



OVERVIEW OF BRAZIL'S FOREST TENURE REFORM, 1992-2012

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Decline in deforestation

The increase in environmental debate in Brazil in the wake of the Earth Summit, convened in Rio de Janeiro in 1992, and the subsequent approval of a series of historical legal milestones initiated a process that has kept deforestation in check in the Amazon. This movement began with the 1988 Federal Constitution. "It included an entire chapter on the environment," says Luiz Carlos Joels, a consultant on environmental issues. At present around 80 percent of the biome remains intact and annual deforestation rates show a downward trend.

According to Joels, the 1992 Earth Summit had at least two important consequences at the national level. Brazil's Pilot Program for the Protection of Tropical Forests was the result of an international agreement between the G7, the Government of the Netherlands, the World Bank, and the Government of Brazil; although created in 1990, it was announced at the Summit and became operational two years later. In the course of nearly 20 years, the program has invested US\$463.1 million in the Amazon Basin and the country's Atlantic Forest (a tropical and subtropical coastal ecosystem) and has achieved substantial results.

The second important legacy of the 1992 Earth Summit, according to Joels, was the restructuring of the federal environmental system—with the creation of the Ministry of the Environment. "The whole debate brought about by Rio 92 generated indirect but practical progress in the country," he says.

The National Institute for Spatial Research (INPE), a federal government body, reports that deforestation is declining in the *Amazônia Legal* ('Legal Amazon', an area of northern Brazil covering more than five million square kilometers— km²—designated by law for economic planning reasons). In 1989, 17,770 km² of forest were cleared. Ten years later the rate was virtually unchanged: satellites detected the clearance of 17,259 km² of forest. By 2009, however, the annual rate of deforestation had decreased sharply, to 7,464 km². INPE data indicate that the rate fell further in 2011, to 6,238 km².

According to José Helder Benatti, professor at the Federal University of Pará and an expert on agriculture in the Amazon, the recent decrease in Amazonian deforestation is the result of an increased effort by government to exercise control over the region. "It is the beginning of governance," he says.

The federal public prosecutor on environmental issues, Marcos Bliacheris, agrees that increased government effort has been important, but he adds two other reasons to explain the decrease in deforestation. "Fluctuations in the markets for the region's products and the strategy of creating protected areas should also be mentioned," he says. In recent years, the global financial crisis has helped to reduce deforestation because of reduced demand for products historically linked to deforestation such as beef, soy beans, and various types of timber.

In the areas of the Amazon where effective action has both decreased deforestation and increased the wellbeing of local people, the main actors in the process have worked together. “Over and above social participation, there is interaction between the federal, state and municipal levels in these cases,” says Benatti.

But it is the resolution of conflicts over land, which emerged when the Amazon became widely coveted (see below), that will determine the sustainability of this reduction in deforestation. Improvements in governance are being complemented by environmental policies to create conservation units and simultaneously to demarcate Indigenous lands. A survey carried out by the Socio-environmental Institute, a São Paulo-based non-governmental organization (NGO), shows that Brazil has 673 demarcated indigenous territories covering 13 percent of the national territory, although only 449 are fully approved. Most of those territories are in the Amazon. A survey conducted by another NGO, Imazon, shows that 50 percent of the Amazon consists of protected areas, agrarian reform settlements, and land occupied by the military. The remainder is divided into unallocated public land without claims, informally occupied public land, and private land titles. However, since there is no reliable record of this land structure, it is not possible to know the exact proportion of each of these categories.

Land rights: the historical context

A “gold rush” mentality has long prevailed in the Amazon. The occupation of northern Brazil followed an economic logic; it was never a properly organized process. It happened with rubber in the late 19th and early 20th centuries, and it has happened more recently in the quest for grain, timber, and minerals.

Given that half of the Amazon remains “unallocated”, there is an ongoing debate in Brazil on the following question: who has a right to the land? Although current laws are aimed at protecting Indians, ex-slaves (*Quilombos*), traditional peoples, and urban settlements, in practice the biggest owners of the Amazon today are still large landowners.

