

## Impacts of the new land laws in defining property rights in Pará

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In 2009 two new land laws were published: one by the Federal Government and the other by the Pará State Government. Both deal with rules for regularizing occupation of public lands, but have differences regarding the requirements and processes for issuing land titles. In this *The State of the Amazon* we analyze the implications of these laws and their regulation for defining property rights and environmental conservation in Pará. Finally, we recommend measures for improving application of these laws.

### Land ownership context in Pará

Pará is one of the Amazon states most affected by land title uncertainty. Estimates of the land title situation in the state indicate that 36% of its territory lacks a definition of its land rights (Figure 1). Of that, 21% is made up of lands supposed to be public, but which may be under occupation and 15% are possibly private properties without confirmation in the recadastre<sup>1</sup> process of the national land reform agency (*Instituto Nacional de Colonização and Reforma Agrária - Incra*).

The best-defined areas include 51% of Pará territory made up of protected areas (with the exception of areas of environmental protection<sup>2</sup>), with the 7% of areas in federal resettlement programs and records of private properties amounting to only 6% of the state, since those titles were validated by Incra in actions for recadastre of properties. However, part of the protected areas is occupied by informal squatters.

That uncertainty leads to legal insecurity for investments, restrictions on obtaining credit and difficulties in actions for environmental conservation and enforcement, as well as land conflicts. For example, data on this type of conflict reveal that over the last twelve years, 2,931 land conflicts occurred in the Amazon, of which one-third were in Pará<sup>3</sup> alone.

One of the barriers to resolving that situation is the existence of thousands of non-regularized holdings in public lands, either because of the state's absence in terms of exercising control over its property or due to the lack of a clear legal basis to solve this issue.

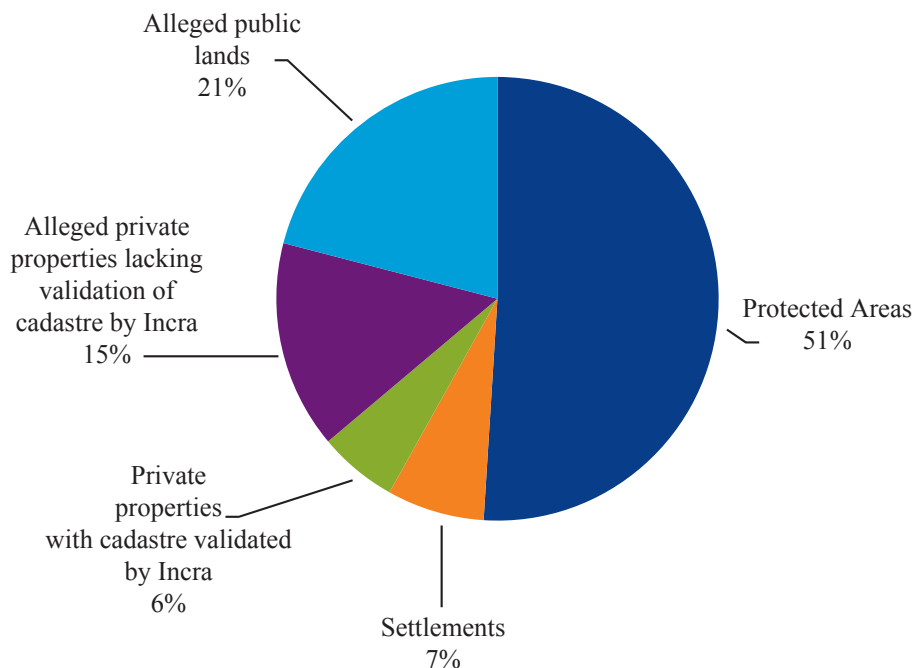


Figure 1: Estimate of the ownership situation for lands in Pará<sup>4</sup>

### Process for approving new laws

Two new laws were approved in 2009 to deal with deficiencies in the legal land ownership basis in the Amazon: federal law 11.952/2009 and Pará state law 7.289/2009. The first is the result of the conversion of Provisional Measure (MP) 458/2009, published on February 10 of the same year. Since the time for approval of an MP is short and has little space for interaction with civil society<sup>5</sup>, this MP was the target of criticism because it dealt with a complex issue: sale and donation of public lands in the Amazon.

