The Rural Environmental Cadastre (CAR) as a tool for environmental regularization in land reform settlements

Lucas Abreu Barroso
Guilherme Viana de Alencar

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ABSTRACT: 2014 marks the 50th anniversary of the Land Statute (Law n. 4,504 / 1964). Enacted at the beginning of the military dictatorship, the Land Statute was the formula found to contain the pressure coming from rural areas which demanded a government policy based on Land Reform. Although designed primarily to distribute land in the Northern Region, after the re-democratization in 1985, peasant movements were present in the five regions of the country, showing that the struggle for land happened nationwide. According to the National Institute for Settlement and Agrarian Reform, by 2013, in Brazil 1,288,444 families were settled in the North, Northeast, Midwest, Southeast and South regions, incorporating an area of 88,197,147ha into the land reform program. The most serious problem resulting from this model of land occupation was uncontrolled deforestation in the settlements with the aim of converting land use to agriculture and livestock activities, which meant a drastic increase in the national rate of deforestation. In this context, the National Institute for Settlement and Agrarian Reform created the Combat Plan and Alternatives to Illegal Deforestation in the Settlements of the Legal Amazon, called Green Settlements Program, which together with the Resolutions of the National Council for the Environment, of 2006 and 2013, established procedures for environmental licensing in agrarian reform settlements, and had a goal to stop deforestation in those areas. With the publication of the new Forest Code (Law n. 12,651 / 2012) the Rural Environmental Cadastre was created, representing another tool to control deforestation, especially those occurring in the areas of rural settlements. Through this registration, settlers will be able to obtain the regularization of areas consolidated until July 22, 2008, the date of the enactment of Decree n. 6514, which deals with administrative infractions and sanctions related to the environment and the procedure to ascertain them.

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1 The legislative-conceptual pathway of the small family-owned agrarian property

The definition of family property was originally established by art. 4, II, of the Land Statute (Law No 4,504/1964), in verbis: [it is] “the rural property which is directly and personally operated by the farmer and his family, absorbing all their workforce, guaranteeing their livelihood, as well as social and economic progress, with a fixed maximum area for each region and farming method, and eventually labor with the aid of third parties”.

In 2006, Law n. 11,326 established the guidelines for formulating the National Policy on Family Farming and Rural Family Enterprises. For definition of the beneficiaries of this government policy, the law stipulates that the family farmer and rural family entrepreneur is the one who practices activities in rural areas (article 3), and must meet simultaneously the following requirements: not to hold, in any way, an area greater than four fiscal modules; to use predominantly workforce of his own family in the economic activities of his establishment or enterprise; to have household income predominantly originated from economic activities linked to his establishment or enterprise itself; to have a minimum percentage of family income originated from economic activities of his establishment or enterprise, as defined by the Executive Branch; and to run his establishment or enterprise with his family (items I, II, III and IV of art. 3, respectively)

With the advent of the new Forest Code (Law n 12,651/2012), an innovative concept for this classification of agrarian property was laid down in art. 3, V:

Art. 3 For the purposes of this Law, the following definitions apply:

[...]

V - small rural family property or possession: the one exploited by the personal work of the family farmer and rural family entrepreneur, including settlements and land reform projects, and which meets the requirements of art 3 of Law No. 11,326 of July 24, 2006.

2 The Land Statute and family property: the basis for land reform

Even though it had its birth during the military dictatorship, the Land Statute is considered the first document in the history of Brazil that addressed the issue of land reform. And this was so, despite not having been created as a state policy aimed to reduce land concentration in the five regions of the country and to promote a better distribution of income, but to meet the huge pressure coming from the countryside generated by peasant movements claiming access to land and better working conditions.1

Since the process of re-democratization (1985), peasant struggles have been characterized by the occupation of land as a way to compel and mobilize the government to implement land reform in agrarian properties that do not meet their social function. These are areas that are susceptible to expropriation for land reform purposes.²

The Land Statute establishes that family property is the first of five destinations of parcels of land expropriated for agrarian reform (art. 24, I), and also the order of preference for the sale of land acquired by the government (art. 25, I).

According to the National Institute for Settlement and Agrarian Reform (INCRA) 1,288,444 families had been settled in Brazil by 2013. The highlights were the North region (527,829 families) and the Northeast region (419,174 families). The area incorporated into the reform program was 88,197,147 ha, encompassing 9,114 settlement projects.