In their study of the land problem in the Amazon, Violet Pinto Loureiro and Jax Pinto show that, until the mid 1960s, land in the Amazon belonged primarily to the Union and the Amazonian states. Of all the land registered by the Brazilian Institute of Geography and Statistics (IBGE), 87 percent consisted of uncultivated and uncleared areas that were exploited by riverside dwellers (*ribeirinhos*) and other traditional peoples living on the products they extracted from the forest. The use of non-forest land was very different from the way it is today. Cattle-raising was practised in 11 percent of the region, but only on natural grasslands, such as those on the island of Marajó in the mouth of the Amazon River and in Roraima state. Today, in northern Brazil, the pastures used for livestock production are not naturally occurring but have been established on deforested land. In the 1960s only 1.8 percent of the region was cultivated, half of it on fully regularized private land.

During the country’s military dictatorship (1964–1985) a great change took place in the Amazon. Traditional peoples had never bothered with the question of land tenure because they considered land to be something indivisible from their lives—an inheritance from previous generations. In recent decades, however, the situation has changed completely. In the late 1960s, large landowners, encouraged by government, began buying public land—in many cases land occupied by traditional peoples—in the north of Brazil, especially in the states of Mato Grosso and Pará; they had *carte blanche* to clear the forests and bring economic development to the region. At the time there was no discussion of sustainable development. On the contrary, biodiversity was seen as an obstacle.

Within ten years, the Amazon population increased from 2.6 million (1960) to 4.2 million people (1970). Without adequate procedures and instruments to measure land, huge areas purchased from government became even larger when demarcated. Land-grabbing and the sale of the same land parcel to more than one person became common practice, in addition to other crimes such as the forgery of deeds and documents. Only in the last decade has this process begun to change—as community land rights start to be exercised effectively.

Success stories

Gurupá municipality

Inspiring examples of the change that is possible are emerging in Brazil. The land entitlement process that has occurred in Gurupá in the state of Pará, for example, shows the importance of tenure in the effective protection of forests and human rights in the Amazon. In Gurupá, a range of legal strategies has been used to resolve land tenure issues, with benefits both in terms of forest conservation and poverty reduction in the communities involved. Progress in Gurupá has been achieved after decades of struggle and social organization focused on the right of people to occupy and use the areas in which they live.

Gurupá is located in the Amazon River estuary, in what is known as the Islands Region. Seventy percent of the municipality consists of a floodplain that is accessible mainly by boat. The journey from the main village to the capital of Pará, Belém, takes 24 hours and the trip to Macapa, the capital of Amapá, takes 12 hours. Of the 25,300 inhabitants who live in the municipality, 71.5 percent are rural. There are three main forms of livelihood: fishing, forest extraction, and agriculture.

The regularization of land in Gurupá involved the use of six legal land-use models: *Quilombo* Communities, Extractive Reserves, Sustainable Development Reserves, Agro-extractive Settlements, assignment of use, and individual ownership.¹

Quilombo Communities. The recognition of the land rights of *Quilombos* is guaranteed by Article 68 of the Temporary Constitutional Provisions Act. In Pará, the authority to undertake the entitlement of a *Quilombo* area rests with Iterpa (*Instituto de Terras do Pará*) for state areas and the National Institute for Colonization and Agrarian Reform (INCRA) for federal areas. The definitive ownership title is issued collectively in favor of an association. Residents of the area do not bear legal process costs. The area cannot be subdivided or sold.

Extractive Reserves. This instrument was developed as a result of a national struggle by rubber-tappers (*seringueiros*) led by Chico Mendes, who was murdered by a cattle-rancher in 1988. The *seringueiros* wanted, and eventually received, rights for traditional populations whose main economic activity was extraction. The right of resource use is granted by the federal government free of charge; it is valid initially for 10 years and is renewable provided that the rules established in the plan of use and in the governing environmental legislation are complied with.

Sustainable Development Reserves. This type of land regularization follows rules similar to those for the creation of Extractive Reserves. An interested party may apply to the Brazilian Institute of

¹ For more detail see the table in the document *Land Regularization and Community Management of Forests in the Amazon*, a classification of the innovative experience in Gurupá, Pará, published in April 2011.

Environment and Renewable Natural Resources (IBAMA). Applications must be accompanied by studies of the sustainable exploitation potential of the area in question and the establishment of a residents' association. Also required is a plan for the use of the resource, which must be approved by either the federal government or the state or municipality.