The major aspects raised against Provisional Measure 458/2009 were (1) provision for donating lands for parcels of up to one fiscal module<sup>6</sup> and long periods for payment for larger parcels, which would reward irregular occupants who have freely benefitted from the natural resources on those properties, (2) the lack of linking of the land titling to the Ecological-Economic Zoning, considering that many states in the region had not concluded that process, (3) determining inspection of properties prior to issuing the titles only for those parcels larger than four fiscal modules, which would limit the capacity for identifying conflicts and overlapping territories occupied by local communities<sup>7</sup>. During the almost four months of approval of the Provisional Measure (MP), there were only four public debates; none, however, occurred in Pará<sup>8</sup>. That MP was converted to law 11.952/2009 by the National Congress in June, 2009. Considering that this Federal Law will apply in around 670 thousand square kilometers in the Amazon (almost twice the area of the states of São Paulo and Paraná together) it would be recommendable to have at least one public hearing in each one of the nine states encompassed by the law.

The implementation of this law began in 2009 through the Legal Land program (*Terra Legal*), coordinated by the Ministry of Agrarian Development. In Pará, *Terra Legal* intends to cover eighty-seven municipalities, of which thirty-seven were visited in 2009 in order to perform the cadastre of holdings on public lands (Figure 2). Some of those municipalities have lands under state jurisdiction, where the Pará Land Institute will implement the new state land law.

This state law resulted from approval of bill 384/2007 by the Pará Legislative Assembly after almost two year of its elaboration. The state law also deals with the possibility of selling state public lands. However, that project was not subjected to a broad public debate in Pará. In fact, public consultation was insufficient, since the proposed law was discussed at only two public events, which were not announced or reported by the local or national press<sup>9</sup>. Furthermore, text and situation

of the draft law was not available on the Pará Legislative Assembly website, which restricted even more its discussion. The project was voted by the State Assembly on June 30, 2009 and will be applied in 257 thousand square kilometers or 20% of the state<sup>10</sup>, equivalent to the area of the state of São Paulo (Figure 3). Below, we will analyze the contents of those laws.

### Analysis of the land laws

The two land laws begin with the premise that in order to resolve the lack of definition with property rights it is necessary to regularize irregularly occupied public areas, meaning, issue property titles to their occupants. Some of the rules for granting those titles respect environmental and land title laws in effect, including the performance of georeferencing of the properties and the requirement to fulfill environmental legislation by demanding restoration of environmental damages (such as illegal deforestation) (Table 1). However, other aspects of those laws may result in negative impacts on land title regularization, such as the consolidation of conflicting occupations and rewarding those who exploit public assets free of charge. In addition, they may increase deforestation and forest degradation in the state.

For example, the state law allows regularization of lands occupied for at least five years, but without imposing a cutoff date (Table 1). In other words, the state allows new occupations to be regularized if they reach a period of five years, as long as they are not contested by third parties during that period. As a result, the law ends up encouraging new irregular occupations of public lands in the Amazon, which might stimulate an increase of deforestation in the state due to two main reasons: to signal new occupations and to expand areas for agriculture and ranching production, since it has been more profitable to invade and deforest new areas than to invest in an increase in productivity in already opened areas.

On the other hand, the federal law established that federal lands may only be regularized if they were occupied by December 1<sup>st</sup>, 2004. However, according to Normative Instruction number 37/2009 from the Ministry of Agrarian Development, proof of the period of occupation is done through documentary means and not necessarily through analysis of satellite images<sup>11</sup>. In that case, there is the risk of regularizing more recent land occupations based on falsified documents. One way to reduce this risk would be at least to analyze satellite images of vegetation cover to identify if there was occupation before 2004. Furthermore, it would be recommendable to have a prior inspection of the occupied areas, but federal law requires inspections only

