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**Draft UNIDROIT/FAO/IFAD Legal Guide on
Agricultural Land Investment Contracts
(ALIC)
Second Regional Consultation
São Paulo, 9 August 2019**

UNIDROIT 2020
Study S80B – Doc. 8
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**Report of the Second Regional Consultation - Raising awareness and seeking
feedback from Brazil and Latin America**

(prepared by the UNIDROIT Secretariat)

1. As part of the elaboration process of the UNIDROIT/FAO/IFAD Legal Guide on Agricultural Land Investment Contracts (ALIC), the ALIC Working Group, in collaboration with the Food and Agriculture Organization of the United Nations (FAO) and the International Fund for Agricultural Development (IFAD), agreed that a consolidated draft of the future Guide – the ALIC Zero Draft (UNIDROIT 2019 – S80B - Doc. 6) – should be submitted to broad and extended consultations to raise awareness of the Legal Guide and to seek further input from stakeholders, in order to ensure a high-quality product that responds to actual needs and complies with ascertained best practices. This course of action was endorsed by the Governing Council of UNIDROIT ([C.D. \(98\) 5\(a\) rev.](#)) at its 98th session (Rome, 8 – 10 May 2019). The consultations included regional events in Asia, Latin America, and Africa, as well as an open online consultation.

2. This document serves to summarise the presentations and discussions that took place during the second regional consultation workshop held in São Paulo on 9 August 2019.

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I. OVERVIEW

3. The second regional consultation on the future UNIDROIT/FAO/IFAD Legal Guide on Agricultural Land Investment Contracts (ALIC) was held on 9 August 2019 in Brazil at the University of São Paulo's Faculty of Law (USP) and co-sponsored by the United Nations Food and Agriculture Organization (FAO) and the International Fund for Agricultural Development (IFAD). As part of the finalisation of the future Legal Guide, the workshop was designed to facilitate feedback on the "ALIC Zero Draft" from stakeholders in Latin America, including investors' legal counsels, government officials, non-governmental organisations, academics and private sector representatives. Simultaneous interpretation was provided at the Workshop in English and Spanish.

4. The workshop was organized in two sessions with speakers and key discussants sharing their views on Agricultural Land Investment Contracts in Brazil and Latin America (Session 1) and presenting their comments and inputs for improvement of the Guide (Session 2).

II. SUMMARY OF PRESENTATIONS

Welcome and Opening Remarks

5. *Mr José Fernando de Simão* (Associate Professor of Civil Law, USP) highlighted that Brazilian Law is currently facing severe changes, not always through the parliament but through provisional measures adopted by the President. He illustrated the impacts that the recently adopted Provisional Measure on Economic Freedom (*Medida Provisória* nº 881/2019) may have for civil and contract law. He underlined the opportune moment to further discuss the topic related to responsible agricultural investment in Brazil and mentioned that all instruments that deal with land, agriculture and contracts require the awareness that the ALIC Guide regional consultation workshop aimed at.

6. *Mr Ignacio Tirado* (Secretary-General of UNIDROIT) introduced the ALIC Guide and explained its drafting process, as well as briefly gave an overview of the issues that are considered in each of its chapters. He emphasised that the ALIC Guide is a contractual guide and clarified the origin of the involvement of UNIDROIT in the partnership with FAO and IFAD for the elaboration of the Guide. He also presented UNIDROIT's previous work on contract farming and explained how it considers the needs and rights of the weaker side of the contracting relationship which is where guidance is most needed – especially in developing and middle-income countries.

7. Mr Tirado highlighted that several international instruments already exist for responsible investment in agriculture but noted that the private law perspective was still missing. He underscored that a whole range of contract law issues that may arise in agricultural land investments had not yet been fully addressed, thereby explaining the rationale for the elaboration of the ALIC Guide. Mr Tirado further explained the representation and tasks undertaken within the Working Group that elaborated the "ALIC Zero Draft" and called upon participants at the workshop to share their inputs on how the Guide would be best adapted to the characteristics of the Latin America region.

Session 1: Agricultural Land Investment Contracts in Brazil and Latin America

8. *Mr Rolf Hackbart* (Senior Policy Officer, FAO Regional Office for Latin America and the Caribbean) illustrated the different types of land use in Brazil and shared information on the quantity of land available for investment (including public land, indigenous land, traditional community land, etc.). He shared his experience with the local implementation of international instruments developed by FAO for land governance, such as the Committee on World Food Security Principles for Responsible Investment in Agriculture and Food Systems (CFS-RAI) and the Voluntary Guidelines on the responsible governance of tenure of land, fisheries and forests in the context of national food security (VGGT).

9. He acknowledged the importance of adopting sustainable investment in agriculture and the need for more legal security. Mr Hackbart drew attention to the specific challenges related to access to water and to the implementation of international instruments at the local level. After describing the problem of identifying who owns land in Brazil, he encouraged all participants at the workshop to share their observations on the ALIC Guide in order to contribute to its effective local implementation.

10. *Mr Claus Reiner* (IFAD Country Director in Brazil & Head of South-South Triangular Cooperation and Knowledge Centre, Latin America and the Caribbean Division) spoke about legitimate tenure right holders as interested parties in land contracts in Brazil and Latin America. He highlighted that one of the important areas addressed by the ALIC Guide is the Free, Prior and Informed Consent (FPIC) which is a central objective also in IFAD projects. As an operational principle, he emphasised the importance of defining the process for this consent to be obtained.

11. He illustrated some mutual benefits of the FPIC which may include community ownership of the investment; minimization of conflicts with other resource users; and reduction in reputational and fiduciary risks. He highlighted that the FPIC means an agreement and not a simple consultation, noting the right of a community to give or withhold their consent to the contract.

12. Mr Reiner related two case-studies which exemplify the difficulties in the expansion of agricultural investment and the displacement of smallholders. He noted the impacts of large agribusiness companies on indigenous communities (e.g. *Guarani*) in Salta, Argentina and the impacts of the agrarian reform in Nicaragua for smallholders. He underlined the importance of the ALIC Guide in helping to avoid future conflicts related to land and stressed how the Guide can help achieve the following outcomes: overcome power asymmetry (for example: unequal access to land and water); achieve Sustainable Development Goals n°1 (no poverty) and n°2 (zero hunger); recognise rights and interests of smallholders (on and next to the property); promote community development and balance development interests. In conclusion, he acknowledged the importance of IFAD as a partner institution in the elaboration of the ALIC Guide, and invited participants at the workshop to contribute to its widespread practical use.

13. *Mr Francisco de Godoy Bueno* (Lawyer and Vice-President of the Brazilian Rural Society) remarked that it may be difficult to apply some of the guidelines presented in the ALIC Zero Draft in the Brazilian context. In particular, he drew attention to the need to consider the history of land tenure and ownership methods adopted in each country. To this end, Mr Godoy Bueno noted the ALIC Guide poses interesting questions worth reflecting upon, but that the Guide needs to be adapted to the problems faced in Latin America, which in his opinion are different from those faced in Africa. He highlighted that the land tenure and property system in Brazil go hand in hand, noting that tenure only has an effect in those cases where property might exist. The possession of untitled land would constitute a mere detention, and this was pointed to as one of the difficulties that may create legal uncertainty for investments in land in Brazil.

14. Mr Godoy Bueno shared some examples of Brazilian policies and programs that have been adopted to increase the titling processes and that seek the promotion of the regularization of land tenure, such as the *Terra Legal* Program in the Amazon, the *Quilombolas* Land Titling Program and the Program for the Recognition of Indigenous Territories. He also explained the partial implementation of the *National Rural Land Register* (CNIR in Portuguese) to further highlight the current situation of legal insecurity that investors may find in Brazil precisely because of the difficulty in understanding the overlap between ownership, property and the legitimation of territories. He recommended the ALIC Guide should further consider the topic on legitimation of property from different legal perspectives.

Session 2: Improving Agricultural Land Investment Contracts

15. *Ms Paula Andrea Forgioni* (Professor and Head of Commercial Law Department, USP) moderated the second session of the workshop and highlighted that security and predictability lowers transaction costs and contributes to the ability to attract investments. She underlined the need to consider the peculiarities of the Brazilian legal system when discussing the ALIC Guide and acknowledged the importance of discussing, for example, how access to water should be considered in agricultural land investments contracts.

16. *Ms Priscila Pereira de Andrade* (Member of the ALIC Working Group, UNIDROIT) shared information on some of the topics that are dealt with in chapters 2 and 3 of the ALIC Guide, focusing on the process of due diligence and social and environmental obligations of the contracting parties. She drew attention to how the Guide presents tools and identifies the phases of due diligence that should be considered when drafting agricultural land investment contracts. She explained that the Guide highlights general topics that may be included in contractual terms but emphasised that the Guide does not propose model clauses or give concrete recommendations for contractual obligations. Calling upon participants to give their feedback on the Guide, she recalled that the purpose of the workshop is to receive inputs on what should be reviewed or included in the zero draft of the ALIC Guide.

17. *Mr Antonio Zanette* (Lawyer and Coordinator of the Graduate Course on Agricultural Law and AgroBusiness of the Fundação Escola Superior do Ministério Público, FMP) spoke about the regulatory context of agricultural lease contracts in Brazil and its relation to the ALIC Guide. He began by presenting the Land Statute (Law nº 4.504/1964) and its reglementary Decree (nº59.566/1966), as well as the constitutional principle of the social function of property adopted in Brazilian Law to highlight the legal context that agricultural land contracts would have to comply with.

18. He referred to a decision rendered by the Superior Court of Justice to exclude the applicability of the Land Statute to contracts which include large companies since they are not vulnerable and highlighted that the great challenge facing the ALIC Guide is trying to encompass the diversity of different legal scenarios. Despite this challenge, he identified topics that are already included in the ALIC Guide and that may contribute to the achievement of legal security in agricultural land contracts adopted in Brazil. Mr Zanette applauded the recommendation included in item 2.142 of the ALIC Guide regarding the form of the contract which should be a written agreement to ensure more clarity. In relation to contractual non-performance, he agreed with the importance given by the Guide to the principles of cooperation and good faith.

19. *Mr Nitish Monebhurum* (Professor of International Investment Law, Centro Universitário de Brasília UniCEUB) recognized that the ALIC Guide seeks to integrate public interest issues into a contract that would in principle primarily protect the private interests of investors. However, he noted that this integration can be problematic because, depending on the distribution of rights and obligations – especially for investors – the contract may lose its attractiveness. By examining the content of the Guide through the lens of International Investment Law, Mr Monebhurum shared his views on two main topics addressed in the ALIC Guide related to the state regulatory autonomy and dispute resolution.

