

**IUCN Academy of Environmental Law**

**8<sup>th</sup> Annual Colloquium of the Academy of Environmental Law**

**THE NEED TO PROTECT THE AMAZON FOREST  
AGAINST POTENTIAL DAMAGES RELATED  
TO THE SUGARCANE MONOCULTURE**

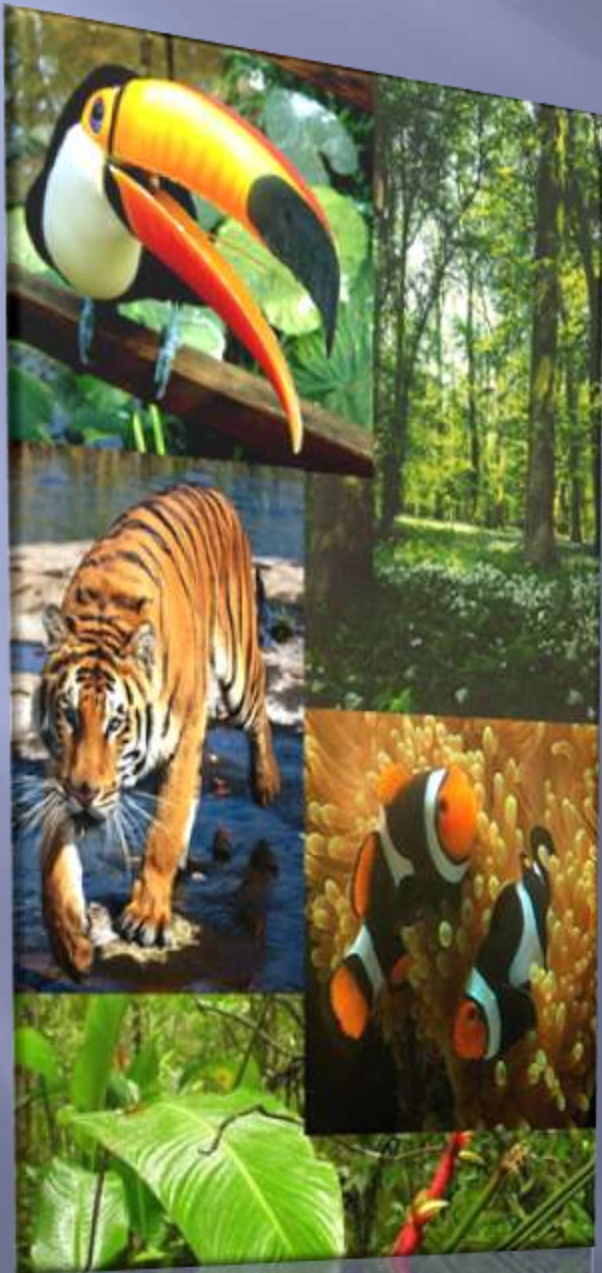
**Ghent University**

**September 13-17, 2010**

**Heline Sivini Ferreira**

**Maria Leonor Paes Cavalcanti Ferreira**

**Patryck de Araújo Ayala**



# OBJECTIVE

**Production of Sugarcane**



**Amazon Forest**



**Produce Biofuels**



**Impact Local Biological Diversity**

# THE AMAZON FOREST



Brazil – 61%

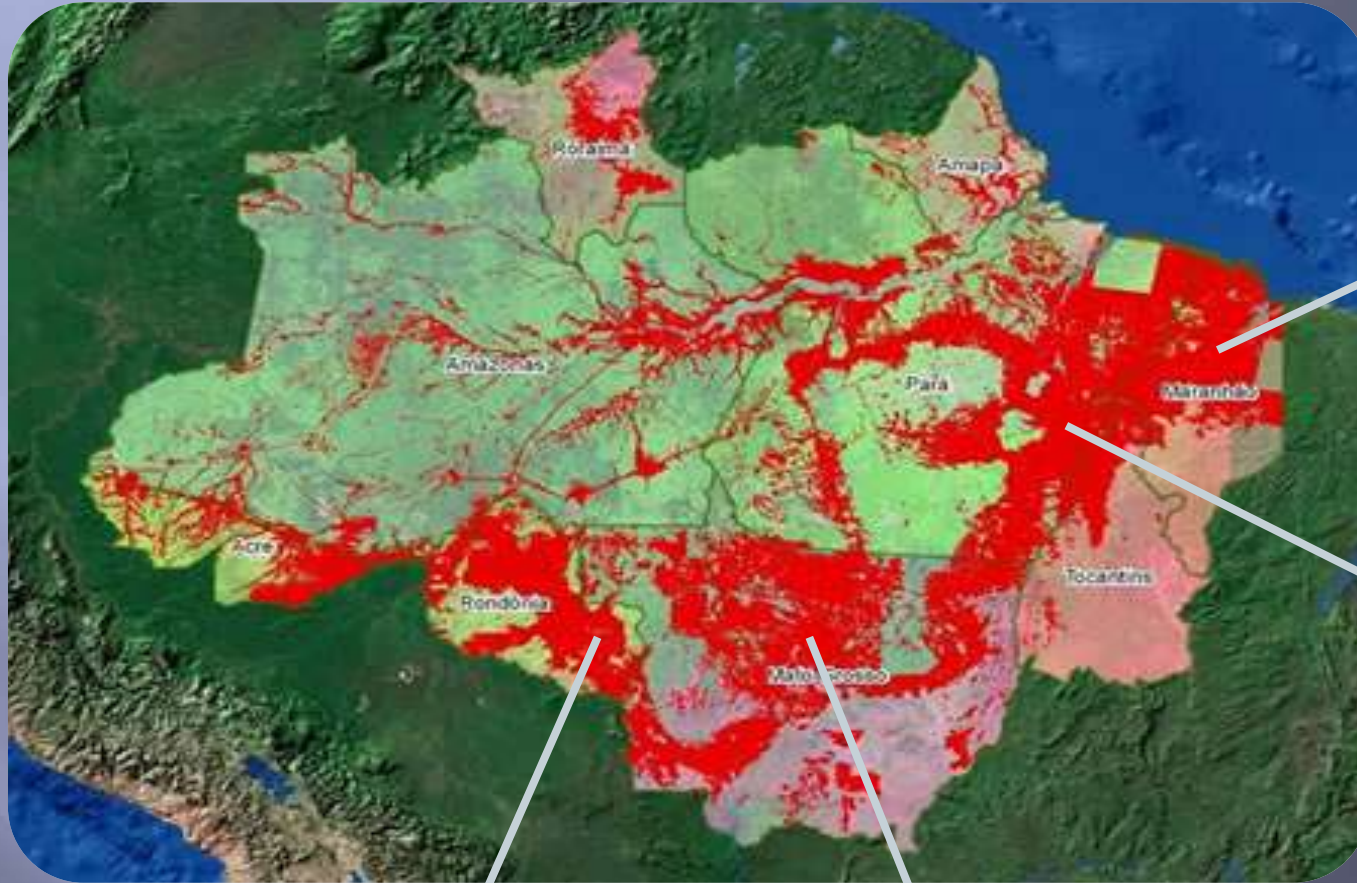
Acre, Amapá, Amazonas,  
Maranhão, Mato Grosso, Pará,  
Rondônia, Roraima, Tocantins.

