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THE BRAZILIAN LAND REFORM STATUTE

BY

ROBERT E. PRICE

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## CONTENTS

	PAGES
Preface	1
I. The Substantive Law of the Land Reform	2
A. Principles of Redistribution and Settlement	3
1. The Resolution of the Latifundio Problem	3
la. The Progressive Land Tax	3
lb. Expropriation	6
lc. Restriction of Certain Benefits to Latifundios	9
ld. The Income Tax	10
2. The Resolution of the Minifundio Problem	10
3. Rationalization of Public Land Policy	11
4. Settlement by Colonization	12
5. Credit for Land Purchases	13
B. Improvement in the Status of Temporary Tenure	14
C. Agricultural Policy Measures	14
II. The Administration of the Land Reform	15
III. Conclusion	16
Footnotes	19

## THE BRAZILIAN LAND REFORM STATUTE

By Robert E. Price\*

### PREFACE

Agrarian reform has been a controversy in Brazil since before the foundation of the republic in 1891, but the intensification of public interest in the agricultural problem seems to date from the Constitution of 1946. Since the 1946 Constitution, there have been hundreds of bills of agrarian reform introduced into the Congress. Prior to the administration of President Castelo Branco, the most effective federal legislation directed towards the economic improvement of the landless rural class was the Rural Labor Statute, passed on March 2, 1963. The efforts of the Castelo Branco government to improve the economic situation of the entire rural class have resulted in a recent constitutional amendment and a land reform law. Constitutional Amendment No. 10, passed by both chambers of the Congress on November 10, 1964, enabled the federal government to reorient its legislation towards a more rational distribution of rural land. Accordingly, on November 30, 1964, President Castelo Branco approved a land reform bill which he had sent to the Congress in late October for its approval. The bill will only become law after a congressional consideration of certain executive vetoes to the bill approved by Congress, but there is slight expectation of congressional passage of vetoed sections.

The approach of the Brazilian government to its rural agricultural problems in the new legislation is broader and more moderate than the other land reforms in Latin America. In its breadth, it not only includes the customary provisions for expropriation, colonization, and model agricultural units, but extends economic policy into the areas of the land tax, public lands, credit, regulation of farm tenure contracts,

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\*Price was a research associate in the Land Tenure Center studying legal aspects of agrarian reform in Brazil and Mexico prior to writing this paper and is currently on an assignment with AID/Brazil.

and general agricultural development. The characteristic of moderation is evidenced by an attitude of economic persuasion, e.g., a land tax in preference to numerous expropriations, and the higher rate of interest on the government expropriation bonds.

In this memorandum, I expect to clarify the essential features of the new law, indicate the position of the law with respect to previous legislation, and speculate on the perspectives of its economic accomplishment.

#### I. THE SUBSTANTIVE LAW OF THE LAND REFORM

The basic orientation of the new land law is expressed in its initial definition of "agrarian reform" as "all those measures which are intended to promote a better distribution of the land by modifications of land tenure and land use in order to accomplish the principles of social justice and increase production" (Art. 1). Then, in accordance with a provision of the 1946 Constitution that "The use of property is conditioned to the social welfare" (Art. 147), Articles 2 and 12 of the law enumerate general principles which delineate the "social function" of land ownership. However, Article 14 provides the assurance that the government will assist those rural landowners "whose objective is the rational development" of agriculture, but promises "the gradual extinction of land use that violates its social function" (Art. 13). Then, Articles 4-5 specify terminology for the classification of agricultural units, subject to later regulation of these broad definitions: rural land, family property, rural modulus, minifundio, latifundio, rural enterprise, parcel holder, Integral Agrarian Reform Cooperative, and colonization. In addition to the "agrarian reform" measures of the land law, Article 1 also provides for "agricultural policy" measures which are intended to insure productive use of the land and harmonize it with industrial development: these measures are "progressive land taxation, income tax, public and private colonization, protection and assistance to the rural economy and cooperatives, and, finally, the regulation of temporary use and possession of the land" (Art. 47). Furthermore, the approach to the land reform is regional so that the choice and extent of government initiative will vary in accordance with the agricultural zones of Brazil (Art. 33).