20. Despite the Guide's effort to address the issue of legal protection of investments against arbitrary expropriation and to ensure protection of investors' legitimate expectations he considered that a larger section should be devoted to the topics of regulatory autonomy and indirect expropriation. He noted that the role of the parent company in the dispute resolution section was not addressed in the Guide and recommended this topic for further consideration by the Working Group during the review of the ALIC Zero draft.

21. He further noted that, in his opinion, it is unclear in the ALIC Guide whether the parent company should be able to invoke the dispute settlement clause in the case of international agriculture investments, noting international arbitration practice permits this. He also mentioned the Guide should consider addressing the doctrine of “clean hands” and the inadmissibility of claims by investors. Furthermore, Mr Monebhurrum considered that the Guide should further consider the counter-claim possibilities in arbitration and further elaborate on the implications of the umbrella clauses rather than only presenting this topic in a footnote.

22. *Ms Flávia Trentini* (Associate Professor, Department of Private Law of the Faculty of Law, Ribeirão Preto, USP) appreciated that the ALIC Guide was being presented in Brazil for consideration but noted that it seems to reflect more the African situation concerning agricultural land investment contracts. She considered that more emphasis could have been given to other agricultural contexts and called for the inclusion of a reference to family farming contracts besides community development agreements. Lastly, she drew attention to the role certification schemes may acquire for monitoring and verifying agricultural land investment contracts.

23. *Mr Rabih Nasser* (Lawyer and Professor of Law, Fundação Getulio Vargas, FGV Law SP) in the concluding remarks of the session said the Guide's biggest challenge is not to cover the largest number of topics or to address them in detail but to strike a balance between several factors that will be in constant tension throughout the investment. Linked to this he noted also the challenge to ensure the Guide's relevance in the current scenario of multiple sources of regulations; that is to say, in a scenario marked by state, interstate, as well as private regulation instruments. Ensuring the usefulness of the Guide is therefore one of the major challenges and in his opinion such relevance does not necessarily require more detailed regulation. Mr Nasser said he believes the Guide will attain its objective to raise awareness, however, the ALIC Guide could be more concise in his view.

24. During the discussion, *Mr Juan Jorge Faundes Peñafiel* (Universidad Autónoma de Chile), as an expert in indigenous people's rights, shared his views on the main favourable aspects presented in the ALIC Guide for responsible agriculture investments and identified aspects that need to be improved.

25. Among other aspects, he appreciated that the Guide distinguishes between legal and legitimate tenure rights holders and considers the protection of indigenous rights (*i.e.* which are not necessarily recognized by public authorities). He recommended that what will be understood in the ALIC Guide as “social effect” and “social issue” be reviewed to incorporate the cultural rights of indigenous peoples.

26. He further emphasised that the Guide currently addresses the concepts of lands and territories interchangeably and stressed that both concepts do not have the same scope. On this basis, he suggested the Guide should underscore the existence of this distinction in some domestic legislations.

27. He also recommended the inclusion of the definition of indigenous territory according to articles 13 and 14 of ILO Convention 169 and noted that the Guide could consider addressing the notion of self-determination of indigenous organizations, their self-definition, with express recognition of their traditional forms of organization and decision-making for the election of their representatives.

28. Finally, he recognized the challenge of including indigenous representatives in the consultation process of the ALIC Guide but encouraged UNIDROIT to continue seeking their participation via the online consultation.

III. SUMMARY OF RECOMMENDATIONS FOR THE ALIC ZERO DRAFT

29. The topics listed below reflect the main recommendations that the Working Group may wish to consider when reviewing the ALIC Zero Draft. The ALIC Guide could:

Insert language

- i. on the definition of indigenous territory according to articles 13 and 14 of ILO Convention 169 (see above, para. 27);
- ii. include reference to family farming contracts besides community development agreements as associated contracts (see above, para. 22);

Further clarify

- iii. the distinction between the concepts of land and territory (see above, para. 26);
- iv. the definition of "social effect" and "social issue" to incorporate the cultural rights of indigenous peoples (see above, para. 25);
- v. the articulation between regulatory autonomy and protection of investments (see above, para. 20);
- vi. the implications of the umbrella clauses and on the "clean hands" doctrine in the dispute resolution chapter (see above, para. 21);

Provide more guidance

- vii. on the distinction between possession and property rights adopted in certain Latin American countries and further explain their implications for the definition of legal and legitimate tenure right holder (see above, para. 13);
- viii. on the role of the parent company in invoking the dispute settlement clause (see above, para. 20);
- ix. on the counter-claim possibilities in arbitration (see above, para. 21);
- x. further consider certification schemes as instruments for monitoring contracts and to manage default situations (see above, para. 22);
- xi. consider addressing the notion of self-determination and self-definition of indigenous peoples, with recognition of their traditional forms of organization and decision-making for the election of their representatives (see above, para. 27);

ANNEX I

PROGRAMME



Faculty of Law
University of São Paulo

Regional consultation workshop**The future UNIDROIT/FAO/IFAD Legal Guide on Agricultural
Land Investment Contracts (ALIC)**

Raising awareness and seeking input from Brazil and Latin America

Friday, 9 August 2019

8:30 – 13:00

Faculty of Law – University of São Paulo (USP)

Auditório Goffredo Telles Júnior (Térreo)

Largo São Francisco, 95 – Centro, São Paulo – SP, Brasil

With the patronage of



Food and Agriculture
Organization of the
United Nations

Developed by a UNIDROIT Working Group in collaboration with the Food and Agriculture Organisation of the United Nations (FAO) and the International Fund for Agricultural Development (IFAD), the future Legal Guide on Agricultural Land Investment Contracts responds to the need for greater and more responsible investment in agriculture, incorporating necessary safeguards to enhance food security and nutrition and to protect legitimate tenure right holders, human rights, livelihoods and the environment while reducing investment risks.

As part of the finalization of the future Legal Guide, this workshop is designed to facilitate feedback on the ALIC Zero Draft from stakeholders in Latin America, including investors' legal counsels, government officials, non-governmental organisations and academics.





The ALIC Zero Draft is accessible (in English) at:

<https://www.unidroit.org/english/documents/2019/study80b/190601-alic-zero-draft.pdf>

Registration is free and can be made by email: a.chaunac@unidroit.org

Workshop Agenda

8:30 – 8:45 Registration	
OPENING The future UNIDROIT/FAO/IFAD legal guide	
9:00 – 9:15 Welcome and Opening remarks <i>José Fernando de Simão</i> (Associate Professor, Department of Civil Law, University of São Paulo)	
SESSION 1 Agricultural Land Investment Contracts in Brazil and Latin America	
9:15 – 10:45 Moderator: <i>José Fernando de Simão</i> (Associate Professor, Department of Civil Law, University of São Paulo)	
9:15 - An introduction to the future UNIDROIT/FAO/IFAD Legal Guide on agricultural land investment contracts - <i>Ignacio Tirado</i> (Secretary-General, UNIDROIT)	
9:30 - Responsible agricultural land investment in Brazil: trends and limitations - <i>Rolf Hackbart</i> (Consultant, FAO Regional Office for Latin America and the Caribbean)	
9:45 - Legitimate tenure right holders as interested parties in land contracts in Brazil and Latin America - <i>Claus Reiner</i> (Country Director, IFAD Brazil)	
10:00 - Discussant: <i>Francisco de Godoy Bueno</i> (Lawyer and Vice-President of the Brazilian Rural Society)	
10:45 – 11:00	Coffee break
SESSION 2 Improving Agricultural Land Investment Contracts	
11:00 – 13:00 Moderator: <i>Paula Andrea Forgioni</i> (Professor, Department of Commercial Law, University of São Paulo)	
11:00 - Due diligence and contractual socio-environmental obligations - <i>Priscila Pereira de Andrade</i> (Expert of the ALIC Working Group, UNIDROIT)	
11:15 - The regulatory context of agrarian contracts, instruments in case of non-compliance and the view of the Brazilian judiciary - <i>Antonio Zanette</i> (Lawyer and Coordinator of the postgraduate course in Agrarian Law and Agribusiness, Public Ministry Foundation, FMP)	
11:30 - Protection of investment, regulatory autonomy and dispute resolution in agricultural land investment contracts - <i>Nitish Monebhurum</i> (Professor of International Investment Law, Centre University of Brasília, UniCEUB)	
11:45 - Discussants: <i>Flávia Trentini</i> (Associate Professor, Department of Civil Law, Faculty of Law of Ribeirão Preto, USP) <i>Rabih Nasser</i> (Lawyer, Professor of International Investment Law, Fundação Getúlio Vargas, FGV Law São Paulo)	
12:15 Final suggestions for the ALIC Guide Closing remarks	


