

CHEMONICS INTERNATIONAL INC.



AGRARIAN REFORM THROUGH CONFLICT:
MANAGEMENT OF AGRARIAN CONFLICTS IN BRAZIL

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Agrarian Reform through Conflict: Management of Agrarian Conflict in Brazil

1. Introduction

Throughout the contemporary history of the country, agrarian conflicts have been caused by different factors and have taken on specific proportions, each with its own dynamics and modes. The process of occupying the agricultural border was surrounded by conflict and violence with regard to land, and these conflicts were a result of pioneers' occupation of the land and the expansion of capital and private property. The pioneers, small farmers that migrated in search of better labor conditions or encouraged by official settlement programs, clashed with large landholders and enterprises that were established in the same areas, appropriating land already occupied and closing the access of the small farmers to land that was free at the time.

Several authors like José de Souza Martins, Otávio Ianni and Fernando Henrique Cardoso, indicate that violence and lawlessness played a key role in the Brazilian agricultural border expansion process. During the military regime, agrarian conflicts in border regions were considered private conflicts or national security issues. Conflicts developed into violence against individuals, since small producers and immigrant workers were not organized politically and did not succeed in establishing a strategy for resistance and action that could raise the agrarian conflict to political dimensions. It was within this context that the Land Pastoral Commission (CPT) was created. It is one of the most active institutions in defending the rights of workers affected by agrarian conflicts.

In the last 20 years, agrarian conflict has acquired other dimensions due to the strengthening of organizations for landless workers, small rural producers, nongovernmental organizations involved in human rights, and the cause of agrarian reform. It is a conflict, which on the political level is manifested by a resistance strategy and struggle for agrarian reform, for access to land and most recently, for public policies on rural development and poverty. This means that in addition to the traditional conflict due to violence in the division of large property, conflicts have taken on a new dimension stemming from the movement of landless people who occupy or invade titled property as part of their strategy to pressure the government to carry out agrarian reform.

The agricultural policy of the Cardoso administration was marked by two important conflicts that ended tragically: Eldorado de Carajas, in Pará and Corumbiara, in Rondonia. It can be affirmed that the government's strategy on all levels is the direct cause of these tragedies. On the one hand, it became indispensable to accelerate and expedite agrarian reform in order to mitigate and prevent social conflicts in the field that could result in events like those in Eldorado or Corumbiara. On the other, very cautious action was initiated to deal with the problem that in many cases degenerated into blatant lawlessness, which contributed in some ways, to promoting new conflicts. While they did not directly cause the deaths in the clashes between social movements and official forces, they were translated into conflicts between large landowners and members of the social movement, many of which did end in death.

This cautious behavior was translated, at least for a while, into the issue being ignored. Land squatting was "quasi" permitted and was handled exclusively within the court system, which

as we will see later, proved to be completely inappropriate for dealing with the problem. Court orders, issued based on the country's civil laws, which ensure and protect the right to private ownership, were not enforced by judicial authorities who did not find any way to return the possession of occupied land. Requests for police intervention to enforce court orders were not fulfilled, which placed the executive and judicial branches in confrontation and noncompliance with the very law they should protect. The apparent permissiveness relative to the movements of landless workers was compensated by the unpunished actions of large landowners and their representatives, which on many occasions were violent and carried out, theoretically, in the name of "the legitimate defense of private property."

From the political perspective, squatting on or the invasion of land has a dual objective: to force the government to expropriate land considered unproductive and to be a tool for social and political mobilization of the organized social movement. From the strategic point of view, these conflicts revolve around the appropriation of government land and the expropriation of unproductive land.

The 1988 Federal Constitution, by providing for the excessive protection of rural property and transferring the control of public land to the States of the Federation, has aggravated tension in rural areas and increased the difficulty in solving land problems. Transferring the competency to determine reversionary public land to the provinces places land issues within the scope of the regional oligarchy with sufficient authority to exert pressure on the state governments, the courts and the police, in the sense of legitimizing the illegal appropriation of land, and disregarding the actions of large enterprises and landowners that control large areas of land. In addition, leaving the authority to expropriate in the federal sphere creates a power void that encourages the spread of conflict.

The increase in conflicts led to a change in land policy and the strategy for managing agrarian conflict: on the one hand, the government tried to facilitate, within the institutional framework in force, the country estate intervention mechanisms, in an effort to improve the capacity to respond to conflicts; on the other hand, legitimized through renewed expropriation and settlement activity on a scale unprecedented in the country, the government has increased the pressure on social movements to restrict their capacity to act and [exert] pressure.

This government pressure on social movements is manifested through several legal measures to reduce the ability of social movements to mobilize and even their viability. The social movements and the government had different views of the measures adopted. For the government, the role of these measures was to reduce conflict and open new spaces for a planned intervention; to the movements, they were repressive and reinforced the "country's historical strategy of repression." As we will see later, during the Cardoso administration, there was a clear relationship between squatting and social conflict in the field and the expropriation and settlement of agrarian reform. In this sense it can be said that agrarian reform is carried out through the conflict.

2. Type and Record of Agrarian conflicts

Rural social conflicts intensified in the 1980's due to the family farming crises, the restructuring of productive systems that used rural labor, unemployment in the urban areas, and the lack of alternatives to absorb rural families who lost their means of survival, whether land or job, in rural areas. Along with these structural reasons, other more specific causes

contributed to feeding conflicts and giving them a dynamic of their own. Among these, we can mention the following:

- (i) The construction of large public or private works such as dykes, irrigation projects, dams, hydroelectric plants, etc. that displace residents of the area in order to carry out engineering work. Although many of these projects include resettlement of the affected families, they rarely include everyone and in the majority of cases, there is a gap between expulsion and resettlements, creating new agrarian conflicts. These families become part of the landless movement and the fight for land.
- (ii) Degradation of the environment, particularly in forest areas caused by landslides and burning to facilitate ranching activities and mass exploitation of wood by large wood companies, or in areas affected by ecological "disasters" caused by industries.
- (iii) Regulation of indigenous lands already occupied by family producers and/or landowners.
- (iv) Conflicts related to defining land control or possession and use of the land.
- (v) The sudden increase in population as a consequence of the conclusion of large projects that use unskilled labor, or squatting alternatives, as in the case of the *garimpos* in the northern region;
- (vi) Conflicts between the beneficiaries of official settlements and the government seeking infrastructure, credit, technical and social assistance, agricultural development, means of trade, etc.

The types of agrarian conflicts are also quite diverse. Santos, Teixeira and Becker (1999, 5) work with the following types:

- (i) Owners (possession, use and ownership of land);
- (ii) Income (disputes regarding the payment of land leases);
- (iii) Association and mediation (disputes regarding the terms of partnership contracts and the equitable distribution of products);
- (iv) Conflicts caused by the construction of dykes;
- (v) Mining activities (conflicts between mining entities and others regarding the use of mining areas and reserves);¹
- (vi) Riverside population (farmers and fishermen);
- (vii) Bank debts.

These authors divide agrarian conflicts into the two traditional categories used in the study of violence: conflicts against individuals and violence against possession and ownership and distinguish "illegal violence," comprised of acts of political violence and "legal violence," which includes the judicial decisions that affect the farming families involved (Santos,

¹ The conflict between the "siringueros" and cattle breeders or farmers that resulted in the murder of Chico Mendes, the leader of the "siringueros," and had wide international repercussions is a good example of this type of conflict.

Teixeira and Becker, 1999, 6). Illegal violence against individuals includes murders, slaughter (acts of violence with over three victims), attempted murders, death threats and physical aggression with bodily injuries (*ibidem*, 6). In the case of conflicts against possession or ownership, illegal violence includes both families who are the victims of expulsion, destruction of houses, crops and personal property, and families who are victims of threats of eviction and expulsion. Legal violence is characterized by the expulsion of families by court order.

Barp (1998) uses a classification similar to that of Santos, Teixeira and Becker. Within the violence against possession and ownership, he includes the families expelled from land by private individuals, those evicted by court order, those threatened with eviction and expulsion and those whose crops and property were destroyed. He includes in the category of violence against individuals murders, attempted murder, death threats, torture, physical assaults with or without bodily injuries, imprisonment, kidnappings, private prisons, restricted movement, child labor and slave labor.

The Land Pastoral Commission is without doubt the organization most involved in the issue of agrarian conflict and for seventy years, its activities have been crucial both in informing society of the seriousness of agrarian conflicts and preventing them from increasing in size. The CPT oversees and records conflicts, and has the most complete database of agrarian conflicts in Brazil. The CPT (CPT, 2000, 85/86) classifies conflicts in four categories:

- (i) Agrarian conflicts: records possession conflicts, squatting and encampments;
- (ii) Slave labor: occurrences of slave labor in the rural areas;
- (iii) Labor conflicts: noncompliance with labor laws and cases of labor abuse²;
- (iii) Other: records labor during droughts,³ water conflicts, union conflicts and conflicts in *garimpo* areas.

CPT records the number of conflicts in each category, and the number of deaths occurring in the conflict (murders), number of persons involved and amount of land (in hectares) in the conflict.

Another source of information on agrarian conflicts is the Audiencia Agraria [Agrarian Hearing] affiliated with the Ministry of Agrarian Development (MDA) (see Section 0). The Audiencia focuses on agrarian conflicts that involve owners-occupants and rural worker groups, and records the number of land occupations, agrarian conflicts ending with the death and/or imprisonment of rural workers, landless peasant camps, the number of social demonstrations on agrarian reform, in addition to human rights violations (giving priority to rural workers with and without land, riverside producers, miners, Indians, *quilombolas*⁴ and *garimpeiros*⁵) and environmental offenses such as tree felling, burning, irrational use of the area and contamination of rivers.

² Abuse is associated with poor labor conditions and covers a wide range of situations, from delays in worker pay, to excessively long workdays. (CPT, 2000, 85).

³ Conflicts during droughts are primarily related to the occurrence of conflicts caused by the total deprivation of the population affected by drought. (CPT, 2000, 86).

⁴ The *quilombolas* are the descendants of the slaves that escaped from slavery and lived in closed communities until very recently.

⁵ *Garimpeiros* are miners of metals, in particular gold, who use traditional methods in mining regions.

Conflict Characteristics

- Violence and impunity: between 1971 and 2001, 706 workers were murdered in agrarian conflicts in the Estado de Pará (533 in the south and southeast regions of the state); of this total, 366 were murdered between 1996 and 2001. During that same period, only three persons were sentenced for all the murders;
- Illegal imprisonment of rural workers;
- Violent eviction from property by the military police;
- Coercion and moral violence inflicted by the police;
- Threats to rural workers;
- Aggressions to owners;
- Invasion or occupation of rural real property;
- Damage to property and the environment;
- Armed fights between workers and landowners
- General climate of insecurity within the community

The CPT and Audiencia figures differ greatly, particularly regarding the number of workers in prison and/or killed in conflicts. According to the Audiencia, the CPT figures inflate the number of agrarian conflicts since the statistics include deaths and imprisonment cases, many private and personal conflicts and imprisonment resulting from common crimes that have nothing to do with agrarian conflicts. The discrepancy is understandable since each organization has a different role, and therefore, uses their own methodologies and sources.

Discrepancies between CPT and Audiencia Figures

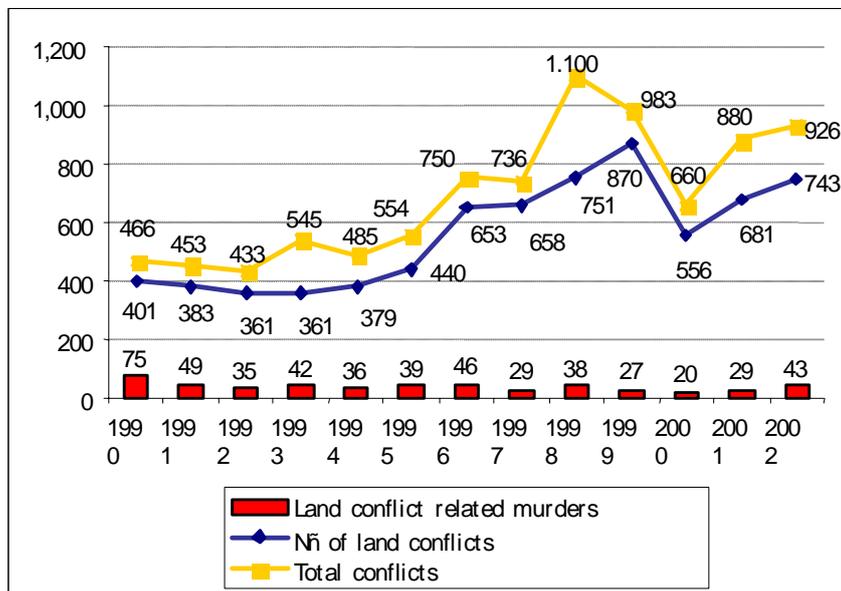
Discrepancies between CPT and Audiencia Agraria figures are due to the use of different methodologies by each institution. The first difference is relative to sources of information. Audiencia figures are based on police investigations, and the Audiencia only records the event as an agrarian conflict when it appears as one of the causes of the conflict in the police investigation. CPT information sources are broader and not limited to police investigations. Rather, they are based on information from its own agents, the various labor organizations and rural worker associations in the field and information in the press. Before recording data in its database, the CPT attempts to verify information through its various sources and confirm the origin and nature of the conflict and violence. In cases of doubt, CPT does not record the data. With regard to police investigations, the CPT frequently reveals that the police do not take into consideration the context in which the violence arose, and therefore, many violent n cases are classified as common offenses caused by problems with neighbors, alcohol, etc. Another discrepancy between CPT and Audiencia figures is relative to the victims of violence. The CPT records an event under the agrarian conflict category only if several categories of workers from the camp participate in the conflicts, in various situations. For example, conflicts over land, [and] water in areas and periods of drought, in mining zones, and union conflicts. The CPT does not include conflicts between large landowners, regardless of their seriousness. In addition to statistical information, the CPT seeks to understand and analyze the causes of violence in rural areas as well as the reality of rural workers as mechanisms to support its struggle to defend human rights. Source: CPT.

3. Evolution of Agrarian Conflicts from 1988-2002

The analysis of the evolution of agrarian conflicts (Graph 1 and Table 1) according to the classification used by the CPT indicates that conflicts associated with land are larger and increased dramatically from 1990-99. Recorded slave labor dropped during the decade, but increased in 2001 and 2002.⁶ The number of labor conflicts dropped during the second half of the decade but other conflicts increased in drought years, i.e. 1998 and 2001. In general, the change in the number of rural conflicts recorded by the CPT follows the pattern of agrarian conflicts.

⁶The increase or drop in slave labor cases does not necessarily reflect the magnitude of the problem. It is quite possible that this increase is due to more efficient identification of parties that use this type of labor.

Graph 1: Number of Agrarian Conflicts, Agrarian conflicts and Total Number of Murders in Agrarian Conflicts. – CPT 1990-2002

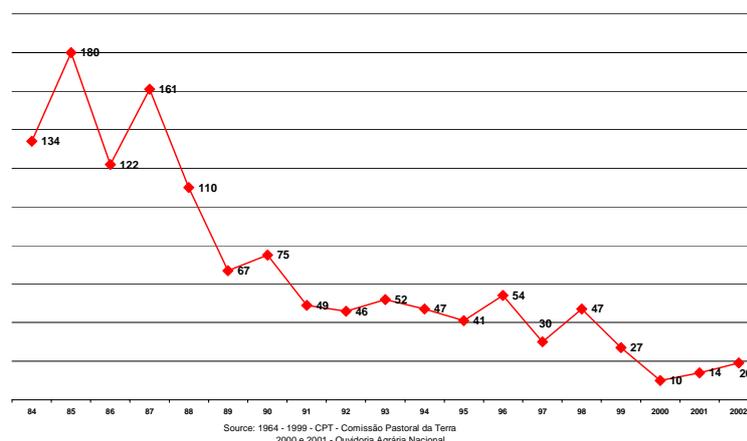


Source: CPT.

After 1998, the number of conflicts with worker deaths also records a sharp decrease (Graph 1 and Graph 2) with the lowest death rate in 2000.

Between 1997 and 1999, an increase is also seen in the number of conflicts resulting in the imprisonment of rural workers, which decreased in 2000 only to increase again later. Graph 2 shows the number of murders acknowledged by the Audiencia Agraria Nacional; a figure that is lower than the one recorded by the CPT (see Chart 2)

Graph 2: Social Conflicts in the Countryside Resulting In the Death of Rural Workers 1984-2002

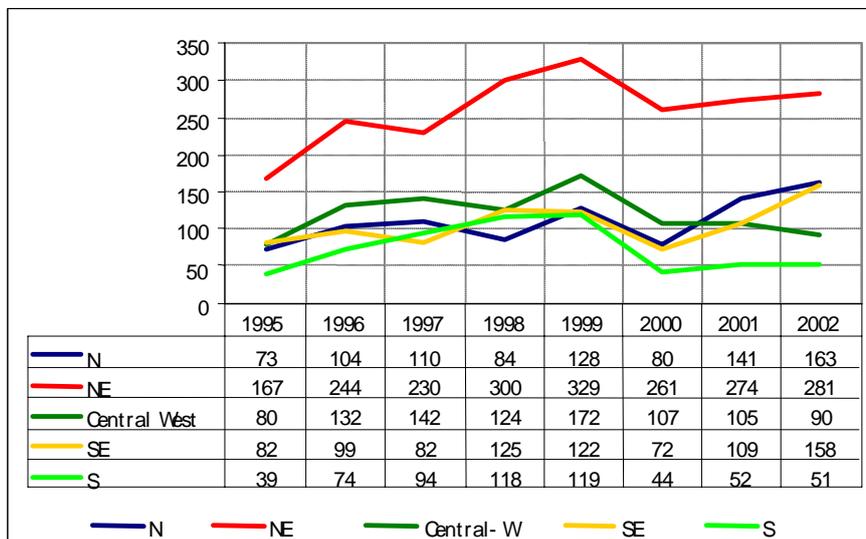


Source: CPT up to 1999; Audiencia Agraria Nacional beginning in 2000.
Produced by: Audiencia Agraria. Only 20 murders in 2002.

