



INSECURE LAND RIGHTS IN BRAZIL

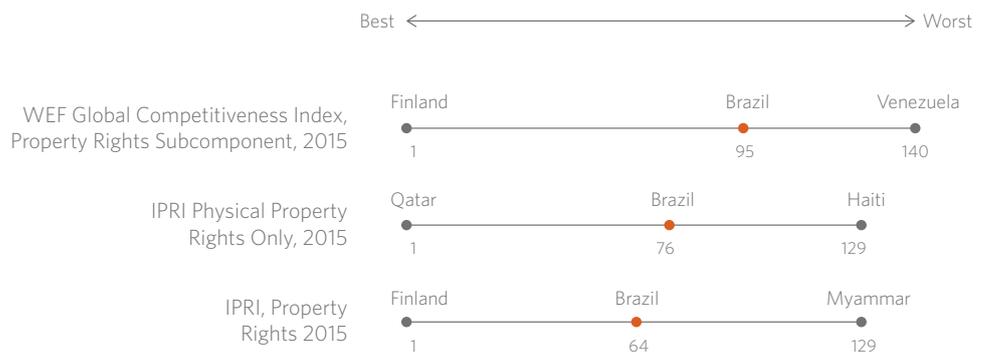
CONSEQUENCES FOR RURAL AREAS AND CHALLENGES FOR IMPROVEMENT

Introduction

Brazil lags behind much of the world in taking advantage of an important driver of economic growth: secure land rights. In 2015, Brazil ranked 64th on the International Property Rights Index (IPRI). It ranked even lower, at 95th, for secure property rights on the World Economic Forum's (WEF) Global Competitive Index (see Figure 1).

When property rights are secure, the nation's lands can be managed, improved, or protected to their fullest potential. This could unlock new economic opportunities, develop markets more fully, and improve the use of the country's resources.

Figure 1: Brazil's Ranking in the World in Property Rights



Note: The rankings in Figure 1 used a different number of countries in their analysis.

Sources: World Economic Forum, 2015 and Property Rights Alliance, 2015

While land property rights remain a major issue in Brazil, they give rise to very different concerns in urban and rural areas. This Climate Policy Initiative (CPI) report focuses on the rural perspective of the problem. Agriculture is an important driver of national growth, making up approximately a fourth of Brazil's GDP. In rural areas, where agriculture constitutes a fundamental source

of livelihood and food security for individuals, secure land rights are ever more important. The fulfillment of these rights would allow rural landholders to use, control and invest in their land and its resources and provide additional economic and societal benefits.

Secure land rights would create mechanisms through which policymakers can enhance incentives and accountability, helping Brazil to increase food production while ensuring environmental protection. They could also help reduce some of the country's most entrenched problems in rural areas, such as land-related conflicts and violence, deforestation, and poorly functioning land rental markets.

This report draws off of extensive academic literature on the social and economic role of land rights from Bernardo Mueller's paper, "Key Issues for Property Rights in Brazil: Implications for the Forest Code."¹ It also outlines the major land governance challenges Brazil now faces.

Challenges Presented by a Lack of Data

While academic literature documents the problems and the associated consequences that arise from insecure property rights, quantifying the actual degree of the problem remains an issue.² Brazil lacks the data needed to identify the exact areas where these issues are most pronounced and how many people are directly affected. Brazil's Agriculture Census provides important information on all agriculture establishments including the legal status of producers. However, the last round of the census was conducted in 2006 and the government recently announced it would cancel the next expected round of data collection in 2017 due to lack of funding. The absence of a proper and unique database aggregating all the public lands, which in Brazil represent over 20% of the territory, also shows why it is so difficult for researchers to develop a clear picture of the problem over time.

While quantifying the extent of the problem in terms of hectares, individuals affected, and financial costs remains a challenge, over the past 20 years, more than 15,000 instances of land-related conflicts have been reported and more than 700 people have lost their lives in these conflicts, which indicates that this problem has created significant human strife.³ The fact that the Agriculture Census shows that in every state a fraction of land is classified as *occupied* is also symptomatic of uncertainty surrounding property rights. *Occupied* defines any land for which the person who works it does not own it or pays anything for its use. *Occupied* land totals 2.2% for the country by area and 9% by number of farms. It is very low in the South, Southeast, and Center-West regions, but is still considerable in some states of the North and Northeast (Figure 2).

