
THE HARD TASK OF ENVIRONMENTAL REGULARIZATION OF FAMILY FARMERS IN THE LEGAL AMAZON ¹

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ABSTRACT

The research focuses on the environmental regularization of family farmers. The objective was to analyze the legal requirements introduced by Law 12.651/12 and its regulations, and the impacts on the family farm located in northeastern Pará (Bragança, Capitão Poço and Garrafão do Norte). A documentary research was made and the sites of the environmental and land agencies were accessed. Besides, a field research was carried out with open interviews with farmers to get to know their perceptions on land and environmental regularization. After that, in order to analyze the political strategies prepared by the federal government, interviews were made with technicians in the Ministry of Environment (MMA), Ministry of Social Development and Fight against Hunger (MDS)[1], National Institute of Colonization and Agrarian Reform (INCRA) and Brazilian Forest Service (SFB). Finally, technicians in the state and federal environmental and land agencies were interviewed in the state of Pará. Then, data was compared to legal requirements in order to identify possible obstacles to compliance with those standards. The results point out at the difficult task of farmer environmental regularization due to the lack of land regularization, education and instruments of agrarian, forest and environmental policies.

Keywords: Family farmer; Law n. 12.651/2012; Environmental regularization.

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*A ÁRDUA TAREFA DA REGULARIZAÇÃO AMBIENTAL DOS
PRODUTORES FAMILIARES NA AMAZÔNIA LEGAL*

RESUMO

A pesquisa aborda a regularização ambiental do produtor familiar. O objetivo foi analisar as exigências legais trazidas pela Lei nº 12.651/12 e suas regulamentações, e o impacto sobre o produtor familiar localizado no nordeste paraense (Bragança, Capitão Poço e Garrafão do Norte). Realizou-se pesquisa documental, com visitas aos sites dos órgãos ambientais e fundiários. E pesquisa de campo aplicando-se entrevistas abertas aos produtores para levantar suas percepções quanto à regularização fundiária e ambiental. Posteriormente, visando analisar as estratégias políticas elaboradas pelo governo federal, foram aplicadas entrevistas aos técnicos do Ministério do Meio Ambiente (MMA), Ministério do Desenvolvimento Social e Combate à Fome (MDS), Instituto Nacional de Colonização e Reforma Agrária (INCRA) e Serviço Florestal Brasileiro (SFB). Por fim, entrevistaram-se técnicos dos órgãos fundiários e ambientais, tanto federais quanto estaduais, no Estado do Pará. Depois, os dados foram confrontados com exigências legais com o intuito de se identificarem possíveis obstáculos ao cumprimento dessas normas. Os resultados apontam a difícil tarefa da regularização ambiental desses produtores relacionada à escassez de regularização fundiária, escolaridade e instrumentos da política agrária, florestal e ambiental.

Palavras-Chave: *Produtor familiar; Lei nº 12.651/2012; Regularização ambiental.*

INTRODUCTION

Law n. 11.326 dated 2006 that sets forth the guidelines for the creation of the national policy on family agriculture and rural family projects in Brazil defines as family farmer and rural family entrepreneur the one who performs activities in a rural environment, simultaneously meeting the following requirements: their areas shall measure up to 4 fiscal modules²; they shall use family workforce to develop the economic activities; a minimum percentage of the family income shall be generated by the economic activity developed in his/her area and the business or project shall be managed with the help of the family. That law also expanded its benefits to foresters, fish farmers, farmers in extractivism activities, fishermen, indigenous people, members of remaining rural *quilombo* communities, since they meet some specificities. And the new forest code (Law n. 12.651 dated 2012) added settlements and settlement projects as part of that audience.

Thus, it is a regulation related to one of the most important principles in Agrarian Law that, according to Duque Corredor *apud* Rezek (2011), “[...] is the one of the protection of the farmer family under the social, economic and, above all, legal point of view”. Although family agriculture takes only 24% of the area of Brazilian rural businesses, according to Mattos (2016), it responds for about 70% of the supply to the domestic consumer food market. It is also possible to associate its contribution for the maintenance of the rural population in the countryside once, in general, they produce where they live; for food safety once farmers produce food for their own consumption and the surplus goes to the internal market; and for poverty decrease once they remain economically active.

Despite their contributions, family farmers are pointed out by Almeida (2006) as part of the agents that contribute for landscape changes due to the cut and burn agriculture, a practice seen by them as the most economic one. However, its intensive use provides for environmental degradation and decreases agricultural productivity. However, according to Costa (1997), the predominance of the livelihood agriculture, which generates few economic, social and environmental results, is due to the lack of policies compatible with the local reality of the family agricultural sector in the Amazon.

2 INCRA's Special Instruction n. 2 dated May 28, 1980 establishes the fiscal module for each municipality.

Micollis et al (2011), when assessing the public policies regarding agroforestry systems in five regions of the country, pointed at structural barriers for family farmers in which they included the difficulty concerning compliance with environmental standards and they list the work developed by Micollis (2008) indicating some factors referring to that difficulty such as: lack of access to relevant and comprehensive information, low level of social organization, technical qualification and formal knowledge.

The data point at the need to deepen the studies related to those obstacles. Thus, it is important to assess the difficulties faced by family farmers to regularize their environmental situation. Law n. 12.561/12 is the reference used once it brought new requirements to environmental regularization that, although encompassing, when reporting to compliance with the environmental legislation, kept some urgency in regards to the maintenance and recovery of Permanent Preservation Areas (APP), Legal Reserve Areas (ARL) and Restricted Use ones (UR).

When addressing environmental regularization, it is important to add clarifications on the environmental legislative competence. It is forecasted in the 1988 Federal Constitution, in article 24, which states that the Federal Government is in charge of legislating about general standards and the States shall legislate in an accessory way, that is, complementing the general standard with regional aspects. And article 30, item II states that municipalities have the possibility of complementing the federal and state legislation as applicable. It is also foreseen that, in the absence of a general standard, the states can fully legislate pursuant to §3rd of article 24 of the Constitution. Fiorillo and Rodrigues (1997, p. 190) support that interpretation when they address that matter and they conclude: “Thus, both the federal government and the States, Municipality or the Federal District are holders of the police power once all of them have the competence to legislate in their respective area of activity”.