As it is well known, it is up to INCRA - a federal government’s autarchy under the Ministry of Agrarian Development (MDA), created by Decree n. 1110/1970, with regimental structure established by Decree n. 5735/2006 (with altered and updated wording by Decree n. 6,812 / 2009) - to promote land reform in Brazil. Furthermore, INCRA is responsible for conducting the national land-use planning, greatly contributing to sustainable agrarian development.

3 Environmental impacts caused by rural settlements

Despite the significant number of settlements to solve social problems in the countryside, the distribution of these parcels caused considerable damage to the environment, because, to produce, settlers need useful area aiming at the implementation of their agricultural and livestock activities. It was in this scenario that rural settlements represented a major hotbed of deforestation, especially those located in the Amazon.³

In a comparative study comprising 343 settlements established in the Amazon, it was found that 49% of the area of these settlements had been deforested by 2004.⁴ This deforestation is concentrated in settlements located in Pará, Rondônia and Mato Grosso, especially along the "Deforestation Arch"⁵. The deforestation that occurred in these settlements represented 15% of total deforestation in the Amazon by 2004.

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⁵ http://www.ipam.org.br/saiba-mais/glossariotermo/Arco-do-desmatamento/92. Accessed on 20/05/2014: "The region where the agricultural frontier advances toward the forest and also where we find the highest deforestation rates in the Amazon. It is constituted by 500,000 square kilometers of lands ranging from eastern and southern Pará westward, passing through Mato Grosso, Rondônia and Acre."
But the study conducted in seven properties of two settlements in Mato Grosso showed that the developed activities do not jeopardize environmental quality and that farming practices are compatible with the standard of environmentally sustainable development.⁶

In order to solve the deforestation caused by settlements, INCRA created through Ordinance n. 716/2012 the Combat Plan and Alternatives to Illegal Deforestation in the Legal Amazon Settlements (PPCADI-Amazon), the so-called Green Settlements Program. This program’s overall aim is the integrated execution of actions of INCRA / MDA with actions and activities of public and private partnerships, and with rural social movements, to prevent, combat and suggest alternatives to illegal deforestation in land reform settlements in the Amazon.

For this control, specifically in areas with settlements established and the already consolidated ones, the National Council for the Environment (CONAMA) approved regulation establishing procedures for environmental licensing in land reform settlements (Resolution n. 458/2013). Through a simplified licensing process, settlements are called to perform procedures that aim to meet the obligations under environmental legislation, covering even the situations subject to regularization.

4 The Rural Environmental Cadastre (CAR) and environmental regularization in agrarian reform settlements

The Rural Environmental Cadastre (CAR) was established by the new Forest Code, being part of the National Information System on the Environment (SINIMA). Its regulation was given by Decree n. 7830/2012, which created the Rural Environmental Cadastre System (SICAR), responsible for integrating the CAR of all states of the Federation.

The CAR allows the monitoring of environmental regularity on the part of the owner or possessor of agrarian property, making it possible for areas (parcels) of agrarian reform settlements to be registered so as to comply with environmental legislation. It is through this cadastre that the environmental agencies of the National Environmental System (SISNAMA) will have access to reliable information about the real situation, location (geo-referencing) and regularity of rural properties concerning the areas of environmental interest located within the agrarian property or possession.

As registration is compulsory for all agrarian properties, the environmental information contained in it eventually composes a database for control, monitoring, environmental and economic planning, and combat against deforestation, as established by article 29 of Law n. 12,651 / 2012.

All properties and land possessions, including those that are part of the agrarian reform settlements, will have a term of one year to be enrolled in the CAR; this term counted from the

day following the publication of Normative Instruction n. 2 of the Ministry of Environment,\(^7\) which sets forth the procedures for integration, implementation and harmonization of the SICAR and defines the general procedures of the CAR.

The aforementioned article 29 of Law n. 12,651/2012 in its § 1, states:

\(^{Art.\ 29\ […]}\)

§ 1 The registration of the rural property in the CAR should be made, preferably in a municipal or state environmental agency that, according to the regulation, shall require of the rural owner or possessor:

I - identification of the rural owner or possessor;

II - proof of ownership or possession;

III - identification of the property through plant and descriptive memorial, containing the indication of geographical coordinates with at least one tie-down point of the perimeter of the property, stating the location of the remaining native vegetation, the Permanent Preservation Areas, Areas of Restricted Use, the consolidated areas, if existing, and also the location of the Legal Reserve.