## A. PRINCIPLES OF REDISTRIBUTION AND SETTLEMENT

### 1. The Resolution of the Latifundio Problem

The Brazilian approach to the solution of the latifundio problem is hybrid and does not follow the monistic measure of expropriation followed in other agrarian reforms throughout Latin America. It represents the efforts of liberal economists in the search for adequate governmental methods of control of the large landed estate without excessive governmental intervention in the agricultural sector. Expropriation is only intended to be a "subsidiary agrarian reform instrument of governmental action in priority areas."<sup>1</sup> The primary emphasis of the law is the progressive land tax.

#### a. The Progressive Land Tax

The experience of Brazil with the progressive land tax dates from the passage of Law 5,994 on December 30, 1960, in the state of São Paulo. The economic threat which it posed to the latifundio in that state resulted in Amendment No. 5, of November 21, 1961, to the federal constitution which effectively eliminated the tax by shifting the land tax from the state government to the counties. However, the experience interested certain Brazilian economists who directly influenced the original drafts of the recent land reform law. A publication of the Brazilian Institute for Democratic Action ("IBAD") in 1961 contained the São Paulo law and commentaries on it.<sup>2</sup> Then, in early 1964, the Institute for Social Studies and Research ("IPES"), whose membership included some of the IBAD researchers, published a limited edition on agrarian reform which included a model law based on the progressive land tax.<sup>3</sup> This model law is similar to the Land Statute, but congressional amendments to the original executive bill has changed some of its significance.

The federal government, by reason of the recent amendment to the Constitution, can now decree taxes on rural land but the tax receipts must be given "to the counties within which are the taxed lands" (Const., Art. 15/VII/9, as amended by Const. Amendment No. 10, Art. 2). This amendment thus permits the federal government to determine basic tax

policy and assist in its collection, but also satisfied the proponents of strong local government in Brazil by providing the counties with a new source of fiscal receipt. Relative to administration of the tax, the Land Statute provides that "the union can delegate to the states or counties the tax levy" and that it can also delegate "to the counties the receipt of the taxes" but, in the latter case, "the union retains the control of the collection" (Art. 48). Later governmental implementation of these broad regulations of the law is necessary.

The incidence of the land tax begins with a basic value of ".2% on the real value of the land, either as declared by the owner without protest of the competent authority or that which results from the cadastral assessment" (Art. 50). This basic value is then subject to multiplication by coefficients of progression in regard to (1) size (coefficient 1 for land not above the average modulus established for that region to coefficient 6 for an area 600 times greater than this modulus), (2) market location (coefficient 1 to 1.6), (3) manner of tenure administration (coefficients which increase the tax incidence from 1 to 1.6, and coefficients which decrease the tax incidence from 1 to .3), and (4) income and agronomic practices (coefficients which increase the tax incidence from 1 to 1.5, and coefficients which decrease the tax incidence from 1 to .4). In effect, this provides for a tax rate of .024% to 3.45%, dependent upon the application of the coefficients: the unproductive latifundio is the most highly taxed. In any event, there is no tax on "a land unit which does not exceed 25 hectares when it is cultivated by a single individual, or with his family, and he does not possess any other land" (Art. 48/VI). Nor is the tax applicable to forests or reforestation areas whose conservation is necessary, in accordance with the forestry legislation (Art. 50/8). The most important exception to the application of the tax progression is the restriction that the coefficients "will only be applied to lands that are not rationally used" (Art. 50/7). In a sense, this is not a restriction on the tax incidence, but a provision which completely changes the significance of the progressive land tax. This provision resulted from a congressional amendment to the executive bill presented to the Congress on October 23 and is plainly inconsistent with sections 3 and 4 of Article 50 which actually specify irrational practices and Article 4/V/a

which defines a latifundio on the basis of mere size. The executive bill seemed directed at a higher tax incidence on the latifundio per se, as evidenced by the coefficients in sections 1 and 2 of Article 50<sup>A</sup>, whereas the congressional bill is aimed at the unproductive latifundio. This is especially evident from Article 51 of the congressional bill which was vetoed by President Castelo Branco as being "highly confiscatory": it provided that the progressive coefficients applicable to a "latifundio" would be multiplied by another coefficient that varied from 1 to 10.<sup>5</sup> Therefore, the Land Statute intends the progressive land tax as a penalty only in regard to the "unproductive latifundio."

