Land acquisition by foreigners in Brazil: legal framework changes and recent tendencies

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Main aims of presentation

• present evidences that land grabbing is part of Brazilian history and is done by Brazilians and foreigners;
• LAS historically developed leads to lack of regulation in land market, creating conditions for land grab and foreigner acquisitions;
• Land acquisitions consequence of expected gains with double characteristics of land (speculative and productive) control with no LAS impossible;
• Evolution of rules over foreigner land acquisitions;
• that large land acquisitions by foreigners is happening in Piauí even more strongly now because of the large difference in land values;
Tordesilhas Treaty -
1. Historically – land grabbing is how the country was formed and is until now being occupied (I)

- Silva (1996) showed that after Portuguese arrival, access to land was done through possession - legal and institutional settings created were not able to stop it;
- Silva (1976), Silva (1996), Monbeig (1984), besides others, showed that as the State didn’t have control over land, the main way to obtain land was through its occupation, subdivision and reselling (with large gains);
Historically – land grabbing is how the country was formed and is until now being occupied (II)

• Costa (1985:175) - During the whole colonial period and until today “as vacant land existed in large quantities, all people that penetrated in the hinterland – areas with no commercial value – could hold a piece of land, as they could face the Indians and survive in the forests”
Historically – land grabbing is how the country was formed and is until now being occupied (III)

• Hunebelle (1982:17) when presenting the Brazilian situation in the 1970s to international investors stated: “On the opposite side, refined investors use the most specialized lawyers to purchase land. The stroke of genius, however, put to practice by certain multinationals as well as by small private groups is the following: one buys “occupied” land for a trifle; soon afterwards, just as in the American West of the 19th century, armed bandits chase (or massacre...) the occupiers. All of sudden, the property is appreciated in 100%, or even 1000%... “
Farm area Brazil - Census information (ha)
2. Foreigner Land Acquisition in Brazil during land grab

- From 2006 – 2009 - international great land acquisition - called land grab
- Different explanations for the intensification in peripherical countries, mostly in South (Brazil, Africa) for:
  ✓ Food sovereignty
  ✓ Portfolio diversification – financialization
  ✓ Speculation
  ✓ Flex crops
  ✓ Land simultaneously productive and speculative asset. Example Shell/COSAN with Radar besides others;
- Less focus on the land quantity more focus on the scale of capital investment;
Foreigner Land Acquisition in Brazil during land grab (2)

• World Bank in 2010, entitled "Rising Global Interest in Farmland. Can It Yield Sustainable and Equitable Benefits? " - between October 2008 and August 2009, 46.6 million hectares would have been acquired by foreigners in developing countries. Have an average size of 40,000 ha, with a quarter of them involving more than 200,000 ha. Only for Brazil this report stated that around 3.6 millions ha had been acquired by foreigners;

• FAO report (2012a) - 754 land deals, 56.2 million hectares are located in Africa, 17.7 million hectares in Asia and 7 million Of hectares in the Americas (FAO, 2012a, p.5).
Evidences of historical Land grabbing in Brazil

• In 2001 an Parliamentary Investigation Commission (CPI) analyzed the public land occupation and stated: "At the national level, land grabbing must sum easily 100 million hectares."

• Cancelation of irregular titles at registries:
  ✓ Lima (2002), canceled in 14 counties of the state of Amazonas, the equivalent of 48.5 million hectares of properties registered;
  ✓ 410.2 millions ha in the state of Pará were canceled in 2009 by the National Justice Counsel (CNJ);
  ✓ In Piauí 6 million of ha have been blocked at the Notaries since 2009
A TYPOLOGY OF LAND GRABS

• differentiate between private and public land grabs (the latter being more usual) and also differentiate between the institutions responsible for the fraud (land notaries, provincial land institutes, and county administration).

✓ public land grab by private agents (usually in terras devolutas) – called grilagem
✓ expelling of landholders with illegal titles by large ones, and/or force;
✓ expelling of small landholders with no titles by large ones, using illegal documents;
✓ expelling of landowners by large ones using titles given by the state;
Buyers are coming to obtain Brazilian land

- UNCTAD - annual direct investment in agriculture of US $ 420.9 million;
- BACEN according to Wilkinson et al. (2011) an average annual official input volume (BACEN) for agriculture and livestock of US $ 178.2 million between 2005 and 2007;
- Sauer e Leite (2011) - in Brazil 34,371 rural properties belonging to foreigners, covering a total area of 4.3 million hectares
- Wilkinson et alli (2011) in recent acquisitions, between 2008 and 2010, with information on the acquired, acquired more than 2.3 million ha.
A Global Land Administration Perspective

