

Financialization, land prices and land grab: a study based on the Brazilian reality *

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Abstract

In the last years, the term “land grab” has gained international importance and has been used as a catch-all phrase for (trans)national commercial land transactions mainly revolving around the production and export of food, animal feed, biofuels, timber and minerals. The main literature explains it as a consequence of the financialization process that included land as an asset. Our main proposition in this article is that for Brazil, speculative land acquisitions played an important role in the portfolio of many economical agents, but with the deregulation of financial markets and the financialization of the seventies it became more intensive. To do so, first we present the different theoretical approaches to the land grab phenomenon and add a post-keynesian view on land transactions to the debate. Second, we analyze the available data on agriculture and livestock foreign investments in Latin America with the main focus on Brazil. Third, we present the legal and institutional aspects of foreign-owned land in Brazil. In conclusion, we propose that land grabbing will always have a speculative component, but after the deregulation of financial markets, the pressure for land acquisition is larger and the efforts in regulation and control over land acquisition in Brazil have not been effective in controlling acquisitions by foreigners.

Keywords: Financerization; Land grab, Land governance, Post-Keynesian, Brazil, Latin America.

Resumo

Financeirização, preços de terra e land grab: um estudo baseado na realidade brasileira

Nos últimos anos o termo “land grab” ganhou importância internacional e tem sido usado como termo genérico para negociações comerciais (trans)nacionais de terras voltadas primariamente para produção e exportação de alimentos e rações para animais, biocombustíveis, madeira e minerais. A literatura internacional explica o termo como uma consequência do processo de financeirização que inclui terra como um ativo. A proposta principal deste artigo é que no caso brasileiro, aquisições especulativas de terras jogaram um papel importante na carteira de investimentos de muitos agentes econômicos, mas é com a desregulação dos mercados financeiros e a financeirização a partir dos anos 1970 que este processo se torna mais intenso. Para tanto, apresentamos as diferentes abordagens teóricas que tratam do fenômeno do “land grab” e adicionamos ao debate nossa contribuição com viés pós-keynesiano sobre as transações de terras. Em seguida, analisamos os dados disponíveis sobre investimentos estrangeiros em agricultura e pecuária na América Latina com um foco no Brasil. A seção seguinte apresenta os aspectos legais e institucionais relacionados às terras detidas por estrangeiros no Brasil. Como conclusão, propomos que o fenômeno de compra de terras por estrangeiros sempre teve um

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componente especulativo, mas após a desregulamentação dos mercados financeiros e o consequente processo de financeirização este componente especulativo tomou força ao mesmo tempo em que as tentativas de regulação e controle no Brasil foram ineficientes para controlar estes investimentos em terras.

Palavras-chave: Financeirização; Land grab; Compra de terras por estrangeiros; Governança de terras; Pós-keynesiano; Brasil; América Latina.

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Introduction

The set of problems involving land property in Latin America has been the subject of controversy, legislation and political struggle ever since the occupation of its territory by the European colonizers in the post-Mercantilism era. More recently, mostly between 2006 and 2009, a great movement of land acquisitions around the world, carried out by different agents and countries mainstreamed this discussion. This debate has coined the new expression “land grab”, which has produced a good deal of controversy around its causes and consequences. First it can be characterized, as by Borrás and Franco (2012b, p. 34), in the following manner: ‘Land grab’ has become a catch-all phrase to refer to the current explosion of (trans)national commercial land transactions mainly revolving around the production and export of food, animal feed, biofuels, timber and minerals.’

The controversy is not, however, restricted to semantics. It has been the stage for reviving old political debates, mainly between those who believe that this is a process to be opposed on account of its harmful social and environmental effects, and those who believe the process is part of the dynamics of the development of capitalism and needs to be controlled and regulated, but which is not in itself necessarily harmful. It is true that the phenomenon of “land-grabbing” comes to the fore in the academic domain with the hike in agricultural commodity prices between 2007 and 2008 and the subsequent accentuated tendency of companies and governments in the developed world to take control of large agricultural expanses, particularly in underdeveloped countries. As Cochet and Merlet (2011) demonstrate, public and private investors have been acquiring or expropriating land with an alarming intensity and there seems to be no effective mechanism to control this movement.

In terms of land acquisition by other countries, according to Von Braun and Meinzen-Dick (2009), there is a prominence of two groups of countries with regard to the recent acquisition of land: food-importing countries suffering from a scarcity of water and land, though rich in capital (Gulf states) and populous countries concerned about the security of food supply (China, South Korea, India). Both groups have gone in search of foreign land in underdeveloped countries as the costs of production are lower and there are substantial amounts of land and water. There

is, however, across the planet, a general move towards land acquisition by investment funds, families and large corporations. Indeed, in the period preceding the crisis of 2008/9 and during the crisis itself, large volumes of capital demanded land and commodities as a means to hedge against the crisis.

The main general explanation to the recent processes of land acquisition by authors such as Fairbairn (2014) and McMichael (2011) is the so-called financialization of economies and land. Despite the variety of definitions¹, the prevailing view is that economies have recently been subject to patterns of accumulation in which gains are more likely to occur in the financial sphere than in production and commerce, and that this would give rise to land being in greater demand in these circumstances. As we shall show in due course, it is our understanding that the economic reality has been financialized since at least the beginning of the 70's, leaving us in business-driven economies in which speculation is ever present and land is one of the assets required to this end, so this recent increase in the demand for land is part of the financialization process.

Although there is a focus from the the media and scientific community on the topic of land grabbing in developing countries, few studies analyze land grabbing in Latin America. This study focuses on the largest of the Latin American countries, Brazil, in search of the relation of financialization and its lands.

The aim of this article is to analyze the processes of land acquisition by foreigners in Brazil and show that the speculation with land plays a decisive role in the land grabbing process. This approach attempts, on the one hand, to show that land, under capitalism or in business-driven economies, is always acquired considering its dual character: it is, at one and the same time, a productive asset and a liquid asset, and is therefore the subject of speculation. Additionally, it will use the Brazilian case to show that the attempts to regulate the entry of foreigners, by way of prohibitions, does not work satisfactorily, since the country, by not having a legal/institutional framework for agrarian administration (not even a register of public and private land), has no effective control over it².

The Brazilian case is quite useful for this purpose, since Brazil, as well as having a fairly well-structured land property market, is a country with one of the largest inflows of international capital acquiring land and is one of the last frontiers with lands being expropriated for the purposes of agriculture and livestock.

The first section begins by exploring the theoretical review of the determining factors in land acquisitions, putting into opposition analysts of acquisitions and the critics of "land grab". In this section, the main contribution

(1) For further details, see Arrighi (1994) and Krippner (2005).

(2) For further detail on the subject of the country's need to build agrarian governance, see Reydon et al. (2015).

derives from the absence of an integrated, theoretical view on the topic that is fulfilled by the proposition put forward by Reydon (1992). The latter proposes a solution by showing that the price of land is, at the same time, determined by both productive and speculative expectations, based on a theoretical Post-Keynesian view.

The following section is a brief analysis of the acquisition of land in Latin America as a whole and shows that capital has been more intensely channeled into the acquisition of land in Brazil. Item four consists of a study of foreign direct investment in Brazil and its agriculture & livestock sector. It begins with a comparison of data from Unctad, the Brazilian Central Bank and Incra, that finds that there has been growing investment in agribusiness and that land has been acquired in large quantities. These comparisons also enable us to see that there is no control whatsoever over the processes and that the funds for the purchase of many of the acquisitions have not entered the country officially. A brief analysis is then performed of the evolution of the price of land in Brazil, noting that there has been a large increase in the price of land which began in the mid2000s, in which foreign acquisition has been one of the determining factors.