Then, in the case that the tax levy is superior to that of the previous year, there are further possibilities for reduction of the tax. First, the landowner may be entitled to a reduction of up to 50% of the levy if IBRA approves the owner's plan for an amplification of the cultivated area of his property (Arts. 50/5, 52). Second, the imposition of the tax is also progressive in regard to time: during the first, second, and third years of the application of the tax, the owner is entitled to reductions of 75%, 50%, and 25% in the respective years with reference to the tax increase in relationship to the year prior to the application of the new tax law (Art. 123).

It should be readily apparent from the prior discussion of the tax that the most important element for its successful application is the requisite territorial cadaster. Without it, the progressive coefficients do not function and the resultant tax is ".2% of the value of the land, as declared by the owner without protest by the competent authority..." (Art. 50). However, there is an attempt to compel the owner to declare the real value of the land through the indirect threat of an expropriation at this declared value (Art. 19/2/ab) and the possibility of a double payment of the actual tax due if the owner, through fault or malice, has furnished false data for the cadaster (Art. 49/3). But, in the hiatus until the completion of the cadaster, although there may be an actual increase in the land tax through a declaration of real value by reason of fear of the expropriation threat, there is still no progression of the tax on the unproductive latifundios. A later section of this memorandum will deal with the cadaster at more length since bonded expropriation is also dependent upon its completion.

### 1b. Expropriation

An auxiliary measure to the progressive land tax for the elimination of the latifundio in Brazil is bonded expropriation by the federal government. The recent constitutional amendment now permits "the union" to indemnify the landowner in bonds when the property is a "latifundio" in a "priority zone" (Const. 147, as amended by Const. Amendment No. 10). The Land Statute implements these provisions of the constitutional amendment.

A resumé of the law of expropriation in Brazil might be helpful here to establish the significance of the recent land reform legislation. The present Constitution, that of 1946, assured "the right to property" to Brazilians and resident foreigners, "except in the case of expropriation for public necessity or public utility, or for social interest, with previous and just indemnification in money" (Const., Art. 141/16). Expropriation in instances of "public necessity or public utility" is governed by 1956 legislation (Decree-Law 3,365 of 1941, as amended by Law 2,786 of 1956): this type of expropriation was not changed by the land reform legislation. However, an expropriation in the case of "social interest," also mentioned in the 1946 Constitution and which is implemented by Law 4,132 of 1962, was modified by the recent legislation. Formerly, the legal norms that regulated expropriation for public utility, i.e., "previous and just indemnification in money," also applied to social interest expropriation, but there are now exceptions to that rule.

First, the exceptions to the previous law of social interest expropriation apply only to the federal government, not to the states. The latter governmental body must still abide by the prior legislation.

The motives for social interest expropriation are stated in the 1962 implementary legislation (Law 4,132 of 1962, Art. 2) but are amplified in the Land Statute: the provisions are sufficiently broad to encompass any expropriation related to land reform (Art. 18).

The object of a bonded social interest expropriation must be a "latifundio, as defined by law" which is in "the areas included in the priority zones" (Const., Art. 147, as

amended by Const. Amend. No. 10, Arts. 5/3-4). If it does not conform to these criteria, then the expropriation must comply with the ordinary law of expropriation. The Land Statute defines a "latifundio as an area which exceeds by "600 times the average modulus for rural property or 600 times the average area for rural properties in the respective zone" (Arts. 4/V/a, 46/1/b) or which, although it has "an area equal or greater than the dimensions of the rural property modulus" represents an uneconomic use of the land (Art. 4/V/b). The "priority zones" are to be designated by IBRA in a National Agrarian Reform Plan which must be approved by the President of Brazil (Art. 34). The Land Statute specifically exempts from social interest expropriation those lands which do not exceed the property modulus by three times, those which satisfy the requisites of a "rural enterprise," and those which, although in a priority area but not in the "rural enterprise" classification, have economic improvement plans which will elevate them to that category approved by IBRA.