For the small family agrarian property or possession, the new Forest Code provides special treatment regarding the registration process in the CAR, considering the difficulties and / or limitations of this category of agrarian property (reduced gross income; small area for agrosilvopastoral exploitation; predominance of use of family workforce, precarious or nonexistent Internet access).

Thus, art. 8 of Decree n. 7830/2012 provides:

Art. 8 For registration in the CAR of rural properties referred to in item V of the caput of art. 3, of Law 12,651 of 2012, a simplified procedure will be observed, pursuant to act of the Minister of State for the Environment, in which the following shall be compulsory: the identification of the rural owner or possessor; proof of ownership or possession; and submission of sketch showing the perimeter of the property, the Permanent Preservation Areas and the remaining vegetation that forms the Legal Reserve.

§ 1 The owner or possessor shall present the data with the identification of the proposed Legal Reserve area.

§ 2 Competent bodies of SISNAMA, or institution empowered by it, shall realize the collection of respective geographic coordinates; and the government shall provide

\(^7\) Normative Instruction n. 2 published on May 5, 2014.
gratuitous technical and legal support, as referred to in the sole paragraph of art. 53 of Law No. 12,651, 2012; the owner or possessor having the option do it on their own.

§ 3 The provisions of this article shall apply to the rural owner or posseiro [one who has possession of public land without title] with up to four fiscal modules who develop agrosilvopastoral activities, and to indigenous peoples and traditional communities that make collective use of their territory.

The form of control (inspection) and checking of information provided by the owner or possessor / posseiro of the family agrarian property in the CAR will be the responsibility of the appropriate environmental agency of SISNAMA. In case there is pending issue or conflict of declared information in the documents submitted, the owner or possessor / posseiro of the family agrarian property shall be notified to remedy / rectify the information / documents submitted by deadline established by competent body.

While this body does not manifest on the pending issues / inconsistencies of the information declared by the owner or possessor / posseiro of the family agrarian property in the CAR, the registration of such property in the CAR will be considered effective, as seen in art. 7 of Decree n. 7830/2012:

Art. 7 If pending issues or inconsistencies in the information contained in the documents submitted to the CAR are detected, the responsible body shall notify the applicant once, so that the applicant may provide additional information or correct and ensure the adequacy of information provided.

§ 1 In the case contemplated in the caput, the applicant shall make the changes by the deadline set by the competent environmental body, under penalty of cancellation of his registration in the CAR.

§ 2 While there is no manifestation of the competent body about pending issues or inconsistencies in the information declared and in the documents submitted for registry in the CAR, the registration of the rural property in the CAR shall be deemed effective for all purposes provided by law.

§ 3 The competent environmental body may conduct field inspections whenever it deems necessary to verify the declared information and to monitor commitments undertaken.

§ 4 The documents supporting the declared information may be requested at any time by the competent body, and may be provided by digital media.

For registration in the CAR, the owner or possessor / posseiro of a family agrarian property must access the module available on the website "www.car.gov.br" and download the executable software file referring to the cadastre module of his state. After downloading, the owner / possessor / posseiro must install it on the computer to start the registration. After installation, there
will be the option of downloading the images regarding the municipality in which the agrarian
property is located.

Three categories of registrations are displayed in the CAR module: 1 Rural Property; 2 Rural
Property of Traditional Peoples and Communities; and 3 Rural Property of Agrarian Reform
Settlements. Options 2 and 3 may only be accessed by the entities responsible for the registration
of traditional peoples and communities and agrarian reform settlements, respectively.

Therefore, for settlement registration purposes, the responsibility falls on the land agency
of the settlement, which may be INCRA or a state agency, according to the origin of the
expropriation. After registration of the parcels, the land settlement agency shall deliver the CAR
to each settler of the settlement project.

However, there is a situation in which the settler will be responsible for his own registration
in the CAR: when he meets the requirement of title registered on behalf of the settlers with
resolutive clauses properly fulfilled (full title). In this situation, settlers should go to the competent
environmental (municipal or state) agency to request support to register their property in the
CAR. The new Forest Code already provides this type of support for agrarian property owners
who have up to four fiscal modules.

The recomposition of consolidated areas in Permanent Preservation Areas along or in the
vicinity of watercourses, lakes and natural ponds in settlements of the agrarian reform program,
considering the limits of each individually demarcated area (parcel), will be conducted in
compliance with the provisions of art. 61-A of the new Forest Code. That is, the recomposition of
these areas (once they comprise consolidated activities until July 22, 2008) will not be carried out
obeying the minimum values required in art. 4 of Law n. 12,651 / 2012, but in accordance with its
art. 61-A, which briefly sets out the minimum widths for recomposition of the areas in the table
below.

