The risks and the principles for landholding regularization in the Amazon

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The land ownership situation for roughly half of the Legal Amazon is uncertain. This lack of definition threatens economic development and environmental management in the region, stimulates social conflict and violates the rights of local populations. In 2008 and 2009, the Brazilian government passed new norms to try to define property rights in the region. In this *The State of the Amazon*, we explain some of the risks with these measures and recommend four principles for reaching an effective and fair landholding regularization in the Amazon: respect for other rights and interests, elimination of perverse subsidies, transparency and institutional coordination. Ignoring those principles will deepen environmental problems (e.g. increase in deforestation) and land conflicts in the region.

Landholding uncertainty

Clarity regarding property rights guarantees stability to landowners and contributes towards socioeconomic development. Nevertheless, an Imazon study[1] revealed uncertainty as to property rights for 53% of the territory in the Legal Amazon, which affects the advance and the success of policies in the environmental and socioeconomic areas in the region. As an example, it is not feasible to implement concessions of public forests before public lands have been clearly identified.

Considering the land surface of the Legal Amazon (4.91 million square kilometres), around 23% of the region is supposedly in private properties, but those lack any validation in the land cadastre maintained by the National Institute for Colonisation and Land Reform (*Instituto Nacional de Colonização e Reforma Agrária* - Incra). There are also 9% in *posses* (holdings) and the other 21% are supposedly public areas outside of protected areas, but which may be under occupation.

There is somewhat more certainty about the remaining 47% the region: 4% are private areas with valid rural property cadastre at INCRA and 43% are protected areas[2], including Conservation Units and Indigenous Lands (Figures 1 and 2).

It is possible to estimate the location of this landholding uncertainty by excluding the protected areas and Incra land reform settlements (Figure 2). In showing that, Figure 2 indicates that mapping and definition of property rights has not been completed for rural properties in areas of consolidated occupation (inside and surrounding deforested areas) and in sparsely occupied zones. Nonetheless, even the protected areas are targeted by illegal occupations and require investments for landholding definition. For example, it is estimated that at least 10 million hectares within Conservation Units have unresolved landholding issues, including the need to expropriate private lands and solve the situation of settlers inside these Units[3].

Changes in landholding legislation

In an attempt to reduce this uncertainty regarding rights and to legalize various existing occupations, the Federal Government, together with the Legislative Branch, have been promoting changes in landholding legislation. For example, the limits for allocation of public lands without a bidding process were expanded on two occasions from 2005 to 2008, reaching the current limit of 1,500 hectares[4]. Since that change, Incra has enacted two rulings (*Instruções Normativas* - INs) – number 45 and 46 of 2008 – to adapt procedures for de landholding regularization. Moreover, in 2008 the Agrarian Development Ministry (*Ministério do Desenvolvimento Agrário* - MDA) proposed the *Terra Legal* Program (Legal Land Program), through which it intended to promote landholding regularization for *posses* of up to 1,500 hectares in the Legal Amazon in three years. This program was incorporated in Provisional Measure 458/2009 of February 2009. In the following section, we will highlight the risks and controversies in Incra's rulings and in the Provisional Measure 458/2009.

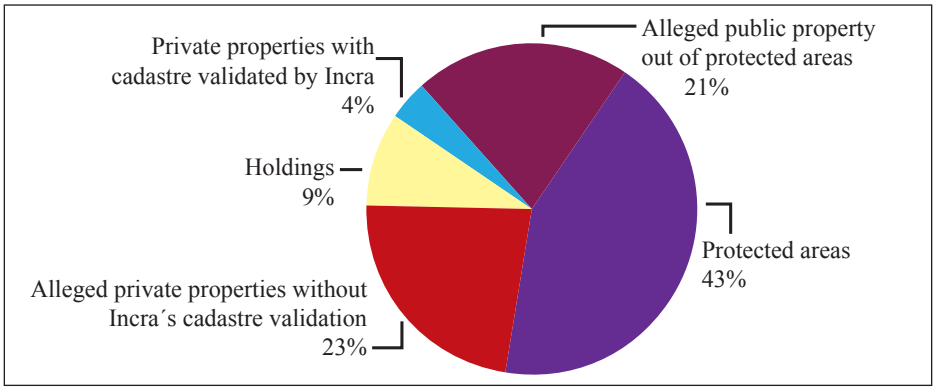

Figure 1: The uncertain distribution of the legal situation for land in the Amazon[5].