On the question of "just indemnification," prescribed by the 1946 Constitution (Art. 141/16), the Land Statute provides that the judicial evaluation of the property "will take into account the declared value of the land for the effect of the Rural Land Tax, the constant cadastral value as increased by the value of improvements with the appropriate monetary correction, and its market value" (Art. 19/2/a). This article does not provide that the awarded indemnification in the expropriation proceeding is tax value, which has been the policy in some agrarian reforms in Latin America: it actually restates earlier Brazilian legislation (Decree-Law 3,365 of 1941, Art. 27) when it indicates that declared tax value is one of the facts that the judge should take into consideration in the assessment. The Brazilian courts have held that legislative restriction on the constitutional provision of just indemnification is unconstitutional.<sup>6</sup> Another provision of the Land Statute provides that the federal government can take immediate possession of the property before the end of the expropriation proceeding by the deposit of an amount which need not be superior to the value declared by the landowner on his income tax (Art. 19/2/b); this is a modification of previous Brazilian legislation to the extent that it has lowered the deposit value, but it should be noted that the just value

of the property will still be determined in the expropriation proceeding without reference to the value of the deposited sum (Decree-Law 3,365 of 1941, as amended by Law 2,786 of 1956, Art. 15).

With reference to the bonds themselves, the recent constitutional amendment provided that they shall include "a clause for exact monetary correction, according to indices fixed by the National Economic Council, and be redeemable in the maximum period of 20 years in successive annual installments..." but that "legislation will regulate the annual or periodic volume of their issuance, characteristics, interest, and period and conditions of redemption." (Const. Art. 147, as amended by Const. Amendment No. 10, Art. 5/1-2). In accordance with this constitutional provision, the Land Statute authorized the federal executive to issue Agrarian Debt Bonds in the maximum value of 300 billion cruzeiros, with interest from 6% to 12% per annum which is likewise protected against currency devaluation, in redemption series of 5, 10, 15 and 20 years (Arts. 105-6). Furthermore, the bonds may be used for the payment of at least 50% of the Rural Land Tax, as payment for public lands, as guarantee on any contracts, works or services with the federal government, as surety in general, as loan guarantee with the federal government, and as deposit to assure execution in judicial or administrative proceedings (Art. 105/1). A comparison with land reform bonds issued by other governments in Latin America indicates conditions in the Brazilian bonds which are more favorable to the landowners. It is even possible that agrarian reform animosity may not be generated among the landowners since the bonds may even meet acceptable bond standards in Brazil.<sup>7</sup>

The Land Statute also provides protection against irresponsible expropriation by the federal government. First, it requires that "Regional Plans for Agrarian Reform shall always be prior to any social interest expropriation" (Art. 35). Furthermore, the Agrarian Commission, an entity composed of 9 representatives (1 from IBRA, 3 from rural labor, 3 from the rural landowners, 1 from a public agency relative to agriculture, and 1 from agricultural schools), should institute the petition for expropriation (Art. 42/I). IBRA itself is the body that executes the expropriation for agrarian reform (Art. 22).

The territorial cadaster, also important for the operation of the progressive land tax, is likewise important for bonded social interest expropriation. The Land Statute provides that the judicial evaluation of the land in the expropriation proceeding (Art. 19/2/a) is dependent upon the completion of the inscription of the agricultural property cadaster (Art. 124). However, since the earlier discussion of that procedure indicated that the judge in the expropriation proceedings only considers the cadaster value as one of the elements in his assessment of the value of the property, this particular provision should not delay the initiation of bonded social interest expropriation until the completion of the territorial cadaster.

The distribution of the expropriated lands, according to the Land Statute, can only be in the form of family properties to farmers who have insufficient land for the sustenance of their family in order to enable the formation of agricultural units organized under cooperative principles (Art. 24). Furthermore, the land "must be sold" to the new parcel holders, in an order of preferences that are enumerated in the law (Art. 25). Apparently, the new owners receive complete title to the land, but later regulation of the law should indicate the installment conditions for its acquisition. These provisions of the Land Statute follow the principles of most of the other agrarian reforms in Latin America, although Mexico constitutes an exception to the principles of sale and unrestricted tenure.

#### lc. Restriction of Certain Benefits to Latifundios

Another measure of the Land Statute which is intended to assist in the solution of the latifundio problem in Brazil is the provision that the owners of rural properties which are classified by the cadaster as a latifundio, in accordance with the principles of Art. 4/V, "will not enjoy the benefits of this law, including financing, loans, and other financial advantages..." (Art. 119). In accordance with this, it would seem that all agricultural assistance mentioned in Articles 75-91 is not available to the latifundio. Therefore, upon the completion of the cadastral classification, this should be an effectual indirect measure for the liquidation of the latifundio.