Throughout the 1995-2002 period, the northeast region recorded the highest number of conflicts, followed by the north and southeast regions. Beginning in 1999, agrarian conflicts

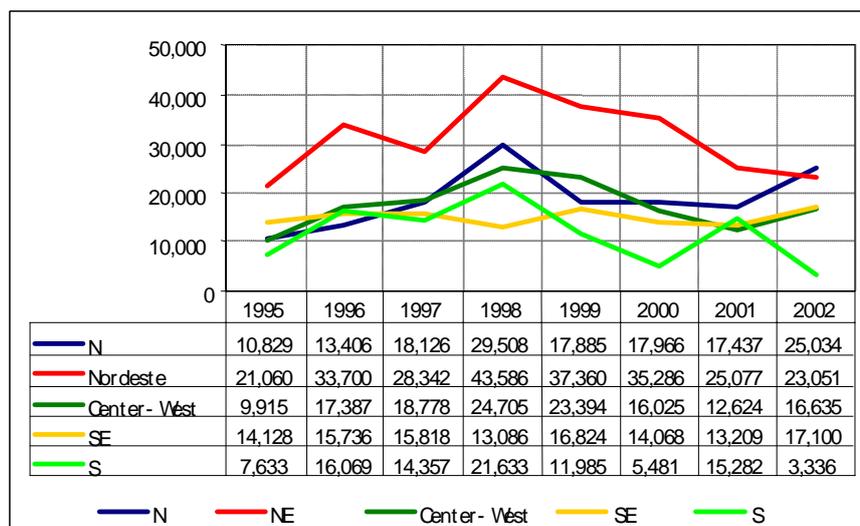
in the southern and central-western regions decreased, but they increased in the northern, southeastern and northeastern regions. (Graph 3 and 4).

Graph 3: Number and Evolution of Agrarian conflicts - CPT 1995-2002



Source: CPT.

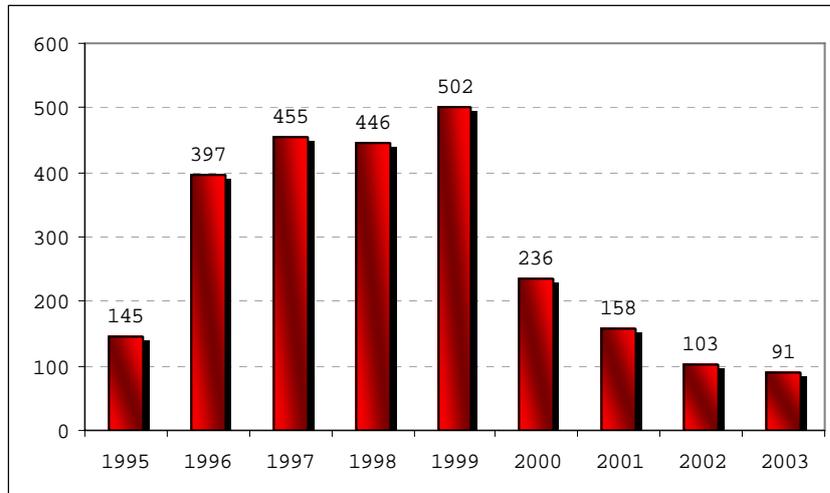
Graph 4: Number of Families Involved in Agrarian conflicts – CPT 1995-2002



Source: CPT.

Analysis of the change in land squatting cases recorded in Brazil during the 1995-2003 period clearly reveals the increased social pressure exerted by landless workers beginning 1995. In the same year, 145 cases of squatting were officially recorded, and this number increased until 1999 with 502 cases of squatting recorded (Graph 6). From that point, there was a marked decrease in squatting, which amounted to only 103 in 2002 according to Audiencia Agraria Nacional information. The first months of 2003 recorded a higher number of squatting cases and by March, the Audiencia had already recorded 91 land squatting cases, evidencing the increased social pressure in rural areas.

**Graph 5: Land Squatting in Brazil
1995-2002**



• **Source:** CPT and Audiencia Agraria Nacional.

Table 1: Conflict Evolution

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Land conflicts ¹													
Nº of conflicts.....	401	383	361	361	379	440	653	658	751	870	556	681	
Murders.....	75	49	35	42	36	39	46	29	38	27	20	29	
Persons Involved.....	191,550	242,196	154,223	252,236	237,501	318,458	481,490	477,105	662,590	536,220	439,805	419,165	421
Hectares in conflict.....	13,835,756	7,037,722	5,692,211	3,221,252	1,819,963	3,250,731	3,395,657	3,034,706	4,060,181	3,683,020	1,864,002	2,214,930	3,066
Slave labor													
Nº of conflicts.....	18	27	18	29	28	21	19	17	14	16	21	45	
Murders.....					1		4						
Persons Involved.....	1,599	4,883	16,442	19,940	25,193	26,047	2,487	872	614	1,099	465	2,416	!
Hectares in conflict.....													
Worker conflicts ²													
Nº of conflicts.....								49	56	28	33	25	
Murders.....								1	5		1		
Persons Involved.....								24,788	366,720	4,133	53,441	5,087	!
Hectares in conflict.....													
Other ³													
Nº of conflicts.....	47	43	54	155	78	93	78	12	279	69	50	129	
Murders.....	4	5	11	10	10	2	4		4				
Persons Involved.....	366,069	307,123	15,331	118,952	45,925	36,581	451,157	3,288	109,162	164,909	62,319	106,104	14
Hectares in conflict.....													
Total													
Nº of conflicts.....	466	453	433	545	485	554	750	736	1,100	983	660	880	
Murders.....	79	54	46	52	47	41	54	30	47	27	21	29	
Persons Involved.....	559,218	554,202	185,996	391,128	308,619	381,086	935,134	506,053	1,139,086	706,361	556,030	532,772	45
Hectares in conflict.....	13,835,756	7,037,722	5,692,211	3,221,252	1,819,963	3,250,731	3,395,657	3,034,706	4,060,181	3,683,020	1,864,002	2,214,930	3,066

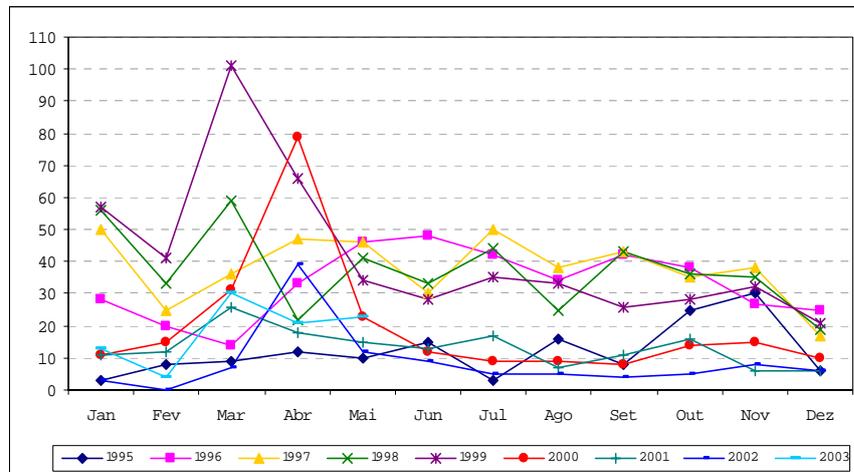
Source: Documentation Section of the CPT

¹Number of conflicts is the sum of land conflict events, occupations and encampments. In 2001, land conflicts include encampments. Occupation cases involving violence against individuals when not recorded in any other of the situations.

²Labor conflicts relative to noncompliance with labor laws and cases of abuse.

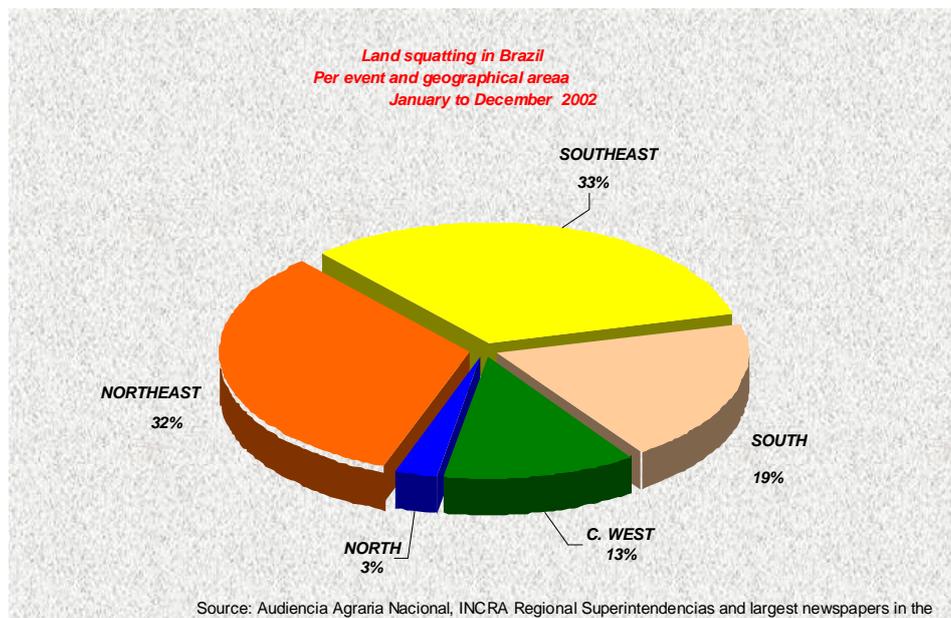
³Workers are included until 1996. After 1996, it includes conflicts during droughts, water conflicts, union conflicts, farming policies and Garimpo. In 2001, only drought-related conflicts were included. In 2002, the sum of drought related conflicts (5), Water conflicts (8) and Garimpo (1) were recorded.

**Graph 6: Land Squatting in Brazil
January-December, 1995-2002
January-May 2003**



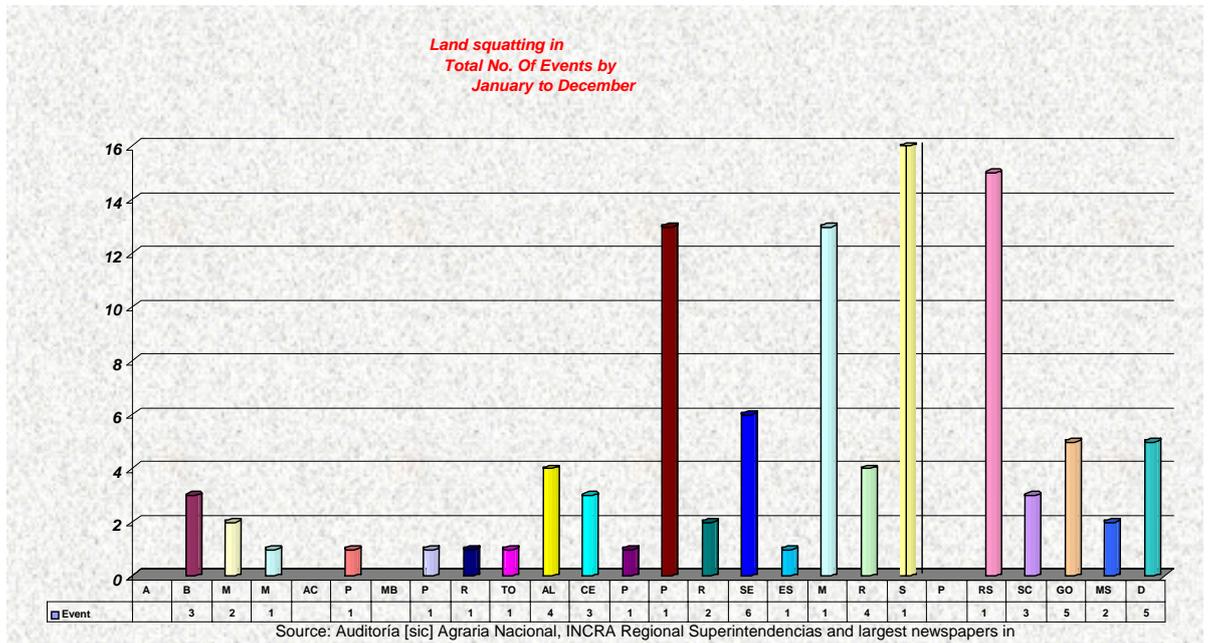
Source: Ministry of Agrarian Development – Audiencia Agraria

**Graph 7: Regional Distribution of Land Squatting in Brazil
2002**

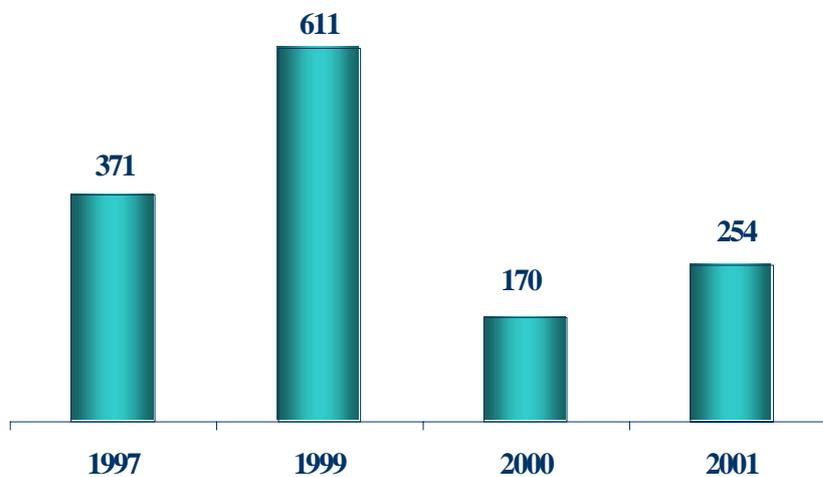


It is observed that in 2002, the majority of land squatting cases were concentrated in the northeast and southeast regions. In the northeast region, because of the presence of large unproductive plantations, particularly in Zona da Mata, where many old sugar cane processing plants remain partially inactive. In the southeast region, squatting is primarily concentrated in *Puntal de Paranapanema*, in the state of Sao Paulo, and is related to disputes over unoccupied government land. The law has already determined that the land is public, but the government has not reverted the possession of many areas, which continue to be used by landowners that already occupied the land (see Section 0).

**Graph 8: Land Squatting in Brazil by State
January – December 2002**

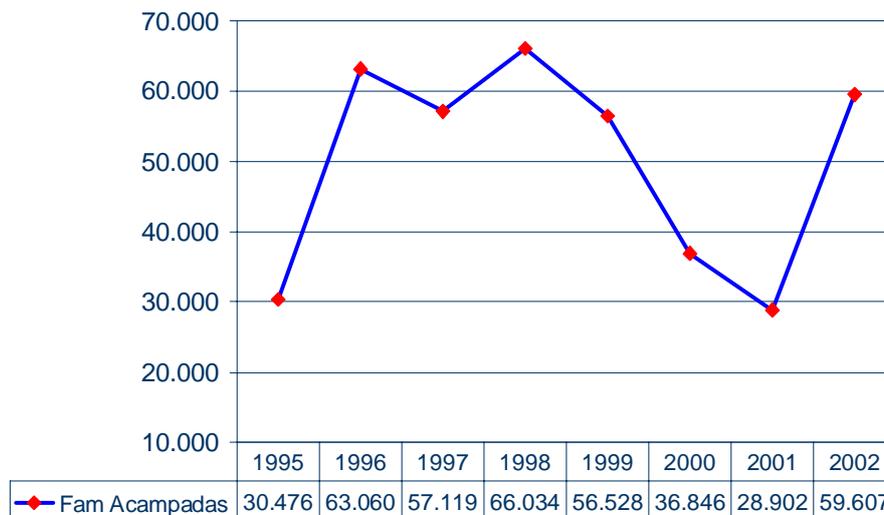


Graph 9: Conflicts with Worker Imprisonment



Source: CPT; Prepared by: Audiencia Agraria Nacional.

During the 1995-1996 period, number of families encamped doubled, resulting in 63 thousand families living in camps. Between 1996 and 1999 the number of encampments of families without land varied between 55 and 66 thousand. This number decreased in 2000 and 2001, but increased once more in 2002.

Graph 10: Families in Camps

Source: Audiencia Agraria.

CTP data does not differ from the data presented in this graph because the Audiencia started to generate its own data beginning in 1999 and 2000. Nevertheless, the CTP database is much more comprehensive and therefore offers a broader view of conflicts.

According to CPT data, the number of agrarian conflicts grew without interruption throughout the 1988-1999 period, dropped in 2000 and increased again until 2002. The number of murders as a result of agrarian conflict during this period varied with a downward trend, and increased again beginning in 2000. Recorded slave labor also decreased during the last decade, but began to increase beginning in 2000. Conflicts included under the Other Conflicts category also dropped in the 1990's but increased disproportionately in 1998 when there was a severe drought in the northeast region of the country.

Analysis of the conflicts by region (Graph 3 and 4) reveals that the majority of conflicts occur in the northeastern part of the country, followed by the north and central-western areas. It is noted that in these regions, which can still be considered border areas, the number of conflicts with violence against individuals is higher, and that in other regions, conflicts revolve around the possession and ownership of land, with a lower level of direct violence against individuals.

Barp (1998) created conflict indexes related to population density, land concentration and unexploited areas and the results concerning the origin of the conflicts are quite revealing. When population density is taken into account, the central-western and northern regions show a higher number of conflicts against both individuals and possession and ownership, while the northeast appears in third place. Despite the fact that border areas have a lower population density, areas in conflict are those that experienced rapid growth in population density due to the strong attraction of immigrants in the last two decades. These conclusions are confirmed by the updated version of Barp's conflict index, weighted by population density up to 2002.

The relationship between conflicts, land concentration, and exploited areas confirms that concentration and presence of unexploited land appear to be the two most important conflict factors. In addition to confirming that the most densely populated areas have a lower level of

violence and vice versa, Barp (1998, 12/20) notes “a direct relationship between unexploited areas and violence in the countryside (i.e., the larger the unexploited area, the greater the violence in the countryside)” as well as “an inverse relationship between the higher rates of exploited areas and violence in the countryside (i.e., the greater the productivity, the lower the violence in the countryside), and areas with more land concentration are the most violent and vice versa.” Since regional land distribution patterns, the exploitation rate and the productivity index (see Hoffmann and Kageyama, 2002) have not changed, it can be said that Barp’s conclusions are valid for the most recent period.

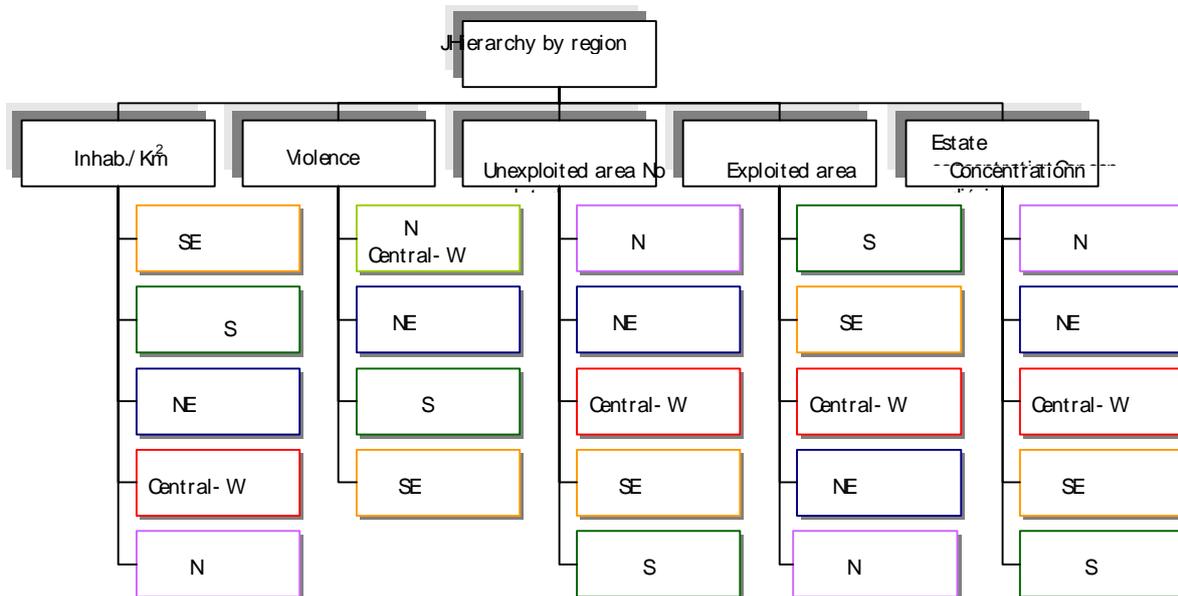
Barp’s conclusions, which are reaffirmed by updating the database until 2002, confirm that the struggle for land and agrarian conflicts are associated with both the presence of unproductive property and the lack of alternatives for survival since it is possible to use the population density and exploitation level as local development indicators. In regions with a less a concentrated ownership structure and a higher level of development, the incidence of agrarian conflict is lower. Diagram 1 summarizes Barp’s conclusions and ranks each region according to population density, violence, unexploited area, exploited area and land concentration.