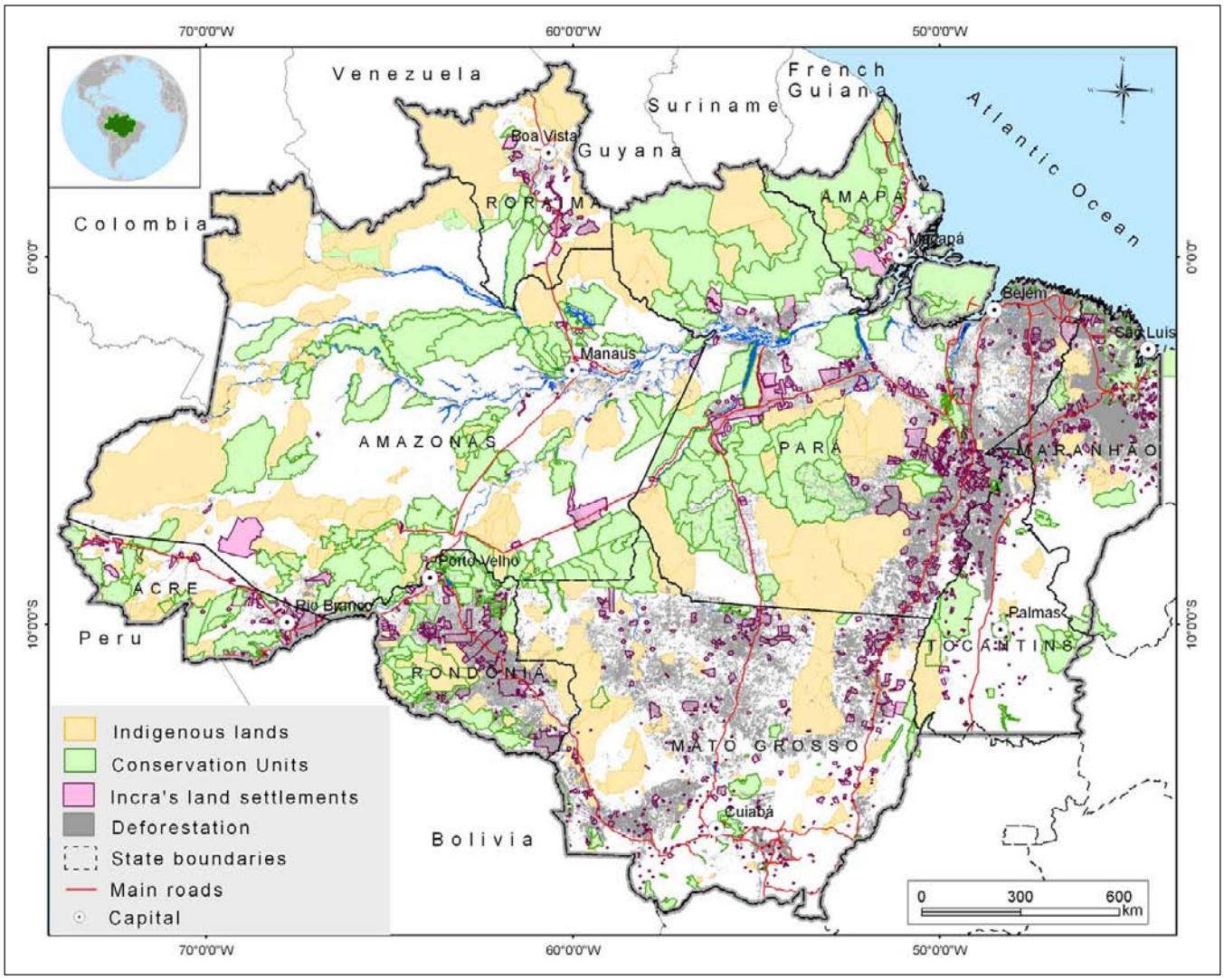

Figure 2. Geography of landholding uncertainty in the Amazon[6].

Principles for guiding the landholding regularization process

Efforts to promote landholding regularization meet different interests in the region, including environmental conservation, recognition of rights of indigenous and local communities and incentives for sustainable production. However, to conciliate those interests, we recommend that the regularization policy should adopt the following principles:

1 • Regularize private occupations while, considering and respecting other priority rights in the legislation (e.g. Indigenous Lands) and public interests (e.g. conservation of biodiversity and environmental services);
2 • Eliminate perverse subsidies derived from free use of public land;
3 • Avoid contradictory policies between governments (federal and state) and among agencies in the same level of government; and
4 • Emphasize transparency to the civil society.