Bolivia, Colombia,  
Ecuador, French Guiana,  
Guyana, Peru, Venezuela,  
Suriname and...

... Brazil: 60%



# DEFORESTATION IN THE AMAZON FOREST



Maranhão

Pará

Rondônia

Mato Grosso

Source:  
IPAAM, 2008

# DEFORESTATION AND SUGARCANE EXPANSION



## FACT

**Brazil is the biggest grower of sugarcane worldwide.**

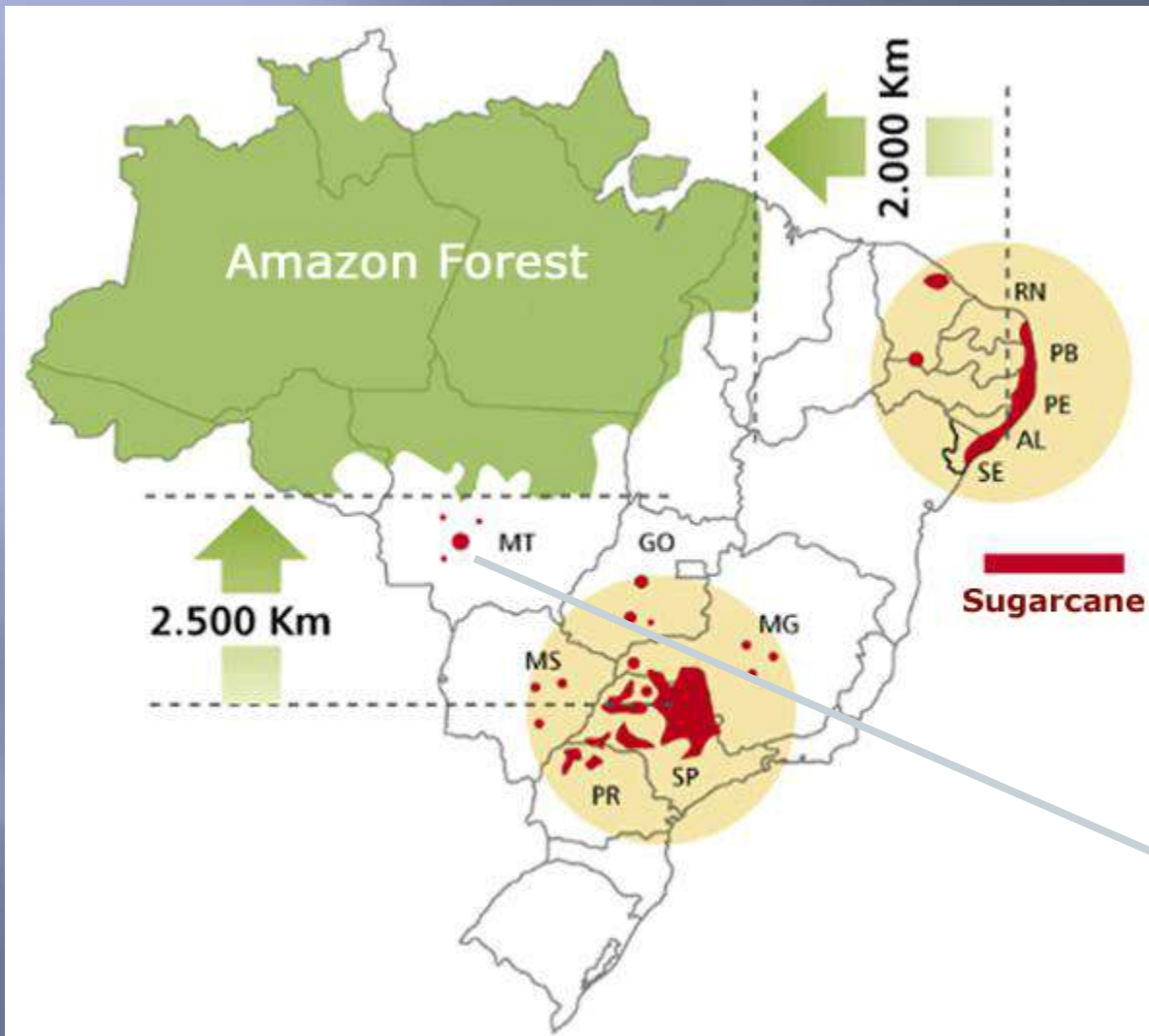
**There is sugarcane cultivation within the Legal Amazon limits.**

