

# The Human and Environmental Cost of Land Business

The case of MATOPIBA, Brazil



## IMPRINT

Published in June 2018 by FIAN International, Rede Social de Justiça e Direitos Humanos and Comissão Pastoral da Terra (CPT).

The research for and elaboration of this report has been a collective work of social movements, national and international human rights organizations, development organizations and academics.

In addition to the publishers, the following organizations were involved:

ActionAid Brasil, ActionAid USA, Aidenvironment, Brasil de Fato, Campanha Nacional em Defesa do Cerrado, Cáritas Regional do Piauí, CLOC – La Via Campesina, Comissão Pastoral da Terra (CPT), Comissão Pastoral da Terra (CPT/PI), Development and Peace, Escola de Formação Paulo de Tarso (EFPT-PI), Family Farm Defenders, FASE, Federação dos Agricultores Familiares (FAF), Federação dos Trabalhadores Rurais na Agricultura (FETAG-PI), FIAN Brasil, FIAN Germany, FIAN Netherlands, FIAN Sweden, Friends of the Earth International, GRAIN, Grassroots International, HEKS/EPER, Instituto Comradio do Brasil, InterPares, Maryknoll Office for Global Concerns, National Family Farm Coalition, Obra Kolping do Brasil, Paróquia de Santa Filomena, Presbyterian Hunger Program, PROGEIA (Santa Filomena), Sindicato dos Trabalhadores Rurais de Santa Filomena, Solidarity Sweden – Latin America, Student/Farmworker Alliance, SumOfUs, Via Campesina Brasil, WhyHunger.

The research also benefitted greatly from the contributions of researchers from the Center for Advanced Amazonian Studies at the University of Para, Brazil (in particular the Research Group ReExisTerra – Resistencias e Reexistencias na Terra), and the Post-graduate Program on Social Studies (Development, Agriculture and Society) of the Federal Rural University of Rio de Janeiro, Brazil.

FIAN International,  
Willy-Brandt-Platz 5  
69115 Heidelberg, Germany  
[www.fian.org](http://www.fian.org)  
[contact@fian.org](mailto:contact@fian.org)

Photos: FIAN and Rosilene Miliotti/FASE

## DISCLAIMER

Contents of this publication may be quoted or reproduced, provided that the source of information is acknowledged. The publishers would like to receive a copy of the document in which this report is used or quoted. FIAN contacted all companies mentioned in this report in order to share and verify with them the information collected during the research, in particular the findings of a fact-finding mission to Brazil, which took place in September 2017. Based on their replies, factual corrections were made in the text.

With the financial support of:



This publication has been produced with the financial support of the European Commission (EC). The points of view contained in this publication are the sole responsibility of the authors and can in no way be taken to represent the views of the EC

# Table of Contents

## **4 List of Acronyms**

---

## **5 Executive Summary**

---

### **1. Introduction**

---

### **2. Conceptual and analytical framework of this report**

#### **2.1. Land grabbing and the financialization of nature**

#### **2.2. Human Rights**

2.2.1. The Human Right to Food and Nutrition

2.2.2. The Right to Land

2.2.3. Extraterritorial Human Rights Obligations

---

### **3. Land as a Financial Asset: New Driving Factors and Actors in Land Grabbing in the MATOPIBA Region**

#### **3.1. Characteristics of the MATOPIBA Region**

#### **3.2. Agribusiness Expansion**

#### **3.3. Land Grabbing and Land Speculation in MATOPIBA Today**

#### **3.4. The Involvement of International Pension Funds in Land Grabbing in MATOPIBA**

3.4.1. The US-American Pension Fund, TIAA

3.4.2. The German Pension Fund, Ärzteversorgung Westfalen-Lippe (ÄVWL)

3.4.3. The Dutch Pension Fund, ABP

3.4.4. AP2, the Second Swedish National Pension Fund

---

### **4. Social and Environmental Impacts of Land Grabbing in the MATOPIBA Region**

#### **4.1. Locations and Communities Visited**

#### **4.2. Findings: Impacts on Communities and Local People**

4.2.1. Land Grabbing and Dispossession of Communities: Old Problem, New Forms

4.2.2. Disputes Over Water and its Uses

4.2.3. Pesticides and the Contamination of Water, Fields, Fish, and Game

4.2.4. Destruction of Cerrado forest

4.2.5. Food and Nutrition Insecurity

4.2.6. Widespread Violence and Conflict

4.2.7. Migration and the Disruption of the Social Fabric of Communities

4.2.8. The situation of women in the visited communities

#### **4.3. Responses by State Authorities and Involved Pension Funds**

4.3.1. Responses by State Authorities

4.3.1.1. Brazil

4.3.1.2. Home States of the Involved Pension Funds

4.3.2. Responses by Involved Pension Funds

4.3.2.1. TIAA

4.3.2.2. ÄVWL

4.3.2.3. ABP

4.3.2.4. AP2

---

### **5. Human rights analysis**

---

### **6. Recommendations**

---

### **7. ANNEX**

---



## List of Acronyms

ÄVWL	Ärzteversorgung Westfalen-Lippe
CAR	Rural Environmental Registry/ <i>Cadastro Ambiental Rural</i>
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CESCR	UN Committee on Economic, Social and Cultural Rights
CFS	United Nations Committee on World Food Security
CPT	Pastoral Land Commission/ <i>Comissão Pastoral da Terra</i>
CRC	Convention on the Rights of the Child
CSO	Civil society organization
ETO	Extraterritorial human rights obligation
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
IAHRS	Inter-American Human Rights System
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labor Organisation
INCRA	National Institute for Colonization and Agrarian Reform/ <i>Instituto Nacional de Colonização e Reforma Agrária</i>
INTERPI	Land Institute of Piauí/Instituto de Terras do Piauí
NAP	National Action Plan on Business and Human Rights
NGO	Non-governmental organization
NRW	North Rhine-Westphalia
OECD	Organization for Economic Cooperation and Development
PRI	Principles for Responsible Investment
RTFN	Human Right to Food and Nutrition
TCGA	TIAA-CREF Global Agriculture LLC
TIAA	Teachers Insurance and Annuity Association
UDHR	Universal Declaration on Human Rights
UN	United Nations
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNGP	Guiding Principles on Business and Human Rights

## Executive Summary

This report describes and analyzes the human rights and environmental impacts of agribusiness expansion and land speculation in the Brazilian region of MATOPIBA (Northeast/North of Brazil).<sup>1</sup> It is based on two fact-finding missions, which took place in September 2017 and January 2018. The first mission documented the consequences of land grabbing for communities in the Brazilian state of Piauí and held meetings with Brazilian state authorities. The second mission took place in Europe and focused on the involvement of pension funds from the Netherlands, Germany, and Sweden, in the expansion of agribusiness and land grabbing in the MATOPIBA region.

### Human Rights and the Financialization of Land

The MATOPIBA region is witnessing the transformation of land into a dematerialized financial asset as a result of the growing power and influence of global finance, and its ways of operating – a process called ‘financialization’. One expression of this process is the fact that financial actors (such as banks, brokerage companies, insurances, pension funds, hedge funds, investment firms, and venture capital funds), increasingly consider land as an attractive investment option. These financial actors channel capital into land purchases and land-based activities in order to diversify their investments, increase returns, and lower the risks for their portfolios. Pension schemes and pension funds are among the leading actors in the context of financialization of land and land grabbing.

Human rights provide the framework in this report for analyzing the land grab that is happening in the MATOPIBA region, as well as for putting forward a series of recommendations on how to address its social and environmental impacts. Human rights

establish a relationship between the rights holders (the people) and the duty bearers (states), placing concrete obligations on the latter. All human rights are interdependent and land grabbing violates a series of them, including the right to food and nutrition and women’s rights. Advances in the standard-setting regarding land over the last years allow to consider land as a human right. Human rights are universal and states are obligated, under international human rights law, to respect, protect, and fulfil human rights outside their borders. States’ extraterritorial human rights obligations (ETOs) require them, among others, to establish regulations that ensure that non-state actors, such as transnationally operating corporations or investors, do not impair human rights in other countries.

### Land Grabbing and Speculation in the MATOPIBA Region

The MATOPIBA region is part of the Cerrado biome, which is extremely rich in biodiversity of flora and fauna. In addition, three of the region’s most important aquifers can be found there. The Cerrado has drawn less attention from the media than the Amazon, but it is just as vital for the country’s, and planet’s ecology. It is one of the most endangered ecosystems in Brazil with high deforestation rates. Around 25 million people live in the Cerrado, including 80 indigenous peoples and so-called traditional peoples and communities. Their livelihoods are based on a close relationship with the ecosystem through hunting, gathering of fruit, fishing, and diversified peasant agriculture. Communities do not usually hold any land titles and large parts of the lands they live on are formally owned by the state.

Agribusiness expansion into the Cerrado has been promoted by the Brazilian state through significant subsidies. Soy monocultures started to penetrate into the region of MATOPIBA in the early 2000s and have since expanded continuously. This has been fueled by a commodity boom, which was caused by the

<sup>1</sup> MATOPIBA is the acronym for a land area of 73,173,485 hectares expanding across the Brazilian States of Maranhão, Tocantins, Piauí, and Bahia, located in the northeastern and northern region of the country.

quest for new areas of investment by global finance. Land speculation in the region has continued after the drop of commodity prices on the world market in the aftermath of the world financial crisis of 2007/08, and land has become a more profitable business than agricultural production. This has led to the creation of so-called land companies that are no longer directly linked to production and fully concentrate on acquiring, selling, leasing and/or managing land. The creation of new farms/*fazendas* usually takes place in lands that are formally owned by the state, by enclosing an area, violently driving out local people and clearing/deforesting it. These farms are then sold to agribusiness corporations or to land companies, which lease or further sell the land. The falsification or forgery of land titles is an intrinsic part of this business, as a way of formalizing (or at least simulating) land ownership, which has been appropriated illegally. The actors that are operating on the ground are backed by international financial actors that channel huge amounts of capital into the land business, and thus fuel the ongoing speculation.

In the case of MATOPIBA, pension funds from the USA and Europe are crucial players. The US-American pension fund TIAA owns almost 300,000 hectares of land in Brazil, almost a third of which is located in the MATOPIBA states. Most of these are managed through two agricultural land funds called TIAA-CREF Global Agriculture LLC I and II (TCGA I and II), which are together worth US \$ 5 billion. The majority of investors in TCGA I and II are institutional investors, in particular pension funds. Among these are the German *Ärzteversorgung Westfalen-Lippe* (ÄVWL), which has invested US \$ 100 million in TCGA I, ABP from the Netherlands, which has invested US \$ 200 million in TCGA II, and the Second Swedish National Pension Fund (AP2), which has invested a total US \$ 1.2 billion in TCGA I and II. TIAA and all these funds present themselves as “responsible” investors and are part of a number of corporate social responsibility (CSR) schemes. This stands at odds with the reality of their land investments in the MATOPIBA region however. Lands have – at least partly – been acquired from a business man, who is allegedly one of the biggest land grabbers in the region, and some were

legally disputed at the time of the acquisition. The funds further operate through a complex investment webs in order to circumvent provisions in Brazilian law, which limit land ownership by foreign companies.

### Human rights violations and eco-destruction

The international fact-finding mission of September 2017 documented the social and environmental impacts of the agribusiness expansion and land speculation in the MATOPIBA region in 7 communities in the south of the state of Piauí. The results show that local people face severe consequences of deforestation, widespread contamination of soil, water, and livestock by agrochemicals, and loss of biodiversity. Additionally, violence against community leaders is on the rise, as are disputes over water, exacerbated by changing rainfall patterns due to eco-destruction. Lastly, local people in the region are losing their land, leading to the destruction of their livelihood, community disruption, and food and nutrition insecurity. In many cases, they are forced to migrate to the favelas (shantytowns) of Brazilian cities. Women are particularly affected by the ongoing land grab and eco-destruction, as they can no longer collect and process wild fruits from the Cerrado forests, while the presence of armed guards, intimidation, and physical violence, makes it impossible for them to plan a family life.

The human rights violations affecting local communities and people are systemic and affect a broad range of human rights. The Brazilian state – at federal, state and local levels – has violated its human rights obligations by promoting the advancement of agribusiness in the region, by not protecting local people from the acts of local land grabbers, agribusiness companies, and investors, and by not ensuring accountability. In particular, it has not respected and protected local people’s collective land rights and the particular ways that they use and manage their territories.

The impairments of human rights are made possible through the investment of international financial actors, in particular the mentioned pension funds. Even though these may not be directly involved in land grabbing and eco-destruction, they are an essential part of the destructive business model applied in the MATOPIBA region. They are fueling land speculation and directly profit from climbing land prices, as this increases the value of their portfolios. The mentioned pension funds are under the jurisdiction of the USA, Germany, the Netherlands, and Sweden, who have the power and the obligation to regulate them, in order to prevent their investments/financial operations from causing human rights harm. The results of the fact-finding mission in Europe in January 2018 show that Germany, the Netherlands, and Sweden have breached their ETOs by not putting in place effective regulation that prevents human rights harm through the pension funds' activities and by failing to ensure rigorous monitoring. They have further failed to ensure accountability of these actors, nor have they provided remedy for affected people.

A series of measures need to be taken by the involved states as well as international institutions in order to guarantee the human rights of the affected people and ensure accountability of the involved business actors.





# 1. Introduction

This report contains the findings of two international fact-finding missions, which took place in September 2017 and January 2018.

The first mission was carried out from September 3 to 15, 2017 in the Brazilian region of MATOPIBA. “MATOPIBA” is an acronym for the region covered by savannahs, scrubland and forest, the Cerrado, in the four Brazilian States of Maranhão, Tocantins, Piauí, and Bahia. This region has seen an aggressive expansion of agribusiness, in particular soy bean plantations, which has been accompanied by the dispossession of rural communities and environmental destruction. The agribusiness expansion and increasing land speculation have been fueled by money coming from international financial actors, in particular pension funds from the USA, Canada, South Korea, the United Kingdom, Germany, Luxembourg, Sweden, and the Netherlands.

The fact-finding mission focused on the involvement of US, German, Swedish, and Dutch funds. It was composed of 30 human rights, development, and social movement experts, focused on the southwest of the Brazilian State of Piauí, at the border with the State of Maranhão. This area was chosen to highlight a process, which affects the entire region.

The team carried out interviews with rural communities in the municipalities of Santa Filomena and Gilbués, namely Melancias, Baixão Fechado, Sete Lagoas, Brejo das Meninas, and Santa Fé. Representatives of more than 20 other communities from the region also took part in the meetings. The field visits were followed by a number of public hearings and meetings with government officials, public prosecutors, members of the National Human Rights Council, members of congress and judges in Bom Jesus (Piauí), Teresina (Piauí), and Brasília.

The fact-finding mission has been a collective work of 30 representatives of social movements, as well as national and international human rights and

development organizations and has been coordinated by FIAN International. Rede Social de Justiça e Direitos Humanos, Pastoral Land Commission/Comissão Pastoral da Terra (CPT/PI), and FIAN Brasil were actively involved in the organization of the mission. Representatives of the following organizations also participated: Comissão Pastoral da Terra (CPT), CLOC – La Via Campesina, Via Campesina Brasil, GRAIN, ActionAid USA, Aidenvironment, Friends of the Earth International, WhyHunger, InterPares, Development and Peace, FIAN Sweden, FIAN Germany, FIAN Netherlands, Latinamerikagrupperna/Solidarity Sweden – Latin America (SAL), Grassroots International, National Family Farm Coalition, Family Farm Defenders, Student/Farmworker Alliance, Maryknoll Office for Global Concerns, Presbyterian Hunger Program, SumOfUs, Campanha Nacional em Defesa do Cerrado, FASE, HEKS/EPER, ActionAid Brasil, Cáritas Regional do Piauí, Federação dos Agricultores Familiares (FAF), Federação dos Trabalhadores Rurais na Agricultura (FETAG-PI), Escola de Formação Paulo de Tarso (EFPT-PI), PROGEIA (Santa Filomena), Sindicato dos Trabalhadores Rurais de Santa Filomena, Paróquia de Santa Filomena, and Instituto Comradio do Brasil.

The overall objective of the fact-finding mission was to document, verify, and give visibility to the social, economic, environmental, and human rights impacts of land business and agribusiness expansion in this part of the Brazilian Cerrado. The team considers this case as one paradigmatic example shedding light on the financialization of land and nature.

The second fact-finding mission took place between January 22 and 31, 2018, in the Netherlands, Germany, and Sweden. These countries are the home states of three of the pension funds, which, according to our research, have been involved in acquiring lands for the expansion of agribusiness in the MATOPIBA region. Meetings were held in the three countries with government representatives, members of parliament, representatives of the concerned pension funds, as well as with journalists and the general public, during public events. The fact-finding mission team also had meetings with representatives of the EU and



Members of the European Parliament. This mission deepened the investigation into the involvement of pension funds from the Netherlands, Germany, and Sweden, in the expansion of agribusiness and land grabbing in the MATOPIBA region, as well as the in the identification of the responsibilities of the funds and state authorities in related human rights abuses and violations.

The fact-finding mission team was composed of representatives from the CPT and the Centre for Advanced Amazonian Studies (NAEA) at the Federal University of Para – in coordination with the Brazilian Campaign in Defense of the Cerrado (Campanha Nacional em Defesa do Cerrado) –, FIAN International, FIAN Germany, FIAN Netherlands, FIAN Sweden, and Latinamerikagrupperna/Solidaridad Suecia – América Latina.

The entire process specifically aimed to:

- give visibility to the social, economic, and environmental impact of the ongoing land grabbing and ecosystem destruction in the MATOPIBA region;
- support local communities affected by land grabbing and support their struggles to defend and assert their rights;
- draw national and international attention to the process of land grabbing in the Brazilian Cerrado and the involvement of transnationally operating pension funds in particular;
- analyze the process of financialization of land in the MATOPIBA region and its role in fueling land grabbing and land speculation and violations of human rights of local people;
- engage with local, state, and federal state authorities in Brazil, as well as in the home states of the involved pension funds, to clarify specific aspects of the process;
- obtain information about existing regulations as well as about possibilities to monitor human rights-related risks of business activities, including investments, and to address abuses under the current regulations;

- identify the regulatory gaps in Brazilian law as well as in the legal frameworks of the home states of the involved pension funds, which make land grabbing and related human rights abuses and violations in the MATOPIBA region possible;
- elaborate a set of recommendations in coordination with the affected communities, to be submitted to the involved states and to the international community, that seek to guarantee the human rights of the affected people; and
- develop a strategy, in coordination with the affected communities, that seeks to protect and guarantee their human and land rights, including by identifying the existing political, social, and legal instruments to be used at national and international levels.

The fact-finding missions and this report are the result of a collective work, involving organizations from many countries. They are particularly based on the long-standing work of FIAN International in investigating and documenting land conflicts and cases of land grabbing in support of affected communities, including the analysis of such cases from a human rights perspective.

The information presented in this report also builds strongly on the research carried out by Rede Social de Justiça e Direitos Humanos, which has been publishing reports and articles on the expansion of agribusiness in Brazil and its impacts on rural communities, including in the MATOPIBA region. It has further strongly benefitted from the local work of the Comissão Pastoral da Terra, in particular its Piauí chapter (CPT/PI), which works with, and in support of, rural communities. The other organizations and researchers involved have contributed to the process in many other ways. It is particularly important to mention the involvement of several organizations and networks who have been investigating and carrying out advocacy work in relation to the activities of pension funds in Germany, the Netherlands, Sweden, and the USA. As land and other natural resources are increasingly treated as internationally tradeable financial assets, through a complex web of different

## 10 The Human and Environmental Cost of Land Business

actors, which are based in different countries, coordinated efforts at different levels become ever more important for defending, asserting, and advancing human rights beyond borders.

This report starts with a section providing the conceptual and analytical framework applied throughout the report. The second section provides some information on the background, describing the new driving factors and actors in land grabbing in MATOPIBA, linked to the financialization of land and other natural resources. The third section contains a detailed description of the findings from the field, based in particular on the testimonies from communities in the MATOPIBA region, information obtained during meetings with involved actors, as well as on additional research. The fourth section presents a human rights analysis of these findings and the report closes with a set of recommendations to address the human rights abuses and violations in the MATOPIBA region.

The members of the fact-finding mission teams hope that this report can support and encourage the struggle of traditional communities of the MATOPIBA region for their rights, and that it can contribute to identifying those responsible for human rights abuses and violations and to holding them accountable, in order to remediate the harm done and prevent further abuses and violations.



## 2. Conceptual and Analytical Framework of this Report

### 2.1. Land Grabbing and the Financialization of Nature

The recent convergence of multiple crises – food, fuel, energy, climate, environmental, and financial – has brought the issue of land back to the center stage of development policy discourse. At the same time, an interplay of several factors has increased interest in land as an economic and financial asset by corporations, funds, local elites, and governments, thus triggering a wave of land and resource grabbing, whose scale, depth, and pace pose major threats to the current and future enjoyment of human rights worldwide.

FIAN has investigated and documented land conflicts and supported rural communities in the defense of and struggle for their lands and other natural resources since its inception in 1986. FIAN was one of the first organizations that began systematically applying a human rights-based approach to land issues. In particular, FIAN contributed to the understanding that the secure and equitable access to land is a key component of the right to food, which has since been adopted by human rights and other international standards. Using a human rights framework to analyze land conflicts and land grabbing means taking the impacts that adversely affect communities and people as a starting point. It also means to place human dignity at the center when claiming states' accountability and confronting injustice, even in cases where it is caused by acts that are "legal". This moves away from an understanding of land grabbing, which focuses on size, features, and procedures of

large-scale land deals, thus neglecting the economic and political drivers of land dispossession.

In this report, we understand land grabbing as 'control grabbing': contemporary land grabbing is the capturing of control of relatively vast tracts of land and other natural resources through a variety of mechanisms and forms that involve large-scale capital that often shifts resource use orientation into extractive character, whether for international or domestic purposes, as capital's response to the convergence of food, energy and financial crises, climate change mitigation imperatives, and demands for resources from newer hubs of global capital.<sup>2</sup> While this definition does not preclude that any land deal or acquisition is a land grab, it is considered a land grab whenever such deals are carried out in settings where the process, immediate outcomes, and broader, long-term implications are such that they effectively deny land/natural resource-dependent people from exercising or gaining access to land, water, and forest, to use for livelihoods or spaces to live in.<sup>3</sup> In such settings, human rights issues arise.

It is important to understand that the target lands of the current wave of resource grabbing are often those in the grey area of property systems, which are thus easily claimed by the state. The property systems in the communities that occupy and use these lands are usually customary tenure. Many of the people affected by such types of land grabs are indigenous peoples or come from ethnic or minority groups, or other marginalized groups who depend on their land. The actors involved in land grabbing (corporations, state authorities at different levels, local elites, international institutions, etc.) create a narrative according to which these lands are "vacant", "fallow", "idle" – or "under-used", or not used "efficiently". This narrative purposely leaves out the fact that such lands are the home of rural communities, who have developed sophisticated

---

<sup>2</sup> This definition follows Borras Jr, S.M., Franco, J.C., Gómez, S., Kay, C. and Spoor, M. (2012), 'Land grabbing in Latin America and the Caribbean.' *The Journal of Peasant Studies*, 39 (3-4), pp. 845-872.

<sup>3</sup> Borras, S., Seufert, P. et al. (2016), *Land Grabbing and Human Rights: the involvement of European corporate actors and financial entities in land grabbing outside the European Union*. Study commissioned by the Subcommittee on Human Rights of the European Parliament (DROI). Available at: [www.europarl.europa.eu/thinktank/en/document.html?reference=EXPO\\_STU\(2016\)578007](http://www.europarl.europa.eu/thinktank/en/document.html?reference=EXPO_STU(2016)578007)



systems to co-exist with nature. According to such a discourse, transferring such lands to “more efficient” and/or “more productive” uses and users – i.e. to corporations and their commercial production model – becomes not only desirable and beneficial, but necessary.

Land and related natural resources are thus increasingly treated primarily as a globalized economic and financial asset. Technical tools such as statistics, calculations on land use, and productivity based on satellite images etc. are used to underpin this discourse and to make land available to all kinds of “investors.” This process fundamentally redefines what land is. Instead of a natural good with a strong local component and whose control and use is primarily a social relation, land is considered a globalized, “investible” resource.<sup>4</sup>

Importantly, behind most large-scale agricultural projects is a web of global actors that make the project possible. These actors include banks and companies that are funding the project, and the companies that are buying the produce being grown or processed by it. When looking at the increasingly complex investment webs of land deals, there are different types of actors: local real estate agents; business managers of the agricultural project; parent companies who (fully or partially) own the business managing the project (subsidiary or local branch); investors/shareholders who invest money in a company in return for shares; lenders who make loans to a project or a company (commercial banks, investment banks, multilateral development banks/IFI, investment funds, hedge funds, pension funds, and private equity funds); governments who offer land to the business managing the project and allow a company to be registered and operate in their country or region; brokers who play a role in helping to secure business deals and communicate between or support different actors involved;

contractors who carry out certain jobs on the ground on behalf of the project; and buyers who buy the produce grown or processed by the project (trading companies, processor/manufacturer, retailer).<sup>5</sup>

Some investors and companies are thus directly or indirectly linked to land deals via financing schemes and shareholder agreements, which often involve complex cascading relationships. This is very relevant for understanding the dynamics of land grabbing and to determine needed regulations to prevent nullification or impairment of the enjoyment of human rights, as well as to define the needed mechanisms for the allocation of responsibilities when harm is caused.

The current dynamics around land and related natural resources need to be seen in the context of the financialization of natural goods, as well as of agricultural and food systems. Broadly understood as the growing power and influence of the finance industry, the financialization of land and territories is a key driver and element of the fierce contemporary rush for natural resources. There is a very close link because land is a key defining element of capital’s spatial access to nature and natural resources like soil, water, genetic resources, timber or else.

Financialization can be defined as the “increasing importance of financial markets, financial motives, financial institutions, and financial elites in the operation of the economy and its governing institutions, both at national and international level”.<sup>6</sup> Importantly, this includes the domination of financial interests not only materially, but also with regards to the way in which land is understood and discussed.

In the context of land and other natural resources, financialization sheds light on the multiple and interconnected actors, relations, and processes

<sup>4</sup> See Li, T. (2014), What is land? Assembling a resource for global investment, Plenary Lecture for the Transactions of the Institute of British Geographers, 39/2014, pp. 589–602.

<sup>5</sup> See Fairbairn, M. (2014), ‘Like gold with yield’: Evolving intersections between farmland and finance’ *Journal of Peasant Studies*, 41(5), pp. 777–795; Clapp, J. (2014), ‘Financialization, distance and global food politics’, *Journal of Peasant Studies*, 41(5), pp. 797–814; Isakson, S.R. (2014), ‘Food and finance: The financial transformation of agro-food supply chains’, *Journal of Peasant Studies*, 41(5), pp. 749–775.

<sup>6</sup> Epstein (2005) Introduction: financialization and the world economy

that are involved in the design, financing, and implementation of agribusiness and other land-related investments (including speculative ‘investments’). This indicates that land grabbing is not only about the direct control over land and other natural resources, but also about the finance mobilized for control, acquisition, and exploitation.

Although the process of financialization is not something completely new (for instance, crop markets were financialized years ago and several climate change mitigation mechanisms are based on attributing a monetary value to forests, oceans etc.), what has changed in the last years is the pace with which the process is unfolding and with which communities are being dispossessed.<sup>7</sup>

One expression of the financialization of nature is the fact that financial actors (such as banks, brokerage companies, insurances, pension funds, hedge funds, investment firms, and venture capital funds), increasingly consider land as an attractive investment option, in addition to the more obvious actors from agribusiness and energy companies, who are involved in direct production. These financial actors channel capital into land purchases and land-based activities in order to diversify their investments, increase returns, and lower the risks for their portfolios. Such ‘investments’ are not necessarily geared towards production, but rather towards speculation, the (seemingly secure) parking of money, or towards gaining control over land in order to exert structural power, to mention but a few examples. This points to a blurring of the line between investments and speculation, which is inherent to the financialization of natural resources and land grabbing.

Pension schemes and pension funds are among the leading actors in the context of financialization of land and land grabbing in the role of major financial capital company players. Global assets of pension

schemes amount to more than 41 trillion USD, which makes them the heaviest players of the financial industry.<sup>8</sup> Two thirds of this amount is invested from the USA. In continental Europe, private pension systems have been pushed and are growing too, in the context of deregulation and privatization over the last 20 years. Search for diversification of portfolios and renting in low interest rate environments has led to more and more land investments by pension funds.<sup>9</sup>

Financialization presents substantive challenges for the defense of land and territories, because of the inherent difficulty in determining which of each of the involved actors is responsible for human rights abuses and violations. As a result, the challenge of remedying the situation is just as stark. This is not a coincidence, but a deliberate strategy that can be described as ‘distancing of accountability’,<sup>10</sup> and is used by many actors involved in land grabbing.

### 2.2. Human Rights

In this report, we use human rights both as a framework for the analysis of the land grabbing and land speculation that are happening in the MATOPIBA region, as well as for recommendations on how to address the social and environmental impacts. Human dignity is at the core of human rights and the human rights framework aims at ensuring a life in dignity for all human beings. As such, human rights historically and conceptually legitimize, instruct, and limit the powers of states, based on people’s sovereignty. States draw their legitimacy from the people who confer them the mandate to serve in the public interest, based on the principle of human dignity.

States have explicitly recognized these rights in the Universal Declaration on Human Rights (UDHR), the International Covenant on Civil and Political Rights

---

<sup>7</sup> Greenberg (2017) Corporate power in the agro-food system and the consumer food environment in South Africa.

---

<sup>8</sup> Think Ahead Institute/Willis Towers Watson (2018), Global Pension Asset Study 2018, available at: <https://www.thinkingaheadinstitute.org/en/Library/Research-and-Ideas/Global-Pension-Asset-Survey-2018>.

<sup>9</sup> See FIAN (forthcoming), The Financialization of Territories.

<sup>10</sup> Clapp, J. (2014), ‘Financialization, distance and global food politics’, *Journal of Peasant Studies*, 41(5), pp. 797-814.

(ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Rights of the Child (CRC), as well as in various conventions of the International Labour Organisation (ILO) and other instruments. The institutions and bodies of the United Nations (UN) that are responsible for monitoring states' compliance with their human rights obligations have further issued normative guidance (among others in the form of General Comments/Recommendations issued by the UN Human Rights Treaty Bodies among others) to specify the content of the rights enshrined in the mentioned covenants and conventions.

Human rights have also been recognized and defined at the regional level, such as in the American Convention on Human Rights and in the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights. The regional human rights systems, such as the Inter-American Human Rights System (IAHRS), complement the UN system and have their own institutions and procedures to ensure compliance and monitoring. In some countries, the human rights obligations described in the international treaties have been included in the national constitution and apply directly as domestic law, conforming the so-called "constitutional block". In other cases, states are required to develop legal frameworks that are based on their existing obligations and aim at the realization of human rights.

Human rights establish a relationship between the rights holders (the people) and the duty bearers (states). The existing human rights framework both describes the rights of all human beings and establishes clear obligations for states to respect, protect and fulfil these human rights. It also

creates a framework for accountability, where states are accountable to the people. The human rights framework also refers to third parties (such as companies and other business enterprises, among others), defining their responsibilities and clarifying the obligations of states to protect rights holders from the impairment of their human rights by these actors.

Human rights are generally defined as inalienable rights, or as the rights without which humans would lose their character as humans. Because of this and the role of human rights to ensure human dignity, international human rights law has instituted the principle of the primacy of human rights over other international norms, such as trade and investment agreements.<sup>11</sup>

Apart from their universality, another key feature of human rights is their interdependency.<sup>12</sup> This means that the different human rights that have been recognized in the afore-mentioned covenants and instruments are interlinked. Together, these rights ensure human dignity and a violation of one right entails, in most cases, also the violation of other rights.

International human rights law imposes two types of obligations on states: general obligations and specific obligations. To act in accordance with their general obligations, states must adopt measures favoring the progressive realization of those aspects of human rights, which are not immediately applicable. This includes refraining from any measures that would set back the realization of a human right. In addition, states must guarantee that no individual or group is discriminated against, in the enjoyment of his or her human rights, on the grounds of race, color, sex, age, language, religion, opinions (political or otherwise), national or social origins, economic status, birth, physical or mental handicap, health, sexual orientation, or civil, political, or social status.

<sup>11</sup> The principle of Primacy of human rights over trade and investment agreements derives from the UN Charter Art. 103, in conjunction with its Preamble, articles 1.3 and 55c, and has recently been reiterated by the CESCR in its General Comment 24, par. 13. Furthermore most of the constitutions in the world have recognized the prevalence of fundamental rights over other kind of constitutional rules.

<sup>12</sup> The human rights principles of interdependence and indivisibility have been recognized, among others, in the Preamble of the ICESCR.

As to the specific obligations of states, all human rights carry three types of associated obligations, namely, the obligations to respect, protect, and fulfil. The obligation to respect means that states must not take measures undermining human rights or preventing individuals or groups from their enjoyment of this right. The obligation to protect this right implies that states must take measures to prevent third parties (individuals, groups, companies, etc.) from interfering with the enjoyment of human rights. Finally, the obligation to fulfil means that states must take measures to ensure that everyone can enjoy human rights and live a decent life.

In the context of land and in the particular case addressed by this report, some of the most important rights are: the right to food and nutrition (see following section); the right to water and sanitation;<sup>13</sup> the right to health;<sup>14</sup> the right to housing;<sup>15</sup> the right to work;<sup>16</sup> the right not to be deprived of one's means of subsistence;<sup>17</sup> the right to take part in cultural life;<sup>18</sup> the right to education;<sup>19</sup> the right to take part in the conduct of public affairs;<sup>20</sup> the right to liberty and security of person;<sup>21</sup> the right to freedom of opinion and expression;<sup>22</sup> the right to access to information;<sup>23</sup> the right to freedom of association;<sup>24</sup> the right to freedom of movement;<sup>25</sup> and the right to a healthy environment.<sup>26</sup>

Specific conventions and other human rights instruments have been developed to describe the

rights of particularly marginalized groups, such as indigenous peoples<sup>27</sup> and women<sup>28</sup> as well.

It should be noted that the UN Human Rights Council is in the final stages of a process to develop and adopt a UN Declaration on the Rights of Peasants and Other People Living in Rural Areas. This declaration will make a crucial contribution to addressing the structural discrimination and marginalization of peasants and other people working in rural areas by specifying and concretizing the existing human rights framework with regards to its application to rural people.<sup>29</sup> A second ongoing process at the Human Rights Council concerns a Binding Instrument on Transnational Companies and other Business Enterprises with Respect to Human Rights.<sup>30</sup> One of its aims is to clarify states' obligations in regulating transnational activities of economic actors, as well as to define preventive and remedy mechanisms for human rights abuses emerged from transnational activities.

### 2.2.1. The Human Right to Food and Nutrition

The human right to food and nutrition (RTFN) is recognized in the UDHR, as part of the right to an adequate standard of living (Art. 25 (1)), and it is enshrined in Article 11 of the ICESCR. The right to food is reaffirmed in Article 12 of the CEDAW and

---

<sup>13</sup> ICESCR, Art. 11; UN General Assembly Resolution 64/292; CESCR General Comment 15; CEDAW, Art. 14(2); CRC, Arts. 20, 26, 29, 46

<sup>14</sup> UDHR, Art. 25; ICESCR, Art. 12

<sup>15</sup> UDHR, Art. 25; ICESCR, Art. 11; CESCR General Comments 4 and 7

<sup>16</sup> ICESCR, Art. 6

<sup>17</sup> ICESCR, Arts. 1.1 and 1.2

<sup>18</sup> ICESCR, Art. 15.1

<sup>19</sup> ICESCR, Arts. 13 and 14

<sup>20</sup> ICCPR, Art. 25

<sup>21</sup> ICCPR, Art. 9

<sup>22</sup> ICCPR, Art. 19

<sup>23</sup> ICCPR, Art. 19

<sup>24</sup> ICCPR, Art. 22

<sup>25</sup> UDHR, Art. 13

<sup>26</sup> UN General Assembly Resolution 45/94 and San Salvador Protocol to the American Convention on Human Rights, Art. 11.

---

<sup>27</sup> In particular the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and Convention No. 169 of the International Labour Organization concerning Indigenous and Tribal Peoples in Independent Countries.

<sup>28</sup> In particular the Convention on the Elimination of Discrimination against Women and CEDAW General Recommendation No. 34 on the Rights of Rural Women.

<sup>29</sup> Please see: [www.ohchr.org/EN/HRBodies/HRC/RuralAreas/Pages/WG RuralAreasIndex.aspx](http://www.ohchr.org/EN/HRBodies/HRC/RuralAreas/Pages/WG RuralAreasIndex.aspx). For a detailed discussion, please see: Monsalve Suárez, S., "The right to land and other natural resources in the United Nations Declaration on the rights of peasants and other people working in rural areas", FIAN International Briefing, December 2015. Available at: [www.fian.org/library/publication/publication\\_of\\_a\\_series\\_of\\_briefings\\_on\\_peasants\\_rights](http://www.fian.org/library/publication/publication_of_a_series_of_briefings_on_peasants_rights).

<sup>30</sup> See all related documents in the web page of the OEIGWG under [www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Pages/IGWGOnTNC.aspx](http://www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Pages/IGWGOnTNC.aspx).



in Article 24 of the CRC. Article 11 of the ICESCR contains two separate yet related norms: the right to adequate food (Art. 11 (1)) and the right to be free from hunger (Art. 11 (2)). The right to be free from hunger is the only right in said Covenant that is termed “fundamental”, thus highlighting the essential status of this right.

According to General Comment 12 (Art. 6) of the ICESCR, the authoritative interpretation of the RTFN, this right “is realized when every man, woman, and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement”. The legal core contents of the RTFN are availability, accessibility, adequacy, and sustainability. Not only does food need to be available from natural resources (through the production of food, fishing, hunting, or gathering) or sale in markets or shops, but it furthermore needs to be accessible to all, both economically and physically. Economic accessibility requires food to be affordable without compromising any other basic needs (e.g. school fees, medicine, or rent); thus, the governing body must ensure a sufficient minimum wage or social security benefit to allow for the procurement of nutritious food and other basic needs. Physical accessibility requires food to be accessible to all, including those who are physically vulnerable such as children, the sick, persons with disabilities, the elderly, people residing in remote areas, and victims of armed conflicts and natural disasters. In addition food must be adequate, taking into account, for example, dietary needs (related to age, living conditions, occupation, sex etc.), safety factors, purity (i.e. free from harmful substances such as contaminants coming from industrial or agricultural activities), and cultural acceptability. Finally, food must be sustainable for both present and future generations.

As all human rights, the RTFN imposes three levels of obligations on states: the obligations to respect, protect, and fulfil (facilitate, promote and provide).

While the understanding of what constitutes the RTFN has advanced with the issuance of CESCR General Comment 12 as well as with the adoption of the FAO Right to Food Guidelines in 2004,<sup>31</sup> the mainstream interpretation still do not incorporate all the dimensions of the RTFN in an exhaustive and adequate manner. In this report, we use a holistic understanding of this right, which departs from the understanding that the RTFN is more than the right to foodstuff. It is also more than the mere access to food that may be nutritionally and culturally adequate and safe. Rather, the RTFN can only be realized when there is a social process in which people, women and men equally, have choices at hand and can decide on how to engage with Mother Nature, transforming resources into food. This food is mostly locally produced, in line with agro-ecological principles and consists of a diversified diet that is adequate, safe and nutritious. This is necessary for everyone to attain nutritional well-being, sustain one’s own cultural identity, and be capable of leading a healthy, active, and social life within the community to which one belongs.

One key dimension of the RTFN is nutrition, which must be considered in every phase of the food system—from how and which foods to produce, to individual consumption and utilization. For instance, nutritional well-being is linked to regular access to a diversified, balanced, colorful, safe, fresh, culturally adequate diet. This points to the need for states to promote biodiversity, promote agro-ecological methods, reduce distance between producers and consumers, reduce chemical inputs, guarantee adequate returns to the producers, inform consumers, and promote adequate wages, among other initiatives.

In addition, the full realization of the RTFN for all can only be achieved when women’s human rights are fully realized. Guaranteeing women’s rights, on the one hand, and understanding the core linkages between women’s rights and children’s rights, on the other, are fundamental to the eradication of hunger and malnutrition, and central to this holistic approach.

<sup>31</sup> Food and Agriculture Organization of the United Nations (FAO) (2005), Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security. Available at: <http://www.fao.org/3/a-y7937e.pdf>.

Systematically reducing women's role to merely that of a mother and food provider for the family not only contributes to structural discrimination and violence (e.g. maternal mortality, infant mortality, feticide, discriminatory feeding practices, child marriage, adolescent pregnancy, etc.), but it also ignores the diverse roles women play throughout their lifespans and neglects the importance of self-determination for women and control over their own body and life.

Finally, the RTFN can only be fully realized within the framework of food sovereignty, which focuses on people, especially women, as the active participants and main decision-makers in all political processes and discussions that relate to food and food production. At the same time, this focus is meant to ensure sustainable livelihoods, as well as food and nutrition systems based on agro-ecological principles. Conceptualizing the RTFN within the food sovereignty framework, instead of the food security framework, allows the root causes of hunger and malnutrition to be tackled, as it brings to the forefront the issue of power. Without the food sovereignty framework, the RTFN risks being seen in the light of only outcomes, and therefore ignoring the questions related to who should control the natural and productive resources, who should define relevant food and nutrition policies, and who should regulate the powerful.

### 2.2.2. The Right to Land

The inextricable connection between land and several human rights has been increasingly recognized by human rights and other institutions over the last twenty years. In particular for rural people, access to, control over and use of land and other natural resources is indispensable for the realisation of various human rights, such as the right to food, the right to housing, the right to water, the right to an adequate standard of living, the right to take part in cultural life, the right to work, the right to self-determination and the rights of women, among others.

Land as a substantive human right has been developed and, until now, explicitly been codified with regards

to the rights of indigenous peoples.<sup>32</sup> In addition, an ever-increasing body of soft law instruments and recommendations/observations of UN Treaty Bodies, in particular the CESCR, have contributed to clarify the relationships between land and other natural resources, on the one hand, and human rights entitlements and state obligations, on the other.<sup>33</sup> The Special Procedures of the UN Human Rights Council<sup>34</sup> have also contributed to the development of the human right to land.

One of the most important developments regarding the recognition of land as a human right, has been the approval of the Guidelines for Responsible Governance of Tenure of Land, Fisheries and Forests, in the Context of Food Security<sup>35</sup> (henceforth Tenure Guidelines), by the United Nations Committee on World Food Security (CFS), in May 2012. These Guidelines build on existing human rights obligations of states and provide guidance to states on how to apply their human rights obligations to the governance of natural resources. The Tenure Guidelines underline the need for states to i) recognize and respect all legitimate tenure right holders and their rights, whether formally recorded or not; ii) safeguard legitimate tenure rights against threats and infringement and protect tenure right holders against the loss of their tenure rights; iii) promote and facilitate the enjoyment of legitimate tenure rights; iv) provide access to justice to deal with infringements of legitimate tenure rights; and v) prevent tenure disputes, conflicts and

---

<sup>32</sup> See United Nations (2008), United Nations Declaration on the Rights of Indigenous Peoples ([http://www.un.org/esa/socdev/unpfi/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfi/documents/DRIPS_en.pdf)) and International Labour Organization (1989), Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169), [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C169](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169).

<sup>33</sup> Among the CESCR's interpretive instruments are the General Comments (GC) No. 4 on the right to adequate housing, No. 7 on forced evictions, No. 12 on the right to adequate food, No. 14 on the right to the highest attainable standard of health, No. 15 on the right to water, No. 16 on the equal right of men and women to the enjoyment of all economic, social and cultural rights and No. 21 on the right to take part in cultural life. Moreover, CESCR has issued concluding observations with relation to land to approximately 50 countries since 2001 (according to an analysis by FIAN based on the Human Rights Index of the Office of the High Commissioner for Human Rights. Available at: [uhri.ohchr.org/en](http://uhri.ohchr.org/en)).

<sup>34</sup> These are independent human rights experts with the mandate to report and advise on human rights from a thematic or country-specific perspective.

<sup>35</sup> Food and Agriculture Organization of the United Nations (FAO) (2012), Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security.

corruption (paras. 3A1-5). They also emphasize that land, fisheries, and forests are not just an economic good, but primarily a source of food and shelter and the basis for social, cultural, and religious practices (preface). The Tenure Guidelines further clearly define that states need to put an emphasis on vulnerable and marginalized people (para. 1.1).

In March 2016, the Committee on the Elimination of Discrimination against Women, which monitors the implementation of the CEDAW, approved its General Recommendation on the Rights of Rural Women (General Recommendation n° 34).<sup>36</sup> This document is particularly significant because it is the first international instrument that specifically addresses the rights of rural women and furthermore, it is the first that explicitly recognises the human right to adequate food and nutrition of rural women within the framework of food sovereignty. It explicitly recognises “rural women’s rights to land, natural resources, including water, seeds, forestry, as well as fisheries, as fundamental human rights” (para. 56). It further underlines the right to participate in decision-making at all levels of rural women whose lives and livelihood depend on their effective access to natural resources (para. 53) and calls for state parties to protect rural women’s rights to natural resources under customary institutions and more explicitly, to ensure indigenous women’s equal access (para. 59). It also calls for the explicit recognition of the natural commons, and thus implicitly for the recognition of collective rights over land and natural resources as the use, access and management of the commons are socially defined and organised in a collective way (para. 62).

The process at the United Nations Human Rights Council towards the adoption of a UN Declaration on the Rights of Peasants and Other People Working in Rural Areas constitutes yet another significant step towards the recognition of land as a human right in as much as the advanced draft of the declaration includes an article on peasants’ right to land and other natural resources.

The advances over the last years in the standard-setting regarding land allow to consider land as a human right. The legal principle of *Pro persona* calls for the application of the norm or standard most favourable for protecting vulnerable social groups and enables state and non-state actors alike to interpret the existing framework in line with the highest standards developed by the UN and regional human rights systems, as well as with case law. This means that the three levels of specific human rights obligations also apply to land and that states have an obligation to respect, protect, and ensure access to, control over and use of land, including by peasant communities and others who live in rural areas.

The framing of land as a human right clarifies that land is, first and foremost, a common good which communities and people access, control, manage and use in many different forms, in order to live a dignified life, according to their social and cultural context. As such, it recognizes and seeks to protect and guarantee a variety of tenure systems and tenure rights, seeking to democratise them wherever they are discriminatory. Such an approach also challenges the dominant understanding of land as a globalised economic and financial asset as well as the promotion of private property rights and land markets to facilitate land deals and acquisitions. It further takes into account that human rights are also, and fundamentally, about controlling resources, and that such control is essential for conducting a self-determined life in dignity and in community with others.

It is important to stress that social movements, indigenous peoples and grassroots organisations around the world have been claiming the human right to land for a long time, as part of their struggles to have their rights to land and natural resources recognised and protected. The already mentioned concept and vision of food sovereignty has been crucial in this regard, just as the concept of ‘territory’, which is used by many ethnic nationalities – especially indigenous peoples – as well as communities and social

<sup>36</sup> For more information, please see: FIAN (2016), “The Recently Adopted CEDAW General Recommendation on the Rights of Rural Women. Analytical Note”, April 2016. Available at: [www.fian.org/fileadmin/media/publications\\_2016/CEDAW\\_GR\\_Rural\\_Women\\_Analysis\\_FINAL.pdf](http://www.fian.org/fileadmin/media/publications_2016/CEDAW_GR_Rural_Women_Analysis_FINAL.pdf).

movements to express their relationship to land and nature.<sup>37</sup> 'Territory' refers to a holistic understanding of land, which recognizes that all natural resources and their uses are interconnected in the realities of the lives and livelihoods of many people, making it impossible to separate land, fisheries and forests from one another, or from other natural resources. It also underlines that for indigenous peoples and small-scale food producers around the world, land, oceans, rivers, forests, and all of nature are much more than a means of production. They are the very basis of life, culture and identity, and fulfil crucial social, cultural, spiritual and environmental functions.<sup>38</sup>

### 2.2.3. Extraterritorial Human Rights Obligations

Human rights are universal. This means that under international human rights law, states are also obligated to respect, protect, and fulfil human rights outside their borders. States' extraterritorial human rights obligations (ETOs) entail that they must refrain from any acts and omissions that have foreseeable effects on the enjoyment of human rights in third countries (obligation to respect), to ensure that non-state actors based on their territory, which they are capable of controlling, do not commit human rights abuses or crimes (obligation to protect), and to contribute to the creation of an international environment that is conducive to the universal realization of human rights (obligation to fulfil).

States' extraterritorial obligations originally derive from articles 55 and 56 of the United Nations Charter, which obligate states to promote the universal respect of human rights and to take joint and separate action to this end, which clearly implies that their obligations do not stop at their borders.<sup>39</sup> Subsequently, the jurisprudence of UN Treaty Bodies,

but also the Inter-American Commission on Human Rights, have reaffirmed the extraterritorial nature of states' human rights obligations.<sup>40</sup>

In light of international law and this jurisprudence, in 2011, a group of experts drafted the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, summarizing and clarifying the extraterritorial obligations of states.<sup>41</sup> The Maastricht Principles are based on underlying principles of international law and constitute an international expert opinion adopted by international law experts from all regions of the world, including current and former members of international human rights treaty bodies, regional human rights bodies, former and current special rapporteurs of the Human Rights Council, and recognized scholars. These principles are a source of international law, in line with Articles 38 c) and d) of the Statute of the International Court of Justice. Rather than establishing new elements of international law, the principles clarify extraterritorial obligations of states on the basis of standing international law, as explained in the Commentary to the Maastricht Principles.<sup>42</sup> The Maastricht Principles are therefore an important tool when analyzing the obligations of states and holding them accountable, including in the context of land grabbing. In the context of this report, this is very relevant, since several US-American and European pension funds are financing the expansion of agribusiness in the MATOPIBA region, thus contributing to land speculation, the dispossession of local people and environmental destruction. The report will therefore also analyze the existing human rights obligations of the USA, Germany, the Netherlands, and Sweden,

<sup>37</sup> The concept of territory is complex and subject to multiple interpretations, but is understood here as expressing holistic relationships between people and their living environment. In this context it is not used to define the geographical and economic ambits of states, and over which states assert sovereignty through the use of political, legal and military force.

<sup>38</sup> Please see FIAN (2017), The Human Right to Land. Position Paper. Available at: [www.fian.org/en/news/article/land\\_is\\_a\\_human\\_right](http://www.fian.org/en/news/article/land_is_a_human_right).

<sup>39</sup> United Nations Charter (1945), ss. 55–6.

<sup>40</sup> See, inter alia, General Comments no. 12 (1999), no. 15 (2002), and no. 24 (2017) of the Committee on Economic, Social and Cultural Rights, General Comment no. 16 (2013) of the Committee on the Rights of the Child, General Recommendations no. 34 (2015) and no. 35 (2017) of the Committee on the Elimination of Discrimination against Women, and General Comment no. 3 (2015) of the African Commission on Human and Peoples' Rights.

<sup>41</sup> ETO Consortium (2012), Maastricht Principles on States' Extraterritorial Obligations in the Area of Economic, Social and Cultural Right, available at: [www.etoconsortium.org/en/main-navigation/library/maastricht-principles](http://www.etoconsortium.org/en/main-navigation/library/maastricht-principles).

<sup>42</sup> De Schutter, O., Eide, A., Khalfan, A., Orellana, M., Salomon, M., Seiderman, I. (2012), 'Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights,' In: Human Rights Quarterly. Available at: [www.etoconsortium.org/en/main-navigation/library/maastricht-principles](http://www.etoconsortium.org/en/main-navigation/library/maastricht-principles).





and identify possible breaches of their extraterritorial human rights obligations.

In the context of land grabbing, the following extraterritorial obligations are particularly relevant:<sup>43</sup> firstly, states must prevent their domestic and international policies and actions from contributing to land grabbing and interfering with people's human rights (ETO Principle 13). This refers both to activities that directly impair the human rights of people abroad and which indirectly interfere, e.g. by decreasing another state's ability to comply with its human rights obligations (ETO Principles 20 and 21). Conducting human rights impact assessments (HRIAs) and monitoring the extraterritorial human rights impacts of policies, laws, and practices are important steps for avoiding harm (ETO Principle 14). Secondly, states are required to establish regulations that ensure that non-state actors, such as transnationally operating corporations or investors, do not impair human rights in other countries (ETO Principle 24). In this context, measures to protect human rights must be adopted

and enforced in all states that are in a position to regulate these actors.

This applies wherever a corporation or financial actor has its center of activity, is registered or domiciled, or has its main place of business or substantial business activities, in the state concerned (ETO Principles 25 and 26). Effective regulation of the extraterritorial activities of companies is a crucial issue for addressing land grabbing, and states are required to use their influence to protect human rights abroad through diplomacy and cooperation (ETO Principle 27). Thirdly, states must hold corporations legally accountable for human rights abuses and crimes and establish accountability mechanisms so affected communities can access effective remedies (ETO Principles 37 and 38). State-based judicial remedies are crucial and the human rights obligations of states require them to open up their judicial systems in order to guarantee all victims of corporate human rights abuses have full access to civil, administrative, and criminal justice systems, among others.

<sup>43</sup> For a detailed description of states' ETOs in the context of land grabbing and land deals, including a compilation of the legal sources for ETOs, please see: Borras Jr., S.; Seufert, P. et al. (2016), Land grabbing and human rights: The involvement of European corporate and financial entities in land grabbing outside the European Union (in particular chapter 4.2 and Annex 4). Available at: [http://www.europarl.europa.eu/thinktank/en/document.html?reference=EXPO\\_STU\(2016\)578007](http://www.europarl.europa.eu/thinktank/en/document.html?reference=EXPO_STU(2016)578007).

### 3. Land as a Financial Asset: New Driving Factors and Actors in Land Grabbing in the MATOPIBA Region

#### 3.1. Characteristics of the MATOPIBA Region

The region known as MATOPIBA encompasses adjacent areas from three states in northeastern Brazil (Maranhão, Bahia, and Piauí) and one state from the country's northern region (Tocantins), covering 337 municipalities and a total land area of 73,173,485 hectares (see Map 1). MATOPIBA is a territorial delimitation, created through a technical cooperation agreement signed in 2014 between different ministries and federal agencies<sup>44</sup> to indicate the potential area of agricultural expansion in an area that has often been described by Brazilian governments as the "world's last agricultural frontier." In May 2015, the Brazilian government created, by a decree,<sup>45</sup> the special region of MATOPIBA and launched the MATOPIBA Plan for Agricultural Development (PDA), designating the area for development of agricultural and mining activities.

The MATOPIBA region is part of the Cerrado biome,<sup>46</sup> which consists of savannahs, scrubland and forests and is the second largest Brazilian biome after the Amazon. The Cerrado covers an area of approximately 2,036 million km<sup>2</sup> (24 % of the Brazilian territory) and is home to 5 % of the biodiversity on Earth. The Cerrado therefore has an extraordinary socio-environmental importance for Brazil, the region and planet earth. Indeed, even though less known and

less reported on by media, the Cerrado is as important as the Amazon is, notably because three of the region's most important aquifers are situated there (Guarani, BambuÍ, and Urucuia), which form two-thirds of Brazilian hydrographic regions. The Cerrado further is a very rich and diverse environment, consisting of several subsystems. As such, it has an enormous importance in terms of biodiversity of flora and fauna.<sup>47</sup>

The Cerrado is, however, one of the most endangered biomes in Brazil today, in particular with regards to loss of its vegetation cover and the extinction of species. According to the Brazilian government, by 2009 already half of the Cerrado's original vegetation had been lost, in particular due to the expansion of agribusiness.<sup>48</sup> While efforts have focused on reducing deforestation in the Amazon, clearing in the Cerrado has continued at high levels, also because this region is (implicitly or explicitly) considered as a buffer zone to the Amazon. Within the Cerrado, the MATOPIBA region accounts for 62 % of the region's total deforestation, reflecting the combination result of poor environmental regulation and intense development of the agribusiness sector.<sup>49</sup>

Although the discourse of governmental and corporate actors presents the Cerrado as a vast "empty" area, human occupation of these lands can in fact be traced back at least 13,000 years. Nowadays, the Cerrado is home to an estimated 25 million people – or 15 % of the Brazilian population – in approximately 1,500 municipalities. It is inhabited by more than 80 indigenous groups such as Karajá, Avá-canoeiro, Krahô, Xavante, Xerente, Xacriabá, and Tapuia, as well as several peoples and communities, who are known and legally recognized as "traditional peoples" for their specific cultures. These include *quilombolas* (descendants of runaway slaves), *geraizeiros*

<sup>44</sup> Namely the Ministry of Agrarian Development, the National Institute for Colonization and Agrarian Reform (INCRA) and the Brazilian Agricultural Research Corporation, through the Strategic Territorial Intelligence Group (GITE).

<sup>45</sup> Decree No 8.447 of 6 May 2015.

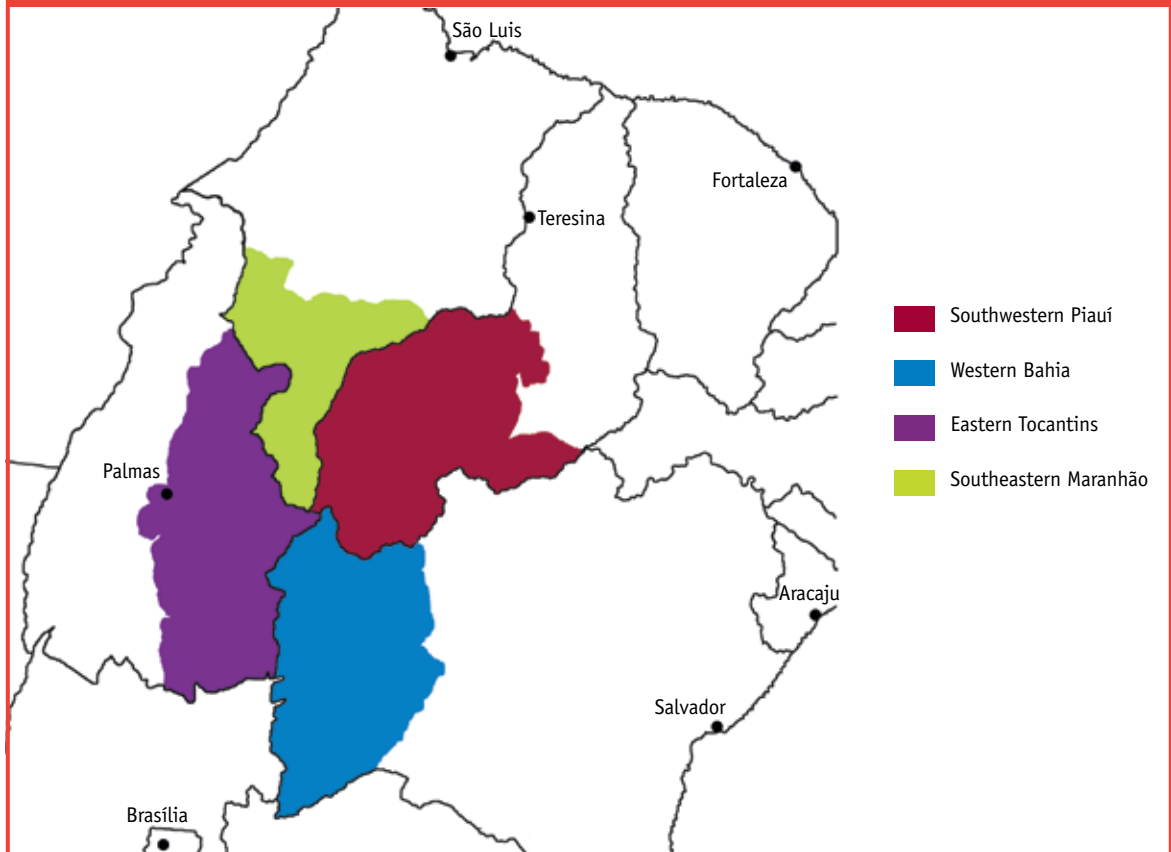
<sup>46</sup> A biome is a major ecological community of plants and animals, such as tropical rain forest, grassland, or desert.