The last section concentrates on legal and regulatory measures aimed at controlling access to land by foreigners. However, the evidence shows that this body of regulations, by virtue of the absence of regulation of land property and inadequate land registration, does not manage to achieve its objective of controlling land acquisition by foreigners, a discussion broached in the conclusion.

1 Some historical evidence of land grabbing in Brazil

It is widely known that the regulation of the rural lands markets in Brazil permits and makes it possible for some owners to speculate with or to grab land and have high gains from selling it later. Hunebelle, a French researcher, in order to present a broad picture of the Brazilian situation in the late 1970s to international investors, wrote an article in which he drew the conclusion that the lack of regulation enables speculation and land grabbing. Hunebelle (1982, p. 17) also shows that there is less interest in creating mechanisms for the regulation of the land market, since the Brazilian elites also benefit from the occupation of land:

‘Land speculation, however, is no business for novices; legal support is necessary in order to overcome the many legal barriers. It all comes down to a game bearing on the notion of “title deed”. A 30-year old title is worth much more than a 10-year old one, which can be cancelled (especially if the invaders/illegal occupants can buy titles). Some careful speculators would rather buy “occupied” land, for which they will pay 10 out of US\$ 100 for an unoccupied property in the States of Acre and Rondônia. On the opposite side, refined investors use the most specialized

lawyers to purchase land. The stroke of genius, however, put to practice by certain multinationals as well as by small private groups is the following: one buys “occupied” land for a trifle; soon afterwards, just as in the American West of the 19th century, armed bandits chase (or massacre...) the occupiers. All of sudden, the property is appreciated in 100%, or even 1000%...’

What must be emphasized is the fact that the process of land occupation in Brazil underwent many different processes in which speculative occupation played a decisive role and that its historical analysis, which will be developed below, will enable a more adequate understanding of the problem.

Monbeig (1984:108), in his work on the occupation of land in the west of the state of São Paulo, stated that ‘the movement of conquest of the land between 1890 and 1900 was a vast financial speculation’. One should notice that the processes of land occupation, of farm-settling and of entering into new territory are determined by the expectation of an appreciation of these lands through the expansion of coffee production.

Monbeig (1984, p. 108) shows that, at the end of the 19th century, inflation mounted:

easy money developed an environment that was favorable to speculation (...) a farm was bought at 230 contos de réis, resold at 500 and then passed on to a third agent at 1000 contos, all in a few years. With the profit derived from such speculation, virgin soil was bought and millions of coffee trees were planted.

The fast movement of occupation of public land starting in the Parahyba Valley region, reaching Campinas, Ribeirão Preto, then São José do Rio Preto and eventually Ourinhos and Araçatuba is caused by the erosion of the old soil and the resulting fall in productivity, but is only made possible by the profit gained from land speculation.

After the political coup of 1964, a new form of profiting from land, besides speculation, came into being: tax incentives and the policy of subsidized agricultural credit. The first of these elements was the granting of a reduction in the income tax for landowners who implemented agricultural and livestock projects in the SUDAM (Superintendence for the Development of the Amazonian Region). Ianni (1979-79) discusses the unfolding of the process:

without leaving aside the practice, very current among Amazonian squatters, landowners, farmers and entrepreneurs, of buying land to use them as “reserves of value”, against the depreciation of the currency, for future economic activities or for speculation.

Despite the inexistence of tax incentives for the occupation of new areas in the Amazonian region, as existed in the 1970s and 1980s, the current potential profits

of land occupation and speculation in the Brazilian Amazon region remains high. Deforestation itself is an outstanding form of earning money through the appreciation of land property. Land speculation works first through the process of appropriation and then through transforming forest into pasture. Regarding the absence of proper regulation, there is no economic activity that can compete with the matching of land occupation with wood extraction and livestock breeding for slaughter.

2 Land speculation and land grabbing: literature review and a critique

Recent literature concerning the process of land acquisition by large corporate groups, investment funds and the like, has received a variety of types of interpretation and analysis. The main focus revolves around those who simply attack the process and argue that the World Bank, the IFPRI, in particular the studies by Deininger (2003, 2011) and von Braun and Meinzen-Dick (2009), do not adequately refute the so-called land grabbing, mainly because these studies lean towards land acquisitions as not necessarily being harmful from an economic, social and environmental point of view.

According to Deininger (2003, 2011), acquisitions can generate agricultural production, jobs and income for the local populations in impoverished regions, while von Braun and Meinzen-Dick (2009) argue that foreign acquisitions can, in addition to bringing agricultural gains, make significant investment in infrastructure a viability. For them, an adequate code of conduct, shared by business, nation states and the local population, could produce an environment where everyone is a winner (win-win). Besides the critics of the process of land acquisition, some authors seek to understand and find solutions to the process, which is where the present study, in theory, sits. Next, the critics of land grab will be presented. In item 2.2. we shall present those authors who interpret, analyze and quantify the land acquisition process as investments that make up portfolios. What none of the literature addresses, however, in any of the interpretations, is a more refined understanding of how and why agricultural land speculation exists, whether nationally or internationally. The Post-Keynesian interpretation, based on Reydon (1992, 1994, 2006), which will be presented at the end of this item, aims to fill this gap.

2.1 The critics of land grabbing

These authors have already identified the processes of acquisition as being “land grabbing”, insofar as they believe that their only purpose is speculation and the appreciation of the capital invested. All authors that criticize the land grabbing process are in reality against the World Bank’s vision as they share the assumption that acquisitions cannot generate local development and, therefore, they already

begin their analysis of the land acquisition process from this fixed position and often lack viable propositions for dealing with the problem.

Amongst these we may quote Daniel and Mittal (2009, p. 1), who were amongst the first to denounce the recent land grabbing process, largely due to the risk it presents to the hegemony of the respective countries in addition to the doubt they cast on the real interests of private enterprise in resolving the problem of agricultural production. In their words: "... there is a dangerous disconnect between increasing agricultural investment through rich countries amassing land in poor countries and the goal of secure and adequate food supplies for poor and vulnerable populations".

Cochet and Merlet (2011, p. 13), who may be classified in a similar way, although they do at least analyze the land grabbing process using economic data, show that in the cases of acquisitions which occurred in Ukraine and Ecuador, there is evidence that the returns on capital are far higher than the returns to labor, indicating that these land acquisitions (land grabbing) cannot be justified from an economic standpoint. They are therefore against land acquisition since, based on their studies, they are ethically unacceptable. As Cochet and Merlet (op. cit.) put it:

The word 'investment' itself loses its meaning when financial efficiency comes above all from the process of appropriating wealth (not necessarily land, but ground rents), land grabbing and concentration, and privatization of common goods. The results of this process are largely irreversible. Peasant societies are destroyed and natural resources depleted.

Along the same lines, McMichael (2011) aims to interpret recent acquisitions in the context of the current crisis in capitalism. He considers current land acquisitions as Land Grabs, both in South America and Africa, because of the three-pronged crisis which is ravaging neoliberal capitalism. This crisis of neoliberal capitalism is threefold as it embodies financial, environmental and food-related dimensions. The economic crisis is supposedly linked to the crisis of 2008 and the subsequent fallout in 2011, while the environmental dimension is associated with the need for land in order to produce fuel and thirdly, the food-related dimension is expressed by scarcity and the hike in the price of food in recent years. For him, it is in this context of a more global crisis that land acquisition is taking place and more than this, according to him, these crises have even justified the actions of multilateral agencies and financing funds in making these investments.

