preparation of the Atlas of Priority Works for the Semi-Arid Region;
- Beginning of the preparation of the Diagnosis of the Current Situation and Perspectives regarding Water Supply to the Metropolitan Regions and Urban Agglomerations;
- Charging for the use of the water of Rio Paraíba do Sul;
- Articulation between the National Water Agency - ANA and the Brazilian Institute for the Environment and Renewable Natural Resources - Ibama.

IV.3 - AUDIT ON AGRARIAN STRUCTURE OF THE AREAS OF ENVIRONMENTAL PROTECTION UNDER THE RESPONSIBILITY OF IBAMA

Ibama's areas of environmental protection, initially derived from the incorporation of the property of the former Brazilian Institute of Forest Development (IBDF) and the Special Secretariat of the Environment (Sema) in 1989, presented several irregularities concerning their agrarian structure, including the presence of private properties in them, which was forbidden by the legislation in force (Decree N. 84.017/79).

Decision N. 190/1994-TCU 2nd Chamber³ attempted to address the problem, determining that Ibama compensate the private owners, and the implantation of a Management Plan and Bylaws for National Parks that did not have these documents.

Likewise, it should be noted that the TCU worked in a process related to the agrarian structure of the National Park of Bocaina Mountain Range (PNSB), located at the border between the States of Rio de Janeiro and São Paulo, identifying the existence of areas purchased for the formation of the protection unit that were partially located under the waters of the Atlantic Ocean.

IV.4 - INSPECTION OF ACCIDENT IN DAM FOR CONTAINING CHEMICAL WASTES

As a result of news published in the media in 2003, Ibama and ANA were inspected with a view to analyzing the rupture of a dam for containing chemical wastes under the responsibility of the companies Florestal Cataguazes Ltda. and Industry of Paper and Cellulose of Cataguazes Ltda., which took place in Minas Gerais, as well as the action of those entities in the prevention of new accidents involving environmental liabilities.

In the aforementioned inspection, the team detected failures and inconsistencies in the processes of licensing and inspection of Ibama, and proposed a range of control measures of environmental liabilities in order to minimize the possibility of occurrence of other accidents.

Decision N. 1.199/2003-TCU/Plenary pointed out aspects related to the need to change the operational process, conferring more security to the identification, monitoring and reduction/neutralization of existing environmental liabilities in the states and municipalities.

Thus, in accordance with the environmental recommendations of the TCU, the environmental agencies will have to promote, in their respective areas of action, work directed to the immediate identification and mapping of the existing environmental liabilities, their location, chemical composition of the wastes, necessary measures for neutralization/reduction or possible economic use, as well as the responsibility for their administration. With this data base, the Civil Defense and the environmental agencies will be better equipped to tackle accidents of this type. Other issues contemplated in the aforementioned Decision were the recommendations to strengthen the National System of the Environment (Sisnama), integrating the entities that compose it, as well as the promotion of hearing with Ibama employees indicated in the inspection report, aiming at investigating the responsibilities for the accident.

3. Enforce rigorously the provisions in the Forest code (Law N. 4.771, of 15/09/65) in private properties located within the limits of the Conservation Units, as provided for in articles 22/24 and 33/34 and in article 225, paragraph 1, numeral II, of the C.F. (sub-item 9.4.2); j) adopt the necessary steps to establish the Management Plan and the Bylaws in the National Parks that still do not have them, as provided for in articles 5/7, 43, paragraph 1, and 56 of the Regulation of the Brazilian National Parks, approved by Decree N. 84.017/79 (sub-items 9.4.4 and 9.4.5); l) adopt the necessary measures to fulfill, in the region of the National Park of the Capivara Mountain Range -PI, the provisions pursuant to article 225, paragraphs 1 numeral IV, and 2, of the C.F. and articles 17, 19, paragraph 3, and 27 of Decree N. 99.274/90 (sub-item 9.4.9); m) adopt effective steps towards removing the inhabitants improperly settled in the area of the National Park of Brasília, in view of the provisions pursuant to article 27 of the regulation of the Brazilian National Parks, approved by Decree N. 84.017/79 sub-item (9.4.10).

IV.5 - AUDIT ON THE PROGRAM OF SUSTAINABLE
DEVELOPMENT OF WATER RESOURCES FOR THE BRAZILIAN
SEMI-ARID - PROÁGUA

In 2000, the TCU carried out, in the scope of the Cooperation Agreement TCU/UK, operational audit of Proágua (Decision N. 829/2001-TCU/Plenary). Such program was aimed at guaranteeing the increase of the supply of good quality water for the Brazilian semi-arid, so that the relative water scarcity would not continue to constitute an impediment to the sustainable development of the region.

The audit goal was to evaluate the contribution of the actions that were implemented in the scope of the Program, at the federal and state levels, in achieving the goals of institutional strengthening and poverty reduction.

Among its main results, the design of normative instruction that governs agreements for the execution of water infrastructure works with the Ministry of the National Integration deserves highlight. Such rule contains the specification of technical viability, economic-financial, environmental and institutional criteria whose lack harmed the effectiveness of the Program, as verified during the audit.

Another important advance was the intensification, by ANA, of the development of courses/workshops for qualification and training of local managers and professionals involved in the area of water resources, in order to provide technical support and to pass on the recommendations of the audits carried out by the TCU and the Federal Secretariat of Internal Control (SFC), particularly regarding the prioritization of the design or revision of the state policies on water resources, establishment of independent agencies and implementation of instruments to charge for the use of the water and concession of grants. This will help speed up the analysis of studies and projects, as well as promote systematic technical guidance to the state units.

V - CONCLUSION

The techniques related to environmental audits are relatively new in comparison with the conventional audit instruments.

In face of the undeniable importance of the area, it is vital that all the Supreme Audit Institutions structure themselves to help their countries in the appropriate management of environmental resources, either by means of compliance audits or operational audits.

With a view to achieving the best practices in environmental auditing, as well as defining training methods for its auditors, the SAIs have been meeting regularly to exchange experiences. We should highlight the meeting of the Working Group on Environmental Audits in the scope of the Intosai, coordinated by the SAI of Canada, and the Comtema, chaired by the TCU; and the International Conference on Environmental Auditing to be carried out in Brasilia, in June 2004.

The Court, in the light of this context, has adjusted its structure in order to oversee government actions that have an impact on the environment, so that it can help improve environmental management and ensure the proper protection of the environmental wealth of the Country. ■

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