## FACT

**The lands have been clearing for:  
sugarcane cultivation;  
livestock.**



# DEFORESTATION AND SUGARCANE EXPANSION



**Amazonas**  
**Tocantins**  
**Maranhão**  
**Pará**  
**Mato Grosso**  
**Rondônia**

**Source:**  
**National Supply Company,**  
**September 2010**

**Mato Grosso**

**Source: Sugarcane Industry Union (UNICA)**

# SUGARCANE EXPANSION AND DIVERSITY



**DEFORESTATION = LOSS OF HABITATS**

**LOSS OF HABITAT IS ONE OF THE MAIN REASONS FOR  
THREAT AND EXTINCTION OF SOCIO AND BIODIVERSITY**

# THE ENVIRONMENTAL LEGAL STATE



## ELEMENTS OF THE CONCEPT

**Economical and social  
solidarity principle.**

**Sustainable  
development.**

**Rational use of  
natural asset.**

**SOURCE: VICENTE CAPELLA, 1994**

# THE BRAZILIAN CONSTITUTION

**CF/88, art. 225: "All have the right to an ecologically balanced environment, [...], and both, the Government and the community, shall have the duty to defend and preserve it for present and future generations".**

## PREMISES TO THE ENVIRONMENTAL LEGAL STATE

- **Broad and comprehensive concept of the environment.**
- **Integrative actuation between Government and citizens.**
  - **Fundamental duty to protect the environment.**

**SOURCE: JOSÉ JOAQUIM GOMES CANOTILHO, 2004.**

# THE AMAZON FOREST AS A NATIONAL ASSET

**CF/88, article 225, paragraph 4:**

**The Brazilian Amazon Forest [...] is part of the national patrimony, and it shall be used, as provided by law, under conditions which ensure the preservation of the environment [...].**