2.2 Empirical analysis of the process of land acquisition by foreigners

There have been countless studies in recent times that have analyzed the process of land acquisition by foreigners, mainly due to the significant quantities of

land negotiated. Here we shall analyze those that attempt to understand and quantify the acquisition processes in various corners of the globe.

Cotula et al. (2009) begin their study by questioning if the land acquisition process in Africa is land grabbing or a development opportunity. The study does not reach clear conclusions about the process but, given the topic's importance for the future, and its sensitivity, they recommend the following actions:

1. guaranteeing property rights, mainly to those who are least protected;
2. the greatest possible transparency in land acquisition processes and contracts;
3. the effective participation of all those involved, mainly governments when establishing conditions for acquisitions that ensure local development;

In Cotula (2011), however, a study consolidating all regions where significant acquisitions have taken place (Asia, Africa and Latin America), the main conclusions are similar to those previously mentioned. Though with more certainty, even with regard to the fact that acquisitions can generate local development if properly managed and regulated by the state, always remembering however that this does not necessarily guarantee a smooth process as governments can be corrupt. In the words of Cotula (2011, p. 26): 'The accommodation of the structuring of agricultural investment may mean the loss of some opportunities, but it also means that the benefits from the opportunities implemented can achieve their maximum potential'.

Borras et al. (2012a) analyze land grabbing in Latin America, criticizing both Deininger (2011) and von Braun and Meinzen-Dick (2009) in terms of the viability that the adoption of a code of conduct will be sufficient to guarantee the quality of land acquisition. However, in addition to substantiating foreign acquisitions in Brazil and Latin America, as presented below, Borras et al. (2011) argue the point of view, which we support, that the state has a decisive role to play in the land grabbing issue. Land acquisition is economically, socially and environmentally damaging if it causes problems in the locations where it takes place. If there is regulation/governance over the land, the decision regarding the purchase of land with foreign capital will be in local and domestic terms. In the words of Scott 1998 apud Borras et al. (2011, p. 30):

'Stepping back, and looking at the bigger picture, there emerge three broadly distinct but interlinked areas of state actions that are relevant in understanding contemporary land grabs, namely, 'state simplification process', assertion of sovereignty and authority over territory, coercion through police and (para)military force to enforce compliance, extend territorialisation, and broker for private capital accumulation. First, in order to administer and govern, states engage in simplification process to render complex social processes legible to the state. The

creation of cadastres, land records and titles are attempts at simplifying land-based social relations that are otherwise too complex for state administration.’

Sauer and Leite (2011, p. 31), in a study dealing specifically with the case of land acquisition in Brazil, analyze the growth in agribusiness production in the country (principally sugarcane and soybean), its relationship to land acquisition by foreigners and the hike in land values. They demonstrate quite interesting relationships between the variables and that the value of the land has risen significantly, probably due to foreign acquisitions. They conclude, however, that in the Brazilian case, acquisitions are ‘a long way off the recommendations for responsible investment per the World Bank study’, as even the professional bodies that protect the agroindustrial groups have played a crucial role in the creation of rules for curbing the acquisition of land by foreigners.

To understand the land acquisition process, in addition to this bibliography that performs analyses from the perspective of land grabbing, there is a wealth of literature that analyzes the land property markets in order to ascertain its relevance and the obstacles to using agricultural land as a profitable investment. This literature also sheds a rather interesting light on the understanding of the recent surge of land acquisitions, both in Brazil and the rest of the world.

Howard (2005) performs an analysis of the more interesting acquisitions for the Callan Investment Institute, concerning investment in agricultural land given the low returns of a variety of financial investments. It concludes that to invest in land by diversifying investments provides a hedge against inflation and higher returns than fixed income investments. Investment in agricultural land, however, requires patience during difficult periods, since this type of investment undergoes fluctuations. In the long run, however, there will be compensating returns in the portfolio as a whole.

Hoesli et al. (2003), in a study that compares investments in land in various parts of the world (USA, France, Netherlands, Great Britain, Sweden, Switzerland and Australia), find that investment in land in their own countries, where stakes are between 5% and 15% of the asset portfolios, leads to a reduction of 5-10% in the level of portfolio risk. When the investments in land are international, the reduction in risk rises to between 10% and 20% and the optimal allocation is a stake of approximately 15% of the agent’s total portfolio. This study, therefore, demonstrates the positive role of investing in land on the diversification of the portfolios of economic agents, but they make it clear that the results vary according to the returns of competing assets as well as the currency policy of the respective countries.

Thus, there is a need to perform studies on gains by comparing land acquisition and other assets. Reydon and Anana (2006) sought to achieve this in the case of Brazil, by performing a comparative analysis of gains from land acquisition

through the comparative performance of the evolution of land values in São Paulo and the evolution of shares on the stock exchange (Bovespa index) and the evolution of savings accounts, in the period between 1980 and 2000. This analysis, covering a period of more than twenty years, revealed that the diversification between these assets was beneficial to the portfolio as a whole. This finding shows that the inclusion of a plot of land together with a savings account in an investment portfolio can help to reduce investor losses during times of crisis on the stock markets. As well as being a hedge against inflation, land is an asset that generates significant returns for those acquiring it. Moreover, it showed that during this period of time, land suffered price fluctuations even greater than those of the Bovespa index.

In a more recent study on the same topic, Highquest Partners (2010) showed, based on real cases of investment funds in various parts of the world (Europe, North America, South America, Asia and Pacific, Africa and the Middle East) that there has, in recent times, been a change in the profile of land purchasers, with a higher participation by investment funds, pension funds and large institutions and that the types of transaction have also increased, not just acquisitions but also leasing and other arrangements. According to the study, Brazil receives around $\frac{1}{3}$ of global investment in land, the remainder being distributed across other countries, although the biggest growth has been seen in Africa. Highquest Partners (2010, 3) conclude that '[a]ll those surveyed indicated that local and central governments were in favor of the influx of private capital into their markets in order to develop and transform agricultural land and to invest in agricultural infrastructure'.

2.3 A post-Keynesian interpretation on the acquisition of land by foreigners

None of the studies presented, however, possess a theoretical interpretation that explains the logic of land acquisition, whether it be national or international. Those studies that manage to come closest to understanding the problems of land acquisition are those related to land price determinants. Ortega (1986), in a study which summarized the literature on the determinants of land prices, with the aim of understanding the "land price paradox", is one of those that most clearly frames the question, stating that there is no theory that adequately explains the determinants of land price, particularly its use for speculative purposes. In truth, the central issue that the theory did not resolve is to identify, in the formation of land price, its potential use for speculative motives.

Ortega (1986, p. 245) states that 'it cannot be said that there exists in the specialist literature a sufficiently solid theoretical pillar to suggest the most appropriate structure for a land property market model'. This means that there is no theoretical foundation that explains the logic or the reason for making land acquisitions in the countries of origin or internationally.

Reydon (1992, 1994) attempted to fill this gap by using the Post-Keynesian theoretical system of reference on the formation of asset prices in order to interpret the formation of land prices. It begins by putting into context the type of economy in which it is currently residing, that is to say, in business-driven economies³, where decisions are governed by monetary values and the quest for profit maximization is paramount. This definition, found in Keynes and Minsky apud Reydon (1992 and 1994) already goes beyond the discussion found in the literature which puts the cause of today's land purchases as being the result of the financialization of the economy and the speculative use of land. According to Reydon (1992), with economies being business-driven, they have been financialized since the end of World War II, i.e. the acquisition of assets is always a speculative investment seeking the highest financial return and not necessarily the highest productive returns.