	<p>Faculty of Law University of São Paulo</p>	 <p>Investing in rural people</p>	
<p><u>WORKSHOP DE CONSULTA PÚBLICA REGIONAL</u></p>			
<p>O futuro Guia Jurídico para Contratos de Investimento em Terras Agrícolas UNIDROIT/FAO/IFAD (ALIC)</p>			
<p><i>Divulgação e debate no Brasil e na América Latina</i></p>			
<p>Sexta-feira, 9 de agosto de 2019 8:30 – 13:00</p>			
<p>Faculdade de Direito – Universidade de São Paulo (USP) Auditório Goffredo Telles Júnior (Térreo) Largo São Francisco, 95 – Centro, São Paulo – SP, Brasil</p>			
<p><small>With the patronage of</small></p>  <p>Food and Agriculture Organization of the United Nations</p>			
<p>Programa</p>			
<p>Sessão I: Os Contratos de Investimento em Terras Agrícolas no Brasil e na América Latina</p>			
<p>Moderador:</p>			
<p><u>José Fernando de Simão</u> (Professor associado de Direito Civil, USP)</p>			
<p>9:00 Abertura</p>			
<p>9:15 Apresentação do futuro Guia Jurídico sobre Contratos de Investimento em Terras Agrícolas - <u>Ignacio Tirado</u> (Secretário Geral, UNIDROIT)</p>			
<p>9:30 Investimentos responsáveis em terras agrícolas no Brasil: tendências e limitações - <u>Rolf Hackbart</u> (Oficial Técnico, consultor FAO América Latina e Caribe)</p>			
<p>9:45 Legítimos detentores de direitos à terra como partes interessadas nos contratos no Brasil e na América Latina - <u>Claus Reiner</u> (Diretor do FIDA no Brasil)</p>			
<p>Debatedor:</p>			
<p><u>Francisco de Godoy Bueno</u> (Advogado, Sociedade Rural Brasileira)</p>			
<p>Sessão II: Aprimoramento dos Contratos de Investimento em Terras Agrícolas</p>			
<p>Moderadora:</p>			
<p><u>Paula Andrea Forquioni</u> (Professora titular e Vice-Chefe do Departamento de Direito Comercial, USP)</p>			
<p>11:00 Due diligence e obrigações socio-ambientais contratuais - <u>Priscila Pereira de Andrade</u> (Membro do grupo de trabalho ALIC, UNIDROIT)</p>			
<p>11:15 O contexto regulatório dos contratos agrários, instrumentos em caso de descumprimento e a visão do poder judiciário brasileiro - <u>Antonio Zanette</u> (Advogado e Coordenador do curso de pós-graduação de Direito Agrário e do Agronegócio da Fundação do Ministério Público, FMP)</p>			
<p>11:30 Proteção do investimento, autonomia regulatória e resolução de conflitos em contratos de investimento em terras agrícolas - <u>Nitish Monebhurum</u> (Professor de Direito Internacional dos Investimentos, Centro Universitário de Brasília UniCEUB)</p>			
<p>Debatedores:</p>			
<p><u>Flávia Trentini</u> (Professora associada ao Departamento de Direito Civil da Faculdade de Direito de Ribeirão Preto, USP)</p>			
<p><u>Rabih Nasser</u> (Advogado, Professor de Direito Internacional dos Investimentos, Fundação Getúlio Vargas, FGV Direito SP)</p>			
<p>12:15 Sugestões finais para o Guia Jurídico sobre Contratos de Investimento em Terras Agrícolas do UNIDROIT/FAO/IFAD</p>			
<p>13:00 Encerramento do Workshop</p>			

ANNEX II**LIST OF PARTICIPANTS**

#	NAME	POSITION	COUNTRY	EMAIL
1	Ms Luana ALMEIDA	Trade and Sustainable Investment Consultant Sidera Consult São Paulo	Brazil	luana.almeida@sideraconsult.com
2	Mr Rabah BELAIDI	Professor Faculdade de Direito Coordenador do Mestrado em Direito Agrário Universidade Federal de Goiás Goiânia	Brazil	rbelaidi@gmail.com
3	Mr Eduardo Juan BELLOCQ	Legal Advisor Under Secretariat of Political Coordination Secretariat of Agroindustry	Argentina	
4	Mr Weldon BLACK	Consultant Centro de Estudios de Derecho, Economía y Política (CEDEP)	Paraguay	w.black.z@gmail.com
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9	Mr Francisco DE GODOY BUENO	Vice President Brazilian Rural Society	Brazil	francisco@buenomesquita.com.br
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11	Mr Marcos DOTTA	Sub Director Dirección de Asuntos de Derecho Internacional Ministerio de Relaciones Exteriores de la República Oriental del Uruguay	Uruguay	marcos.dotta@mrree.gub.uy


12	Mr Fábio Henrique EVANGELISTA	Law Student USP	Brazil	fabioevangelista@usp.br
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15	Ms Paula Andrea FORGIONI	Professor and Head of Commercial Law Department, USP	Brazil	paforgioni@forgioni.com.br
16	Ms María Carolina FRIZZO	Legal Adviser Ministry of Foreign Affairs Argentina	Argentina	wfr@mrecic.gov.ar
17	Mr Rolf HACKBART	Senior Technical Officer FAO Regional Office for Latin America and the Caribbean	Brazil	rolf.hackbart@fao.org
18	Mr Victor Santos MARIOTTINI DE OLIVEIRA	Law Student USP	Brazil	victor.mariottini.oliveira@usp.br
19	Mr Tito Livio MAULE	N/A	Brazil	titomaule@usp.br
20	Mr Nitish MONEBHURRUM	Professor of International Investment Law Centro Universitário de Brasília UnICEUB	Brazil	N/A
21	Mr Rabih NASSER	Lawyer and Professor of Law Fundação Getulio Vargas, FGV Law SP	Brazil	rabih.nasser@nasser.adv.br
22	Mr Jose Mauricio PACHECO JUNIOR	PhD Cotutelle / University of Göttingen / University of São Paulo L.L.M. Göttingen FDI Lawyer	Brazil	maupacheco@gmail.com
23	Mr Gabriel PANSANI SIQUEIRA	Head Grupo de Governança de Terras – GGT Institute of Economics of UNICAMP (State University of Campinas)	Brazil	g.pansani.s@gmail.com
24	Ms Priscila PEREIRA DE ANDRADE	Member of the ALIC Working Group UNIDROIT	Brazil	prisqua@gmail.com

25	Mr Antonio Eduardo REICHMANN SEIXAS	Mestre em Direito Internacional e Comparado - USP Bacharel em Direito do Estado - UFPR	Brazil	aeseixas@gmail.com
26	Mr Claus REINER	Country Director in Brazil & Head of South-South Triangular Cooperation and Knowledge Centre, Latin America and the Caribbean Division IFAD	Brazil	c.reiner@ifad.org
27	Mr Flávio SILVA BELCHIOR	Researcher Grupo de Governança de Terras – GGT Institute of Economics of UNICAMP (State University of Campinas)	Brazil	fsbelchior@gmail.com
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29	Ms Flávia TRENTINI	Associate Professor, Department of Private Law of the Faculty of Law, Ribeirão Preto USP	Brazil	trentini.sma@gmail.com
30	Ms Carolina URES	Partner, Advisor on WTO Matters Sidera Consult São Paulo		
31	Mr Rodrigo VAS SAMPAIO	Professor of Civil Law at Faculdade de Direito USP	Brazil	imavsampaio@uol.com.br
32	Mr Antonio ZANETTE	Lawyer and Coordinator of the Graduate Course on Agricultural Law and Agro-Business of the Fundação Escola Superior do Ministério Público FMP	Brazil	N/A
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34	Mr William BRYDIE-WATSON	Senior Legal Officer	Italy	w.brydie-watson@unidroit.org



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

Private Law and Agricultural Development: Draft Legal Guide on Agricultural Land Investment Contracts



Prof. Ignacio Tirado
Secretary-General
UNIDROIT

1



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
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Background: Private law and agricultural development


UNIDROIT Principles of International Commercial Contracts:

- Prepared by a group of eminent experts in the field of international contract law representing all major legal systems and geo-political regions of the world
- Identify principles and offer commentary for virtually all important topics in contract law (e.g. formation, agency, validity, interpretation, content, third-party rights, conditions, performance, non-performance, transfer of rights, limitation periods)
- For use, *inter alia*, by parties in negotiating contracts or resolving disputes
- Fourth edition released in 2016, with additional provisions addressing long-term contracts



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INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
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Background: Private law and agricultural development


- **Colloquium on “Promoting Investment in Agricultural Production: Private Law Aspects”** (8-10 November 2011), focused on the following potential areas of work:
 - title to land;
 - contracts for investment in agricultural land;
 - legal structure of agricultural enterprises;
 - contract farming; and
 - the financing of agriculture.
- The Acts of the Colloquium were published in the *Uniform Law Review*. See XVII UNIF. L. REV. (2012-1/2).



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Unidroit 2010
C.O. (199) 17
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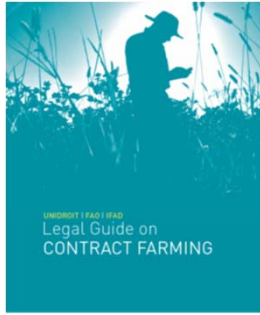
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INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

Background: Private law and agricultural development

- The **UNIDROIT/FAO/IFAD Legal Guide on Contract Farming** provides detailed guidance on contract farming relationships, including a discussion of legal issues and problems that may arise, in order to promote understanding and more stable and balanced relationships.
 - Preface and Introduction
 - The Legal Framework
 - Parties, Formation and Form
 - Obligations of the Parties
 - Excuses for Non-Performance
 - Remedies for Breach
 - Duration, Renewal and Termination
 - Dispute Resolution
- The Legal Guide on Contract Farming, for example, builds upon the UNIDROIT Principles, referring to more than a quarter of that instrument's 211 Principles.



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Agricultural Land Investment Contracts: Process

Following the adoption of the Legal Guide on Contract Farming, the Secretariat prepared a **feasibility study** regarding possible work on agricultural land investment contracts:

- taking stock of the present situation, in particular existing initiatives relevant to agricultural land investment contracts (e.g. VGGT, CFS-RAI Principles, UN Guiding Principles on Business and Human Rights, IFC Performance Standards);
- examining whether a possible UNIDROIT instrument would be of additional benefit in this field; and
- ultimately concluding with the recommendation that UNIDROIT undertake work to provide legal guidance on private law aspects of such contracts.

UNIDROIT 2016 – C.D. (95) 7(b) 5

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Agricultural Land Investment Contracts: Process (continued)

- Work on agricultural land investment contracts was approved in 2016, with a high level of priority.
- The Working Group on Agricultural Land Investment Contracts was constituted in early 2017 and has since held four meetings: (1) 3-5 May 2017; (2) 13-15 September 2017; (3) 25-27 April 2018; and (4) 9-11 October 2018.
- Outreach activities have included a Side Event and two informal meetings held at CFS 45, CFS 44 and CFS 43 respectively, as well as participation in various conferences to raise awareness about the work and seek expert and stakeholder input.
- Progress thus far has resulted in an initial consolidated draft of the Legal Guide which has been made available on UNIDROIT's website in May 2019.

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Future Legal Guide: Purpose

- To offer contractual guidance that is consistent with the UN Guiding Principles, VGGT, CFS-RAI Principles and other international instruments in order to promote greater and more responsible agricultural investment
- In doing so, the Guide does not seek to promote large-scale land acquisitions. In acknowledging that such acquisitions continue to occur, however, it raises awareness about alternative investment models (e.g. contract farming) and helps to ensure that leases of agricultural land are done responsibly and that stakeholders' rights, particularly those of legitimate tenure right holders, are protected and respected.