Table 1 Minimum requirements for recomposition of marginal strips of waterways, lakes and natural ponds
for the consolidated areas in the Permanent Preservation Area, according to size of agrarian property.

<table>
<thead>
<tr>
<th>Agrarian Property Area</th>
<th>Recomposition of Marginal Strip with minimum width of:</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Up to 1 fiscal module</td>
<td>5 meters</td>
</tr>
<tr>
<td>- Over 1 fiscal module and</td>
<td>8 meters</td>
</tr>
<tr>
<td>up to 2 fiscal modules</td>
<td></td>
</tr>
<tr>
<td>- Over 2 fiscal modules and</td>
<td>15 meters</td>
</tr>
<tr>
<td>up to 4 fiscal modules</td>
<td></td>
</tr>
<tr>
<td>- Over 4 fiscal modules</td>
<td>As determined by the Environmental Regularization Program (PRA), with a minimum of 20 meters and a maximum of 100 meters (for watercourses) and of 30 meters (around lakes and natural ponds)</td>
</tr>
</tbody>
</table>
In the case of areas occupied in *veredas* [marshy or drenched areas that contain springs or headwaters of watercourses, where there is an occurrence of hydromorphic soils, predominantly characterized by rows of *buritis* (*Mauritia flexuosa*) and other forms of typical vegetation], § 7 of art. 61-A provides a different solution from that set forth in art. 4, XI, of Law 12,651 / 2012, establishing the Permanent Preservation Area in *veredas* with minimum width of 50 meters of marginal strip, in horizontal projection, from the permanently marshy and drenched space. The following table shows the minimum widths for situations of areas consolidated in *veredas*.

**Table 2.** Minimum requirements for recomposition of marginal strips of swampy space of *veredas* for consolidated areas in the Permanent Preservation Area, according to the size of the agrarian property.

<table>
<thead>
<tr>
<th>Agrarian Property Area</th>
<th>Recomposition of the Marginal Strip, in horizontal projection, demarcated from swampy and sodden space with a minimum width of:</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Up to 4 fiscal modules</td>
<td>30 meters</td>
</tr>
<tr>
<td>- Over 4 fiscal modules</td>
<td>50 meters</td>
</tr>
</tbody>
</table>

The omission of the land agency or settler (when he has full title) to carry out registration of the agrarian property in the CAR will result in future problems that may hinder (and even prevent) the economic and productive activity of the small family-owned property, such as:

a) Unavailability of Agricultural Credit: five years after the date of publication of Law n. 12,651 / 2012, financial institutions will only grant agricultural credit in any of its forms, to owners of agrarian properties registered in the CAR (Article 78-A.), that is, as of May 28, 2017;

b) Inability to obtain environmental permits / licenses: a registration of the property in the CAR will be used as a requirement for obtaining permits / licenses in the appropriate environmental agency;

c) Inaccessibility to PRA: those who do not register in the CAR will not have access to PRA and the benefits arising from it;

d) Difficulty in obtaining / maintaining market certification: as the CAR contains accurate information of the environmental situation of the agrarian property, this will probably be an important condition to acquire and maintain market certification;

e) Precariousness in the realization of the environmental planning of the agrarian property: the CAR database covers a broad base of current and high-resolution maps that allows the owner to view and plan economic activities in line with environmental preservation. The owner’s refusal to register his property in the CAR will imply in inaccessibility to such relevant information.
5 Conclusion

Notwithstanding the history of land occupation presented in this paper has demonstrated an adverse outcome to the protection and preservation of the environment in the agrarian reform settlements established since the enactment of the Land Statute exactly 50 years ago, one realizes that the small family-owned property has now the opportunity to reverse this scenario of environmental degradation and to guide its future in harmony with the sustainable agricultural development.

The creation of the CAR, with its specific module to meet situations involving rural settlements, came to provide greater legal security to settlers in relation to compliance with environmental rules and to the change of profile that marked rural settlers as responsible for a large portion of deforestation in the country.

The greatest benefits derived from the CAR are the regularization of deforested areas until July 22, 2008, according to the various situations provided in the new Forest Code, and the registration (in a national cadastre) of existing areas of environmental interest in the agrarian property, to allow settlers to have the necessary documentation available to substantiate full compliance with their environmental obligations.

6 References