### 1d. The Income Tax

The Land Statute has also had recourse to the income tax in an additional attempt to correct an economic situation through fiscal policy. It provides that the presumed net profit of an agriculture unit for "schedule G" of the income tax will be determined by the application of a coefficient of 3% on the value of the land and its improvements (Art. 53). Although the previous income tax law applied a coefficient of 5% on the value of the land (Decree 51,900 of April 4, 1963, Art. 57), it appears that the policy behind the legal decrease was the expectation of an actual increase in the tax levy since there should be a re-evaluation of declared property value by the landowners. An impetus to a correct declaration of land value is provided by the threat of the minimum deposit for assumption of immediate possession in expropriation proceedings (Arts. 19/2/b, 124). However, in contradiction to this hypothesis of apparent policy reasons, the original IPES land reform study upon which this article of the Land Statute was based, postulated a coefficient of 10%.<sup>8</sup> From a comparison of these percentages, there is also the possible interpretation that there was a simple decrease in the income tax for the benefit of the landowner class. But, whatever the interpretation of the article, there is the expectation that the owner of an unproductive latifundio will either economically develop his land or sell it rather than pay the 3% coefficient on the declared value of his land. As a further inducement to sale of the latifundio, in addition to the tax threats and assistance restrictions, the Land Statute also provides for an exemption of the capital gains tax when the object of the sale has been to eliminate a latifundio (Art. 125).

### 2. The Resolution of the Minifundio Problem

The Land Statute attempts the resolution of the minifundio problem through the measure of land consolidation by expropriation with a later distribution of the larger units to parcel holders (Art. 21). In the priority areas, these expropriations are specifically intended by the Land Statute (Art. 20/I). For the purposes of the agrarian reform the minifundio is "rural land which is less in area and possibilities than the family property" (Art. 4/IV).

These minimum dispositions of the Land Statute, which could have included provisions relative to sale and inheritance of small agricultural units such as in other agrarian reform laws, seems insufficient to cope with the minifundio problem and could actually increase social tension in the priority areas if there is not a maximum of discretion in the exercise of the power of expropriation.

### 3. Rationalization of Public Land Policy

The agrarian reform legislation has also attempted to rationalize the distribution of public lands, but the task of construction of a uniform policy in Brazil is difficult since the vast majority of the public land is within the dominion of the state governments (Const., Art. 34): a 1964 SUPRA publication indicated that the total amount of land held by the federal government was 1,698,878 hectares, much of this Indian reserve land. In the new legislation, there have been only slight changes in the 1946 Constitution and the pertinent implementary legislation.

With respect to the state public lands, there were the following reforms. The alienation or concession of public land which has an area greater than 3,000 hectares can only be made by the state with the previous authorization of the federal Senate unless it involves a colonization plan which has been approved by the federal government (Const., Art. 156/2, as amended by Const. Amendment No. 10, Art. 6/2). The Constitution previously specified 10,000 hectares. Furthermore, the states shall now assure to squatters on their public lands a preference for the acquisition of an area which is not greater than 100 hectares (Const., Art. 156/1, as amended by Const. Amendment No. 10, Art. 6/1). The Constitution previously specified 25 hectares. In addition to the prior acquisition right of the squatter, he is also entitled to ownership of an area which cannot be greater than 100 hectares under the doctrine of adverse possession pro labore (Const., Art. 156/3, as amended by Const. Amendment No. 10, Art. 6/3). The Constitution previously specified 25 hectares. This ownership right of the squatter is an apparent exception to the general principle which prohibits the adverse possession of public property, but a favorable interpretation would extend it to public lands of both the state and federal governments.<sup>9</sup>

The legislation which refers to the public lands of the federal government (Decree-Law 9,760 of 1946) was also somewhat altered by the Land Statute. IBRA was authorized to commence the localization of the federal public lands and, with the agreement of the states, to perform the same service for them (Art. 11). With reference to squatters on the federal lands, the Land Statute awards them an acquisition right after 1 year of simple occupation and ownership after 10 years of adverse possession pro labore, but in neither case can the area exceed the "rural modulus" (Art. 97-102). Several other provisions of the Land Statute relative to public land administration are probably only applicable to the federal lands and not to those of the state since the latter hypothesis should require a constitutional amendment: one article prohibits the alienation or concession of public lands in the priority regions if there has not been consultation with IBRA (Art. 25/4) and another forbids leases and sharecropping contracts on the public lands (Art. 94).