# TOWARDS A NEW SENSE OF SUSTAINABILITY

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**ETHICAL  
BEHAVE**

**ECOLOGICAL  
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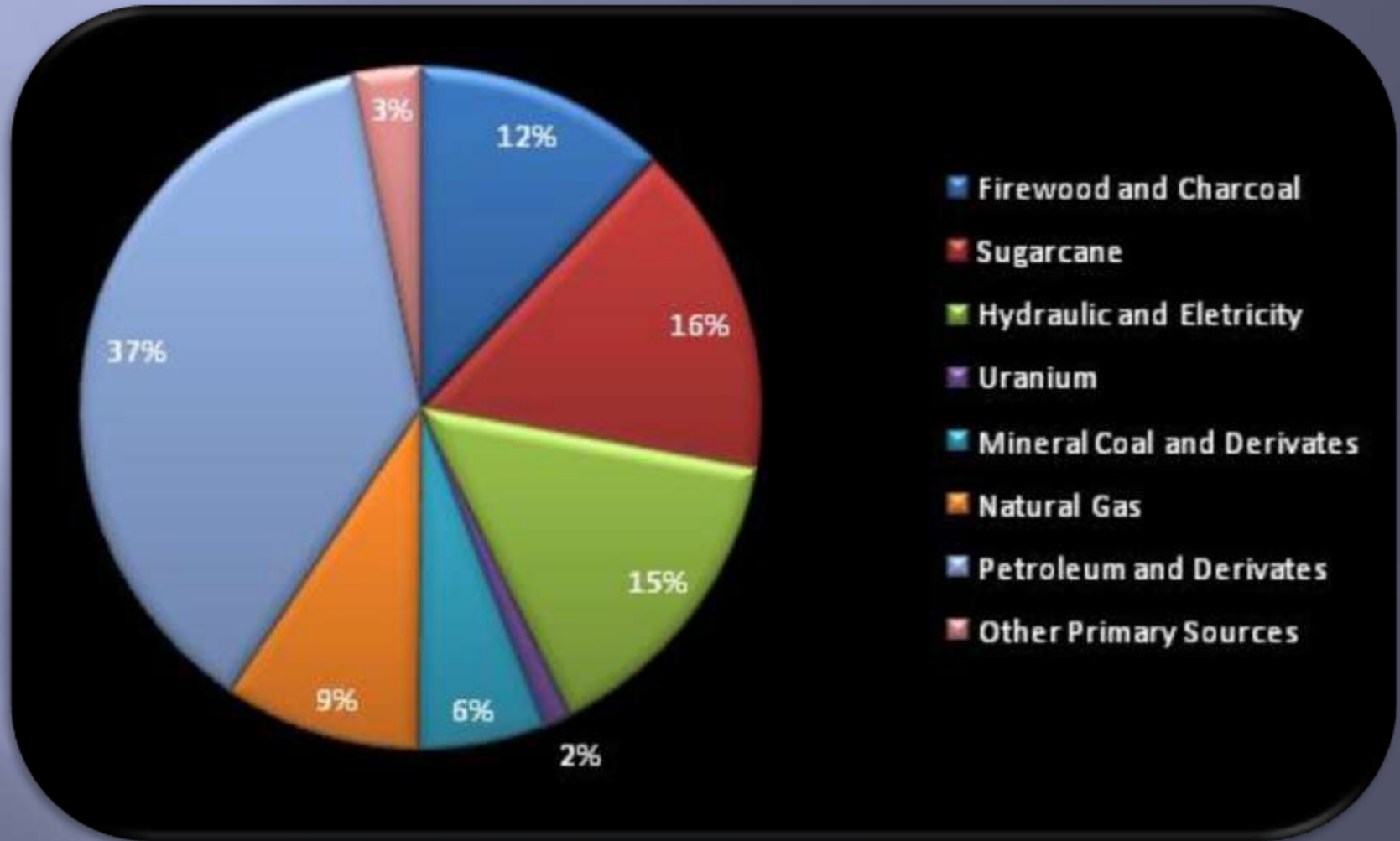


# CHALLENGE



**When will we have an inclusive, sustainable and economically viable society?**

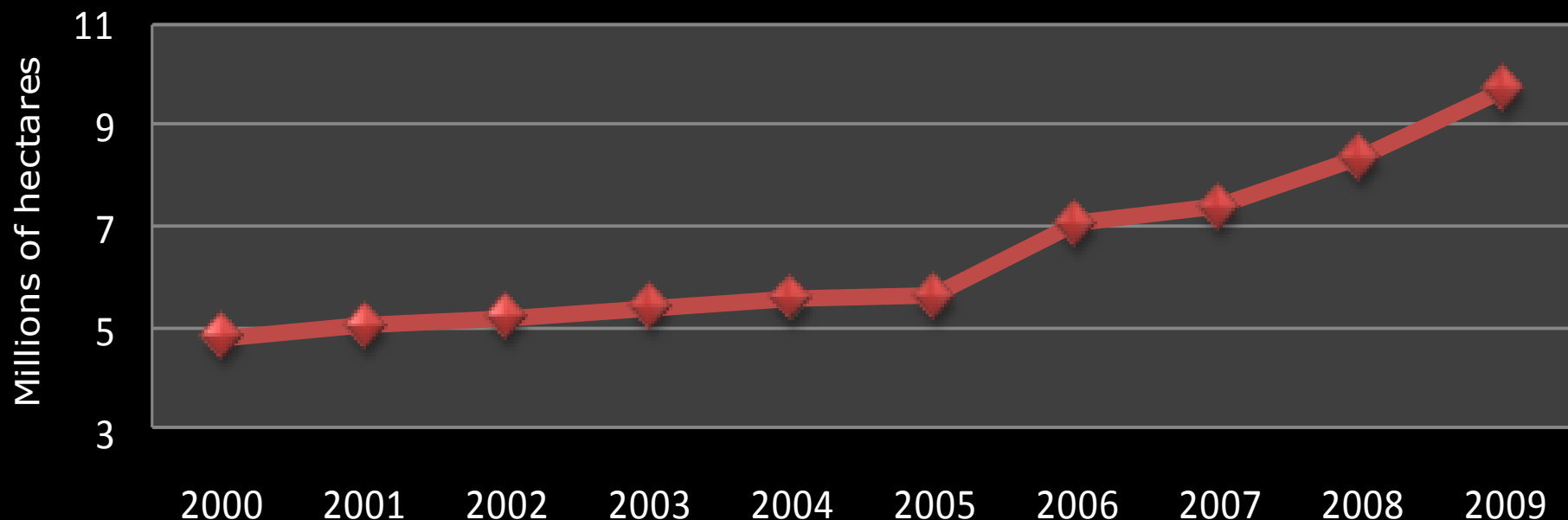
# BRAZILIAN ENERGETIC MATRIX



Source: Ministry of Mines and Energy, 2008.

# THE AREA CULTIVATED WITH SUGARCANE IN BRAZIL INCREASED 73,4% FROM 2000 TO 2008

—◆— Area cultivated with sugarcane in Brazil

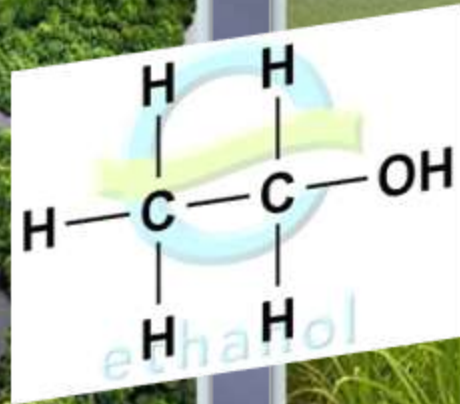


**2000: 4,82 millions of ha**

**2008: 8,36 millions of ha**

Source: Ministry of Agriculture, 2009.

# SUGARCANE IN THE AMAZON FOREST



**The National Supply Company recorded an increase of areas cultivated with sugarcane within Legal Amazon.**

**2007: 17,6 million of tonnes**

**2008: 19,3 million of tonnes**

Source: National Supply Company, 2008.

