

DID LAND REGULARIZATION ADVANCE IN THE AMAZON?

Two years of the Legal Land Program

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Executive Summary

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Uncertainty on land property rights in the Amazon is a severe obstacle for the implementation and advance of sustainable development policies in the region. As of 2010, 50% of the land in Amazon was classified as protected areas, land settlements created by the federal government and military-owned land. The remainder was public land without formal allocation, public land occupied informally or under dispute and private property. However, the lack of reliable cadaster on land ownership makes it difficult to say precisely the proportion of land in each of these categories.

In 2009, the federal government launched the Legal Land Program, based on Law 11.952/2009, aiming at expediting land regularization of up to 300,000 informal occupations in public land on the Legal Amazon. The program is coordinated by the Ministry of Agrarian Development with support from the Land Reform and Settlement Institute (Incra). It also has a decision-making consulting committee, the Intergovernmental Executive Group, joined by other ministries, state governments and some representatives from civil society.

The program was expected to issue land property titles in 60 days through five major steps: cadaster of occupations, georeferencing of parcels, field inspections, granting of land title and monitoring after the title. However, the program failed to meet its ambitious goal in its first year and only 276 land property titles were issued, primarily of requests for tilting made before the program.

After one more year of the program, we assessed its main results between June 2010 and May 2011. We also analyzed actions taken by the Judiciary branch to fight registration of false land titles in the state of Pará, another important aspect to promote land property regularization.

In its second year, the program registered 87,992 possessions in 10,3 million hectares. Nevertheless, only 335 new titles were issued, achieving 611 since 2009.

CADASTER OF OCCUPATIONS

The State of Pará accounted for most of the occupations and land area inserted in the cadaster of the Legal Land Program (47% of parcels in 46% of the area), followed by the states of Rondonia (22% of parcels in 24% of the area) and Amazonas (13% of parcels in 13% of the area). The states of Amapa and Roraima ranked low, failing to achieve 1% of all occupations and area in the cadaster.

With respect to the size of each parcel, most of them (64%) was classified as small scale, since their size was below the unit used to measure land rural properties in the Amazon: the fiscal module (which ranges from 59 to 87 hectares in average in the Legal Amazon, considering the tax module average size per municipality). According to law 11952/2009, government must regularize small parcels without charges. However, the small scale parcels accounted for only 17% of the total area in the cadaster.

In fact, the majority of the area (78%) scored between 1 and 15 fiscal modules with emphasis on parcels between 4 and 15 fiscal modules (44%). All those parcels above 1 fiscal module must pay for the regularization. Besides, there were 231 properties above 15 tax modules, occupying around 525,000 hectares. However, they cannot be regularized by the Legal Land Program since they exceed the limit determined by Law 11.952/2009 (15 fiscal modules).

Of all the 87,992 cadasters, only 2% (2,021 cases) were under analysis and 1% had already reached conclusion with issuance of land titles, totaling 611

titles. Most of the cadasters (56%) were in the initial phase of analysis and 41% were pending analysis.

GEOREFERENCING OF PARCELS

In 2010, the Legal land Program hired companies to produce georeferenced maps of 85,000 occupations in 31 million hectares. As of December 2010, 22% of the contracts signed between the program coordination and the companies were fulfilled and the majority was still in execution, from which 46% were considered within schedule. Eighteen percent were delayed for more than 30 days.

Until April 2011, these companies had forwarded 12,000 technical pieces of georeferenced parcels to the program coordination, from which almost 6,000 were already validated or under analysis. The program's coordination also decided to share the georeferenced maps with the Legal Land's Intergovernmental Executive Group members and with selected institutions. The maps will be available only for these institutions in a web-based platform created by Incra. Sharing these data will increase surveillance capacity on the georeferencing results, but it is still necessary to widen this access to municipalities and their rural workers and producers associations.

FIELD INSPECTIONS

The program did not advance in one of the most critical aspects identified in its first year: the previous identification of territories occupied by local communities and indigenous groups that were not formally recognized. Such identification is fundamental to prevent titling over these territories, primarily in cases where the law does not require the program to make a field inspection before granting the title (this exemption ap-

plies to property up to 4 fiscal modules). The program's new proposal to solve this issue is to hire institutions to carry out the work of identifying territories inhabited by local communities and indigenous groups.

GRANTING OF LAND TITLES

The program fell short in complying with its own targets for granting land titles. The 335 titles issued on Legal Land second year represent only 1.4% of the 23,001 titles target that was announced by the program in 2010. In addition, the annual target for the analysis of cadasters in 2011 (20,020 cadasters) is incompatible with the target for granting titles in the same year (39,671 titles).