Thus, dealing with legal requirements regarding the environmental regularization of farmers in the northern part of the state of Pará means analyzing federal, state and municipal environmental standards, when applicable. In this case, the analyses were concentrated if the federal standards and the ones of the State of Pará.

The research hypothesis was that compliance with those standards would be difficult due to landowning regularization, access to agricultural, forestry and environmental policy instruments as well as to fundamental rights, in this particular case, to formal education.

According to Marques and Malcher (2009, p.22-23), landowning regularization regarding rural real estate is: “a set of procedures made effective by a landowning institution, guided by specific legislation, that results in the issuance of a document or a title that can provide its holder with the right to use or own the real estate.”

In what concerns the public policy instruments, they shall be understood as mechanisms made available to the Public Power to achieve the objectives of the policies referred to (HOWLETT, 2011). In this case, the ones related to the agricultural policy are foreseen in Law n. 8.171 dated 1991, article 4, items I to XIX, among which are: technical assistance and rural extension, mechanization, credit. Referring to the forestry policy, it is possible to identify in Law n. 12.651, dated 2012, the Rural Environmental Register – CAR, the Environmental Reserve Quota – CRA, the payment for environmental services, dispersed in different articles. And, regarding the environmental policy, they are foreseen in article 9 of Law 6.938 dated 1981, with a focus on the environmental permitting and especially protected spaces.

Once this research is part of the Inovagri Project under the responsibility of Embrapa Amazônia Oriental, the area had already been selected, including the state of Pará, which, according to data from the Brazilian Institute of Geography and Statistics (IBGE)’s 2006 census, has the largest number of family property (195,985). The municipalities of Bragança, Capitão Poço and Garrafão do Norte were added. They are located in northern Pará and they have areas of 2,091.90 km², 2,899.50km² and 1,599.00km², respectively, pursuant to information in the Green Municipalities Program (PMV, 2016)’s website.

The target audience included 27 family farmers and one farmer who was excluded from that classification once his area exceeded 4 fiscal modules: 9 in Bragança, 9 in Capitão Poço and 10 in Garrafão do Norte. Two areas in the municipality of Capitão Poço belong to associations.

The documental research was firstly used to survey the standards on the environmental regularization of Family farmers in northern Pará and the main landowning standards, both federal and state. On that purpose, environmental and landowning bodies’ websites were visited. Then, a field research was carried out and farmers/partners were applied open interviews on July 20 to 24, 2015 in order to survey the landowning and environmental regularization³.

3 Once two farmers were absent, their wives were interviewed.

In regards to the 10 farmers in Bragança, 9 of them were interviewed and 1 of them was traveling. During the interviews, we learned that one of the farmers was selling his property and he was, thus, excluded from the analyses⁴. After that, 7 of the 9 farmers located in Capitão Poço were interviewed. Two of them could not be reached, one of which was a representative of the Association of Farmers in Igarapé Grande (APIG). Later on, the representative of the area of the Association of Small Rural Farmers in Carrapatinho's interview was excluded. Thus, 6 interviews were analyzed. Finally, the farmers located in Garrafão do Norte were interviewed: 10 interviews were forecasted and carried out.

Then and in order to assess the political strategies prepared by the federal government, the field research continued on May 31 and June 01, 2016, when technicians in the Ministry of Environment (MMA), Ministry of Social Development and Fight Against Hunger (MDS)⁵, National Institute of Colonization and Agrarian Reform (INCRA), Brazilian Forestry Service (SFB) were interviewed. Finally, technicians in the federal and state landowning and environmental bodies located in the State of Pará were interviewed.

Then, the information was confronted with legal requirements for environmental regularization, with a focus on the maintenance and recovery of APPs and ARLs and on the difficulties so as to think about the need to open new paths that allow for the effectiveness of the standards referred to.

The article is divided into four parts, in addition to the introduction and the final recommendations: the requirements for the environmental regularization of the family farmer at the federal level; the environmental regularization of the family farmers in the State of Pará; environmental regularization of family farmers in northern Pará from Law n. 12.651/12, progresses and the need for complementary actions.

1 THE REQUIREMENTS FOR THE ENVIRONMENTAL REGULARIZATION OF FAMILY FARMERS AT THE FEDERAL LEVEL

In this item, the main requirements for the environmental regularization of family farmers at the federal level are presented. Initially, 4 In mid-July 2016, Maricelia Barbosa, a technician at the Inovagri Project, informed that this farmer gave up selling the property.

5 That ministry was extinguished by Provisional Measure n. 726 dated May 12, 2016.

short considerations on the Permanent Preservation Areas and the Legal Reserve Area are outlined. Then, the registration of the family farmer into the Rural Environmental Register is addressed. After that, the landowning regularization in the environmental regularization process is covered. Finally, family farmers and consolidated areas are approached, as well as the environmental regularization program.

1.1 Short Consideration on Permanent Preservation Areas – APP and Legal Reserve Area - ARL

ARLs and APPs are listed by Carneiro (2001) as part of the four fundamental categories of Especially Protected Spaces (EEP). Those spaces are forecasted as an instrument of the national policy of environment by means of Law n. 6.938 article 9, item VI. And it is provided for in the Federal Constitution, article 225, §1, item III, when it charges the Public Power with the task of defining those spaces in all the units of the federation and state that they can only be suppressed in the face of the law, besides forbidding any kind of use that compromises the integrity of the attributes that justify their protection. Finally, it is possible to conclude that EEPs shall be understood as a gender once they encompass different types of protected areas among which are APPs and ARLs.

APPs are areas that may or not be covered with vegetation and they aim at “preserving water resources, the landscape, the geological stability and biodiversity, easing the fauna and flora gene flow, protecting the soil and ensuring the wellness of human populations”, pursuant to article 3, item II of Law 12.651/12. It is noticeable that they were set by the legislator as EEP to be preserved.

The second kind, the ARLs, are areas located inside rural properties or possessions whose lawful delimitation varies according to the region and type of vegetation, their natural resources can be used in a sustainable way and they contribute to “help the conservation and the rehabilitation of ecological processes and to promote the conservation of biodiversity as well as to shelter and protect the wild fauna and the native flora”, pursuant to Law n. 12.651 dated 2012, article 3rd, item III. It is understood that its base is on conservation.