# DECREE N. 6.961/2009: AGROECOLOGICAL ZONING OF SUGARCANE

**Indication of areas  
without environmental  
restrictions and currently  
under anthropogenic use;**

**Decrease in direct  
competition with food  
production areas;**

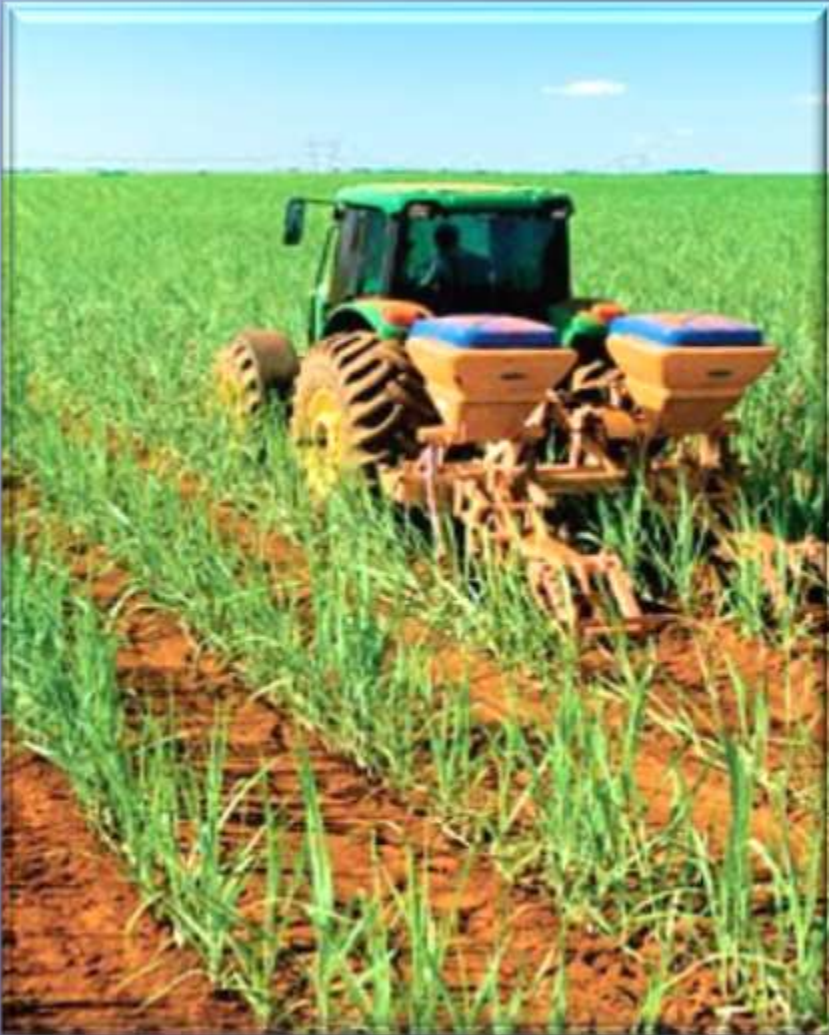


# DECREE N. 6.961/2009: AGROECOLOGICAL ZONING OF SUGARCANE



**Exclusion of areas for cultivation in the Amazonia and Pantanal biomes, as well as the upper hydrographical basin of Paraguay;**

# **DECREE N. 6.961/2009: AGROECOLOGICAL ZONING OF SUGARCANE**



**Indication of areas on  
land with declive  
less than 12%;**

**Production with  
mechanical harvest;**

**The Decree is not  
applied to industrial  
units already installed.**

# NEGATIVES POINTS OF THE DECREE N. 6.961/2009

- **The Cerrado biome was not protected;**
- **Priority areas for biodiversity were not mapped;**
  - **Sugarcane Zoning has no connection with other farming activities;**
  - **Risks of indirect impacts disregarded;**
- **Permission to activities that are already licensed in areas not capable.**