1 Mueller, 2016.

2 Climate Policy Initiative. 2016. *Property Rights in Brazil: Establishing a Baseline*. Internal Report.

3 Comissão Pastoral da Terra, 2015.

Figure 2: Share of Farms Classified as *Occupied* in Each State



Source: Brazil's latest Agriculture Census, 2006

Structure of the Report

This report clearly shows that there are important social, economic, and environmental costs associated with the lack of well-defined property rights; while at the same time presenting the many complexities within Brazil's system of land governance that need to be addressed in order to improve the system.

Although there are many costs to insecure property rights, this report focuses on the five most urgent consequences for rural areas:

1. Conflicts and violence;
2. The lack of tenancy markets;
3. Increased deforestation;
4. Unconventional land use decisions; and
5. Production inequality for small farms.

Next, the report introduces one of the main challenges to improving land rights: Brazil's system of land governance. The following key obstacles are summarized:

1. Institutional complexity;
2. Limitations of the Land Registry; and
3. Lack of an authoritative, integrated database of public and private land.

As one of the world's largest economies, Brazil is uniquely poised to reap significant benefits from addressing these challenges and providing secure

land rights. CPI aims to deepen understanding about land rights issues in Brazil and to help chart a pathway to their improvement. Given today's technological advances, including the promise of tools such as georeferencing and database management, achieving secure land rights is within Brazil's reach.

Key Consequences of Brazil's Insecure Land Rights

Clearly, insecure land rights affect Brazil's international standing, but they also contribute to serious internal social, economic, and environmental problems. This section summarizes five of the main consequences associated with Brazil's insecure land rights.

Consequence 1: Conflicts and violence

Land-related conflicts are the most profound consequence of insecure property rights. Frontier evolution in Brazil has often been accompanied by conflict and violence. This has happened in the coffee frontier in the 19th century and in the Amazon frontier starting in the 1960s.⁴ Starting in the early 1990s, the number of conflicts and the number of murders increased significantly peaking in the early 2000s (see Figure 3). In the last 10 years there has been an average of 30 homicides per year related to land conflicts with a total of 723 homicides between 1994 and 2014. In 2014 alone conflict affected almost 100,000 families and an area of over 8 million of hectares.⁵

Some of the worst violence occurred in the state of Pará. In 2014, it topped the list of homicides by state with nine assassinations attributed to land conflicts. During that same year, Maranhão, Mato Grosso, and Rondônia followed with five homicides each.

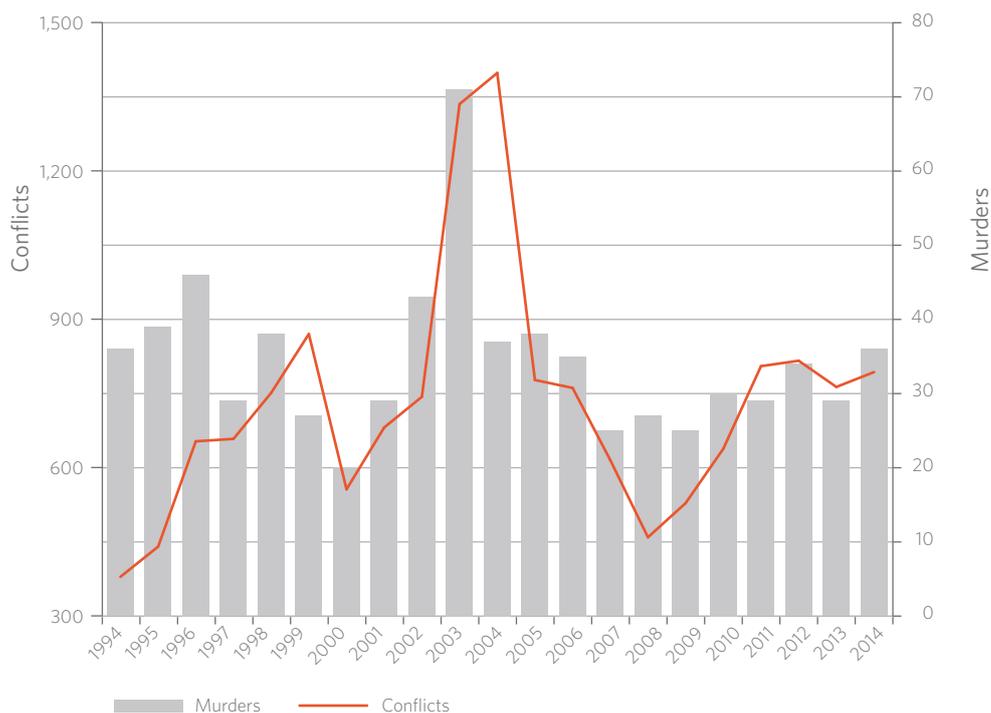
One major factor contributing to these land conflicts is the existence of complex legislation that creates uncertainty over property rights to land. The Brazilian Constitution contains a "social function of property" requirement for all land, which has, in practice, informally legitimized the actions of squatters (see Box 1). The Civil Code allows the titleholder to request an eviction of squatters. It is the inherent tension between how these two laws are written and in the ways they are enforced that introduces uncertainty. This leads to strategic actions by squatters and titleholders in response, which often results in physical violence and further conflict.⁶

4 Mueller, 2016.

5 *Comissão Pastoral da Terra*, 2015.