<sup>47</sup> Action Aid and Rede Social de Justiça e Direitos Humanos (2017), "Impacts of agribusiness expansion In the MATOPIBA region: Communities and the Environment", p. 9-17. Available at: [http://actionaid.org.br/wp-content/files\\_mf/1506360021ACTIONAID\\_MATOPIBA\\_ENG\\_WEB\\_25SET.pdf](http://actionaid.org.br/wp-content/files_mf/1506360021ACTIONAID_MATOPIBA_ENG_WEB_25SET.pdf).

<sup>48</sup> Ministério do Meio Ambiente, MMA (2009), Plano de Ação para Prevenção e Controle do Desmatamento e das Queimadas no Cerrado, p. 7.

<sup>49</sup> Pereira, L. I. and Pauli, L. (2016), 'O processo de estrangeirização da terra e expansão do agronegócio na região do Matopiba.' Revista Campo-Território, Vol. 11, nº 23, Special edition, July, pp. 196-224.

Map 1: The MATOPIBA region



(peasants from northern Minas Gerais), *vazanteiros* (river bank peasants in the Cerrado), *quebradeiras de coco babaçú* (babassu nut processors), *povos de fundo e fecho de pasto* (communities where there is shared ownership of the land as well as collective use of resources), *barranqueiros* (a people who live along São Francisco River banks), and *sertanejos* (cattle herders). There are also communities conducting small scale extraction of minerals, family farmers,

settlements of landless peasants demanding agrarian reform, as well as people who were settled in plots assigned according to agrarian reform guidelines. All these peoples live and interact with the Cerrado, preserving it and making sustainable use of resources in the area. The practices, knowledge, and customs of these peoples are indispensable not only for their own survival but also for the survival of the Cerrado.<sup>50</sup>

<sup>50</sup> Action Aid and Rede Social de Justiça e Direitos Humanos (2017), Impacts of agribusiness expansion In the MATOPIBA region: Communities and the Environment, p. 17.

Over the centuries, these peoples and communities have developed strategies of survival and coexistence with the Cerrado and maintain a close relationship with the ecosystem through hunting, gathering of fruit and fishing, diversified agriculture, such as hillside and valley bottom agriculture, and loose cattle raising. The indigenous and traditional peoples have further developed a big social and cultural diversity. However, the culture of the Cerrado communities is unknown to many sectors of society. This creates a mistaken notion that the Cerrado is a biome with “poor” soils that explain a “demographic void”. Such discourse has been promoted and used to justify the expansion of industrial agriculture monocultures in the region, causing enormous environmental destruction, as will be described later on.

The peoples and communities living in the Cerrado have faced violence and exclusion throughout history. In fact, indigenous and native peoples of the Cerrado already faced violence under colonial occupation, which intensified by the incursions by settlers in search of stones and precious metals. In the seventeenth century, the first villages were established in the Brazilian Midwest, which later gave way to the formation of the first cities.<sup>51</sup> Communities of runaway slaves of African descent started to settle in the 19th century and organized in so-called *quilombos*. The traditional communities in the region go back to the middle of the 19th century. At the same time, the Brazilian Land law (1850) stipulated that all lands that were not formally owned by somebody now belonged to the state (so-called vacant lands, *terras devolutas*). After the end of slavery, a number of freed slaves left the big landholdings and settled on these state lands, creating communities that lived off farming, fishing, hunting, gathering and other activities. These communities did not formally own the land, but lived there as “occupants” (*posseiros*). Until today, the communities living in the MATOPIBA region do not usually hold any land titles and large

parts of the lands they live on continue to be *terras devolutas*. Given that these public lands have been used by communities and rural people for many years and that they have therefore - according to Brazilian law - acquired the right to own and use it by occupation (usucaption), “public land of common use” is a better term than the official term “vacant land”.<sup>52</sup>

As everywhere in the Cerrado, the communities in the MATOPIBA region have adapted to the natural landscape and live in the so-called *baixões*, or lowlands, where rivers flow from the high plateaus. These lowlands provide water and fish and places where communities could build their houses, grow food (manioc, rice, corn, beans), and raise some cattle, pigs, chickens and other poultry. The higher plains or plateaus (*chapadas*), with intermittent rainfall and water, were not good places to live, but were used as grazing areas for the cattle as well as for hunting and the gathering of fruit, wood and medicinal plants.<sup>53</sup> The use of both the lowlands and the highlands have thus been the basis of the livelihoods of peoples and communities living in the areas for a long time. Communities have managed and used the land and other natural resources based on customary practices. The plateaus in particular have been considered a common good, which communities have used collectively.

Today, the MATOPIBA region is marred by poverty and social inequality. Regarding agriculture, there is a significant disparity in the distribution of lands and income, which has its roots in Brazilian history and is reproduced until today. Of the total number of settlements, 80 % are rated as very poor (accounting for 5.22 % of the region’s gross income), 14 % are poor (accounting for 8.35 % of the region’s gross income), 5.79 % are middle class (accounting for 26.74 % of the region’s gross income) and 0.42% are rich (accounting for 59.78 % of the region’s gross

<sup>51</sup> Action Aid and Rede Social de Justiça e Direitos Humanos.

<sup>52</sup> See [https://1bps6437gg8c169i0y1drtgz-wpengine.netdna-ssl.com/wp-content/uploads/2018/04/LandSpeculation\\_Brazil\\_42518.pdf](https://1bps6437gg8c169i0y1drtgz-wpengine.netdna-ssl.com/wp-content/uploads/2018/04/LandSpeculation_Brazil_42518.pdf).

<sup>53</sup> Action Aid and Rede Social de Justiça e Direitos Humanos (2017). “Impacts of agribusiness expansion in the MATOPIBA region: Communities and the Environment”, p. 21. Available at: [http://actionaid.org.br/wp-content/files\\_mf/1506360021ACTIONAID\\_MATOPIBA\\_ENG\\_WEB\\_25SET.pdf](http://actionaid.org.br/wp-content/files_mf/1506360021ACTIONAID_MATOPIBA_ENG_WEB_25SET.pdf).



income).<sup>54</sup> Poverty and inequality have considerably increased as a result of the displacement of rural people due to agribusiness expansion.

Regarding land distribution, the 2006 agricultural census (the last one made available) has shown that from a total of 324,000 agricultural settlements in an area of 34 million hectares, 36 % had an area smaller than 10 hectares (with an average area of 2 hectares) and occupied only 0.7% of the region's land (246,000 hectares). 36 % of the settlements had between 10 and 100 hectares and occupied 13 % of the land. 10 % of those settlements had areas that ranged between 100 and 500 hectares, holding 21 % of the land. The remaining 4 % with holdings over 500 hectares, occupied 63 % of the land. The same census also shows that small and medium farmers produce over 70 % of the food for internal markets.<sup>55</sup>

### 3.2. Agribusiness Expansion

The expansion of the agricultural frontier into the Brazilian Cerrado started in the 1950s, in the context of a process of industrialization of agriculture, which has had catastrophic consequences for rural populations.<sup>56</sup> During this time, the Brazilian State guaranteed subsidized credit, tax exemptions, management of prices, and supply of land for agribusiness. This generated a major transformation in rural areas, which combined technical change with a worsening of historically asymmetrical relations of ownership and power. An important contributing factor to this was the availability of international finance capital that, at the cost of and increasing debt of the Brazilian State, financed the acquisition of machinery and chemical inputs from multinational companies. The "modernization" of agriculture became a political priority during the military dictatorship,

which lasted from 1964 to 1985.<sup>57</sup> This led to the creation of big agribusiness companies, which produce commodities for export (currently the main ones are soy, corn, sugar, cotton, and concentrated orange juice), following the model of the so-called Green Revolution, which is based on extensive use of chemical inputs, the mechanization of agriculture, and requires significant amounts of capital.

Conflicts over land are not new to the MATOPIBA region (in the 19th and early 20th century large-scale cattle breeding put pressure on traditional and indigenous communities) and already began to increase the early 1980s, when gauchos (rich farmers coming from the southern region of Brazil and some neighboring countries) started to arrive in search of lands for the cultivation of soybeans. Starting in the 1990s, important state subsidies, especially in the form of subsidized credits and subsidies for crop insurances, led to the expansion of soy monocultures, which, in the early 2000s, started to reach deeply into the northern part of the Cerrado, especially the states of Piauí and Tocantins. Around the same time, the quest for new areas of investment by the finance industry led to a commodity boom, which resulted in the speculative increase of the prices of commodities (such as soy, sugar, corn, cotton, eucalyptus, and meat) and further fueled the territorial expansion of monocultures and agribusiness. Between 2000 and 2014, the area planted with soy and sugarcane in the MATOPIBA region increased by 253 % and 379 % respectively and the area planted with soybeans increased from 1 million to 3.4 million hectares.<sup>58</sup>

The rise in commodity prices in the futures markets raised the demand for arable lands, which in turn raised the price of land in Brazil. Consequently, land itself increasingly became a target for financial actors and a business in its own right, beyond the financing of

<sup>54</sup> Mingoti, R., Brasco, M.A., Holler, W.A., Lovisi Filho, E., Spadotto, C.A. (2014), Matopiba: caracterização das áreas com grande produção de culturas anuais. EMBRAPA, Land Management. Campinas SP.

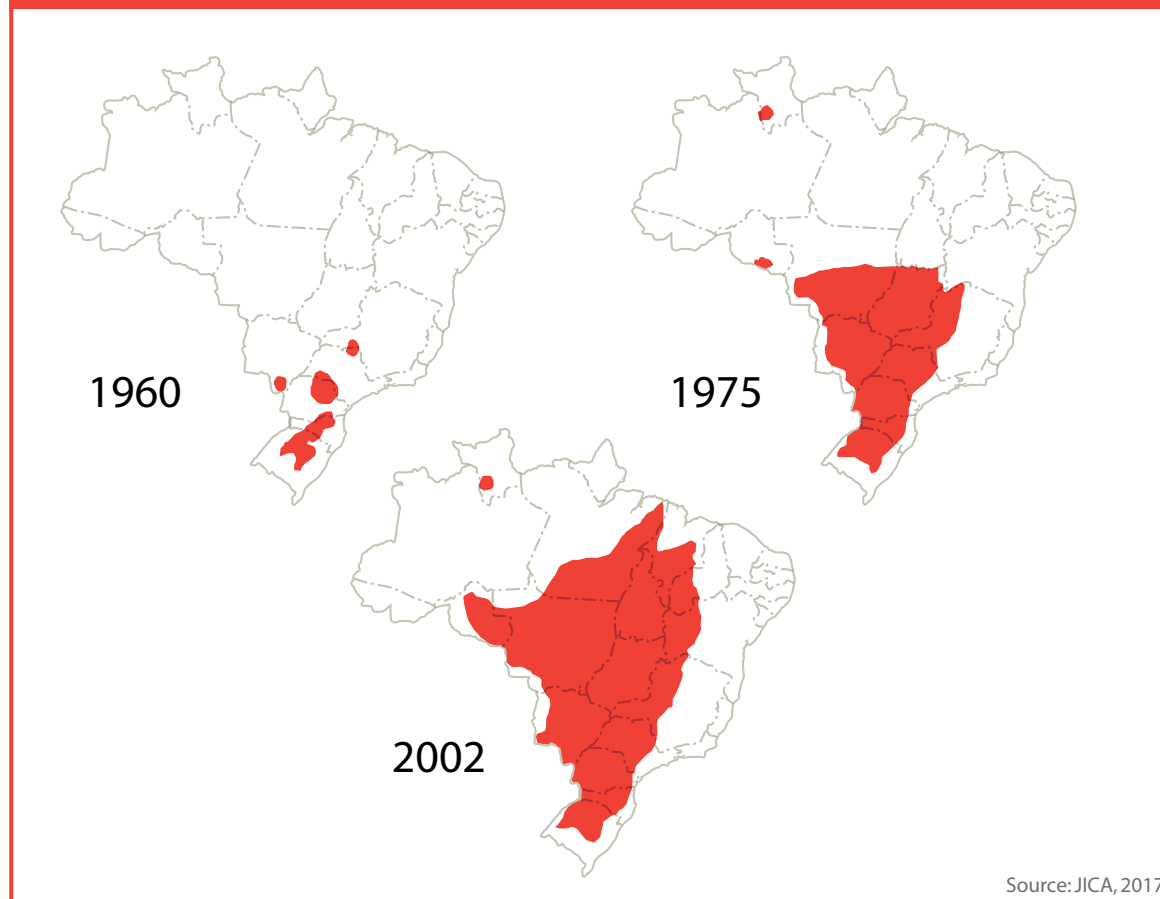
<sup>55</sup> Instituto Brasileiro de Geografia e Estatística, IBGE (2006), Censo Agropecuário 2006. Available at: <https://ww2.ibge.gov.br/home/estatistica/economia/agropecuaria/censoagro/default.shtm>.

<sup>56</sup> This chapter is based on Rede Social de Justiça e Direitos humanos (2018), Imobiliárias agrícolas transnacionais e a especulação com terras na região do MATOPIBA. Available at: [www.social.org.br/images/MATOPIBA.pdf](http://www.social.org.br/images/MATOPIBA.pdf).

<sup>57</sup> Idem.

<sup>58</sup> Idem, p. 26.

Map 2: Soybean Expansion in Brazil, 1960–2002



agro-industrial production. In the MATOPIBA region, this led to the appropriation of land, which had been used and occupied over generations by peasant communities and was still largely covered by native Cerrado vegetation. These lands have since become the focus of land speculation. Indeed, the demand for land as a financial asset drives the rise in prices as a speculative business. A case in point is the soybean industry, which started to incorporate the value of the land on which it produced into companies' portfolios, raising their value. The rise in the stock of a company can offset new debts, thus acting as an investment and promise of future production, which leads to the expansion of monocultures and the incorporation of new lands.<sup>59</sup>

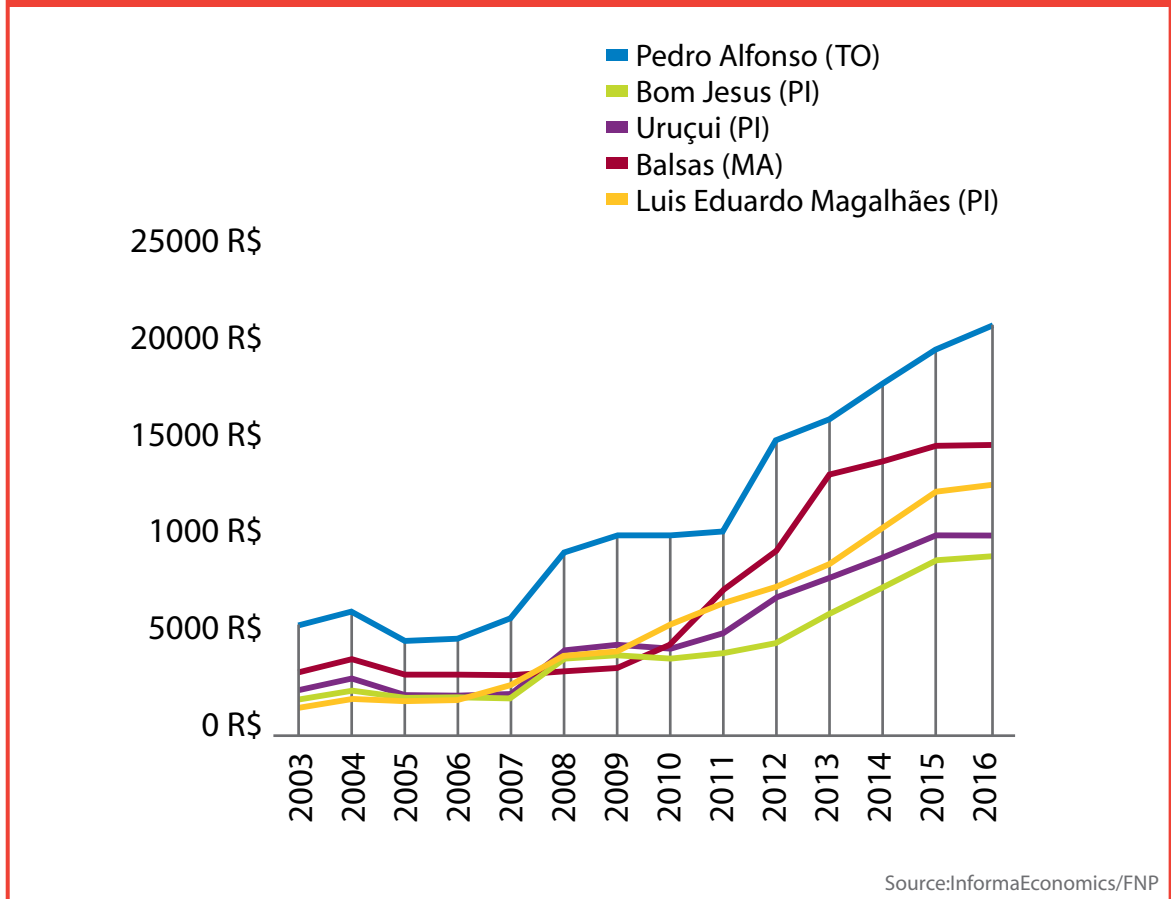
### 3.3. Land Grabbing and Land Speculation in MATOPIBA Today

Land speculation has continued after the end of the commodity boom and the drop of commodity prices on the world market in the aftermath of the world financial crisis of 2007/08. According to research by Rede Social de Justiça e Direitos humanos, even with falling international commodity prices in recent years, land prices have continued to rise in the MATOPIBA region, which has further stimulated land grabbing, the expropriation of peasants, and the destruction of the Cerrado.<sup>60</sup> Several companies and financial actors have begun to regard the price of a piece of land as

<sup>59</sup> Idem.

<sup>60</sup> Idem.

Figure 1: Price of the land in the MATOPIBA region (2003–2013)



an asset separated from the product and draw profits from speculation. According to research, 19,000 km<sup>2</sup> have been transferred in the MATOPIBA region between 2013 and 2015.<sup>61</sup>

With the increasing disconnect between commodity prices and land prices, land has, in many cases, become a more profitable business than agricultural production. Research shows that transnational agribusiness companies started operating in the land market around 2008/09. Some of these companies have created branches that specifically deal with land business. One example is the company SLC (Schneider Logemann Company), whose branch SLC Agrícola is one of the biggest Brazilian soy producers, while

the branch SLC Land Co. has become a big player in the land business. SLC controls almost half a million hectares of land in Brazil, with some 300,000 hectares planted with soy. In 2015, SLC generated more income through its farmland purchases and sales than via its historic core business with soy for the first time.<sup>62</sup> Other newly created land companies are no longer directly involved in industrial agricultural production and fully concentrate on acquiring, selling, leasing, and/or managing land.

The first step of land business is the creation of new farms/*fazendas*. This usually takes place in lands that are formally owned by the state (*terras devolutas*), by enclosing an area that had previously been without

<sup>61</sup> Kane, D. (2017), Brazil: Human and Environmental Costs of Land Investments, Maryknoll Office for Global Concerns, p. 7.

<sup>62</sup> Rede Social de Justiça e Direitos humanos (2018), Imobiliárias agrícolas transnacionais e a especulação com terras na região do MATOPIBA, p. 38.

land title. Once an area has been appropriated – often through an illegal act of forging ownership and enclosing/fencing off, driving out local people (often through the use of force) – new farms/*fazendas* are created, i.e. prepared for agroindustrial production, including through deforestation. These farms are then sold to agribusiness companies or to land companies, which lease or further sell the land.<sup>63</sup> According to information received through interviews with representatives of companies that are involved in land business in the MATOPIBA region, it costs around 5,000 Brazilian reais per hectare (around € 1,200) to create a farm in this way, which is then sold for at least 15,000 Brazilian reais per hectare (around € 3,600).<sup>64</sup>

The falsification or forgery of land titles is an intrinsic part of this business, as a way of formalizing (or at least simulating) land ownership, which has been appropriated illegally. In Brazil, this form of land appropriation is referred to as *grilagem*. This term refers to an old practice of keeping falsified documents with crickets, so that the insects would make the false documents look old and thus seemingly more real.<sup>65</sup> *Grilagem* is considered a crime under Brazilian law and normally involves corrupt state representatives, such as notary officials and judges, who are responsible for registering and legalizing ownership of a given plot of land respectively. The plot of land is then sold several times. Through these transactions, the title obtained in the described way becomes “clean” and “legal” and becomes attractive for international investors.

In many cases, plots of land that have been acquired in this way are then used as a basis to illegally expand the property through grooming, violence, and forgery of documents – a method called *abraço*, which means embrace.<sup>66</sup>

Importantly, those that are operating on the ground are backed by international financial actors and transnational companies that channel huge amounts

of capital into the land business, and thus fuel the ongoing speculation. Several of the companies that are involved in land transactions and speculation in the MATOPIBA region are linked to foreign companies, making them transnational land companies. Some prominent examples include: Radar, a joint venture of COSAN (Brazil’s biggest sugar producer) and TIAA (a US-based pension fund); SLC Agrícola S.A. (soy producer), which owns a real estate branch called SLC Land Co., which in partnership with Valiant Assets Manager (a UK-based investment fund) owns farms in the region; BrasilAgro S.A., listed in the stock exchange, which has Argentinian and Brazilian urban real estate and agribusiness partners; Sollus Capital, which receives indirect investments from Japanese and Argentinian companies; InSolo, which receives investments from the Harvard University Endowment Fund.<sup>67</sup>

All of the listed companies are present in the area visited by the fact-finding mission and very likely own land/farms there.<sup>68</sup> The region has also been a target for Japanese investments by Agrícola Xingú S.A., a Brazilian subsidiary of Mitsui & Co. S.A., and Agrex/Mitsubishi.<sup>69</sup>

Even though they may not be directly linked through a business relationship in all cases, the various players are all necessary parts of a specific model of wealth extraction, which has enormous social and environmental costs. Included among these are the local land grabbers/*grileiros*, the land companies

<sup>67</sup> See Rede Social de Justiça e Direitos Humanos (2018), *Imobiliárias agrícolas transnacionais e a especulação com terras na região do MATOPIBA*.

<sup>68</sup> FIAN contacted all companies mentioned in this report in order to share and verify with them the information collected during the realization of the fact-finding mission, which took place in September 2017. The excerpts of a draft version of this report directly mentioning the activities of companies in the MATOPIBA region were shared with them via e-mail on December 12 and 13, 2017. Based on their replies, factual corrections were made in the text. Despite many efforts to contact Tiba Agro S.A. via telephone and fax, we did not succeed to contact this company. Mitsui & Co. S.A. stated, in a response dated December 22, 2017, “that Agrícola Xingú’s objective is agricultural production in Brazil and Mitsui does not hold business for the purpose of land investment. Mitsui has a policy to respect the human rights.” The company refers to its activity reports, which are available at [www.mitsui.com/jp/en/sustainability/activity\\_report/human/index.html](http://www.mitsui.com/jp/en/sustainability/activity_report/human/index.html). SLC Agrícola S.A. and SLC Land Co. expressed in a letter dated December 27, 2017, their disagreement with regard to the information that the creation of new farms cost very little to investors and provides enormous returns.

<sup>69</sup> Rede Social de Justiça e Direitos Humanos (2018), *Imobiliárias agrícolas transnacionais e a especulação com terras na região do MATOPIBA*.

<sup>63</sup> Idem.

<sup>64</sup> Idem, p. 30.

<sup>65</sup> Idem.

<sup>66</sup> Ariovaldo Umbelino Oliveira (2016), *“A mundialização da agricultura brasileira”*. São Paulo: Iandê Editorial.



that acquire the lands in order to speculate or lease them out to production, the agribusiness companies that exploit the land (and the local people who end up working on the plantations after losing their livelihoods), and the international financial actors who may be linked to any of these actors and ensure the capital inflow that is necessary to keep this business going.

As will be explained in more detail in the following chapter, pension funds from the USA, Germany, the Netherlands, and Sweden have invested substantial funds in land business in the MATOPIBA region.

### 3.4. The Involvement of International Pension Funds in Land Grabbing in MATOPIBA

#### 3.4.1. The US-American Pension Fund, TIAA

TIAA (Teachers Insurance and Annuity Association) is a private, non-profit pension fund that manages the retirement accounts of around five million teachers and social service workers from 16,000 organizations.<sup>70</sup> It has offices all over the United States and around the world, but it is based in New York. TIAA is the largest international investor in agricultural lands, as well as the third largest commercial real estate manager in the world.<sup>71</sup>

Through its global asset management division, called Nuveen, TIAA possesses and manages 1,697,219 acres of land (686,840 hectares), divided between five countries on four continents,<sup>72</sup> worth in excess of US \$ 8 billion.<sup>73</sup> TIAA has been purchasing agricultural

lands since 2007<sup>74</sup> and, in 2012, launched its first international agricultural lands fund, called TIAA-CREF Global Agriculture LLC (TCGA I), totaling US \$ 2 billion.<sup>75</sup> A second agricultural lands fund (TIAA-CREF Global Agriculture II LLC, TCGA II), worth US \$ 3 billion was launched in 2015.<sup>76</sup> The majority of investors in TCGA I and II are institutional investors, in particular pension funds (see Table 2).

According to TIAA, around 43% of its lands, about 728,730 acres (294,901 hectares), are located in Brazil. 40% of its agricultural lands, or 684,735 acres (277,097 hectares), are located in Australia and TIAA has smaller ventures in Chile and Poland. Almost 15% of its agricultural lands are located in the USA, totaling 251,166 acres (101,641 hectares), and even though this represents less than a sixth of its cultivated lands, the returns from agricultural lands in the USA equals nearly half of its total assets. According to the information provided by the fund, over 71% of the area owned by TIAA is dedicated to grains and oilseeds (mainly the industrial crops, soy beans and maize), while another 25% of its lands are planted with sugar cane. Around 4% of this land is dedicated to growing food or specialized crops. The vast majority of TIAA's crops are thus destined for the commodities market in order to make processed food, biofuel, or feed livestock in industrial farms.

The lands owned by TIAA in Brazil are located in different states. 261,694 acres (105,902 hectares), i.e. almost 36%, are located in the MATOPIBA states. Other states where TIAA owns farmland are Mato Grosso, São Paulo, Minas Gerais, Goiás, and Mato Grosso do Sul. The state of São Paulo is where TIAA owns most of its lands in Brazil, namely 330,981 acres (133,941 hectares), or around 45 %.

<sup>70</sup> [www.tiaa.org/public/about-tiaa/news-press/press-releases/pressrelease531.html](http://www.tiaa.org/public/about-tiaa/news-press/press-releases/pressrelease531.html)

<sup>71</sup> Norton, Leslie P., "TIAA/Nuveen: A Trillion Dollar Startup Is Making Its Move. Roger Ferguson is rebuilding the pension-plan giant from the ground up and aims to expand its reach", *Barron's* (4.8.2017), [www.barrons.com/articles/tiaa-nuveen-a-trillion-dollar-startup-is-making-its-move-1491623875](http://www.barrons.com/articles/tiaa-nuveen-a-trillion-dollar-startup-is-making-its-move-1491623875).

<sup>72</sup> TIAA/Nuveen (2017), "Responsible Investment in Farmland: 2017 report on ethical conduct and responsible stewardship of the environment". Available at: [www.tiaa.org/public/pdf/06-2017\\_GBR-CFARMRPT\\_Farmland\\_Report.pdf](http://www.tiaa.org/public/pdf/06-2017_GBR-CFARMRPT_Farmland_Report.pdf).

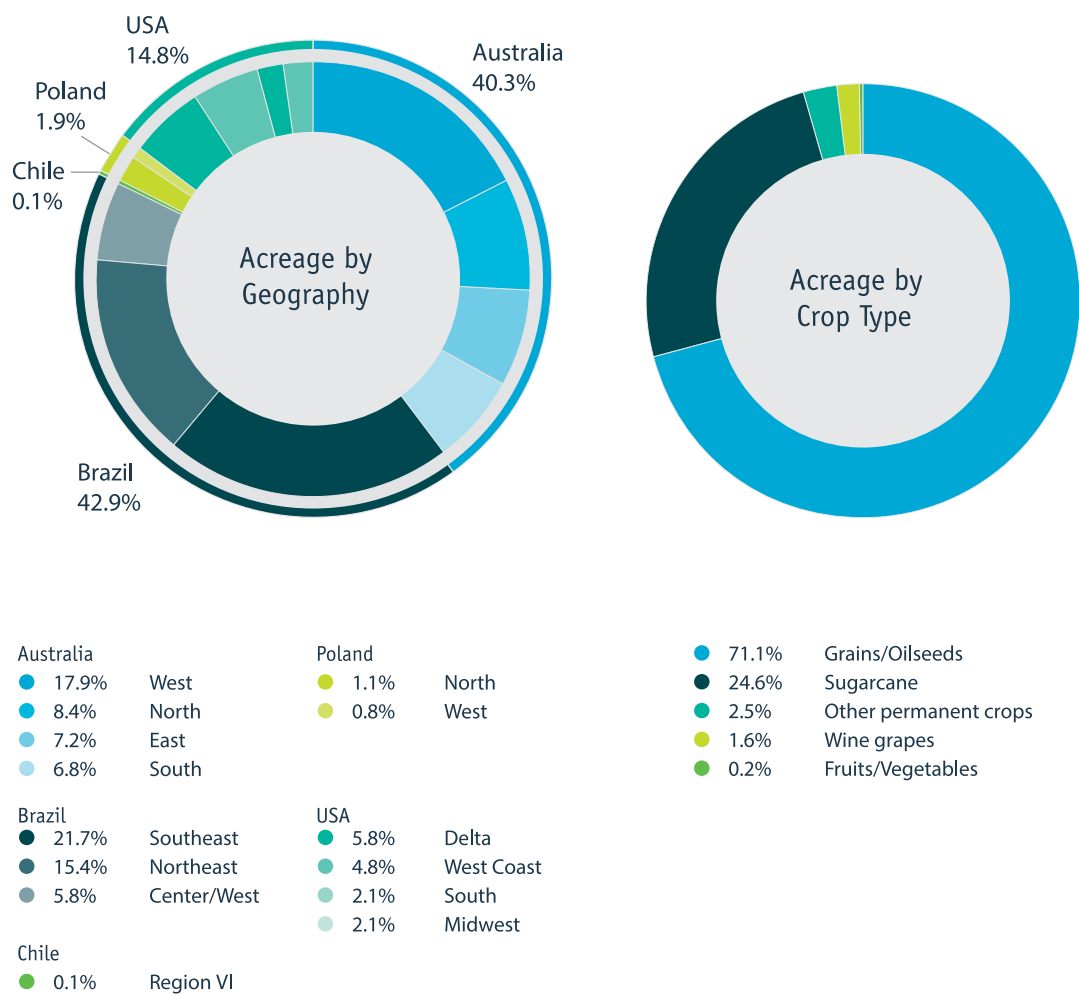
<sup>73</sup> Claire Pennington, "TIAA Global Asset Management: 'We are finding more opportunity internationally'", *Agri Investor* (9.28.16), [www.agriinvestor.com/tiaa-global-asset-management-we-are-finding-more-opportunity-internationally](http://www.agriinvestor.com/tiaa-global-asset-management-we-are-finding-more-opportunity-internationally). According to TIAA/Nuveen, its farmland holdings were valued at US \$6 billion at the end of 2016. See TIAA (2017), *Responsible Farmland Report*, p. 16.