# THE BURNING PRACTICE



**BURNING CLOUD IN THE STATE OF PARÁ**

**Source: Globo Amazônia, September 2010**

**LOCAL AND GLOBAL  
POTENTIAL DAMAGES**

**Environment**

**Climate**

**Biodiversity**

**Workers**

**Population**

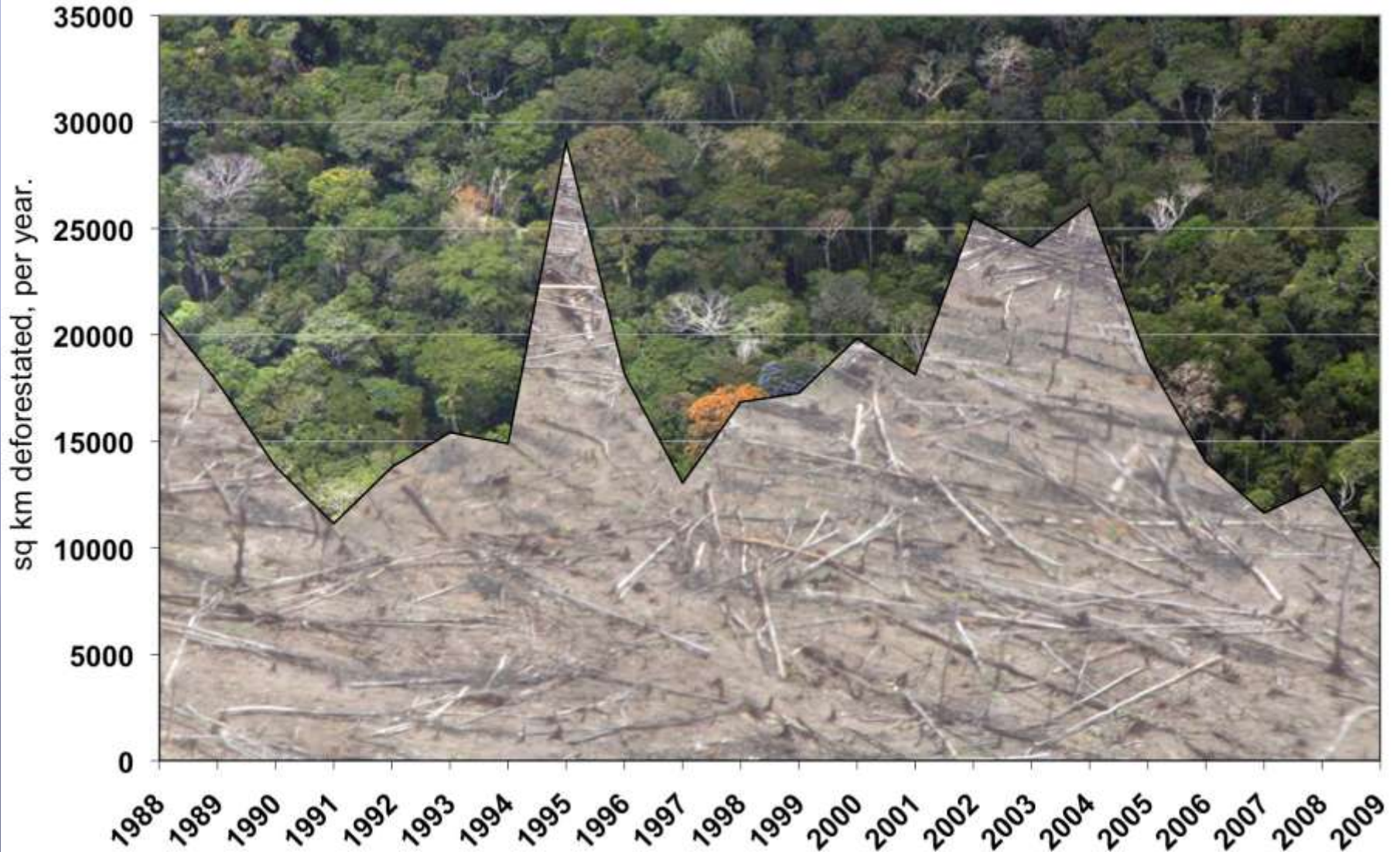
# **JURISPRUDENCE ANALISYS**

**“Fires, particularly in agroindustrial activities or agricultural organized or business, are incompatible with the objectives of protection of the environment set out in the Federal Constitution and in infraconstitutional environmental standards. In times of climate change, any exception to this general prohibition, besides due to the law, expressly in federal law, must be interpreted restrictively by the administrator and judge”.**