1.2 A Registration of the family farmer in the Rural Environmental Register (CAR)

The environmental regularization involves the development of activities in the rural real estate to meet the requirements of the environmental legislation. A priority shall be given to actions related to the maintenance and recovery of Permanent Preservation Areas as well as legal reserve and restricted use ones, and the compensation of the legal reserve when that may be the case.

In order to implement the environmental regularization, the CAR was inserted at the national level. Pursuant to article 29 of Law n. 12.651 dated 2012, it is an electronic register of all rural real estate located in Brazil aiming at integrating information, in a national sphere, that enable planning, control and monitoring actions to be outlined in regards to economic activities and deforestation fighting⁶.

Initially, Law n. 12.651/12, article 59 set forth a one-year timeframe for all rural real estate to be registered into the CAR as of the implementation of this register. It was found nationally implemented as of the date of publication of MMA's Normative Instruction n. 2 dated May 06, 2014. This timeframe was now extended to December 31, 2017 by Law n. 13.295 dated June, 2016.

The registration of the family farmer into the CAR is provided for in article 55. It foresees the presentation of the documents listed in items I and II of §1 of article 29 as mandatory, including owner identification, evidence of ownership or possession and draft mentioning the perimeter of the real estate, the APPs and the remainders of the ARL.

Article 53 also forecasted that the collection of the geographic coordinates in order to locate the ARL is a responsibility of the bodies in the National Environment System – Sisnama or of institutions qualified by it. The registration and the technical and legal support are free, and article 54, paragraph only forecasts the obligation of the state Public Power to technically support the reconstitution of those areas.

Regarding settlements, it is important to highlight that all are registered in the perimeter CAR. The individual registration of settlers⁷ is still being made. Still concerning settlements, one cannot disregard the

⁶ For further information on the CAR, read PETERS, Edson Luiz; PANASSOLO, Alessandro. *Rural Environmental Register - CAR & Environmental Regularization Program – PRA*. Curitiba: Juruá, 2014.

⁷ Interview on May 31, 2016 in Brasília with INCRA's General Coordinator for the Environment, João Augusto Scaramello.

contribution of the Federal Public Prosecutor's Office (MPF). First of all, by filing lawsuits in seven states of the Brazilian Legal Amazon, six in 2012 and one in 2013, to convict the Institute of Colonization and Agrarian Reform (INCRA) for the damages perpetrated. The states involved were Pará, Amazonas, Rondônia, Roraima, Acre, Mato Grosso and Maranhão⁸.

Secondly, when the MPF signed the Term of Commitment (TC) on August 08, 2013 with INCRA in Brasília, having INCRA's adjustment of conduct as an object in what regards managing settlements in the Legal Amazon that had environmental liabilities in order to terminate, with judgment on merits, the public civil lawsuits referred to. INCRA's responsibility to require the individual CAR and the Environmental Permitting in those settlements is on this TC. Thus, INCRA was forced to engage a service provision to carry out the CAR⁹.

1.3 Landowning Regularization in the Environmental Regularization Process

Landowning regularization was included once it represented an essential stage for the family farmer, his/her environmental regularization and access to the instruments of the agrarian, environmental and forestry policy. The conclusion was that, although the information for registration into the CAR is declaratory, they shall later be evidenced so that the farmer is able to move forward in the regularization process.

Moreover, as well explained by Alencar et al (2016, p. 80 e 81), the legal uncertainty regarding land tenure negatively contributes for the conservation of the forest once it discourages investment and long term productive practices. Although it is referring to settlements, the analysis is appropriate for the other areas.

Stella et al (2016, p. 187) state that the regularization is one of the elements that is going to contribute for making it feasible to increase the profitability in open areas and to value the forest. It shall allow family farmers to access funding and investment lines at the settlement, making it possible to bring technical instruments to ease the regularization process for the plots and the productive activities. Here, again, there is a reference to settlements but they refer to family farmers and not to settlers.

⁸ Copy of the Term of Conduct Adjustment forwarded by e-mail by Leonardo Andrade Macedo, Federal Attorney in Uberlândia-MG.

⁹ Copy of the Term of Conduct Adjustment forwarded by e-mail by Leonardo Andrade Macedo, Federal Attorney in Uberlândia-MG.

Regarding settlers, the Constitution sets forth that the beneficiaries of rural real estate as a consequence of the agrarian reform shall receive a title deed or a title of use concession. Nowadays, INCRA initially enters into a Use Concession Contract (CCU) with settlers, it transfers the rural real estate to the beneficiaries of the agrarian reform on a temporary basis and it insures to them access to the land, to credit made available by INCRA and to other federal government programs. The settler shall be regular before the CCU from the landowning point of view in order to access the land itself, the credits and other programs¹⁰.

After ten years, the settler shall receive the title of domain over the area, pursuant to Law n. 8.629/93, since the CCU's clauses are met and the farmer is able to cultivar the land and pay the title of domain in 20 (twenty) annual installments.

In what regards the farmers who are not included in the agrarian reform program, but who are located in federal areas, since the areas are listed and levied, there is a landowning regularization program that deserves a highlight: the *Terra Legal Amazônia* Program. It is a program coordinated by the Ministry of Agrarian Development (MDA)¹¹ that aims at regularizing the legitimate occupations, a priority given to small farmers and local communities in the Legal Amazon.

1.4 Family Farmers and the Consolidated Areas

The consolidated areas refer to the rural real estate where there was anthropic occupation prior to July 22, 2008, including buildings, improvements or agricultural, forestry and livestock activities. In that case, the use of the fallow regime is admitted, that is, areas that rest to recover the natural fertility of the soil and to reduce the infestation of intruder plants according to CONTO et al (1999).

The objective of the legislator was to treat distinctly the real estate whose dimensions do not exceed 4 fiscal modules, regardless the fact that they are family or not, expanding to them the permission to continue the economic activities, even when they were irregularly carried out, in ARLs and APPs, since they had started before July 22, 2008. However, there was a strong difference regarding the treatment given to ARLs and APPs. In what concerns the ARL, the family farmer may have used it 100% without having to recover anything. That is the understanding of the interpretation

¹⁰ Information confirmed by Ronaldo Coelho.