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Future Legal Guide: Scope

- **Land leases:** Agricultural land investment contracts involving grants of tenure and related rights for a specified time (e.g. investment contracts, concessions, leases) and not those involving sales.
 - Leases are currently known to be more common than sales.
 - Leases entail ongoing obligations, which allows for use of contractual safeguards and for monitoring of the parties' obligations.
- **Possible parties and stakeholders:** Investors, governments, local communities, legitimate tenure right holders and private landowners.
- **Contractual arrangements:** Diverse contractual arrangements to be covered (e.g. different types of contracts, mixed business models, community development agreements).

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Future Legal Guide: Target Audience and Approach

- **Target audience:** Legal counsel involved in the preparation, negotiation and implementation of agricultural land investment contracts.
- **Approach:** To follow a concrete approach based upon contract principles and practices and actual investment operations.
 - The draft Legal Guide refers to international instruments (e.g. the VGGT, the CFS-RAI Principles, the UN Guiding Principles, UNIDROIT instruments), as well as related guidance documents promulgated by inter-governmental Organisations (e.g. the FAO Governance of Tenure Technical Guides).
 - In making these references, it seeks to be comprehensive, while avoiding duplication of existing guidance.

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Future Legal Guide: Content

Preface and Introduction:

- To set out the purpose and approach, to introduce agricultural land investment contracts and other key terms, and to define the Legal Guide's scope.

Chapter 1 - The Legal Framework:

- To assist with the evaluation of the applicable legal framework, including understanding of customary systems and rules, and the identification of gaps in that framework for which contractual safeguards might be needed.

Chapter 2 - Parties, Contractual Arrangements, Due Diligence and Formation:

- To assist with the identification of all tenure right holders (including both legal and legitimate right holders), determination of the contractual arrangements for taking into account those holders and the assessment of any possible impacts for which contractual safeguards might be needed.

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Future Legal Guide: Content (continued)

Chapter 3 - Rights and Obligations of the Parties:

- To assist with the negotiation of provisions in various areas (e.g. land tenure; social and economic issues, including food security, gender and youth; environment; investment protection and regulatory autonomy; and monitoring and implementation).
- Particular emphasis is placed upon possible safeguards, such as mechanisms for ensuring compliance with environmental requirements and for sharing the benefits arising from the leased agricultural land with legitimate tenure right holders and local communities.

Chapter 4 - Contractual Non-Performance and Remedies:

- To analyse possible excuses and remedies for non-performance, thereby helping to ensure a more balanced and sustainable contract and to prevent conflicts.

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Future Legal Guide: Content (continued)

Chapter 5 - Transfer and Return:

- To flag issues that might arise – regarding the transfer of leased land from one investor to another or the return of the land at the end of the lease – and to analyse possible contractual provisions for addressing those issues.

Chapter 6 - Grievance Mechanisms and Dispute Resolution:

- To assist with understanding various grievance and dispute resolution possibilities and setting them out in the contract in order to create a more balanced and sustainable contract.

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Next Steps and Request for Input

- **Summer 2019:** Open Internet consultation, as well as regional consultation events held around the world, in coordination with Working Group experts, to seek further input on the draft Guide from stakeholders.
- **Fall 2019 – Spring 2020:** The Secretariat, in coordination with the Working Group, is to revise the draft Guide for submission to the UNIDROIT Governing Council for adoption.
- The Working Group would welcome any input that interested stakeholders may wish to submit to the UNIDROIT Secretariat at info@unidroit.org.
- More information about the project is available at <https://www.unidroit.org/work-in-progress/agricultural-land-investment>.
- For comments to the Zero ALIC draft: <https://www.unidroit.org/work-in-progress/agricultural-land-investment/online-consultation>

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Thank you for your attention!



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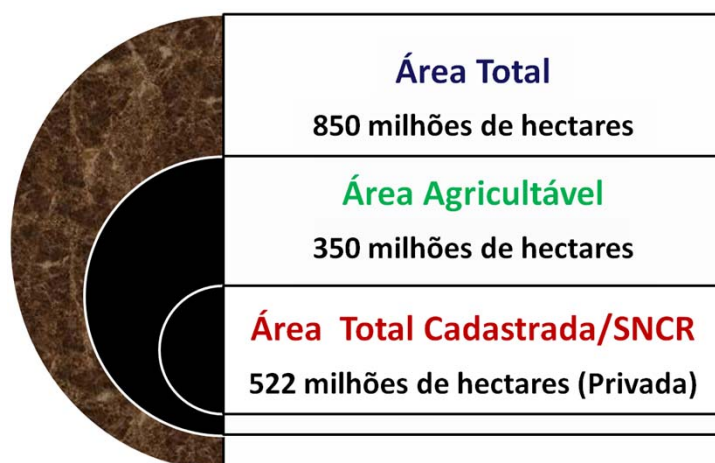
SÃO PAULO
AGOSTO
2019

GOVERNANÇA DA TERRA NO BRASIL - DVG/RAI e transações responsáveis de terras -



1

BRASIL



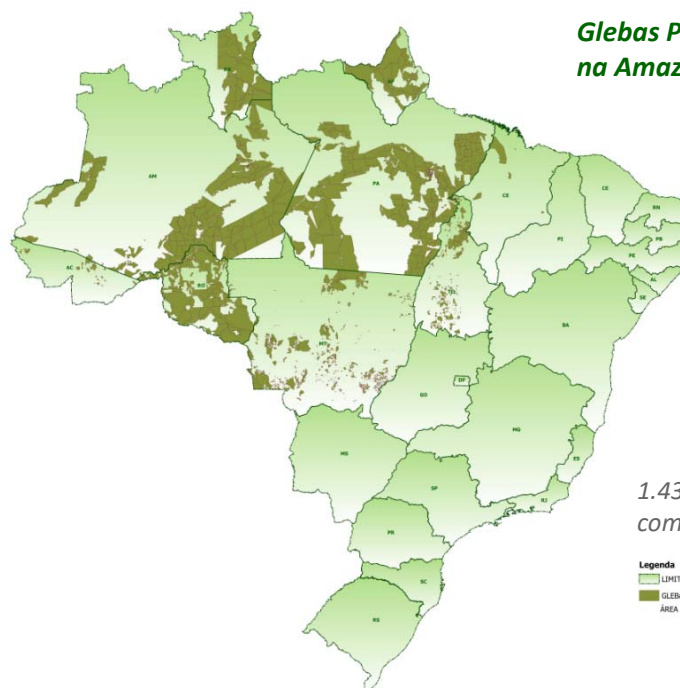
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Contexto: País heterogêneo, cultura, tradição, economia, produção, biomas

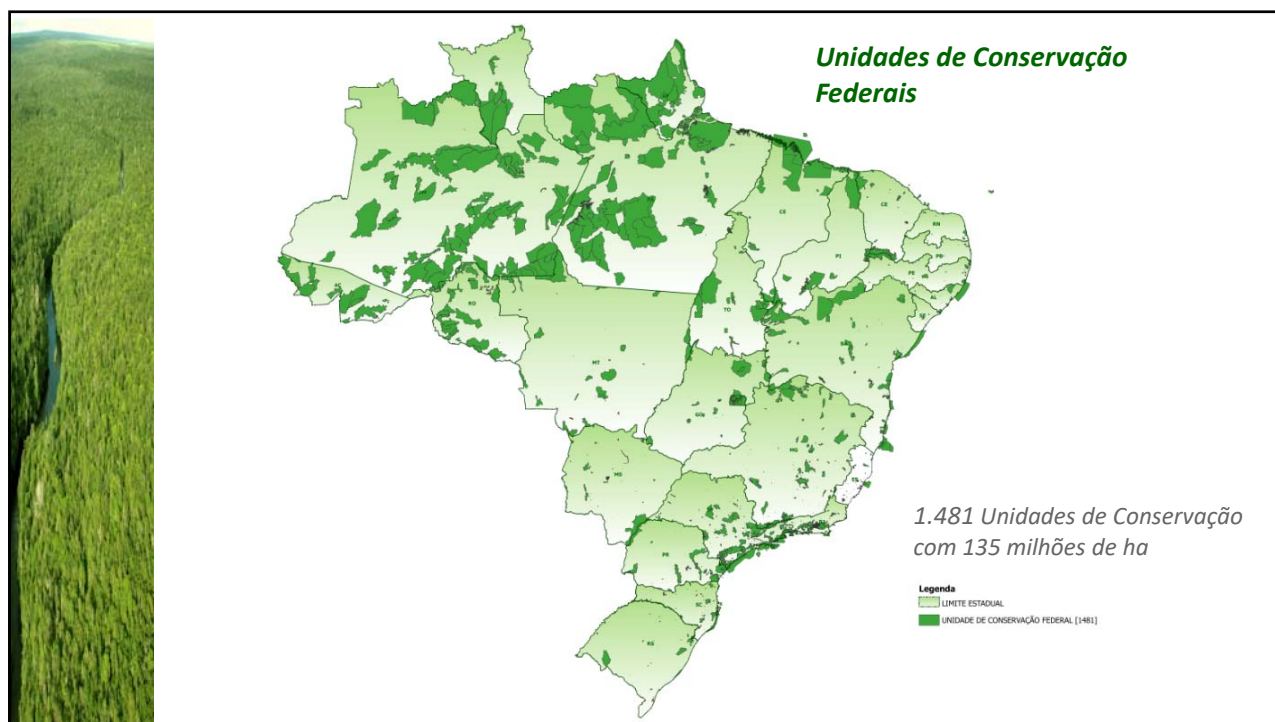
- O Brasil é um dos maiores produtores de alimentos, agroenergia e produtos e serviços da biodiversidade do mundo;
- O Brasil é detentor da maior reserva de água doce do planeta, 8% do volume mundial;
- O Brasil possui de 44.000 a 50.000 espécies de plantas vasculares, o que representa aproximadamente 18% da diversidade vegetal do mundo;
- O Brasil é o quinto país em extensão territorial no mundo;
- No Brasil a propriedade tem como pressuposto exercer uma função social;
- O Brasil carece de políticas de Zoneamento;