Nevertheless, Barp does not reveal other causes of conflict, i.e. the presence of vacant land that could be reverted to the state and *griladas*,⁷ factors that explain the conflict in Puntal de Paranapanema, in the state of Sao Paulo (land that can be reverted to the state with irregular titling) and in Sur de Pará (inappropriately acquired land).

More detailed analysis of the evolution of conflicts during the 1988-1997 period by Barp (1998) reveals two important points that were not changed with the update of the data to 2002. There is a clear downward trend in conflicts involving illegal violence, which Barp calls barbarism, and an increase in legal or legitimate violence. This statement reflects the change in the nature of conflicts, specified previously, due to the appearance of social movements and the “presence of the State as a mediator in Agrarian Conflicts” (Barp, 1998, 28). It is also noted that the weight of conflicts against possession and ownership increases to the detriment of violence against individuals, a fact that Barp interprets – correctly in our view - as “related to the manner in which workers are organized to claim land and the manner in which the government proposes mediating social conflicts” (Barp, 1998, 29).

⁷ *Griladas* are lands acquired inappropriately.

Diagram 1: Regions ordered according to Inhab/Km², violence, unexploited areas, exploited areas and concentration of country estates.



Source: Barp, 1998

The shift from agrarian conflicts to the political struggle for access to land and agrarian reform has not only reduced violence against individuals but also completely dissociated land squatting —the main tool of the social movement - from violence (see Barp, 1998, 33).

Finally, Barp (1998, 34) observes that land squatting organized by rural workers is not connected to violence in the countryside. This confirmation proves that the organization of landless workers is a source of conflict, but not violence. On the contrary, worker organizations appear to contribute to reducing violence, in particular the violence against workers that characterized social conflicts in the countryside in border regions.

4. Evolution and Management of Conflicts in Recent Years

Given the structural determinants of agrarian conflicts: land concentration, the presence of unproductive land, vacant and/or “*grilada*” lands and the lack of squatting opportunity for rural labor, it is possible to relate the explosion of conflicts to the obstacles faced by the government to carry out agrarian reform and to solve the problem of vacant state land (*devolutas*⁸) and / or “*grilada*” lands.

The institutional framework is set forth in the 1988 Federal Constitution, the Land Statute of 1964 and a set of Supplementary Laws, Provisional Measures, Decrees, Interministerial Decrees and other government regulations and administrative acts, particularly of the MDA and the INCRA.

The Federal Constitution defines the private property system of the country (Article 5, XXII), which must satisfy its social function (Article 5, XXIII). It expressly states that rural

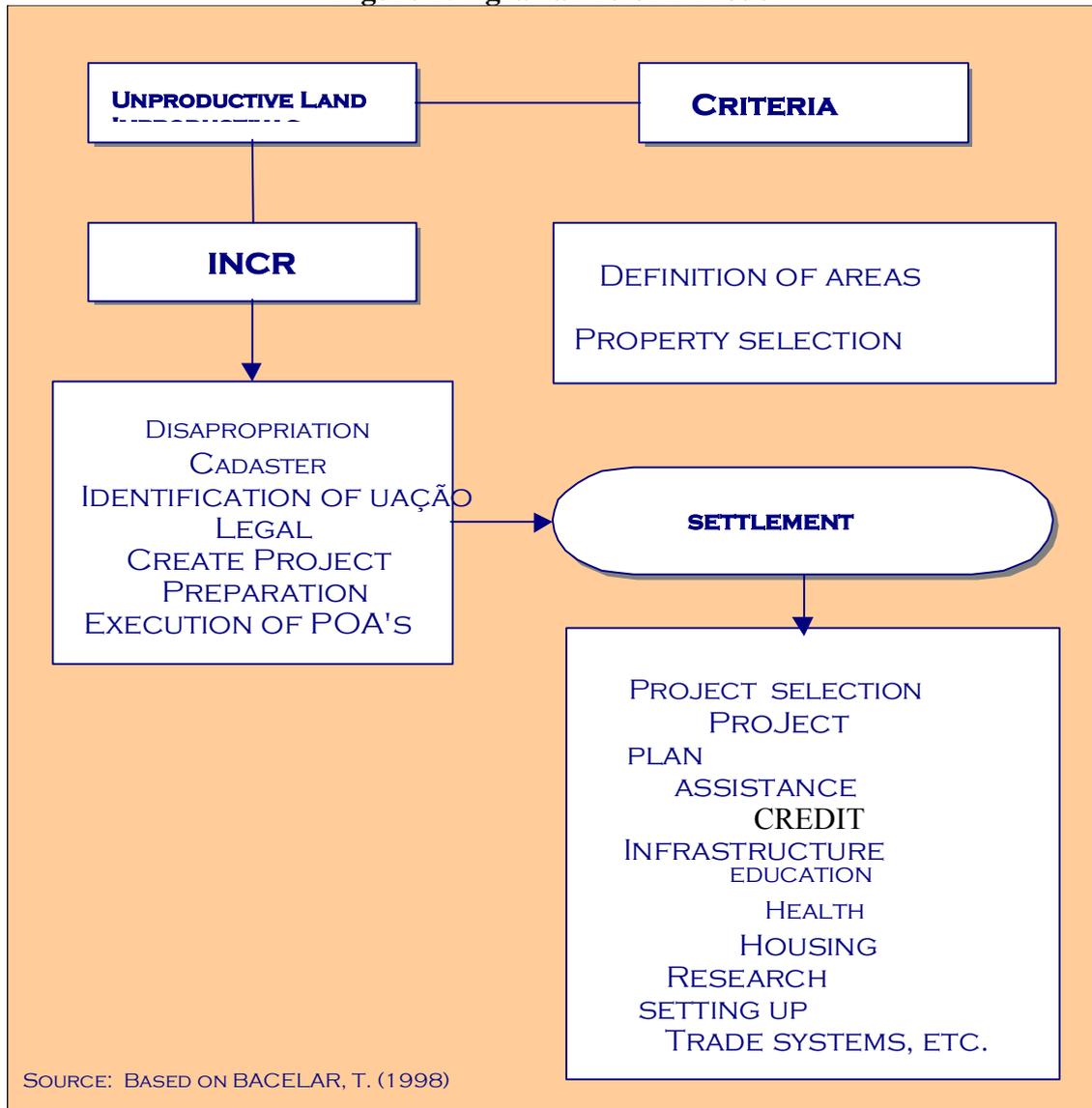
⁸Devoluta lands are public lands that are occupied illegally by large landowners and family farmers. (*posseiros*).

property must fulfill a social function (Article 186), and that “it is the duty of the Union to expropriate, for public benefit, for agrarian reform purposes, rural real property that is not fulfilling its social purpose, by means of prior and fair indemnification with agrarian debt securities, including a clause to preserve its actual value, redeemable in a term of up to 20 years...” At the same time, Article 185 of the Constitution expressly prohibits the expropriation of productive land for purposes of agrarian reform.

Given this institutional framework, there are two big obstacles to the implementation of agrarian reform on the scale and in the time necessary to avoid conflicts: (i) time and (ii) the lack of resources to acquire land and establish settlement projects. Below is a detailed explanation of these issues.

4.1. Expropriation of Real Property and Agrarian reform Settlements

Expropriation of unproductive land, the primary method of acquiring land for agrarian reform purposes, is by nature a conflictive process because it contrasts the interests and rights of private owners with the interests and rights of social groups. Buainain, Silveira and Teófilo (2001) emphasize that expropriation is, in the majority of cases, a tool to forcefully transfer land from owners to agrarian reform beneficiaries, and therefore leads to conflicts. While the law defined the possibility of expropriation, it sought to insure broad rights for owners to defend their assets and interests. The defense falls within the Judicial Branch, which is responsible for enforcing the laws in effect, and it can resort to the police force to enforce its rulings. Appeals to judicial authorities—a burdensome process in Brazil—provides for a long period to carry out the land acquisition process, which is not consistent with the speed required to prevent conflicts, and much less with the management of conflicts once they arise.

Figure 1: Agrarian reform Model

Source: Buainain, Silveira and Teófilo (2001)

Figure 1 shows a summary of the settlement model, from land acquisition through expropriation to family settlement. The process begins with the **selection of land to be expropriated**.

In theory, this selection should be made by the INCRA based on socioeconomic studies, but in practice when there is agrarian reform through conflict, social movements are the ones who in reality select the land through the occupation or invasion of land for the purpose of possible expropriation. Although social movements have occasionally squatted or invaded productive land (a symbolic case was the occupation or invasion of the land of the President of the Republic, in whose case there was no doubt as to its productivity), the vast majority of land squatted or invaded by landless persons is unproductive. It is worth noting that in practice, social movements have selected the land for expropriation purposes.

Once the land is selected, INCRA takes a series of steps and performs an inspection to confirm that the land is in fact unproductive. These steps include the following stages: first,

it consults the Registry to obtain information about the real property; preliminary analysis of the real property and research at the public notary's office to identify the owner and the titling status.

The next step is to notify the owner that an inspection will be performed. This step was always a big obstacle in the expropriation process because the law ensured owners their right to be notified in person that INCRA was going to inspect their property. Owners usually ignored the INCRA notification and denied having any formal knowledge of it. In many cases, after being notified of the inspection, owners protected the entrance to their land with armed men who did not allow INCRA employees to enter. INCRA alone does not have the authority to request police assistance with performing inspections. This assistance can only be obtained through a court order. In other cases, owners sought police assistance to guarantee the advance protection of the courts and prevent inspections from being performed.

Nevertheless, in June 1997 a Provisional Measure was enacted (N^o 1577), which makes it possible for the INCRA to enter any real property even without personal notification of the owners, whom are informed that the real property will be inspected by the publication of a notice in a newspaper of the state's capital. This strategy greatly reduced the number of owners claiming to have not been notified. The Audiencia Agraria, whose duty is to manage conflicts, has been very effective in eliminating this obstacle. (Section 0).

This process could last months, despite the fact that the INCRA is equipped with state of the art technology (satellite imagery to make a preliminary analysis of the property) and human resources (competent and skilled professionals to fight technical legal issues).

Once the INCRA overcomes the first obstacle, it carries out a preliminary inspection with a technical team of two agronomists and land registry specialists, a surveyor and any other experts needed. The purpose of the inspection, which results in the Level of Land Use (GUT) and the Level of Effective Management (GEE) assessment decision, is to certify whether the property is unproductive. This is an important stage in the process because it is common for owners to legally challenge the INCRA's assessment decision. Until recently, the lack of rigorous productivity assessment criteria was a major obstacle to carrying out expropriations. In the absence of well-founded decisions, judges accepted owners' requests to perform a second assessment called a judicial assessment, which delayed the process and presented opportunities for corruption (there were cases of judicial experts who accepted bribes from owners to "adjust" technical reports to meet their interests) and for contradictions between the INCRA decision and the expert appointed by the judge.

Judicial assessments are not mandatory in expropriation processes for agrarian reform purposes, and remain at the discretion of the judge (Mititão, 2001, 345). However, the weakness of INCRA decisions contributed to the development of judicial assessments. The new rules provide that judicial assessments have sixty days to present the decision, but the judicial assessment still delays the expropriation process a few months. In recent years, the INCRA took several steps to make the GUT (Level of Land Use) and GEE (Level of Economic Efficiency) calculations more objective, and to improve the quality of the decisions, including substantially modernizing its database, access to satellite images, training of human resources, and defining procedures and methodologies for preparing technical decisions and valuing rural real property.

If a decision confirms that land is unproductive, the next step is to determine whether the land is suitable for rural settlements. This step can be carried out quickly since the data necessary for this analysis was already obtained in the inspection. If the property is suitable, it can be expropriated and the owner is notified of the unproductiveness decision. From this point, the owner has 15 days to challenge the results of the decision at the INCRA. Once its unproductive status is confirmed, the government declares the real property to be for public benefit for agrarian reform purposes, carries out a new financial appraisal of the area and the INCRA assigns a value to the real property. In general, owners challenge this value and this leads to a revaluation through judicial assessment. In the best case scenario, the INCRA estimates a period of 10 to 12 months to carry out the whole process, from inspection through expropriation, provided the owner does not file an appeal in court. Nevertheless, expropriation is still not the end of the process; it is necessary to formally create the settlement, settle the families and establish them on the property. This process can take a few additional months because it depends on the availability of INCRA budget resources.

In the event the INCRA rejects the owner's appeal, the next step is to make the legal preparations to issue a Presidential Decree to expropriate the property. In general, INCRA employees prepare this decree quickly. The proceedings are sent to Brasilia to be reevaluated by the Solicitor General of the INCRA and then go to the Civil House of the Presidency of the Republic [Casa Civil de la Presidencia de la República] to be signed by the President. The information obtained confirms that this step is expeditious and that the President signed expropriation decrees at least once a month. One can see that the difficult part of the process is the beginning.

Once the expropriation is decreed, another step in the process begins, which is carried out in court, which transfers the possession and ownership of the expropriated property from the former owner to the INCRA, which is then responsible for preparing and filing the action to issue possession of the expropriated property. This entails preparing an assessment decision on the value of the property, distinguishing between the value of land to be paid in Agrarian Debt Securities [Títulos de la Deuda Agraria (TDA)] and the value of the assets and facilities to be paid in cash. The decision is based on local and regional data on land prices and the value of the assets and facilities. This value decision of the property is another crucial part of the process, not only because owners challenge it, but also because it has created corruption, which led to the payment of huge indemnification amounts, which reduced even further the financial ability to collect land for agrarian reform.

The INCRA prepares the value decision relatively quickly and the primary obstacle to continuing the process is financial. To begin the process, a judicial deposit of TDAs (Agrarian Debt Securities) and the money corresponding to the assets and facilities must be made. Both deposits depend upon the availability of resources and the issuance of securities scheduled by the Treasury.

From 1996 to 2002, major progress was achieved in these areas. From 1995 to 1998, the Treasury issued TDAs twice a month and the agrarian reform budget was increased considerably. Provisional Measure No. 2.027-2000 reduced indemnification taxes and linked the TDA tax rate to the size of the expropriated property (lower rate to larger properties), reducing the cost to acquire land.

Harsh measures were also adopted to suppress corruption in the preparation of decisions and inflated property values. Some examples follow:

- (i) Hold legally accountable persons responsible for preparing decisions;
- (ii) A broader technical-political commission to evaluate results;
- (iii) Legal definition (Provisional Measure N° 1577-97) of criteria for indemnification and appraisal methodologies for assets and facilities;
- (iv) Perform land market studies;
- (v) Modernization of the database.

Even with this, Sampaio's (1999, 21) research reveals that "the average time interval between the publication of the Presidential Decree, which declares areas to be for public benefit for agrarian reform purposes, and the expropriation ruling is approximately 6 months (172 days)."

Although Supplementary Law N° 76-93 defines the summary process for expropriating land for agrarian reform purposes and indicates that this process may take several years [sic]. In 1999, Sampaio conducted a study that analyzed 601 lawsuits commencing in 1993 relative to the timeframe from the initiation of an expropriation procedure to the first ruling of the judge. His conclusion is that "Of the 601 proceedings, only 78 (12.97%) ended in a judgment, and of these, 63 were just to confirm agreements between the parties. The remaining (15) were guilty verdicts. The average time lapsed was 262 days in the case of agreement confirmation and 757 days for sentences. Before the new law, the process took up to 10 years. Of the total, 523 remain in progress (87.02%), which already had an average of 594 procedure days, as of November 1998" (Sampaio, 1999, 21).

This means that after the new law, the term was reduced from 10 years to 262 days in cases of simple confirmation, and 750 days in cases of litigation. It is worthwhile to note that 87% of the proceedings still had not ended after 594 days. Although great progress was achieved (from 10 to 2 years), it is evident that the INCRA has no ability to anticipate or solve conflicts because it must deal with very long judicial procedures.

The enactment of Supplementary Law N° 88/96 produced a major change by determining that the issue of possession (temporary ownership) be made in a maximum period of 5 days after the INCRA files the suit. This measure was crucial to make it feasible to increase settlements after 1995, and made it possible to reduce the above-referenced conflicts. Sampaio observed that "the average time between the expropriation judgment and the issue of the property possession title by the INCRA is currently 42 days. Prior to this law, the average was 129 days. This reduction was observed in all the units of the Federation..."

Nevertheless, the process does not end with the possession issued by the INCRA. As stated previously, the next step is to create the settlement and establish the Settlement Development Plan [Plan de Desarrollo del Asentamiento (PDA)], which are necessary to establish the beneficiaries and for them to receive funds to start production. As explained later, the delay and difficulty settling families and establishing populations and releasing the resources provided by law have been a new source of conflict, very different from agrarian conflicts. In this case, the conflict is between the settlers and the government, and the core of the *new conflict* is access to the facilities provided by public policies, from credit to education. At this time, the Audiencia can also play an important role.

Obviously, it is not necessary to add the time elapsed in each stage of the expropriation and settlement processes to conclude that the procedures, despite the progress achieved in recent years, are not appropriate for anticipating conflicts, much less managing them. By merely

adding the 172 days between the expropriation decree and the action judgment to the 42 days between the judgment and the issue of possession one can conclude that it is difficult for the INCRA to efficiently respond to conflicts.

The following chart tells the story of a typical settlement, the Geraldo Garcia, in Mato Grosso del Sur. The chart shows the duration of the entire expropriation process proceedings in the event of a lawsuit. It took 4 years of squatting to achieve the settlement, which in 2003, was still not established. In a context characterized by strong and growing social pressures, the absence of negotiation and conflict management tools made the situation explosive.