<sup>74</sup> See [www.tiaa.org/public/about-tiaa/news-press/press-releases/pressrelease602.html](http://www.tiaa.org/public/about-tiaa/news-press/press-releases/pressrelease602.html) and Marcia Zarley Taylor, "Farmland REITs Gain Ground", *The Progressive Farmer* (6.14.16), [www.dtnpf.com/agriculture/web/ag/news/businessinputs/article/2016/06/14/wall-st-funds-flirt-farmland](http://www.dtnpf.com/agriculture/web/ag/news/businessinputs/article/2016/06/14/wall-st-funds-flirt-farmland).

<sup>75</sup> "Pension funds investing more often in agriculture", *Maxwell, Locke & Ritter* (10.23.16) [www.mlrc.com/articles/pension-funds-investing-more-often-in-agriculture](http://www.mlrc.com/articles/pension-funds-investing-more-often-in-agriculture).

<sup>76</sup> See [www.tiaa.org/public/about-tiaa/news-press/press-releases/pressrelease602.html](http://www.tiaa.org/public/about-tiaa/news-press/press-releases/pressrelease602.html).

Figure 2: TIAA's Farmland Holdings <sup>77</sup>



<sup>77</sup> Source: TIAA/Nuveen (2017), Responsible Investment in Farmland, p.18. Based on gross acreage of 1,697,219 as of 12/31/16

Table 1: TIAA Farmland Holdings in Brazil over Time <sup>78</sup>

State	2012		2013		2014		2015		2016	
	Acres	Hectares	Acres	Hectares	Acres	Hectares	Acres	Hectares	Acres	Hectares
Bahia	17.680	7.155	34.676	14.033	43.299	17.522	78.957	31.952	78.959	31.953
Maranhão	83.160	33.653	167.653	67.845	159.218	64.432	168.143	68.044	167.569	67.812
Piauí	-	-	7.848	3.176	7.851	3.177	7.851	3.177	7.851	3.177
Tocantins	-	-	7.364	2.980	7.363	2.980	7.315	2.960	7.315	2.960
Mato Grosso	35.179	14.236	92.730	37.526	93.153	37.697	102.050	41.297	86.353	34.945
São Paulo	121.858	49.313	228.290	92.384	270.800	109.587	296.383	119.940	330.981	133.941
Minas Gerais	-	-	29.264	11.842	37.974	15.367	38.144	15.436	37.990	15.374
Goiás	-	-	12.408	5.021	13.733	5.557	11.712	4.740	11.712	4.740
Mato Grosso do Sul	-	-	1.029	416	-	-	-	-	-	-
<b>Total</b>	257.877	104.357	581.262	235.224	633.391	256.319	710.555	287.546	728.730	294.901
<b>Total in MATOPIBA states</b>	100.840	40.808	217.541	88.034	217.731	88.111	262.266	106.133	261.694	105.902

<sup>78</sup> Own elaboration, based on TIAA's annual reports.

As already stated, most of the farmland in Brazil is owned and managed through the two funds, TCGA I and II. According to TIAA's Farmland Holdings Report from October 2016, the total farmland holdings in Brazil under TCGA I amount to 328,414 acres (132,904 hectares), of which 7,851 acres (3,177 hectares) are situated in the state of Piauí,<sup>79</sup> 116,995 acres (47,346 hectares) in Maranhão 7,315 acres (2,960 hectares) in Tocantins (and 25,618 acres (10,367 hectares) in Bahia<sup>80</sup> Under TCGA II, farmland holdings in Brazil amount to 159,959 acres (64,733 hectares), of which 6,080 acres (2,460 hectares) are located in Maranhão and 35,660 acres (14,431 hectares) in Bahia.<sup>81</sup>

As already mentioned, TIAA's farmland investments are overseen by its global asset management arm, Nuveen. The investments are managed by Westchester Group Investment Management, an asset management firm affiliated to TIAA/Nuveen, which "identifies, acquires, and monitors our farmland investments and is also responsible for the negotiation of the lease and crop management contracts."<sup>82</sup> A third management layer is made up of farm operators, who "manage the properties on a day-to-day basis."<sup>83</sup> In many cases, this happens through lease contracts.

---

<sup>79</sup> This is the area made up of two farms owned by TIAA: Ludmila and Laranjeiras.

<sup>80</sup> TIAA (2016), "TIAA-CREF Global Agriculture I LLC. Farmland Holdings Report", October 31, 2016. Available at: [www.tiaa.org/public/pdf/tcga\\_i\\_farmland\\_holdings\\_report\\_2016.pdf](http://www.tiaa.org/public/pdf/tcga_i_farmland_holdings_report_2016.pdf).

<sup>81</sup> TIAA (2016), "TIAA-CREF Global Agriculture II LLC. Farmland Holdings Report", October 31, 2016. Available at: [www.tiaa.org/public/pdf/tcga\\_ii\\_farmland\\_holdings\\_report\\_2016.pdf](http://www.tiaa.org/public/pdf/tcga_ii_farmland_holdings_report_2016.pdf).

<sup>82</sup> TIAA/Nuveen (2017), *Responsible Investment in Farmland*, pp. 10-11. See also [www.tiaa.org/public/about-tiaa/news-press/press-releases/pressrelease602.html](http://www.tiaa.org/public/about-tiaa/news-press/press-releases/pressrelease602.html).

<sup>83</sup> Idem.



Table 2: Investors in TCGA I and II <sup>84</sup>

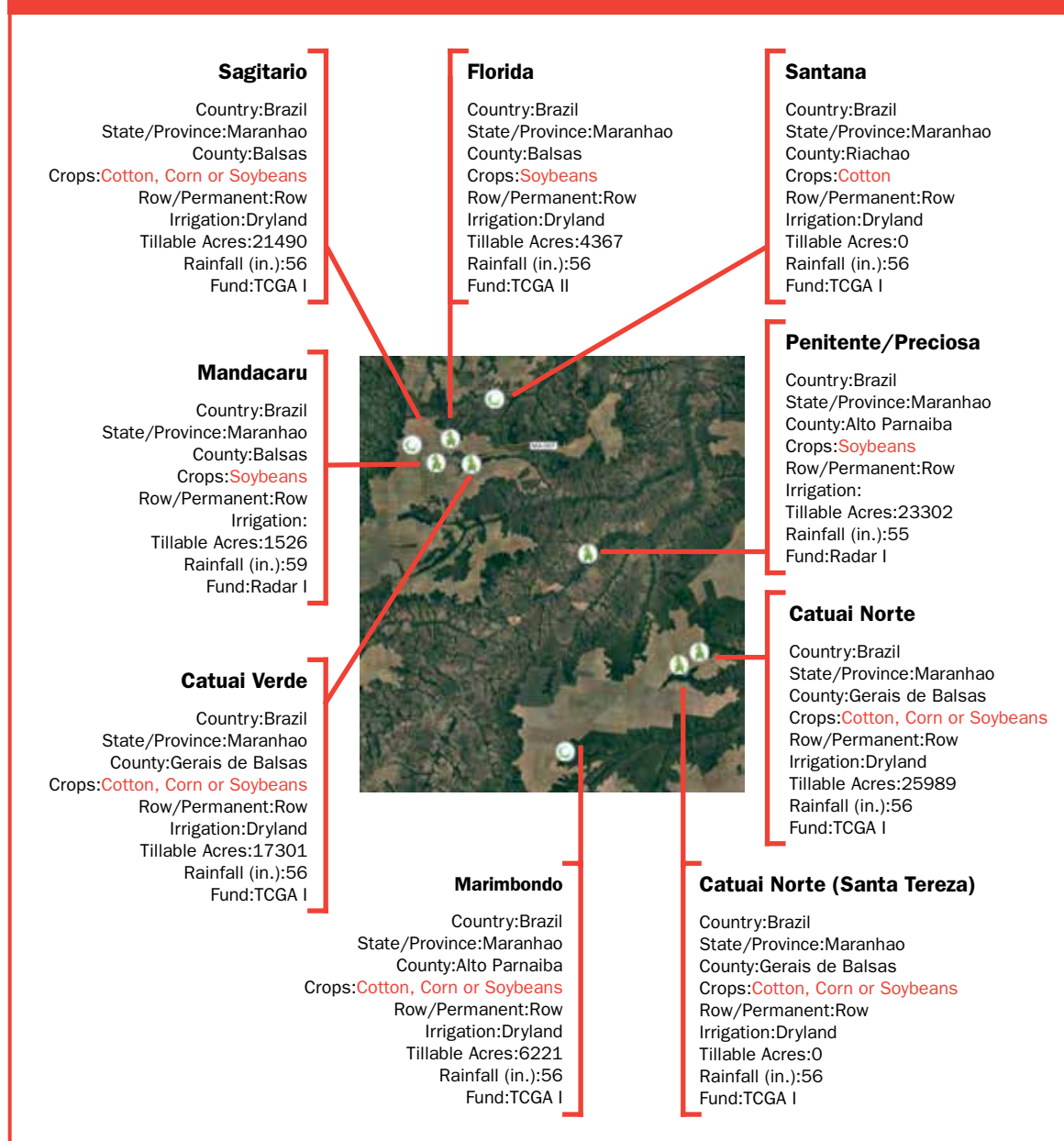
Fund	Investor	Country	Percentage	Amount (US \$ millions)
TIAA-CREF Global AgriTIAA-CREF Global Agriculture LLC	Caisse de dépôt et placement du Québec	Canada	12.5	250
	bcIMCO	Canada	12.5	250
	National Pension Service of Korea	Korea	4.5	100
	AP2	Sweden	23.0	450
	ÄVWL	Germany	5.0	100
	TIAA Global AG Holdco LLC	USA	41.7	834
	TIAA-CREF Global Agriculture Investor Fund, LP	USA	0.8	16
<b>Total</b>			100.0	2.000
TIAA-CREF Global Agriculture II LLC	Feeder Fund and High Net Worth Investors		0.6	18
	NMR Pension Fund (N M Rothschild & Sons employee pension fund)	UK	0.7	21
	Cummins UK Pension Plan Trustee Ltd.	UK	0.8	25
	Environmental Agency Active Pension Fund	UK	1.0	30
	NCPP Investment Holding Company (NAV Canada Pension Plan)	Canada	1.4	41
	Thales Pension Trustee Limited as Trustee of the Thales UK Pension Scheme	UK	1.5	44
	Labourers Pension Fund of Central and Eastern Canada	Canada	1.7	50
	Ontario Power Generation Inc. Pension Fund	Canada	1.7	50
	Ontario Power Generation Inc. On behalf of the Decommissioning Segregated Fund	Canada	2.3	68
	Greater Manchester Pension Fund	UK	2.3	70
	Ontario Power Generation Inc. On behalf of the Used Fuel Segregated Fund	Canada	2.8	83
	Islazul General Partner S.à.r.l.	Luxembourg	3.3	100
	SA Real Assets 2 Limited	UK (Guernsey)	3.3	100
	CDP Infrastructures Fund G.P.	Canada	6.7	200
	State of New Mexico State Investment Council	USA	6.7	200
	Stichting Pensioenfond ABP	Netherlands	6.7	200
	bcIMC Renewable Resource Investment Trust	Canada	10.0	300
	Comptroller of the State of New York, as Trustee of the Common Retirement Fund ("CRF")	USA	10.0	300
	TIAA Global AG Holdco LLC	USA	11.7	350
	AP2 Ag-land Investments KB	Sweden	25.0	750
<b>Total</b>			100.0	2.999

<sup>84</sup> Source: [www.sec.gov/Archives/edgar/data/1364783/000119312516781853/d279596d485bpos.htm](http://www.sec.gov/Archives/edgar/data/1364783/000119312516781853/d279596d485bpos.htm).

According to TIAA, “Nuveen has established several investment entities, including TIAA-CREF Global Agriculture LLC and TIAA-CREF Global Agriculture II LLC (the “TCGA entities”) to make farmland investments.”<sup>85</sup> This points to the fact that TIAA also

owns and manages farmland through other vehicles. Indeed, based on information about its farmland holdings made available by TIAA/Nuveen, there are also two other funds, called Radar I and II, which own farms in the MATOPIBA region.

**Figure 3: Investment Conglomerate of TIAA in the State of Maranhão<sup>86</sup>**



<sup>85</sup> TIAA/Nuveen (2017), Responsible Investment in Farmland, pp. 10-11.

<sup>86</sup> Based on TIAA's farmland map. Available at: [www.tiaa.org/public/assetmanagement/strategies/alternatives/agriculture/farmlandmap](http://www.tiaa.org/public/assetmanagement/strategies/alternatives/agriculture/farmlandmap). Accessed on 30 January

TIAA presents itself as a company leading the way when it comes to opening up attractive investment options to financial investors, in particular institutional investors. In a letter to FIAN, sent in response to a draft version of the present report, TIAA/Nuveen states: “We believe our long-term financial commitment, stringent due diligence process and well-documented sustainable approaches set the standard for institutional farmland investors.”<sup>87</sup> The fund further states to have “taken several steps to be on the forefront of responsible investment.”<sup>88</sup> The fund emphasizes particularly that it is one of the original signatories to the Principles for Responsible Investment (PRI) and was involved in developing the Principles for Responsible Investment in Farmland (Farmland Principles). Both are initiatives led by investors with the stated objective of improving the sustainability, transparency, and accountability of their investments, including in farmland.<sup>89</sup> TIAA underlines that it reports on its activities in relation to these principles annually.

TIAA justifies its farmland investments on the basis of needing to diversify its portfolio in order to support retirement security, provide a steady income, and hedge against inflation. In one of its reports, the fund states: “We believe farmland is an excellent long-term asset class that adds value and diversification to many institutional investment portfolios.”<sup>90</sup> TIAA underlines that it is a long-term investor that acquires its “farmland assets generally with up to a 20-year time horizon.”<sup>91</sup>

It also claims that the investments “are a vital source of capital that helps local operators to farm sustainably, improve crop yields, and increase global food supplies.”<sup>92</sup> The fund acknowledges that farmland investments are a “complex subject [...] with many environmental and social considerations,” but claims to be addressing these through its due diligence procedures (see chapter V.3 for more details).

TIAA’s self-description as a global leader on responsible and sustainable investment stands at odds with research on its land investments in Brazil however.<sup>93</sup> This research shows how the fund has set up a complex structure in order to acquire farmland in the MATOPIBA region. Many of its farms were purchased by a company called Radar Imobiliária Agrícola S/A, which was created through a joint venture between TIAA and Brazil’s largest sugar producing company, Cosan. TIAA initially owned 81% of Radar through its Brazilian subsidiary, Mansilla Participações Ltda., while Cosan owned 19% and managed the investments.<sup>94</sup> One of Radar’s objectives is to obtain capitalized income from land – that is, acquire cheap lands, establish farms on that land, and then sell it, in several cases in speculative transactions.<sup>95</sup> In September 2016, Cosan announced the sale of the majority of its stakes (the equivalent of hundreds of thousands of hectares of land) in Radar to Mansilla Participações, TIAA’s subsidiary in Brazil.<sup>96</sup> The complex architecture around TIAA’s farmland investments allows the fund, among others, to circumvent provisions set out under Brazilian law,

<sup>87</sup> Letter by TIAA/Nuveen to FIAN, dated December 22, 2017.

<sup>88</sup> Ibid.

<sup>89</sup> For more details, see chapter IV.

<sup>90</sup> Responsible Farmland Investments report 2017, p. 4.

<sup>91</sup> Responsible Farmland Investments report 2017, p. 4.

<sup>92</sup> [www.tiaa.org/public/land/responsible-investment-farmland](http://www.tiaa.org/public/land/responsible-investment-farmland).

<sup>93</sup> Reports questioning TIAA’s self-depiction as a “responsible investor” have also been published regarding other of the fund’s activities. See, for instance: Morgenson, Gretchen, “The Finger-Pointing at the Finance Firm TIAA”. In: The New York Times (10.21.2017), <https://www.nytimes.com/2017/10/21/business/the-finger-pointing-at-the-finance-firm-tiaa.html>; New York’s attorney general has subpoenaed TIAA, the giant insurance company and investment firm, seeking documents and information relating to its sales practices, according to people briefed on the inquiry, <https://www.nytimes.com/2017/11/09/business/tiaa-subpoena.html>. Also TIAA’s fossil fuel investments have been tracked by CSOs: <https://fossilfreefunds.org/funds>.

<sup>94</sup> For details, please see Rede Social de Justiça e Direitos Humanos, GRAIN, Inter Pares, and Solidarity Sweden-Latin America (2015).

<sup>95</sup> Rede Social, p. 40.

<sup>96</sup> Ibid., p. 41.

which limit land ownership by foreign entities.<sup>97</sup> Even though TIAA now holds 97% of Radar with its acquisition of Cosan's shares, Cosan formally continues to manage Radar, while TIAA appears only as an investor and claims that the land is not owned by foreigners.<sup>98</sup> Brazilian law establishes responsibilities for owners but not explicitly for investors, which is used by the latter in order to reject any responsibility on abuses and crimes.

According to information released by the company itself,<sup>99</sup> a part of Radar's lands in the south of Maranhão and Piauí were obtained from the owner of the company CODECA, Mr. Euclides de Carli, who is allegedly one of the biggest land grabbers in the region. When Judge Heliomar Rios Ferreira from the rural court in Bom Jesus, Piauí, published his decision to cancel land titles held by Mr. de Carli, in a process that resulted in the defrauding of 124.000 hectares of land in the State of Piauí, he referred to Mr. de Carli as, "the lord of the lands of Piauí",<sup>100</sup> and stated: "what we have seen up until now is a true example of a huge land ownership fraud, perhaps the largest one in the State of Piauí."<sup>101</sup> Mr. de Carli's activities have also been investigated by the Legislative Assembly of Maranhão.<sup>102</sup>

Research on the land business in MATOPIBA has also found that Radar bought lands in Piauí, which were

legally disputed, cleared them and leased them to SLC Agrícola/LandCo for soy production.<sup>103</sup> According to recent research, it is also possible that Radar acquired one of its farms in Maranhão (Catuaí Norte), from SLC Agrícola. This points to the fact that different companies, which are active in the land business in MATOPIBA, have business relations among each other. Land transactions between them help to keep the market buoyant.<sup>104</sup>

Ludmila farm, which covers 2.300 hectares<sup>105</sup> in the municipality of Santa Filomena, is one of the farms owned by TIAA through TCGA I in the state of Piauí (which is adjacent to the Parnaguá farm belonging to SLC Agrícola), which has led to land conflicts with local communities (see chapter IV). Recent research by Rede Social de Justiça e Direitos Humanos could not prove that these lands were acquired illegally. However, proceedings to cancel the deeds concerning a good part of the lands around the farm have been initiated by the rural court in Bom Jesus.<sup>106</sup> Two farms that are situated on the same plateau as Ludmila farm also involve international investors, namely the Parnaguá farm (owned by SLC Agrícola/Land Co. with financial backing from the UK investment fund Valiance Capital) and a farm owned by the agribusiness company InSolo Agroindustrial (in which the Endowment Fund of Harvard University has invested<sup>107</sup>). All these farms have been established

<sup>97</sup> According to Brazilian law (law n° 5.709/1971), a maximum of 25% of the total territory of a given municipality can be owned by foreigners. Within this 25%, just 10% can be held by the same person. This law goes back to Brazil's dictatorship-era and was revised by the Lula administration (2003-2010).

<sup>98</sup> Rede Social, p. 41.

<sup>99</sup> See Rede Social de Justiça e Direitos Humanos (2017), "Imobiliárias agrícolas transnacionais e a especulação com terras na região do MATOPIBA", pp. 20, 40-41.

<sup>100</sup> Case no. 0000759-98.2016.8.18.0042 TJ/PI of July 5, 2016.

<sup>101</sup> Case from 5th of July, 2016 (Public Prosecutor of the State of Piauí). See, for instance: <https://www.gp1.com.br/noticias/ministerio-publico-investiga-empresario-euclides-de-carli-399021.html>

<sup>102</sup> "Euclides de Carli is one of the main land-grabbers in the Brazilian agricultural frontier", said Lindonjonson Gonçalves de Sousa, the public prosecutor who investigated Carli's land transactions. "It should be no surprise to anyone that he has a notorious role in the conflicts over land in that region". In: "Compra de terras agrícolas no Brasil por gigante americana gera polémica", which can be found in: <https://oglobo.globo.com/economia/compra-de-terras-agricolas-no-brasil-por-gigante-americana-gera-polemica-18070436> (accessed on 17 November 2017).

<sup>103</sup> Hershaw, E. and Sauer, S. (2017), "The evolving face of agribusiness investment along Brazil's new frontier: institutional investors, recent political moves, and the financialization of the Matopiba." Paper presented at the 5th International Conference of the BRICS Initiative for Critical Agrarian Studies, 13-16 October 2017, Moscow, Russia. Available at: [www.iss.nl/sites/corporate/files/2017-11/BICAS%20CP%205-7%20Hershaw%20and%20Sauer.pdf](http://www.iss.nl/sites/corporate/files/2017-11/BICAS%20CP%205-7%20Hershaw%20and%20Sauer.pdf).

<sup>104</sup> Rede Social.

<sup>105</sup> Different information is available regarding the size of Ludmila farm. According to information provided by TIAA/Nuveen, its two farms in Piauí – Ludmila and Laranjeiras – have 7.851 gross acres (3.177 hectares) and 4.501 tillable acres (1821 hectares). The NGO Global Forest Watch speaks about 2.291 hectares. A request for a title deed registered by INCRA quantifies the area of the farm with 2.300 hectares. See: [https://www.tiaa.org/public/pdf/tcga\\_i\\_farmland\\_holdings\\_report\\_2016.pdf](https://www.tiaa.org/public/pdf/tcga_i_farmland_holdings_report_2016.pdf); [http://www.globalforestwatch.org/map/12/-8.90/-45.70/ALL/hybrid/loss?tab=analysis-tab&geostore=0229018c9a9c10d72dc8fd03e36f2ef8&begin=2012-01-01&end=2013-01-01&threshold=30&dont\\_analyze=true](http://www.globalforestwatch.org/map/12/-8.90/-45.70/ALL/hybrid/loss?tab=analysis-tab&geostore=0229018c9a9c10d72dc8fd03e36f2ef8&begin=2012-01-01&end=2013-01-01&threshold=30&dont_analyze=true); and Rede Social (2018), p. 43.

<sup>106</sup> GP1, 3 August 2016/, see Rede Social, pp. 41-42.

<sup>107</sup> According to research, 95% of InSolo Agroindustrial's capital belongs to the Harvard Endowment Fund. See Rede Social, p. 48.

on what are formally state-owned lands (*terras devolutas*) and it is unclear how they could have been acquired by legal means. The Brazilian Institute for Colonization and Agrarian Reform (INCRA) has also registered a request for a title deed on Ludmila farm by Euclide De Carli's daughter, which is an indication that Radar might well have bought this farm from De Carli.<sup>108</sup>

### 3.4.2. The German Pension Fund, Ärzteversorgung Westfalen-Lippe (ÄVWL)

In 2011, the German pension fund for medical doctors, Ärzteversorgung Westfalen-Lippe (ÄVWL), which provides retirement plans for over 56,000 doctors and manages over € 10 billion, invested US \$ 100 million in TIAA's farmland fund TCGA I. According to information received during a meeting with ÄVWL, the investment is bound to stay within TCGA I for 10 years (until 2021), but could still be sold to other investors that are part of the fund.

In the structure of Germany's system of retirement provisions, the pension schemes of professions ("berufsständische Versorgungswerke") like the ÄVWL are part of the so-called 'first pillar', which refers to the statutory retirement schemes. ÄVWL is an institution of the regional chamber of medical doctors' profession ("Ärztammer Westfalen-Lippe") and governed by the supervisory and management committees ("Aufsichtsausschuss" and "Verwaltungsausschuss"). As such, the ÄVWL is a public law entity entrusted with public functions.<sup>109</sup>

In Germany's federal political system, the exclusive jurisdiction over those schemes is in the hands of regional states (Bundesländer). The ÄVWL is therefore subject to the legal supervision of the Ministry of Finance of the state of North Rhine-Westphalia (NRW). According to regional law, the supervisory role includes ensuring that pension schemes fulfill their

tasks in "accordance with the applicable law,"<sup>110</sup> which includes international treaties ratified by Germany.<sup>111</sup> The pension schemes are required to report regularly about their investments and related financial risks.<sup>112</sup>

ÄVWL also has a Corporate Governance Codex that mentions ethical aspects of their investments.<sup>113</sup> It does not mention human rights and refers to internal checks by the management committee based on the Principles for Responsible Investment (PRI) as a reference (see discussion on PRI in chapter V). A recent guideline for pension funds for public employees in North Rhine-Westphalia contains some additional provisions for regulation of pension money.<sup>114</sup> According to this guideline, relevant sustainability aspects, i.e. ecological and social aspects, must be taken into account when assessing the security and profitability of an investment (para. 3). Bonds are excluded from acquisition if there are clear indications that there are violations of the principles of good corporate governance in the areas of human rights, labor, environment, and anti-corruption laid down in the principles of the UN Global Compact (para. 4). However, the guideline does not foresee independent monitoring and the qualification of sustainability is typically made on the basis of statements made by the fund provider or fund-management company.

### 3.4.3. The Dutch Pension Fund, ABP

Stichting Pensioenfonds ABP is the pension fund for government and education employees in the Netherlands. Managing € 403 billion in assets as of October 2017,<sup>115</sup> ABP is the largest pension fund in

<sup>108</sup> See Rede Social, p. 43.

<sup>109</sup> The Ärztekammer Westfalen Lippe (KWL) has maintained the Ärzteversorgung Westfalen-Lippe as its pension scheme of profession since 1960. The regional labor and health ministry of North Rhine-Westphalia (NRW) has the general regulative duty ("Rechtsaufsicht") to supervise the ÄVWL.

<sup>110</sup> § 3 Landesversicherungsaufsichtsgesetz NRW in conjunction with § 20 Landesorganisationgesetz NRW

<sup>111</sup> See articles 4 and 28 of the ICESCR, which has been ratified by Germany.

<sup>112</sup> In North Rhine-Westphalia, the reporting duty is based on the law "Versicherungsaufsichtsgesetz des Landes NRW" and related ordinances like VersAufsVO NRW, in particular § 7. The reporting period is typically four times a year. See [www.vanr.de/DE/843/aufsicht.php](http://www.vanr.de/DE/843/aufsicht.php).

<sup>113</sup> [www.aevwl.de/fileadmin/Dokumente/Kodex/Kodex\\_der\\_%C3%84VWL\\_Ausgabe\\_2015.pdf](http://www.aevwl.de/fileadmin/Dokumente/Kodex/Kodex_der_%C3%84VWL_Ausgabe_2015.pdf).

<sup>114</sup> Allgemeine Anlagerichtlinien für die Verwaltung von Anlagen des Sondervermögens "Pensionsfonds des Landes Nordrhein-Westfalen" durch das Finanzministerium

<sup>115</sup> See [www.abp.nl/over-abp/financiele-situatie/actuele-financiele-situatie](http://www.abp.nl/over-abp/financiele-situatie/actuele-financiele-situatie).



the Netherlands and among the five largest pension funds in the world. Like other European pension funds, ABP, through its asset management firm APG, increased its focus on investments in farmland in the wake of the global financial and food price crisis of 2007/2008 and has been expanding its agricultural portfolio to hundreds of millions of euros since then. "Basically, the world is our farm," said Mr. Jos Lemmens, then senior manager of commodities at APG, in 2010. Choosing a country or region for investments "just depends on the specific project and whether the risk/return profile is right."<sup>116</sup>

According to TIAA's records, ABP has US \$ 200 million of assets invested in TCGA II.<sup>117</sup> As of the end of year 2017, ABP also had stocks worth around € 15 million in Cosan (a company that partially owns Radar).<sup>118</sup>

Interestingly, the Dutch government has seats on the Employers' Council and the Accountability Board of ABP, where it can table concerns and ask for clarifications. The Pensions Act in the Netherlands contains a number of legal requirements that pension funds have to fulfil.<sup>119</sup> Most of these are related to risk management and good governance in the interest of pension beneficiaries. Since 2014, pension funds are also obliged to report on how they deal with environment and climate, human rights, and social relations in their investment policies. It is, however, up to the pension funds to decide how they report on these issues. ABP publishes an annual corporate social responsibility report in which it, amongst other things, describes its intentions and guidelines, as well as providing a list of companies it contacted on CSR issues. It also contains an updated list of

sectors and companies that are excluded from ABP's investments.<sup>120</sup>

In 2013, the pension fund sector established a code of conduct with a short section on sustainable investment, which largely reflects the reporting responsibility contained in the Pensions Act.<sup>121</sup> In 2017, the sector started negotiations with the government and other actors on an agreement on international CSR standards, based on the existing code of conduct, the Pensions Act, the OECD guidelines for multinational enterprises, the Principles for Responsible Investment (PRI), and the Guiding Principles on Business and Human Rights (UNGP). As will be shown with more details below (see chapter V), these principles and guidelines do not establish binding rules on corporate legal accountability for the investments of pension funds and rely on voluntary commitments by involved companies and investors.