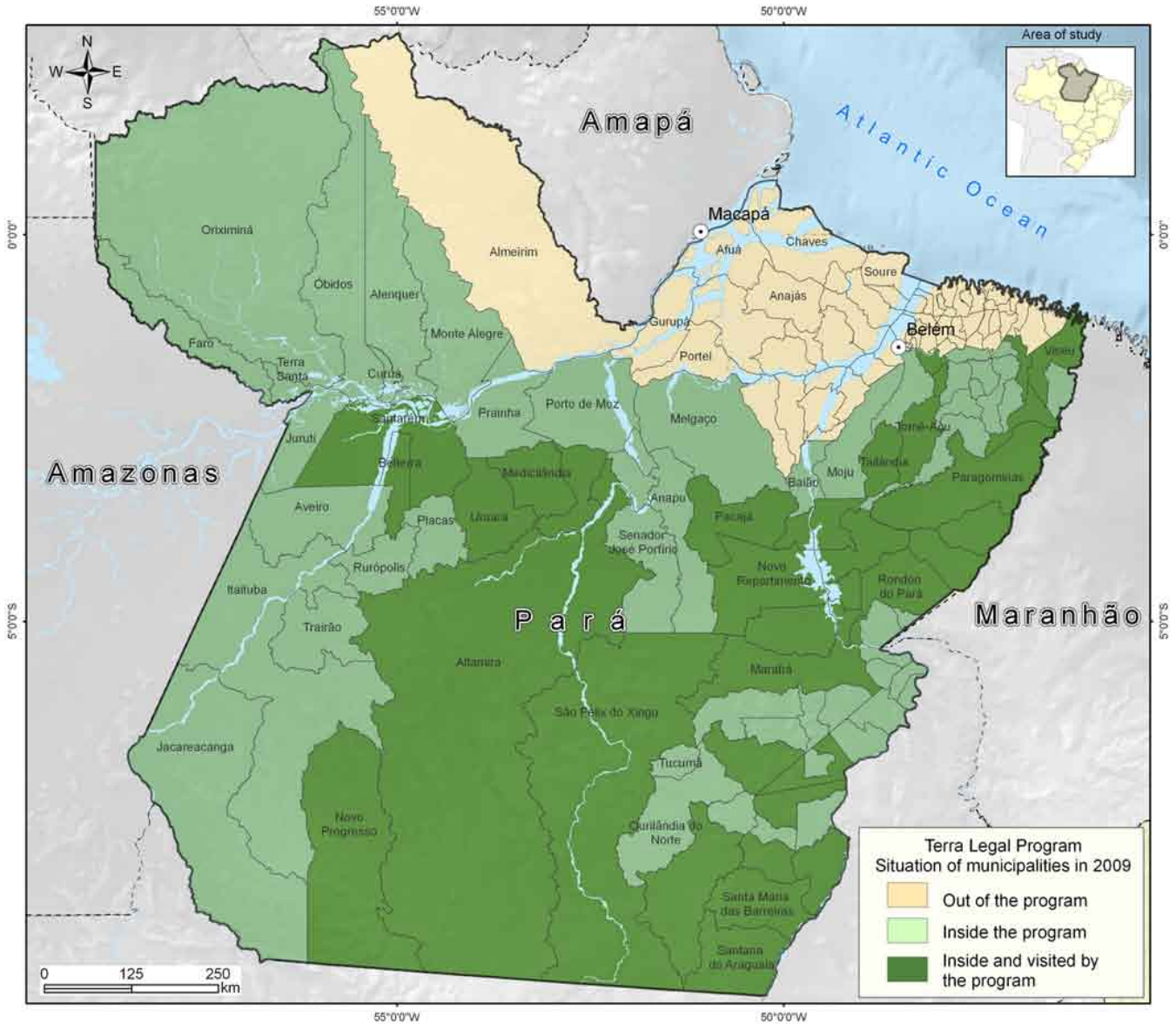


Figure 2: Status of municipalities in Pará State at the Terra Legal Program in 2009<sup>12</sup>

in properties larger than four fiscal modules, with some exceptions for cases below that threshold (Table 1).