¹¹ Ministry extinguished by means of Provisional Measure n. 726 dated May 12, 2016.

of article 67, Law n. 12.651/12.

Regarding the APPs, there is a need for recovery, but sizes forecasted are smaller than what had been forecasted before, that is, the use of economic activities in part of the APPs was allowed and/or consolidated. In that case, the farmer has to recover part of the area that was changed according to the table below.

Table 1. Permanent Preservation Areas Located in Consolidated Areas

Typology	Fiscal Module	Restoration Measure	Measurement Parameter
Along Water Courses	Up to 1	5	Counted from the trough of the irregular bed, regardless the width of the water course
	> 1 to 2	8	
	> 2 to 4	15	
Around springs and waterholes		15	
Around lakes and natural lagoons	Up to 1	5	Contado em faixas marginais, com largura mínima
	> 1 to 2	8	
	> 2 to 4	15	
Paths	To 4	30	In an horizontal projection, delimited from the swamped and soaked space, with minimum width

Source: ELABORATED BY THE AUTHOR, 2016.

On Table 1, there are APPs forecasted for the consolidation of agricultural, forestry and livestock activities, ecological tourism and rural tourism activities developed up to July 22, 2008. Law n. 12.651, dated 2012, specified the types of APP and set forth, according to the size measured in fiscal modules, how much of the area can be used in the activity. The target was the areas that measure up to 4 fiscal modules and with settlements, the object of this analysis.

It was possible to notice the flexibilization in the use of the APP in what regards rural real estate measuring up to 4 fiscal modules when the possibility of reduction was posed due to the size of the area. The legislator

also allowed tableland edges to be used in areas of up to 4 fiscal modules, without referring to the need for them to be located in consolidated areas.

Finally and still talking about the APPs, they can be used whenever they are featured as public utility, social interest or low impact. It is important to list two APPs related to the matter. The first one has social interest, it included the small rural family property or possession and traditional communities, since the existing topsoil is not destroyed and the environmental function of the area is not harmed. The second one refers to a low impact activity in which the possibility to build the family farmer's home with water supply provided with the effort of the residents themselves was planned and so was agricultural and forestry exploration, and sustainable forest management, including the extraction of non-wood products.

As this interpretation extends to settlements and to agrarian reform projects, it is important to have a deeper discussion on the environmental liabilities. A research carried out by Alencar et al (2016, p. 48) concludes that part of the settlements located in the Legal Amazon are areas that got to INCRA with environmental liabilities. Once the recovery of those areas is an *obligatio propter rem*¹², when INCRA purchased or expropriated them and added them to its assets, it became responsible for recovering them and it can also start a cross claim to be compensated for the costs of the recovery.

It is not possible to accept that the responsibility for a violation and/or crime committed by farmers, who benefitted or made a profit from the violation/crime, is transferred to the settler. And, even less, to transfer to the settler the encumbrance for the area that had already been deforested and of which INCRA was already aware. It is also important to say that the above mentioned institute needs to identify the consolidated areas in order to also identify the ARL once it receives the same treatment received by family farmers, that is, it is only forced to maintain the vegetation existing up to July 22, 2008.

1.5 Environmental Regularization Program (PRA)

To recovery the areas that are considered as irregulars, Law n.

¹² According to provisions in Law n. 12.651/12, article 2, § 2 that establish: "The obligations foreseen in this law are *obligatio propter rem* and they are transmitted to the successor, of any nature, in case domain or possession over the rural real estate is transferred".

12.651/12 forecasted the Environmental Regularization Program (PRA) to be created by the Federal Government, the States and the Federal District. The legal timeframe granted to the Public Power for implementation was one year as of the publication of the law, extendable for one year. Thus, the PRA had been implemented by the States by May 28, 2014.

In what concerns adhesion to the PRA, the timeframe starts one year of its implementation extendable for one year. However, that timeframe was extended by MP n. 724, dated May 04, 2016, to May 05, 2017 just for small property and family farmers.

Regarding that timeframe and as required by the law, in order to adhere to the above mentioned program it is necessary to be registered in the CAR, and considering that the registration deadline was extended to December 31, 2017, the deadline for registration in the PRA shall also be extended, although no legal document informing of that change has been identified.

Decree n. 7.830 dated October 17, 2012 set forth general standards related to the PRA and it included the following program instruments: the CAR, the Term of Commitment (TC), the Project for the Recovery of Changed Areas (PRAD) and the Environmental Reserve Quotas (CRA).

Those instruments are available for those who wish to adhere to the PRA. That adherence shall take place in relation to violations in APPs and ARLs committed prior to July 22, 2008. Pursuant to Law n. 12.651/12, the procedure to adhere to the PRA initially includes registering the rural real estate into the CAR and requesting the environmental agency to adhere to the PRA. The agency shall arrange the preparation of the TC after the interested party has submitted the PRAD. It is only possible to cancel fines after that procedure, since the fines refer to deforestation in ARL and/or APP areas. The CRA is a way to compensate an ARL. It is essential to highlight the importance of the CRA as a nominative title representing an area with native vegetation, under recovery process or existing ones that can be used by family farmers, including ARL areas, allowing for the generation of income by using the standing forest.

As family farmers who deforested ARLs prior to July 22, 2008 have no obligation to recover neither to compensate them, the issue was just the recovery of the APP. In that case, there is a forecast for real estate of up to 4 fiscal modules so that APPs in the real estate do not exceed 10% of areas of up to 2 fiscal modules and 20% of areas between 2 and 4 fiscal modules after all the APPs in the real estate have been summed up.

Article 61-A, §13, items I to IV of the above mentioned law forecasted the following recovery actions: lead the natural regeneration of native species; plant native species; plant native species and simultaneously regenerate native species; and plant wood, perennial or long-cycle and exotic species intercalated with native regional ones in up to 50% of the total area to be recovered for real estate referred to in item V, caption of article 3.