Agro-extractive Settlements. An Agro-extractive Settlement is a form of land tenure that may be at the federal or state level. It aims to benefit families whose livelihoods are based on forest resources and allows for such resources to be exploited within a framework of ecological–economic balance. Residents must establish an association that assumes responsibility for the land based on a concession of real right of use.

Assignment of use. Floodplains such as those in Gurupá are legally owned by the Union. Laws on the granting of titles for such areas require government and occupants to enter into a use concession contract, which may be collective or individual.

Individual ownership. Regularizing land for individual ownership is a costly and time-consuming process in Brazil. A claimant must submit a request to the land department of the relevant state and pay an inspection fee. The maximum size of the land for which a title is granted is 100 hectares.

In Gurupá, regularization processes have been completed in five areas: Santa Barbara Island (18,000 hectares and 12 families), *Quilombos* (87,000 hectares and 350 families), Camutá Pucuruí (17,800 hectares and 24 families), the Itatupã-Baquiá region (64,800 hectares and 142 families) and Cinzas Island. Land regularization is in process in another three areas (Urutá Island, one extremity of Large Gurupá Island, and the Marajói Extractive Reserve).

As land tenure has been resolved, the Gurupá experience in community forest management has been one of trial, error, and success. In Marajói, for example, the *açaí* palm had virtually disappeared because of previous over-harvesting caused, at least in part, by unclear tenure.

“We found that managing the *açaí* area was the way to bring back wildlife, fish, and the *açaí* palm,” says local resident Zé Trindade. “We started all this full of energy, without technical support. What we did was to prune the *açaí* but we did not know how to do that correctly. The palms recovered well but gave no fruit. They were beautiful but did not produce anything. So we discussed how to find the right way to do this. We started to experiment in small areas. Only later did we obtain more technical information about their management. We learned, for example, that you have to thin the *açaí* to allow light to enter the soil and to maintain an adequate spacing of three by three meters”.

Mamirauá Sustainable Development Reserve

The Mamirauá Sustainable Development Reserve is another example of how tenure clarity has both helped to improve forest conservation and enabled the *ribeirinhos* to increase their income. This reserve is adjacent to the Amana Sustainable Development Reserve and the Jaú National Park; combined, this group of conservation units constitutes a massive forest area of 6.5 million hectares. Today, 63 groups live within the conservation area, earning a living through activities ranging from ecotourism and research to the controlled use of resources—such as bass fishing, which is subject to certain standards and required practices. For example, to ensure the sustainability of the fish population, a lake fished for bass in one year normally cannot be used in the next season.

Quilombo Communities in São Paulo

The Vale do Ribeira, the poorest region of the southern state of São Paulo, is home to several *Quilombo* communities. Some have already demarcated their land, while others are still in the process of doing so.

Life was much more difficult in the past, according to Benedito Alves da Silva, 55, a member of the Ivaporunduva *Quilombo* Community. Known as Ditão (meaning someone who speaks forcefully), he is a community leader. The group he represents fought for 14 years for registry as a *Quilombo* Community. Last year the struggle ended with victory. Now the community has the title deed to the land and there is a bridge over the river, which facilitates the marketing of the community's main source of income, bananas. "In the 1970s during the military regime, bringing up any subject was a problem. You could end up doing jail time," says Ditão in an interview in *Folha de S.Paulo*. He left the community to work in road construction. "I came back to help my father [in the struggle for the community title]," he says. "Life has improved so much," says Ditão, "that young people who left Ivaporunduva to study elsewhere are coming back and starting families there."

Ingredients of success

There are now sufficient examples of success stories in Brazil to determine the ingredients of such success. One of these, which may be considered fundamental, is the organization of civil society. Motivated people need to form groups, which must be willing to seek joint solutions to the issues hindering sustainable development.

A second ingredient is the positive role of the state, which needs to strive to ensure that its laws and public policies favor traditional peoples and aim to conserve forests and other ecosystems.

Third, traditional communities need technical support—be it from government agencies or NGOs. As more success stories like those in Gurupá, the Ivaporunduva *Quilombo* Community, and the Mamirauá Sustainable Development Reserve emerge, other groups will find it easier to get the support they need to secure their rights and pursue sustainable development pathways.

But threats lie ahead

Despite the promising signs, there is a risk that progress in improved governance in the Amazon could be undermined by proposed changes in laws, policies, and even the Federal Constitution.