6 Alston et al., 1999; Alston et al., 2000.

Figure 3: Land Conflicts and Violence in Brazil



Source: Comissão Pastoral da Terra, 2015

Consequence 2: The lack of tenancy markets

Tenancy contracts play an essential role in driving the economic rewards of land ownership. They allow landowners to benefit from their land by renting its use in exchange for a fixed sum or for a proportion of the production. Tenancy contracts can also improve the allocation and use of land resources by steering land toward its highest valued uses.

Nonagricultural demand for land is common in Brazil and similar countries with poorly developed capital markets, especially those with chronic inflation. In such countries, the purchase of land is often used as a hedge against inflation, as an asset that can be liquidated to smooth consumption in the face of risk, as collateral for access to loans, or as a tax shelter.

Working tenancy markets allows those unskilled farmers who accumulate land for nonagricultural purposes to lease out their land to be cultivated by skilled peasants, which increases overall agricultural output. Thus, the land rental market can establish efficient resource allocation even when some people demand land for nonagricultural purposes.⁷

In addition, tenancy can be an important entry point for poor peasants to climb the agricultural ladder and achieve landownership. In countries like Brazil, where there is an abundance of underused land and large contingents of landless peasants, tenancy contracts seem to be an ideal means for solving two problems at the same time.

⁷ Assunção, 2008.

BOX 1: LAND REFORM AND THE LAND STATUTE

The widely held belief that land must maintain satisfactory levels of productivity in order to benefit society was formally introduced in Brazil's Land Statute of 1964.

The statute prioritized this ideal (naming it the "social function of property"), and it spurred new legislation. The land reform law allows the government to takeover unproductive farms and to transfer that land to landless peasants. They are then expected to make it productive.

Although the original holders receive compensation for the takeover, in most cases, the takeover (called expropriation) is punitive. The government imposes the expropriation. They do not negotiate and the financial compensation can fall below the original holder's valuation of the land.

Land reform was one of the major banners of the New Republic when it emerged in 1985, symbolizing the social inclusion the new government prioritized. Although land reform under any circumstances is a difficult policy to implement, it was even harder in a large and undeveloped country like Brazil was at that time. The redistribution of land proved almost impossible in a country where wealth and power were so unevenly distributed.

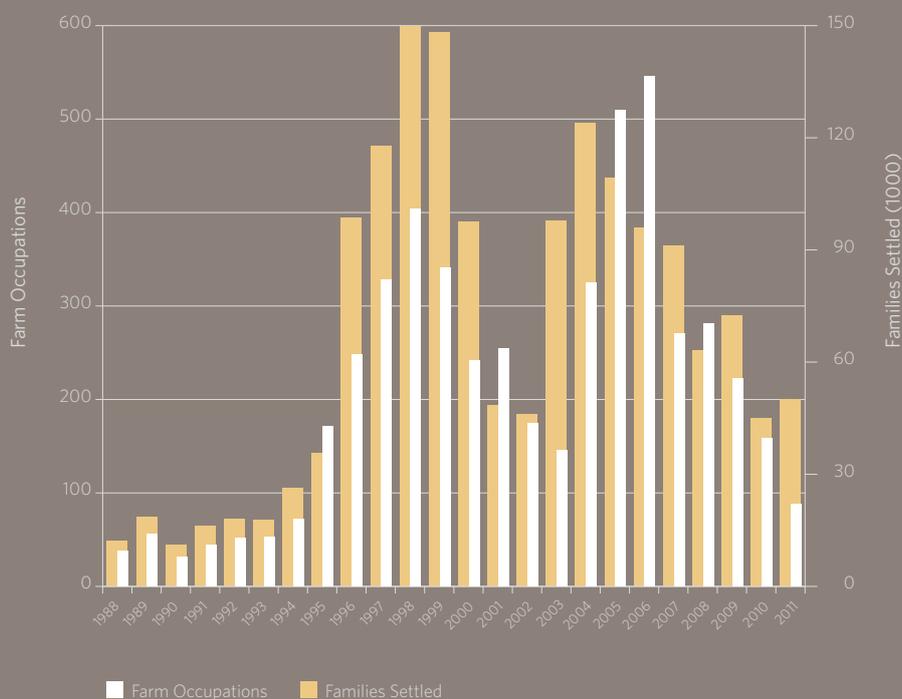
Up to the early 1990s, land reform politicians and policymakers debated land reform vigorously, but

there were few practical results. This created the opportunity for well-organized peasants to increase their pressure for land reform.