Another provision in the federal law regards offender who deforested those areas after July 22, 2008. In that case, no benefits are foreseen by the federal law, which emphasizes the need for punishment pursuant to article 9, §1 of Decree n. 8.235, dated May 05, 2014. However, Law 9.605/1998 and Decree n. 6.514/2008 forecast the possibility for the offender to request the conversion of the fine into environmental services, since the request is accepted by the environmental agency and the TC is signed by the requester who becomes responsible for the recovery of the area and, when the case may be, submitting a project on that purpose.

For settlers from the agrarian reform, INCRA has to survey the date when the family farmer was effectively settled and to check whether there was later deforestation, in which case the settler is made responsible for it.

2 ENVIRONMENTAL REGULARIZATION OF FAMILY FARMERS IN THE STATE OF PARÁ

The main requirements for the environmental regularization of the family farmer in the State of Pará are presented in this item. Initially, there is a brief history of the CAR in Pará. Then, the contribution of the Federal Public Prosecutor's Office beyond the registration of the family farmer into CAR is addressed. After that, the CAR in Pará after Law n. 12.561 dated 2012 is approached. In sequence, landowning regularization is described. Finally, the procedures for family farmers who committed environmental infractions and/or crimes are presented.

2.1. Short History of CAR in the State of Pará

The CAR was available in the State of Pará since 2008. At that time, the construction of this model included a visit to the state of Mato Grosso, which used the Unique Environmental Permit (LAU) aiming at the

authorization for deforestation with a focus on the regularity of the APPs and ARLs and using georeferencing¹³.

At that time, the State Secretariat for Environment and Sustainability (SEMAS) had engaged the same consulting company as the state of Mato Grosso and it wanted to replicate the same model in Pará. However, some technicians within that secretariat spoke up against it for understanding that LAU could not be seen as an environmental permitting process once it would not include an impact assessment regarding the activity to be developed, but just whether the real estate met the requirements related to the APPs and ARLs. That analysis was also confirmed on a document issued by the MMA that questioned the LAU because it could not be limited to a simple deforestation authorization with a focus on the legalization of APPs and ARLs (MMA, 2006) once it is a permit.

After broad discussions, the conclusion was that the activities developed in the state of Mato Grosso that were called LAU, would be called CAR in the State of Pará and that was regulated by Decree n. 1.148, dated 2008 and still in force. CAR is foreseen as a preliminary stage of the Rural Environmental Permit (LAR), an environmental permitting instrument aimed at the productive activities performed in rural real estate located in the State of Pará.

2.2 The Contribution of the Federal Public Prosecution's Office Beyond the Obligation of Registering into the CAR in the State of Pará

The MPF contributed by acting in a coordinated way to punish cattle breeders pointed out as responsible for the deforestation of 157 thousand hectares in Pará and meatpackers purchasing meat from those areas. It also issued recommendations to 69 of those meatpacker's clients for them to avoid purchasing those products (MPF, 2009).

Those measures forced meatpacker owners to talk to the MPF in order to enter into Terms of Adjustment of Conduct (TAC), known as "the meat TAC". Meatpackers committed to only buy cattle from environmentally regular farms that were facing no issues regarding slave labor. To be able to sell to those companies, farmers had to: include their real estate into the CAR; have approved regularization plans for degraded areas; carry out the environmental permitting for their activities and respect

¹³ The author participated in that visit.

the labor legislation.

The impact of the actions carried out by the MPF was so strong that cattle breeders increased pressure over the State government. Together with the municipalities, the state was forced to agree to speed up the adoption of public policies to reduce deforestation and to modernize the productive chain in agriculture and cattle raising. TAC imposed to the government, among other measures, the creation of a structure for a computerized register for rural property.

The municipalities were invited by the MPF to sign the TAC and they agreed to enter into local covenants against illegal deforestation proposed by the city hall, farmers and rural workers associations and entities of the civil society. They were also forced to implement a minimum environmental management structure to monitor and inspect deforestation within their territories.

In 2011, the State Government created the Green Municipalities Program - PMV by means of Decree n. 54 dated March 30. It institutionalized the commitments made with the MPF through the TAC. It also made resources available for the activities to be performed. And, as required in the Meat TAC, the program included the municipalities. Meeting MPF's requirements and pursuant to its article 1, the PMV aims at

boosting the local economy on sustainable bases through incentive for municipalities in the state of Pará to improve the municipal public governance, promote legal assurance, attract new investment, reduce deforestation and degradation and promote environmental recovery and the conservation of natural resources.

On PMV's website, there are guidelines on how municipalities can register into the program. The first step is the signature of the Term of Commitment agreed with the MPF and the Term of Adhesion in the PMV.

Still in 2011, PMV was institutionalized under its own organization and the coordination of an Extraordinary State Secretary pursuant to a Decree published on the State Official Gazette (DOE) on November 23, 2011 and with the support of a Management Committee consisting of representatives in the civil society and the State Government.

Nowadays, the PMV is developing a project with the Amazon Fund to support the "large scale implementation of the Rural Environmental Register (CAR) and to strengthen the municipal environmental management so as to contribute for the fight against illegal deforestation and forest

degradation in the State of Pará” (PMV, 2016). When handling the project, it noticeable that the support targets rural real estate measuring up to 4 fiscal modules and that is where family farmers are inserted.

2.3 CAR in Pará after Law n. 12.651/12

The National System for Rural Environmental Register (SICAR) was created by Decree n. 7.830 dated October 17, 2012 aiming at, among others, receiving, managing and integrating the information collected by CAR in every state of the country. For federal units that already had a system to register rural real estate, the decree forecasted the obligation to integrate their database to SICAR.

In the State of Pará, that adhesion has taken place recently by means of Directive n. 654 dated April 07, 2016. Data is currently being updated because when they were inserted into the Environmental Monitoring and Permitting System (SIMLAM), the 1965 Forest Code was still in force, amended by Provisional Measure (MP) n. 2.166-67/2001, and Law n. 12.651/12 created new requirements.

State Decree n. 1.148/2008 is still in force. It is responsible for regulating the CAR in Pará, thus prior to Federal Law n. 12.651/12, although many of its articles are no longer in force once they are not compatible with the general standard.

2.4. Landowning Regularization

Based on the analysis of landowning standards and considering that family farmers are the target audience, the area is 4 fiscal modules at the most and the largest module in Pará is 75, areas are 300 hectares maximum. In that case, there are three possibilities for landowning regularization: non-costly destination, costly destination and the creation of settlement projects.