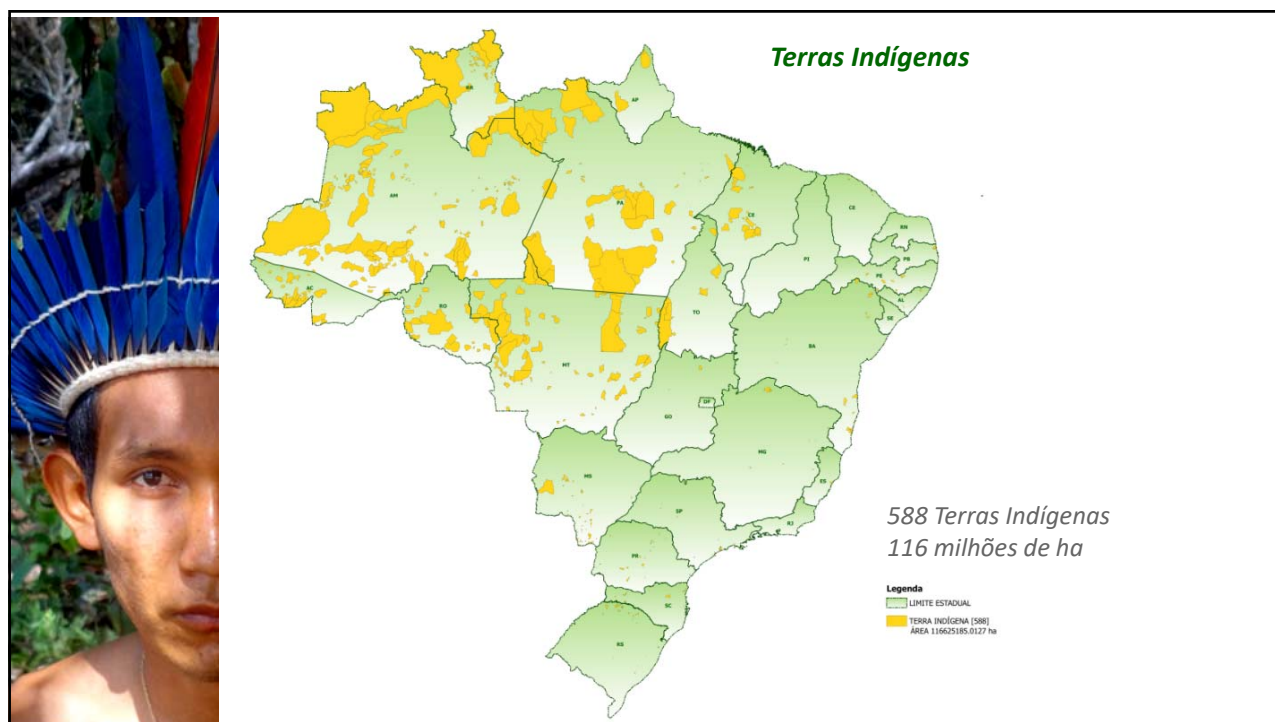
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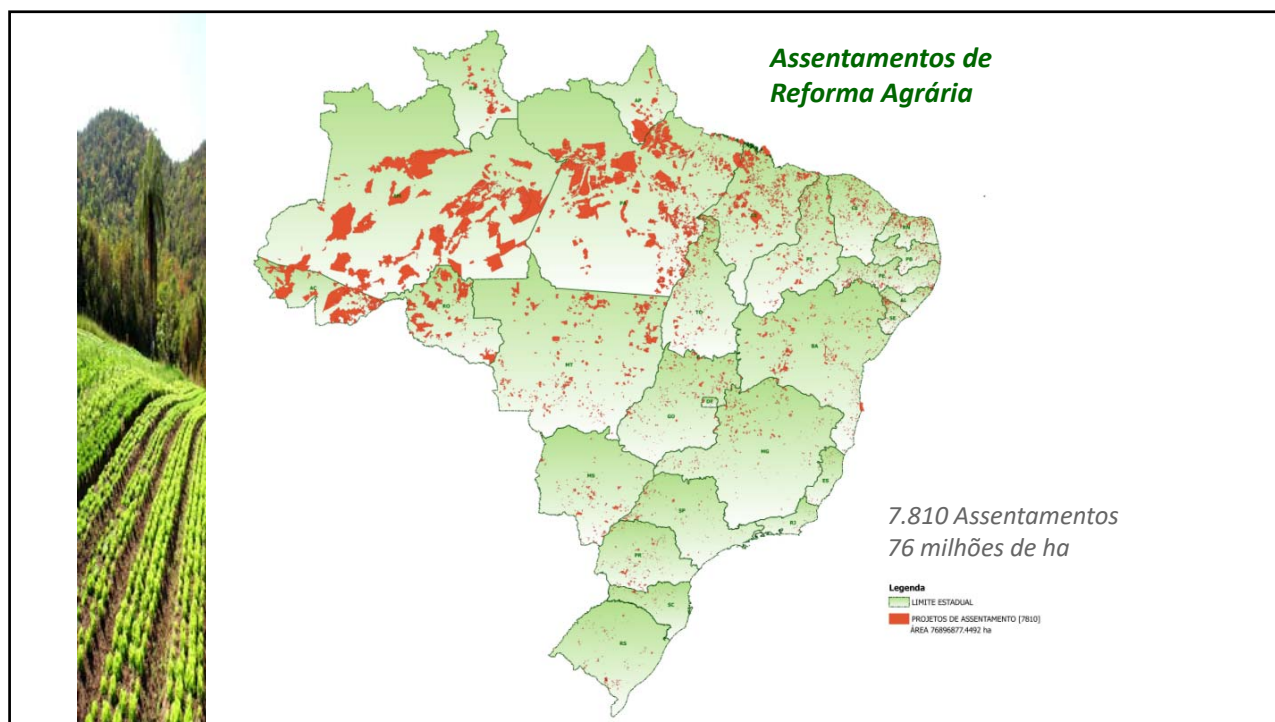
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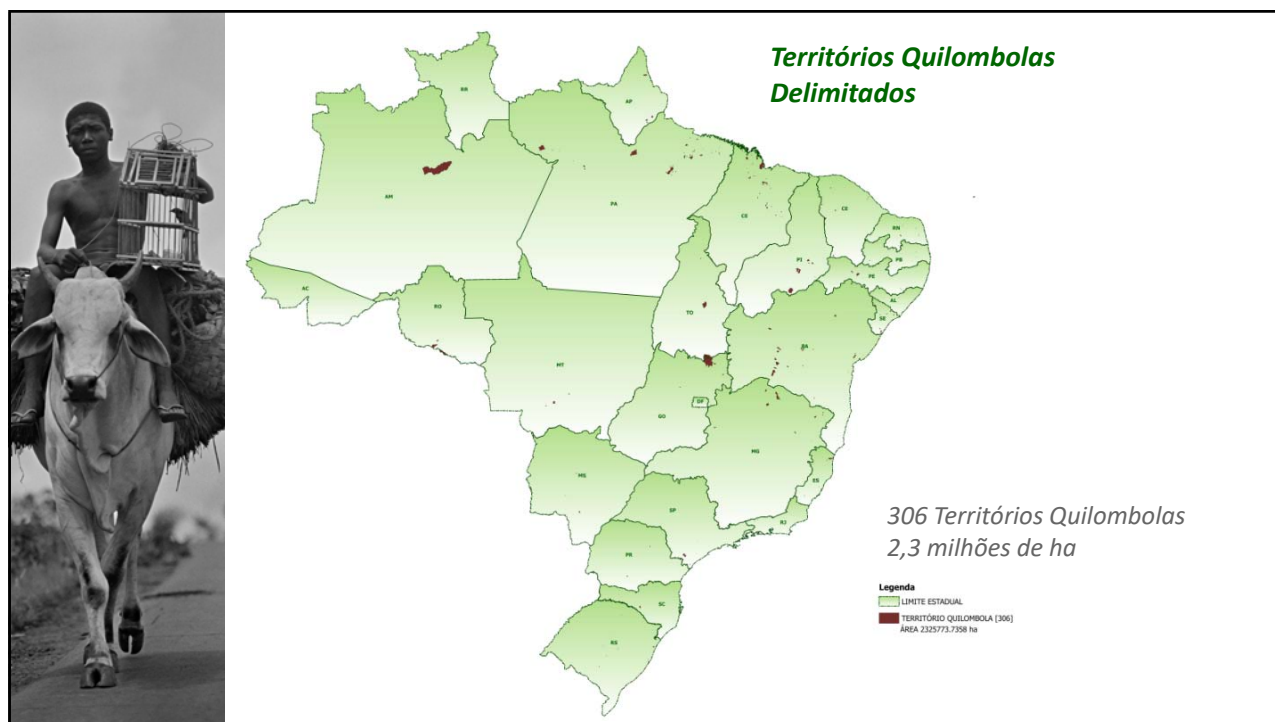
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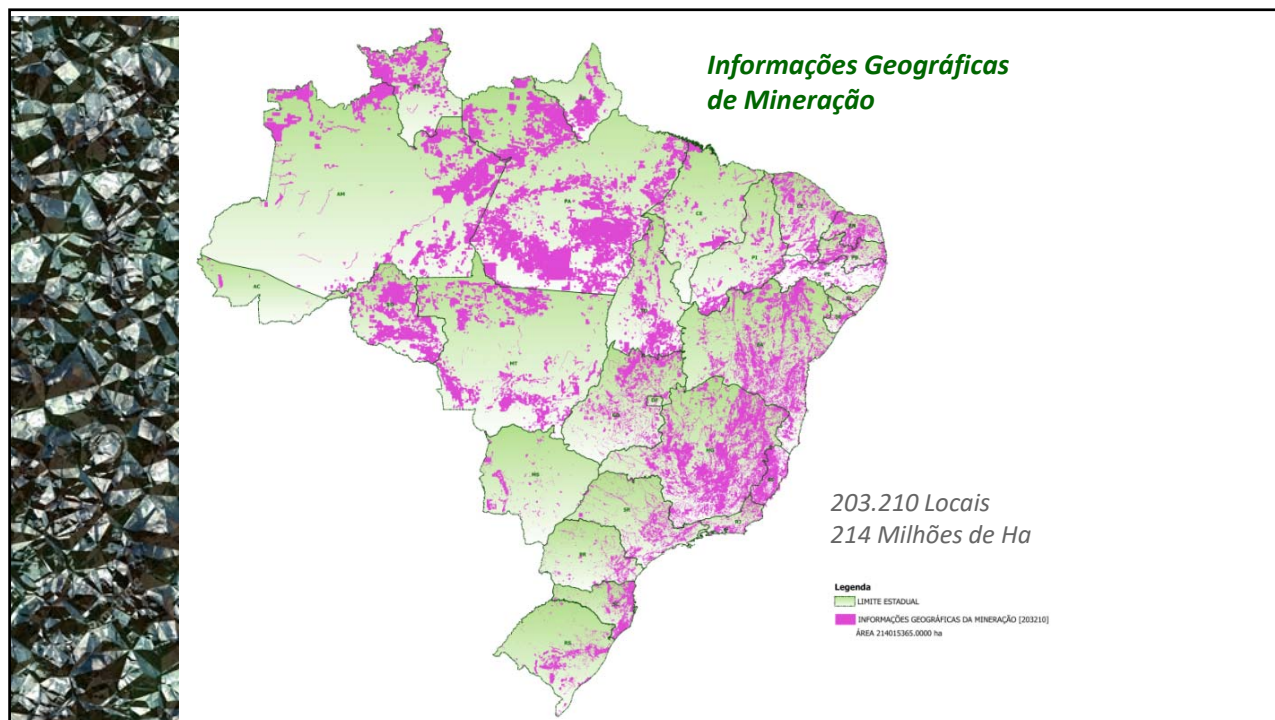
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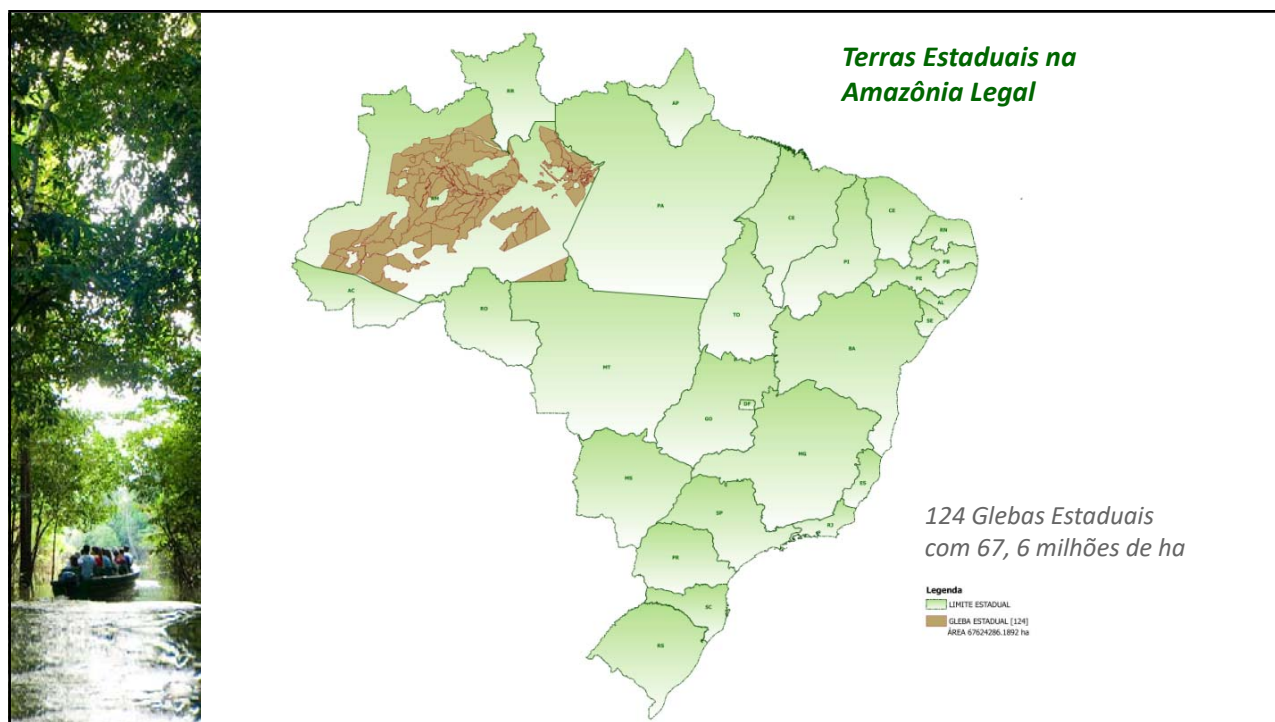