A coalition called the Landless Worker's Movement (MST - *Movimento dos Trabalhadores Rurais Sem Terra*) realized that if they waited for the government to follow through with its announced land reform programs, nothing would be accomplished. The MST therefore devised the strategy of invading land that fit the requirements for being expropriable (unproductive and/or weak title) as a means to force the government to expedite their efforts. Under MST leadership, invasions that led to occupations of unproductive farms grew dramatically in the 1990's.

Figure 4 shows the number of occupations from 1988 to 2011 and the number of families settled by the government. The fact that land reform settlements track land occupations so closely shows that land reform in this period was fully driven by MST pressure; that is, land reform happened where workers invaded. The intent was not to gain the land by sheer force. Instead, the invasions were explicitly geared at exploiting the *de jure* rules that required "satisfactory levels of productivity." Violence and conflict often ensued as the landowner or the police tried to remove the occupants from the land.

Figure 4: Farm Occupations and Land Reform Settlements



Source: Adapted from Alston et al., 2010

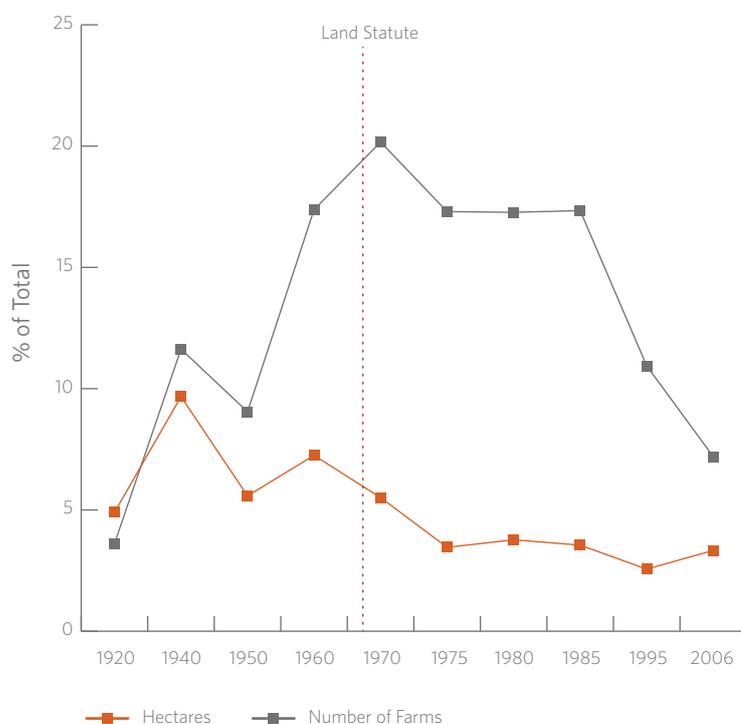
Significantly, relative to most other countries, Brazil makes remarkably low use of tenancy. Figure 5 shows the proportion of farms and area under tenancy contracts in Brazil according to the agricultural census data: the percent of farms in tenancy has fallen steadily since the 1960s.

According to data from the World Census of Agriculture, Brazil's tenancy rates hover at 3.3%, while, comparatively, Europe is at 33% and the United States is at almost 38%.⁸

One main cause of these low tenancy rates is the Land Statute. The Land Statute states that two of the conditions for the social function of property to be met are: (i) "to promote the welfare of the owners and the workers who toil in it, as well as their families," and (ii) "to observe the laws governing fair working relationships between those who own the land and those who cultivate it."

These requirements reflect a deep suspicion in society, not wholly unfounded historically, that tenancy relations involve exploitation of peasants by powerful landowners. Given that land reform and expropriations were a central part of the political debate, the sentiment expressed by this legislation had the effect of inducing many landowners to avoid tenancy relations, even when they were profitable from a purely economic point of view. Additionally, peasant leagues and associations that represent landless workers and small producers do not seem to accept tenancy as a solution to their landlessness; they would prefer to own land.⁹

Figure 5: Percent of Farms and Area in Tenancy Contracts



Source: Adapted from Alston and Mueller, 2010

⁸ Assunção and Chiavari, 2014.

⁹ Buainain et al., 2008.