History of the Geraldo Garcia Settlement	
Social movement	MST
Formation of the encampment	500 families 1997
First illegal takeover	January 24, 1998
First eviction	February 8, 1998
Area	5,689 Hts.
Negotiation process	
Negotiation	From March 1998 to June 1999
Outcome	Settlement of families
History of the Property	
Objectives: To verify the location, occupation and exploitation of the property and update of the land registry. Examine aspects related to productivity, assess and appraise the real property with regard to its social function.	
Notification of the owner	August 19, 1999
Inspection performed	From August 24 to 27, 1999
Inspection report	September 27, 1999
Inspection outcome	UNPRODUCTIVE PROPERTY
Administrative Procedures	
Notification to the owner	October 6, 1999
Process review by the owner	October 22, 1999
Challenge	November 3, 1999
Review Commission Report	November 17, 1999
Process review by the owner	November 22, 1999
Chain of control	December 1 - 8, 1999
Send the proceedings to the INCRA in Brasilia for expropriation	December 9, 1999
Lawsuit and Expropriation Process	
Security order granted to the owner	January 5, 2000
Return the process to the INCRA in the state of MS	January 6, 2000
INCRA's Defense period	Up to February 9, 2000
Process goes to the INCRA in Brasilia	July 2, 2000
Expropriation Decree	July 21, 2000
Property assessment decision	September 6, 2000
Publication of the inspection notification	September 13, 2000
TDA issuance request	September 18, 2000
TDA issuance	October 25, 2000
Court Judgment: The INCRA receives possession of the real property	December 2000
Settlement Execution	
Settlement established	December 29, 2000

Begin demarcation process	December 2000
Conclusion of demarcation work	November 28, 2001
Bid to appraise and divide the land	August 2000
Selection of beneficiaries (drawing)	April 6, 2002
Payment of the installation credit	May to August 2002
<i>Pending for 2003</i>	
<ol style="list-style-type: none"> 1. Owner's request for judicial assessment of the values determined in the INCRA assessment (awaiting judge's ruling) 2. One area is still under "<i>judice</i>", i.e. the INCRA still does not have definitive ownership of the land. 3. Settlement Development Plan 4. Roads: Bid in progress 5. Rural electrification: planned for 2003/2004 6. Basic sanitation and water for human consumption: planned for 2003/2004 	

4.2. Acquisition of Vacant Land

Recovery of vacant reversionary areas by the state is another way to acquire land for agrarian reform settlements. The Federal Constitution grants this function to the states of the federation. In the past, the technical procedures necessary to identify and demarcate vacant areas were extremely burdensome and slow, because the demarcation and measurement tasks were performed manually. Now, this can be carried out in less time with the assistance of satellite images.

Establishing the state as the owner of vacant areas is a long and complex judicial process replete with problems because the majority of land is already occupied, but illegally. Acknowledgement must be obtained from the court that the area is actually vacant. The instrument used is the discriminating action that demands that the history of the control of the area in dispute be identified commencing from 1850, the publication date of the Land Law. Any type of problem can be found at this stage: false records, illegible entries, lost documents, burned notary documents, etc., which give rise to innumerable challenges in each stage of the process, the request for technical assessments and other judicial tricks to prolong the undefined period.

The experience of the State of Sao Paulo illustrates the difficulty caused by lawsuits relative to distinguishing activities. Analysis of the public land acquisition process of 31 settlements in Puntal de Paranapanema—the area of the state with the most conflict - that ended by mutual agreement of the parties reveals the following:

- In 1972, 18 actions were brought. Of these, 7 concluded in 1997. In other words, the state was only able to take possession of the area 25 years after the action started. The other proceedings also ended by mutual agreement between the state and the squatters in 1998, 1999, 2000 and 2002.
- In 1985, three actions were initiated and ended by agreement beginning in 1997.
- The other actions were initiated in 1999 and ended beginning in 2000.

This shows that agreements between the parties are the best alternative to fighting these conflicts since they made it possible to reduce the process time from 25 years to less than one year.

When there is no agreement after the distinguishing activities are complete, which identify the area as vacant and transfer ownership to the state, it is necessary to obtain the possession of the property that is already occupied by other parties. A new judicial action must be initiated, the protest action, i.e. the state protests the possession of its property occupied by third parties. The process is long because it entails appraising the improvements to the property by the former occupant (provided the occupant is acting in good faith). Analysis of the 42 settlements in the specific area that carried out protest actions confirms the slow judicial process. The action for the land of the Santa settlement, looking at Paranapanema, began in 1995 and lasted until 2002, when it end through an agreement. In 1994, four other actions began and ended commencing in 1996, when the state, faced with deteriorating agrarian conflicts, decided to shift its legal strategy and seek agreements between the parties. In this case, the law's role is to confirm the agreement, granting it force of law. One can see that state's decision to pursue agreements made it possible to rapidly end protest actions initiated beginning in 1996. In 7 cases, the actions took less than one year, and the others up to two years.

Two points are worth highlighting: first, the positive role of the social movement to pressure the government to recover areas it owns that were occupied by third parties. This land had already been distinguished as area belonging to the state, but continued to be occupied as if it were private. Also, the protest and immediate nature of the movement restricts its own efficacy because it leaves the government without any support to mobilize the measures and means necessary to respond to the very protests of the movement. The movement has always remained a political opposition movement and has refused to establish cooperative relations despite the fact that could generate improvements in the expropriation and settlement process.

Second, the importance of mechanisms to manage conflict, which make it possible for the parties to enter into agreements, and make the specific agreements viable. In the case of the state of São Paulo, the agreement between the state and landowners of the Puntal was only realized due to the coordinated work of the INCRA and ITESP, and the joint work on the federal and state levels. Decree 433, which provides for the acquisition of land by means of TDA and currency (the same criteria used for expropriated land), was important to closing the agreement and reducing conflict: the state of São Paulo contributed with its own land, the country compensated the occupants and the ITESP/INCRA contributed to the settlement step.

4.3 Land Acquisition through the Market

Another mode is to acquire land through the market, a mechanism introduced in 1997, with the pilot credit program for the land acquisition (*Country Estate Credit*). The program's concept and operation are quite simple: granting country estate credit for producer associations that acquire land, providing assistance for their establishment and credit for production and related investments. An interesting point to note is the elimination of conflicts to acquire land and the replacement of lawsuits with an agreement between the parties that negotiate the land. The analysis by Buainain et al (1999) of a sample of 116 settlement projects with land acquired by producers confirms these statements: the entire land purchase process was carried out in less than 4 months. The obstacles encountered arose from the legal aspects of the process due to the availability of resources to acquire the land and irregularities in the titling of the negotiated property. In many cases, it was only after the negotiation concluded that the workers learned that property documents were not correct and the deal could not be closed immediately.

Reydon (2000) also holds that the acquisition of land through the market reduces the cost of land considerably for agrarian reform programs. The average cost per hectare of land acquired by the *Land Certificate Program* in the northeast was 167.30 BRL and the expropriation cost for the INCRA, at 539.40 BRL, was almost four times higher. According to Reydon (2000, 91), "the costs per hectare of land of the *Land Certificate Program* are lower than the INCRA expropriation cost. On average, they are 66% cheaper in Maranhão, 66% in Ceará, 14% in Pernambuco, 43% in Bahia and 49% in Minas Gerais."

4.4 Cost of Agrarian reform and Financial Restrictions

Besides the problems associated with the slowness of the process to recover land for agrarian reform purposes, the government faces financial restrictions that make it difficult to both anticipate and prevent conflicts and to overcome them once they arise. The Brazilian

agrarian reform program is quite costly for several reasons; (i) institutional; (ii) operational and (iii) the model adopted.

The Federal Constitution sets forth that in expropriations, owners must be paid the market value of the land, therefore imposing a financial limit on the government's capacity to sponsor broader agrarian reform. In addition to this, the law in effect until the mid 1990's contributed to raising the cost of the agrarian reform. On the one hand, it facilitated fraud in the appraisal of real property, and on the other, regulations allowed for the payment of 12% annual compensatory interest on the difference between the amount deposited by the INCRA and the value ruled by the court. However, since the proceedings took several years, the price of expropriated land was readjusted automatically, independent of the actual change in prices on the land market. Raydon (2002) shows that the price of land dropped throughout the last decade, but this drop did not prevent the prices of expropriated property from increasing due to the correction of the value at a minimum of 12% a year, according to the regulations on this in effect since that time. In some cases, when the decision was confirmed, the final value of land was several times higher than the actual value of the expropriated property.

Another source of distortion was the concept of making "fair compensation" and the method for calculating it. Sampio (1999, 34) observed that the "current approach —sum of the uncultivated land, assets and facilities — did not respond to the problem of a fair compensation set forth in Article 12 of Law N° 8.6289/93 because the land market did not separate these components. Thus, the basic values of uncultivated land used in the research, which are referenced in the appraisals, are really not representative of this alone because of the possibility of including the improvements made to the same." In addition to this, the value of the improvements was calculated by the replacement cost, without correctly taking into account depreciation or the fact that many improvements did not have the same market value, and that their value had been included in the price of the land. The value of the improvements subsequently increased to the value of the uncultivated land, further increasing the distortion of the process and the price of the expropriated property.

In recent years, several measures were adopted to correct this distortion and reduce the cost of settlements. Among the most important is Provisional Measure N° 1577 of 1997, which establishes the criteria to determine the fair compensation, taking into account the location of the real property, its suitability for agricultural, size, occupied area and time of possession, functionality, time of use and condition of the properties. This provisional measure also introduced clauses to count the value of the compensation with the market price of the entire property (the value of the improvements must be deducted from the market price selected for the research), thus avoiding over appreciation of the property, which was implicit in the previous criteria where the replacement value of the assets and constructions was added to the price of the land.

The provisional measure also changed the criteria for the payment of compensatory interest to avoid the application of the standard legal criteria (125 per year), setting the ceiling of 6% per year. Later, PM N° 1901 of 1999 linked the tax rate to the GUT, imposing an inverse rate to the GUT. Owners of property with a high level of unproductiveness would receive 0.5% per year as compensatory interest.

As a whole, these measures contributed to reducing the cost of acquiring land for agrarian reform, which also benefited from the land price reduction during the 1990's.

The results of the INCRA's management during the 1995-2002 period confirms the reduction in legal costs related to the total amount of land expropriated (values in millions): 255 BRL and 2.742 hectares (1997); 79 BRL and 3.140 hectares (1988); 81 BRL and 2.369 hectares (1999); 136 BRL and 2.256 hectares (2000); 37 BRL and 1, 85 hectares (2001). It also confirms the reduction of land acquisition cost per settled family (Table 12). Nevertheless, the total cost per family, while lower than estimated, it is still high.

There is no doubt that the high cost of land has restricted and continues to greatly restrict the government's capacity to intervene in the agrarian problem, and in this sense, it is the determining factor in agrarian conflicts, which increased during the second half of last decade. Even today, the high costs within the context of fiscal restraint are the primary restrictions to expanding and sustaining agrarian reform in Brazil and limiting the possibility of anticipating and responding to agrarian conflicts in a more effective manner.

4.5 Conflicts and Land Policy Measures During the 1995-2002 Period

We argued in previous sections that conflicts are related to the difficulties the government faces in implementing agrarian reform. In other reports (Buainain, 1999, 2003), we argued that the greatest legacy of the Cardoso Administration was not the record number of families settled, but the creation of institutional conditions that are more favorable to implementing a program consistent with agrarian reform. Actions were taken in several areas: economic, legal, operational, human resources, planning and the introduction of the new action tools and mechanisms that made it feasible to increase rapidly, although in an unbalanced manner, the number of families settled. Below, we describe some of the most relevant measures.

First, a set of measures was implemented that made the rapid property expropriation process feasible, in particular Supplementary Law N° 88/96(1996), which provides for a maximum period of five days for court authorities to transfer possession of the property to the INCRA, and PM 1577 of 1997, which expedites the inspection of property. Together, these two measures make the expropriation process feasible, which as we saw previously, did not progress due to the difficulties created by owners in performing the productivity inspection of the property and the transfer of the possession of expropriated property to the INCRA.

Second, measures were undertaken to reduce the cost of agrarian reform, some of which were noted previously.

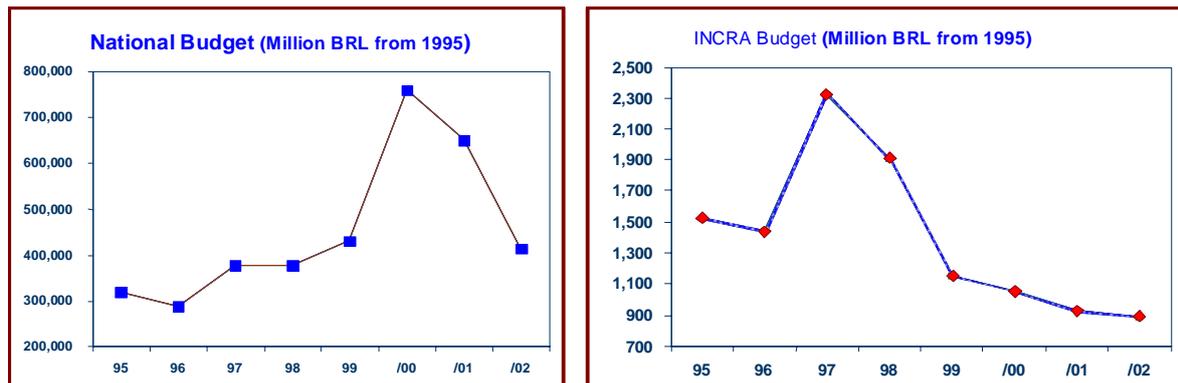
Third, agrarian reform gained importance in the political agenda of the government. This is reflected in the political decision to increase the budget for the agrarian reform program, at least for the 1995-1998 period (see Graph 12). The absolute increase in the INCRA budget is a reflection of the political priority granted to agrarian reform. During the 1995-1998 period, the INCRA budget also increased in relation to the country's budget (average 0.52%), reaching its highest rate in 1999 (0.61%). This budget increase reflects the increase in agrarian conflicts during the period, and at the same time, it makes the expansion of settlements feasible, which were fundamental factors in reducing the conflicts seen later, beginning in late 1997.

Other evidence of the importance attributed to agrarian reform is the fact that many of the changes that make expansion of expropriation and settlement feasible were adopted through

provisional measures, actions under the exclusive competency of the President of the Republic, employed specifically to avoid the long approval process through Parliament.

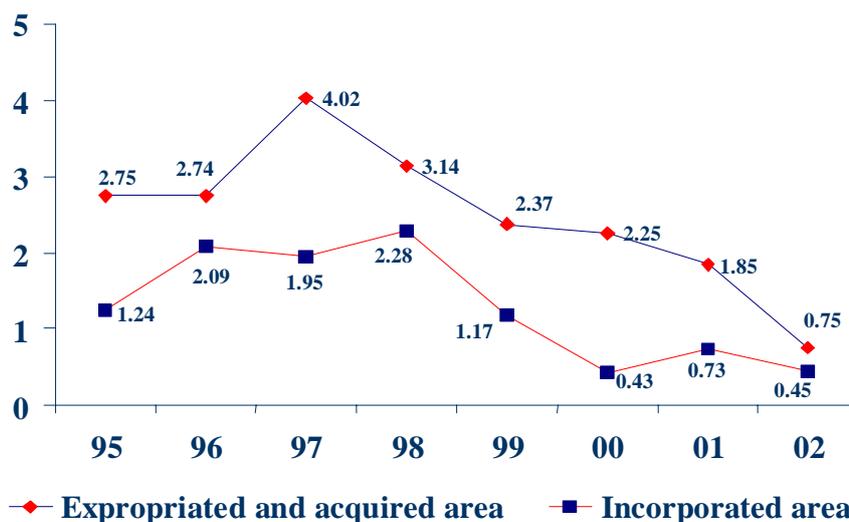
Beginning in 1999, the political priority declined, which is reflected in the reduction of the INCRA budget, both in absolute value and in relation to the country's budget (average 0.19% for the 1999-2002 period and 0.14% for 2000-2001). The relationship between the number of families settled and the availability of resources is quite clear.

Graph 11: National and INCRA Budgets



Fourth, expropriation and settlement actions were accelerated. In fact, the total amount of land expropriated and acquired from settled families increased beginning in 1995 and remained over 2.2 million hectares per year until 2000. The total land actually incorporated into the agrarian reform accompanied the evolution of the land expropriated and acquired. This outcome cannot be minimized; we only have to compare it with the performance during the early years of the 1990's. During the 1990-92 period, 2.7 million hectares were expropriated, and from 1993 to 94, only 967 thousand hectares. During these four years, at least 60 thousand families were settled.

While the social movement questions these figures, it cannot be denied that the total land expropriated during the Cardoso Administration surpasses the total land expropriated the previous twenty years. This record expropriation was in response to the pressure exerted by the social movement and to agrarian conflicts, but it would not have been possible without the political will to carry it out, and without having enacted the legal and operational measures mentioned previously.

Graph 12: Total Area Expropriated and Total Area Expropriated and Acquired

Source: INCRA, Division de Procesos Finalísticos y Sisot. Data from 2002, until November.

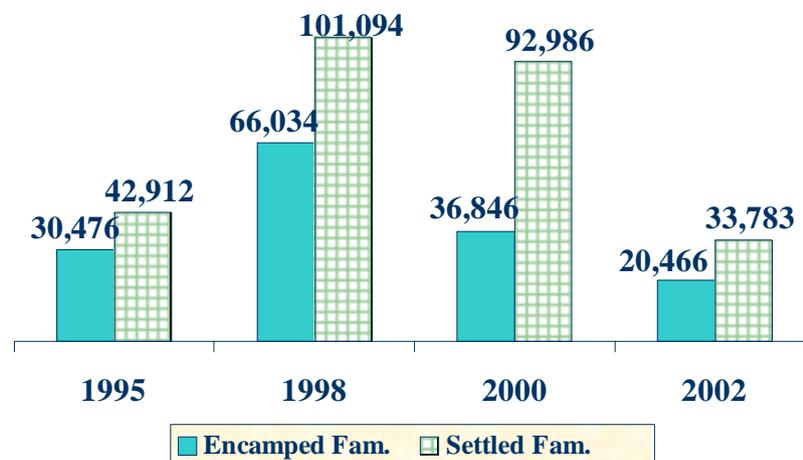
The number of families settled also grew dramatically (Graph 14) and always remained over historic levels. Between 1964 and 1994, only 220 thousand families were settled, a result that was achieved before the end of 1998 when Cardoso's first term as president ended. 1998 was the peak year, with over 100 thousand families settled. It must be emphasized that both the area expropriated and the number of families settled continued to be higher than historic levels even after the budget was reduced. This is explained by the drastic drop in land prices and the fact that both expropriation and settlement reflect not only the current year's budget, but also the actions undertaken in previous years. The reduced budget decreased the operating capacity of the INCRA in 2002 and it probably also created difficulties in 2003.

It must be noted that beginning with the adoption of the "Nuevo Mundo Rural" (New Rural World Program) in 1999, the INCRA was not responsible for the social activities in the settlements. Thus, education, health, basic sanitation and other related activities went to the respective ministries and their agencies in the federal units. These measures freed up the INCRA budget for acquiring land, demarcation, infrastructure and installation and production credits. Yet, the budget reduction did not make it possible to establish the settlements provided in the government plan and caused a clear deceleration in the pace of agrarian reform.