### 3.4.4. AP2, the Second Swedish National Pension Fund

The second AP Fund is one of five buffer funds within the Swedish public pension system. The role of these funds is to manage fluctuations in the pension system. AP2 manages a total of 345.9 billion SEK (around € 30 billion) for all Swedish citizens. AP2 invests 2.4% of its capital in farmland through companies which are jointly owned by AP2 and other investors. More than 85% of the fund's farmland investments are made (or are committed to be made) through TCGA I (US \$ 450 million) and TCGA II (US \$ 750 million), and 27% (2018) of the fund's farmland is located in Brazil.<sup>122</sup>

<sup>116</sup> See [www.pionline.com/article/20100419/PRINT/304199989/fertile-ground-for-investment](http://www.pionline.com/article/20100419/PRINT/304199989/fertile-ground-for-investment).

<sup>117</sup> See [www.sec.gov/Archives/edgar/data/1364783/000119312516781853/d279596d485bpos.htm](http://www.sec.gov/Archives/edgar/data/1364783/000119312516781853/d279596d485bpos.htm). In a response letter to a draft version of the present report, sent to FIAN on 30 January, 2018, APG stresses the fact that it is "invested in TCGA 2 and not in TCGA 1. This is an important distinction in the context of the report as much of the attention in the report is focused on the Ludmila farm, which is a farm that is not owned by TCGA 2 and therefore not part of our investments."

<sup>118</sup> See [www.abp.nl/images/listed-investments.pdf](http://www.abp.nl/images/listed-investments.pdf). As of April 2017, ABP had stocks worth around € 32 million in Cosan. In an email sent to FIAN on 15 June 2018, ABP's asset manager, APG, states that ABP has further reduced its "exposure" to Cosan since December 2017, without specifying the reasons for ABP's decision.

<sup>119</sup> See Pensioenwet, Article 135-4. Available at <http://wetten.overheid.nl/BWBR0020809/2017-04-01>.

<sup>120</sup> See, for instance, [www.abp.nl/images/responsible-investment-report-2016.pdf](http://www.abp.nl/images/responsible-investment-report-2016.pdf).

<sup>121</sup> Please see [www.pensioenfederatie.nl/stream/codeofthedutchpensionfundsenglish2017-1-30.pdf](http://www.pensioenfederatie.nl/stream/codeofthedutchpensionfundsenglish2017-1-30.pdf).

<sup>122</sup> Andra AP-fonden (2018), Årsredovisning och Hållbarhetsrapport 2017. Available at: [www.ap2.se/globalassets/nyheter-och-rapporter/arsredovisningar/arsredovisning-2017.pdf](http://www.ap2.se/globalassets/nyheter-och-rapporter/arsredovisningar/arsredovisning-2017.pdf).



According to AP2, its strategy “is to invest in large scale agricultural properties in countries with clear legal structures”,<sup>123</sup> although representatives of the fund have admitted that this could be an issue of concern in Brazil.<sup>124</sup> The stated preference is to place investments in countries with a minimum of subsidies and one criterion is that the respective country is a net exporter of agricultural products. Furthermore, the fund’s stated strategy is to buy and then lease the lands to farming companies mostly focusing on row crops (such as corn, soy, wheat and sugarcane). Farmland is seen by AP2 as its most long-term investment asset, with an expected timeframe of at least 20 years. AP2 demands that the managers have

long-documented experience of similar investments, share their view on long-term perspective and sustainability, as well as having local presence and understanding. AP2 prefers so called ‘club deals’, which entails collaborating with other investors to have better alignment with investor preferences and be in a better position to influence investments.<sup>125</sup>

The legal framework guiding the investment rules of the public pension funds is decided by the Swedish parliament. The current system was adopted after an agreement between five parties in 1999. Representatives from these parties (the Social Democrats, the Moderate Party, the Centre Party,

<sup>123</sup> Idem, p. 43.

<sup>124</sup> Andra AP-fonden (2017), Årsredovisning och Hållbarhetsrapport 2016. Available at: [www.ap2.se/globalassets/nyheter-och-rapporter/hallbarhetsrapporter/hallbarhets-och-agarstyrmingsrapport-2016\\_170210.pdf](http://www.ap2.se/globalassets/nyheter-och-rapporter/hallbarhetsrapporter/hallbarhets-och-agarstyrmingsrapport-2016_170210.pdf).

<sup>125</sup> Andra AP-fonden (2018), Årsredovisning och Hållbarhetsrapport 2017.

the Liberals and the Christian Democrats) together with one additional party (the Green Party) form a group in the Swedish parliament, which is responsible for negotiations on changes in the public pension system – including the overall rules of the public pension funds.

The public pension funds differ from other state agencies in that they are ruled directly by law, rather than regulations. The mission of the AP funds, as formulated by the Swedish parliament, is to manage assets in the pension system in order to obtain high yields at a low risk. According to the current framework, “the funds should take into account ethical and environmental issues without compromising the overall objective of high revenue.”<sup>126</sup>

The government’s role is limited to the appointment of the funds’ boards and to appointing external auditors who evaluate the funds’ activities. These evaluations are the basis of reports to the Swedish parliament where the government (through the Ministry of Finance) presents the results and its view on the activities of the fund.<sup>127</sup> Every year, the fund’s board adopts an asset owner policy, and the board receives a report at each meeting regarding the sustainability work of the fund. The government has so far made no mention of the AP funds in its Action Plan for Business and Human Rights.<sup>128</sup>

There is currently an ongoing process to update the legal framework that applies to the public pension funds. An initial proposal was presented in June 2017, which included stronger reference to sustainability issues, which are defined by the government proposal as social, environmental, and economic sustainability. Human rights are mentioned as a key component of

the social dimension. However the main emphasis of the proposal continues to be on the achievement of high revenue. The process has been delayed, but the government is expected to present a proposal to parliament during 2018.

In addition to the existing legal framework, AP2 has its own internal framework in order to guide the fund regarding sustainability. In this framework, AP2 refers to the Swedish Instrument of Government – which is part of the Swedish Constitution and is based on values such as democracy and fundamental rights, the UN Conventions signed by Sweden, international guidelines that are supported by Sweden (such as UN Global Compact, ILO and OECD guidelines for multinational companies), and Sweden’s position regarding international law. AP2 also states that it “expects companies to act in accordance to laws, covenants and international guidelines, regardless of the country in which the company operates. That responsibility applies even if the country has not signed a convention or has weaker legislation.”<sup>129</sup>

---

<sup>126</sup> Government of Sweden (2000), Legislative proposal 1999/2000:46, p. 76. Available at: [www.regeringen.se/contentassets/95e4a79049704b26b95372d2109b20e3/ap-fonden-i-det-reformerade-pensionssystemet](http://www.regeringen.se/contentassets/95e4a79049704b26b95372d2109b20e3/ap-fonden-i-det-reformerade-pensionssystemet).

<sup>127</sup> Government of Sweden (2017), Report to Parliament on AP funds 2016. Available at: [www.regeringen.se/49c6b3/contentassets/6adfa54a8f1f4d16b94869a58b194087/redovisning-av-ap-fondernas-verksamhet-t.o.m.-2016-skr.-201617130-.pdf](http://www.regeringen.se/49c6b3/contentassets/6adfa54a8f1f4d16b94869a58b194087/redovisning-av-ap-fondernas-verksamhet-t.o.m.-2016-skr.-201617130-.pdf).

<sup>128</sup> Government of Sweden (2015), Action plan for business and human rights. Available at: [www.government.se/contentassets/822dc47952124734b60daf1865e39343/action-plan-for-business-and-human-rights.pdf](http://www.government.se/contentassets/822dc47952124734b60daf1865e39343/action-plan-for-business-and-human-rights.pdf).

---

<sup>129</sup> See [www.ap2.se/sv/hallbarhet-agarstyrning/organisation-och-ansvarsfordelning/vardegrund-for-hallbarhet-och-agarstyrning](http://www.ap2.se/sv/hallbarhet-agarstyrning/organisation-och-ansvarsfordelning/vardegrund-for-hallbarhet-och-agarstyrning).

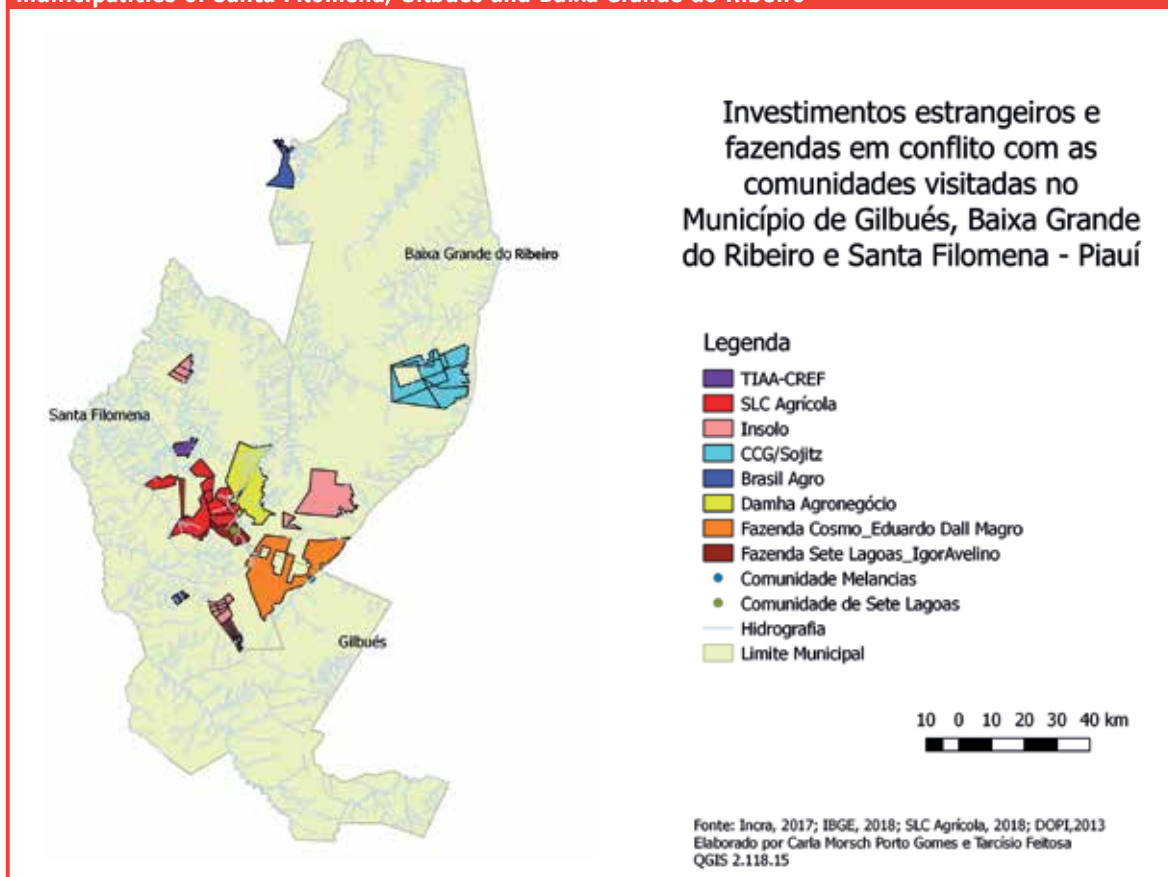
## 4. Social and Environmental Impacts of Land Grabbing in the MATOPIBA Region

### 4.1. Locations and Communities Visited

The international fact-finding mission to MATOPIBA, which served to collect first-hand information for this report, took place in the southwestern region of the State of Piauí, at the border with the State of Maranhão, and focused on two municipalities: Gilbués and Santa Filomena. It is one of the regions in which TIAA/Nuveen has been acquiring lands through

their local affiliates, in particular Radar Imobiliária Agrícola S/A. The Ludmila farm, in particular, is situated in the municipality of Santa Filomena. The size of the farms in the MATOPIBA region, the distance between them and the bad infrastructure required the mission to focus on one specific area. In addition, the exact localization of the farms owned by TCGA is difficult to identify. Ludmila farm was one of the first for which such localization was possible. Given that land grabbing in the MATOPIBA region follows a pattern, which has been described previously and which involves many different actors who are, in many cases, linked through business relations, the particular case of these two municipalities can be considered as emblematic of a process, which affects the entire region and has severe and far-reaching impacts on local people.

**Map 3: Localization of the communities of Melancias and Sete Lagoas and agribusiness farms in the municipalities of Santa Filomena, Gilbués and Baixa Grande do Ribeiro<sup>130</sup>**



<sup>130</sup> Map elaborated by Carla Morsch Porto Gomes, Doctoral Student in CPDA/UFRJ, and Tarcísio Feitosa, Researcher and advisor to the State of Pará's Public Ministry, seconded to CPDA/UFRJ. All data is taken from official records or the information made available by the companies concerned.



## 42 The Human and Environmental Cost of Land Business

The international fact-finding mission team visited the following communities between September 6 and 11, 2017:

**Melancias:** this community is located in the municipality of Gilbués. It consists of 53 families, who identify themselves as *Ribeirinhos-Brejeiros*<sup>131</sup> and live on the banks of the River Uruçuí Preto. As a community, they claim to have been living there for 104 years. They depend on the collection of fruit such as *buriti* (*Mauritia flexuosa*), *mangaba* (*Hancornia speciosa*), *pequi* (*Caryocar brasiliense*, also known as *souari* nut), as well as on fishing and farming for their livelihoods.

This community has been severely affected by the drying up of water springs during the last few years, because of the declining level of the aquifer. Community members state that water started to become scarce five years ago and that the marshlands where the *buriti* trees are located began to dry up. As a consequence, the trees stopped giving fruit. Other plants that are used to make medicines are disappearing along with them. According to the collected testimonies, the river is also drying up and fish and bees are disappearing.



<sup>131</sup> *Ribeirinhos* are the people who live close to a river and whose main livelihood is artisanal fishing as well as floodplain agriculture and foraging. *Brejeiros* are the people who live on marshlands. The Brazilian state recognized *Ribeirinhos* as one of the traditional communities in the country entitled to special protective measures (Presidential Decree n° 6.040 of 2007).



Many residents have reported on excessive use of pesticides in plantations close to the community. The pesticides are sprayed by airplanes on the plateaus, from where they flow to the lowlands, devastating the crops and fields of the families. Pesticides are also present in the river, marshlands and streams, with extreme consequences for fisheries. The rivers' waters turn orange during the rainy season, as they flow downwards, bringing with them sediment and the poison from the plantations.

The community is currently trying to formalize their land rights, especially because land grabbers have presented falsified documents to get hold of the community's lands. As a matter of fact, several claims of ownership for the same land have been presented. In order to defend its rights, the community has filed a complaint with the rural agrarian court. As part of their efforts, the community even paid for a technician to perform geo-referencing work, but the registration of the regularization/formalization claim could not be finalized due to the litigation in progress at the rural court. The conversations with the community have made clear that a growing number of threats by land grabbers causes much fear in the community.

**Baixão Fechado:** this community is located in the municipality of Santa Filomena and lives on the banks of the Sucruíu marshland. The ancestors of its members settled at this place approximately 170 years ago. The community reported that it is very much affected by constant harassment by land grabbers, gunfights and high degrees of violence linked to land disputes in the region. Land grabbers have occupied not only the plateaus that were collectively used by the community and transformed them into soy plantations, but are also pushing into the community's lowlands. According to the traditional use of their territories by communities, the plateaus (*chapadas*) were previously used by the community to raise livestock, hunt, and forage. Community members have pointed out as particular worrisome the conflict with Ludmila Farm, with which the community has a legal dispute over land ownership, which has been ongoing for eight years. Overall, three farms have taken lands from the communities in the area:

Japura, Fortaleza, and Ludmila. Local people claim that public authority is non-existent and that the government has not taken the necessary measures to secure their rights, leading to a gradual dwindling of the number of community members who leave the area as a result of the loss of their livelihoods and the constant threats.

Water, which used to be plentiful and of good quality, has been dwindling for years due to deforestation and abusive extraction by the soy farms, leading to a situation, in which the community needed to rely on supply from water trucks. The community has no access to public electric services and electricity is provided exclusively by generators. Without electricity it is extremely difficult to process local fruits into pulp, which could ensure some income to the families. There is also a lack of roads that would make the transportation of local produce to local markets easier.

**Sete Lagoas:** this community is also located in the municipality of Santa Filomena. The community self-identify as member of the Gamela indigenous peoples group. Evidence of ancient occupation can be found in an old cemetery and in the memories of those descending from indigenous peoples living on the area. They are considered as squatters, since they do not have formal possession of their traditional lands.

With the arrival of a company called Damha in the region in 2010, the conflict on the community's land has escalated. A part of the Sete Lagoas community is constantly under surveillance by a private security company, a situation, which made many families leave the region, as they were no longer able to plant their crops and have become the target of constant threats. Community members report that families are being prevented by armed persons from working and tending to their crops and that the houses of several families have been bulldozed or burned. Damha claims that the lowlands where the communities live are a legally protected reserve area owned by the company and has filed a possessory action against the community (Process 0000335-90.2015.8.18.0042 TJ/PI). This points to the fact that the Brazilian

legislation, which requires that landowners keep a part of their land with native vegetation as a legal reserve, is leading to 'green grabbing,' which is increasingly practiced in the visited region (see more details below).

**Brejo das Meninas:** this community lives on the banks of the Riozinho river and belongs to the municipality of Santa Filomena. The community members identify themselves as *ribeirinhos*. Women in the community rely on extraction of *buriti* and other fruits of the Cerrado for their livelihoods and make a variety of crafted goods, including crochet nets and rugs, oil and candy made of *buriti* and *pequi* oil, as well as milk and cashew jam, among other goods made with regional fruits like the bacaba. These activities are the ones most affected by the expansion of agribusiness in the region. After the *buriti* palms in the plateaus have been cut down to give space to monocultures, the women have to walk a lot further each day, facing all kinds of danger, harassments and threats along the way by land grabbers, plantation owners, and their employees.

During the visit, several community members highlighted the problems caused by deforestation, such as the decrease in the number of some animals that has made hunting more difficult. Some areas that had been used for farming have been burned and can no longer yield anything, which is seen by locals as a deliberate action to drive them off their lands. They also state that municipal governments are closing countryside schools as another way to make them leave their communities.

**Santa Fé:** this community is located in the municipality of Santa Filomena and, together with the communities of Brejinho, Angical, Brejo Feio, and Brejo Seco, makes up the Riozinho territory. It is composed of about 100 families, who identify themselves as *ribeirinhos* and have been living on the lands for more than 200 years. It is a sizable community that managed to build a significant infrastructure through hard work, accompanied by Father João, a missionary living in the community, and supported by some international non-governmental organizations. The community

still has many resources, mainly thanks to its still very voluminous river. This brings some measure of safety to the community and adds to its potential. The community has organized itself to oppose the agribusiness expansion and to resist land grabbing, defending their lands. As part of their struggle, they have initiated the procedure to formalize their land rights with the Land Institute of the State of Piauí (INTERPI), the public institute responsible for regularizing land owned or under the jurisdiction of the State of Piauí). However, the community is concerned that this process has not advanced, while INTERPI has made possible the regularization of large private properties owned by companies and individuals in that same region.

## 4.2. Findings: Impacts on Communities and Local People

### 4.2.1. Land Grabbing and Dispossession of Communities: Old Problem, New Forms

For local people, the dispossession of communities of their land is the most immediate impact of the expansion of agribusiness in the region. All communities have reported on the loss of land that was grabbed, and on which agribusiness plantations have been established.

The land, and its manifold uses, sustains the life of families and has been the basis for the livelihoods of local people for generations. Most members of the communities visited in Gilbués and Santa Filomena have declared that they were 'born and bred' on that land, emphasize their strong ties to the region, and express their desire to remain there and have their livelihoods and traditional ways of life respected. Several communities can trace back their ancestry in the region at least to the early 20th century. Communities' traditional ways of life commonly involve life in the *baixões* (lowlands), where the villages are situated. Here they plant their crops, fish and hunt, raise livestock that could graze in the *baixões* and the *chapadas* (plateaus), and collect and

process fruits like the *buriti* (*Mauritia flexuosa*), also known as the moriche palm) into candies and oils, an activity performed mainly by the women. The plateaus used to be used as a common space for the grazing of livestock, hunting, and collecting of firewood and wild plants. Together, the *baixões* and the *chapada* formed the communities' territory, which sustained their lives over generations.

Despite being the traditional inhabitants of these lands, the communities' land rights have never been officially recorded and recognized (either individually or collectively) and most of the lands are formally owned by the state (*terras devolutas*, see chapter II). Many of these local people are *posseiros*, meaning that they have legitimate tenure rights through their long-term, multi-generational possession and use of the land. In many cases, communities use and manage their lands through communal forms of tenure. However, the fact that communities' tenure rights have not been secured by the state, means they are made vulnerable to dispossession by land grabbers and agribusiness companies. According to the reports of community members, ever since the 1990s they have been suffering from direct pressures (by means of threats, legal actions, the destruction of houses and fields, and personal aggressions), and indirect pressures (through the destruction of fauna and flora, the contamination of soils and water by pesticides, and diminishing of water resources among others), resulting from the expansion of agribusiness in the region and increasing land speculation, especially since international finance has started to target lands in the region. As a result, farming, hunting, fishing, and breeding of livestock have been made increasingly difficult, if not virtually impossible, by the establishment of plantations and the ecological destruction caused by deforestation and the industrial model of agriculture.

With the expulsion/eviction of communities from the highlands, where soy and sugar cane plantations have been established after cutting down the native Cerrado forest, the lowlands alone are not sufficient for maintaining and providing a living for many families. Many have been forced to leave their areas

permanently and migrate to the cities, where they live in slums in the outskirts of mid-sized and large cities, working in precarious jobs. The communities that managed to stay are only able to do so by toiling under extremely precarious conditions. Many times they end up working on the plantations in situations akin to slavery, and many times finding themselves forced to work for the same agricultural business owners who now occupy their former lands.

The land conflicts in southern Piauí take place against a backdrop of much confusion regarding land possession. According to official reports, the state is second in Brazil in terms of land overlapping land claims and tenure insecurity.<sup>132</sup> During the process of land grabbing for the establishment of agribusiness plantations or for purposes of speculation, the involved actors seek to obtain legal recognition of their possession, which further adds to the overlapping claims. According to statements made by local authorities to the mission, there are cases of properties that have up to 20 deeds. Local registry offices are used as one of the main mechanisms to defraud the ownership of lands and perform manipulations in order to legalize the land grabs. A recent investigation by the Public Prosecutor's Office led to the closing of ten registry offices, including the ones in Bom Jesus and Santa Filomena. According to official sources, many of the suspended registry offices were later reopened under the responsibility of the very same people who were in charge before, because of a "lack of alternatives" in the region.

According to several testimonies by community members, there is collusion between both local and state public authorities and large agribusiness companies, which facilitates land grabbing and the dispossession of traditional communities. The public authorities' neglect of this reality is blatant. Large and grave conflicts over land (for example the one that happened in 2007 in Bom Jesus, Piauí – Rio Preto settlement today – and that has never been investigated), take place without leading to any investigation by the state's competent authorities (such as the police, INCRA, and INTERPI, among others). Many other conflicts with dreadful

<sup>132</sup> See [www.ap2.se/sv/hallbarhet-agarstyrning/organisation-och-ansvarsfordelning/vardegrund-for-hallbarhet-och-agarstyrning](http://www.ap2.se/sv/hallbarhet-agarstyrning/organisation-och-ansvarsfordelning/vardegrund-for-hallbarhet-och-agarstyrning).



consequences for the communities are not even registered in the statistics and the official records. According to statements given to the mission, institutions like the INCRA in Piauí, are under the influence of congressmen and senators of the state, who are involved in agribusiness or act like its representatives. Something else to factor in, is that few lawyers manage to remain unconstrained by the influence of agribusiness in the region.

Communities are trying to regularize their lands and formalize – and thus secure – their tenure rights. However, they have been facing a series of difficulties. These include the fact that the government does not offer accessible legal or technical guidance for traditional communities in the area that wish to regularize their lands. It has been left to the Land Pastoral Commission (CPT) and the rural workers' unions to perform this role, by offering some orientations and counseling. Some communities such as Sete Lagoas have been trying to regularize their lands, by paying for technicians to do the necessary

geo-referencing work out of their own pockets, and registering them with the Rural Environmental Registry (CAR). However, in many cases communities find out during the process that their lands have already been registered by others, in particular by agribusiness companies.

### ***Green Grabbing***

New types of resource grabbing relate to so-called 'green grabbing': since the lowlands still have a green cover of native Cerrado vegetation, industrial farmers and agribusiness companies are also reaching for those lands, in order to comply with the Brazilian environmental legislation. Indeed, the Brazilian Forest Code from 2012 (Law 12651/2012) requires land owners to keep a certain percentage of their property preserved in the form of so-called legal reserves. According to the Forest Code, individual rural properties have to ensure that 20 % of their total area are covered by native vegetation in the Cerrado biome. If properties are situated in transition



areas to the Amazon biome, the legal reserve must be 35 % of the total area of the property. The state of Piauí, and particularly the southern part of its territory, are, however, not considered as such a transition zone, meaning that the 20 % norm applies to the farms situated here. Because the lands of the plateaus have for the most part been completely deforested for the establishment of soy plantations, agribusiness companies expand their farms to the lowland areas, where the villages of local people are situated. The communities, including those of Melancias, Baixão Fechado, Sete Lagoas, and Brejo das Meninas, who have previously already been confined to the lowlands are now facing further dispossession. Reports by community members have highlighted how the families are prohibited by agents linked to the agribusiness companies, from planting crops or raising animals on their lands.

Closely related to this, land grabbers are also using the Rural Environmental Registry (Cadastro Ambiental Rural, CAR) as an instrument to formalize their land claims. The National Rural Environmental Cadaster System (SICAR) was introduced by the Brazilian Forest Code from 2012 (Law 12651/2012) and instituted by Decree n° 7.830/2012, in order to govern the management of native vegetation and water resources on privately owned lands. Registration of land in the CAR is needed in order to obtain environmental licensing, which is a prerequisite for obtaining credit and for exporting production. The CAR is an online system, in which anybody can register environmental and land use information. In order to do so, no proof of property is required. It is sufficient to enter the GPS data, according to the categories defined by the Environmental Code, such as legal reserves or permanent protection areas (APP). Although the CAR does not have any value as a property title – Article 29 of the Forest Act explicitly states that the CAR cannot be used as a land title or as proof of land ownership – land grabbers and agribusiness companies are using the CAR as a proof of their occupation and land use. This has been practiced particularly in the case of the legal reserves by registering areas which are used by traditional peoples – most of them intact as native vegetation areas – as part of their property. As

such, the CAR is being used as a way of legitimizing big land owners' claims over these lands as well as corroborating agribusiness' compliance with the Environmental Code.

The information in the CAR is not comprehensively linked to the cadaster system, thus contributing to a situation where different information is registered in different registration systems for the same area by different actors with different interests. As has been described for the community of Sete Lagoas, communities who try to register their lands in the CAR often find out that their lands have already been registered by plantation owners, usually as legal reserves.

Despite the flaws of the CAR, several initiatives and projects have been promoting this system and its use. Some examples are the project MATOPIBA 2020, which is funded by the Global Environment Facility (GEF) and is executed by the Brazilian Rural Society (SRB)<sup>133</sup>, and a project, which is coordinated by UNDP and Conservation International, with the objective of making the expansion of soy production in the Cerrado "sustainable".<sup>134</sup> One pillar of this project is to support the implementation of the 2012 Forest Code and the CAR, as its main tool. One of the project indicators is the increase of the number of properties/farms that are registered in the CAR. Also, the German development bank KfW is funding a project to promote the implementation of the CAR for traditional communities, but without taking into account the described problems and how it is used to the detriment of communities' rights. The project is operated by the Brazilian Forest Service and the Brazilian Ministry of the Environment, with the technical support of GIZ.<sup>135</sup>

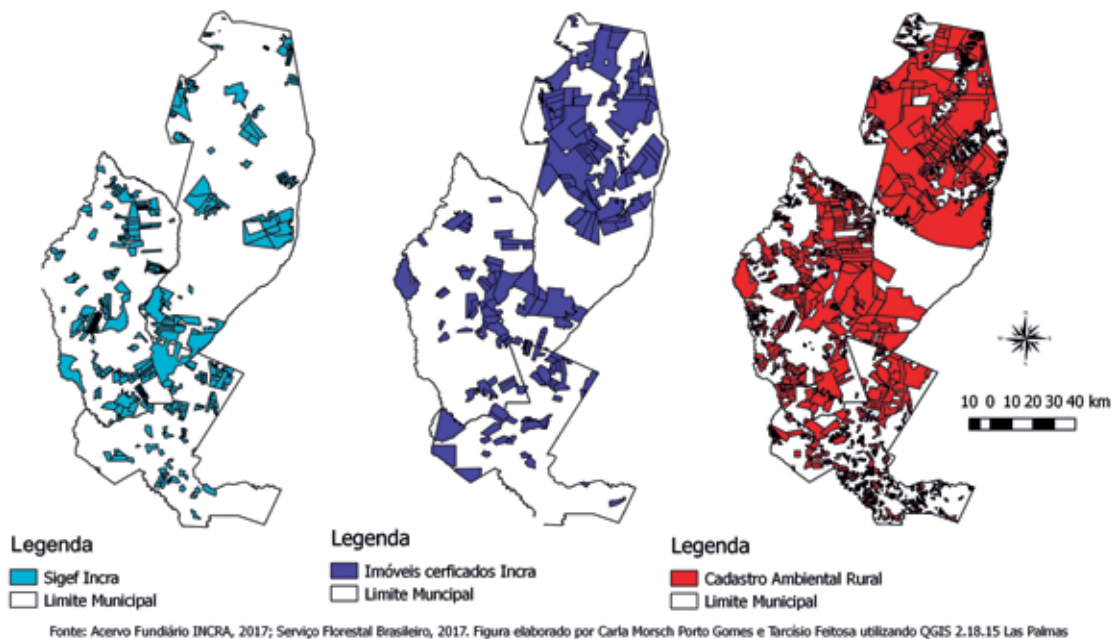
<sup>133</sup> <http://cerradoeditora.com.br/cerrado/matopiba-2020-projeto-que-injeta-r-50-mi-na-regiao-comeca-a-ser-executado-em-2018/>

<sup>134</sup> Please see <https://info.undp.org/docs/pdc/Documents/BRA/1.%20BRA17G31%20-%202017.06.30%20-%20Initial%20signed.pdf>

<sup>135</sup> Project "Land and Environmental Management for the CAR at traditional communities". This project focuses on supporting traditional communities to register their lands in the CAR. However, given the existing asymmetries of power and access to the system, as well as the structural problems of the CAR, it is questionable whether this system actually contributes to secure local people's lands.