The legal system also makes it extremely difficult for landlords to evict tenants if they choose to withdraw the land for owner-cultivation.¹⁰ This uncertainty also contributes to the low rates of tenancy contracts in Brazil.

Empirical evidence has shown the negative effect that property rights insecurity has on different types of contracts. Using all municipalities in Brazil, analysis estimates that a one-standard deviation increase in land-related conflicts in the previous 10 years decreases the incidence of fixed rent contracts from 4% to less than 3% and the incidence of sharecropping from 2.5% to 1.3%. In areas that have more conflicts, land reform and the threat of expropriation are more salient, and thus so are the risks to owners entering tenancy contracts.¹¹

Consequence 3: Increased deforestation

Monitoring and enforcing property rights in forests can be challenging due to their remote location and general inaccessibility. This leads to greater rights insecurity. While researchers are still working to understand what drives deforestation and how, there is a very large body of research literature associating deforestation to dysfunctional property rights, most of it focused on the Amazon.

One way property rights may induce deforestation is through the Land Statute and constitutional requirements that landowners maintain satisfactory levels of productivity to protect their rights. Cleared forest often serves as evidence of productive use of land and thus makes the land less susceptible to expropriation for the purposes of land reform. In addition, when the forest is cleared, it makes invasions easier to detect, so it helps property owners protect their land from illegal occupations.

Legislation also requires landowners to assure the conservation of natural resources. This tension between the benefits of clearing and preserving only increases the uncertainty surrounding the laws and property rights. With the land reform agency promoting productive use and the environmental agency promoting conservation, it is often unclear to landowners how to proceed: the result has often been deforestation.

Moreover, once deforestation has already occurred, the absence of well-defined property rights makes it very difficult or even impossible to identify who owns the cleared land. Sanctions or punishment becomes pointless if no one can be held responsible for the crime.

An analysis of the link between property rights and deforestation in the Amazon shows that a 10% decrease in insecurity, measured by an index that combines number of homicides related to land conflicts and number of expropriation initiatives taken by the National Institute of Colonization and Land Reform

10 Assunção and Chiavari, 2014.

11 Alston and Mueller, 2010.

(*Instituto Nacional de Colonização e Reforma Agrária - Incra*), induces a 7% decrease in annual deforestation rates.¹²

Deforestation may, however, be decreasing in light of new conservation policies Brazil introduced in 2004.¹³ Indeed, annual deforestation rates in Brazil's Amazon fell by almost 80% between 2004 and 2012. Yet, the current policies seem to have limitations in controlling small-scale deforestation, which has remained more persistent. In the early 2000s, Amazon deforestation resulted mainly from the clearing of large contiguous areas of forest. In recent years, however, deforestation has been completed mainly through small-scale clearings.¹⁴ In 2012, a new Forest Code was adopted to govern the use and protection of private lands in Brazil. It is one of the most important pieces of legislation with the potential to drive efficient land use in Brazil and become an effective tool against climate change. Although this new law has potential to control illegal deforestation, further research is needed to understand how it is changing behaviors among land proprietors and squatters.

Consequence 4: Unconventional land use decisions

When property rights are insecure, land use choices become distorted by these circumstances. Landowners make decisions that vary from what they would likely choose in more secure or more traditional economic environments.

It is difficult to gauge the full impact of how insecure property rights distort investment decisions, but research studies document the following effects:

- Weak titles in the Pará and Paraná frontiers led to farmers reducing land-specific investments;¹⁵
- In areas where property rights are insecure, landowners across Brazil tend to use sub-optimally large or premature investment in order to strengthen their rights;¹⁶
- On the other hand, the concession of titles to low-income Afro-Brazilian communities (*quilombolas*) improved their income and welfare through increased production and investment.¹⁷

Crop choices also deviate from selections that are more likely to be made under more secure economic and agricultural circumstances. One study found that in those municipalities where there are more conflicts, and thus less secure property rights, the choice of which crops are planted is affected.¹⁸ Because natural pasture and unproductive land signal an under-use of the land, they increase

12 Araujo et al., 2009.

13 "Action Plan for the Prevention and Control of Deforestation in the Legal Amazon" (*Plano de Ação para a Prevenção e o Controle do Desmatamento na Amazônia Legal, PPCDAm*).

14 Assunção et al., 2015.

15 Alston et al., 1996.

16 Vertova, 2006.

17 Bowser and Nelson, 2012.

18 Alston and Mueller, 2010.

the probability of a property being targeted for land reform. The same study shows that an increase in property rights uncertainty (as tracked by number of land related conflicts) reduced natural pasture and unused land, and it increased cultivated pasture. The increase in conflicts also led to a reduction of high-investment temporary crops (such as soy) for low-investment permanent crops.¹⁹ This shows that insecure property rights distorted farmers' crop choices from what would be the most profitable option if there were secure property rights.