#### 4. Settlement By Colonization

An additional measure of agrarian reform in the Land Statute is agricultural colonization. The 1946 Constitution expressly provides that "The law should facilitate the settlement of man on rural land, establishing colonization plans..." (Const., Art. 156). There has been previous colonization legislation and actual colonization in Brazil. The intention of the Land Statute is to consolidate and perfect that legislation. In addition to this federal legislation, there is also current state legislation which governs state colonization programs.

The administration of the colonization program follows the functional division of agrarian reform activities from the perspective of priority zones. The existent agricultural colonies will be administered by IBRA if they are located in the priority areas, and by the National Institute of Agrarian Development (INDA) if they are in non-priority areas (Art. 114). Future colonization will be directed by the same administrative organs in accordance with the priority zone criteria (Art. 58).

The Land Statute specifically regulates federal government colonization. A perusal of the law will indicate the pertinent provisions (Arts. 55-9, 63-72, 126), and this memorandum will only refer to the general content of the mentioned articles. The model unit is entitled a "Colonization Nucleus": it should contain that number of lots which enable the parcel holders to know each other and be recognized by the administrator. A "Colonization District" is an administrative unit that integrates the activities of 3 or more "Colonization Nuclei." The individual lot size should conform to the "rural modulus," cannot be further subdivided by inheritance, and is lost by the parcel holder if he does not directly cultivate it although he is entitled to restitution of the purchase price in that case.

Private colonization is also specifically recognized and regulated by the Land Statute (Arts. 60-62). The law provides for approval of these programs by INDA, states minimum obligations for the settlement project, and forbids colonies that do not emphasize ownership tenure.

#### 5. Credit For Land Purchases

A portion of the agricultural policy section of the Land Statute which extends credit to sharecroppers and landowners is an indirect financial measure which can assist the development of tenure change in Brazil towards the family farm (Arts. 81-83). It provides that a rural worker has the right to a loan from the National Agrarian Reform Fund in an amount equal in value to the annual minimum wage of the region with an amortization period of 20 years at an interest rate of 6% per annum. In the priority areas, the loans to sharecroppers and cooperative members should be extended to them through cooperatives, and, in the other areas, the owners of small and medium sized parcels should also receive the loan through a cooperative.

### B. IMPROVEMENT IN THE STATUS OF TEMPORARY TENURE

The Land Statute, in addition to those provisions which intend a redistribution of land resources, the primary purpose of most Latin American agrarian reforms, has also included within its scope the regulation of agricultural leases and sharecropping contracts (Arts. 92-96, 107). The extension of this protection to an economic group which numbers about 2 million persons is an important contribution of the Land Statute. The administration and execution of these provisions should be one of the major efforts of the federal government and the appropriate rural associations. The previous legislation on these contracts was contained in the 1916 Civil Code (Arts. 1211-1215, 1410-1423). The limited scope of this memorandum does not permit a close analysis of the numerous provisions of the Land Statute which are aimed at specific abuses. However, in general, the new law prohibits abusive action of the landowner, e.g., unremunerated labor, established lease ceilings, and designates fixed percentages for sharecropper contracts.

### C. AGRICULTURAL POLICY MEASURES

These provisions of the Land Statute (Arts. 73, 75-91, 109-112) relate to topics which are not directly relative to land tenure reform. They are without the bounds of the Land Statute sensu strictus and can only be considered land reform activities in the broad sense of the formula "integral agrarian reform." Furthermore, the articles themselves are more enunciation of principles than specific provisions. For these reasons, this memorandum will only discuss them in a general way. The topics covered by this section are: technical assistance, seed production, artificial insemination, mechanization, cooperatives, credit, marketing, rural electrification, crop insurance, agricultural education, and minimum prices. The most important topic of these measures in relation to a land reform is that of cooperatives: the law establishes an Agrarian Reform Integral Cooperative and indicates future financial assistance from IBRA, INDA, and the National Bank of Cooperative Credit (Arts. 79-80).