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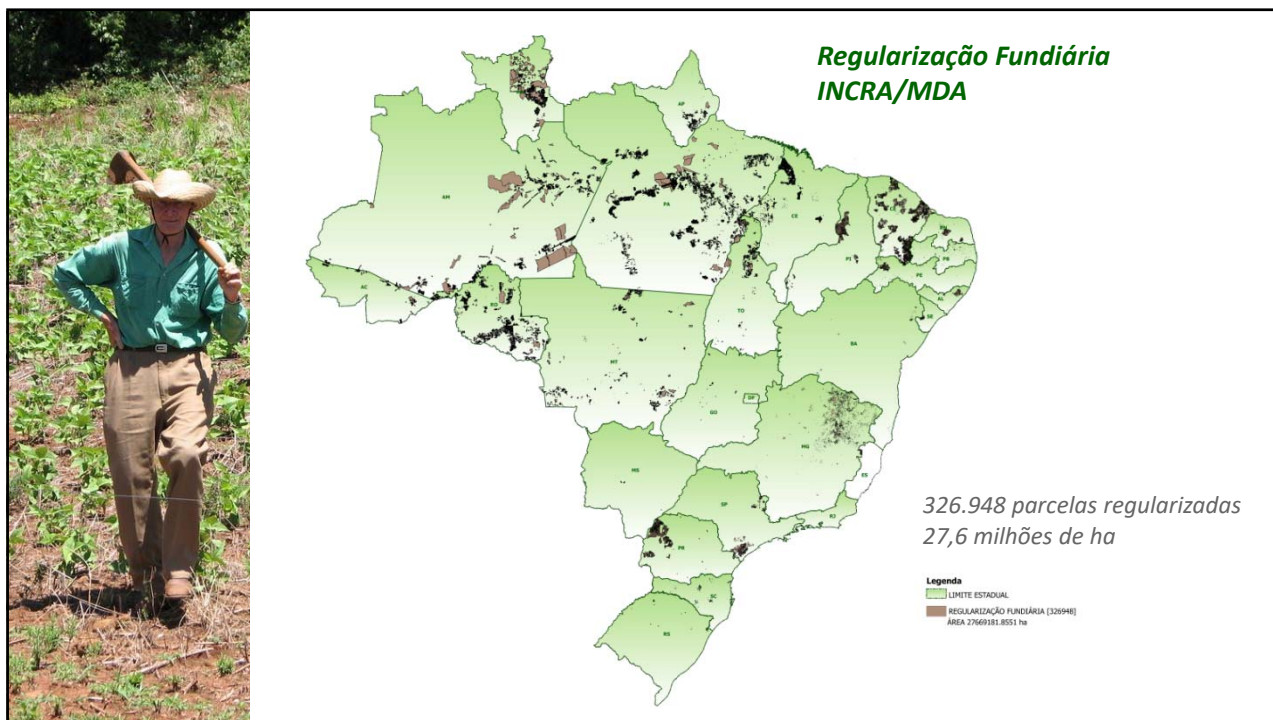
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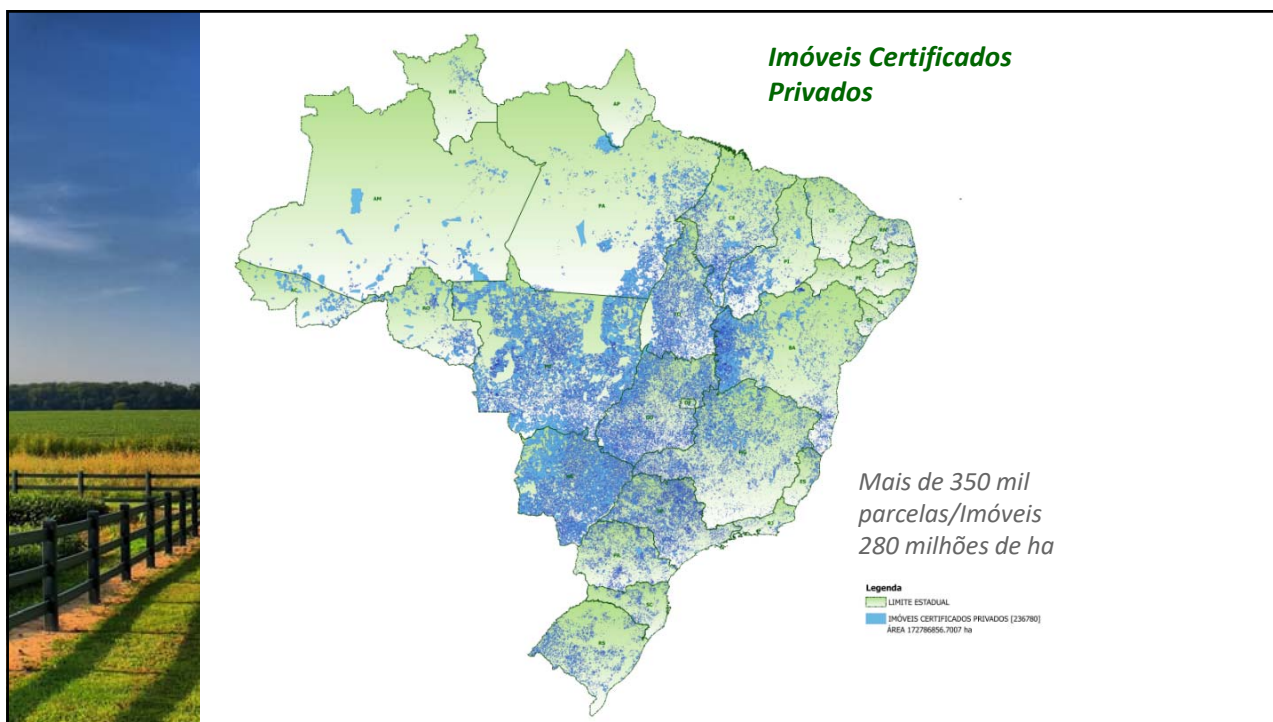
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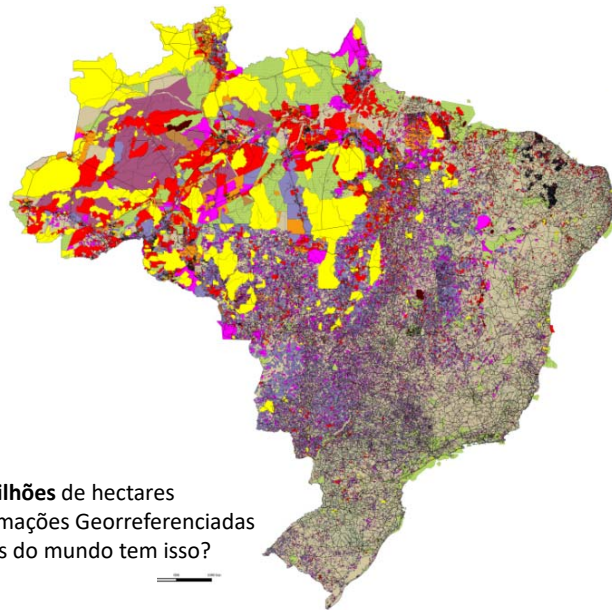
O Acervo fundiário Digital é um visualizador que permite a sociedade o acesso às bases georreferenciadas do INCRA.