Thus land, as it generates productive incomes and possesses liquidity, becomes an asset of sufficient quality for the necessary speculations. This occurs because in this type of economy, the price of land is determined by three expectational characteristics: (q) the quasi-incomes resulting from its productive use, (l) liquidity, a product of its speculative use while a liquid asset, and (c) cost of maintenance arising from it remaining in the portfolio of the economic agents, all of which are capitalized via a subjective rate of interest.

It is these income streams, resulting from the ownership of land, which the agents evaluate and compare to those of other assets when deciding on the acquisition of a piece of agricultural land⁴. The attributes of these lands (i.e.: of being, at the same time, a capital asset that produces other products and a speculative asset) that makes it an asset to have in one's portfolio. This leads to there being demand for land in the most diverse segments of owners of wealth, from farmers to industry and banks. This demand, however, and its supply, fluctuates, causing both local and national prices to vary. This means that both private acquisition and public intervention in the land property markets require a detailed monitoring of their dynamics. Therefore, the analysis of land acquisition by foreigners must take into account this dual character of land: that makes it possible to have productive and speculative gains that generate productive incomes and that possess liquidity, thus being an important refuge for those investing in capital. In this sense, to do away with international speculation in land is somewhat impossible, though it is possible to have regulation over its use and expropriation that takes these characteristics into consideration, through land state regulation and land management rules.

Surely with the process of financialization that arose in the seventies of the last century with the end of the Bretton Woods system, these processes got to be

(3) Vide Minski and Keynes apud Reydon (1992, 1994).

(4) In Reydon and Ananã (2006) we showed that land in Brazil, in an asset portfolio such as shares, gold, cattle, was one of the assets that made possible the growth in its owner's wealth.

distended very strongly as shown by Arrighi (1994) and Krippner (2005). The liberalization of international capital flows and the deregulation and integration of financial markets under the leadership of the United States have given rise to an increasingly financialized capitalism in which operations with financial assets have assumed increasing importance in the management of the wealth of all actors. Also, the demand for land as an important asset increased widely, as shown by Fairbank (2014).

It is clear, however, that in our economic system land will always be demanded by different kinds of wealth owners to invest and obtain future gains. Only with complete cadasters and with a state/government with clear intentions and power to constrain foreign/speculative demand for land will it be possible to put limits on what the literature calls “land grab”. As has been shown in this item, this is because “land grab” is part of the system, just as banks, financial markets and speculation are.

3 Foreign Direct Investment (FDI) in the agriculture & livestock sector in Latin America

This section presents the land acquisition situation in Latin America, based on a varied array of studies. In Latin America, according to Highquest Partners (2010), the acquisition of land has mainly occurred through private agricultural land management companies which garner funds and administer land for investors that include wealthy family groups and financial institutions based in the region, or in North America or Europe. There is a tendency for a separation between land management and land property, which indicates greater (financial) efficiency through the administration and scale of large tracts of land, both through their ownership and through leasing or their administration by third parties. Brazil stands out as the biggest frontier for new agricultural investments due to its greater supply of land, despite new legislative changes related to the purchase of land by foreigners curbing the supposed ease of access to land by foreigners indicated by the same study.

Highquest Partners (2010) collected data indicating that 24% of companies and investment funds contacted have their headquarters in South America⁵. The geographical focus of land investment by the companies and funds analyzed in the study has converged notably on South America (spearheaded by Brazil) in recent years. Still on the subject of South America, Brazil appears to be the main focus regarding lands under administration by the funds and companies interviewed,

(5) In the Highquest study (2010), 54 companies and funds were contacted and 25 were interviewed. As for the location of their offices, the headquarters of the 54 contacted are geographically distributed as follows: 32% were based in Europe, 28% in North America, 24% in South America, 12% in Asia & Pacific and 4% in the Middle East & North Africa.

followed by Argentina, with a certain degree of interest from investors on Uruguay and Paraguay, and it is estimated that one third of the value of global capital allocated to the sector is currently being invested in Brazil.

The International Land Coalition report (2011) illustrates the importance of Brazil and Argentina with regard to land acquisition, but shares the view that despite their importance, the investments in these countries are concentrated on the purchase of shares in companies that hold land as opposed to the direct acquisition of land, in contrast to the way direct land acquisition occurs in Africa and Southeast Asia. This reductionist view, however, may have adverse effects on the direction of the analysis of the phenomenon of the accentuation of land acquisition by foreigners in Latin America over recent years, as it presupposes the existence of a regulatory, political and economic context identical to the cases in Africa and Southeast Asia, without taking into consideration the peculiarities of Latin America.

In another study, Borras et al. (2011, 6) demonstrates the existence of the “land grabbing” phenomenon in Latin America and is of the opinion that it is on the rise. On a comparative plane, the study describes the situation of Latin America compared to other regions:

By international comparison, the region is different from the processes in Africa where transnational (transregional) deals are more prominent and widespread, but the Latin America and the Caribbean is closer to the Southeast Asian case. In the latter, intra-regional land investments by (trans)Southeast Asian companies are substantial, probably more important than investors from outside the region, at least for now. But the critical role played by domestic/national elites in Latin America and the Caribbean is a similar phenomenon in all other regions of the world: Africa, Asia and post-Soviet Eurasia (idem, p. 6).

Also, according to Borras et al. (2011, p. 7), the specific nature of land acquisition in Latin America is such that this occurs in countries that do not belong to the usual profile of “frail” or “weak” states, going against the conclusions of the predominant line of thinking that claims that “land grabbing” only occurs in countries with “weak” or “frail” governance structures (op. cit., p. 7). In the same study, Borras et al. (2011, 7) also clarify the character of the phenomenon in Latin America, where large-scale land deals resulted in dispossession by displacement of the rural poor in some instances, but has not resulted in mass dispossession compared to the scale at which it takes place in Africa and some parts of Asia.

The character of land acquisitions in Latin America according to the 17 FAO studies on land grabbing in Latin America (reviewed in Borras et al., 2011 and 2012a), points to the recent increase in foreign investment in land and agriculture and the special case of Brazil and Argentina with regard to the involvement of foreign governments. It is important to note that no negative impact on food security

of an investment recipient country was found in the countries surveyed by the FAO studies.

In Latin America at the present time, the countries where land acquisition occurs most are Argentina, Brazil, Chile, Colombia, Ecuador, Guatemala, Paraguay, Peru and Uruguay, and to a lesser extent in Panama, Mexico and Nicaragua. In those countries, the main purposes of land acquisitions are related to the “flex-crop” complex (principally sugarcane, soybean and oil palm)⁶, other food sectors (mainly livestock) and timber, with the highest volume of land acquisition appearing in Brazil. The key agents in Latin America can be classified into four main groups: international investors, (trans)latina investors, national or domestic capital, finance companies and Central Government, as per Chart 1 below:

Chart 1
Investors in land in Latin America and the Caribbean

Countries of origin of foreign investors	Countries active in
International	
Gulf States	Argentina, Brazil
China	Argentina, Brazil
United States	Colombia, Peru, Mexico
European countries	Colombia, Peru, Uruguay, Mexico
South Korea	Argentina, Brazil
Japan	Brazil, Colombia, Ecuador
(Trans-)Latina	
Argentina	Brazil, Uruguay, Paraguay
Brazil	Bolivia, Colombia, Paraguay, Uruguay, Chile
Chile	Argentina, Brazil, Uruguay, Colombia, Ecuador, Peru
Colombia	Bolivia, Peru

Source: Borras et al. (2011).

