

Land Policy and Administration as a Basis for the Sustainable Development of the Brazilian Amazon

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There is enough land in the Amazon region to satisfy Brazilian society's demands for economic development, environmental management of a resource base of global importance and the challenges of agrarian reform. Yet Brazil has been unable to create a fully coherent and manageable land policy and administration system for the region which permits sustainable development goals to be achieved while reconciling special interests and uses. Instead, resource waste, private appropriation of the public domain and social conflict characterize land relations in the region. As the region becomes increasingly accessible for a variety of economic activities, and more central to Brazil's economy, the resolution of the land questions looms large as a foundational element for reconciling and ordering economic development, resource management and social priorities.

The timing of land policy reforms is important. An ongoing "race for property rights" in the Amazon threatens to overwhelm the planning framework for reconciling economic, environmental and agrarian

reform policy goals. The increasing value of Amazonian land and the lack of consistent rules of the game in the allocation of public land create incentives to join the race for property rights and acquire land ahead of the designations of public institutions. Private actors are moving quickly and aggressively to signal, document, adjudicate, and enforce their claims to property rights in the absence of fully consistent practices and gaps in institutional coordination. In practice private actors use the legalization of precarious occupation and fraudulent documentation as the main vehicles in the race for property rights. Public institutions are attempting to pre-empt the race through zoning, the rapid and extensive creation of protected areas, the passage of a public forest concession law, and the establishment of sustainable development settlement projects.

Nevertheless, the results of this race for property rights have generated a chaotic situation. Up to half of the registered titles to private land in the Legal Amazon are considered to be under suspicion of illegality. Over 42 million hectares are held in possession (*posses*) with the National Institute for Agrarian Reform's interpretation of their property rights differing widely from that of the possessors. Approximately 28 percent of the land (143 million ha) is considered legally unallocated, although virtually all of it is contested by various public and private agents. Another 70-100 million ha are privately held but considered likely to be based on fraudulent documentation. There is no consistent record of the physical location of lots registered in Amazonian land registries. On average 40 land-related killings have occurred annually over the past 5 years, and 1,800 violent episodes were recorded in 2004 in the region.

So who really owns the Amazon? The cadastral data, based on user declarations, show that as of 2003, 35 percent of the area's 509 million hectares of land





was held under private tenure, either registered ownership or private possession. Data from existing protected areas up to 2006 shows that about 37 percent of the Legal Amazon was in some type of protected status, about half of this area as indigenous lands and half as conservation units of various types. The remaining 28 percent of the area was in neither of these categories, and therefore is technically considered to be unallocated public land (Figure 1).

However, these figures mask a more complicated and uncertain situation in terms of the final legal status of these areas. An unknown amount of the land in protected area status is physically occupied by private users, whose claims of occupation may or may not have validity according to a complex and often contradictory legal and procedural framework, depending on their circumstances. The large area described as private by the cadastral system is also under a cloud of doubt. As much as 100 million hectares of the 178 million hectares under declared private ownership are suspected of being based on fraudulent documentation. Another 50 million hectares of this privately held area is classified from the

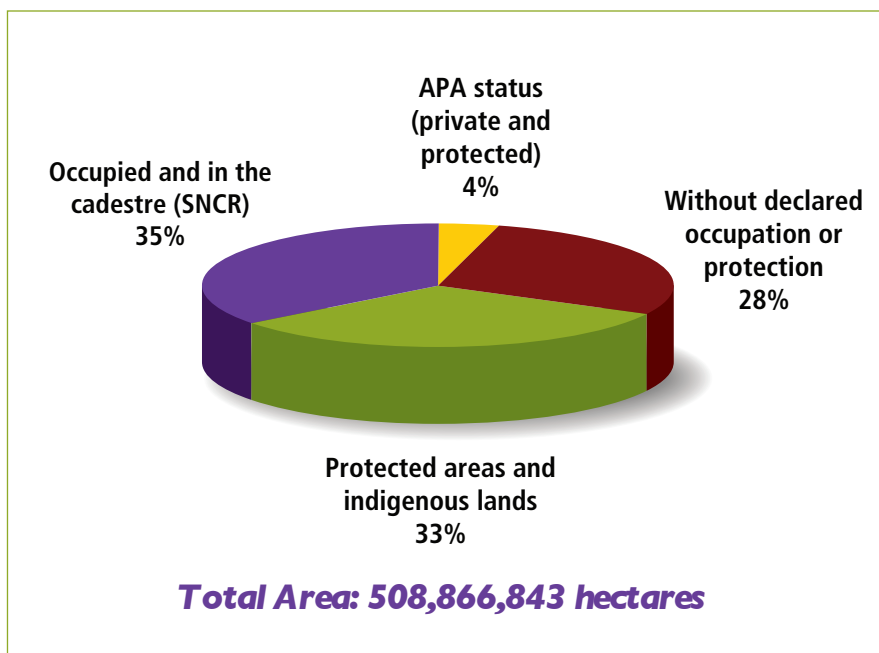
cadastral declarations as simple possession (*posse*) which may or may not be subject to full recognition as private property, again depending on its circumstances of size, history, and location. In this sense, 30 percent of the entire area may be legally uncertain and/or contested.