Enemark, Williamson (2010).
Brazil LGAF will need to probe a complex institutional set up

**Presidency of the Republic** with Congress approval establishes:
- Conservation areas and Aboriginal Lands

**State Land Institutes:** responsible for all state public land

**INCRAS:**
- Grants unique initial registration
- Registers properties at a cadastre
- Concedes concession of use to resettled
- Discriminates public land

**Resettlements** of landless

**LAW 10,267:** any change in property at the notaries needs georeferenced plant for register

**Properties Notaries:** registers properties based on contracts of purchase and selling (consulting preview registers)

**Judiciary Courts** - it homologates or creates titles in decisions of any type of conflict

**MUNICIPALITY:** decisions about use of rural and urban land, charging of urban land tax

**INCOME TAX Office:** charging of rural property tax (ITR)

**State Governors with Congress approval establishes:**
- State conservation areas

**Colonization** — public land destination to land divisions

**Conservation areas and Aboriginal Lands**

Source: legislation and Reydon (2014)
Lack of Governance seen at several LGAF shows:

- Lack of control over public lands;
- Private land property registry is not reliable;
- The registry coverage is incomplete and not up to date;
- Lack of spatial information (georeferencing) on the registry of private land properties;
- Lack of a reliable and integrated registry of public and private land;
- Low level of land property taxation;
- Supply, land use planning and regularization of urban land are not in line with the demand;
- Neglectful governance over large scale land and forest acquisitions
Many incomplete non integrated cadasters
Syntheses of the Brazilian legal setting

• Law 5.709 from 1971 - restricts the acquisition of land in Brazil by foreigners:
  ✓ Maxim of 25% of the total area of one municipality;
  ✓ In the frontier (150 km) – prohibited;
  ✓ Public Land donations to foreigners prohibited;
  ✓ Farmers: max 50 MEIs (5-100 hectares)
  ✓ Corporations: max 100 MEIs (besides when authorized by Congress)
Changes in the legal setting interpretation:

• To make the privatization possible (FHC) between 1998-2010, the General advocacy (parecer GQ181 da AGU), based on a controversy over the 1988 Constitution, makes the acquisitions by foreigners more flexible;

• International Corporations with a head office in Brazil are considered Brazilians independently of the foreigner share in the company;

• After strong pressure of different sectors in 2010 the legal interpretation changes again and the restrictions from de law 5.709 of 1971 (parecer LA01 da AGU) prevail again.

• Since then the limits are strong again but there are ways around;
Proposals for changes in legal setting for foreigners land acquisitions

• PL 2289/2007 - Beto Faro (PT/PA) – wants to rule in the same directions of the seventies but including land rental;
• PL 4059/2012 - added to PL 2289/2007 by the rural group; Goes against the previous project in essence (see Note of the Popular Movements of August 2016)
• PL 4059 - Civil House waved to try to pass the same as Provisional Measure - returned afterwards (FPA, Defense were against) (Carta Capital, 16/02)
Cases of Land Grab – because of lack of LG
MATOPIBA: the new soya bean frontier

• Maranhão, Tocantins, Piauí and Bahia and is compound of 31 microregions (337 municipalities) summing 73 million hectares.
• Most was occupied during the 90’s;
• Piauí started at the 2000 – soya bean production area increased from 10 thousand to 610 thousand of ha;
• Prices of land increased sharply;
• conflicts around land are so large that a Agrarian Court was created;
• Its Judge has blocked since 2009 the registers at notaries of 6 millions of ha of properties;
Who are the buyers of grabbed land?

- From what could be obtained in the region many types of land grabbers are obtaining land in the region: as the Judge said:

- “irregularities in the Cerrado land acquisitions involving members of the Judiciary, Legislative and Executive of Piauí, and authorities in Brasilia. The illegally occupied lands were acquired by entrepreneurs from Africa and Asia (especially China), Europe, the United States and other states. Land brokers seek national and foreign investors to obtain the land that was illegally registered with fraud at the registration offices. Land grabbing also involves several multinational companies and foreign investment funds as large areas owners. There are reports of loans in national and international banks in which the land is given as collateral - when, for the most part, the area in question and pledged to the financial institution does not exist”.

Map 3 – Properties with georeferenced maps in South west Piauí.