Atualmente, o INCRA disponibiliza para visualização e download mais de **329,5 milhões** de hectares entre assentamentos, territórios quilombolas, convênios de regularização fundiária e imóveis certificados.

Aliada às informações de entidades parceiras como Funai e ICMBio essa área alcança **628,4 milhões** de hectares. Desconsiderando as sobreposições o Acervo conta com cerca de 59% do território nacional.

Para Acessar o Acervo Fundiário:
<http://acervofundiario.incra.gov.br>

628,4 milhões de hectares
De informações Georreferenciadas
Qual país do mundo tem isso?



13



14



O BRASIL tem altos níveis de informalidade e insegurança sobre a posse e uso da terra - tanto em áreas rurais como urbanas - que afetam o desenvolvimento sustentável, a segurança jurídica dos proprietários, a segurança nas transações de terras, particularmente para os grupos mais vulneráveis (como pessoas de baixa renda, mulheres e minorias étnicas, etc).

PORQUE? QUAL A ORIGEM DESSES PROBLEMAS? QUAIS CONSEQUÊNCIAS

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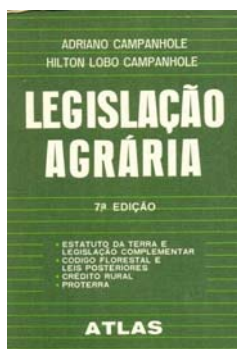
GOVERNANÇA FUNDIÁRIA NO BRASIL (LGAF) World Bank (2014: xi)

- quadro legal e institucional problemático gera seis áreas de fragilidade da governança fundiária:
- existência de extensas áreas com indefinição dos direitos de propriedade;
- Registros de propriedades nos Cartórios incompletos e desatualizados;
- ausência de um registro oficial e integrado de terras públicas e privadas;
- baixos níveis de tributação sobre imóveis;
- desconexão entre oferta de terras urbanas, planejamento e regularização do uso da terra;
- Governança negligente na aquisição de terras e florestas.

15

16

Legislação Fundiária Brasileira desatualizada, complexa e parcialmente obsoleta



17

Legislação Fundiária Brasileira

51 dispositivos

- **DL 1.110/70** - Criação do Incra
- **Decreto 6.812/09** – Aprova Estrutura Regimental do INCRA
- **CF** – art. 20 – Patrimônio da União
- **Lei 4.504/64** – Estatuto da Terra
- **Decreto 59.428/66** – Regulamenta Estatuto da Terra e artigos da Lei 4.947/66
- **Lei 8.629/93** – Lei Agrária
- **MP 2.183/01** – altera DL 3.365/41, Lei 4.504/64, Lei 8.629/93 e outras
- **DL 1.106/70** – Dispõe sobre ocupação faixa 10 KM Cuiabá-Santarém e Transamazônica (§1 art. 2º)
- **DL 1.561/77** – Ocupação dos terrenos da União e dá outras providências
- **DL 1.414/75** – dispõe sobre terras devolutas em faixa de fronteira
- **Decreto 76.694/75** - Dispõe sobre a execução do DL 1.414/75 (ratificação faixa de fronteira)
- **Lei 9.871/99** – Estabelece prazo para ratificação títulos em faixa de fronteira.
- **Lei 10.164/00** – Prorroga prazo da Lei 9.871/99
- **Lei 10.363/01** - Prorroga prazo da Lei 10.164/00
- **Lei 10.787/03** - Prorroga prazo da Lei 10.164/99
- **DL 2.375/87** – Revoga 1.164/71 – Dispõe sobre terras públicas
- **Decreto 3.743/01** – Regulamenta Lei 6.431/77 – regulamenta doação terras a municípios da Amazônia Legal em Faixa de Fronteira
- e de interesses à segurança nacional
- **Lei 5.868/72** – Cria o SNCR
- **Decreto 72.106** – regulamenta a Lei 5.868/72
- **Decreto 4.449/02** – regulamenta a Lei 10.267/01
- **Decreto 5.570/05** – Nova redação ao Decreto 4.449/02
- **Decreto 7.620/11** – Nova redação ao Decreto 4.449/02

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Legislação Fundiária Brasileira

- **Lei 6.746/79** – Altera artigos da Lei 4.504/64 (Est. da Terra), fixação do Imposto sobre a Propriedade Rural
- **Decreto 84.685/80** – regulamenta a Lei 6.746/79
- **Lei 8.022/90** – Transfere para SRF a competência do ITR
- **Lei 8.847/94** – Dispõe sobre o ITR, contribuições sindicais e taxa de serviços cadastrais do Incra
- **Lei 9.393/96** – Dispõe sobre o ITR e TDA e conceituação de imóvel rural.
- **Decreto 4.382/02** – regulamenta o ITR
- **Lei 5.954/73** – Doação de imóveis de Núcleo de Colonização
- **Lei 6.383/76** – regulamenta o processo discriminatório terras devolutas da União
- **Lei 6.431/77** – Doação de porções de terras devolutas na Amazônia Legal
- **Lei 4.947/66** – Fixa normas de direito agrário e atribuições do IBRA
- **Lei 5.709/71** – Aquisição de imóveis rurais por estrangeiros
- **Decreto 74.965/74** – regulamenta a lei 5.709/71
- **Lei 6.015/73** – Registros Públicos
- **Lei 10.267/01** – altera as leis 4.947/66, 5.868/72, 6.015/73, 6.739/79, 9.393/96 – Cria o CNIR, Institui a certificação de imóveis rurais, estabelece obrigações entre o INCRA e os Registros Imobiliários
- **Lei 6.739/79** – Dispõe sobre as matrículas e os registros de imóveis rurais
- **Lei 6.634/79** – dispõe sobre faixa de fronteira e altera o DL 1.135/70

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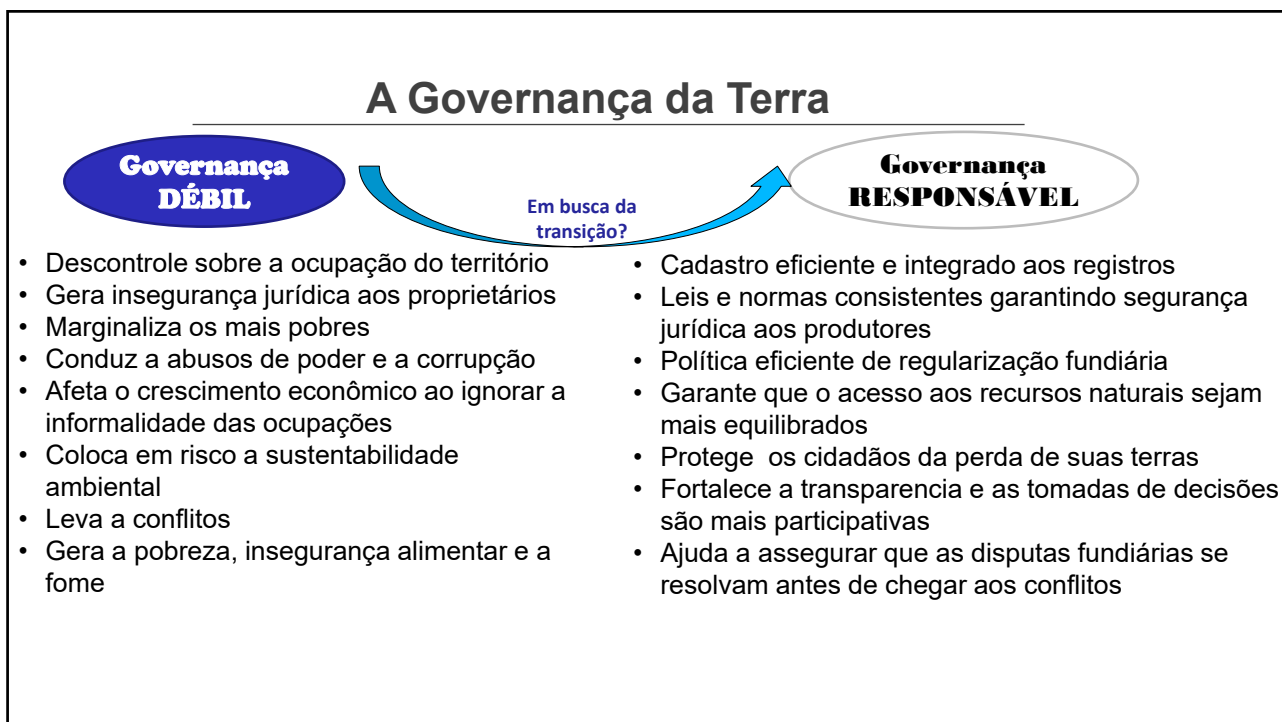
Legislação Fundiária Brasileira

- **Decreto 85.064/80** – regulamenta a Lei 6.634/79
- **Decreto 4.883/03** – transfere competência do MinC para o MDA da regularização de territórios quilombolas
- **Decreto 4.887/03** – regulamenta procedimentos para identificação, reconhecimento, delimitação, demarcação e titulação das terras ocupadas por remanescentes das comunidades dos quilombos.
- **Lei 11.952/09** – Cria o programa Terra Legal
- **Lei 12.651/12** – Institui o novo Código Florestal
- **Lei 13.001/13** – Titulação PAs' etc...
- **Lei 13.465/17** – Regularização Fundiária
- **Lei 13.178/15** – Ratificação Títulos em Faixa de Fronteira
- **Instruções Normativas e Normas de Execução Internas**
 - **IN 11/2003** – Diretrizes para fixação do Módulo Fiscal
 - **IN 28/2006** – Fiscalização Cadastral
 - **IN 66/2010** – procedimentos para atualização cadastral
 - **IN 57/2009** – define procedimentos para identificação, reconhecimento, delimitação, demarcação, desintrusão, titulação e registro das terras ocupadas por remanescentes das comunidades dos quilombos.
 - **IN 71/2011** – aquisição de imóvel por estrangeiros
 - **NE 105/2012** – Certificação Imóveis rurais