Graph 13: Change in the Number of Families Settled

Source: INCRA – Sipra.

These statistical settlement results have been questioned by the landless workers movement, which accuses the government of falsifying these figures, and specifically, of including in the agrarian reform studies the normalization of possession of small farmers that already had land without titles. We will not address that dispute here. The reduction of conflicts is an indicator that agrarian reform made significant progress between 1995 and 2002.

Graph 14: Ratio of Encamped Families and Settled Families

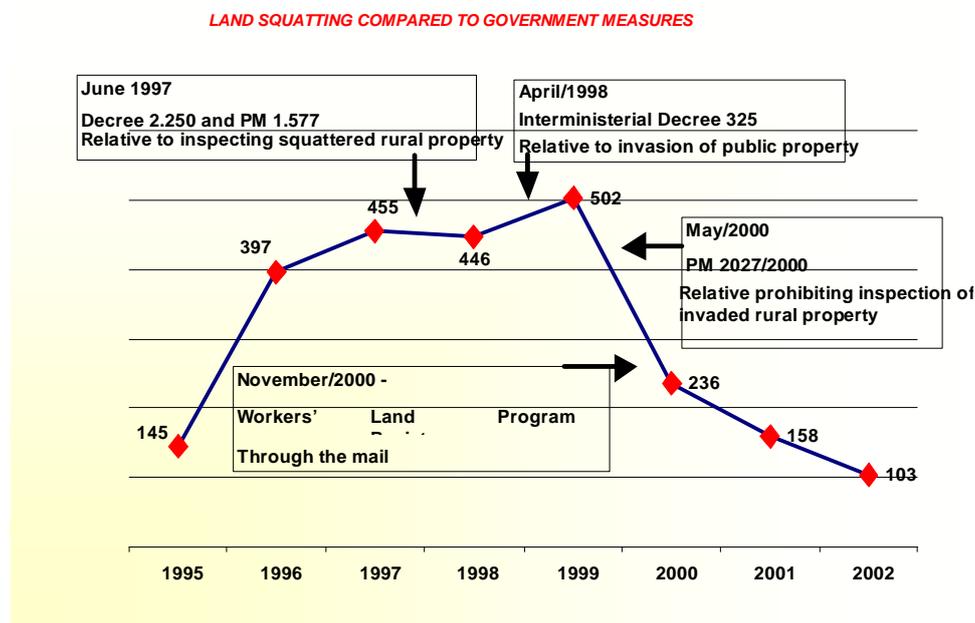
Source: Audiencia Agraria Nacional – MDA

The studies of Barp (1998) and Santos and Teixeira and Becker (1998) had previously identified a clear connection between government actions and agrarian conflicts. On the one hand, “government actions, promoting settlements, are always linked to pressure from movements that claim land through squatting” (Barp, 1998, 38); on the other, the increase in settlements is related to the reduction of agrarian conflicts and violence in the countryside.

Taking the number of encampments as an indicator of the pressure from the social movement and of the possibility of conflict, the impact of settlements on reducing encampment is clear (Graph 15). It is also noted that the increase in settlements between

1995 and 98 was sufficiently powerful to reduce by half the number of encampments between 1998 and 2000.

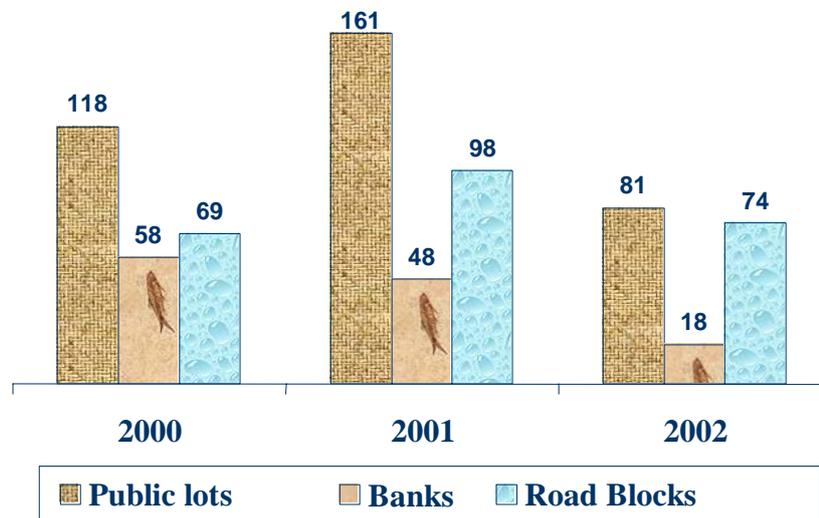
Graph 15: Squatting and Government Measures 1995-2002



Source: Audiencia Agraria Nacional.

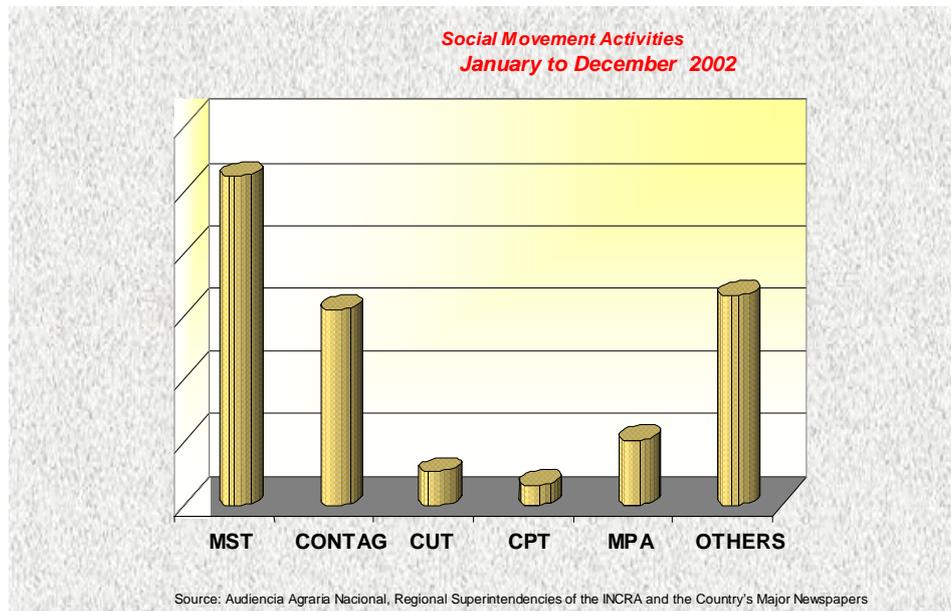
In addition to the increase in settlements, the government took other measures to control and reduce land squatting/invasion. The first, in April 2000, related to the occupation of public buildings, which excludes from the agrarian reform program those participants who are occupying public buildings. The second, which had a greater impact on reducing squatting, was adopted in May 2000 and prohibits the inspection of invaded rural property for a period of two years after the invasion; if squatting recurs, the restriction period increases to 4 years. The marked drop in squatting from the time this provisional measure entered into force in a context of settlement reduction appears to indicate that the decision had an influence on the activities of the social movement. (Graph 15).

Provisional Measure 2027 is the subject of intense debate. The social movement exerted and continues to exert considerable pressure on the government to revoke it. It is without doubt a controversial issue. On the one hand, the change in squatting leaves no doubt as to the effectiveness of the provisional measure with regard to the explicit goal of reducing squatting, and in this sense, it positively reduces, but does not solve, the conflict created by squatting. On the other, to the extent that it does not contribute to the resolving the causes of the problem, it only moves the focus of the conflicts and the strategy of social movements from squatting unproductive property as a means to pressure the government, to other property, including productive property, and to squatting public buildings, holding marches, etc. Graph 16 confirms the increase in the number of demonstrations through squatting in public buildings.

Graph 16: Social Demonstrations through Squatting in Public Buildings

Several sources consulted by the author, associated with both the Cardoso Administration and the Lula Government, the judiciary branch, the social movement and owner organizations reveal that the vast majority of property squatted in the 1990's was actually unproductive. According to INCRA officials, over 80% of the property squatted that was inspected was classified as unproductive. In São Paulo, in the Puntal region, the focus of squatting has been public land already illegally occupied by large landowners, and ITSEP technicians confirmed that the areas that the judiciary did not recognize as public property were not occupied by the landless [groups]. The redirection of squatting to public locations (plazas, buildings and roads) or productive property may increase conflict.

To the social movement, the provisional measure is undemocratic and unconstitutional. Undemocratic because it arbitrarily restricts citizens' rights to demonstrate and unconstitutional because it impedes the full execution of the constitutional provision that it is possible to expropriate unproductive lands. According to the movement, because squatting unproductive land is one of the primary mobilization tools in the fight for agrarian reform - families adhere to the expectation that occupied land will be expropriated - the primary goal of the provisional measure was to demobilize social movements and ease the struggle for agrarian reform.

Graph 17: Social Movement Activities

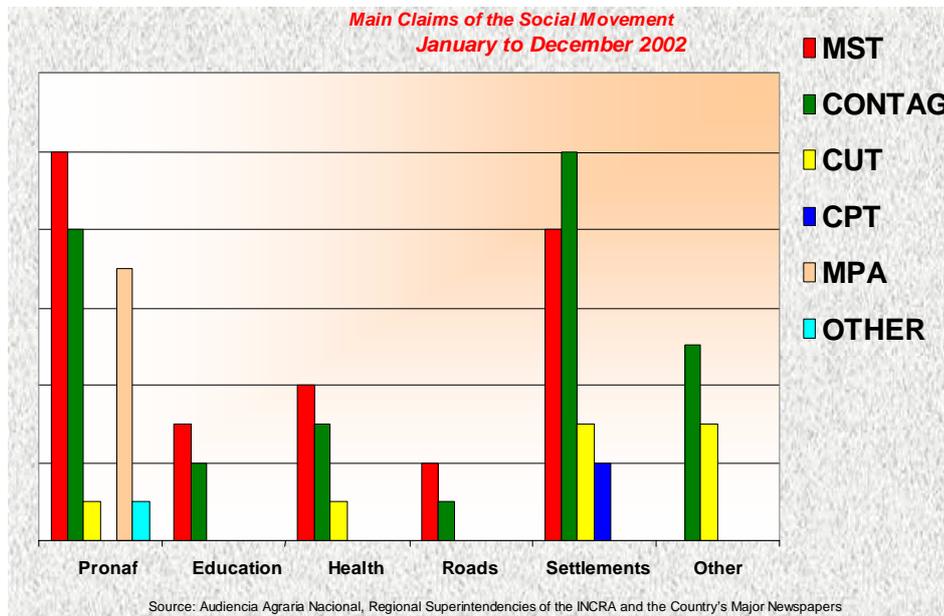
For the officials in charge of developing agrarian reform during the former administration, the arguments of the social movement are not valid. On the one hand, the right to demonstrate is guaranteed, provided no illegal actions are carried out, and the squatting of private property, even if it is unproductive, is illegal. On the other, it also does not violate the constitution since it only suspends the inspection of property with squatting for a period of two years. Despite the fact that, in practice, no property can be expropriated without having been inspected, the provisional measure does not establish in any way that unproductive property cannot be expropriated, and in this sense, it does not contradict the Constitution, at least formally. In addition to this, it is recognized that the provisional measure can influence the mobilization capacity of a social movement, although that was not its intent.

From the government's point of view, the purpose of the measure was to reduce the pressure caused by squatting, and take the government out of the position of being hostage to the social movements. This position had the government merely putting out fires in agrarian conflicts, and obligated it to place settlements on land selected by the social movement - not necessarily the most appropriate; to negotiate from a position of disadvantage with landowners, since they knew that the government was under pressure, and therefore was in a hurry to solve the problem; to distribute land to the members of the movement, and not necessarily to the most qualified or needy families; to carry out agrarian reform on a scale incompatible with the support funds necessary to make the settlements a success, from the infrastructure deficit confirmed in the recent Sparovek study (Sparovek, 2003). According to former minister Raúl Jungmann, the provisional measure and the reduction in squatting are fundamental to moving from the model of agrarian reform through conflict to planned agrarian reform that is more coherent and sustainable.

There appears to be no doubt that the provisional measure contributed to reducing land squatting; at the same time, it made the negotiation process between the government and the social movement more difficult, particularly in cases where, despite the provisional measure,

land was squatted or invaded. Finally, the invasion or squatting of productive property, neighboring the property targeted by the social movement as a pressure strategy, contributed to triggering emotion and increasing rural conflict since the owners of productive property fully support the law to reject invasion or squatting, and in general, do not agree to negotiate with the social movement or the government.

Graph 18: Main Claims by Social Organization



Finally, the government introduced new “*fundiaria*” country estate policy tools, in particular the Land Bank, the Country Estate Credit Program, and the creation of a national registry of candidates for agrarian reform by mail. The social movement considers all these tools to be measures whose objectives are to demobilize them and reduce their capacity to exert pressure. The government’s own propaganda reveals this goal: “Why cut the fence when you can walk through the door?” The problem here is the lack of ability to respond to the demand. Conflict is only postponed.

The reduced pool of labor and successful squatting of land as an instrument to mobilize and exert pressure appear to be creating greater polarization of the social movements (Graph 18), with squatting in public buildings, banks and roads. This paper does not analyze the political strategies of the social movements that struggle for agrarian reform, but it is clear that the movement is expanding the scope of its claims “demanding reforms in the economic policy of the government.” On the one hand, this appears to reflect the view that a broader implementation of agrarian reform requires more profound political changes; but it also reflects the difficulty of mobilization due to the very measures established by the government. Graphs 17 and 18 show the level of activity of the main organizations as well as the types of claims. It calls attention to the fact that in 2002, claims for support programs for settled and producer families were as strong as their claims for land.

Chart 1: Land Owners and Worker Organizations

Movimiento de los Trabajadores sin Tierra (MST)
Comisión Pastoral da Terra (CPT)
Central Única de los Trabajadores (CUT)
Federación de los Trabajadores Rurales de los Estados
Confederación de los Trabajadores de la Agricultura (Contag)
Movimiento por la Libertación de los Sin Tierra (MLST)
Movimiento de los Agricultores Sin Tierra (MAST)
Movimiento Esperanza Viva
Movimiento Nacional de Productores (MNP)
Unión Democrática Ruralista (UDR)
Confederación Nacional de la Agricultura (CNA)

5. Management of Agrarian Conflict: The Experience of the "Audiencia Agraria" and the Judicial Branch

We previously argued that the only effective and efficient response to agrarian conflicts in Brazil is to carry out the agrarian reform program, thus addressing not only the legitimate demand for land, but also the provisions of the country's constitution. However, we noted that the prevailing institutionalism makes it difficult to implement agrarian reform, for either legal or financial reasons. This difficulty creates a space for conflicts to arise, which the public authorities must fight.

Throughout history, the main strategy to manage agrarian conflict was political, police and even judicial repression. The empire ordered the army to quash the revolt of Canudos (1896/97) whose messianic religious nature did not conceal his real character of a conflict whose base was a mass of small farmers and former slaves who did not find space to survive on the large estates that dominated the entire northeast region. The military regime politically repressed social movements and converted them in cases of national security that were fought by the country's armed forces. Democratization placed the problem on a new level, and along with fighting conflicts through repression, new opportunities appeared to handle and address agrarian conflicts [such as] negotiation, public hearings, and the presence of the government, especially for containing violence, through an integrated and multi institutional approach.

Our argument is that conflict management, understood to be the process that occurs after the conflict has been precipitated, is conditioned by a series of institutional, legal and political difficulties. In addition to this, until recently, it lacked the adequate institutional mechanisms to respond to the dynamics and the reality of agrarian conflicts.

It is necessary to emphasize that agrarian conflicts occur in a context of deep chasms between the government and the social movements, which are placed in opposition, almost exclusively as tools for political pressure in order for the government, which is considered and presumed to be an enemy of the cause, to carry out agrarian reform. Conflict realized through politics, therefore, appears to be a tool for action that excludes negotiation, collaboration and the formation of cooperative entities. It is probable that in the midst of the war of words disseminated through the national press, often with the exchange of harsh

accusations, in which each camp “tries to play it up for their public,” the leaders of the social movements and government officials have established channels of communication that are more personal in nature than institutional.

Nevertheless, there is no proof that the government and social movement have evolved towards a more mature position of cooperation during the Cardoso administrations. As explained later, the work of the Audiencia is feasible only because conflict as a strategy for action is efficient if it is kept under control and produces results, i.e. expropriations and settlements. However, results in the institutional framework in force, are growingly dependant on negotiations since the bureaucratic and judicial arbitration procedures are extremely slow and ineffective for satisfactorily arbitrating conflicts. This situation opened the possibility of the Audiencia Agraria acting.

Cooperation between the government and the social movement assumes accepting differences and restrictions and respecting the identity of each side. The government’s strategy toward the social movements has always been to disarm and capture them. And for their part, the social movement’s strategy toward the government has always been to disqualify and reject any government initiative, even those that could be of direct and immediate interest to landless workers and family farmers. It has always been a relationship marked by deep distrust and a lack of respect.

The government firmly maintained the position of accusing the social movement of radicalizing issues, not being truly interested in agrarian reform, but in broader political issues, promoting rural violence and not cooperating to overcome the problems the government faces in making agrarian reform viable. The social movement also maintained the firm position of accusing the government of a lack of political will, falsifying settlement results, repressing workers, conspiring with impunity, etc.

This struggle between the government and the social movement decisively conditioned the path and environment for agrarian reform in recent times. On the one hand, the government had to face strong opposition from the Parliament to the legal changes necessary to advance the agrarian reform process. There was no cohesion in the Cardoso Administration’s political support base, a wide variety of parties, on the issue of agrarian reform, and it did not see any political gains [to be made] in promoting an issue on the agenda of the opposition. Regardless of the positive or negative judgment made on the role and measures implemented during this period, it must be recognized that it was the result of the political will of the government to implement agrarian reform according its own vision and within the framework of the institutionalism in force.

On the other hand, the government had to face the political pressure of the social movement, increasing the number of settlements, using the “firefighter strategy,” but in response to the sources of conflict arising in the country based on congruent planning. The result is noted in the agrarian reform performance indicators, which reveal the structural instability of the settlements, their problems and weaknesses.

In addition to the chasm between the government and the social movement, conflicts are managed within a context that could be characterized as an institutional “vacuum” produced by the legal fragmentation of responsibilities between the country and the states of the federation, and between the various institutions involved in the conflict. Only the nation can expropriate land for agrarian reform purposes, but the states have the constitutional duty to

collect vacant land and protect property and personal and public safety. On the political level and for its entire population, the federal government, specifically the Ministry of Agrarian Development and the INCRA, is responsible for carrying out agrarian reform.