## II. THE ADMINISTRATION OF THE LAND REFORM

The administrative agencies which are to execute the agrarian reform are the Brazilian Institute of Agrarian Reform (IBRA), the Regional Delegations of IBRA, and the Agrarian Commission (Art. 37). IBRA is a federal agency directly subordinate to the President of Brazil and is intended to be the main executory agency of the agrarian reform (Arts. 16, 37-40). It is authorized to represent the federal government in agreements with states or counties and third country nationals (Arts. 6-8, 31) and contract loans from within Brazil or in foreign countries (Art. 30). The area of its activity in "rural development" is limited to those areas which are included in the priority areas and included in regional and national agrarian reform plans (Art. 73/2/a): however, since it is authorized to execute the "agrarian reform" on a national scale, e.g., an expropriation in a non-priority area, it will function throughout Brazil. The Regional Delegations of IBRA are subordinate executive organs that will have jurisdiction in designated zones (Art. 41). The Agrarian Commission, previously discussed in the section on expropriation actions, initiates expropriation actions, probably its most important function, and counsels IBRA on the execution of the agrarian reform (Art. 42). The Land Statute has also created the National Institute of Agrarian Development (INDA), a federal agency attached to the Ministry of Agriculture which is to direct the agricultural development projects in the non-priority areas: this includes colonization, agricultural extension, and cooperatives (Art. 74).

A National Agrarian Reform Plan must first be drawn up by IBRA and then approved by the President of Brazil before the Land Statute is operationally effective (Arts. 33-34). It is to determine the priority areas, indicate regional agencies to execute the agrarian reform, establish the objectives of the Regional Agrarian Reform Plans, indicate technical policy in the priority areas, and fix the budget for these plans (Art. 34). Later, the Regional Agrarian Reform Plans, which must be prior to any social interest expropriation, will set down more specific objectives of agrarian reform (Art. 35-36).

The financing of the agrarian reform is provided for by the institution of a National Agrarian Reform Fund (Arts. 27-31). This fund will be constituted for the most part by

the federal tax receipts from the special assessment, 3% of the total tax receipts of the federal government, the financial resources of the previous agrarian reform agency SUPRA, and at least 20% of the total budget of such regional organizations as SUDENE, SPVEA, CVSP, and SUDOESTE.

The territorial cadaster appears to be the most important land reform activity of IBRA in the immediate future. Previous sections of this memorandum have emphasized its importance in the operation of bonded social interest expropriation, the progressive land tax, and the determination of farm unit classifications. The Land Statute itself recognizes this since it establishes a "priority" for it (Art. 103/3). Article 46 specifically charges IBRA with the obligation of performing the cadaster and indicates the contents of it. In general, it appears that the Land Statute contemplates a cadaster based on the present economic status of the individual farm units. This type of cadaster could apparently be made on the basis of a census type questionnaire. However, a cadaster of potential use, specifically mentioned in the law with reference to the priority areas, would not be possible by the census type of questionnaire but would probably require photometric analysis if it were to be effective.

### III. CONCLUSION

The Brazilian Land Statute represents an important endeavor in the solution of one of the problems of an economically underdeveloped country. It is particularly significant since it is a law which is characterized by moderation, fiscal persuasion, and multiple measure legislation. Its formulation rests on the hypothesis that a capitalistic agriculture which is subject to governmental control is the desirable economic structure for Brazilian development. This policy encourages all economically productive agriculture units, not only the family farm. The intention of the Land Statute is the elimination of the unproductive latifundio, assistance to the landless or small property owners, and protection to temporary tenure operators. There has been slight specific coverage of the family farm, only to the extent that there is no expropriation threat and a slight land tax incidence, since the purpose of a land reform is

not to revolutionize the structure of the family farm but only to encourage it, and no emphasis on the salaried agricultural laborer since the Rural Labor Statute had previously extended legal protection to him.

There are possible objections to the law however: it is the nature of any legislation and of any analysis that prompt objections. The intention of these particular objections is not to denigrate the Land Statute but to indicate certain aspects of the law which may be deficient in the resolution of the rural land problem. There is an initial formal objection against the Land Statute itself: a ready comprehension of the law is difficult because of the subject arrangement and a failure to integrate this law with previous agrarian legislation. However, this is a slight matter and, perhaps, a characteristic of most legislation. There are more important objections to the substance of the law.