**VOTE OF THE JUSTICE HERMAN BENJAMIN (2009).**

# DEFORESTATION RATES IN THE AMAZON FOREST

## Deforestation in the Brazilian Amazon, 1988-2009

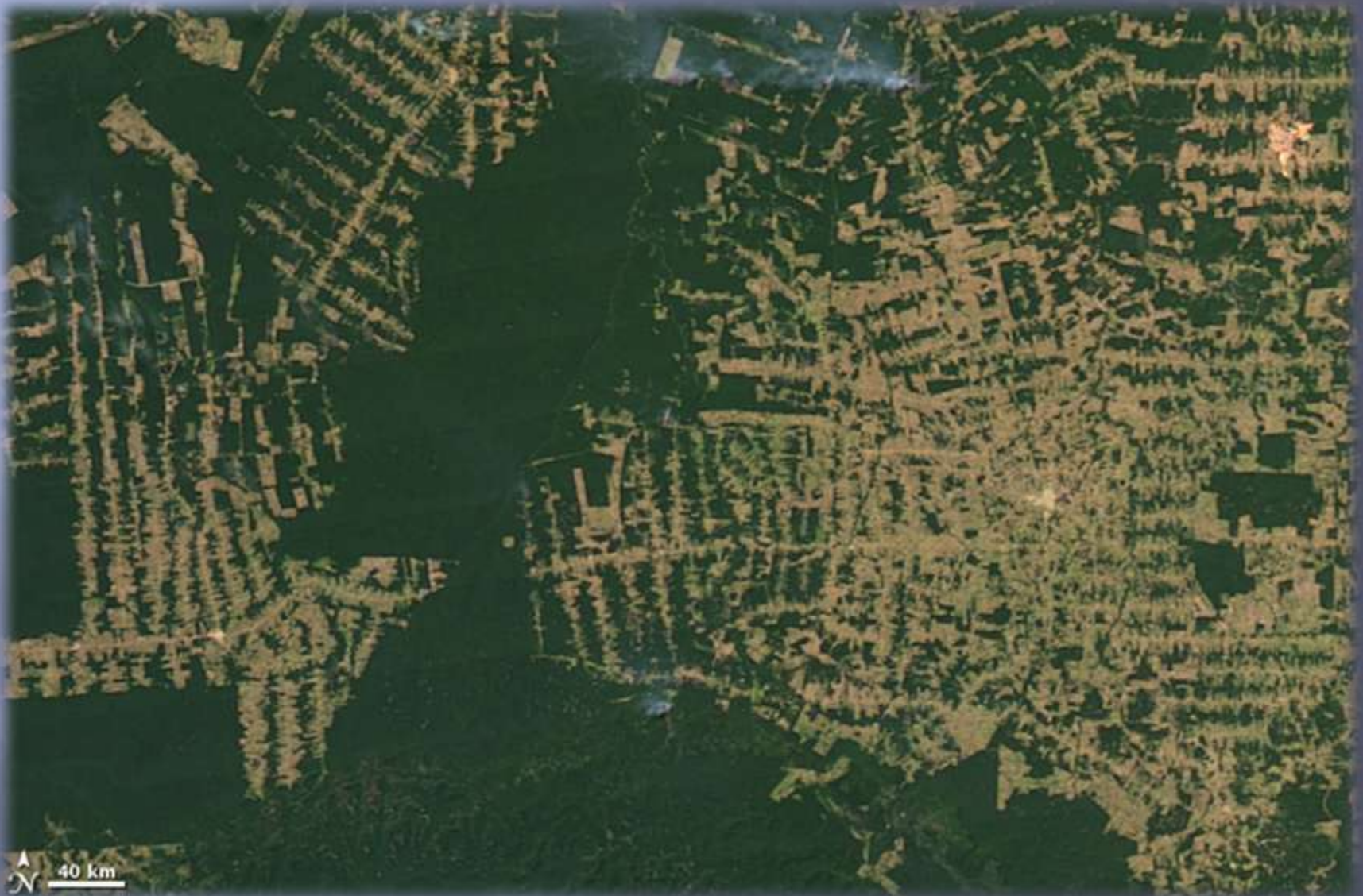


# STATE OF RONDÔNIA, 2000



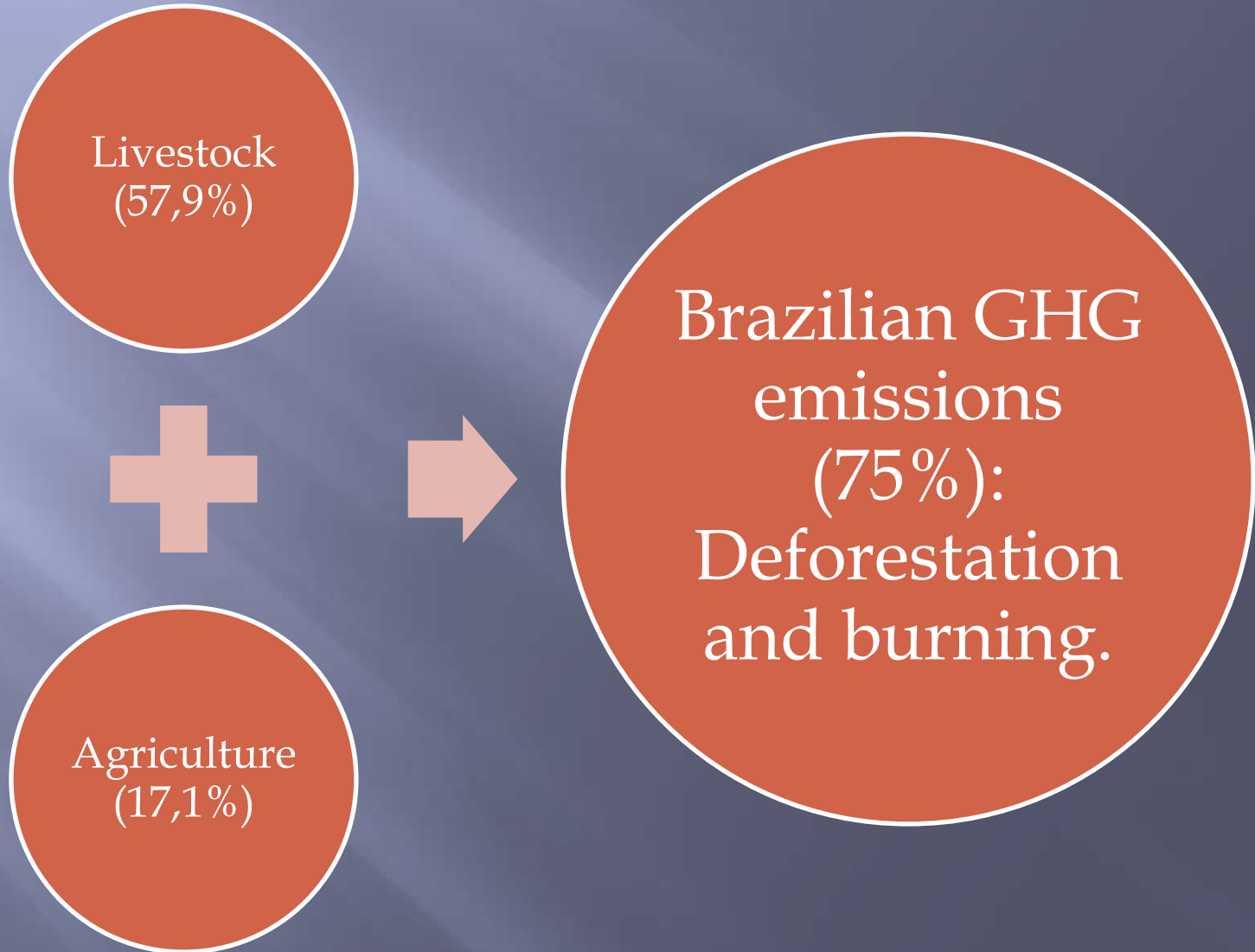
Source: MODIS, Nasa

# STATE OF RONDÔNIA, 2008

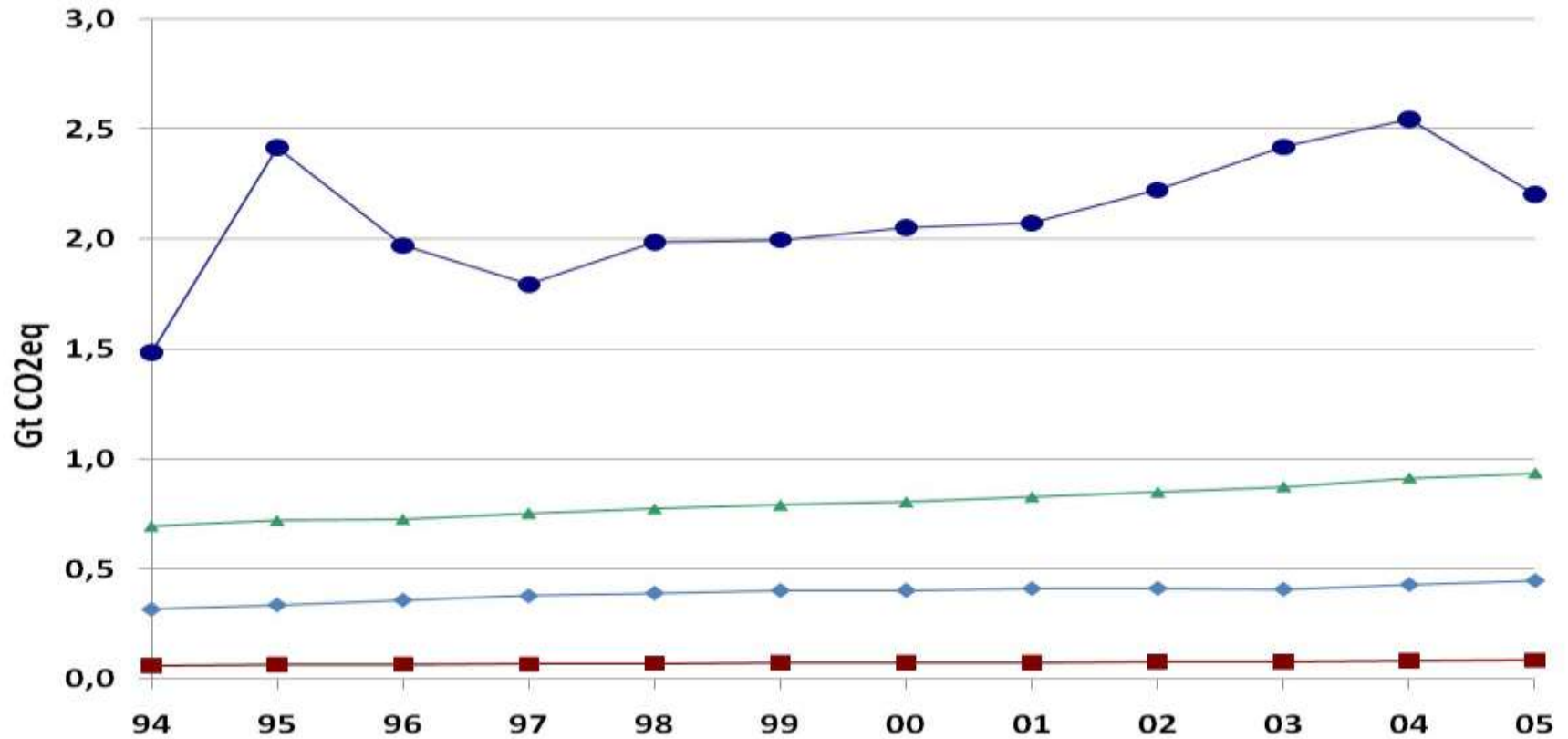


Source: MODIS, Nasa

# BRAZILIAN GHG SOURCES



# BRAZILIAN EMISSIONS RELATED TO LAND USE TRANSFORMATIONS AND DEFORESTATION



**AGRICULTURE AND LIVESTOCK**

**ENERGY**

**INDUSTRY**

Source: Brazilian on Emissions (1995-2005).

# THE INCONSISTENCY IN THE BRAZILIAN PUBLIC POLICIES

## **The Brazilian government presents distinct messages:**

- The production of the so-called first generation biofuels is encouraged by public policies (Federal Act n. 11.097/2005);
- The agroecological zoning of sugarcane prohibits its cultivation in two biomes: Amazon and Pantanal (Federal Decree n. 6.961/2009);
- Finally, the Brazilian Forest Code is now subject to review initiatives that decrease the levels of biodiversity protection that have been achieved so far.

# THE NEW APPROACH IN THE BRAZILIAN LEGAL EXPERIENCE

## Importance of the standstill principle



# THE STANDSTILL PRINCIPLE

**The principle has its visible development in the international law of human rights, in a theory of fundamental rights, and in the experience of several Western Constitutional Courts.