This means that the federal government is the center for claims related to land issues, and that political conflicts involving this issue are channeled through this authority. In this case, there is a “concentration” of claims to the federal government, regardless of its legal and constitutional jurisdiction to fight and respond to many of the areas involved in the claims. This concentration reflects, at least in part, the agrarian reform model adopted in the country, which concentrated the majority of actions relative to taking and distributing land for agrarian reform purposes within the federal government and the INCRA.

Despite the fact that the federal government is the primary entity responsible for carrying out agrarian reform, the states are in charge of solving conflicts involving property squatting, the violation of civil and criminal laws, and the individual rights of citizens, whether they are landowners, peasants or landless workers, within the justice system or through other means available to maintain public order and individual security. Meanwhile, although the laws in force are clear with regard to the responsibilities of each division of the governmental, they do not adequately provide for a rapid solution of conflicts. On the one hand, the actions for which the federal government is responsible – collection of land and establishment of settlements - must follow an excessively long processes; on the other, the responsibilities of the state governments are set forth in the civil and criminal laws of the country, which are inadequate to fight social conflicts.

Civil law is based on the tradition of private law, and does not fully incorporate the constitutional provision of the social function of property. Moreover, by not fully recognizing the social aspect of ownership, it categorizes the actions of the social movement as common crimes in criminal law. Theoretically, the purpose of the law is to avoid conflicts, requiring citizens to act within the parameters defined by it. It can also be said that the purpose of the law in force is to resolve and solve conflicts, and imposing costs on one of the parties. Nevertheless, the imperfections of the law cannot be dismissed, which for many reasons, does not tend to new situations that arise as society evolves with the efficiency and fairness necessary.

The permanent tension between the legality that consolidates a determined status quo, social changes and the new situations created by the changes in society drive legal and institutional improvements based on new interpretations of the laws in force by judges or the actions of lawmakers. However, legal institutions, which have a duty to ensure the stability of rules, tend to slowly and cautiously adjust to changes in society, and are therefore, subject to imperfections and variations in the level of efficiency in both preventing and resolving conflicts.

This appears to be the case for laws on fighting agrarian conflicts in Brazil: the introduction of the social function of property and of the possible orientation toward agrarian reform programs for rural properties that do not fulfill the social function has still not been fully incorporated within a legal institutional framework that is adequate for fighting agrarian conflicts. In a context of increasing conflict that is clearly social in nature, simply and fairly enforcing civil law – in particular until 2002 when the former Civil Law Code of 1916 was replaced by a new one that includes in the legal text the social function of property – can in

many cases fuel and/or worsen conflicts rather than helping to overcome or ease them. The conflicts in Eldorado de Carajás and Corumbiara are tragic examples of this reality.

The legal process that follows squatting or the invasion of property by the social movement illustrates the potential for violent conflicts that can follow the simple act of enforcing the law. One such example is squatting or invasion of an area where there are no irregularities or doubts relative to the possession and title deed. The legal owner of squatted or invaded land turns, in accordance with the law, to the legal system to ensure that the ownership established and recognized by law is respected. Therefore it files the suit to return possession, a measure that civil law provides to return to the legal owner, the property illegally appropriated by third parties.

Under the law, squatting or unauthorized invasion of another party's property is, without doubt, possessory appropriation and conversion, and the law considers that it must be corrected immediately by returning possession. The law also provides punitive measures to be imposed against the parties responsible for the appropriation. Once conversion has been confirmed, the legal system, based on the constitutional provisions that guarantee the right to private ownership and the private law interpretation of agrarian rights, decrees that the possession of the property be returned.

A justice official goes to the converted property — note that the judicial decision defines squatting as appropriation since the law does not provide a possibility of squatting, whether or not peaceful, of the property of other parties — and informs the squatters of the judicial decision established in an order issued by the competent judge. Once the occupants — considered squatters — have been informed of the judicial decision, they may or may not comply with it. In the event they decide to leave the property peacefully, the underlying conflict caused by invasion is solved. However, all the factors and reasons that led to the squatting or illegal invasion remain unaddressed since the judicial decision only concerns reestablishing possession of appropriated property, and has no jurisdiction over squatters' claims.

If the squatters decide to reject the order to vacate the area, the next step is to request the intervention of the police to enforce the judicial decision. This is the perfect scenario for the dimensions of a conflict to increase. On one side, the owners whose property has been converted rise up to defend their assets in accordance with the law; and on the other, are workers who feel their constitutional right to access to land is not protected. Thus, two opposing camps are formed. On one side are the police, who in the majority of states are not trained to deal with these types of situations, and authorized to use force to ensure compliance with the judicial order. And on the other are workers, stirred by the political struggle despite knowing that the law is not in their favor, convinced of the legitimacy of their movement and that they have the right to unproductive land, which in accordance with the constitution, should be expropriated for agrarian reform purposes.

In this typical conflict situation, the lack of mediation can cause tragedies to be repeated, with death and injuries. In these cases, a provocation — and there are always agitators on both sides — a misunderstanding to light the fuse that results in direct confrontation between the police and the social movements.

It can be said that until end of the last decade, every episode of squatting or invasion of land, which in itself was a demonstration of the agrarian conflict, led to an enormous explosive charge due to inadequate means for the parties to negotiate. Each case of squatting or invasion produced a social tension that was, at times, disproportionate to the actual scale of the conflict due to the risk that the situation would get out of control.

By not having adequate mechanisms to manage conflict, the states “solved” the problem by indirectly refusing to cooperate in enforcing possession return orders issued by the legal system. This triggered a series of injustices and illegal acts. On one side, landowners could not have their land vacated, and squatters were not settled in any location; the legal system was demoralized; the police did not fulfill their duty to ensure order and protect assets as set forth in the constitution – and on many occasions, the police intervened as a repressive force. This contributed to creating the image of being a tool of the owners and a repressive element of the social movement. The government was demoralized by the situation and the workers were unprotected from the impunity and violence in the countryside.

The “Audiencia Agraria Nacional” emerged within this context as part of the Ministry of Agrarian Development, and the judicial branch assumed a more active and creative role to prevent and overcome latent agrarian conflicts.

5.1 The Experience of the Audiencia Agraria

The “Audiencia Agraria Nacional” was created in March 1999 and its primary objective was to prevent and reduce agrarian conflicts. This entity became a tool for information, monitoring, and mainly, the prevention, mediation and negotiation of agrarian conflicts. In reality, until 1996 when the Department of Agrarian Conflicts was created, in affiliation with the Estate Directorate of the INCRA, public authorities did not have a monitoring or information system on the occurrence of agrarian conflicts. The CPT was the only institution that performed this function on the national level. This was due to the idea that conflicts should be handled within the scope of the legal system and public security and not at the INCRA, which was considered to “only” be responsible for settlements. The activities of the Conflict Department were limited almost exclusively to gathering data, and during the 1995-1998 period, the highest official of the INCRA and the Extraordinary Ministry for Estate Issues were almost always responsible for intervening in sources of conflict.

Consequently, the creation of the Audiencia acknowledged the importance of agrarian conflicts and the need to establish negotiation mechanisms aimed at reducing areas of tension. The Audiencia’s action strategy is to promote negotiation between the parties involved in agrarian conflicts with the goal of reducing the need for the legal system and public safety groups to intervene, and at the same time, cooperate with the legal system to quickly and peacefully resolve conflicts.

The Audiencia Agraria Nacional operates within the Ministry of Agrarian Development, but it is an institution linked to the Ministries of Justice, Agriculture and Agrarian Development. In theory, its role is to coordinate the actions of these ministries to both prevent and resolve conflicts. It also coordinates the work of the Attorney General’s Office, public defenders, the state-level Departments of Justice and Public Safety, the Brazilian Bar Association and other organizations involved in agrarian conflicts and human rights issues. The guiding principles of the Audiencia are detailed in the preceding interministerial decree that defines the following guidelines for managing agrarian conflicts involving land squatting:

- (i) Know the actual demands of the groups involved;
- (ii) Avoid commitments that the federal government and the authorities cannot fulfill;
- (iii) Create forums for discussion and negotiation; and
- (iv) Identify mediators with credibility to negotiate.

On the federal level, the Audiencia concentrates on the following:

- (i) **Monitoring Information on Social Conflicts in the Countryside.** The Agrarian Conflict Information System [Sistema de Informaciones sobre Conflictos Agrarios (SICA)] was created for this purpose, which interconnects all regional superintendencies of the INCRA, and makes it possible to record and publish information - in real time - on the existence and evolution of conflicts. INCRA employees in each state are responsible for obtaining information, and they must be in close contact with the state Audiencias, Departments of Public Safety and Justice, the courts and worker and producer organizations. The SICA is still the implementation phase and its operation is limited.
- (ii) **Specialization of INCRA and Government Employees in Conflict Prevention and Mediation.** The Audiencia offers refresher courses in conflict prevention and mediation, and has created a reference document on "Social Conflict Prevention and Mediation" in which it provides basic guidelines for employees on how to address conflict situations.
- (iii) **Definition of Principles and Guidelines for Handling Conflict.** In addition to the Social Conflict Prevention and Mediation reference document, the Audiencia defined a Plan to Enforce Court Orders to Return Possession. As mentioned previously, court orders to return possession have caused open conflict between workers and public authorities, with a high risk of bloodshed. The Plan to Enforce Court Orders to Return Possession establishes all the steps that must be followed by the personnel in charge of enforcing these court orders when possession activities are carried out, thus guaranteeing that constitutional standards are fulfilled. The role of the Audiencia is important in this process so that orders are carried out peacefully and in full compliance with human rights. Chart 3 summarizes the main guidelines of the plan. In 2002, 26 states had already implemented the Prevention [sic] Plan to Enforce Court Orders to Return Possession.
- (iv) **Analysis and Follow-up of the Claims of the Social Movements,** directing them to the competent institutions and persons for their respective resolution, when necessary.
- (v) **Coordination with the Competent Entities and Institutions** to provide legal and social assistance to settled families.
- (vi) **Creation and Installation of Federal Land Audiencias [Hearings] in the States.**
- (vii) **Creation and Installation of the State Land Audiencias [Hearings].**

(viii) Promote the Creation of Federal and State Land Tribunals.

Although it is a recent experiment, it is recognized as *the point for negotiation between landless workers and landowners*, with the participation of social organizations and civil society and several areas of the federal and state governments. The mere creation of a negotiation forum justifies and validates the creation of the Audiencia. It must be remembered that dialogue between the parties in conflict is not easy, and at least in the beginning, there is not much willingness to negotiate. Both workers and landowners believe they have “rights and reasons”; and workers and owners feed into resentment and ideological and personal preconceptions that make the negotiation process difficult.

Plan to Enforce Court Orders to Return Possession

- *Coordination between the area police commander and government and municipal groups to accompany the military police in the event it is necessary to use force to evict squatters.*
- *Document police actions on film during eviction operations in areas that are subject to possession return orders.*
- *No court orders shall be enforced until the Commander of the Military Police (BPM) inspects the site in order to collect information on: the probable number of persons squatting in the location,; the probable number of children, pregnant women, elderly and sick persons, the presence of clergy, nongovernmental entities, members of parliament, state or municipal authorities, the existence of resistance (armed or unarmed) and material that could be used to resist eviction. The judge must be informed in writing of the results of the inspection, and if there are adverse factors, a judicial inspection must be requested.*
- *Under no circumstances shall the members of the Military Police perform any actions that do not guarantee the safety of the legal officials and workers hired to carry out the eviction.*
- *Under no circumstances shall legal officials carry out any actions other than those set forth expressly in the order to return possession, and the Commander must suspend the operation if any party in the operation displays conduct or attitudes inconsistent with guaranteeing the safety of the legal officials and executing the order.*
- *The Police Commander must centralize communications between legal officials and the police and police officers shall not execute any orders given informally by any person other than the Commander.*
- *All parties involved in the operation must behave in a calm, balanced and clear manner. They must be clearly informed of the operation that must be carried out, in particular regarding the social, political and economical dimensions of squatting for workers. They must also be directed to the need to avoid any type of arbitrary action against the landless workers.*
- *Troops must be warned of the limits of the police’s power in the interest of society and preserving fundamental individual rights in accordance with Article 5 and its respective subsections in the federal constitution.*
- *The officer in charge of police support shall take the following precautions to facilitate communication: (i) Contact the representatives of the squatters to clarify the situation and prevent conflicts; (ii) Locate temporary camps with the support of municipal, state and federal authorities to relocate squatters; (iii)*

Indicate, also with the assistance of municipal, state and federal authorities the buildings where the personal property of evicted families will be held.

- *The General Commander of the Military Police must inform the local authorities and social organizations involved of the operation, indicating the scheduled date, the number of families involved and any other pertinent information*

In addition to this, the action strategy of owners and landless workers converge in at least one point: both groups' interest in magnifying the scope and violence of the conflicts. This attitude is echoed in the press, which follows complaints obtained through investigation and tends to exaggerate conflicts either to disagree with the actions of the landless workers' movement or because it "provides more news" and "sells more papers." The workers' movement tends to exaggerate facts because conflict is its tool for pressure. The worse the image of landowners, the more political support it obtains from the press and politically. The greater the risk of violent actions by the owner, the better for the workers because the government under more pressure to "do something" and solve the problem. For their part, owners also have interest in exaggerating the actions of squatters and characterizing them as aggressive, violent, illegal, etc. It is part of the strategy to transform the social movement into a "group of agitators" and put the government in a position where it has to intervene to "reestablish law and order."

Promoting and mediating a negotiation process in this climate and context is a complex task that requires gaining credibility and the trust of the parties involved. The Audiencia works, with the aid of many social organizations involved, to clarify the real facts of the conflicts and create conditions to negotiate and the resolve them. Before analyzing the mechanisms and problems to date, it is appropriate to report the main results of the work of the Audiencia Agraria Nacional based on the information provided by it.⁹

Public Institutions Involved in Agrarian Conflicts

- The courts - ensure compliance with the law and reduce impunity;
- The Attorney General's Office - conduct police investigations and facilitate punitive actions by the judicial branch;
- The Department of Public Safety - guarantee the physical safety of individuals in accordance with Article 144, Section IV of the federal constitution; disarm the population; prevent conflicts; and enforce orders of the judicial branch;
- Federal Policy - intervene when there is evidence of conspiracy, as in Polígono de la Marihuana in the state of Pernambuco;
- The INCRA - the institution responsible for the agrarian reform and colonization of the country, and for beginning the administrative process to implement agrarian reform;
- Ibama – prevent environmental damage
- The Ministry of Justice – intervention to prevent the violation of human rights. Responsible for the Federal Police and cooperates with state legal officials and the state public safety departments;
- The Ministry of Labor – deals with cases of slave labor and violations of workers' human rights;
- Funai - agrarian conflicts involving indigenous populations.

⁹ The author would like to note that there were no statements in the interviews that justified questioning the quality of the Audiencia information.

Since 1998, the Department of Agrarian Conflicts, which was replaced by the Audiencia in 1999, has monitored the weakness of claims of the social movements. This monitoring is performed through reports sent and obtained by the INCRA, the MDA, social organizations and by the Dial Peace and Land system, which receives free calls made by citizens (Graphic 19). The Audiencia technical team analyzes this information that becomes a valuable tool for preventing conflicts and guiding the negotiation process.

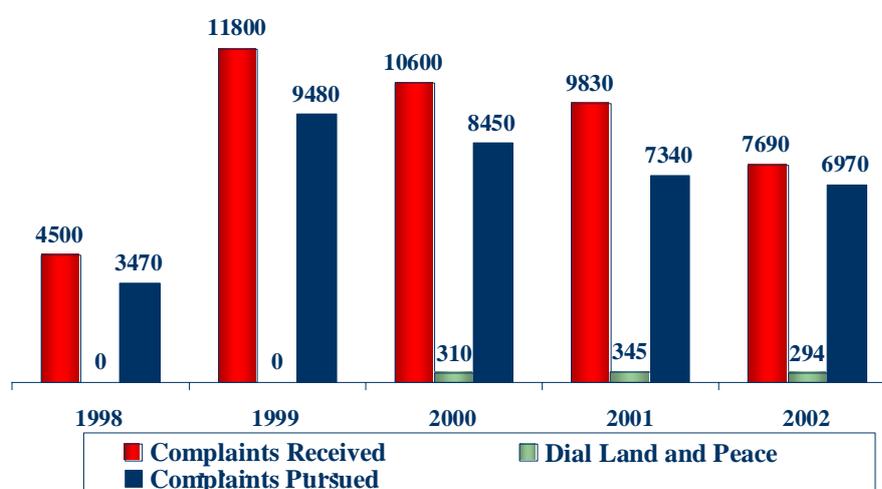
Instructions for Conflict Negotiation

- Interministerial Decree 321/29 of April 1989: How to fight invasions of squatting.
- INCRA Decree N° 161 of March 1, 2000, creates the Agrarian conflict Information System
- Decree N°68 of April 15, 2002 (MDA), creates the Permanent Committee for Monitoring and Resolving Agrarian Conflicts.

The effectiveness of prevention does not depend on the Audiencia, which has neither the tools nor authority – and whose function is not prevention – to respond to claims that range from the implementation of settlements, infrastructure works, deregulation of credits to providing social services, violation of citizens' rights, health, etc. The Audiencia is responsible for sending information to the entities and institutions that are competent in each area.

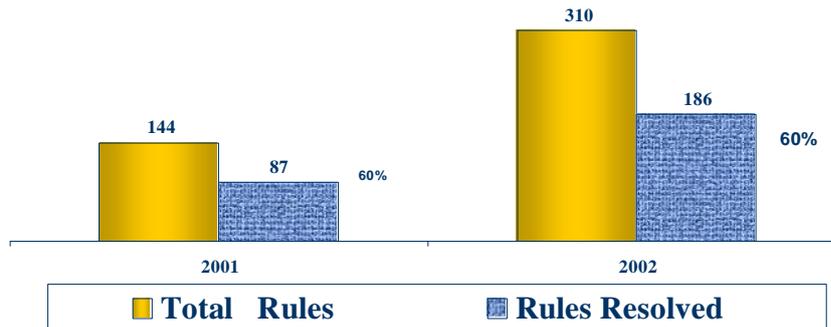
The Audiencia does not have the sufficient human resources or physical infrastructure to play a more active role in coordinating the various institutions so that they respond to claims, nor does it have the means to monitor the claims that are handled. This weakness involves a clear risk: the loss of credibility with the public when those responsible for acting do not handle the claims or claimants with the appropriate attention. Despite this obvious institutional weakness, the Audiencia performs an important role, not only in the sense of specifying, but also facilitating the response to claims. (See Section 0)

Graph 19: Monitoring of Social Movement Claims



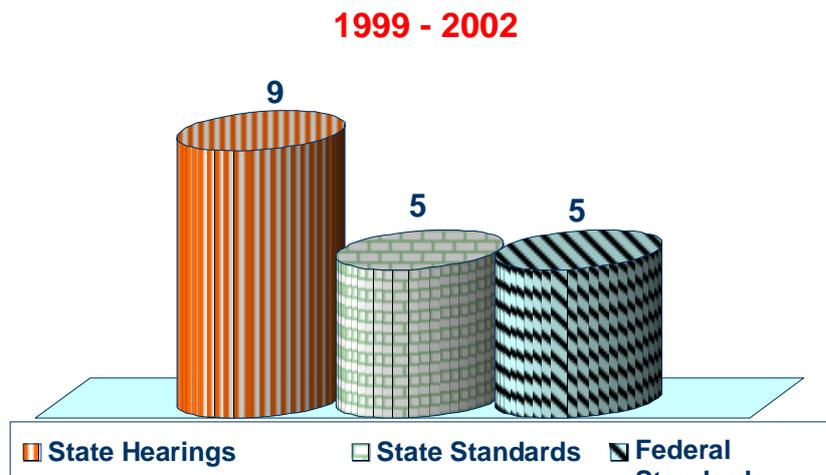
The Audiencia actively participates in negotiations with social movements in conflict situations. In 2001, there were 144 cases of conflict, and in 2002, this figure increased to 310. Thanks to its participation and that of other institutions, in these two years approximately 60% of the negotiations were resolved positively (Graph 20). It appears to be undeniable that the Audiencia has played an important, and in many cases, fundamental role since its involvement made the negotiations themselves possible.