Borras et al. (2011) analyzes the data in the FAO study and reclassify the foreign investments by country including capital intensive and land intensive large investments as land grab, also expanding what can be defined as land grab (green grabs, etc). Using this different analytical point of view they arrive at a different result, showing that the presence of large investments in land is high in almost every Latin American country, whilst there is also a considerable (much more than argued in the FAO studies) presence of land grabbing (either from domestic or foreign capital) in Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Guatemala, Paraguay, Peru and Uruguay.

(6) Also referred to as “food-feed-fuel crops”.

Most importantly, Borras et al. (2012a) highlight the specificity of large land deals in Latin America and the Caribbean, the “land grabbed land grabbers”: there is a strong inter-regional character of the land grabbing protagonized by the (Trans)Latin American Corporations (TLCs), that can be of two types,

a company with single origin in terms of nationality (Latin American), and an alliance of two or more nationals (Trans-Latin American). Either type is likely to have some tie-up with international finance, especially in the light of laws passed in Southern America aimed at curbing the foreignization of land that seems to have driven foreign capital to forge alliances with domestic capital (via local subsidiaries and other schemes) and to explore non-purchase land acquisition schemes to circumvent such legal limitations (Borras et al., 2012a, p. 860).

The large number of land acquisitions in Latin America and the recent tendency towards an acceleration of this trend in the past few years, attest to the importance of analyzing this movement, which has already produced real economic and social effects, particularly in Brazil.

By placing due emphasis on the importance of clarifying the impacts of land acquisition in Latin America, the following section intends to go more deeply into the analysis of land acquisition in Brazil, where volume and intensity has been greatest.

4 Foreign Direct Investment (FDI) in the agriculture & livestock sector in Brazil

The importance of Brazil as a *locus* for directing investment into land is not in question. The central issue is to understand its characteristics, its logic and, as a result, think about the primary mechanisms for its control or extirpation, if needs be. It should be said at the outset that these acquisitions are part of a far broader dynamic dominated by the attractiveness of Brazil as a new global axis for the supply of agricultural commodities. In the words of Highquest Partners (2010, p. 2):

Brazil is recognized as the largest frontier for new farmland development. The availability of new land (estimated in 40 to 70 million hectares); a legal system which facilitates foreigner investments in farmland and a relatively clear legal and environmental regulatory system have attracted foreign investment in Brazilian farmland.

The liquid inflow of capital, by way of foreign direct investment in Brazil, has fluctuated quite significantly, essentially as a result of external accounts and Brazil’s exchange rate situation. In recent times, according to Nascimento (2011, p. 11):

Starting in 2001, with a world economic slowdown considerably reducing trade and investment flows, FDI inflows to Brazil declined, reaching a low of US\$10.1 billion in 2003. In 2004, the volume of FDI went up again, dipping slightly again in 2005....

As far as the total volume of foreign direct investment in Brazil is concerned, Table 4 of Wilkinson et al. (2011) shows significant growth, more than doubling between 2002 and 2008. It can be seen that, for the period under review, amongst all the sectors, it is the primary sector, excluding minerals, that boasts the highest average annual growth rates. In this sector, direct investment, which was in the order of US\$ 70.9 million in 2002 climbed to US\$ 796 million by 2007. The international crisis certainly reduced investment in the agriculture sector in 2008. Nascimento (2011, p. 11) also notes that agriculture has been receiving quite significant volumes of direct investment, stating that:

Until 2009, Brazil had a total of USD372 billion in inward FDI stock. The distribution of these resources has favored mainly the services sector, followed by investments in non-agriculture related industries, the agriculture related sector, and the mineral extraction (...) Agriculture related sector inward FDI stock until 2009 totaled nearly USD 35 billion.

Table 1
Foreign Direct Investment (FDI) in Brazil by sector of the economy
In US\$ million

Sector	2002	2003	2004	2005	2006	2007	2008	Average Annual Growth Rates
Primary, excepting Mineral Extractive Industry	70,9	181,9	207	253	213,6	796	619,2	0,71
Trade and Services	7.555,30	4.506,00	10.707,80	6.402,80	8.743,80	12.166,10	14.013,00	0,25
Total FDI	10.585,10	6.909,40	8.484,70	12.924,40	12.124,40	16.556,40	16.877,80	0,12
	18.778,30	12.902,40	20.265,30	21.521,60	22.231,30	33.704,60	43.886,30	0,2

Source: Wilkinson et al. (2011).

According to Unctad (2009), Brazil has been a significant recipient of FDI flows in the agriculture sector, particularly in recent years. According to Unctad (2009), for the period 2005-7, Brazil received US \$421 million, corresponding to the third largest volume of FDI flows in the agriculture sector, losing out only to China and Malaysia (Table 2). The same source notes that Brazil is only in 17th place amongst those countries that have the greatest FDI stock, in the sum of USD 383.6 million.

The Unctad numbers are surprising, mainly when compared to those obtained from Bacen in the study by Wilkinson et al. (2010). While the Unctad data show annual direct investment in agriculture & livestock in the region of US\$ 420.9 million, Wilkinson et al. (2011) report an average annual volume for agriculture &

livestock over the same period of around US\$ 178.2, between 2005 and 2007, via the Brazilian Central Bank.

The investments by Soros, the Saudi group Agro Invest and Bunge in agribusiness as reported by the press and drawn together by Wilkinson et al. (2011), have already reached US\$ 1.5 billion. The total of all the investments reported in the study comes to US\$ 3 billion.

Table 2
FDI flows and stocks in agriculture, selected countries,
various years, in millions of dollars

Receiving country	Flows, 2005-2007	Receiving country	Stocks, 2007 or latest year
China	747	China	6.156,20
Malaysia	671,2	USA	2.561,00
Brazil	420,9	Vietnam	1.753,10
Russia	187,7	Canada	1.497,80
Indonesia	119,6	Indonesia	1.001,40
Cambodia	87	Russia	953
UK	84,7	Chile	949,7
Poland	73,9	Italy	624,3
Papua New Guinea	71,1	Australia	624,2
Romania	67,7	France	616,4
France	61,5	Ukraine	557,6
Ukraine	57,3	Hungary	493,9
Vietnam	51,4	UK	490,8
Peru	51	Poland	446,3
Chile	49,5	Romania	412,8
Tanzania	40,5	South Kore	400,5
Honduras	36,2	Brazil	383,6

Source: Unctad (2009).

Highquest Partners (2011), which performed research on funds investing in land and the agriculture & livestock sector across the world, found that in Brazil alone there are investments in the order of US\$ 1.35 billion. However, for investments that include more than one country, and Brazil is included in this, the amount has reached US\$ 2.7 billion. This is a clear indication that a significant proportion of the funds leaving the countries of origin is not entering Brazil officially through the Central Bank or they have not been identified as such. The study also shows, through the direct investments in activities connected with the agriculture & livestock sector, that the activity with the highest growth in terms of the entry of

foreign capital, is that of alcohol manufacturing. In other words, official foreign investment in Brazil has been concentrated in the sugar-alcohol agroindustrial sector.

However, the most surprising information as presented in Sauer and Leite (2011), is the number of rural properties, and the area occupied, officially registered with Incra⁷ in 2010. According to this information, in Brazil there are 34,371 rural properties in the hands of foreigners, extending over a total area of 4.3 million hectares. Regarding the more recent acquisitions, between 2008 and 2010, 2.3 million hectares were acquired, as reported by Wilkinson et al. (2011) informed in newspapers. This is therefore another clear demonstration that official information on land acquisition by foreigners in Brazil is well adrift of reality.