**



# **ENVIRONMENTAL PROTECTION AND THE STANDSTILL PRINCIPLE IN THE BELGIAN JURISPRUDENCE**



**In a famous case that has already had its description in the legal literature, the Council of State admitted that relaxation of environmental standards violate a standstill principle, and a right to the environment if there are no compelling reasons to do so.**

# THE STANDSTILL PRINCIPLE IN BRAZILIAN CONSTITUTIONAL LAW

**The major State and social goal in the Brazilian Ecological Constitution is to protect the natural foundations of life, considering the need to protect an enduring existence (article 225);**

**Brazilian Ecological Constitution does not admit the return to the basic levels of social, cultural, economic and ecological protection.**



# FINAL CONSIDERATIONS

- **Although the premises of the Environmental Legal State can be identified in the Brazilian Constitution, it has not been enough to assure the protection of biodiversity within the Legal Amazon;**
- **A new sense of sustainability seems to be one of the keys to the construction of an ethical behavior towards the environment, perceived as a unique and indivisible asset;**
- **The major State and social goal in the Brazilian Ecological Constitution is to protect the natural foundations of life, considering the need to protect an enduring existence;**
- **Brazilian Ecological Constitution does not admit the return to the basic levels of social, cultural, economic and ecological protection.**

# THANK YOU!

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