Graph 20: Claims Rules of the Social Movements



Another important activity of the Audiencia Nacional has been encouraging the creation of federal land audiencias in the states, state land audiencias, and state and federal land tribunals. The Audiencia Nacional's work in this area is primarily related to informing and lobbying since each state government decides whether to establish their own state audiencias. Since 1999, 9 state audiencias, 6 state land tribunals and 6 federal land tribunals have been created.

Graph 21: Creation and Establishment of State Land Audiencias and State and Federal Land Tribunals



Several basic reasons facilitated the work of the Audiencia Agraria Nacional in this area. First, it is in the interest of state governments to create mechanisms for managing agrarian

conflict. The general public associates agrarian conflicts with the federal government - as a result of the centralized agrarian reform model - and in the majority of cases, the governors blame the federal government for land problems, forgetting that the states are responsible for guaranteeing public safety and the property rights of citizens. Regardless, conflicts occur on the state and municipal levels, and as much as local authorities try to transfer responsibility to the federal government, there is no way to avoid political erosion due to agrarian conflict. This means that it is in the interest of governors and prefects or mayors to cooperate in the work of the Audiencia, and for this reason they have supported, albeit scarcely at times, the proposal to create State Audiencias and State and Federal Land Tribunals.

Second, the creation of extrajudicial mechanisms to manage, mediate and resolve conflicts is also in the interest of the courts. It was noted previously that it is difficult for the judicial branch to fight conflict situations. Nevertheless, the rulings made by judges, in particular ruling to return the possession of property with squatting or taken over, and/or accepting arguments against performing an inspection, specifically cause part of the conflicts (see Section 0). State Audiencias are considered efficient tools for mediation between the parties in conflict and the judicial branch, and for this reason they were created through cooperation between the MDA/INCRA and the state courts, and they function in courts and on their behalf.

Third, the state departments of safety have an interest in receiving support from the Audiencia in order to reduce the need for police to intervene in conflicts.

Fourth, the success of some pioneering experiments facilitates the work carried out by the Audiencias. In the case of Land Tribunals, the state of Minas Gerais' experience (see Section 0), one of the first states to create State and Federal Tribunals, is frequently cited as an example to be followed since it streamlined the work of the judicial branch and contributed to reducing and rapidly resolving agrarian conflicts in that state.

In fifth place, the conflict index has been reduced due to the excellent action of agrarian conflict mediators within the states and the work of the National Commission of Conflict Mediators of the Audiencia Agraria Nacional, which intervenes in all complex cases based on the principles of negotiation and recommending solutions to the competent entities.

During the 2001-2002 period, the Audiencia Nacional organized training activities on agrarian conflict prevention and mediation, which are summarized in Chart 2.

Chart 2: Training on Prevention and Mediation of Social [sic] Conflicts in the Countryside

Offices	Number of People	
	1995-1998	1999-2002
1. Maps on land several conflicts	90	
2. Training Businessmen (2001 and 2002)		203
3. Land Conflict Prevention		170
4. National Forum For conflict Mediation		150
5. Training For the Hearing (2001 and		120

5.1.1 Institutionalism of the Audiencias

The Audiencia Nacional and the State Audiencias are fragile from the institutional perspective. The Audiencia Agraria Nacional was, and remains, an arbitrary name since it does not appear in the organization chart of the Ministry of Agrarian Development or in that of the INCRA. In 1999, the National Agrarian Auditor, the appointed *Attachment Abator*,¹⁰ occupied from the formal perspective, the role of the Adviser to the Minister since the position or function of the National Land Auditor did not exist. This is a curious situation. An employee appointed to a position that does not exist, using a title that also does not exist within the organizational and legal structure of the Ministry without any legal authority to perform the duties that were vaguely attributed to him as Auditor, comes to act throughout the country, intervening in agrarian conflicts, promoting the creation of the State Audiencias, mobilizing institutions, promoting meetings, etc. Regardless of the formalities, his "agreement" has impact and he imposes himself as a de facto authority.

The Auditor, besides his own reputation, represented the Minister — and in this sense had authority delegated by the Minister—, but the situation reveals the institutional gap that existed in this area. The position of Auditor was subsequently included in the structure of the Ministry's Department of Agrarian reform. However, the Audiencia still does not appear in the agency's organization chart.

The status of the State Audiencias is no different and in the five states on which we obtained information, neither the Auditor nor the Audiencia had been formalized as a function or public entity. There is no law or decree establishing the position of Auditor, or that formally establishes the Audiencia, although there is an agreement between the Ministry, the INCRA and the State Courts that sets forth the Audiencia.

¹⁰ The *Attachment Abator* is the highest position of a judge in the state courts.

State auditor positions are honorary, without compensation and judges fill them who are appointed promoters and/or liberal professionals as an act of service to society. The position of an Auditor as an honorary position has advantages and disadvantages. The main advantage is that it grants credibility to the Auditor since the parties do not consider him to be working in his own interest. The disadvantage is that since the majority of Auditors are retired public employees, they have other activities and cannot dedicate themselves full time to the work of the Audiencia.

The institutional weakness of the Audiencias is reflected in their capacity to perform their work. The Audiencia Agraria Nacional only has five employees to carry out all the activities. In Mato Grosso del sur, the Audiencia only has one secretary and no other permanent technical employees. To a large extent, the work of these entities relies on the cooperation provided by other institutions, in particular the INCRA and the State Courts. All the states lack logistical support to perform their duties with greater efficiency since the Audiencias rely on the “good will” of other public agencies.

Paradoxically, the institutional vacuum in the area of conflict management has been fundamental to ensuring both the “authority” of the Auditor and the “good will” of the institutions involved [that are] responsible for resolving agrarian conflicts. Since the work and success of the Audiencia is in the interest of all players and institutions, they all collaborate to some extent to give the Auditor prestige so that he can perform his duties.

Another item that reveals the fragility of the institution is the reliance on the Auditor himself, since the persons involved in conflicts say that it is the Auditor as a person, and not the institution, who brings credibility and legitimacy to acting and promoting negotiation. It is the Auditor who has access to the ministers, governors, secretaries of justice and safety, civil society institutions such as the CPT and the Brazilian Bar. It is the Auditor, and not the Audiencia, who is more or less capable of mobilizing the institutional resources necessary to carry out the duties of the Audiencia. It is as if the judicial branch were reduced to the persona of the judge. At least during this initial phase, identifying the Audiencia by the role of the Auditor, appears to have been positive, in particular by facilitating contact with other authorities, giving the position the power and prestige that facilitated the “good will” toward the work that was performed. Over the medium term, this identification could become negative, and even a factor of greater fragility.

Although it is identified with the persona of the Auditor, the Audiencia it is a collective institution comprised of representatives of the workers, owners, various public agencies and many civil society organizations. In reality, the Audiencia can work simply because it unites the parties in conflict and all pertinent institutions and players in the resolution of conflicts. In the majority of the states, the Audiencia is comprised as follows (See **Error! Reference source not found.**):

- National or State Auditor;
- Representative of owners;
- Representatives of social movements;
- Representatives of Civil Society:

- Bar Association of Brazil
- Land Pastoral Commission
- Human Rights Organizations

- Representatives of the State Government:
 - Department of Justice
 - Department of Safety
 - Land State Agency
 - Ministry of the Environment

- Representatives of the Federal Government
 - INCRA
 - Ministry of Justice
 - Ombudsman's office
 - Ibama

- Representatives of the State and Federal Judicial Branch.

Another element that reveals the institutional fragility of the Audiencias is the absence of representatives of several institutions at the meetings, as well as the high turnover of representatives, factors that weaken the institution and make the work difficult, which often has to go in reverse on issues decided previously because a new representative is not informed or does not agree. This shows that although the work carried out by the Audiencias is relevant to the state governments, the government does not always grant it the status or importance it merits. Some people interviewed confirmed that they always go to the Auditor, who is not occupied, and that the authorities only appear in times of crises. This, without question, limits the work of the Audiencia.

In summary, the authority of the Audiencia depends on the moral “authority” of the Auditor and his power is based on the interest of the states, courts and those directly involved in keeping the situation under control. While the courts and the MDA/INCRA appoint the Auditor, his position has status, which is important to performing his duties. Obviously, gaining the trust of stakeholders is a *sine qua non* condition to perform the duties, but this trust is fragile and depends on each agreement, which is not entirely satisfactory to the parties.

5.2 Tools of the Audiencia

The audiencia does not have many tools for action. It is a council that counts on the participation of landowner representatives, landless workers and the government and civil society in general. It is a center for negotiation, which coordinates the actions of several public, private and nongovernmental organizations and institutions that intervene and participate in conflicts and seeking solutions.

The main proceedings of the audiencias consist of a public conciliation hearing that brings all the stakeholders to the negotiations table. These hearings follow formal procedural steps and a specific pace, and many are held at the courts. According to several interviewees, the formal process and ritual steps are important to “maintaining authority” and to making dialog between the parties possible.

The audiencias' role is to promote direct dialogue between the parties involved in conflicts. It is important to remember that in a country such as Brazil, which is characterized by profound social and economic inequities, there is a major imbalance of power between the landless workers and landowners. It is true that the organization of workers into social movements decreases this asymmetry, but in the case of agrarian conflicts, landowners are still the stronger party, which represents itself as the defenders of law and order, as opposed to the social movement, which both the press and landowners present as the transgressor. One of the most important duties of the audiencias is to eliminate this imbalance of power between landowners and landless workers, thereby reestablishing the constitutional principle of citizenship and equality of all in the eyes of the law.

In the hearings, each party presents its point of view, claims, conditions to solve the problem, demands, etc. Then there is a discussion on how to address and conciliate the claims of the social movement with the rights of the landowners. The hearing is important and efficient in resolving conflicts in a dynamic and definitive manner because the institutions that have a role in solving conflicts participate in it. Each institution is able to assess the possibility of handling the claims, specify the difficulties and propose or seek alternatives. This makes it possible to promote, during hearings, the lawfulness and technical-legal feasibility of the proposals under discussion without consulting third parties.

The content and subjects of conflicts brought to hearings vary, but the primary theme is without doubt related to the invasion or squatting of rural property. Discussions revolve around evicting from the property and settling invading families. Since their inception, audiencias have dealt with a range of problems, from the presence of *jagunços* (gunmen hired by owners) on ranches who threaten the landless, "peaceful" squatting on property, ecological reserves, environmental damage caused by squatting (deterioration of ecological and environmental reserve areas, production of garbage, sanitary conditions, etc.), the loss of crops during eviction from property, threats against and physical abuse of the landless, restricting the freedom of employees and residents of invaded or squatted areas to "come and go," squatting on roads and in public buildings and spaces, to claims relative to implementing public policies on credit, technical assistance, education and health.

The success of negotiations depends on the personal authority of the Auditor and the audiencia's ability to contribute to solving problems. Nevertheless, the actions of the audiencia are dependent upon the actions of other institutions, and all requests, summons, and calls to meetings remain under the authority of other institutions over which audiencias have no authority or power. Therefore, the efficacy of the audiencia depends on the good or bad will of the institutions and authorities that have the tools to make agreements feasible. For this reason, the procedures of audiencias, as well as the timeliness of their actions, are closely related to the actions and timing of other institutions such as the INCRA and the courts, which are generally slow.

The following is a list of some factors relevant to the success of the negotiation process:

- (i) **Expropriate, Settle and Evict: Three Components of the Negotiation Process.** The main goal of workers is settlement and for owners, it is to obtaining evictions from their property. Therefore, the possibility of settling workers on the occupied ranch or at another site is fundamental to the work of the audiencias. In this sense, expropriation and settlement are the primary "currencies of exchange" used in the negotiation process.

- (ii) **Pressure to Use the Police.** Although one of the primary concerns of the Audiencia is specifically avoiding the use of force from the police in agrarian conflicts, which is recognized as inefficient at managing and solving land problems, in many cases the real possibility of police intervention has worked as an effective argument at the negotiation table. In these cases, the currency of exchange was simply to stop the police from acting in the evictions from property authorized by the court.
- (iii) **Support Encamped Families.** Another item is the provision of social services such as baskets of staple foods, medicines, mats and legal advising for families while they wait for the final solution, which is always settlement.
- (iv) **Ensuring the Priority of Settling Squatters.** In “Agrarian reform through Conflict,” squatting on land is a mechanism to pressure the government and to select beneficiaries. In many cases, the different groups of the social movement fight for the “right” to settle their members in a determined area. In this context, the different organized groups fight among themselves for the priority settlement of their members. In some cases, the commitments made relative to this issue, collide with some of the criteria for the public authorities to select beneficiaries. Another problem arises when groups that lose priority do not accept the agreement and encourage new squatting or invasions to ensure the right to settlement.
- (v) **Conditions of Eviction and Settlement in a New Camp.** In many cases of eviction from squatted or invaded property, an important point in the negotiations is the conditions for the eviction. In other words, the social movement does not oppose the eviction but disagrees on the conditions for eviction. In some cases, the invaders have cultivated the land and demand compensation for abandoning their crops before the harvest. In other cases, they demand guarantees from the owner to preserve their crops and access to the property to harvest the crops. The third case is when the social movement requests assistance to move to another site and to establish a new camp.
- (vi) **Intervention in Expropriation Processes in Progress.** Generally, the intervention is to accelerate them.
- (vii) **Peacefully Remaining on the Squatted or Invaded Property.** In many cases the negotiation evolves squatters remaining on the squatted or invaded property with the consent of the owner. This period may be only a few months, sufficient time to harvest their crops, to wait for expropriation at the same squatted or invaded property or another property acceptable for expropriation.
- (viii) **Intervention with the Judicial Branch** in order to streamline the court process or to accompany the return of possession of property and to avoid the intervention of the police force.
- (ix) **Guarantees to Respect Human Rights and the Preserve the Ownership of the Squatted Real Property.**

- (x) **Credit Resources, Infrastructure Works and Technical Assistance.** Due to the growth of the “new conflict,” it is noted that negotiations revolve around issues related to credit, technical assistance, the implementation of public works, land demarcation and building infrastructure.

The work of the INCRA is essential to the success of the audiencias, and the information compiled shows that the collaboration between the audiencias and the superintendencies of the INCRA has been very close and positive. However, the INCRA has certain difficulties relative to operational and financial constraints in fulfilling its duties as the institution responsible for expropriations and establishing settlements. The work of the INCRA is limited by procedural rules, bureaucracy, limited financial resources, etc., which make it difficult to quickly perform the actions necessary to anticipate and resolve conflicts. Moreover, the INCRA’s actions depend not only on the decisions made by the courts, but also by the President of the Republic who decrees expropriations. Under these conditions, it is very difficult to reach agreements or enforce agreements signed in the mediation hearings promoted by the audiencias.

Nevertheless, it is worth noting that the steps undertaken recently have increased the operational efficiency of the INCRA, as well as its capacity to intervene in conflicts. Decree Law N° 2.614 dated June 3, 1998, which amends Decree N° 433 of 1992, authorizes the INCRA to acquire land on the market for agrarian reform purposes. In several cases, the INCRA has facilitated agreements by purchasing land that was under conflict, for example in Sao Paulo. Obviously, this possibility is limited and subject to the availability of INCRA budget resources. On the other hand, the participation of the INCRA in public conciliation hearings held by the audiencias or the court system, and specifically the authorization to reach agreements court, have greatly facilitated conciliation between the parties in conflict.

5.3 Experience of the Courts¹¹

The intervention of the judicial branch in agrarian conflict resolution processes has been a subject of much controversy. On the one hand, the social movement argues – not without reason - that the judicial branch has been used as an instrument to protect the interests of landowners and that in many states, it directly contributes to maintaining the atmosphere of impunity that characterizes the countryside. (See CPT, “Cuadernos de Conflictos Agrarios”).

Regardless of this judgment or any other judgment of value, it is necessary to recognize that by its very nature, the judicial branch, the defender of the law, tends to be the most conservative authority of the republic. Consequently, the intervention of the courts in agrarian conflicts in Brazil is conditioned by the legal framework within which they work. This legal framework, in particular when it is interpreted conservatively, does not provide sufficient tools for the efficient function of the courts in agrarian conflicts. Two reasons can be highlighted for this: contradictions in land law and the excessively long and complex legal process for responding to situations of social conflict. The examples mentioned are sufficient to illustrate the issue of time. The controversy over the interpretation of the law is briefly described below.

¹¹ The argument in this section was a recurring theme in the interviews conducted. The author is not an expert in legal issues and advises readers that this complex subject has been simplified, which is the subject of numerous controversies and books written by experts.

Article 5 of the federal constitution clearly sets forth the principle of private property. The tradition in Brazilian law confuses it with the Declaration of the Rights of Man of 1789, which is included in the Constitution of the United States of America, and states: "Property is a sacred and inviolable right of which no one may be deprived, except for public convenience that is legally proven, as demanded, and obviously provided there is fair and prior compensation." (Article 17 of the Declaration of the Rights of Man, August 26, 1789).

Article 5 of the Brazilian constitution states: All persons are equal under the law, without any distinctions, and it guarantees both Brazilians and foreigners residing in the country, the inviolable right to life, freedom, equality, security and property, under the following terms:

- XXII – the right to property is guaranteed;
- XXIII – property shall maintain its social function.

It is true that the constitution guarantees the right to private property, but at the same time, it sets forth that property must satisfy its social function in accordance with the requirements defined under constitutional law (Article 186 of the constitution). It also establishes that property that does not satisfy its social function may be expropriated for the purposes of agrarian reform, and that productive land cannot be expropriated.

For the lay person not expert in law, the wording of the constitution appears to be clear by conditioning the sovereignty of private property by the satisfaction of its social function. The truth is that this issue has been the subject of many conflicts and controversies within the judicial branch. As previously mentioned, on the one hand there are the legal property owners that require protection against squatting or invasion of their land, and on the other is the social movement that justifies land squatting on the basis that the property does not fulfill its social function.