Consequence 5: Production inequality for small farms

Poorly defined land rights perpetuates production inequality in Brazil. The belief in social inclusion, which has been argued to be the fundamental cause of the disjuncture between *de jure* and *de facto* property rights, is a direct aversion to inequality (see Box 2). Due to the widespread shared belief in social inclusion, the greater the level of inequality in Brazil, the greater the reaction in terms of programs and policymaking to address this issue. This often leads to attempts to make the latent *de jure* rules and legislation come to life, which then increases the uncertainty of property rights leading to many of the pathologies noted above.

Despite the massive effort to redistribute land through land reform and the promotion of family farms during the past quarter century, Brazil lacks a well-established base of small farms participating in the agricultural sector.

The data in Table 1 show that less than 1% of the total farms in Brazil generates more than half of the gross income declared by farmers. The least productive farms, which represent 66% of the nation's total farms, produce only 3% of the total declared income. This production profile is so highly skewed that it suggests that much of the current Brazilian agricultural policy directed toward supporting family farms may be largely ineffective.

Table 1: Gross Income per Farm by Farm Size, 2006*

Brackets (min. wages)	Number of farms	% of Total No.	Gross Income %	Gross Income per farm
0 to 2	2,904,769	66.01%	3.27%	0.52
2 to 10	995,750	22.63%	10.28%	4.66
10 to 200	472,702	10.74%	35.46%	34.49
> 200	27,306	0.62%	51.19%	861.91
Total	4,400,527	100%	100%	10.45

* Data from Brazil's latest Agriculture Census

Source: Navarro and Campos, 2013

¹⁹ A one-standard deviation increase in conflicts reduced the areas in natural pasture by 17%, in unused land by 3.7%, and the area of temporary crops by 3.1%, with compensating increases in planted pasture of 11.3% and permanent crops of 7.3%.

BOX 2: DE JURE VS. DE FACTO

De jure is an expression that means “of right, by right, according to law,” it is usually contrasted with *de facto*, which means “in fact, in reality.” The terms *de jure* and *de facto* are used instead of “in law” and “in practice,” respectively, when describing political or legal situations.

In the case of property, it is often difficult to fully enforce the formal rights specified by laws and regulations so it is common that the *de facto* property rights that provide the incentives for land use choices are disjoint from the *de jure* property

rights. This wedge between *de jure* and *de facto* may not be very consequential if there is wide agreement and certainty that what truly applies are the *de facto* rules that everybody has actually been abiding by.

However, when the *de jure* rights are invoked by other claimants or by the government, breaking with the practice of the *de facto* rights, there is uncertainty over which rights will prevail. Given the insecurity about which system is in place (*de facto* or *de jure*), incentives for inappropriate land use arise.

Brazilian Land Governance: Key Obstacles to Securing Land Rights

Brazil’s land rights rules and laws are not always properly enforced. Some laws are also extremely complex, which makes them difficult to interpret and implement. Furthermore, many institutions hold responsibility for managing property rights, and their mandates often contradict or overlap.

This complex, bureaucratic environment makes it difficult to secure property rights for the benefit of all of Brazil’s citizens. This section provides an introduction to the institutional challenges presented by Brazil’s current system of land rights governance.

Obstacle 1: Institutional complexity

In Brazil, multiple institutions share responsibilities for governing land property rights. This complex system lacks communication and coordination among its activities and does not have integrated databases.

The institutions in charge of land management are the executive offices at the federal, state, and municipal levels. They are responsible for executing a wide range of tasks and services related to land management, including agriculture and land reform, environmental monitoring and protection, indigenous and *quilombolas* community rights, and tax collection. The legislative branch of government enacts the property rights legislation while the judicial branch decides on land tenure conflicts. Finally, the land management system also includes notaries. Notaries are private entities, which have received public delegations by the federal government to provide a public registry function. The notaries are supervised by the judicial branch.

To give a sense of the complexity of the system, just at the level of the federal government, 11 institutional bodies share oversight of different aspects of

land rights and management. The fuller scope of Brazil's land governance and respective duties are summarized in Box 3.

Obstacle 2: Limitations of the land registry

Brazil's real estate registry operates under national legislation, and all properties, whether public or private, must be registered. Due to the limitations of this registration system, the record of land rights is unreliable. (Significantly, the rural cadastre system, which tracks only rural lands, introduces more problems and complexity to the system. These are discussed separately in Box 4.)