The lack of inspection may also lead to ignoring cases of overlapping between the requests for regularization and other priority uses under law, including the creation of protected areas and recognition of areas of indigenous people and local communities. In an attempt to reduce that risk, Decree 6.992/2009 establishes that the Ministry of Agrarian Development will consult other agencies potentially interested in the areas before titling private occupations<sup>13</sup>. However, those agencies have only thirty days to pronounce themselves and the lack of responses after this deadline implies the absence of opposition to regularization. Given that agencies such as the National Foundation for Indigenous People (FUNAI in Portuguese) and Chico Mendes Institute for

Biodiversity Conservation (ICMBIO in Portuguese) have financial and human resource restrictions, it is unlikely that they will meet the thirty day deadline indicated in the decree. Thus, areas titled without inspections may lead to the legalization of irregular occupations and increase land conflicts.

The state law, unlike the federal law, establishes that all properties must be inspected prior to issuance of titles, which reduces the risk of legalizing situations in dispute. However, that law creates the possibility of legalizing properties irregularly enrolled in land registry offices by means of a legal agreement signed between the landholder and Pará Land Institute (*Iterpa*) settlement. In this case, *Iterpa* may regularize only the area that meets the requirements of state law 7.289/2009 and in exchange, the holder of the property returns the remain-

ing area to the state. This is a polemical provision, since it may be interpreted as a means for legalizing land grabbing (known as *grilagem*), which is often associated with violence in the countryside and longstanding practices of corruption in land registry offices in Pará (reported in several studies, including Parliamentary Commissions and inspections by the State Justice system). Thus, the risk of regularizing areas in dispute without a more accurate analysis of the situation exists in both the federal and state laws.

Finally, the amount to be charged for potentially occupied lands will reward those who have enjoyed use of natural resources freely and in a predatory manner. Even though the amounts had not been publicly disclosed as of January, 2010, the federal law itself establishes that

one of the indices for calculations used by the Federal Government considers that the longer the time of occupation, the lower the price of the land will be<sup>14</sup>, ignoring, for example, the profit obtained by the occupant from harvesting and selling natural resources. In an attempt to reduce this premium for the irregular occupant, the state law establishes the charging of an annual fee for occupying state public lands on properties that have not yet concluded the regularization process. That fee is a sort of *rend* so that the occupant will not freely enjoy the use of state public assets. The fee could also serve as a disincentive to new occupations in state areas. However, charging it will depend upon effective enforcement by Iterpa in the 20% of state territory where the new law will apply.

**Table 1: Main aspects of new land laws from 2009 at the federal and state level**

LEVEL OF GOVERNMENT	FEDERAL (LAW 11.952/2009, DECREE 6.992/2009 and Normative Instruction of Ministry of Agrarian Development 37/2009)	STATE (LAW 7.289/2009)
<b>Principal agency</b>	Ministry of Agrarian Development	Pará Land Institute (Iterpa)
<b>Time requirement for regularization</b>	Occupations up to December 1st, 2004 in an orderly and peaceful manner	Minimum of five years, without limit on date for occupation and as long as there is no legitimate challenge from third parties
<b>Impediments to regularization</b>	Corporate entities; owners of properties; foreigners; those who have a position or public employment with Incra, the Ministry of Agrarian Development, the Federal Planning Secretariat of the Ministry of Planning, Budget and Management, or with state land agencies	Prior beneficiaries of land concession; land owners may regularize holdings only through purchase
<b>Inspection prior to issuing land titles</b>	Required for more than four fiscal modules and in smaller properties in the following cases: (1) existence of environmental infraction or work analogous to slavery; (2) cadastre done by proxy; (3) existence of land conflict on parcel.	All of the properties
<b>Monetary Value of Property</b>	Amounts differentiated by size of properties: (1) free of charge below one fiscal module; (2) possibility of differentiated value for between one and four fiscal modules and (3) based on an Incra price table and special rates for between four and fifteen fiscal modules	Based on prices practiced in the rural land market, defined in a table produced by the State Agriculture Secretariat
<b>Form of payment</b>	In cash with 20% discount or installments for up to twenty years in annual installments, with grace period of three years	In cash with 20% discount or installments for up to ten years, plus 30% discount for properties that respect legal reserve and areas of permanent protection (APP)
<b>Environmental liabilities</b>	Signing of legal agreement after issuance of title	Requirement of Rural Environmental Cadastre with signature of a legal agreement
<b>Charging of occupancy fee for non-regularized properties</b>	None	0.5% of monetary value of property that has not yet concluded regularization process
<b>Mechanisms against false titles</b>	Provides no specific measures in this area	Legal agreement to validate false titles in the area of the property that meet requirements of state law. The rest of the area must be returned to the state.