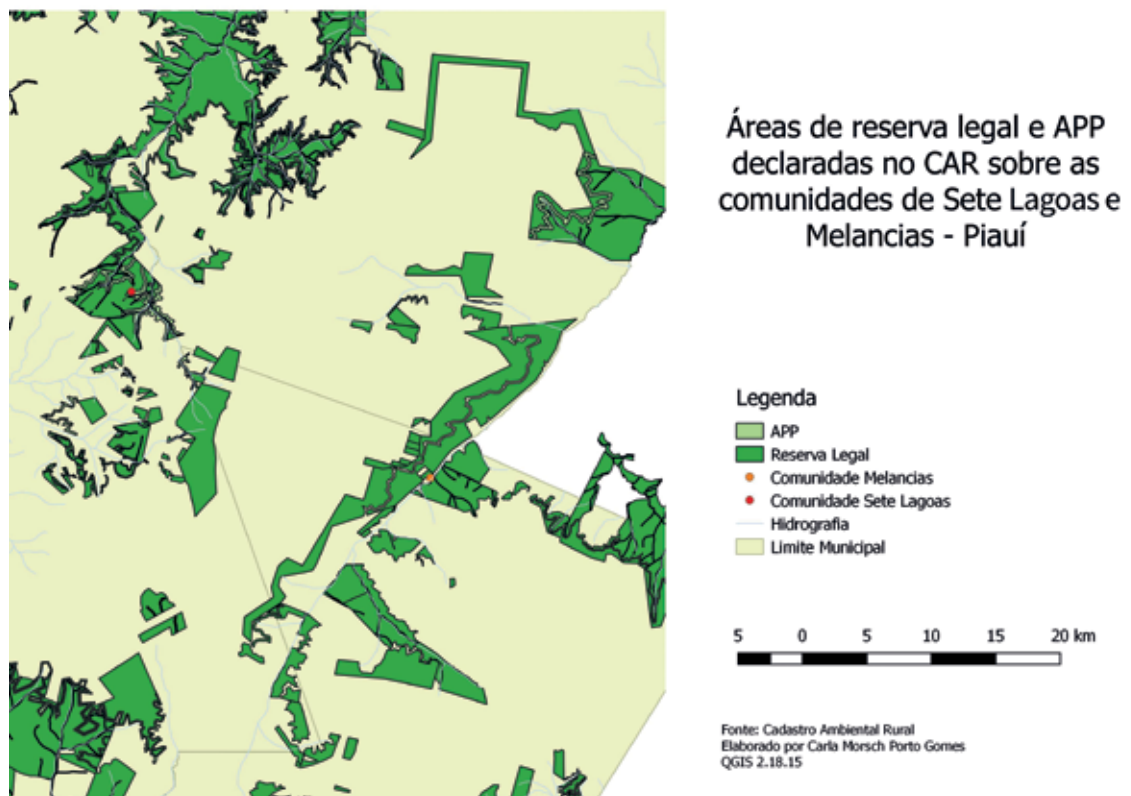
**Map 4: Lands in the municipalities of Santa Filomena, Gilbués and Baixa Grande do Ribeiro that are registered in different registries.**



The registration of the same areas in different registration systems<sup>136</sup> contributes to the confusion regarding land ownership and land use, which works to the detriment of traditional communities.<sup>136</sup>

<sup>136</sup> SIGEF (*Sistema de Gestão Fundiária*), is a tenure management system of INCRA. Inscription in SIGEF means making a claim for a given plot of land, which will then be assessed and, possibly, certified. Inscription in the SIGEF does therefore not mean proof of ownership. However, as with CAR, inscription in the SIGEF is used by individuals and companies to legitimize land ownership and land use.

**Map 5: Community Lands in Sete Lagoas and Melancias that have been Registered in the CAR as Legal Reserves and Permanent Protection Areas (APP)<sup>137</sup>**



#### 4.2.2. Disputes Over Water and its Uses

Disputes over water and its uses are a constant issue in the accounts given by the visited communities. Land dispossession and land grabbing occurs mainly in areas where there is availability of water, in particular through water springs and wells. As a result, the communities' access to water and fishing resources, which are crucial in order to sustain their livelihoods, their ways of life and farming practices is highly compromised.

In the community of Melancias, the mission heard reports that the *buriti* palm fields are drying up along with the main water streams that supply the

community. Community members have also noted that perennial or more voluminous rivers no longer exist, or do not hold the same volume they held ten years ago. Mr. Juarez, a community leader, reported that in one of the *buriti* palm fields in the vicinity of Melancias – a field which held a significant variety of other fruits besides the *buriti* – the floods that happened seasonally every year after the rainy season no longer happen as before. During the visit by the international mission, the *buriti* palm fields were indeed dry. According to him, the fields should be at least moist during the period from January to May, in which it usually rains a lot in the southern region of the state. As a consequence, many fruits no longer yield the same amount they did before. The bananas

<sup>137</sup> It is not possible to state who registered the lands in question. However, the areas around the communities, correspond to the areas of the Sete Lagoas Farm and the Cosmo Farm.

are dry and the clusters of *buriti* fruits are no longer completely filled. Women have noted that fruits, such as oranges and key limes, which used to be juicy and tasty, are now dry or “spongy”. Mr. Juarez and other community members blame the drying up of the *buriti* palm fields on the expansion of agribusiness plantations in the region. According to him, the establishment and advancement of these plantations has gone along with the deforestation of everything

that was there before, without any concern for areas that should have been protected, such as water springs and river beds. The deforestation causes the water to no longer be held by the soil. By the same token, the deforestation of spring areas results in an effective loss of the water table’s capacity to accumulate water, damaging the replenishment capacity of the water springs and threatening their very existence.



In the community of Melancias the mission was also told that the headwaters of the Uruçuí Preto river (which springs in the community), is under an aggradation process. According to the reports of community members, one of the reasons is the deforestation caused by the plantations. Indeed, the accelerated process of destruction of Cerrado forest in the highlands leads to the erosion of the soil and causes large quantities of sediment to flow downriver towards the community's area during the rainy season, resulting in aggradation. The mission was told that the same thing happens in other areas of the Uruçuí Preto, and that this seriously compromises the access to water of communities and people who live in or close to its banks.

Reports about the drying up of springs, marshes and rivers as a result of deforestation were also given in the Baixão Fechado community. According to the reports, residents see themselves forced to drill artesian wells in an area that was supposed to be protected in order to access to water. At the same time, agribusiness companies in the area drill wells over 400m deep and drain the aquifers.

In the community of Sete Lagoas, residents emphasized the connection between land grabbing, deforestation and restrictions of the use of water. The community is located in the highlands area and has a lagoon nearby, named Lagoa Feia, which used to be 30 km long. As plantations (Damha) and agribusiness properties (SLC Agrícola)<sup>138</sup> advanced to the lagoon's area (which is also occupied and used by the community and has become a cause of conflicts), it began to suffer aggradation and stopped flooding the surrounding lands during the rainy season, as it used to do. According to community members, the agribusiness companies cut many more trees than they are allowed to and do not keep 20% of their lands as protected areas as they are legally obliged to. According to one resident who is also the secretary of agricultural policies of a rural workers union (STTR) of Santa Filomena, local people used to fish in the flooded areas during the rainy season. On

top of that, according to the reports of community members, in particular agents linked to the DAMHA farm, which took 4,000 hectares of the community's lands, prevent community members to access the lake area. This direct impediment to the access to the water and fisheries of the lagoon by local people is a tactics used to force them to leave.

Residents of Sete Lagoas also reported that it is facing a worsening water shortage, which is profoundly affecting their livelihoods, including their access to safe drinking water. Currently, drinking water is being distributed by a tank truck, which is – ironically or cynically – owned by SLC, one of the agribusiness companies active in the region. Some community members have reported that they were told by workers from the companies that the hose used to drain water from the river into the tank truck is the very same used to fill other tank trucks with pesticides. The severe water shortage in the region is illustrated by the fact that, two weeks after the international fact-finding mission visited the region, the mayor of Santa Filomena, Carlos Augusto Braga, declared a state of emergency due to city wells running dry.<sup>139</sup>

*“Water: it finished. There is very little left. We are afraid of dying of thirst. If just these projects stopped. Then water would come back. But they don't stop. No, they will probably only stop when the river will be dry.”*

Palmerina Ferreira Lima, 77 years old, Melancias.

#### 4.2.3. Pesticides and the Contamination of Water, Fields, Fish, and Game

The use of pesticides is identified by the affected communities, as one of the main problems caused by agribusiness activities in the region. Its impacts are manifold. As already mentioned, communities have reported on the contamination of water bodies – river, marshlands, and streams – and groundwater due to the use of pesticides in the plantations. As

<sup>138</sup> In a response letter to a draft version of this report, dated 27 December 2017, SLC states that the lagoon is located around 4 km from their property and deny any link between the company's activities and the aggradation as well as the stopped flooding.

<sup>139</sup> See, for example: [www.portalr10.com/noticia/817/prefeito-de-santa-filomena-decreta-situao-de-emergncia-no-municpio](http://www.portalr10.com/noticia/817/prefeito-de-santa-filomena-decreta-situao-de-emergncia-no-municpio).

a result, the communities' access to clean water, which is crucial in order to sustain their livelihoods, their ways of life, and farming practices, is highly compromised. In many cases, agrochemicals are sprayed by airplanes. Rivers are also contaminated by eroding soils of the plantations. The contamination of water resources destroys fisheries and the crops of local people, and compromises their access to safe drinking water. Reports about the contamination by several plantations and agricultural projects of rivers with pesticides have been made, among others in Melancias, Sete Lagoas, and Chácara Xicara in Alto Parnaíba (MA). For instance, one resident in Melancias reported during the visit that she had become seriously ill, feeling nauseous and weak, and showing other symptoms, which are compatible with pesticide intoxication. She spent two months under clinical observation in Teresina. Many other people have reported similar symptoms that get worse when the use of pesticides is at its most intense in the nearby plantations. In Baixão Fechado, residents also reported that symptoms like coughing, dizziness, stomach aches, and low pressure have been increasing over the past few years, along with an increase of cancer cases. They attribute it all to the poisoned water.

Community leaders in Melancias told the mission that during the winter the pesticides used by agribusiness on the plantations end up flowing straight into the Uruçuí Preto River along with eroding soil and sand. Women reported that they can no longer use the river's waters during that season to wash their clothes, bathe, or cook. They noted that when they do, they end up with nausea, skin rashes, and dizziness. There are many cases of diseases that are very likely related to the ingestion of pesticides and an increase of diseases like cancer.<sup>140</sup> Many residents in Melancias also reported how pesticides have polluted their river, marshlands, and streams, causing the fish to die. Reports about the decimation of fisheries due to polluted waters, were also heard in Brejo das Meninas and Baixão Fechado.

Already in 2015, the community of Melancias filed an official complaint to denounce the pollution of the Uruçuí Preto River by large soybean farms on the highlands.<sup>141</sup> However, given the continued reports on water pollution by community members during the mission, it is obvious that this complaint has not led authorities to take measures that effectively protect and guarantee local people's access to, and use of, water resources. The community of Santa Filomena has also filed a complaint to denounce the impacts caused by the use of agrochemicals for soybean production.<sup>142</sup> In Brejo das Meninas, some community members state that they have seen persons linked to the land grabbers and agribusiness companies dump poison in the lakes and rivers. According to some residents, this is part of a deliberate strategy to drive away the families by killing all the fish and make it impossible for them to live there.

Water pollution has also led to a lack of safe drinking water. "The only good water we have now is the one that comes from SLC", Gemina from the Sete Lagoas community told the mission. SLC Agrícola is one of the agribusiness corporations whose activities are at the root of the communities' problems. According to her, the company began to make these deliveries because members of the community, in particular young people who work on the SLC farms, had mentioned to their superiors that the community was having serious difficulties in finding water and that the water they had was polluted and caused itching, dizziness, nausea, and other symptoms similar to those caused by intoxication. She believes that the tank trucks are a way for the companies to prevent the communities from denouncing the fact that they no longer have access to clean and safe water.

Inhabitants have also claimed that birds that eat the mangoes from the trees in the region die soon after, which could well be an indication of chemical contamination. Local people further report that the Red-and-green Macaw and the Amazon Parrot can no longer be seen in the region, which indicates a

<sup>140</sup> Although Piauí is one of the states with the lowest rates of pesticides use per planted area, the appearance of reported cases of intoxication by pesticides has increased from 32 in 2007 to 105 in 2013, an increase of over 200%. See Ministério da Saúde (2016), *Relatório Nacional de Vigilância em Saúde de Populações Expostas a Agrotóxicos*, p. 26, table 4.

<sup>141</sup> Rede Social de Justiça e Direitos Humanos, GRAIN, Inter Pares, and Solidarity Sweden – Latin America (2015), *Foreign pension funds and land grabbing in Brazil*, p. 11. Available at: [www.grain.org/article/entries/5336-foreign-pension-funds-and-land-grabbing-in-brazil](http://www.grain.org/article/entries/5336-foreign-pension-funds-and-land-grabbing-in-brazil).

<sup>142</sup> Idem, p. 13.



disappearing of animal species and a consequent loss of biodiversity. The agrochemicals pollution and contamination is very likely one of the factors for this development. The deforestation, establishment of monoculture plantations, and the use of pesticides have also led to a reduction of the bee population.

The pesticides stop insects from attacking the crops in the plantations on the highlands, which means the pests descend to the lowlands and attack the crops of the traditional family farmers. The spraying of agrochemicals also extinguishes natural enemies of existing pests, which makes it extremely difficult for local people to protect their crops from pests. The mission heard reports in various communities about how whiteflies descended from the highlands and destroyed the crops on their fields in the lowlands. The same thing happened in past years with different insects. Residents of the Sete Lagoas community have reported that they are no longer able to plant many types of crops they traditionally grew, such as broad beans, maize, rice, and beans, because of the increase of pests such as whiteflies and weevils. Likewise, the community of Baixão Fechado has reported that it has lost its pumpkin crops.

*“They use pesticides such as Roundup.<sup>143</sup> It destroys all of our crops, including our broad beans. We used to be among the top producers of broad bean in the region. Now we are losing all of our broad beans... They spray that poison from their airplanes and it contaminates everything. We see pests appear in a way we didn’t know before, like the whitefly. We don’t know how to combat this pest, and the flies destroy everything. We cannot even afford to buy poison ourselves, because it is too expensive. If we could we would buy it because these pests are ruining all of our crops.”*

Jose Branco, Baixão Fechado.

#### 4.2.4. Destruction of Cerrado forest

Reports from the communities and observations during the mission show that “draftsmen” and large companies have deforested absolutely everything in their path in order to create plantations, in many areas not leaving a single tree standing. In order to cut down the forest and scrublands of the Cerrado, they use highly destructive methods such as big chains (correntão).<sup>144</sup> This method involves two powerful tractors moving in parallel with a thick chain between them that pushes over even the biggest trees in its path. In addition to pulling up all of the flora, animals of all sorts get trapped under fallen trees and are then cut up by the chains. As such, the correntão exterminates, in just a few hours, the extraordinary environmental and social diversity of the Cerrado, which took thousands of years to form and develop.

<sup>143</sup> Cases were reported regarding the concomitant use of Thiodi 45 and Roundup 40, sprayed from an airplane. This is a serious matter and those charges need to be investigated.

<sup>144</sup> Despite being extremely destructive, the use of the correntão as such is not illegal. There is law proposal to make it illegal (law proposal 4959/2016), which is under the evaluation of the Commission on Agriculture and Animal Breeding. However, the method is often used to open new areas for agriculture, i.e. in areas where deforestation is not allowed, making it illegal in these cases.





In addition to the numerous testimonies gathered in all visited communities about the high degrees of deforestation, it is possible to confirm these claims – at least partly – by analyzing satellite photos. Regarding the Ludmila Farm, which is located in

the municipality of Santa Filomena and is owned by TIAA/Radar, satellite photos show the significant deforestation that has been taking place in the area ever since it was acquired between 2012 and 2013, according to the sources consulted.

#### Loss of Forest in the Ludmila Farm, Santa Filomena, Piauí, from 2001 until today<sup>145</sup>



Picture 1 shows that between 2001 and 2012 the area affected by loss of forest (marked in pink) was 5.74 hectares.<sup>146</sup>



Picture 2 shows that until the end of 2013, the area increases to 127 hectares, pointing to deforestation.

<sup>145</sup> Based on data by Global Forest Watch. In order to track the complete evolution of forest loss/deforestation in the Ludmila Farm from 2001 to 2017, please access the following site: [www.globalforestwatch.org/map/12/-8.90/-45.70/ALL/hybrid/loss?tab=analysis-tab&geostore=0229018c9a9c10d72dc8fd03e36f2ef8&begin=2012-01-01&end=2013-01-01&threshold=30&dont\\_analyze=true](http://www.globalforestwatch.org/map/12/-8.90/-45.70/ALL/hybrid/loss?tab=analysis-tab&geostore=0229018c9a9c10d72dc8fd03e36f2ef8&begin=2012-01-01&end=2013-01-01&threshold=30&dont_analyze=true).

<sup>146</sup> Global Forest Watch specifies that tree cover loss is not necessarily due to deforestation, but can also occur for reasons such as fire and logging within the course of sustainable forestry operations.

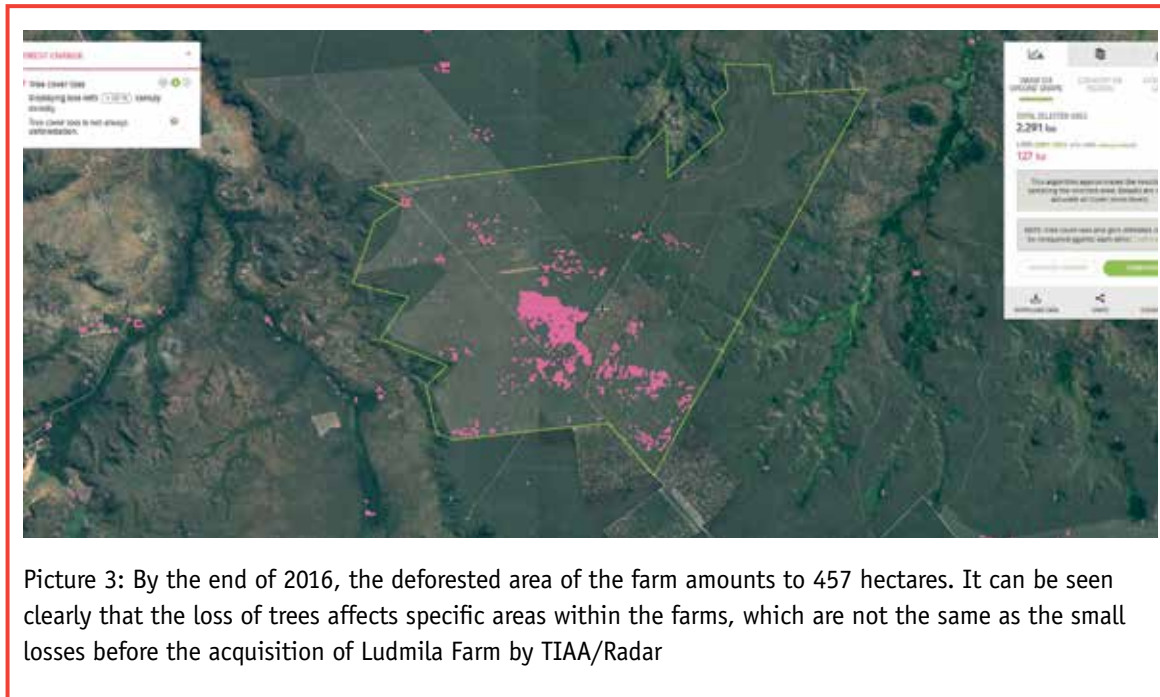
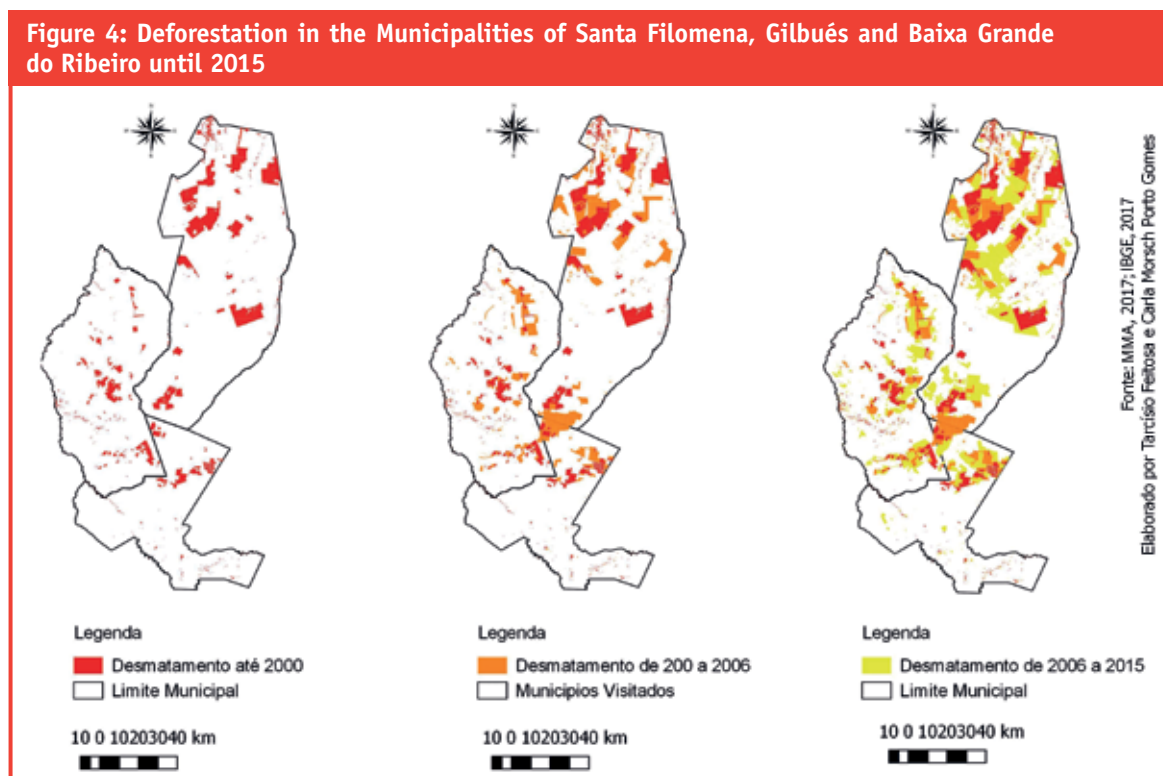


Figure 4 depicts the overall deforestation in the three municipalities visited by the international mission between 2001 and 2015. The acceleration of the deforestation after 2006 is clearly noticeable.



The reports from the visited communities clearly indicate that the destruction of the Cerrado for the expansion of agribusiness has altered the rainfall patterns in the region, which now suffers from drought. This strongly affects local people's livelihoods, in particular because peasant agriculture becomes increasingly difficult.

*"An attack against the environment is also an attack against us peasants, against the people of the countryside. The men and women who were born on the fields and live on the fields, live from the fields and with nature. What we are observing – and I have observed this in the course of the 46 years of my life – is deforestation at a large scale."*

Cassimiro Lopes Neto, Baixão Fechado.

#### 4.2.5. Food and Nutrition Insecurity

The interlinked processes of loss of land, deforestation, water and soil pollution, and the changes of hydrological cycles, wind patterns, and temperatures in the Cerrado – which are linked to the ecodestruction – are having serious impacts on the quantity as well as the quality and diversity of foods available for the communities visited. Traditional food habits have gradually changed since the arrival of agribusiness in the region. On the one hand, inland fisheries have seriously diminished as well as the number of wild animals for hunting. Herbs and medicinal plants have disappeared. Water scarcity has led to *buriti* palms and other fruit trees producing less fruits, thereby impacting, in particular, women's livelihoods related to the collection and processing of fruit. The processing of the *buriti* fruits into oils and candies has, for example, drastically reduced. Water scarcity also affects the growing of other food crops. The massive use of pesticides is further affecting farming by communities and has led to the disappearance of broad beans and other food crops, as well as to pests moving from the highlands to the lowlands and

destroying rice, pumpkins, and other crops of the communities. Members of different communities have also stated that security companies associated with agribusiness companies prevent local people from planting food crops and raising animals in the now disputed lowlands. In other cases, the presence of armed guards who carry out raids into the peasants' fields has forced residents to move their farm fields further and further away from their communities. In some cases, the farming areas of communities are kilometers away from their homes, in order to protect them from being destroyed.

The combination of all these factors has created a situation of big food and nutrition insecurity. In the community of Sete Lagoas, for instance, children younger than 5 years show clear signs of undernutrition such as low stature. Adults are equally affected.

*"I pity children born today because there is a lack of water in the rivers and fertile lands that we can work to provide enough quality food for our children".*

Jaime, a young adult volunteer with the environmental group Progea

#### 4.2.6. Widespread Violence and Conflict

In addition to the violence inflicted on the communities by the destruction of the nature that surrounds and sustains them, all of the communities visited by the mission live under unsettling circumstances. This involves different forms of intimidation, harassment, and physical violence. According to the Pastoral Land Commission (CPT), there were 636 recorded conflicts over land and 109 over water in the region of MATOPIBA in 2016 alone.<sup>147</sup> Both of these figures are the highest in the last 20 years.

In Sete Lagoas, for instance, residents' houses and fields have been vandalized and partly destroyed, a fact that was verified by members of the mission

<sup>147</sup> See [www2.fct.unesp.br/nera/boletimdataluta/boletim\\_dataluta\\_10\\_2017.pdf](http://www2.fct.unesp.br/nera/boletimdataluta/boletim_dataluta_10_2017.pdf).



## 58 The Human and Environmental Cost of Land Business

team. Residents also reported different forms of regular harassment by guards and other agents linked to the plantations, such as death threats, intimidation of community leaders, violence against children, threats against animals, and armed groups wandering around. The community has difficulty in formally denouncing these incidents due to the fact that the next police post is 240 km away. Nevertheless, since

January 2016, ten formal complaints were presented by residents of Sete Lagoas. However, none of those complaints have been investigated by the police, who, according to the reports of community members, never even showed up to investigate and ascertain what had happened. Some residents stated that local policemen work with militias that are controlled by the plantation owners.



In the Brejo das Meninas community, the mission documented reports from residents about a recent incident of gunshots, which hit houses as well as a bus with people inside. There is a continuous fear of armed outsiders roaming their lands. Some of the women are showing signs of depression, mainly related to the intimidation they have to endure, like the tension caused by frequent late night gunshots near the community, which result from guards and security company employees of the plantations doing firearms training sessions on or close to the plantations. To compound matters, reports point to conflicts between different land grabbers in the region, which worsens the tension felt by the community. This subject is particularly worrying for local people, to the extent that they are too afraid to even talk about it.

Several reports of community members have pointed to the complicity of state authorities in the violence and threats against traditional populations. Several testimonies reported, for instance, that police agents were part of the armed escorts, which have threatened the communities on different occasions. Furthermore, the communities have no access to justice and can therefore not count on protection by juridical authorities because the courts, the prosecution offices, and police stations are usually hundreds of kilometers away from their lands.

In a protest against the destruction of people's livelihoods and the Cerrado by agribusiness on September 30, 2017 in Balsas, Maranhão, during which protestors occupied the Transamazonian highway for several hours, a banner carried by the protestors illustrated how local people perceive police attitudes in the region: "The police are paid and use the whole state apparatus to defend agribusiness and the poor have no way to defend themselves".<sup>148</sup> Indeed, statements by several community members point out that the state is present when it comes to address claims and needs

of the large plantations, while being absent and ignoring the complaints made by communities.

One case of targeted violence against a community leader worsened shortly after the fact-finding mission visited the region. Adaildo José da Silva, who lives in the Morro D'Água community, reported how a lawyer has been trying to evict him from his land for years using threats, false documents, and violence. On September 19, 2017, Valdimar Delfino dos Santos, who works for the lawyer trying to remove da Silva from his land, again physically attacked him and threatened him with death. Da Silva has registered complaints with the police various times to no avail.<sup>149</sup> In February 2018, armed men entered once more into the community looking for Adaildo José da Silva, who, luckily, was not at home. Threats against him and his family have continued since.

#### 4.2.7. Migration and the Disruption of the Social Fabric of Communities

Destruction of communities' livelihoods related to dispossession, deforestation, water scarcity, and pollution with pesticides, alongside violence and harassment, has led to a decline of the communities' population, as many families see themselves forced to leave their villages permanently and migrate to the cities, where they live in slums in the outskirts of mid-sized and large cities.<sup>150</sup>

The invasion into the communities' lands has been sudden, brutal and violent, leaving them with no means to survive and drives them to the brink of hunger and spoliation. The communities and families that have so far managed to stay are only able to do so by toiling under extremely precarious conditions, many times in situations of extreme vulnerability and analogous to slavery, and many times finding themselves forced to work for the same agricultural business owners who occupy their former lands. Cases

<sup>148</sup> See [www.brasildefato.com.br/2017/09/30/em-denuncia-contra-agro-negocio-2-mil-pessoas-ocupam-a-transamazonica-no-maranhao](http://www.brasildefato.com.br/2017/09/30/em-denuncia-contra-agro-negocio-2-mil-pessoas-ocupam-a-transamazonica-no-maranhao).

<sup>149</sup> See [www.semcerrado.org.br/campanha/nota-publica-ameacas-e-violencia-em-comunidades-do-cerrado-piauiense](http://www.semcerrado.org.br/campanha/nota-publica-ameacas-e-violencia-em-comunidades-do-cerrado-piauiense).

<sup>150</sup> According to the Landless Workers Movement, 377 countryside schools have been closed in the State of Piauí only in 2014. See [www.mst.org.br/2015/06/24/mais-de-4-mil-escolas-do-campo-fecham-suas-portas-em-2014.html](http://www.mst.org.br/2015/06/24/mais-de-4-mil-escolas-do-campo-fecham-suas-portas-em-2014.html).

of violence against children, burning of houses and fields, blocking of wells, night-time firearms drills in order to intimidate the population, physical abuse, and aggression, are getting more common.