Notaries frequently have difficulties integrating their records with the public land-related bodies. Moreover, the notary incentive structures do not encourage the generation of an authoritative record of property rights. For each individual notary, fees are based on the number of registrations they complete, regardless of the accuracy of the information registered. Finally, monitoring of their services is usually limited.

A second challenge with the real estate registry is that records are incomplete and out of date. Real estate buyers are required by law to register their purchasing titles, however, many do not do so. The reasons vary and likely include simple inertia. Relatively high transfer and registration taxes may be another reason, as they may discourage owners from registering transfers and other transactions. This also likely encourages the under-declaration of the property's value by the registrants in an effort to reduce their fees. The World Bank's Land Governance Assessment Framework (LGAF) study estimates that in Pará and Piauí fewer than 50% of rural properties are formally registered.²⁰

The real estate registry also frequently lacks georeferencing data on the properties it tracks. Historically, asset locations documented by the registry were only descriptive, and did not include maps or other spatial information. This has led to duplication of claims and a persistent problem of false claims. Recent laws require georeferencing of all property, and the number of registries with these data is growing. However, a complete and trustworthy database does not yet exist.

Another persistent challenge is that of forged documents in the system. Because notaries do not always properly check the authenticity of documents used to register private properties, either due to a lack of capacity of the staff or corruption, registration based on false documents is common (see Box 5). The problem is further aggravated by the fact that when a notary office registers the falsified transaction record or other document, it automatically gives legitimacy to the claim in any location of the country. The forgers then take advantage of this.

²⁰ For more information see <http://go.worldbank.org/V97H6OMC50>.

BOX 3

Federal Government

Executive institutions/bodies:

- **Presidency of Brazil** – responsible for titling of indigenous land and creating protected areas.
- **National Institute of Colonization and Land Reform (INCRA)** – responsible for land reform, establishing rural settlements, maintaining the National System of Rural Cadastre (SNCR), managing public/federal lands, regularization and titling of *quilombolas*.
- **Ministry of Agrarian Development (MDA)** – responsible for land reform policies and land regularization in the Amazon biome.
- **Department of the Environment (MMA)** – responsible for forestry and environmental policies.
- **Chico Mendes Institute for Biodiversity Conservation (ICMbio)** – responsible for proposing, implementing, managing, protecting, inspecting, and monitoring federal protected areas, such as national parks and extractive reserves.
- **Brazilian Forestry Service (SFB)** – responsible for public forest concessions, managing the National Public Forest Registry (CNPf), and implementing and managing the Rural Environmental Registry (CAR).
- **Brazilian Institute of Environment and Renewable Natural Resources (IBAMA)** – responsible for the environmental control, law enforcement, and licensing of the Brazilian forests.
- **National Indian Foundation (FUNAI)** – responsible for mapping out and protecting lands traditionally inhabited and used by indigenous peoples.
- **Palmares Cultural Foundation (FCP)** – responsible for recognizing and certifying *quilombolas* communities.
- **Federal Property Management Office (SPU)** – responsible for managing the federal properties, which includes vacant lands, federal floodplain areas, others.

- **Federal Revenue** – responsible for collecting the rural land tax (ITR) and maintaining the Rural Land Cadastre (Cafir).

Legislative branch: Competent to enact laws on property rights, agriculture, environment, land expropriation, and land reform.

Judicial branch: Decisions on land tenure conflicts concerning federal lands.

State Government

Executive institutions/bodies:

- **Governor** – responsible for creating state protected areas.
- **State Land Institutes** – responsible for establishing state rural settlements, managing public/state lands, regularization and titling of *quilombolas*.
- **Environmental Agencies** – responsible for proposing, implementing, managing, protecting, inspecting, and monitoring state protected areas. Also responsible for the environmental control, law enforcement, and licensing of rural activities.

Legislative branch: Competent to enact laws on environment protection.

Judicial branch: Decisions on land tenure conflicts concerning private properties and state lands.

Municipalities

Executive institutions/bodies: Responsible for creating protected areas and establishing municipal rural settlements

Legislative branch: Competent to legislate only on issues of local interest, including environment and land use.

Notary Offices/ Land (or Real Estate) Registry Offices

Offices that are empowered by the public authorities to perform notarial and registry activities, including those relating to real property transactions. Under Brazilian law, a deed of sale must be witnessed and authorized by a public notary and then registered at the Land Registry/ Real Estate Registry (RGI).