The non-costly destination serves areas of up to 100 hectares, donated by the State, with a final title not negotiable for 10 years and the farmer has to meet the following requirements, pursuant to article 28, items I to V, State Decree n. 2.135, dated 2010: not having another area as the owner or holder; permanent home and effective culture within one year; the main activity shall be based on agricultural and cattle raising, agricultural and industrial and/or extractive exploration; there shall not be any claims

from third parties; it shall respect the environmental legislation and have not benefitted from land disposal or concession by the Public Power.

The costly destination is valid for areas larger than 100 and up to 500 hectares. It is a direct sale by the State, with a final title and remedial clauses. State Law n. 7.289 dated 2009 states that it can only be used with a lawful occupier who shall evidence the following requirements, pursuant to article 7, §2, items I to VII of the law referred to: permanent home and effective culture for at least 5 years; not being the owner, occupant or holder of another rural area, except if it was acquired by means of costly disposal; evidence the productive and social use of the property; there shall be no lawful claims from third parties; respect the environmental legislation and have not benefitted from land concessions by the Public Power; duly pay the occupation fee.

Finally, it is important to highlight the State obligation imposed by the State Constitution, article 239, in case of listed public and waste land in the rural area, they shall be intended to agricultural settlements and, preferably, to rural workers who use family labor force. The State has a regulation to create settlements even with the possibility to include them into the list of INCRA's agrarian reform beneficiaries. Access shall be provided by INCRA to the instruments of the agricultural policy¹⁴.

In that case, the title takes the form of a concession contract for the right of use, which can be individual or collective. Thus, the beneficiary shall not receive a final title.

During the field survey, it was possible to notice a joint effort of federal and state agencies in the environmental and landowning areas on campaigns to regularize areas from both the landowning and the environmental perspectives.

2.5 Procedures for Family Farmers who Committed Environmental Infractions and/or Crimes

The PRA was created in the State of Pará by means of State Decree n. 1.379 dated September 03, 2015. The document rules the environmental adjustment of rural real estate deforested before and after July 22, 2012. It was regulated by Normative Ruling n. 1 dated February 2016 and issued by SEMAS that set forth the procedures and criteria for those adjustments.

14 Those instruments are in article 4, items I to XIX, Law n. 8.171 dated January 1991.

The same instruments used at a federal level were brought PRA: CAR, the Terms of Environmental Commitment (TCA), PRAD and CRA.

This decree also created special procedures for family farmers. It informs that there shall be a simplified special procedure to recover APPs, although it fails to describe it. It offers assistance for adherence to the PRA through the public office in charge of rural technical assistance in the State or through other entities the environmental body may set partnerships with. Similarly to the federal standard, it authorizes plantation of temporary and seasonal cultures having a short cycle ebb tide, it excuses APPs recovery and it includes the plantation of fruit, decoration or industrial trees, native or exotic species in an interspersed system on the margins of water courses for regularization.

At the end, monitoring was forecasted to follow up the implementation of obligations assumed, to observe the progress of the regularization and to inspect and discover potential non compliances. The decree failed to forecast technical assistance for the family farmer to prepare and execute the PRAD, when necessary, neither activity follow up to guide the farmer on how to perform the activities and make a profit from the recovery through the CRA and other instruments.

3 ENVIRONMENTAL REGULARIZATION OF FAMILY FARMERS IN NORTHEASTERN PARÁ AS OF LAW N. 12.651/12

This item presents the results of the environmental regularization of family farmers in northeastern Pará as of Law n. 12 651 dated 2012 with a focus on family farmers in the Inovagri Project, their landowning regularization and environmental regularization.

3.1. Profile of Family Farmers in the Inovagri Project

It was possible to obtain the profile of 24 of the partner farmers in the project. From that number, only one does not lawfully fit the definition of family farmer once his area exceeds 4 fiscal modules. The age range varies from 32 to 80 years old and the level of education of 19 of the farmers is primary education. Regarding the time they have been living or working in the area, it ranges from 13 to 51 years.

Concerning agrarian activities, 11 family farmers were only working in agriculture; 7, in agriculture and cattle raising; 1, agriculture

and beekeeping; 1, agriculture, carpentry and aquaculture; 1, agriculture and fish farming; and 1, agriculture, cattle raising, fish farming and aquaculture.

Thus, they are mainly family farmers, average age range around 56 years old, low education levels with 80% having only concluded primary school. They are responsible for managing their rural property and for the environmental regularization of their areas. Almost 50% only work in agriculture and about 30%, in agriculture and cattle raising. The others work in beekeeping, aquaculture and even carpentry, in addition to agriculture.

3.2. Landowning Regularization for Family Farmers in the Inovagri Project

The identification of surveyed farmers' ownership was only possible after a formal consultation to INCRA and to Pará's Land Institute (ITERPA). In that case, as only 80% of the farmers have just concluded primary school, that makes access to landowning regularization difficult. An aggravating factor is that they are located far from landowning agencies, both from offices in their municipalities and the capital city, where they often have to go.

From the 10 farmers located in Garrafão do Norte, all of them are in federal areas. From those, only 2 have a regular landowning situation and both are located in Settlement Projects (PA). Two farmers were identified in the List of Beneficiaries (RB) of the agrarian reform in the state of Pará, but their areas have been blocked by the Federal Court of Accounts (TCU), and the reason for that was not disclosed. Although one of the farmers is on the List of Beneficiaries, his area is outside the Settlement Project and it has also been blocked by the STU for an unknown reason. A farmer in a federal tract of land and not registered by INCRA was identified.

As explained, all the Settlement Projects have the perimeter CAR, by they require the individual CAR. However, INCRA can only carry out the individual CAR for the 2 regular ones. The others have to solve the issue¹⁵ before starting the environmental regularization.

In Capitão Poço¹⁶, the 9 farmers are distributed among three

¹⁵ Interview made on July 06, 2016 with Ronaldo Coelho, a technician at INCRA's environment sector - SR (01).

¹⁶ Interview made on July 06, 2016 with Ronaldo Coelho, a technician at INCRA's environment sector - SR (01).

tracts, listed and levied. Four of the farmers and the two areas belonging to the two associations are in tract 1; two other farmers are in tract 2; and one farmer is in tract 3.