Besides the destruction of their livelihoods, there are also other ways of coercing the communities to leave. The absence of secondary schools in the area forces young people to abandon school or move to the cities when they reach the age of 12, in order to complete their studies. This severely affects the dynamics of the communities as it disrupts families. The situation which has been made worse by the accelerated rate with which the elementary schools in rural areas are being closed in the State of Piauí. In order to care for their children who want to study, also women are compelled to leave the villages and migrate to the cities. An illustrative example is that of the Tabocas settlement, where the school was closed and mothers were charged by the Prosecutor's Office and pressed to migrate to the cities.

The lives of community members are made even more complicated by the absence of basic services. The Baixão Fechado and Santa Fé communities, for example, do not have access to public electricity until today, which severely limits their possibilities to generate a decent income for their families.

As a result of outmigration from rural areas, urban areas have been growing at a fast pace. Cities like Teresina, Brasília and Palmas have become the destination for many young people who can no longer find a perspective to live and work in dignity in their communities of origin. The swelling of the cities is, however, not accompanied by a correlated improvement and increase of public services or the creation of jobs. Many people end up working in precarious jobs. Women in several communities have also reported that child labor is common in the cities, especially in domestic work.

An example of the dramatic situation regarding migration to the cities is can be found on the outskirts of Bom Jesus, a small city located in the Grotas region in Piauí. 80 % of the population are peasants

who have been expelled from their lands over the last years and more than five new neighborhoods have been created in this city during this time.

### 4.2.8. The situation of women in the visited communities

Women are particularly affected by the detrimental impacts of the expansion of agribusiness. Traditionally, women are in charge of collecting, transporting, processing, and selling the *buriti* fruit, which is a traditional part of the regions' diet and an important source of income for families and communities. They used to be able to gather *buritis* in the surrounding Cerrado, but since it was destroyed women have to walk several kilometers – in one case women told the mission team that they walk over 8 km – in order to collect and bring back the fruits. Many times they carry the fruits on their heads, further increasing the difficulty of their task. In addition, the *buriti* palms yield less fruits each year, which puts the livelihoods of women related to the preparation of oils and candies under increasing pressure. In Brejo das Meninas, a young woman reported on how the processing of fruit has become ever more difficult and how it leads women to become isolated from their communities. As more and more time is needed to harvest the fruit and produce enough to make a living and buy the basic means of production, some women are no longer able to participate in social life. Women further struggle to sell their produce as there is no infrastructure regarding the transport of candy and oil, or conditions for selling them.

*“My mother has to isolate herself from social life in order to make the same amount of candy she did 10 years ago. In addition, she has to acquire the basic means of production by herself, in order to ply her craft. It takes a lot of time and a lot of toil to produce the 400 kg of buriti candy and 66 liters of oil she produces every year. It is extremely hard to get clean water and there is also the work needed to clean the shack”.*

A young woman from Brejo das Meninas

Another woman remarked that she had just turned 52 years old and only four months ago learned what a salary was. Besides being a candy maker, she also works for the town hall as a street cleaner.

When talking about land issues in focus group discussions with women, their fear was palpable. Many claimed that they were afraid and hesitant to invest in their lands, as they do not know if they will get to stay there or keep ownership. The insecurity regarding their land rights creates a lot of insecurity within communities more generally and conflicts have erupted between families over the remaining community lands, which are also being disputed by farms and plantations nearby.

Women are also worried by the increase of health problems and the increase of cancer cases in several communities, which they relate to the contamination of, soils, food and water.

Another issue emphasized by women of the visited communities is the constant intimidation, physical violence, and permanent presence of armed guards, which makes it impossible for them to plan a life for themselves and their families in the region. A woman from the community of Santa Fé told the mission that her father wants to leave because of the constant threats. With misty eyes, she recounts how she became acquainted with the forest in her childhood and was able to learn, play, and grow in it. Today, her son is not only missing that opportunity, but might have to grow up in another place altogether. A life in the cities does not, however, present any prospect for the families, as poverty as well as lack of basic services and jobs leads to yet more insecurity and violence.

Finally, women highlight the authorities' abandonment of the communities, a recurring theme in the communities that the mission has visited. People feel disregarded by politicians, the mayors, and the local authorities. In most of the communities, there is no

school, no jobs, and no electricity. In one community, people have created improvised class rooms inside a health center in order to ensure schooling for their children. Even though the building is in a bad condition, it is in better shape than the old school building. This points to the fact that despite the dire circumstances they face, communities resist and do whatever they can to live a life in dignity. It became clear during the fact-finding mission that women play a crucial role in this regard and that in several villages strong, determined and courageous women ensure that the families and communities continue functioning, despite being beset by violence.

### 4.3. Responses by State Authorities and Involved Pension Funds

#### 4.3.1. Responses by State Authorities

##### 4.3.1.1 Brazil

So far, the main response to increased land conflicts in the area covered by the international fact-finding mission of September 2017, has been the passing, by the State of Piauí, of the state law N° 6.709 on September 28, 2015, on the regularization of ownership and colonization of lands.<sup>151</sup> This law, together with Decree N° 16.324 of December 7, 2015,<sup>152</sup> sets forth a land regularization program for lands that formally belong to the State of Piauí and which are considered as vacant (*terras devolutas*). As already explained, in reality these lands are not vacant, but are in many cases used by communities on the basis of customary tenure and use, which are very often of communal/collective nature. The law distinguishes between those lands that are considered as inalienable (*terras devolutas necessárias* and *terras devolutas reservadas*) and those that are subject to the land regularization program (*terras devolutas não*

<sup>151</sup> The Law is available at [www.legisweb.com.br/legislacao/?id=303923](http://www.legisweb.com.br/legislacao/?id=303923).

<sup>152</sup> The decree is available at [www.legisweb.com.br/legislacao/?id=313412](http://www.legisweb.com.br/legislacao/?id=313412).



*consideradas indisponíveis*). The regularization of the latter can happen through different forms defined by the law, namely: the legitimization/formalization of existing tenure/use rights; the regularization of occupation; donations (including through agrarian reform programs); the selling of lands; the exchange of public lands for private lands; concessions; and the leasing of lands for a defined period of time.<sup>153</sup>

The law does not exclude any groups or actors (including big land owners and agribusiness companies) from being beneficiaries of the law, but it defines the following priorities of land regularization:

- 1) the settlement of landless rural workers;
- 2) the regularization of existing tenure rights; and
- 3) the protection of natural ecosystems and of sites that are of particular importance, including because of their ecological, historical, and cultural value.<sup>154</sup> In addition, the law establishes criteria for the decision regarding land regularization, which are:

- 1) the “rational and appropriate use” of the land;
- 2) the adequate use of available natural resources and the preservation of the environment;<sup>155</sup>
- 3) the compliance of owners with the provisions governing labor relations; and
- 4) exploitation of the land that favors the well-being of owners and workers.<sup>156</sup>

The Decree N° 16.324 defines the general objective of Piauí’s land regularization program to be “to promote legal security to tenure rights holders and to guarantee the socio-economic and environmental development in rural areas.”<sup>157</sup> The program’s

specific objectives mention the regularization of the occupation by family farmers and the provision of security of tenure of *quilombola* communities, but the decree also explicitly refers to the regularization of lands used by agribusiness in Cerrado areas as an objective.<sup>158</sup>

The institution responsible for the implementation of the land regularization program is the Land Institute of Piauí (Instituto de Terras do Piauí, INTERPI). The regularization process is coordinated by so-called Special Commissions (*Comissões Especiais*), which are composed of two administrators of INTERPI and one agronomist or surveyor. These commissions are responsible for identifying lands to be regularized as well as rights that may exist over them, and for taking a decision on the regularization and the beneficiary of a given parcel. The law establishes a process intended to allow for all those who may have a claim over the land in question to present their claim and any documents that support it.<sup>159</sup>

Decree 16.324 sets clear objectives to be achieved until December 31, 2019, namely the issuing of 11,000 titles for family farmers, the regularization of six *quilombola* communities and the privatization (through selling and leasing) of four million hectares of land.<sup>160</sup> According to information of the World Bank, by January 2018, 258 beneficiaries had received registered land titles, while another 336 beneficiaries were in the final stages of receiving their title, bringing the total so far to 694 beneficiaries with a received a registered land title. There were an additional 7,937

<sup>153</sup> Law N° 6709 of 28/09/2015, chapter VII, arts. 37-49.

<sup>154</sup> *Idem.*, art. 32.

<sup>155</sup> The Law specifies that “adequate use” is understood as use that respects “the natural vocation of the land, in order to maintain the productive potential of the property;” it also specifies that “preservation of the environment” is understood as maintenance of “the natural environment’s characteristics and of the quality of environmental resources [...] to maintain the ecological balance of the property as well as the health and quality of life of neighboring communities”

<sup>156</sup> Law N° 6709 of 28/09/2015, art. 14. Such exploitation is defined by the law as exploitation that “aims to meet the basic needs of those who work the land, observes the norms of work safety and does not provoke conflicts and social tensions on the property.”

<sup>157</sup> Decree N° 16324, para. 2.1.

<sup>158</sup> *Idem.*, art. 2.2.

<sup>159</sup> Law N° 6709 of 28/09/2015, arts. 2-27.

<sup>160</sup> Decree N° 16324, para. 2.1.



requests filed by small-scale farmers for land titles through the land regularization program and eight teams in place to execute land tenure regularization activities. Five *quilombola* communities have received further land titles under the project.<sup>161</sup>

The land regularization program in Piauí is supported by the World Bank, through a US \$120 million loan to the government of Piauí, which was signed on April 27, 2016. This project will run until December 31, 2020 and has the stated objective of benefitting “the state’s rural poor by increasing and improving services in education, health, agriculture and water resources.”<sup>162</sup> Subcomponent 1.4 of the loan aims at “strengthening real property rights,” through supporting the implementation of Piauí’s land regularization program.<sup>163</sup> The World Bank justifies its support by arguing that the lack of formal land titles is a major obstacle to increasing income of rural communities in a context of widespread rural poverty in Piauí. According to project documents, the “land regularization through the provision of full land tenure titles to small farmers” is intended to contribute “to social and productive inclusion,” referring to the importance of land for peasants as the “primary means for growing crops that can improve

food security and quality, reducing vulnerability to hunger and generating livelihoods.”<sup>164</sup>

According to information gathered during the fact-finding mission, the land regularization process in Piauí has been used by large plantation owners and agribusiness to legalize their claims over lands in the Cerrado and to formalize their property rights over these areas. Given the current dynamics in the MATOPIBA region, in particular the high degree of violent dispossession, falsification of land titles, and corruption, the land regularization process is thus in many cases worsening the situation, by legalizing illegal and/or illegitimate appropriation of community lands and triggering further dispossession and environmental destruction. At the same time, communities have faced several difficulties in their attempts to have their traditional land rights recognized and protected through the program. In a meeting with representatives of CPT, Rede Social, and FIAN in May 2018, representatives of the judiciary of the state of Piauí stated that there is a lack of political will to effectively prioritize the regularization of community lands, which could be due to the fact that this will not lead to increased tax revenue for the state government. In addition, the land regularization law and its implementing program privileges individual titling, while neglecting approaches to secure collective tenure rights. In this context, it is important to underline that neither the law nor the program recognize the collective territorial rights of the traditional communities in the State of Piauí.

Taking into account the critical situation of communities in the Cerrado and the risk of formalizing land dispossession through the land regularization process, the Brazilian Public Prosecutor’s Office formally recommended to immediately suspend the application of State Law n° 6.709/2015 on December 18, 2017, until measures have been taken to ensure

<sup>161</sup> World Bank (2018), Implementation Status & Results Report. Piauí: Pillars of Growth and Social Inclusion Project (P129342), 17 January 2018. Available at: <http://documents.worldbank.org/curated/en/255531516201161985/pdf/Disclosable-Version-of-the-ISR-Piaui-Pillars-of-Growth-and-Social-Inclusion-Project-P129342-Sequence-No-05.pdf>.

<sup>162</sup> Project “Piauí: Pillars of Growth and Social Inclusion” (project no. P129342). See the World Bank’s press release: [www.worldbank.org/en/news/press-release/2015/12/21/brazil-more-social-inclusion-productivity-benefit-piaui-rural-poor](http://www.worldbank.org/en/news/press-release/2015/12/21/brazil-more-social-inclusion-productivity-benefit-piaui-rural-poor). The World Bank has been supporting land regularization and formalization in Piauí for many years. The current project was approved together with another loan of US \$ 200 million (“Piauí: Productive and Social Inclusion”, project no. P146981) with similar components and which ended on 31 August 2017. (<http://projects.worldbank.org/P146981?lang=en>) Both loans/projects are the continuation of a previous project of US \$350 million (“Piauí: Green Growth and Inclusion”, project no. P126449, approved on 6 March 2012 and closed on 30 March 2013, <http://projects.worldbank.org/P126449/piaui-green-growth-inclusion-dpl?lang=en>, [www.worldbank.org/en/news/press-release/2012/03/06/world-bank-brazil-more-200000-poor-families-benefit-green-growth-social-inclusion-policies-piaui](http://www.worldbank.org/en/news/press-release/2012/03/06/world-bank-brazil-more-200000-poor-families-benefit-green-growth-social-inclusion-policies-piaui)), which also included the issuing of property titles as one of its pillars.

<sup>163</sup> Other components concern secondary education, access to health services, registration of ground water users, participation of farmers in value chains, and technical assistance to support Piauí’s public management

<sup>164</sup> Project Information Document (PID), available at <http://documents.worldbank.org/curated/en/423181468213891806/pdf/PID-Print-P129342-12-01-2015-1448983947229.pdf>.

the possibility of collective titling for communities and ensure their free, prior, and informed consent regarding land attributions.<sup>165</sup> The Prosecutor's Office further recommends to identify and document the local traditional communities' forms of tenure and use of natural resources through an anthropologic study as well as through consultations with affected communities prior to any regularization. The recommendation particularly underlines the importance of consulting the affected communities about how their traditional forms of tenure and land use should be effectively protected, without transforming them into private property through land titles.

The recommendation of the Public Prosecutor's Office is addressed to INTERPI as well as the World Bank, calling upon the latter "to adopt measures to assess and correct the negative effects of the World Bank-financed land regularization program in the State of Piauí, in order to prevent and remedy violations of the land rights of traditional peoples and communities."<sup>166</sup>

The recommendation of the Public Prosecutor's Office supports the demands of eight affected communities from the municipalities of Gilbuês, Santa Filomena, and Bom Jesus who – in a letter sent to the Food and Agriculture Organization of the United Nations (FAO) on December 11, 2017 – asked for the establishment of a round table for dialogue in order to assess the land regularization process and discuss its objectives, including the importance of collective registration of community lands. In their letter, the communities propose that this round table be composed of the Agrarian Court of the State Judiciary (Vara Agrária da Justiça Estadual), INTERPI, and representatives of the communities and with the participation of the state and federal Public Prosecutor's Offices, the World Bank, the State Parliament of Piauí, FAO, and support groups from civil society.

On January 17, 2018, INTERPI responded to the recommendation of the Public Prosecutor's Office. In its letter, INTERPI states that the regularization process includes public lands that are occupied and used by peasant communities and that it has, on some occasions, issued collective titles, in particular in the case of *quilombola* communities. INTERPI's response also contains information regarding the communities in the municipalities of Santa Filomena and Gilbuês, also visited during the international fact-finding mission. According to the letter, all these communities, with the exception of Santa Fé, are situated on lands that are already registered in the name of owners and can therefore not be regularized by INTERPI.<sup>167</sup> At the same time, the letter claims that INTERPI's procedures contain safeguards to ensure that lands that are occupied by other groups, in particular local communities, cannot be registered by big landlords.<sup>168</sup>

This response thus confirms that private actors, in particular plantation owners, have registered land that is occupied and used by local people, using the regularization process as a means of formalizing the dispossession of communities. In a subsequent meeting with representatives of CPT, Rede Social de Justiça e Direitos Humanos, and FIAN in May 2018, representatives of INTERPI acknowledged that the land titles held by these actors over community lands may be forged, but did not want to commit to initiating a procedure to assess, and eventually cancel, them. INTERPI also makes clear in its response letter to the Federal Prosecutor's Office that it will not suspend the regularization process, despite the evident problems.

On March 20, 2018, at the occasion of the annual World Bank Conference on Land and Poverty, a broad alliance of social movements of small-scale food producers, organizations of indigenous peoples, and other CSOs launched an international statement calling

<sup>165</sup> The letter is available at [www.fian.org/fileadmin/media/publications\\_2017/Letters\\_and\\_statements/Recomendac\\_\\_a\\_\\_o\\_MPF.pdf](http://www.fian.org/fileadmin/media/publications_2017/Letters_and_statements/Recomendac__a__o_MPF.pdf).

<sup>166</sup> Idem

<sup>167</sup> This applies to the communities of Sete Lagoas, Brejo das Meninas, Baixão Fechado, and Melancias.

<sup>168</sup> Letter of INTERPI to the Public Prosecutor in the municipality of Corrente (Piauí), dated January 17, 2018.

upon the World Bank to 1) adhere to the Brazilian Public Prosecutor's Office's letter by immediately suspending its support to the land regularization/titling process in Piauí; 2) respond to the demand of affected communities to establish a dialogue round table in order to assess the effects of the land regularization program in Piauí, so as to prevent and remedy violations and to put in place mechanisms, which guarantee local communities control over their territories as well as effective remedies, including the restitution of community lands; and 3) publicly disclose how the land regularization project in Piauí is in compliance with the Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests.<sup>169</sup>

In response to this statement, representatives from the World Bank traveled to Piauí in order to hold meetings in which some community members and support groups participated, in particular the CPT. After the visit, the World Bank sent a formal response signed by its country director for Brazil, Martin Raiser, to the signatories of the abovementioned statement. In the letter, the World Bank states that its mission's conclusions were "that the communities in the project areas are not affected by displacement and that the process of land regularization through INTERPI is regarded by all the communities, with whom the World Bank team consulted, as one important element of protection against illegal land grabs."<sup>170</sup> Representatives of the affected communities as well as local CSOs who participated in the meetings with the World Bank insist, however, that community members provided detailed information about existing conflicts. During its visit to Piauí, the World Bank agreed to organize a second mission, in order to conduct meetings with the affected communities, in order to identify ways of addressing issues that may exist. These meetings are scheduled for June 2018.

According to information received by the fact-finding mission team, a process has been started to carry

out an assessment and revision of State Law N° 6.709. According to statements by representatives of the state judiciary, a proposal for a revised law will be presented soon. No details have been made available so far regarding the process of consultation for the revised law, in particular with regards to the involvement of affected communities.

In addition to the land regularization process, a rural court (*Vara Agrária da Justiça Estadual*) was established in Bom Jesus in Piauí, as a response to the claims made by social movements and other organizations in the region. This court has been carrying out an important role in slowing down the advances of agribusiness on communities' lands. As already mentioned, the court has cancelled several land titles, which had been acquired illegally and opened investigations on several farms. However according to statements received during the international mission, this court has been operating practically without resources and is under constant attacks by politicians and large plantation owners in the region. Also, the judge nominated for the court and his family have been repeatedly targeted with death threats, which has forced them to move to another city.

In March 2018, the judicial branch of the State of Piauí established an institutional Task Team on Land Regularization (*Núcleo de Regularização Fundiária*). This Task Team will support the land regularization process in urban and rural areas, in order to support administrative and judicial processes (in particular the rural courts). It is to focus on conflict areas and will also have a monitoring function. According to information made available by the judiciary, it will focus on lands used for family farming and develop a comprehensive State plan for land regularization.<sup>171</sup> The Task Team will also contribute to the process assessing and revising State Law n° 6.709/2015.

<sup>169</sup> Available at: [www.fian.org/en/news/article/world\\_bank\\_program\\_forcing\\_local\\_communities\\_off\\_their\\_land](http://www.fian.org/en/news/article/world_bank_program_forcing_local_communities_off_their_land).

<sup>170</sup> The letter, dated April 3, 2018, was sent to FIAN International.

<sup>171</sup> Please see [www.pi.gov.br/materia/interpi/nucleo-de-regularizacao-fundiaria-sera-criado-pela-corregedoria-geral-da-justica-4863.html](http://www.pi.gov.br/materia/interpi/nucleo-de-regularizacao-fundiaria-sera-criado-pela-corregedoria-geral-da-justica-4863.html) and <https://cidadeverde.com/noticias/266967/piaui-tera-nucleo-pioneiro-no-pais-para-tratar-de-regularizacao-fundiaria>.

#### 4.3.1.2. Home States of the Involved Pension Funds

##### Germany

During the fact-finding mission to Europe, which took place in January 2018, the international delegation held a meeting with representatives of the German Federal Foreign Office (including the “Business and Human Rights” and “Brazil” divisions), the Federal Ministry of Finance (“Investment Funds” division) and the Federal Ministry for Economic Cooperation and Development (“South America, Brazil” division). During this meeting, it was confirmed that no specific institutional mechanisms are in place in the parliament and its committee on finance to review such investments in case of substantive human rights concerns (apart from the possibility to table parliamentary questions). The government pointed to two existing human rights-related remedy mechanisms in Germany: (a) a remedy mechanism implemented under the National Action Plan for Human Rights; and (b) the OECD Guidelines on Multinational Companies, which allow complaints to the National Contact Point (NCP) in the concerned country. Neither of these mechanisms is, however, integrated in the national legal system. Furthermore, the remedy mechanism of the National Action Plan for Human Rights is of strictly voluntary nature, while the mechanism under the OECD Guidelines does not lead to any sanctions, but to a mediation between the parties. Both mechanisms lack clear obligatory prevention or remedy mechanisms for affected people in case of abuses.

A member of parliament who is a member of the parliament’s finance committee clarified that there are currently no binding regulations obliging pensions funds to respect human rights and that no established mechanisms are in place to ensure cooperation between the parliament’s committee and national or international human rights institutions. The MP further stated that there is in general very little discussion about human rights in the financial committee and in cases where this issue comes up, discussions focus on transparency regarding human

rights risk management towards shareholders.

Overall, the interviewed authorities expressed reluctance to establish any obligatory mechanism ensuring legal accountability for human rights abuses deriving from the transnational activities of pension funds or any other business enterprises. During the meetings it became clear, that there is an absence of awareness on human rights issues. The dominant position is to remain in voluntary structures when it comes to business and human rights. An EU Directive on the Activities and Supervision of Institutions for Occupational Retirement Provision (IORPs Directive 2016/2341), which was adopted in 2016, was mentioned as a pioneering legislation, which could possibly lead to stronger regulation, given that it requires pension funds to include environmental and social risks in their risk assessments. Germany and all other EU Member States are required to translate this Directive into national law by January 2019.<sup>172</sup>

According to the German political system several matters are devolved to the regions/states (Bundesländer), including the regulation and oversight of ÄVWL, which is a responsibility of the State of North Rhine-Westphalia. However, despite repeated requests, the state government of North Rhine-Westphalia refused to meet the delegation with the argument of not wanting to interfere in

<sup>172</sup> In Germany, supplementary occupational pension schemes, which are not dedicated to a certain profession, are part of the pension system’s ‘second pillar’ and are regulated by the state. They are subject to the supervision of the Bundesfinanzinstitut (BaFin), which, in turn, is supervised by the national ministry of finance. Like the pension schemes of professions, they are also predominantly structured around investments of premiums and therefore both are referred to as pension funds in this document. Under German law, pension funds are required to invest their capital as safely and profitably as possible, to secure future retirement benefits (e.g. § 7 VersAufsVO NRW, § 215 VAG). Furthermore, there is a cascade of regulations (from national to regional) on pension money. According to the Insurance Supervision Act (Versicherungsaufsichtsgesetz – VAG), occupational pension schemes may only invest in assets and instruments whose risks can be sufficiently identified, assessed, monitored, controlled, and included in their reporting (para. 234 II in conjunction with para. 124 VAG). In reality, existing regulation and monitoring relates (almost) exclusively on financial risks and protection of the pensioners, excluding social, human rights, and environmental risks. Decision makers so far have been hesitant to integrate those aspects (e.g. via a regulative act that clarifies the role of the existing state of human rights obligations in the context of pension schemes).

parliamentary issues<sup>173</sup> and that any allegations should be first brought to ÄVWL directly.<sup>174</sup>

### The Netherlands

During a meeting with government officials at the Dutch Ministry of Foreign Affairs that took place as part of the international fact-finding mission in January 2018, the Dutch government referred to its initiatives in recent years to establish and facilitate a recurring dialogue with civil society, academia, and the private sector on land issues, which also deals with issues related to investments in land. Even though the Dutch government has seats on the Employers' Council and the Accountability Board of ABP, it states that ABP is a private company, which operates at a distance from authorities and that government does not exercise direct control over ABP's management.

Overall, the government's approach towards companies and financial actors is mainly inspired by corporate self-regulation and the facilitation of "multi-stakeholder" dialogues, rather than by regulation of corporate and financial actors via appropriate legal frameworks. In this context, the government refers to voluntary mechanisms such as the OECD Guidelines for multinational enterprises, the Principles for Responsible Investment (PRI) and the Guiding Principles on Business and Human Rights (UNGPs). The Dutch government has publicly stated several times that it specifically expects pension funds to comply with the voluntary principles and standards of the OECD Guidelines.<sup>175</sup> In general, the authorities expressed reluctance to the establishment

of any obligatory mechanism of legal accountability for human rights abuses caused by the transnational activities of pension funds. They mentioned, however, the possibility for affected people to address complaints to the Dutch embassy.

### Sweden

The international delegation of the fact-finding mission met with four representatives of the Ministry of Finance, namely a state secretary and three advisors. These government representatives stated that the Swedish government has limited control over the AP funds and that its influence is limited to appointing board members of the funds and to reviewing the funds' work, based on which annual reports are presented to parliament. From the discussion with the ministry, it emerged that there is no body responsible for overseeing the fund's compliance with law.

The ministry representatives referred to the new legal framework on the regulation of pension funds that is currently being developed and expressed the view that this reform will mean some steps in the right direction, given that it will contain clearer and more concrete instructions on sustainability, including human rights. According to the ministry, the development of the revised framework is a complex process as it is a compromise between six different parties in parliament. The government is reluctant to include a list of conventions in this framework, arguing that the law is expected to stand for a long time and should be formulated in a way to allow it to take up developments.

The exchange with the ministry provided no clarity on the issue of access to remedy. According to the ministry's representatives no complaint mechanism is suggested in the new legislative proposal. However, they expressed a willingness to take this aspect into consideration and referred to AP2 and the pension group in the parliament on this matter.

<sup>173</sup> The argument is related to the fact that the pensions of the federal state parliamentarians are also managed by ÄVWL. Despite explaining that the objective of the requested meeting was to discuss broader issues related to regulatory gaps and options for the state government to address human rights abuses, and not the details of the parliamentary pensions, the State Chancellery did not accept to meet the delegation.

<sup>174</sup> The state Ministry of Finance also argued that they consider this case a single case and do not, as such, see the need to discuss regulation options and possible changes in regulation. In addition, the same ministry expressed the view that a discussion on existing options to act would clearly be a 'political discussion' and could, as such, only happen at high ministerial level.

<sup>175</sup> For example in these Q&A's with Dutch MPs: [www.tweedekamer.nl/kamerstukken/kamervragen/detail?id=2011Z25788&did=2012D03965](http://www.tweedekamer.nl/kamerstukken/kamervragen/detail?id=2011Z25788&did=2012D03965) and [www.tweedekamer.nl/kamerstukken/kamervragen/detail?id=2012Z16815&did=2012D45199](http://www.tweedekamer.nl/kamerstukken/kamervragen/detail?id=2012Z16815&did=2012D45199).



### 4.3.2. Responses by Involved Pension Funds

#### 4.3.2.1 TIAA

After preliminary reports showed strong evidence that TIAA's funds were purchasing lands that had previously been taken from traditional communities in Brazil, and there are concerns that the fund's financial support of palm oil companies has contributed to land grabbing and deforestation in other countries, several US-based CSOs have been campaigning and urging TIAA to: 1) immediately disclose all information regarding agricultural properties owned by the fund (directly or by means of their subsidiaries) and information regarding their partnership with palm oil companies; 2) commit to an investment policy that does not lead to land grabbing and/or deforestation; 3) publish their answers to those demands to their shareholders.

TIAA denies that it took part in any irregularity. In a letter sent in response to a draft version of the present report, TIAA states that it follows the requirements of all laws of the country in which it operates. The fund claims that "none of our land acquisitions are linked to 'land appropriation'," and that it conducts "a thorough title chain analysis and environmental review" prior to any land acquisition. It further claims to "screen sellers based on their involvement in litigation (including jurisdictions far from the property being considered for purchase) and also based on a reputational background check."

Regarding its land acquisitions in Brazil in particular, TIAA states that its farmland portfolio "consists only of land that has been approved for agricultural use – the vast majority of which has been used as farmland long before our investment." The fund further rejects allegations that it is involved in land speculation, stating "we acquire farmland assets generally with up to a 20-year time horizon. We do not purchase land with the intention of short-term monetization."

Also, according to TIAA, its investments in the Cerrado region concern only "established farming areas where our croplands are located in the high

plateaus." Regarding the fund's farm in Piauí, the Ludmila farm, which is located in the municipality of Santa Filomena, TIAA states that it is continuing the conversion process into farmland, which had been initiated by the previous owner. The fund claims that this process has been conducted in accordance with Brazilian law "and with all necessary environmental licenses." According to TIAA, the process of preparing the land for crop production has been ongoing for several years and no crop has been produced so far, and consequently the fund also denies the use of agrochemicals on the farm.<sup>176</sup>

As previously stated, TIAA underlines its participation in a number of self-regulation initiatives of the private sector, in particular the PRI and the Farmland Principles. The fund publishes annual reports on its compliance with these standards. In its last report, which dates from 2017, TIAA states that it has taken actions in order to address "concerns" regarding its activities regarding "transparency, engagement with external stakeholders and our investments in Brazil". The latter is particularly in response to allegations according to which TIAA's investments have led to land conflicts, displacement of local people, deforestation, and excessive pesticide usage.<sup>177</sup> The concrete actions taken in 2016 according to TIAA/ Nuveen are "(1) increased transparency around our farm locations through updated maps; (2) refreshed our approach to stakeholder engagement by hiring a dedicated person to manage these efforts; and (3) enhanced due diligence processes in Brazil."<sup>178</sup>

The company now has an online map<sup>179</sup> showing the rough locations of their farms, along with some information about each of them (such as what they produce and the area under production). However it is impossible to see the precise location of farms on this map, because users are not able to zoom into the image closely enough.