The most serious of these is a proposed amendment to the Forest Code. If lawmakers approve changes lobbied for by the agro-business lobby, many and large tracts of land currently under environmental protection will be made available to agro-business.

There is also a proposal for an amendment to the Federal Constitution which, if approved, will take the prerogative to create Indigenous land away from the executive and hand it to the National Congress; according to Bliacheris, this will almost certainly shift the emphasis in the process from technical to political. A similar change is being considered for the demarcation of environmental conservation units. Such changes, supported by the agro-business lobby, could further delay or even derail the demarcation of Indigenous lands and protected areas.

Another important issue is Direct Unconstitutionality Action (ADI) 3239, filed by the Democratic Party, which challenges Decree 4887/2003. "One of the main questions concerns the self-identification of land by communities of *Quilombos*," says Bliacheris. The outcome could have a huge impact on those communities, as well as on the environment. "All attempts to weaken

environmental and forestry legislation are characterized by two things: remove environmental restrictions on land use, and obstruct access of traditional communities and peoples to land,” says Bliacheris.

Consolidating public policies aimed at an organized occupation of Brazilian ecosystems—the Atlantic Forest, the Cerrado, the Pantanal, the southern grasslands, and the Caatinga ecosystems are also under pressure—and preventing legal setbacks are not the only challenges facing advocates of human rights and the environment in Brazil. The biggest bottleneck to be resolved is a socioeconomic one: how to establish the land rights of traditional peoples and enable them to sustain themselves in an environmentally non-destructive way. In Brazil, a lack of continuity in public policy is common, slowing progress on a number of social issues.

“If the great success so far in the fight against deforestation has been due to the policy of control combined with the creation of conservation units, from here onwards this will not be enough,” says Bliacheris, “especially since protected areas and conservation units are much more effective with the cooperation of the surrounding population.”

The goal of the federal government in launching its “Legal Land” program in 2009 was to regularize 300,000 informal farms (that is, properties without formal title deeds) on public land in the *Amazônia Legal*. The aim was to issue land titles with a 60-day turn-around involving five phases: registration of tenure, geo-referencing, inspection, granting of land title, and subsequent monitoring.

But the program has started slowly. In its second year it issued 335 new individual titles, for a total of 611 title deeds since 2009, mostly in Pará (54 percent) and Rondônia (20 percent). About 88,000 people have registered their tenure to 10.3 million hectares of land, but only a few have been issued with land title deeds.

According to Bliacheris, tenure is only one of the requirements. “First, smallholders must have access to land,” he says. “Second, their presence has to be encouraged. Only by them staying a long time in the region will the forest be preserved.” Without these policies, the process will be completely different: “Without the right to a plot of land, the only thing they can do is clear the forest and then move to the area beyond. Thus, someone will take advantage of them when the land in question is turned into pasture,” he says.

Deforestation remains a threat in several conservation units as well, reinforcing the importance of government monitoring to ensure that those areas are protected. This is another bottleneck that is still far from being resolved in Brazil.

The states of Mato Grosso and Pará have both been arenas of conflict over land use and land tenure and continue to be so. The indigenous area of Maraiwatsede in Mato Grosso has been approved since 1998. But the Xavantes people there are competing for the land with farmers and squatters, including 7,000 non-Indigenous people who have been living in the area for only about 20 years and who do not try to adhere to the concept of sustainable development. Each year, Brazilian satellites aimed at the Amazon identify pockets of deforestation in this region. In April 2011, for example, INPE identified an area of 68.8 km² that had lost much its original vegetation. In that month, no other contiguous area in the Amazon incurred deforestation of that magnitude.

Changes are far from entrenched

Notably, Brazil's success in dramatically lowering deforestation rates is due largely to the increase of secure land rights for Indigenous Peoples and communities to the lands they depend on. Even with threats to the Forest Code and the Federal Constitution. Brazil's example to the rest of the world at Rio+20 cannot be discounted. Projects implemented in Mamirauá, Gurupá, the Quilombos areas, and the interior of São Paulo give hope to groups across the world defending their ability to contribute to sustainable development when their rights are secure.

Although there has been significant improvement in the approach to land tenure and the rights of traditional peoples in Brazil, there is still much to be done. Moreover, much that has been achieved to date could be undermined by proposed changes