Regarding the 661 the land titles issued since the beginning of the program, most are located in Pará State (54% of titles and 81% of the area), followed by Rondônia State with 20% of titles in 9% of the area.

LAND VALUE

Current regulation that determines the method for calculating land prices is under revision. Upon Intergovernmental Executive Group's request, Legal Land drafted a comparative study of the different methodologies used by state land agencies to calculate land value, considering the states of Amazonas, Mato Grosso, Para, and Tocantins. The study unveiled huge variation on prices, with the exception of the method applied by Amazonas, where the land value is similar to the one adopted by the Legal Land Program. In addition, land values applied by the program are below market prices, which may keep encouraging new illegal occupations of public land in the region. Based on this comparative study, the program will carry out a new study with state governments, Federal Prosecution Office and the

Union Audit Court to improve the current regulation on land price, aiming at bringing the methodologies of federal and state governments closer.

ENVIRONMENTAL REGULARIZATION

Although legislation requires that all parcels regularized by the Legal Land Program must be in compliance with environmental laws and restore illegally deforested areas, there is little information publicly available to verify the status of environmental compliance. The Environmental Rural Cadaster (CAR in Portuguese) is the very first step to reach environmental regularization of rural properties in many of the Amazon states, primarily in Pará and Mato Grosso. However, according to information available on the internet for these two states, we have concluded that none of the properties analyzed in Mato Grosso had CAR, which was also the case for almost half of titles issued in Pará (47% of the cases in this state).

FIGHT AGAINST REGISTRATION OF FALSE LAND TITLES

In the Amazon, there are several cases of land grabbing and registration of false land titles, a phenomenon known as *grilagem*. In Pará, between 1995 and 2010, the State Attorneys filed 85 lawsuits to cancel such false land titles. Nevertheless, only 21% (or 18

lawsuits) had reached some kind of provisory or definitive decision.

A faster method to cancel false titles, with no need of lawsuits, is the administrative cancellation ordered by a body at the State Court of Justice in charge of inspection of notaries, the *Corregedoria*. Although the administrative cancellation is still questioned by some judges, this procedure has been confirmed by superior bodies at the Judicial branch. For instance, in 2009 the National Counsel of Justice (CNJ in Portuguese), responsible for overseeing Brazil's Judiciary administrative operation, ordered the cancellation of a land title in the city of Vitoria do Xingu in Pará, whose property size (410 million of hectares) was three times larger than the whole state of Pará. In the following year, CNJ canceled more than 5,000 land titles in Pará, whose notary register had been previously blocked by the State Court of Justice. The blocking of registration prevents transactions involving these properties while more severe measures (such as cancellation) are not taken.

The ruling for cancellation can be reverted if the alleged owners of the lands present documents that evidence titles legality. However, Pará State Court of Justice established that the responsibility to assess such documents lies with the notary where such property is registered, instead of delegating the task to a judge. This latter option would increase the ruling enforce-

ment and also prevent mistakes in the interpretation of such documents.

The CNJ decision on cancellation of titles has been questioned by the private sector in Pará, the main sector affected by such ruling. As of December 2010, private sector institutions (such as associations of loggers) had filed three lawsuits at the Supreme Court to reverse this ruling. One lawsuit brought by a union of logging companies got a provisory decision in June 2011 determining the partial suspension of the cancellation of land titles. Such decision only applies to the properties of the current associates to this union. However, this decision emphasizes that until the final judgment of the case, the land registries of such properties remain blocked to avoid any transaction.

RECOMMENDATIONS

- The georeferenced maps of the parcels inserted in the cadaster of the Legal Land Program should be shared at municipal level, including the mayor, local secretariats and associations of rural workers and producers. These institutions have great potential to contribute to the revision and validation of maps since their members know the reality of land occupation in the cities.
- The Federal Government must advance in the implementation of a unified land cadaster in Brazil

that would aggregate information on land rights and environmental status of the properties. The project of such cadaster exists, but has been slowly implemented.

- The Legal Land Program must advance on the implementation of the new proposal to identify areas inhabited by local communities and indigenous groups, before increasing the number of private land titles issued by the program.
- Land prices charged by federal and state governments must be reviewed and adjusted, in addition to take into account market value to prevent encouraging new public land occupations and land speculation.
- Despite of the progress with the process of cancellation of false land titles, Pará State Court of Justice needs to review and strengthen rules that allow suspension of this measure in cases of title legality evidence. Judges must be tasked for title revalidation, instead of notaries, to ensure control.
- Considering the lawsuits questioning the cancellation of titles ordered by the CNJ and a recent decision that partially suspend such ruling, the Brazilian Supreme Court must prioritize the judgment of such cases. Otherwise, the recent advances in cancelling false titles and combating land grabbing in the Amazon region may be weakened.



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