The inclusion of the progressive land tax as the primary measure of the land reform has the first appearance of a laudatory attempt at control of the latifundio. However, there have been critics of the progressive land tax as the principal measure of agrarian reform, notably Thomas Carroll of the Inter-American Development Bank,<sup>10</sup> because of the difficulty in its administration. Tax administration has always been particularly bad in rural Brazil. In reference to the 1960 São Paulo progressive land tax, the Brazilian Institute for Democratic Action (IBAD) observed: "The tax instrument which it utilized is an important part of an agrarian reform program, but it is not the principal... On the other hand, if the land tax with its forecasted increases is effectively collected -which has not occurred in any state of Brazil, even without an increase- this alone would constitute a real revolution..."<sup>11</sup>

Apart from the question of the administration of the tax, which is the principal query, there is also the possible objection that the tax is not sufficiently high on the unproductive latifundio: the São Paulo tax had a polarity from 1 1/2% to 12% whereas that of the Land Statute, after the veto of President Castelo Branco of Article 51 of the congressional bill which elevated the latifundio coefficient to 10, fluctuates from .024% to 3.45%. Furthermore, the Land Statute is inconsistent in its treatment of the latifundio: for

progressive land tax purposes only the unproductive latifundio is the objective, but for all other purposes the latifundio per se is the object of preoccupation. The bonded social interest expropriation of the latifundio is not open to the objection of confiscation because of the favorable terms of the bonds, although there is the possibility of excessive delay in the initiation of these expropriations but that is a problem of administration.

The slight treatment in the constitutional amendment and the Land Statute of public land policy is regrettable since that should have been one of the keystones of the land reform. Furthermore, the subject of colonization was dealt with more as a sociological phenomenon than as an economic reality; perhaps, one of the dangers of a land reform is a frequent direction towards a colonization program that has proved costly throughout Latin America and Brazil. Then, the administrative division of agricultural development activity between two organizations, IBRA and INDA, could lead to a duplication of personnel and bureaucratic confusion.

Finally, there should be an expression of caution towards the land reform program itself. There is the possibility that the Land Statute is merely another one of those remarkable legislative enactments of Brazil, always achieved without a violent class struggle occasionally evident in other Latin American countries, which may not be effective if there is a faulty administration of the law. The Land Statute is not auto-executory but requires an effective enforcement if it is to accomplish its objectives. The initial execution of the Land Statute, after its implementation by executive regulations and the issuance of the National Agrarian Reform Plan on May 31, will be the first indication of its administration. The Land Statute postulates an agrarian reform which proceeds on a successive time schedule, but there is cause to hope that it will not be dilatory.

FOOTNOTES

1. Justification of the Land Statute Bill. O Estado de São Paulo. October 4, 1964. Although this language was not that of the formal justification of the executive which was presented to Congress, it appears to represent the thought of the federal executive.
2. Instituto Brasileiro de Ação Democrática. Recomendações sobre reforma agraria. 1961. 360 p.
3. Instituto De Pesquisas E Estudos Sociais. A Reforma Agraria. 1964. 101 p.
4. Ibid, p. 63. "It is for this reason that the latifundio is a grave problem, regardless of the fact that it is or is not productive."
5. Diario de Congresso. Secção II. November 21, 1964. p. 4885. Bill of a joint commission composed of members of both chambers.
6. Barreto Filho, Oscar. "O Ajustamento da lei de desapropriações à Constituição de 18 de Setembro de 1946." Revista de Tribunais, 1957, Vol. 264, pp. 26-32, p. 26.
7. A statement in 1963 by the Vice-President of the Commercial Association of Rio de Janeiro explained the type of agrarian bond that would be acceptable on the stock market. "In my opinion, an issuance for indemnification of property would have to be made on a small scale with minimal interest of 8%, a period of ten or twenty years with annual redemptions by purchase on the Stock Exchange, a 100% guarantee against currency devaluation, not only for principal but also for interest, and with a compensation for their redemption assured by taxes capable to cover this." O Estado de São Paulo, December 18, 1963.
8. Instituto de Pesquisas e Estudos Sociais, p. 85.

9. De Carvalho, Afrânio. Reforma Agraria. Ed. O Cruzeiro. 1963. 288 p. p. 47.
10. Carroll, Thomas F. "The Land Reform Issue in Latin America." Latin American Issues, ed. by Albert O. Hirschman. The Twentieth Century Fund. 1961.
11. Instituto Brasileiro de Ação Democrática, p. 265.