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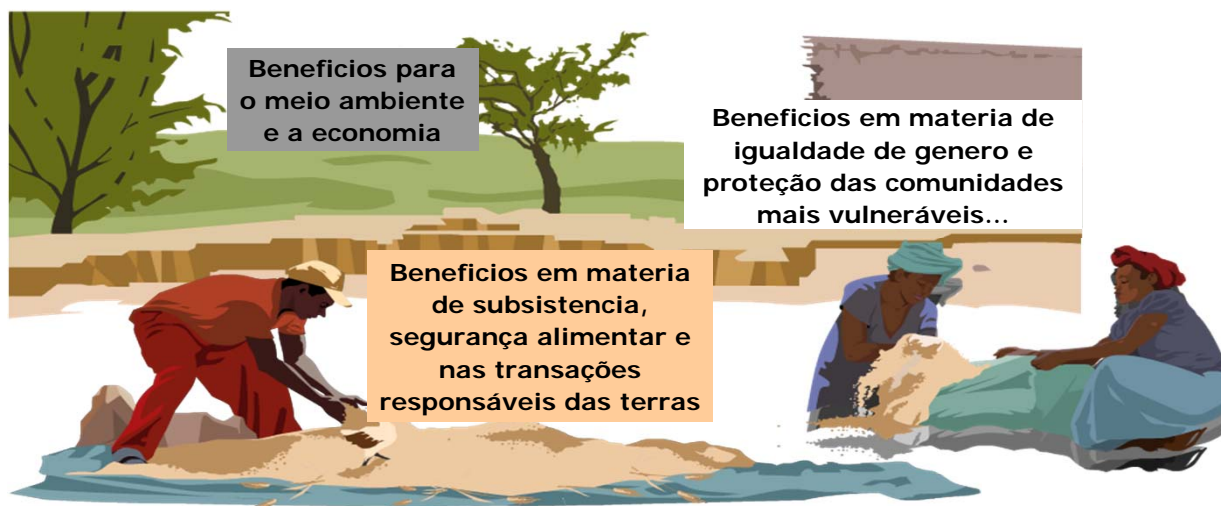


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22


BENEFÍCIOS DA GOVERNANÇA RESPONSÁVEL DA TERRA




23

Os Governos podem tomar diversas medidas para efetivar uma política de governança da terra que possibilitem transações responsáveis de terras:


- 1**




Transações responsáveis:
Em primeiro lugar, o Governo deve construir estratégias, políticas e leis que determinem claramente as regras ou procedimentos que se aplicam em matéria de acesso e uso da terra.
- 2**



Transparência e Planejamento:
O Governo precisa ter procedimentos abertos e acessíveis que apoiem essas leis, como sistemas de cadastro transparente e eficientes para orientar as aquisições, planejamento e avaliação sobre a gestão do território e espaços de participação social.
- 3**



Confiança nos dados:
O Governo precisa contar com informações claras, confiáveis e consultáveis
- 4**



Racionalidade Administrativa:
Necessário estruturar arranjos institucionais adequados ao propósito da política de gestão da terra

24

E MAIS...

5



Qualificação Técnica:
Para aplicar leis e normas regulatórias, o Governo deve ter servidores públicos qualificados e capacitados

6



Participação Social:
O Governo deve conscientizar, socializar e tornar acessível ao público as leis, os sistemas, normas regulatórias para Regularização Fundiária e fontes confiáveis de informação

7

Responsabilidade compartilhada:
As regras devem impor o dever probatório sobre a parte que dá início à controvérsia em disputas judiciais, de modo que esta possa aduzir as razões que motivam sua solicitação para examinar os direitos reivindicados.

8



Equidade e tolerância:
No nível mais amplo, o Governo pode fomentar a harmonia dentro da sociedade, através do tratamento igual para todas as pessoas e agindo com tolerância às diferenças.

25

Medidas como a garantia de direitos, consagrando-as em leis, o estabelecimento de uma política efetiva de ordenamento territorial, a melhoria da informação sobre o território e a intensificação da transparência na gestão das terras são decisivos para as transações responsáveis de terras.



Quando todos esses elementos se refletem em políticas, guias, normas, instituições e serviços, a governança responsável da terra adquire dimensões reais e beneficia indivíduos, grupos, empresas, sociedade e a economia.

26

RESUMINDO



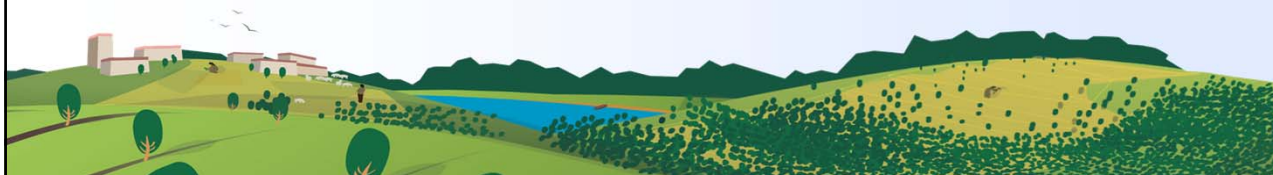
Princípios gerais que devem orientar a governança responsável das transações de terras:

- 1 - reconhecer e respeitar os direitos legítimos de acesso à terra;
- 2 - salvaguardar esses direitos;
- 3 - facilitar o seu pleno gozo;
- 4 - permitir o acesso à justiça para eliminar os conflitos sobre esses direitos;
- 5 - prevenir disputas, conflitos e corrupção relacionados com direitos legítimos à terra.

27

OBRIGADO

ROLF HACKBART
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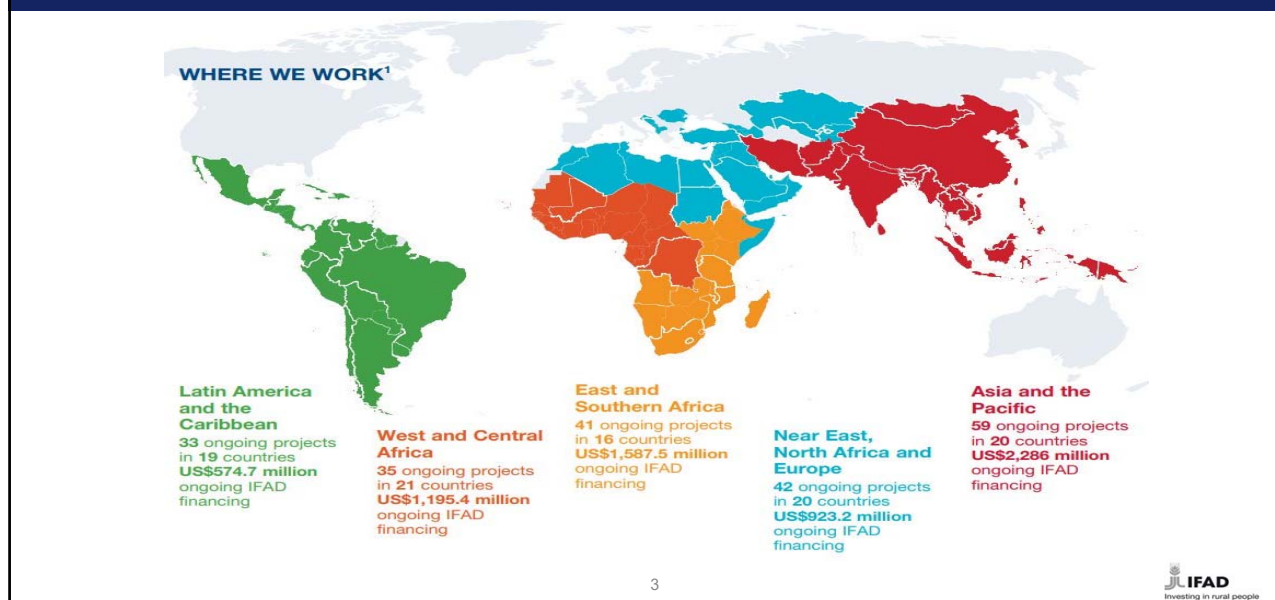


1



2

Where We Work – 96 Countries



3

IFAD Latin America and the Caribbean

IFAD is working with 17 governments to deliver 34 ongoing projects across the region



4

Legitimate tenure right holders as interested parties in Land Leases in Latin America



5

Free, Prior and Informed Consent (FPIC) in IFAD-supported Projects

- Improves the relevance and quality of investments.
- Community ownership of the investment.
- Partnership is strengthened.
- Minimizes conflicts with other resource users.
- Minimizes reputational, operational and fiduciary risks.



IFAD
Investing in rural people

6

Two examples



- **Salta, Argentina:** Coexistence of large agribusiness companies (crops and livestock) with adjacent indigenous communities, that see their land use rights diminished. Empirical evidence based on Land Matrix data
- **Nicaragua:** agrarian reform and counter-reform, followed by large-scale investments



7


Use of the Legal Guide



8

Thank you!






Due diligence e obrigações socio-ambientais contratuais

Priscila Pereira de Andrade

Membro do grupo de trabalho ALIC, UNIDROIT

1



Procedimento de Due Diligence

- boa prática internacional
- base para o estabelecimento das cláusulas de um contrato de investimento em terra agrícola responsável
- possível preencher eventuais lacunas legislativas
- auxilia na definição de salvaguardas para prevenção de impactos negativos
- cria relações econômicas mutuamente benéficas com as comunidades afetadas

2



Três etapas para um procedimento de due diligence adequado

1. Avaliação da própria terra;
2. Identificação de atores envolvidos, interessados e/ou impactados;
3. Escolha de instrumentos contratuais apropriados.

3



Performance de estudos de impacto

- É necessário realizar avaliações de impacto com relação aos seguintes tópicos:
 - - com relação aos direitos humanos
 - - com relação aos impactos ambientais
 - - aspectos sociais
 - aspectos econômicos essenciais

4

Estudos de impacto como boa prática contratual

- mesmo quando não são exigidos por lei
Ex. ISO 31000 (Gerenciamento de riscos corporativos)
- complementam as iniciativas de responsabilidade social da empresa
- fornecem dados básicos para monitorar e medir impactos
- delinear planos para implementar ações corretivas ou compensatórias

5

Obrigações contratuais sociais e ambientais

Baseado no desempenho da due diligence, e nos estudos de impacto, o Capítulo 3 do Guia destaca alguns tópicos que deveriam compor as cláusulas contratuais para proteção dos direitos humanos, sociais e ambientais.

6