Once the areas of Garrafão do Norte and Capitão Poço are owned by the federal government, it offers two possibilities to regularize them: one of them, through INCRA by creating settlement projects accompanied, or that should be accompanied, by instruments of the agricultural policy; and the other one, via MDA, by means of the Legal Land Program through which the federal government only gives farmers the title.

Each of the situations shall be duly assessed by INCRA and/or MDA, and they are in charge of offering a feasible alternative for regularization. In that case, solving the problem means that the farmer has to go to Belém, which may be impossible for some for several reasons that vary from the lack of financial resources to the ability to move around the city. Or the need for INCRA to inspect those areas without having enough budget or personnel for punctual rectifications as is the case of part of the settlers.

Thus, both farmers located in settlement projects, due to the issues mentioned above, and farmers in federal tracts, whose documents to access the land may have due cancellation clauses, have to go to INCRA in order to identify their landowning status.

Two of the 6 farmers¹⁷ in Bragança are in the Colony areas and 4, in state wasteland. The ones referring to the Colony are listed and levied by the State as part of its assets, while the wasteland has not yet been listed and levied. In both cases, the farmers have to go to ITERPA to survey their landowning status: the 2 farmers located in wasteland because they are on land that has not yet been added to the state assets, and the 4 farmers in the Colony area because, although the area aims at colonization, there may be doubts such as whether there was final or temporary destination, whether there were clauses to be met, whether the clauses were met¹⁸.

There is a forecast for costly and non-costly landowning regularization in the state of Pará. Only one of the farmers located in Bragança exceeds 100 hectares. Thus, he has to go through the costly regularization, while the others have access to the non-costly one. Moreover, if many farmers located in the state ownership area have a profile for the creation of a Settlement Project, the State can create it and request INCRA

¹⁷ Official Letter n. 0402/2016-GP, dated July 15, 2016.

¹⁸ Interview made on July 15, 2016 with Lucas Oliveira de Almeida Sobrinho, ITERPA's autarchy attorney.

to give access to the instruments made available to the settlers in the agrarian reform and under its responsibility¹⁹.

In the absence of landowning regularization, the farmers also remain environmentally irregular and they cannot access the economic instruments in Law n. 12.651/12 and the state laws, neither the other instruments in the agricultural policy.

3.3 Environmental Regularization of the Farmers in the Inovagri Project

This item has information on the environmental regularization of farmers in the Inovagri Project. Data regarding two different aspects is going to be presented: regarding compliance with the environmental standards and the praxis related to the use of the land and instruments of the agricultural policy.

3.3.1 Compliance with Environmental Standards

Although 60% of the farmers thought they knew the environmental standards, when the information regarding the knowledge about them was crossed, it was possible to conclude that 100% of the family farmers are not aware of them. Even the ones who had heard about them were not able to explain them. The all mix ARLs and APPs. However, all of them know that creek and river margins have to be preserved.

Finally, when information about environmental regularity was surveyed, about 30% of them at that time said they had the CAR, one of the first steps for environmental regularization. This requirement was created in the State of Pará in 2008 so it is not a recent one.

Moreover, none of them had an environmental permit or the relevant exemption. The environmental permit is one of the instruments in the national policy for the environment that is required for economic activities considered potentially pollutant and/or degrading. The state of Pará even forecasts the Rural Environmental Permit (LAR), which is specific for agricultural, forestry and cattle raising activities. Pará also forecasts the possibility to dismiss the Environmental Permit for some activities. For example, in case of agricultural, forestry and cattle raising activities, considered gender activities, there are species encompassed by

¹⁹ Interview made on July 15, 2016 with Lucas Oliveira de Almeida Sobrinho, ITERPA's autarchy attorney.

Resolution n. 107 dated March 12, 2013 issued by the State Council of the Environment (COEMA) that can be exempted when they are developed by family farmers.

The environmental regularization was started in 30% of the surveyed properties. The action of the MPF deserves a highlight once it resulted in the signature of the TAC that created the PMV, currently responsible for the preparation of the CARs for real estate of up to 4 fiscal modules. From there, farmers shall use their associations to get to know the PMV and their rights, and to demand for individual or collective benefits in an organized way.

The CAR is the embryo of the environmental regularization whose strong point is to allow for the family farmer to have its area georeferenced with the location proposal regarding the ARL and the identification of possible APPs. However, it is necessary to continue the environmental regularization process, with landowning regularization and later permitting or dismissal of it. That is why emphasis is placed on the need for the farmers to socially organize themselves and to seek for qualification in order to demand their rights from the Public Power.

During the interview with Carlos Eduardo from SFB, it was possible to notice the importance of CAR, even if it is declaratory, once it allows the Public Power to visualize the country's landowning structure, identifying conflicts and looking for solutions. It is essential to organize those farmers by means of their association to follow and enforce their rights.

3.3.2 Praxis Concerning the Use of the Land and Instruments of the Agricultural Policy

In order to survey the praxis regarding the use of the land and, at the same time, to implement instruments of the agricultural, environmental and forestry policy, the following discussions were raised: on the selection of the area, the amount of time necessary for planting and the item on the incentive given by the Public Power and its relationship with public agencies.

In what regards the selection of the area, it was clear that the option is due to the fallow time: according to farmers interviewed, the older the area the more fertile it is, with some exceptions such as those who chose areas where manioc does not rot, where there are no stones, that are flat. Some of them noticed that when they use a dozer, they may choose thinner

vegetation; without having a dozer, they have to use the thicker vegetation.

As for the time when the family farmers remained in the area, developing the activity, they said it varied according to the activity and the need. In this case of temporary planting agriculture, such as manioc, the general rule is that it varies from a year to a year and a half. The timeframe varies a lot when they have other activities such as perennial activities and cattle raising, not specified in detail. However, they indicated that because of the lack of instruments in the agricultural policy such as machinery and equipment, technical assistance and rural extension, the soil quickly becomes exhausted and they are forced to go to new areas, which implies in cutting and controlled burning new vegetation.