4.1 The main types of foreign buyer and their motives

The absence of reliable, consolidated information on the acquisition and existence of foreign landowners in Brazil means that studies have had to conduct primary surveys of acquisition data. While Wilkinson et al. (2010) did this based on information published in newspapers, journals and on websites, Highquest Partners (2010) performed research with investment funds.

Wilkinson et al. (2010), based on this research, created an investor typology and their motives for investing which, in summary, included the following main categories of investor and investment motives:

- a) Agriculture capital investing in the same sector of activity** – new investment in acquisitions on the part of both domestic and foreign agribusiness companies interested in expanding their activity in the sector;
- b) Agriculture capital investing in synergetic and/or convergent sectors** - new investment in acquisitions on the part of both domestic and foreign agribusiness companies interested in expanding their activity in the sector;
- c) Non-traditional agriculture capital responding to new synergies** – new capital entering sectors in which they did not previously participate, e.g. oil companies coming into the alcohol sector;
- d) Rural property companies that have emerged in response to the appreciation of land values and the prospects for Brazilian agriculture** – various types of company, ranging from international funds to real estate

(7) The Rural Property Register, which comes under the responsibility of the National Institute for Colonization and Agrarian Reform (Incra), records information provided by all landowners, holders of titles and owners of rural property of any kind which is classified as “rustic building of continuous area, whatever the location, which is designed or may be designed for the following forms of exploitation: agriculture, livestock, vegetal, forestry or agroindustrial extraction (Law 8,629 of February 25, 1993, article 4, subparagraph I).

developers specializing in the creation of new properties for subsequent resale, particularly on the agriculture and cattle-raising frontiers.

e) Nation states that are rich in capital but poor in natural resources in search of guaranteed food and energy supplies – despite this tendency being more common in Africa and Asia, this type of investment has also been present in Brazil, particularly from Arabic countries, China and India.

f) Investment funds attracted by the diverse prospects for agricultural commodity appreciation – prior to the 2008-09 financial crisis and the legal changes relating to land access in Brazil, this type of investment was commonly seen. They are generally joint ventures of national capital and international enterprise located in Brazil.

g) Investments related to environmental services incentives – the large number of native forests which still exist in the country, linked to the international need for their preservation, has led to some important investments being present in this area, mainly in the second half of the 1990s and the first half of the following decade, when land values in Brazil were quite low. Policies of payments for environmental services of the carbon credit type and REDD will be one more incentive in this direction.

h) Mining and oil exploration companies. The quest for new sources of oil and the heavy demand for a wide range of minerals is significantly increasing investment in land in Brazil. In the Amazon region, these investments are perhaps the main factor in the conflict with indigenous communities. This type of investment results in new uses for land and this often becomes a source of discord in relation to agricultural activity and traditional communities/farmers.

Chart 2 below shows the number of foreign land acquisitions in Brazil, as analyzed by Wilkinson et al. (2010), and the principal associated crops. It can be seen from Chart 2 that news about acquisitions mostly occur with productive activities in agriculture and livestock (a, b and f), despite there being a significant number of acquisitions with companies acting more speculatively such as those in category d), companies operating in the resale of agricultural plots of land. It can be seen in the same chart that the main crops that have attracted international investors are those that have expanded most in the country, namely sugarcane, pulp, grain and cotton.

Chart 2
Number of news reports concerning land acquisition, by investor category and motive,
between 2008 and 2010

	Investor category and reason for acquisition	No. News Reports	Main crops to be developed
a)	Agriculture capital investing in the same sector of activity	11	Sugarcane (ethanol), Pulp, Soybean and corn, cotton
b)	Agriculture capital in synergetic and/or convergent sectors	3	Soybean
c)	Non-traditional agriculture capital responding to new synergies	1	Soybean
d)	Rural property companies that have emerged in response to the appreciation of land values and the prospects for Brazilian agriculture	5	Pulp
e)	Nation states that are rich in capital but poor in natural resources in search of guaranteed food and energy supplies	5	Grain, poultry and soybean
f)	Investment funds attracted by the diverse prospects for agricultural commodity appreciation	9	Sugarcane (ethanol), Pulp, soybean, milk and grain
g)	Investments related to environmental services incentives	2	Pulp and sugarcane (ethanol)
h)	Mining and oil exploration companies.	0	

Source: Data organized by the author based on Wilkinson et al. (2010).

The tables of Foreign Direct Investment in Brazilian agriculture & livestock between 2002 and 2008, obtained by Wilkinson et al. (2010, p. 67) from the Brazilian Central Bank, show that the largest investments have occurred in the food sector, which is a fairly industrialized sector, meaning therefore that only a part comes in the form of land acquisition. The sector that received the next highest volume of investment was the alcohol production sector, followed by paper and pulp. This once again shows that foreign investment in Brazil is pretty much shaped by the productive agribusiness sectors.

Another piece of information that corroborates the productive direction of land acquisition in Brazil lies in its location: in highly productive regions. Wilkinson et al. (2010, p. 68) show that 82.4% of foreign investment in Brazil's agribusiness, between 2002 and 2008, that went through the Brazilian Central Bank, was concentrated in the Southeast region. Next came the Midwest and the South with 7% and 5.5% of investment, respectively. This information is in part substantiated by Borrás et al. (2011), with information from Sauer and Leite (2011), which shows based on Incra data, that the majority of foreign properties are located in the Central-South of the country, but in terms of area, the distribution covers a larger area, with a significant share in the Midwest and the state of Bahia, which are grain producing regions in expansion.

4.2 The recent evolution of land values in Brazil and the role played by foreign acquisitions

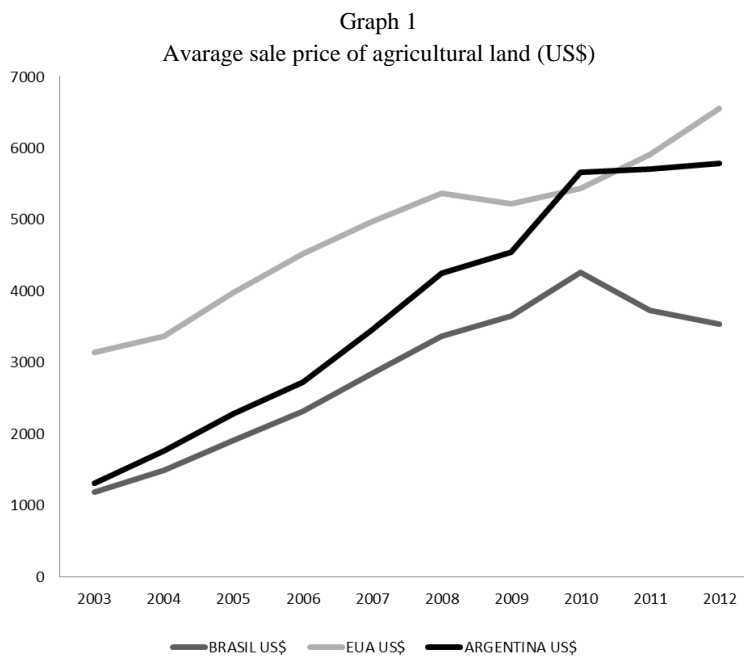
The importance of international land acquisition in Brazil can be seen from the impact on the land property markets and on land values. To understand this better, it is necessary to go back a little in the analysis and see the dynamics of land prices in the most recent period. One of the most significant milestones in the evolution of

land values in Brazil was the drop of over 40% in the price of land following the *Plano Real* in 1995. This plan, by stabilizing the value of the local currency, ended a cycle of many years of inflation and also took away from the land some of its speculative use⁸. After this drop in 1995, the price of land remained flat for a further 5 years at an average selling price of around US\$ 1,000, as can be seen in Graph 1 below.