Fonte: INCRA/PIAUÍ, 2014
### Table 4 - LAND PRICES IN PIAUI R$ current

<table>
<thead>
<tr>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Caatinga (Bom Jesus)</td>
<td>50</td>
<td>53</td>
<td>108</td>
<td>125</td>
<td>242</td>
<td>348</td>
<td>695%</td>
</tr>
<tr>
<td>Cerrado agrícola (Bom Jesus)</td>
<td>201</td>
<td>563</td>
<td>1.867</td>
<td>1.900</td>
<td>2.150</td>
<td>2.250</td>
<td>1119%</td>
</tr>
<tr>
<td>Cerrado agrícola (Uruçuí)</td>
<td>299</td>
<td>563</td>
<td>1.867</td>
<td>2.000</td>
<td>2.300</td>
<td>2.933</td>
<td>981%</td>
</tr>
<tr>
<td>Pastagem formada na caatinga (Bom Jesus)</td>
<td>200</td>
<td>227</td>
<td>458</td>
<td>467</td>
<td>601</td>
<td>898</td>
<td>449%</td>
</tr>
<tr>
<td>Terra agrícola de alta produtividade (Bom Jesus)</td>
<td>941</td>
<td>1.619</td>
<td>4.050</td>
<td>3.833</td>
<td>4.033</td>
<td>6.633</td>
<td>705%</td>
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<tr>
<td>Terra agrícola de alta produtividade (Uruçuí)</td>
<td>1.272</td>
<td>2.111</td>
<td>4.542</td>
<td>4.375</td>
<td>4.983</td>
<td>8.500</td>
<td>668%</td>
</tr>
<tr>
<td>Terra agrícola de baixa produtividade (Bom Jesus)</td>
<td>548</td>
<td>1.056</td>
<td>2.050</td>
<td>1.767</td>
<td>2.217</td>
<td>4.083</td>
<td>745%</td>
</tr>
<tr>
<td>Terra agrícola de baixa produtividade (Uruçuí)</td>
<td>870</td>
<td>1.337</td>
<td>1.983</td>
<td>2.017</td>
<td>2.917</td>
<td>5.400</td>
<td>621%</td>
</tr>
</tbody>
</table>

Source: FNP several years
Cases of enterprise specialized in speculating with land
BrasilAgro – core business on Web site:

"maximize the return on our investments by: identifying, acquiring, developing and operating rural properties that offer high potential for price appreciation; and optimizing the returns and yields of our rural properties by implementing agricultural technologies and techniques that are considered benchmarks in the industry.

We actively manage our operations by combining the returns generated from our properties and from our operations."
Brasilagro Shareholding

CRESUD
39.76%

Free Float
60.24%

IPO*: Maio, 2006
R$ 584 mm
58.226.800 ações
### BrasilAgro – properties

<table>
<thead>
<tr>
<th>FARMS</th>
<th>LOCATION</th>
<th>ACQUISITION DATE</th>
<th>PROJECT</th>
<th>TOTAL AREA</th>
<th>ACQUISITION VALUE</th>
<th>CAPEX¹</th>
<th>ACQUISITION + CAPEX</th>
<th>INTERNAL VALUATION²</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jatobá</td>
<td>BA</td>
<td>Mar/07</td>
<td>Grain</td>
<td>31666</td>
<td>33,4</td>
<td>318</td>
<td>65,2</td>
<td>298,8</td>
</tr>
<tr>
<td>Araucária</td>
<td>GO</td>
<td>Apr/07</td>
<td>Sugarcane</td>
<td>8,324</td>
<td>56,2</td>
<td>1,3</td>
<td>57,5</td>
<td>144,0</td>
</tr>
<tr>
<td>Alto Taquari</td>
<td>MT</td>
<td>Aug/07</td>
<td>Sugarcane</td>
<td>5,305</td>
<td>33,2</td>
<td>0,1</td>
<td>33,3</td>
<td>117,2</td>
</tr>
<tr>
<td>Chaparral</td>
<td>BA</td>
<td>Nov/07</td>
<td>Grain</td>
<td>37,182</td>
<td>46,7</td>
<td>4,1</td>
<td>50,8</td>
<td>256,0</td>
</tr>
<tr>
<td>Nova Buriti</td>
<td>MG</td>
<td>Dec/07</td>
<td>Forestry</td>
<td>24,211</td>
<td>216</td>
<td>0,4</td>
<td>22,0</td>
<td>28,7</td>
</tr>
<tr>
<td>Preferência</td>
<td>BA</td>
<td>Sep/08</td>
<td>Pasture and Grains</td>
<td>1,739</td>
<td>110</td>
<td>8,8</td>
<td>29,8</td>
<td>52,3</td>
</tr>
<tr>
<td>CrescSA.¹</td>
<td>Paraguay</td>
<td>Dec/13</td>
<td>Pasture and Grains</td>
<td>19,307</td>
<td>72,0</td>
<td>-</td>
<td>72,0</td>
<td>111,1</td>
</tr>
<tr>
<td><strong>Sub-Total</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>241,624</strong></td>
<td><strong>274,1</strong></td>
<td><strong>67,5</strong></td>
<td><strong>341,6</strong></td>
<td><strong>1010,0</strong></td>
</tr>
</tbody>
</table>