Next, we explain which aspects of rulings 45 and 46 of 2008 and the Provisional Measure 458/2009 are in disagreement with these principles.

a. Donation of lands up to 100 hectares. The ruling 45 and 46 stipulated that regularization of public land occupations should occur through payment, even for properties of up to one fiscal module[7] or 100 hectares. However, the Provisional Measure 458/2009 changes those rules and establishes that the government will donate lands of up to one fiscal module (100 hectares) in the Amazon and charge a reduced price for areas between 1 and 4 fiscal modules (100 and 400 hectares). That proposal maintains the perverse subsidies that can encour-

age new deforestation, since the offer of free land makes it more profitable to invade and deforest new areas than to invest in increasing the productivity in lands already cleared. Furthermore, that measure seeks to regularize properties that are already occupied and where their occupants have exploited those public lands without paying for it. Thus, they have had the opportunity to generate income, use and sell the harvested timber, and implement other activities, such as cattle ranching.

b. Payment for properties in 20 years with a grace period of three years. The Provisional Measure 458/2009 allows a long period (twenty years) for payment for the property and further authorizes occupants to remain on the lands for another three years without paying. That provision should be excluded and the government should require up front payment. One viable alternative would be to encourage public and private banks to create credit lines for purchasing rural properties. By doing that, the government would immediately receive for allocating lands and collection of the payment would be in charge of specialized institutions with the proper structure for guaranteeing long-term payments.

c. Differentiated procedure for occupations up to 100 hectares on public lands after December 2004: the two rulings 45 and 46 and the Provisional Measure 458/2009 maintain two differentiated procedures for regularizing occupations occurred as of December 2004 and others occurred after this date up to 100 hectares (one fiscal module). In the first case, the occupant receives a Title Deed to be paid after the third year of its issuance (see previous item). For more recent occupations, the government issues a free Occupation Permit valid for four years and then the occupant receives a Title Deed, which the occupant will start paying after the third year of its issuance. In fact, the second option allows free occupation of public lands for at least seven years. Nevertheless, regularization rules should be unified to avoid a multiplicity of temporary documents, such as the Occupation Permit. Furthermore, the government should prohibit regularization of occupations in public land after 2004 to discourage further privatisation of areas of public interest. That prohibition would also enable the implementation of other policies already established for the region, such as concessions of public forest.

d. Rules for rescinding titles reward occupants that disrespect contracts: the rulings 45 and 46 determine that occupants who do not comply with the contractual rules for using the property (i.e. environmental norms or instalment payments) lose the land. However, the government repays the occupants the capital they paid plus any interests on the capital based on official interest rates, so that the occupant can pay or amortise bank loans for which the property is collateral. That rule maintains perverse subsidies by permitting the land users that disrespect rules of contracts and misuse public lands to recoup the amount paid. The Provisional Measure 458/2009 does not specify what rules on paid amounts will be applied in the cases of contracts broken by occupants, which leaves room for continuing what was established in the rulings 45 and 46. The only provision of this new Measure about broken contracts is a prohibition for payment of improvements in case the government recovers the possession of the lands.

e. Irregularities and gaps in environmental damages restoration mechanisms: The rulings 45 and 46 establish mechanisms for restoring environmental damages that exceed Incra's mandate, since environmental agencies and Public Prosecution Service are responsible for this issue. For instance, according to Incra's rulings, non compliance with the minimal percentage of forest cover in each parcel (called Legal Reserve) in areas smaller than 100 hectares (one fiscal module) can be resolved by adding an area with forest adjacent to the property. In the absence of an adjacent area or if the property is larger than 100 hectares, the occupant settles an agreement to recover the environmental damage with Incra alone, without participation by the appropriate agencies (environmental agency and Public Prosecution Service).

An environmental omission that is also worrisome in the Provisional Measure 458/2009 is the exemption of identification and location of environmental damages before issuing the Title Deed, as well as the absence of previous agreement on how to restore them. In addition, the Provisional Measure does not indicate who the appropriate agencies for dealing with that issue are. Therefore, those inconsistencies and omissions should be adapted to the current environmental legislation to enable a proper environmental management of those parcels.

e. Insufficient transparency in the process for reformulating and applying rules. The decision to publish a Provisional Measure instead of choosing to draft a law drastically reduced the opportunities for public consultation, since the deadlines for examining Provisional Measures are short and restricted to the National Congress. Furthermore, although the Provisional Measure 458/2009 establishes that the Agrarian Development Ministry must disseminate information on landholding regularization via the Internet, that determination is vague. It does not define the types of data that must be disseminated or when this should be done. For example, to make landholding regularization a transparent process

and allow civil society monitoring, the government has to disclosure prior to a decision on titling the personal data of those requesting regularization, as well as the complete geographic location and maps for the required parcels. Moreover, the text of the issued Title Deed should be fully published in the Internet, together with the content of the agreements settled to recover environmental damages. That information will allow civil society to monitor and contribute towards implementation of that norm, avoiding titling in areas where there are other priority rights (e.g. indigenous and local communities or areas of interest for conservation).