There are three main efforts to address land policy and administration issues in the Amazon, but they lack coordination. One effort is led by the private sector and agribusiness and is characterized by widespread requests for the regularization of occupied lands, generally held under possession status, to state and federal land institutions. Responses to these requests are lagging, as they are tied to other key efforts to address the land administration challenge. The second effort is led by the land reform sector (under the direction of INCRA) and focuses on combating land fraud, responding to occupations, and regularizing occupied areas in order to expand areas available for land reform settlements. The third effort is led by the environmental and forestry sectors and is focused on zoning, the creation of protected areas, and enforcement of the legal reserve requirement to maintain standing forest on private land. These three

main directions have had partial successes but have never been fully coordinated, generating conflicts, policy gridlock and inconsistent judicial outcomes.

These efforts to solve the problems have been partially successful to date, but remain incomplete. INCRA's efforts have focused on re-inspection of documentation, called *recadastré*. The *recadastré* exercise has been a major step forward for land administration by recovering about 20 million hectares of illegally documented land for public purposes and clarifying the status of mil-

Figure 1. Land tenure situation in the Legal Amazon according to National Cadastral System (2003) and the area under protection (2006)





lions of hectares more. Yet the exercise still needs to be carried forward to completion. For example, 1,939 cases accounting for about 62 million hectares above 5,000 ha are still pending. Of these cases, 978 have not presented any documentation and total about 24 million hectares. This may indicate the area with the highest likelihood of presenting illegalities. The recadastre call for properties ranging from 5,000 to less than 10,000 hectares has also not been completed.

The establishment of land reform settlements has expanded quickly since 1995 (to a total of 36 million hectares) and has become one of the main drivers of land policy and administration in the Amazon. But the creation of land reform settlements is not well-coordinated with environmental policies, spatial planning and is prohibiting land regularization, the emergence of legitimate land markets and intensification in private holdings.

The third reform effort, the creation of protected areas, including indigenous lands, in the Legal Amazon is the main strategy from the environmental standpoint to resolve land policy and administration issues in advance of the race for property rights by asserting the public's interest in forest management and the protection of traditional inhabitants. Forty-two percent (212 million hectares) of the Brazilian Amazon is under protection as indigenous land or conservation units. In a historically notable achievement nearly 37 percent of these conservation units were created only in the last four years (2003–2006).

In many cases the creation of protected areas has successfully pre-empted new occupations, leading to improved environmental management, but challenges from informal and illegal occupation, as well as opposing interest groups, remain for protected areas. Until recently most protected areas were far from the reach of economic activities and the kind of passive protection offered by most protected designations was sufficient. But now 84 percent of protected areas are within the profitable reach of economic activities (such as timber, mining, cattle and soy production) and face increasing pressure due to the growth of infrastructure (e.g., roads, electrical grid) and the rise of commodity prices (timber, minerals, meat, and soybeans).

The race for property rights in the Brazilian Amazon is likely to become more intense as the economic potential of the region continues to expand through road building and increased opportunities for agricultural expansion, spurred by profitable commodity production scenarios. In this situation the incentives driving the race for property rights will only become stronger.

To avoid perpetuating the same land problems into the future, an alternative scenario would require strong cooperation and coordinated action among many stakeholders who have tended to not work together in the past—essentially a new type of social and political pact—to remove key obstacles to peaceful and sustainable land administration in the Amazon.

In spite of much existing conflict, there are many shared interests and incentives among most landholders in the region for achieving a system of transparent and regularized tenure. Cooperation and coordinated action would need to focus on intensified efforts at reclaiming public land that is clearly the result of illegal acquisition. Reclaiming public land creates space for the consolidation and creation of protected areas and agrarian reform settlements.

The second focus of coordinated action would logically be the regularization of land held in possession under conditions of “good-faith” in areas where such occupation is appropriate. More specifically, a pact for coordinated action would involve uniting the interests of economic development groups, environmentalists, and land reform proponents around a *grand plan for land regularization*. Under such a plan the goals of each of these groups would be targeted through coordinated government initiatives to reclaim public lands illegally held in exchange for the allocation of these lands to land reform, the regularization of existing possessions held in good faith, public investments in regularized areas and the expansion and consolidation of the protected areas.

Regularizing land tenure and creating normal land markets would improve incentives for intensification of land use in these areas, providing legitimate and productive land users with the security to invest in their landholdings. This strategy would involve the “sealing off” of new frontiers to unorganized and illegal occupation. Main elements in coordinated approach would also

need to include the extension of the recadastré exercise to all properties, cancellation of the registrations of illegally held lands and the identification of public lands (*discriminação*). A coordinated approach for land regularization as described here has also the potential for significant environmental gains. Regularization and titling would provide the basis for charging compensation for legal reserves, and reduce pressure on new conservation areas. It would reduce pressure on existing conservation units by creating credible commitments to their sustainability, and by channeling new occupation away from them into land markets. It would create the conditions of tenure security necessary for the operation of a formal land market in older areas, spurring investment and increased productivity.

In practice, making such a pact work would need to be backed up by federal-level enforcement with the clout to make credible commitments and consistent judicial interpretations of policies and regulations. The technical requirements to support land regularization are of a manageable scale and would require a complete geo-referencing of each parcel of land in the region, matched one-to-one with the property's entry in the land registry (*cartório*).

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