¹ CAPEX: Capital Expenditure
² Internal Valuation
BrasilAgro – location properties

241,624 hectares
in Brazil and Paraguay

Diversified portfolio
reducing operational and financial risks

- Sugarcane: 5%
- Forestry: 8%
- Pasture: 6%
- Grains: 80%

Environmental reserve: 36%
Potentially productive: 64%

Red: Sold farms
Yellow: BrasilAgro’s farms
Orange: Agricultures partnerships
SLC Agrícola Case

*Acquire new farms*, the Company seeks to identify and acquire rural properties in Brazil’s cerrado region with excellent production and appreciation potential; *Increase production by leasing land*. Leasing areas close or adjacent to our farms reducing our fixed costs and unit production costs, in addition to lower initial investment needs; *Increase the cultivation of second crops.*
SLC Shareholding

**Farming Operation and Land**
- 100%
- SLC Agricola
  - 81.3%
  - SLC LandCo
  - SLC Agricola
  - Valiance
  - SLC-Riconador Fazenda Pioneira
  - SLC-MIT
  - Mitsu & Co. Ltd.

**Family Holdings**
- 100%
- SLC Group
  - 49%
  - Free-Floating (SMA & PROVESPA)
  - SLC Agricola
    - 51%
    - SLC Alimentos
    - SLC Comercial
  - SLC Agricola (1)
  - Sells branded rice and beans to wholesalers and supermarkets.
  - Sells MRO's (Maintenance, repair and operation) items for the industry.

**SLC Group**
- 100%
- SLC Alimentos
- SLC Comercial
- Ferramentas Gerais
- John Deere dealer for northwestern Rio Grande do Sul State.

(1) Total shares issued: 98,897,500 / Level 1 ADR Program: Launched August 8th, 2011 (Sponsor: JP Morgan) - Ticker SLCJY
NET LAND APPRECIATION (R$/MM)
Adjusted for SLC Agricola’s share at SLC LandCo.

2011: 179, 11%
2012: 269, +17%
2013: 375, +18%
2014: 428, +17%
2015: 140, +5%

Legend:
- Net Land Appreciation
- Variation in price per hectare
Fully owned by SLC Agrícola
SLC LandCo’s farms
Joint Venture with Grupo Dois Vales
Joint Venture with Mitsui Co.
The present debate on foreigner land ownership
Proposals of changes in the legal setting legal

• Blairo Maggi (PP), Minister of Agriculture and Rural Producer, defends ban on foreigners only for annual cultivars - corn, cotton and soybeans - this lock was not included (Estadão, 04/04)

• Estadão, 04/04 - "Land sale project gets more 'liberal'":

• Current project - 100 thousand ha limit for purchase + 100 thousand ha leased

• Newton Cardoso's proposal (PMDB-MG) = without limits (it is said that there will be a ban for Amazonian biome and border regions)
3. Conclusions

• It is necessary that the land governance agenda becomes a state policy - not a government policy.
• Land problems have been part of Brazilian reality since its beginnings – and the edition of new laws has always been the solution;
• Land grab emerges as a recent hype, but it is important to remember that the interest of foreigners for land in peripheral countries has always existed.
3. Conclusions (2)

• Nationality and territoriality controls are ineffective against a denationalized and deterritorialized threat such as financial capital. (Fairbairn, 2015)

• The purchase of land by foreigners would not be a problem if there were participatory and socially accepted governance mechanisms (e.g., cadastre + a rural zoning that indicated areas for large-scale exploration, conservation areas, areas for family agriculture, etc.).

• Rather than prohibiting, it is necessary to create mechanisms for large estates to generate shared benefits for society (investments in communities, jobs, commitments to environmental preservation in the region, etc.)
The major proposals for improving the Brazilian land governance are:

• develop Land Information System (LIS) that includes capacity to map the land and organize the land information that is decentralized in different institutions at different levels of the government (federal, provincial and local) to build an up to date consolidated land cadaster.

• Creation of a new institution for Land Administration or, alternatively, centralizing this responsibility on an existing institution.

• Modernize the land property registration system, which usually takes part in the land frauds, especially promoting transparency and creating mechanisms of public monitoring.

• Promote the issuing of land titles for tenants in possession.

• Enforce the land property taxation.
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More information:
http://governancadeterra.com.br

O Planeta Agradece!
Thank You!

Contact: bastiaan@unicamp.br

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