When asked about access to incentive from the Public Power, 10 of the farmers said they had access to some kind of incentive. Garrafão do Norte received 7 of those incentives, possibly because these were settlers from the agrarian reform who, after access to the land, are offered a set of instruments in the agricultural policy. The ones located in Capitão Poço have not yet been recognized by the government as clients of the agrarian reform or the Legal Land Program, although they are in federal tracts. Those farmers located in Bragança who are in Colony or waste land areas in the State of Pará have also not been offered that kind of actions.

About 83% of partner farmers maintained some kind of relationship with Public Power agencies, with a highlight on Garrafão do Norte, responsible for 50% of the relationship. The Technical Assistance and Rural Extension Company of the State of Pará (EMATER) is among the most cited agencies.

4 LAW N. 12.651 DATED 2012, ITS PROGRESS AND THE NEED FOR COMPLEMENTARY ACTIONS

Law n. 12.651 dated 2012 brought some benefits to family farmers such as support to prepare the CAR, free registration, APPs resizing, simplification of procedures both for the CAR and for handling.

However, the main innovation is considered to be the partnerships offered by the public power to make the environmental regularization possible. Although landowning regularization is not required for registration into the CAR, the three states made an effort to include it once it is declaratory. In addition to that, the Public Power has the georeferenced rural landowning structure available to plan public policy actions, even if

initially it is just declaratory information.

No doubt that the MPF was essential in the State of Pará for compliance with environmental standards, especially in the case of CARs, with a focus on both the Settlement TAC and the Meat TAC, the first one demanding from INCRA actions for the environmental regularization of settlers and the second one requiring regularization from the elements in the productive chain. The pressure forced the state government of Pará to implement the environmental and forestry policy in the State. It is an effective evidence of the interference of the MPF in the implementation of the instruments of the policies referred to.

However, there are some questionable points in that law. One of the main ones is the fact that it leveled the benefits of the family farmer to those of people having areas that measure up to 4 fiscal modules, giving equal treatment to unequal ones. As Lehfed et al (2013, p. 270) assert:

Among the social functions of property, family agriculture deserves special attention once it is an activity to be protected, encouraged and made compatible with environmental protection as it allows for the livelihood of a large number of families and, at the same time, it may become an excellent instrument for the implementation of good practices for environmental preservation.

Another questionable point is removing the illegality cover from rural real estate measuring up to 4 fiscal modules and whose ARLs were deforested prior to July 22, 2008. Some, as Carvalho (2013), even consider it harmful when applied to family farmers, pointing at a direct lawsuit on unconstitutionality proposed by the Office of the Federal Attorney General. And there are people in favor of it, as Braga (2013), who disagrees, as he said, from the great majority for considering it a reasonable measure once it adjusts environmental protection to the social and economic reality.

It is important to question the measure referred to, which is still in force, once the Supreme Court has not yet judged the ADI and it is enough to discourage the cutting and controlled burning practice by those actors. The information presented indicates that it is not going to be enough in case the Public Power fails to simultaneously implement the environmental, forestry and agrarian policy instruments.

In what concerns the farmers surveyed, although about 41% of them have accessed some kind of incentive and about 83% of them have maintained a relationship with a public agency, when the information was

crossed with praxis on the use of land, it was possible to notice that a lot is still to be improved regarding the policies aimed at family farmers. That is due to the fact that those incentives are not associated to other public policies, especially the Technical Assistance and Rural Extension Policy (ATER).

Alencar et al (2016, p. 86) also got to that conclusion when they said that the lack of access to the ATER makes the farmer produce with no guidance and often miss the opportunity to dedicate to more profitable and productive activities. Although they referred to Settlement Projects, the information can be extended to the other family farmers. In addition to that, the ATER policy is practiced in a conventional way, often aiming at extensive and low productivity agricultural and cattle raising productive systems (ALENCAR et al, 2016, p. 82-83). Notice that 30% of the farmers in the Inovagri Project already develop extensive cattle raising besides agriculture.

Thus, the fact that some of those farmers accessed some kind of incentive or even had a relationship with those agencies does not mean that they are working to contribute for a more sustainable activity standard.

In this case, it is irrelevant that Law n. 12.651/12 forgave the farmers who deforested their ARLs prior to July 22, 2008 because it is unlikely that they stop using the remaining vegetation without having access to the agrarian, environmental and forestry policy instruments.

The results point at some actions to change that picture: rescuing and/or strengthening the farmers' social organization; a specific demand from those farmers to the city halls to request information on partnerships with PMV to register the other farmers (70%) into the CAR; a joint action for land regularization at INCRA and qualification in environmental, forestry and agrarian policies in order to specifically request access to the instruments in the policies referred to; and following compliance with TACs via MPF.

CONCLUSION

In view of the arguments presented, it is possible to say that, although the main environmental standard, Law n. 12.651/12, has included aspects to simplify requirements for family farmers, they are still far away from the reality of family farmers in the Legal Amazon, especially due to their poor education levels, the lack of landowning regularization, the lack

of access to instruments in the agricultural, forestry and environmental policy.

Thus, the research hypothesis was confirmed: the farmers are not aware of the environmental standards. Part of them is also in an irregular situation regarding the areas they have paradoxically occupied for years, living there with their families and developing agricultural activities. The access to environmental regularization and to the instruments of the agricultural, forestry and environmental policy is denied to them if they fail to have the documents that insure possession over the land.

The lack of instruments in the agricultural policy such as technical assistance and rural extension or the poor access to rural credit that is not associated to technical assistance and rural extension makes it difficult for the farmer to correctly apply it. The lack of equipment and machinery contributes for the maintenance of the cut and controlled burning culture adopted in case of thick vegetation, the only way to make fertile soil available.

The simplification of procedures for the environmental regularization of family farmers, which received special treatment from Law n. 12.651/12, shall be associated to actions by the Public Power to provide them with the necessary conditions to explore their areas with sustainable techniques, which implies public policy actions to promote access to education in the countryside, to landowning regularization and to the implementation of the instruments forecasted in the agricultural, environmental and forestry policies.

The first step was taken and it is being made concrete by means of the Amazon Fund Project and the support of the MPF to provide those farmers with the CAR, but the farmers have to understand the need to strengthen their social organizations in order to use the legal means in face of the Public Power to meet their demands.

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