It was only in the first decade of the new millennium that land prices bounced back. They started to rise again from the end of 2002, mainly as a result of the recovery in commodity prices. The first period of accentuated growth in the price of land is the product of the recovery of international commodity prices and the growth in demand for agricultural produce within the country (Graph 1).

For the most recent period, post 2002, Figure 1 exhibits the evolution of the selling price of land for cultivation, based on data collected by the agribusiness consultancy group FNP. The following four phases of price evolution can be detected:

1. Between 2000 and 2002, stagnation
2. From 2002 to 2008, accentuated growth
3. From 2008 to 2009, lower growth
4. After 2009, return to accentuated growth



Source: FNP (2010).

(8) For further details, see the study on the Impact of the *Plano Real* in Reydon and Cornélio (2006).

Analysts are unanimous about the accentuated growth in the price of land between 2007 and 2008: the product of the combination of a growth in the interest in producing ethanol by both Brazilian and overseas groups. This accentuated growth has an extra stimulating factor, namely the growth in demand for land deriving from speculative movement with commodities, which usually occurs at times preceding a crisis.

The slower growth in the price of land after 2008 was the product of the economic crisis that ravaged the world in September of that year. It is interesting to note that, in spite of the extent of the crisis, the average selling price of land in Brazil did not fall, it merely suffered slower growth. In other words, the acquisition of land has had a strong impact on the land market over the last decade.

5 Legal and institutional aspects of foreign-owned land in Brazil

The legal and institutional mechanisms developed in the 21st century to deal with the critical agrarian situation in Brazil are based on the historical pattern of occupation and development in Brazil, and seem to be insufficient to improve this situation. Formal regulations, which have never been completely enforced, make land access in Brazil both fragile and inchoate (Reydon et al., 2014, p. 510).

A huge body of constitutional law, land law, civil property law, environmental law and planning law, operating at national, state and local levels, governs land relations and land institutions in Brazil. A large set of agencies are involved in the establishment and regularization of land rights, their recording and documentation, processes for establishing allowable uses, managing special-use areas, planning overall land use, and conflict resolution. This body of law and these institutions embody a number of characteristics that have created wide gaps between the reality of land relations on the ground and the legally mandated requirements for landholdings and landholders. This confusing institutional framework creates gaps that contribute to some of Brazil's most pressing social, economic and environmental problems.

The absence of mechanisms that regulate the ownership, use and occupation of rural and urban land is one of country's major land problems. And this lack of regulation, *de facto* rather than *de jure*, results from and is determined by the possibilities to speculate on land, that is, to make money with the purchase, maintenance, transformation and subsequent resale of land in any of its forms.

It is also known that the rules that were aimed at the effective regulation of these markets through laws always ended up being circumvented or not enforced, creating more favorable conditions of speculation for some people. Therefore, the ideal regulation would be the one in which society had governance and could define

the proper use of the land, either from a production point of view or for homes, simultaneously preserving the environment.

This lack of land governance can also be found systematically in the results of the four stages of the Land Governance Assessment Framework (LGAF) applied to Brazil in the last years, showing:

- A lack of control over public lands;
- That private land property registration is not reliable;
- That the registry coverage is incomplete and not up-to-date;
- A lack of spatial information (georeferencing) on the registry of private land properties;
- A lack of reliable and integrated registration of public and private land;
- A low level of land property taxation;
- That supply, land use planning and regularization of urban land are not in line with the demand;
- Neglectful governance over large-scale land and forest acquisitions.

This regulatory context, added to the large inflow of capital heading in the direction of the countryside to acquire land, demonstrates even more clearly the serious situation with land in Brazil. Recent studies show that land in the region as appreciated by as much as 600% in some states in the country, primarily at the agricultural frontier.

5.1 Legal-institutional measures to limit foreign access to rural land

In the last forty years, the set of rules, laws and opinions that have sought to limit foreign access, demonstrates two clear phases: between 1969 and 1995, with a clear nationalist spirit, placing strict limitations on the acquisition of land by foreigners; and post-1995 when, in an attempt to facilitate the entry of international capital in the state privatization process, the legislation is modified making it more permissive as far as foreign land acquisition is concerned and, at the same time, less clear, generating diverse opinions and multiple interpretations.

Even in the period when there were greater restrictions on foreigners acquiring land, there was in fact no way of enforcing the laws, in spite of the rules in this former period being quite clear and well defined, there were no clear mechanisms to control the process, as a result of the country having no agency which effectively has a registration of lands and which is capable of tracking the purchase and sale movements of the land property markets.

According to Wilkinson et al. (2010), the main legal definitions with regard to the acquisition of rural real estate by foreigners (both legal entities and

individuals) originates in the era of the military dictatorship. In this context, article 3 established that the acquisition of a rural property could only be conducted by Brazilian citizens or by foreigners who were permanent residents in Brazil, a policy that was justified on the basis of the ‘protection of the integrity of national territory, state security and the fair distribution of property’.

Still in the shadows of the military dictatorship, in 1971, law 5709 was drawn up which brought with it the regulation of the acquisition of rural real estate by foreigners, permeated by the guarantee of national sovereignty and the motive for discussion even today due to the rigid restrictions (at least 23 of them) on the residency of foreign individuals in Brazil and on legal entities authorized to operate in the country:

It was governed by Decree 74965/74 and both are in force. According to this law the following limits exist in respect of the area of real estate:

a) Foreign individuals may not exceed the real estate acquisition limit set at 50 modules of undefined exploitation (MEI), in either a continuous or discontinuous area, and in the case of less than 3 modules, acquisition is free, without the need to acquire a license (article 3);

b) The sum total of rural areas (article 12) belonging to foreigners (individuals or companies), may not exceed 25% of the area of restriction where they are situated, substantiated by a Property Registration certificate. In addition, people of the same nationality may not, in each municipality, be owners of more than 40% of this limit.

The main limitations are as follows:

a) Foreign companies legally constituted in the form of public limited companies must hold their shares nominatively when operating with rural land subdivision, rural area farming or if the owners of rural real estate and those activities are not linked to its articles of incorporation (article 6). the exploitation of rural areas or if owners of rural real estate are not linked to its articles of incorporation (article 6).

b) In any real estate transaction involving the conveyance of land to foreigners, the title deeds must be created via public deed.

c) The property registry offices are obliged to submit to the sector authorities (Ministry of Agriculture and Incra) the listing of deeds drawn up in the name of foreigners on a quarterly basis.

d) The notary public may only draw up title deeds with the authorization of Incra, after certification by this agency.

e) Any title deeds drawn up that are not in compliance with the legal restrictions will be legally void. In this case, both the notary public which draws up the deeds and the registry that record them, will be civilly and criminally liable for their acts. As for the alienor, he shall be obliged to give the amount received for the unauthorized sale back to the purchaser (Wilkinson et al., 2010).

Law 6634 (1979) pronounces on acts permitted on the country's borders, forbidding subdivisions and transactions with rural property by foreign individuals or legal entities and defining in article 3 thereof what is deemed to be a foreign company. In order not to be considered foreign, at least 51% of share capital must belong to Brazilian nationals and at least two-thirds of the workforce must be Brazilian.