Recommendations for public policies

We recommend that landholding regularization policies in the Brazilian Amazon consider the following:

Prevent pillage of public lands that have not yet been illegally occupied. By promoting landholding regularization in zones already occupied, the government can stimulate a new race to occupy zones that are sparsely occupied by indigenous and local communities, with the expectation that future regularizations may be allowed. This would threaten environmentally sensitive areas and stimulate conflicts between current inhabitants and immigrants. To avoid this process, government must create Conservation Units, recognise and demarcate Indigenous Lands, as well as recognize and title rights for traditional populations such as African-slave descendants and riverbank inhabitants.

Conclude Ecological-Economic Zoning (ZEE) to guide regularization. Only three States in the Brazilian Amazon have their ZEE approved by state law (Acre, Pará and Rondônia) and Roraima is concluding this process. Of the three that have the law, Pará still needs to detail its macro-zoning – a process that already started in 2009 with a zoning law specifically to the western part of the State (regions along the BR-163 and BR-230 highways)[8]. However, it is important that all the States of the Amazon conclude their ZEE to guide landholding regularization and avoid the consolidation of occupations in areas with potential for creating Conservation Units or for recognising the rights of local communities.

Create a consensus on rights for occupations that cannot be regularized. The current rules and proposals for landholding regularization do not attend all the demands for solving the uncertainty of property rights in the region. For example, they do not consider the rights for settlers on properties larger than 1,500 hectares. However, it is necessary to create a legal consensus on the fate of those occupations, primarily regarding the right to receive compensations for improvements made in those areas by settlers[9]. Without clear rules, the landholding situation for a significant area in the Amazon will remain uncertain, and its regularization will be slow and costly, involving lengthy legal suits for recovering the possession of large illegal occupations[10].

Avoid legal changes through provisional measures. Landholding regularization in the Amazon should be based on stable rules, as opposed to what has been happening recently with the use of provisional measures. Changes in land laws should follow the usual legislative process, preceded by broad dissemination and an opportunity for debates with civil society.

NOTES

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1 BARRETO, Paulo et al. Quem é dono da Amazônia? Uma análise do recadastramento de imóveis rurais. Belém: Imazon, 2008.

2 This estimate discounts the ocean surface of one Environmental Protection Area and the overlaps between protected areas as estimated by the Imazon Geoprocessing Laboratory.

3 ISA. Estratégia para a consolidação territorial na Terra do Meio. Relatório de reunião técnica de 21-22 de novembro de 2006. Brasília: Instituto Socioambiental, 2006.

4 Changes in these limits were promoted through Federal Law 11.196/2005, Provisional Measure 422/2008 and Federal Law 11.763/2008.

5 This estimate considers the land surface for Amazon States excluding large water surfaces; in other words, a total of 4.91 million square kilometres (BARRETO, op. cit.).

6 Data Source. Deforestation up to 2008 – Instituto Nacional de Pesquisa Espacial (Inpe); Indigenous Lands – ISA, 2005; Conservation Units – ISA, 2008; Incra Settlements – Incra, 2002. Rodney Salomão of Imazon prepared the map.

7 Fiscal module is a unit of measure for land parcels that vary among municipalities, but that in general is up to 100 hectares.

8 Pará State Law 6.745/2005 established the Macro-zoning and State Law 7.243/2009 established the zoning for the western part of Pará.

9 Judges apply rules for compensating improvements in various ways. It varies from those who consider that illegal land holders have no rights to compensations to those who consider that all improvements must be compensated before the landholder is removed from the parcel. See details in BARRETO, op.cit.

10 According to data from Incra`s National Rural Registry System (Sistema Nacional de Cadastro Rural - SNCR), in 2003, about 14 million hectares, or 35% of the total area of posses in the Amazon were in properties equal to or greater than 2 thousand hectares, which will continue to be irregular according to the current proposal. In fact, the area would be even larger if one considered new occupations after2003.

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