## Recommendations for public policies

The two new laws provide for advances such as the demand for environmental regularization linked to land title regularization. Furthermore, the Pará law innovates positively in demanding payment for the use of non-regularized land. However, several gaps and risks persist in the laws. We thus recommend the following measures for improvement:

***Limit the time of occupation in state lands regularization.*** The state law should establish the same time limit for property regularization that has been provided for in the federal law, to avoid encouraging new occupations with the prospects of future legalization. To do this, it will be necessary to change state law 7.289/2009.

***Link the regularization of federal lands to positions expressed by all interested agencies.*** The agencies with potential interests in the areas to be regularized must necessarily be heard before the lands are titled<sup>15</sup>. The thirty days deadline is incompatible with the operational reality of those agencies. Thus, decree 6.992/2009 should be altered to enable regularization to proceed only when the Ministry of Agrarian Development has received positions from all institutions. To facilitate and speed up that process, the interested agencies should set up a Working Group amongst themselves to deal with interests and conflicts in each tract of land to be regularized.

***Use satellite images to confirm time of occupation.*** The Ministry of Agrarian Development should utilize satellite images from 2004 (referring to August 2003-July 2004) and 2005 (referring to August 2004-July 2005) to verify evidence that the land being solicited for occupation

was already occupied by December, 2004. The images, available for free at the website of the National Institute for Space Research (*INPE* in Portuguese), from the Landsat and CBERS satellites can detect evidence of occupations above 6.25 hectares<sup>16</sup>. This precaution should be greater in areas where the Federal Law does not call for obligatory inspections prior to issuing the land titles.

***Modify the calculation and disclose the monetary value for the land.*** Those who have occupied public lands for a longer time should pay more, considering that they have already enjoyed use of the land and its natural resources, such as timber.

Furthermore, the monetary values for the lands should be publicly disclosed, since they concern the privatizing of a public asset, which should occur based on broad transparency of information. Disclosure had not occurred as of January 2010, despite the Federal Government having issued some 197 land titles larger than one fiscal module in the states of Mato Grosso, Rondônia and Pará, primarily in the BR-163<sup>17</sup> road region.

***Distribute beforehand proposals for legal agreements to legalize irregularly registered areas.*** The requests for signing legal agreements to regularize false land titles should be previously disclosed by Iterpa, so that interested institutions may express themselves. For example, should the Public Prosecution Service be promoting some sort of investigation about the case, it may oppose an agreement of this nature. In addition, human rights organizations connected to land issues need to have the chance to express themselves in those cases, to avoid legalization of properties with illegal titles where disputes have been or are occurring. The obligation of prior disclosure can be established by state decree.

## NOTES

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<sup>1</sup> Recadastré of rural properties is a process coordinated by Incra to update information in the Cadastre System for Rural Properties and to detect irregularities related to land titling. More details in Barreto, P; Pinto, A.; Brito, B. & Hayashi, S.. 2008. *Quem é dono da Amazônia. Uma análise do recadastramento de imóveis rurais*. Belém, Imazon: 74p.

<sup>2</sup> An Environmental Protection Area is a type of protected area that does not affect the ownership of the land and in which private properties have some restriction of use in favor of environmental conservation.

<sup>3</sup> According to the Pastoral Land Commission, land conflicts are actions of resistance and confrontation for the possession, use and ownership of land and for access to rubber tree groves, *babaçu* palm forests or Brazil-nut groves, when they involve squatters, settlers, remnant populations of *quilombos*, small landholders, occupants, the landless, and others. Source: *Comissão Pastoral da Terra. Conflitos no campo. CPT*, 2008. Available at <http://www.cptnac.with.br/?system=news&action=read&id=2800&eid=6>. Access on January 5, 2010.