Obstacle 3: Lack of an authoritative, integrated database of public and private land

As obstacles 1 and 2 suggest, a third major area of difficulty in Brazilian land governance is the lack of an integrated database of public and private land. Without an integrated database of properties, the state agencies charged with public land management operate largely without a proper asset inventory. Yet, asset inventories are a key element for good land stewardship. This is of utmost importance when Brazil has large areas of public land (including vacant land, protected areas, indigenous lands, etc.). Rough estimates show that over 20% of Brazil is occupied by public vacant land. In the state of Amazonas, this percentage raises to over 40%, or the equivalent of 60 million hectares – an area that is larger than most Brazilian states. The absence of an accurate cadastre does not allow for precise estimates.

The Federal Property Management Office (*Secretaria do Patrimônio da União-SPU*), part of the Ministry of Planning, Budget and Management, has as its main responsibility, the management of National Assets, and maintains its own incomplete database. The nature of these assets is very diverse: state owned properties, tidal lands, indigenous lands, national forests, vacant lands, border areas, and goods of common use. The SPU is in charge of

BOX 4: LAND REGISTRY X CADASTRE

The purpose of the registry and cadastre systems is sometimes misunderstood and exemplifies the complexity of land governance in Brazil. This box highlights the differences and presents the key challenges facing the cadastre.

The **land registry** is a national record of all properties' transactions (e.g., purchase, sale, donation, and inheritance) and all the interests related to the land (e.g., mortgage and easement) in Brazil, which is mandatory for all urban and rural properties. Real estate buyers are required by law to register their purchasing titles. The notaries issue the certificate of registration, which is a legal document that certifies ownership rights over a declared property.

The rural **cadastre** is a database that indicates the geographical location and attributes (for example, physical, environmental and use characteristics) of

the land. Rural cadastres in Brazil, which comprise both properties and possessions, have different purposes and are managed by different bodies. The information in the cadastres supports the development and management of land, agricultural, environmental, social and tax policies. The registration of a parcel of land in a rural cadastre does not guarantee property rights.

Due to the lack of coordination and integration of records between land-management agencies, there is no unique land cadastre covering the entire Brazilian territory. Furthermore, the lack of connection between rural cadastres and land registry limits legal security in real estate transactions, prevents the implementation of fairer and more effective land policies and increases fraud and illegal appropriation of land.

all vacant federal public land but does not have the data for an accurate understanding of the scope of the land under its management. A further layer of complexity is added by the fact that there are also vast areas of public land belonging to the states that maintain (with or without success) their own databases.

BOX 5: GRILAGEM, THE PRACTICE OF ILLEGAL LAND GRABBING

Grilagem, or the illegal grabbing of public lands, refers to the practice of creating false documents in order to take possession of land illegally.

The term comes from an old practice of forging documents by placing the fake papers in a box of crickets or *grilos* in Portuguese. Over time, the insects gave an aged appearance to the documents, which improved their chances of being accepted by authorities.

Although land grabbers no longer use crickets today, they still forge documents in an effort to deceive a notary into “legalizing” their land. Once they have their fake property documents notarized, they add credibility to their title by registering it in different state and federal land-related institutions (e.g., state land institutes, Incra, federal revenue, environmental agency).

“Classic” land grabbing most commonly uses forged papers that correspond to actual existing areas. Once the fake title is notarized, the land grabbers then start exploiting or selling the land.

However, sometimes the forged documents serve solely as collateral for financial transactions.

There are several documented cases where the mere possession of fake land ownership papers is sufficient to obtain bank loans and project financing, or to pay social security debts.²¹

The overall rate of land grabbing is not fully known, but in 1999, Incra made its first and only consistent effort to locate each case of fraud and falsification of land ownership titles (*Livro Branco da Grilagem*). Across the country, the total land under suspicion of being illegally occupied at that time was approximately 100 million hectares; this is four times the area of the State of São Paulo. In the North, the rate of land grabbing is especially concerning: 55 million of the 157 million hectares in the state of Amazonas are thought to be appropriated illegally.

Although these numbers have likely declined somewhat since many fraudulent documents were canceled after Incra’s 1999 study, the practice of land grabbing persists and is mostly undeterred. For example, in 2006, a survey showed another 30 million hectares grabbed in Pará, which equals 23% of the state’s territory.²²

²¹ Di Sabbato, 2001.

²² IPAM, 2006.

Conclusion

Nations that deliver secure land rights to their citizens benefit from organized and peaceful property transactions. This allows for the most efficient and productive uses of land and generates positive social and economic rewards. This report advances progress toward that goal by helping to define the consequences of insecure land rights and the obstacles to their improvement. CPI will further contribute to this discussion by mapping legislation, identifying the main stakeholders involved and outlining the implications of land property rights for the implementation of the new Forest Code.

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