Owners argue that property is a constitutional right guaranteed by Article 5 of the constitution, and which consequently must be defended by its legal owner and by the competent Brazilian jurisdiction. From this perspective, the act of squatting or illegal invasion of property is considered a crime and legal officials must exercise their authority, enforce the law and punish the offenders. Moreover, the constitution considers the right to property to be one of the fundamental rights and guarantees of citizens. Therefore, if property is a fundamental right of man, it cannot be violated by other men, and if this occurs, it is a violation of law" [sic] (Morais, s/d, 2).

Under these terms, any illegal squatting is considered a crime, and as such, must be punished. This continues to be the interpretation of the legal text made by the majority of Brazilian judges. According to Fábio Comparato, as quoted by Morais, "the majority of our judges continue to routinely judge as if the constitution did not exist in this country or as if the declarations of the rights of man were mere rhetorical declarations to embellish year-end speeches. They continue to blindly enforce the provisions of the civil code on private property, or those of the civil procedure code on possessory actions, without recognizing that these provisions were revoked by the Constitution of 1934, which established for the first time in our law, the duty to use private property pursuant to the needs of society." (Fábio Comparato, quoted by Morais, s/d).

This is obviously a complex controversy because it is true that by squatting on or illegally invading property, the social movement seeks to take justice into their own hands - a

reproachable attitude in democratic systems - since even if land is unproductive, it is the duty of public authorities and not the social movement to decide on this issue after following all of the steps provided by law. Nevertheless, one cannot ignore the reality, which as previously indicated, is a situation of many public institutions still lacking the sufficient expediency to fulfill the duties entrusted to them by the federal constitution. Nor can it be ignored that the steps set forth in the law favor inaction and that the families who fight for their right to land for their survival are not in a position to wait on the public sector to act. It is probable that without social pressure, landless workers, like Samuel Becket's characters Vladimir and Estragon, would find themselves waiting for Godot.

Furthermore, it is certain that comparing social movement activists to criminals, or simply determining that the possession of property be returned to its owner is not a solution to the social problem that motivates squatting or the invasion of land. Often, returning possession does not solve the individual problem of the owner because the same group or another group of landless workers squats on or invades their land again. Also in many cases, as previously mentioned, the process of returning possession increases conflict, especially when the police force is required to enforce the order of the judge. Apart from the risk of violent confrontation between the social movement and the police, police-assisted evictions are more costly and do not solve the problem since, in the majority of cases, landless workers return to squat in the same area another neighboring area.

Because of the risk of bloody conflicts between the social movement and the police, states avoid sending in the police to enforce judicial orders to return the possession of property taken over by squatting or invasion. For their part, owners request federal intervention on the state level to enforce judicial orders. Although the federal government has not intervened recently, the request for federal intervention functions as an element to pressure the federal government and the state to find a solution that eliminates the widespread unlawfulness created by the judgment of by the Superior Court determining the intervention. The state government does not comply with the law, the federal government does not exercise its duty, and both the federal and state executive branches disobey the decisions of the courts.

All of this creates the need to change the private law view of land ownership – which does not take into account at all the social function of land or the difference between illegal abuse of possession inflicted on the private owner by other parties, nor does it consider the fact that the social movement uses land squatting as a tool to exert political pressure to carry out the agrarian reform provided under constitutional law.

At this time, an increasing number of renowned jurists defend this view and a similar or greater number of judges accept it. From this perspective, ownership cannot be considered a definitive right, but a “mid-level right” (Fábio Comparato, quoted by Moraes, s/d) and in this sense, the completely inviolable right to property is not consistent with making property subject to its social function.

According to federal judge, Weliton Militão dos Santos, “cases of squatting or invasion of property by large groups of landless workers illustrate the right to property interpreted from the point of view of public law experts and not private law, which now considers the right to property to be absolute.” The same judge, quoting Ismael Marinho Falcão, believes that “...property is not a right, but a social function. The owner, i.e. the party with the risk, by virtue of having this risk, has a “social function” to fulfill. While it fulfills this mission, its title deeds are protected by law, but if it does not fulfill it, it is lawful for the government to

intervene. Consequently, it is noted that the concept of social function is directly related to the concept of work.”

In discussing the origin of the act of possession, the same judge acknowledges that “resounding” battles have occurred in this area and that “these actions are a real relief to owners of land occupied by large groups of landless agriculture workers. In reality, and with rare exception, workers are considered mere invaders in a private law view of the law.” Based on broad ideological discussions, and in the opinion of some of the more renowned authors, he concludes that “even when large unproductive property is occupied by landless workers,” it is not possible to accept that the occupation of unproductive land by large groups is an “invasion” and that criminal law applies to the “invaders.”

It is certain that the public law view of land rights represents progress toward conciliation, but it is necessary to indicate that simply rejecting the request to return property in cases of squatting or invasion of property by landless workers does not alone lead to the solution of the agrarian conflict. On the other hand, generalizing this judgment would entail transferring to the social movement the ability to assess and decree the unproductive status of property; this would be equivalent to sanctioning “the right to occupy” property prior to and independent of the public authority’s assessment on whether it fulfills the social function. The government would not be the party responsible for verifying the law. Instead, it would be the social movement. Diffusion of this view could encourage new squatting, and instead of calming conflicts, it would increase the tension between owners and workers, with grave consequences. The key here is to find a fair balance between the rights of owners and the rights of the landless workers. This will never be a simple task.

For its part, the objective of Provisional Measure N° 2.027 was to restrict squatting that seemed to increase to the extent that the judicial branch proved weak in ensuring compliance with the law, under both the private and public law interpretations. In addition, this weakness appeared to encourage owners, who were also growing in numbers, to arrive at taking private measures to “defend their property” and prevent squatting. CPT and police reports are full of stories about the atrocities committed by employees of private security companies hired by owners to “defend themselves” from invasions.

The prevailing public law view of land rights at this time only contributes to reducing agrarian conflicts to the extent that before making a drastic decision to “expel invaders in the name of the right to private property,” or “guarantee the occupation of legitimate and legal property,” it opens space and time for negotiation between the parties in conflict, for the attempt at conciliation, and at the same time, it creates conditions so that the other public institutions involved in conflicts take the necessary measures to solve or disarm them without violating the human rights of workers or owners.

As they are auxiliary organizations of the judicial branch, the Audiencias Agrarias act in this negotiation space. However, it must be noted and acknowledged that the same judicial branch is developing specific mechanisms that are more appropriate to managing agrarian conflicts. They include the creation of specialized land courts (land *tribunals*) and conciliation hearings in the court proceedings related to agrarian conflicts.

5.4 Hearings of the Land Courts (Tribunals) and of the Conciliation Hearings in Expropriation Processes, Return of Possession and Protest Suits

The federal constitution provided for the creation of federal and state *tribunals* (courts) specialized in handling land issues. The advantage of the land *tribunal* is to expedite the proceedings, beginning the process and faster resolution. The main experiment is the creation of the land *tribunal* in the state of Minas Gerais in June 2002. The *Land Tribunal* is connected to the forum of the state capital, but in reality, it has been a form of itinerant justice that is mobilized at the site of conflicts in order to facilitate their resolution. The presence of the land judge at the site of the conflict, along with all representatives of the institutions and parties involved, contributes to reducing conflicts in the state of Minas Gerais and accelerating the negotiation and trial of agrarian conflicts in the state court of appeals.

When it was created, the land *tribunal* found 14 conflicts in 17 regions and 86 municipalities of the state of Minas. Seventeen groups of landless workers and eleven thousand families participated in these conflicts. From September 2002 to June 2003, the land judge held 59 conciliation hearings relative to 106 proceedings underway in the state court and reached a final agreement in 95% of the proceedings – in an extremely short period compared to the “normal” timeframe. In addition to reducing the duration of the proceedings, the immediate presence of the land judge in conflict areas has decreased tension in countryside and in the conciliation hearings, owners and workers have reached novel agreements, fruits of the spirit of the conciliation established through this mechanism. One of the most interesting cases is a lease agreement for property with squatting or invasion to rural workers for a period of 3 years – the time necessary for the final settlement of the families on a piece of property that the INCRA will expropriate. In another case, the owner transferred a portion of the property as a gratuitous loan at no cost to the workers. The workers agreed to respect the property and peacefully vacate it at the end of the period and the owners [agreed] to respect the workers’ rights. These agreements are made under the supervision of the judge, and the judicial branch is the guarantor of the agreement.

The objective of the conciliation hearing is to expedite the final resolution of conflicts. In the case of expropriation procedures and return of property, its objective is to achieve the peaceful and definitive transfer of the property to the INCRA or its legitimate owner. Recently in 1996, through Supplemental Law of the Summary Ritual No. 88 of 1996, which amends Supplemental Law No. 76 of 1993, the possibility was granted to conduct conciliation hearings in expropriation procedures. This law authorizes the judge to request conciliation hearings within 10 days from the initial subpoena of the court proceedings. In the hearing, the judge listens to the parties and the public defender and proposes the conciliation. Once an agreement has been reached, the judge transforms it into the court decision with the validity and force of law. (Santos, 2001, 266)

However, making the conciliation hearings function efficiently has not been an easy task. Their function assumes that the participants, especially the representatives of public organizations, are duly authorized and have authority to negotiate and sign agreements in the same hearing. This was not the case of the attorneys from the INCRA who had to consult with Brasilia on agreements, which made it difficult to enter into agreements quickly. It also requires a change in the culture of the state prosecutors who follow the tradition of litigating up to the last stage of the judicial process and that of not seeking agreements and early conciliation. In Brazilian administrative law, the practice of filing lawsuits and exhausting

all tools and procedural possibilities for resolving disputes is quite solid. This tradition is based on the objective of preventing corrupt conduct among public employees who make agreements with private agents that go against public interest. In this institutional context, making agreements also involves risks to those responsible, who are vulnerable to accusations, which at times are frivolous and without objective or legal foundation, of having carried out inappropriate public administration activities. This explains the reason why even now, many judges prefer to avoid conciliation hearings, which could decide with little bureaucracy and greater speed the conflicts that fill the shelves of the courts.

The cases of the federal courts and the Land Tribunal of Minas Gerais are noteworthy in this regard. Both the number of proceedings pending in federal court and in the land court of the state and the duration of the litigation have been reduced considerably. In addition, the resolution of conflicts has made it possible to greatly reduce the cost of expropriation. According to Luiz Pimenta, former director of estate policy of the INCRA, (Reydon, 2000, 24), the adoption of conciliation hearings in the federal court of the state of Minas Gerais achieved agreements in 50% of the lawsuits, with a substantial savings in resources from the public funds. The average increase in the value of land in the agreements, relative to the initial appraisal of the value of the property made by the INCRA was 8.85% in all processes from the 1997-1999 period (122 processes), while the average increase in the processes that were concluded through court decisions without agreements between the parties was over 220%. This means that property initially appraised at 100,000 BRL, expropriated through an agreement in a conciliation hearing, cost the treasury 108,800 BRL and its final transfer to the INCRA was carried out in a few months. Another property, with the same value, at the end of the lawsuit will have cost the treasury 320,800 BRL and it will take several years to transfer the property to the INCRA. One must remember that the INCRA cannot transfer title deeds to settled families prior to completing the final expropriation activity. Without the title, settled parties cannot seek credit in the market and continue to be dependent on public credit. Therefore, they do not become emancipated and as the government does not have the resources to grant credit to all beneficiaries without title deeds, it promotes credit rationing in practice, which harms everyone in the end because the amount of the credit is not sufficient to cover the families' needs.

Nevertheless, it is certain that in recent years, the agriculture crisis and the drop in the price of land facilitated agreements because many owners, wishing to sell their land, were inclined to negotiate and enter into agreements with the INCRA. Regardless of the more or less favorable conditions, the experience of both the state of São Paulo (Section 0) and Minas Gerais confirm that the judicial branch can assume a more efficient role in reducing agrarian conflicts. In order to achieve it, it is necessary to assume the role of Conciliator Authority and overcome its bureaucratic and formalistic tradition. However, conciliation depends on the convergence of actions and the capacity of the other public institutions to assume, sign and carry out agreements achieved in the framework of the law. Thus, the cost of agreements is lower than that of conflicts and lawsuits, and better results are produced for everyone.

CONCLUSIONS

Upon examining the historical origins and recent causes of agrarian conflicts in Brazil, it is noted that in the 1980's, they greatly increased to decrease in the late 1990's as a result of a series of measures undertaken by the government between 1995 and 2002. These measures

streamlined the land expropriation process and enabled the government to respond more effectively to the pressure exerted by the social movement and by agrarian conflicts.

We have argued that by the trigger of the contemporary agrarian conflict is, along with rural poverty, the lack of alternatives to squatting and survival for the families of rural workers who were expelled from the countryside in the 1990's as a consequence of the family agriculture crisis and the productive restructuring of several chains of agro-business. In this context, access to land, the immediate objective of landless workers, is one of the few alternatives of citizens integrating into Brazilian society.

We have shown that agrarian reform goes hand in hand with the agrarian conflict, and in this sense, we have talked about agrarian reform through conflict. Recently, the engine driving agrarian reform in Brazil has been social conflict and political pressure exerted by landless workers. Conflict set the pace, determined the beneficiaries and the location of reform, and transformed the INCRA and other public institutions into agrarian fire fighters that went to and fro putting out fires, without any possibility of planning preventive actions that could have been able, if planned and performed, to prevent conflicts from occurring.

The organization and political strengthening of the landless workers movement has determined change in the nature of agrarian conflicts. The analysis has proven the movement of conflicts to the political level and decrease in violence against individuals, which had been a historical feature of agrarian conflicts between landowners and isolated rural workers with little organization, in particular in agricultural border areas. The core issue is the fight for land and beginning in 2000, the increase in demonstrations and pressure relative to public policies was observed generally, and in particular relative to ensuring the compliance of the so-called agrarian reform liabilities - infrastructure works, credits, and provision of services.

This paper highlights the difficulties the public institutions face in promptly and efficiently responding to agrarian conflicts. We have also argued that in many cases, the mere use of the law fueled conflicts, and due to the lack of mechanisms for management and negotiation between workers and landholders, squatting or land invasions took on a conflictive role, with tragic consequences in many cases, which perhaps did not correspond to them, and would have been able to be prevented with straightforward procedures for negotiation between the parties.

The assessment of mechanisms for managing conflict, in the scope of the Ministry of Agrarian Development and the states, and the judicial branch, confirms the need to establish, consolidate and strengthen the negotiation channels between the stakeholders and institutions that participate, directly or indirectly, in agrarian conflicts, and solutions for conflicts. The assessment of the conflict management work carried out by the Land Hearings (Audiencias Agrarias) has evidenced that their success was based on the fact that conflict resolution is a matter of general interest. In other words, these hearings do not have "formal authority," but they do have the power derived from the interest of the parties in the conflict in overcoming the struggle.

The government is interested in preventing the social consequences of conflicts and avoiding the situation of institutional controversy and lawlessness created by conflicts. Governments are interested in both avoiding and resolving conflicts in order to reduce the political and institutional costs they incur by not performing their functions, not complying

with the law that sets forth agrarian reform and not observing the law that also protects private property; owners are also interested in promptly resolving conflicts; the social movement, which uses conflicts as a strategy and tool to pressure, is also interested in negotiation because without it, settlements - which are their immediate objective - would take much longer. In this context, the audiencias have found good conditions to develop and carry out their function as the mechanism for negotiating agrarian conflicts.

We have also observed that the audiencias have a very fragile institutionalism, and that they basically depend on the personal authority of the Auditor and the cooperation of a set of institutions equipped with the effective means to prevent or resolve conflicts. An alternative that does not exclude the audiencias, but complements them is the creation of the *Land Tribunals* in the states where the most intense agrarian conflicts occur, reproducing the successful experience of Minas Gerais.

We have also pointed out that during the second half of the 1990's, many owners were interested in the expropriation of their land through agrarian reform because the price of land was low, the liquidity of the land market was low and they did not have many alternatives for selling their land. Agrarian public debt securities were attractive because the TDA demand was high for privatization programs that accepted them for their full value. Owners' interest in expropriation facilitated the increase in settlements, and in this sense, contributed to reducing conflicts. With the increase in land prices beginning in 2000, we see owners' growing resistance to expropriation, and one cannot forget the importance of this resistance in this context of increased squatting and invasions early in 2003. Although the increase in the price of land makes agrarian reform more expensive, owners' resistance makes the actions of the INCRA more difficult and slow in managing the primary currencies of exchange in agrarian conflict negotiations: expropriation and settlements.

A key element to reducing conflicts is the performance of the public entities in charge of carrying out land policies. We have argued that the operational capability and effectiveness of the INCRA have been negatively affected by a set of legal and operational regulations and procedures that are not suitable to responding to permanent situations of social conflict. We have also noted the progress made in the last few years that has resulted in a considerable reduction in the time and cost of settlements. However in recent years, the operational capacity of the INCRA has been restricted by the financial crises that has cut its regular budget.

It is certain that the implementation of agrarian reform is a question of priority and political will, but the analysis performed shows that will alone is not sufficient to respond to the agrarian conflict in the short term. In many cases, the government faces financial, legal, operational and human limitations that unfortunately cannot be ignored. Political will is important, but not sufficient to provide sound ways to overcome the restrictions that prevent the government from efficiently responding to agrarian conflicts according to its political will. This appears to be the current situation. The landless workers' social movement hoped that the Lula Administration would immediately establish a new agrarian reform program to settle 150,000 families per year, but the government, whose will cannot be doubted, faces serious difficulties in meeting these expectations and fulfilling the promises made during the presidential campaign.

The temporary measure that prohibits inspection of property with squatting or invasion contributed to reducing the number of cases of property squatting. In contrast, the number of

camps along the roads grew as well as the number of urban demonstrations in favor of agrarian reform. The purpose of the temporary measure was to contain the process of squatting or invasion of property, since families join the movement with the expectation of obtaining land. The exclusion of invaded property and the people who participate in invasions of public land restricted the political mobilization capacity of the landless workers movement. As a reaction to this situation, the social movement changed its strategy and began to establish camps along the roads and neighboring properties they considered unproductive.

To a large extent, agrarian conflicts arise from the imbalance between social demand for land—inflated in recent years because of the economic crisis—and the government's capacity to meet this demand. The mechanisms for managing agrarian conflicts created in recent years play an important role and have contributed to effectively reducing tensions, but it must be remembered that they only contribute to resolving conflicts on a case by case basis, and that they do not act on the source of conflicts: lack of survival alternatives for the rural poor and the inability of the public sector to establish in a manner that is sustainable the policies provided in the federal constitution.

Conflicts continue to be ignited and the causes are still ignored. Thousands of peasant families leave the countryside without any other prospects of incorporation [into the workforce] than joining their “comrades” in a camp for landless persons. Until the country finds the path to sustainable economic development, agrarian conflicts will continue to exist in Brazilian society. Even if one believes the Lula Administration will succeed in implementing agrarian reform, it is only a relief - that is undoubtedly efficient – and not a final solution to the agrarian conflicts in Brazil.

7. References

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