<sup>4</sup> In calculating protected areas we did not consider areas of environmental protection, since that type of unit does not alter land title status, and it is possible to have irregularly occupied public lands inside such an area. Sources: Incra. *Sistema Nacional de Cadastro Rural*. Incra, 2007; Incra. *Assentamentos Rurais na Amazônia*, 2006. Imazon, 2009; Data on recadastré of rural properties carried out by Incra based on Administrative Rulings 558/1999 and 596/2001.

<sup>5</sup> The deadline for converting provisional measures into law is sixty days, which can be extended for an equal period when voting on them has not been closed by the Lower House and by the Senate (art. 62, paragraphs 3rd and 7th of the Federal Constitution).

<sup>6</sup> A fiscal module will vary according to the municipality, but does not exceed 100 hectares in the Amazon.

<sup>7</sup> Brito, B and Barreto, P. The risks and the principles for landholding regularization in the Amazon. The State of the Amazon, 10. Imazon, Belém, 2009. Available at [http://www.imazon.org.br/novo2008/publicacoes\\_1er.php?idpub=3565](http://www.imazon.org.br/novo2008/publicacoes_1er.php?idpub=3565).

<sup>8</sup> The public debates occurred in an online chat with the congressman in charge of the process to convert Bill 498/2009 into law (Federal Congressman Asdrúbal Bentes); a hearing at the Amazonas State Legislative Assembly; a Public Hearing in the Federal Senate and discussions during the Vigil for Preserving the Amazon (an event that occurred in the Senate to hand over a petition with 1,1 million signatures collected by the Amazon Forever campaign, led by Brazilian artists).

<sup>9</sup> Benatti, José Heder. Interview granted to Brenda Brito. Belém, October 19, 2009.

<sup>10</sup> Iterpa, 2007.

<sup>11</sup> The Ministry of Agrarian Development Administrative Ruling 37/2009 in Appendix II established twelve types of documents that may be used to prove occupancy prior to 2004: 1. Titles issued the Federal or State Government; 2. Rural Property Cadastre Certificate; 3. Declaration of worthiness from the Program of Strengthening of Rural Familiar Agriculture (*PRONAF* in Portuguese); 4. Proof of Payment of Rural Land Tax (*ITR* in Portuguese) (payment prior to 2004); 5. Cadastre with other rural technical assistance Agencies; 6. Proof of opening of a proceeding referring to possession at a public agency; 7. Receipt of purchasing of for agricultural products; 8. Fines/Notifications from environmental agencies regarding possession; 9. Receipt for purchase and sale of rural production; 10. Permit for animal transportation; 11. Vaccination card for animal herd; 12. Producer's identification card.

<sup>12</sup> Sources: Ministry of Agrarian Development. Rotas do Programa Terra Legal na Amazônia. Available at <http://bit.ly/cSVI2S>. Acess on February 08 th, 2010; Ministry of Agrarian Development. Calendário no Pará. Available at <http://portal.mda.gov.br/terralegal/pages/padatas>. Access on February 08th, 2010; Ministry of Agrarian Development. 436\_municípios\_Terra\_Legal. Portal da Cidadania, 2009.

<sup>13</sup> Secretariat for Federal Patrimony, National Foundation for Indigenous People (FUNAI in Portuguese), Brazilian Forest Service, Chico Mendes Institute for Biodiversity Conservation and state environmental agencies (Art. 10 of Decree 6.992/2009).

<sup>14</sup> This criterion is called "ancientness" (*ancianidade* in Portuguese) (Art. 12, §1º of Law 11.952/2009 and Art. 19, I of Decree 6.992/2009).

<sup>15</sup> See note 13.

<sup>16</sup> Available at [http://www.dgi.inpe.br/siteDgi/index\\_pt.php](http://www.dgi.inpe.br/siteDgi/index_pt.php).

<sup>17</sup> MDA. *Lista de Posseiros Titulados*. Available at <http://portal.mda.gov.br/terralegal/pages/titulacao>. Access on January 20, 2010.

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