With the return to democracy, article 171 of the 1988 Constitution establishes the concept of company nationality, differentiating companies as Brazilian, Brazilian with national capital and non-Brazilian (included here as foreign companies and multinational or transnational companies). Article 190 clarifies the dependence of approval by the National Congress in cases of leasing or the acquisition of rural property by foreign individuals or legal entities. Thus, the laws that should govern the subject would be Law 5709 of 1971, discussed earlier, and Law 8629 (article 23) of 1993, which deals with the authorization by National Congress for the acquisition and leasing by foreigners of areas in excess of those established by Law 5709.

The situation changes in 1995 with the proclamation of Constitutional Amendment no. 6 which revokes article 171 of the Constitution with the aim of preventing any protection, benefit or preferential treatment to "Brazilian companies" or "Brazilian companies with national capital", thus facilitating the entry of foreign capital into rural real estate through subsidiaries with mixed national/foreign capital, without creating a restriction proviso in the law which had always been imposed on foreigners in so far as rural properties and communications was concerned. However, despite the revocation of article 171 of the Constitution, it did not change law 5709 and its regulation, which are in full force today.

In 1997, according to Wilkinson et al. (2010):

... the Opinion of the Attorney General (Opinion AGU GQ – 181, concluded in 1998), was discussed in which the interpretation was adopted that §1 of article 1 of Law 5709/71 would not have been admitted by the Federal Constitution of 1988, thereby lacking validity. Based on this understanding, the AGU opinion confirmed that the same requirements would not be applicable to Brazilian companies that the law applied to foreign individuals and legal entities for the acquisition and leasing of rural property in the country. So he argued that common law could not make a distinction between the so-called 'Brazilian company' with foreign capital and the 'Brazilian company

with national capital' [...] In other words, any company with foreign share participation may acquire land in national territory. The points of view with regard to this Opinion by the AGU vary between accepting the legitimacy of this interpretation in full and criticism that the AGU has gone down a path of legal sophistry to deny the granting of any protection or benefit to domestic companies and to national capital itself, which would consist of a government option that would relinquish sovereignty across national territory.

In 2007, at a meeting of the Chief of Staff on the theme of “the acquisition of land by foreigners and the objective of refining national legislation on the subject”, aimed at national interests linked to the ‘world food crisis and the possibility of adoption of biofuel on a grand scale as an important, alternative source of energy, qualified to diversify the national electricity system to great advantage’. In the understanding of this meeting, these two new phenomena ‘are the main vectors of this new approach to the question of land property in Brazil, particularly rural property’. Accordingly, it was in the interest of this meeting to request a potential review of AGU Opinion GQ 181 of 1998, with the aim of ‘imposing limits and restrictions on the acquisition of rural real estate by Brazilian companies whose share capital was predominantly in the hands of foreigners who are non-resident in Brazil or foreign companies not headquartered on national soil’. More specifically, it aimed to remove any doubts about the application of restrictions and limits provided for in Law 5709 of 1971. However, the review of Opinion GQ 181 was not approved at the time due to the possible consequences that approval might bring upon the country in the middle of a global economic crisis, and was postponed until 2010. The new opinion, called Opinion CGU/AGU 01/2008 – RVJ, published in the Federal Official Gazette on August 23rd, 2010, states that ‘Brazilian companies with majority control by foreign individuals or legal entities will have their rural property acquisitions examined as well as the full text of the corresponding ruling’, giving itself the appearance of a strategic character for having, amongst others, and in the absence of any control over these acquisitions, the following effects:

- expansion of the agricultural frontier with the advance of crop cultivation in areas of environmental protection and in conservation units;
- irrational appreciation of the price of land and the incidence of real estate speculation producing an increase in the process of expropriation directed towards agrarian reform, as well as the reduction in the inventory of land available for this end;
 - growth in the illegal sale of public land;
 - use of funds arising from money laundering, drug trafficking and prostitution for the acquisition of land;
 - increase in land grabbing;
 - proliferation of “stooges” in the acquisition of these lands;

- increase in the volume of biopiracy in the Amazon region;
- inadequately regulated expansion of ethanol and biodiesel production;
- acquisition of land on the frontier strips putting national security at risk.’

Accordingly, the revitalization of the constitutionality of Law 5709 of 1971 went ahead, and with it the provisions in respect of the mandatory nature of registering land purchases in special books in Land Registry offices. Moreover, it reestablishes that the records of acquisitions made by Brazilian legal entities that have the majority of their share capital held by foreigners, individuals residing overseas or legal entities with head offices overseas, must be communicated on a quarterly basis to the State Department of Justice and to the Ministry of Agrarian Development. As regards the size of the land, the restrictions revert to those dictated by Law 5709. With regard to frontier areas, the opinion points to Law 6634/79 where it clearly states that legal business transactions that involve obtaining right of possession, domain or any other effective rights over rural property in frontier areas, involving foreigners⁹ (both individuals and legal entities), shall, after the Incra process has been started, depend upon the prior authorization of the National Defense Council – this limitation is valid for companies with any foreign share participation of any kind and not just for companies with majority foreign capital.

Conclusions

Land acquisition in Latin America and Brazil is part of a wider process of seeking areas for investment and capital accumulation, which has intensified in recent years. What sets Brazil apart from the others is the nature of its agribusiness, which began a process of modernization in the 1970s, consolidating investments, particularly those of the larger companies located both up- and downstream of agricultural activity. What the analysis makes clear, however, is that there are no national or local controls over the processes of land acquisition and there is evidence that a significant proportion of acquisitions takes place with financial resources that are not entering the country officially.

The press tends to associate the landgrab phenomenon with speculative movements by financial capital or with security strategies aimed at agricultural raw materials, by the new, emerging countries. The present analysis of the Brazilian case confirms both of these tendencies as important components of this new wave of land investment. In addition, the theoretical input that is employed, which takes the point of view that land is, at one and the same time, both a speculative asset and a productive asset supports this view. Empirical information from different sources

(9) More specifically those involving foreign individuals who are resident in Brazil, foreign legal entities authorized to operate in the country or a Brazilian legal entity in which a non-resident foreign individual or a foreign legal entity headquartered overseas, has any kind of stake.

shows that the main sectors and regions where land was acquired are those that have potential productive use attached to it. This reinforces the theoretical aspect that speculative gains are linked to productive and supplementary gains.

The question is not, therefore, if land grabbing is speculative or not. It will always have a speculative component. The problem is with regulation and control. The study of the Brazilian case shows that not only does control not exist over foreign-owned land, but over land in general, as there is no land registration and/or land administration along UN lines (vide Reydon 2011). Our analysis identifies the historical roots of the lack of effective land regulation in Brazil, as well as the limitations of the usefulness of the present registration system to identify the processes of concentration and foreignization.

In this sense, land policies should be far more directed towards the regulation of unbridled speculation in this market, than attempts to repress or prevent it. The fundamental understanding is that speculation with assets, which includes land, will always take place in a capitalist system. It is up to the state to regulate it and society to establish governance over it so that additional harm does not befall said society.

The Brazilian case is fundamental for the understanding of the global process of land acquisition by foreigners, for three reasons. Firstly, Brazil is becoming the main global player in the production of large agroforestry commodities. Secondly, Brazil demonstrates the diversity of interests involved in the current wave of land acquisition. Lastly, those companies that are spearheading the process in Brazil, whether they be private national companies, state-controlled or foreign, are also investing heavily in land in the rest of Latin America and in Africa. The limitations currently imposed on land access by foreigners in Brazil are and will be rendered harmless through the use of straw men and other mechanisms. Only if the state assumes its regulatory role and society assumes its land governance role will a process exist in which foreigners will acquire land legitimately and legally, by taking part in the processes of local development, both in Brazil and the rest of the world.

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