<sup>176</sup> Letter by TIAA/Nuveen to FIAN, dated December 22, 2017.

<sup>177</sup> TIAA/Nuveen (2017), *Responsible Investment in Farmland*, p. 2.

<sup>178</sup> Idem.

<sup>179</sup> Please see: [www.tiaa.org/public/assetmanagement/strategies/alter-natives/agriculture/farmlandmap](http://www.tiaa.org/public/assetmanagement/strategies/alter-natives/agriculture/farmlandmap).

With regards to its farmland investments in Brazil, the report claims that TIAA “continue[s] to avoid investing in areas in Brazil with potential indigenous community claims, and in biologically significant forested areas such as those found in northern Brazil in the Amazon Biome.”<sup>180</sup> It further claims that “most of the agricultural lands in our portfolio have been used as agricultural lands for many years, if not decades.”<sup>181</sup> In addition, TIAA points to its “rigorous due diligence process,” which includes “fundamental analysis of each property prior to acquisition” and a “reputation risk net”, to guarantee that the fund won’t purchase lands from individuals or companies with serious allegations against them.<sup>182</sup> The performance of each of its farms is further monitored individually over time. According to the report, the due diligence procedures have been updated since 2015 and it has adopted a code of conduct specifically for its Brazilian investments.<sup>183</sup>

TIAA recognizes that there are “challenges” regarding farmland investments, including the risk to contribute to water scarcity, nutrient runoff, climate change impacts through deforestation, land rights protection, transparency, as well as worker health and safety. The fund claims to address these through its “responsible and sustainable land management practices.” Based on its own guidelines, TIAA/Nuveen has developed a set of key performance indicators (KPIs) against which it reports. Not surprisingly, TIAA/Nuveen’s assessment of its own performance is extremely positive. Regarding its respect for existing land and resource rights (Guideline 3), for instance, the fund gives itself a 100 % performance rating on both of its indicators. According to the report, this means “that for any new property acquired in 2016, we conducted a formal title search and review as part of our due diligence process (KPI 3.1) and thus help to ensure that all properties were compliant with applicable land rights laws in the United States, Brazil or Australia (KPI 3.2). Land rights regulations vary across the geographies where we invest, but

in each case we adhere to existing laws.”<sup>184</sup> In the Brazilian context, the report also specifically refers to the Brazilian Forest Code of 2012, stating that all of TIAA’s properties are in adherence with the registration requirements, including the CAR.<sup>185</sup>

TIAA’s ratings regarding the promotion of environmental sustainability (Guideline 1) and the respect of labor and human rights (Guideline 2) are also very high. Taking a closer look at the indicators, it becomes clear that these refer to procedural issues, rather than assessing the actual outcomes of the activities and management of the farms. Regarding land rights for instance, there is no indicator that would cover any existing claims by local people over the land owned by TIAA. In the same line, the guidelines regarding environmental sustainability do not contain, for instance, an indicator on deforestation or on impacts on ecosystems. Also, the existing indicators on “chemical and production inputs” do not consider the kind and quantity of pesticides used.<sup>186</sup>

Overall, the report and monitoring serve to deny that TIAA is involved in any issues in the first place. However, there are some inconsistencies, such as for example regarding TIAA/Nuveen’s statement that “land rights may be a source of conflict due to ambiguous laws, lack of clear documentation, or historical disputes. We do our best to avoid investing in areas with ambiguous land rights laws”. Besides the fact that it is not accurate to attribute land conflicts exclusively to “ambiguous laws,” TIAA is well aware that MATOPIBA is a region, where a number of conflicts exist – many of which are linked to investments and agribusiness activities – as well as a region with a lot of uncertainty regarding land ownership and overlapping claims.

The claim that TIAA is not involved in any deforestation and clearing of areas in the context of its farmland acquisitions – according to a report published in

<sup>180</sup> Idem, p. 3.

<sup>181</sup> Idem, pp. 6-7.

<sup>182</sup> Idem, pp. 12-13.

<sup>183</sup> Idem.

<sup>184</sup> Idem, pp. 27, 40. The report also states that TIAA has conducted an assessment of its properties in Brazil in 2015, which was carried out by a consulting firm, called BSD (see p. 39).

<sup>185</sup> Idem, p. 42.

<sup>186</sup> Indicators 1.3 and 1.4 concern the “Percentage of acreage used to grow row/permanent crops that use variable rate or equivalent technologies to efficiently apply fertilizer and/or pesticides” (p. 27).

2017, “it is Nuveen’s general practice to maintain the forests on the land it acquires in Brazil”<sup>187</sup> – is in contradiction with the findings of the international fact-finding mission as well. These indicate that, at least in its farm in Piauí, TIAA is indeed involved in the deforestation of Cerrado forest. Information collected on the ground suggests that significant deforestation took place on the Ludmila farm, through the use of huge chains. Such claims are supported by the sequence of satellite photos presented in this report (see chapter IV.2.4). Although TIAA/Nuveen does not speak of deforestation in the letter sent in response to a draft version of this report, it acknowledges that Ludmila farm is in a process of “conversion into farmland” and preparation for crop production. Even though the fund claims that it is continuing a process, which had been initiated by the previous owner, this stands in contradiction with its claim that it only operates on lands, which have been used for agriculture for a long time.

Satellite images made available by Global Forest Watch also show deforestation on farms owned by TIAA, under TCGA I, in the state of Maranhão (farms Catuaí Verde, Catuaí Norte, Catuaí Norte (Santa Tereza), Sagitario, and Marimbondo, totalling 116,995 acres/47,346 hectares).<sup>188</sup> Even though a closer analysis shows that the main deforestation on these farms happened between 2001 and 2009, and thus before the creation of TCGA I, the satellite images show that significant destruction of Cerrado vegetation has happened on farms owned by the fund. This contradicts TIAA’s claims that it only acquires lands, which have been used for agriculture for many years. In a reaction to a draft version of this report, ABP’s asset manager, APG, stated that TIAA/Nuveen “is not only working toward a zero-deforestation policy in Brazil, but has also committed to not acquire farms in the future that have newly been deforested.”<sup>189</sup> This suggests that no such guidelines existed in the past and that TIAA/Nuveen may well have acquired newly deforested farms.

### 4.3.2.2. ÄVWL

ÄVWL declined the request of a meeting and a direct exchange with the international delegation of the fact-finding mission in January 2018, which included delegates from Brazil.

The fund has referred in the past to its internal Corporate Governance Codex,<sup>190</sup> which refers to ethical and social aspects but does not mention human rights. In addition, the chapter on ethical and social aspects does not provide details about how decisions about investments are taken. Rather, it only loosely refers to existing guidelines like the Principles for Responsible Investment (PRI), which are only declarations of intent. This way, the ÄVWL has the full discretionary power to decide about what is ethical, ethically relevant, and what is not, thus having the role of judge and party when judging a given situation. According to the mission’s research, ÄVWL also has a handbook on risk management, which is, however, not publicly available. It could not therefore be clarified whether the assessed risk refers also to human and environmental harm, or only to investments risks in terms of and financial gain.

It is worth noting that the national German governing body of doctors (“Deutscher Ärztetag”) formally demanded in 2010 that all German pension schemes of doctors only invest in line with ethical aspects.<sup>191</sup>

### 4.3.2.3. ABP

During a meeting with ABP’s asset management firm APG, the fund’s representatives referred the international delegation to Nuveen as the fund manager of TCGA II, for more information on due diligence and monitoring procedures. The responsible fund manager of APG was very positive about the due diligence and reporting by Nuveen. At the same time, APG expressed its interest in receiving more information regarding the intricate ways in which

<sup>187</sup> TIAA/Nuveen (2017), Responsible Investment in Farmland, p. 42.

<sup>188</sup> Available at [www.globalforestwatch.org](http://www.globalforestwatch.org).

<sup>189</sup> Email sent to FIAN on June 15, 2018..

<sup>190</sup> [www.aevwl.de/fileadmin/Dokumente/Kodex/Kodex\\_der\\_%C3%84VWL\\_Ausgabe\\_2015.pdf](http://www.aevwl.de/fileadmin/Dokumente/Kodex/Kodex_der_%C3%84VWL_Ausgabe_2015.pdf).

<sup>191</sup> Deutscher Ärztetag (2010) Beschlussprotokoll, p.125

land is grabbed in the MATOPIBA region, including the role of Brazilian environmental legislation and the CAR. This, coupled with APG's reliance on Nuveen, indicates that the Dutch fund managers might not have a comprehensive understanding of the consequences of the massive influx of foreign capital in the region. During the meeting, APG justified its land investments as a contribution to the fight against hunger, which stands in contradiction to the fact that most of the crops produced on the farms in the MATOPIBA region (mainly soy) are not food crops and are geared towards exportation.

During the meeting and in a subsequent letter, APG emphasized its "commitment to respect and promote human rights and environmental sustainability in its investments through its support for the UN Global Compact Principles and the Farmland Principles endorsed by the UN Principles for Responsible Investment". It further welcomed "research from a wide range of stakeholders including local experts as it enriches our understanding and diligence of our (potential) investments," stating APG's commitment to fact-check such information with the fund managers and "if needed follow-up in an appropriate way to ensure adherence to our responsible investment policies."<sup>192</sup>

Overall, ABP presents itself as a "responsible investor" and claims to have high standards and targets concerning the sustainability of its investments. ABP is part of the group of institutional investors, which launched the Principles for Responsible Investment in Farmland in 2011, which were later incorporated into the PRI. In 2015, the fund committed to review all the companies it has shares or bonds in, within five years. Amongst its goals before 2020 are a 25% decrease of CO2 emissions, a five-fold increase of its investments in renewable energy and a doubling of "High Sustainability Investments."<sup>193</sup>

#### 4.3.2.4. AP2

In a meeting that took place during the international fact-finding mission in January 2018, AP2 stated that Nuveen is the main interlocutor for discussing the problems around investment, due to their closer involvement as managers of TCGA. At the same time, AP2 stated that it actively influences TCGA's sustainability work through the board position, which is held by AP2. The person holding this position is also member of TCGA's economic, social, and (corporate) governance (ESG) committee and the representatives of AP2 claimed that the fund had played a key role in pushing through policies on increased transparency. AP2 also has a continuous dialogue with Nuveen, which produces quarterly reports and, according to its own reports, AP2 visits farmland properties several times every year". However, AP2 emphasizes that the main work in ensuring ESG is during the due diligence process and that they expect fund managers to follow the Principles on Responsible Investment in Farmland.

In response to the findings of a 2015 report on TCGA's farmland acquisitions in Brazil,<sup>194</sup> AP2 stated that TCGA follows strict procedures to verify the title of the lands it acquires and that all of its farm properties in Brazil were acquired in compliance with federal and local laws protecting aboriginal heritage and indigenous community rights. In its 2017 annual report, AP2 further mentions that third party evaluations were made by the company BSD Consulting on their Brazilian farmland properties in 2015. According to this, the evaluation focused on compliance with Brazilian law on working conditions, health and safety, as well as compliance with PRI. According to AP2, the result showed that the leasing companies had a good governance system, but that non-compliance or flaws were found in all cases. AP2 states that this has led to a change in the fund's policy around site visits, which are now more in depth and include a visit to the main office of the involved companies. In addition, AP2 has introduced a new

<sup>192</sup> Letter from APG to FIAN International, dated January 30, 2018.

<sup>193</sup> Please see [www.abp.nl/over-abp/beleggen/verantwoord-beleggen.aspx](http://www.abp.nl/over-abp/beleggen/verantwoord-beleggen.aspx).

<sup>194</sup> Rede Social de Justiça e Direitos Humanos, GRAIN, Inter Pares, and Solidarity Sweden-Latin America (2015), Land grabbing and pension funds in Brazil. Available at: [www.latinamerikagrupperna.se/wp-content/uploads/2015/11/grain-5336-foreign-pension-funds-and-land-grabbing-in-brazil.pdf](http://www.latinamerikagrupperna.se/wp-content/uploads/2015/11/grain-5336-foreign-pension-funds-and-land-grabbing-in-brazil.pdf).

code of conduct for the leasing companies and a monitoring policy is being developed. According to information provided by AP2, a new evaluation of most of TCGA farms will be commissioned by Nuveen during 2018.<sup>195</sup>

In its 2017 sustainability report AP2 strongly presents itself as a “responsible investor” with high ambitions, citing the awards the fund has earned for its sustainability work. AP2 has also released a statement with other institutional investors (including, among others ABP), about the importance of institutional investors investing in solutions that help to fulfil the Sustainable Development Goals (SDGs).<sup>196</sup> AP2’s communication strategy about their farmland investments has a strong focus on its contribution to the SDGs, in particular SDG 2 (zero hunger), arguing that large-scale farming is a way to achieve economic growth and development.<sup>197</sup> Initiatives are underway at the Global Reporting Initiative (GRI) and PRI to develop indicators to measure investors’ performance on this and AP2 say they hope to use these in future.

AP2 recognizes the importance of international conventions on human rights and says that it adopted a new human rights policy in 2017 to clarify responsibilities. This policy will be implemented from 2018 onwards. Further capacity building on this issue of the fund’s staff will take place in collaboration with the organization Shift. In its reports, AP2 refers in particular to the Guiding Principles on Business and Human Rights and states that the fund aims to implement a policy for a remedy mechanism, as is recommended by the guidelines. However, no concrete time frame is set yet. The representatives did not provide any information regarding any complaint mechanisms for affected people. AP2 is in the last year of a three-year process of risk evaluation which will be focused on its fund holdings in 2018.<sup>198</sup>

Climate change is another issue AP2 strongly refers to in its sustainability reports, committing to the objectives of limiting global warming to 2 degrees Celsius and expressing support for clear regulations in this regard.<sup>199</sup> The fund has also published a separate Climate Strategy Report in 2016,<sup>200</sup> in which it presents its ambition to contribute to a carbon neutral society. In particular, AP2 states that it has developed criteria to start divesting from fossil fuels. Some divestment decisions have been announced by AP2, but the fund still has major investments in fossil fuel companies.<sup>201</sup> AP2 also puts forward its participation in a number of initiatives to address climate change, including the Climate Action 100+ (a project in which investors conduct dialogues with the world’s biggest polluting companies on climate commitments) and the International Investor Group on Climate Change (IIGCC), which works for policies towards more climate smart investments. During the meeting with the international delegation, AP2 mentioned that it makes use of satellite monitoring and the collection of soil samples as ways of ensuring the long-term sustainable use of the farmlands the fund has invested in, and to track deforestation.

---

<sup>195</sup> Andra AP-fonden (2018), Årsredovisning och Hållbarhetsrapport 2017, p. 45.

<sup>196</sup> Idem, p. 29.

<sup>197</sup> Idem, pp. 30-31.

<sup>198</sup> Idem, pp. 29, 48, 49.

---

<sup>199</sup> Idem, pp. 5, 27.

<sup>200</sup> Andra AP-fondens (2016), Förhållningssätt till klimatomställningen. Available at: [http://www.ap2.se/globalassets/hallbarhet-agarstyrning/klimat/klimatstrategi-2016\\_se\\_161111.pdf](http://www.ap2.se/globalassets/hallbarhet-agarstyrning/klimat/klimatstrategi-2016_se_161111.pdf).

<sup>201</sup> See WWF (2015), Du äger! Ap-fondernas ägande av fossila reserver. Available at [www.wwf.se/source.php/1591998/Du\\_ager\\_AP-fonderna150320.pdf](http://www.wwf.se/source.php/1591998/Du_ager_AP-fonderna150320.pdf).







## 5. Human rights analysis

The aggressive expansion of agribusiness, particularly of soy bean, in the municipalities of Gilbués and Santa Filomena, has led to a serious destruction of nature and to severe violations of the human rights of local people. Agribusiness expansion and the accompanying land speculation has reshaped the political economy of southern Piauí and the MATOPIBA region, and has dramatically altered the social relationships with nature and the social fabric itself. Environmental crimes and human rights violations are manifold and closely interlinked.

Brazil has ratified the international human rights Covenants and instruments as well as the American Convention on Human Rights, including its Additional Protocol on Human Rights in the area of Economic, Social and Cultural Rights. By virtue of its obligations under these standards, the Brazilian state is required to take proactive measures to respect, protect and fulfil human rights and to abstain from any acts and omissions that could result in impairing their enjoyment. The Brazilian state is further a party to several international conventions and agreements on the protection of the environment (Rio Declaration, United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification), the preservation of biodiversity (in particular the Convention on Biological Diversity, CBD) and climate change (UN Framework Convention on Climate Change, UNFCCC, and the Paris Agreement).

Treaties and conventions on human rights have constitutional status in the Brazilian legal framework and need to be immediately implemented. Brazilian law further provides a legal framework to ensure the realization of human rights. Of particular importance are Articles 6 and 11 of the Federal Constitution, which are devoted to social rights, which are considered as non-amendable clauses of the constitutional text.

Brazil has also Constitutional and other legal provisions regarding the particular attention that needs to be given to the protection of particularly

marginalized groups. This refers in particular to indigenous peoples and *quilombola* communities, with a special attention to their rights over their territories and natural resources.<sup>202</sup> Decree N° 6.040 of 7 February 2007 explicitly recognizes the rights of traditional peoples and communities, establishing as objective of the national policy in this regard the “recognition, strengthening and guarantee of their territorial, social, environmental, economic and cultural rights, with respect and appreciation for their identity, their forms of organization and their institutions.”<sup>203</sup> The decree puts a particular emphasis on guaranteeing their territories as well as the access to the natural resources they traditionally use for their physical, cultural and economic reproduction. It further underlines the importance of ensuring the full exercise of traditional peoples and communities’ individual and collective rights, especially in situations of conflict or threat to their integrity.<sup>204</sup>

The human rights violations affecting local communities and people are systemic and affect a broad range of human rights. For an overview of the economic, social, and cultural rights affected, see annex. Among the most important aspects, we highlight the following:

- **Destruction of water springs and river beds; destruction of water table’s capacity to accumulate water due to deforestation, damaging**

<sup>202</sup> The Federal Constitution recognizes, in Articles 231 and 232, that, “the indigenous peoples have their social organization, customs, beliefs and traditions and the original rights to the lands that they have traditionally occupied”. Law 6.001/1973, known as the Statute of Indigenous Peoples, and Decree 1.775 of 1996, stipulate the procedure for the demarcation of indigenous land, which should be performed by the Brazilian National Foundation for the Indigenous Peoples (FUNAI). Article 129, V, of the Federal Constitution stipulates that the Public Prosecutor’s Office shall be in charge of legally defending the rights and interests of indigenous peoples. In 2006, the Brazilian federal government established the National Commission on Policies for Indigenous Peoples (Decree of 03/22/2006), under the Ministry of Justice, which started operating in April, 2007 and was tasked with drafting a bill for the establishment of a National Council on Policies for Indigenous Peoples. On February 7, 2007, Decree 6.040 established the National Policy for the Sustainable Development of Traditional Peoples and Communities, and defines them in its Article 3 as culturally differentiated groups that occupy and use territories and natural resources as a condition for their cultural, social, religious, ancestral, and economic reproduction. In 2003, Decree 4.887 regulated the procedure used to identify, recognize, delimit, demarcate and provide title deeds to the lands that are remnants of former slave settlements (often referred to as *Quilombolas*), pursuant to Article 68 of the provisional provisions of the Federal Constitution.

<sup>203</sup> Decree N° 6.040 of 7 February 2007, art. 2.

<sup>204</sup> Ibid., art. 3.

**the replenishment capacity of the water springs and threatening their very existence; and water pollution due to excessive pesticide use.**

The Brazilian State is infringing its obligation to protect existing stable access to water of adequate quality by traditional communities, which is threatened and destroyed by destructive and polluting agribusiness practices. Thus the Brazilian State is violating the human right to water of the five communities visited.

- **Destruction of Cerrado forests, wild plants and animals, including fisheries.**

The Brazilian State is infringing its obligation to protect existing access to forests from destruction by agribusiness activities. Access to Cerrado forests is required by the local population, in order to ensure forest-related livelihoods, such as hunting wild animals and gathering of *buriti*, *pequi*, and other forests fruits as well as medicinal plants. By not impeding the destruction of Cerrado forests, the Brazilian State is violating the human right to food of the five communities visited. Especially the rights of women to food, work, decent income, and health, are particularly affected, since *buriti* gathering and processing is predominantly a woman's livelihood in this region.

The destruction of Cerrado forests, which in turn led to the destruction of water sources, combined with the water pollution, have caused the destruction of fisheries. In this case as well, the Brazilian state is responsible for violating the right to food and the traditional fishing practices of the *ribeirinho* communities.

Deforestation for the establishment of agribusiness plantations also violates local people's right to a healthy environment. Article 225 of the Federal Constitution guarantees the right to an "ecologically balanced environment" and Law n° 9.605 of 1998 establishes sanctions for environmental crimes. While the Brazilian Forest Code (Law n° 12.651/2012) establishes legal

reserves with native vegetation that must be preserved in rural properties, this law has led to increased deforestation because many rural estate owners interpreted it as a green signal to deforest more as long as their legal reserves were kept intact.<sup>205</sup> The law has also established an amnesty for areas degraded and deforested above the limits before 2008. Most of these areas are situated in the transition areas between the Cerrado and the Amazon, including parts of the MATOPIBA region, in particular the states of Maranhão and Tocantins. In the state of Piauí, the degradation of the Cerrado region expanded fast after the adoption of the Forest Code, as the amnesty allowed both to legitimate degradation in areas still not fully licensed for large scale agricultural use and also allowed for the acquisition of cheaper still preserved land so that degradation could be pushed to the limits. Coupled with changes in land legislation, the amnesty has also contributed to the legalization of the occupation (and deforestation) of more than 50 million hectares of land in the overall territory of Brazil.

As has been said, the Cerrado is one of the most threatened biomes in Brazil and deforestation had already destroyed half of it by 2009. Deforestation in the context of agribusiness expansion has also led to the disappearance of animal and plant species, and thus to the reduction of biodiversity in this critical ecosystem. Taking into account the effects of the amnesty and the Forest Code, they are not conducive to guaranteeing the right to a healthy environment for local people in the Cerrado.

- **Destruction of human health and a healthy environment due to the use of pesticides.**

The Brazilian state is obliged to protect human health and the environment, including land and water, from exposure to toxic pollution. By failing to do so in the municipalities of Guilbés and Santa Filomena, it is violating the rights to health and to a healthy environment of the affected communities.

<sup>205</sup> See Soares-Filho, B. et al. (2014), "Cracking Brazil's Forest Code." In: Science, Vol. 344, 25 April 2014, pp. 363-364.

- **Damaging of food sources and forced changes of food habits**

The decimation of inland fisheries as well as of wild animals for hunting, the disappearance of herbs and medicinal plants, the disappearance of certain food crops as well as the diminishing yields of *buriti* palms and other fruit trees, combined with the deteriorating water availability and soil fertility for cultivation and the dispossession of lowlands to grow crops or tend animals, has led to a situation of insufficient food availability and food quality in the visited communities. The destruction of ecosystems and biodiversity has adverse impacts on the nutritional diversity for the affected communities, which is key for the realization of the right to adequate food and nutrition.

The Brazilian State is not protecting the existing and varied sources of food of these communities, from destruction by agribusiness activities. Thus, the Brazilian State is violating the right to food and nutrition.

The right to food and nutrition is provided for through various provisions and principles of the Federal Constitution and was included in 2010, as part of constitutionally guaranteed social rights, in its Article 6. In addition, the Brazilian State's obligation to protect and promote the right to food and nutrition is also provided for through several laws in force in the country, including the law that reinstituted the National Council for Food and Nutrition Security (CONSEA) in 2003, the Child and Adolescent Statute (ECA), and the Organic Law on Food and Nutrition Security (Law 11.346/2006). The latter in particular is an important legal instrument for the implementation of the right to food in the country, since it considers the promotion and guaranteeing of the human right to adequate food as the objective of the National Policy on Food and Nutrition Security. This law also establishes the National System of Food and Nutrition Security (SISAN), whose objective is to formulate and implement food and nutrition security policies and plans, to stimulate the integration of efforts

between government and civil society, as well as to promote the monitoring and assessment of food and nutritional security in the country.

- **Dispossession of traditional communities from their territories**

The communities of Melancias, Baixão Fechado, Sete Lagoas, Brejo das Meninas, and Santa Fé, identified themselves as traditional communities who have inhabited these areas in several cases for more than 100 years. They have developed culturally distinct forms of occupying these lands as well as relating to nature and the Cerrado ecosystem, for their subsistence as communities. The Brazilian State has violated the right to land and territory of these communities through its acts and omissions.

Firstly, it has not recognized the communities' collective traditional lands on the plateaus as well as in the lowlands; and the particular ways that they use and manage both. The Brazilian state has further not protected the communities from dispossession of their lands, fisheries, and forests, by local land grabbers and agribusiness companies. In addition, the Federal Government has been promoting the advancement of agribusiness in the MATOPIBA region over the past years, by means of subsidies and giving priority to infrastructure and technology-related policies. The incentives given by the government to large companies strongly contradict its obligations to respect, protect, promote, and uphold the human rights of the traditional people, including in the Cerrado and in the State of Piauí.

In addition, The Brazilian State has been encouraging the unorganized occupation of the Cerrado in Piauí by agricultural and land companies, without following proper regulations regarding the land rights of traditional populations who inhabit the region.

While the State of Piauí has introduced legislation and a program to promote land regularization, there is evidence that this program has benefitted

primarily big land owners and discriminated against traditional communities and peoples. The land regularization law and policy were further elaborated and approved without adequately informing and consulting the local traditional communities, in order to ensure that the land regularization process responds to their needs and aspirations. In particular, the land regularization does not adequately provide for the recognition and protection of collective forms of occupation and use, as guaranteed under article 231 of the Brazilian Constitution and article 68 of the Transitory Constitutional Disposition Act (ADCT).

The norms benefiting agribusiness and neglecting the traditional populations as well as the regularization program not recognizing the collective use of lands fosters significant existing power asymmetries and increases material inequality, representing a violation of the state of Brazil's obligation of non-discrimination.

Regarding its law on land regularization as well as the program to implement it, the State of Piauí is not observing core provisions set out in the Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests. In the context of the legal recognition and allocation of tenure rights, these Guidelines underline the need to establish safeguards to avoid infringing on, or extinguishing, tenure rights of traditional communities, when states recognize or allocate tenure rights to land, fisheries, and forests. This includes, in particular, legitimate tenure rights that are not currently protected by law (Tenure Guidelines, para. 7.1). They further specifically require states to provide appropriate recognition and protection of the legitimate tenure rights of indigenous peoples and other communities with customary tenure systems (para. 9.4), such as the traditional communities in the Cerrado. The Tenure Guidelines further require states to identify all existing tenure rights and right holders, whether recorded or not, whenever states intend to recognize or allocate tenure rights. Communities, including those with customary tenure rights, need to be adequately included in

the process of identifying existing tenure rights (para. 7.3), following the standard on consultation and participation of the Guidelines (Tenure Guidelines para. 3B6; para. 9.9 of the Guidelines recognizes the free prior and informed consent of indigenous peoples). This standard particularly requires to address power imbalances between different actors.

Given that many of the lands are under the formal ownership and control of the state (*terras devolutas*), authorities – in particular INTERPI – are required to recognize, respect, and protect the legitimate tenure rights of individuals and communities of said land, along with protecting related resources, including those with customary tenure systems (Tenure Guidelines, para. 8.2). As has been explained, a significant portion of the areas which are being regularized in Piauí, are lands and forests that are collectively used and managed. The Tenure Guidelines require states to recognize and protect these lands and their related systems of collective use and management, including in processes of allocation (para. 8.3).

The land regularization process in Piauí is taking place in a context where the lands and livelihoods of traditional communities in the region are under increasing pressure, due to the massive expansion of soy and sugar cane monocultures by companies, backed with international finance capital. The Tenure Guidelines underline the need for states to put in place safeguards to protect legitimate tenure rights, human rights, livelihoods, food security, and the environment, from risks that could arise from large-scale transactions in tenure rights (para. 12.6). They also require states to prioritize and promote production and investment models that do not result in the large-scale transfer of tenure rights to investors (para. 12.6).

As has been described, the CAR, which has been introduced by the Brazilian Forest Code, has played a detrimental role in the context of agribusiness expansion and land grabbing in Piauí. On the one hand, the Code's requirement to maintain a certain



amount of rural properties with native vegetation (legal reserves) has led to the appropriation of community lands in the lowlands, as big farm owners have deforested the plateaus and established plantations, so that they need to expand into areas with intact vegetation in order to comply with the requirements of the Code. On the other hand, the CAR has played an important role in formalizing the appropriation of lands by agribusiness and land companies. As the information collected during the international fact-finding mission as well as research shows, land grabbers (*grileiros*) and agribusiness companies are using the registry a) as way to prove their occupation; b) to be admitted to Environmental Regularization Programmes (PRA); and c) to have access to rural credit, what is also a way of proving their social and economic land use along time (characteristics of possession).<sup>206</sup> Even though the Forest Code stipulates that registration in the CAR does not correspond to a property title, available information shows that it is being used in this way by big land owners and agribusiness companies.

In addition, the way the registration in the CAR works favors these actors over communities. Concretely, existing asymmetries are reproduced regarding the access to the system. The example of the community of Sete Lagoas is a case in point: after having paid a technician to establish the GPS points required to inscribe lands into the CAR, community members realized that their lands had already been registered. The absence of safeguards in the procedures is a discrimination of rural people. Finally, the CAR adds an additional layer to the existing registration systems, such as different systems of INCRA, which are disconnected and contribute to creating overlapping claims over land (see map 4). This increases the confusion regarding land rights, which favors big land owners and makes communities lose out. As such, the CAR is not in line with the provisions of the Tenure Guidelines.

In this context, it is important to say that the Brazilian Forest Code has been under Supreme Court Evaluation since 2012. The first hearing took place in December 2017. The judge in charge maintained that the Environmental Amnesty disrespects Article 225 in the Brazilian Constitution and that the statute of the Environmental Regularization Programs must not be accepted as a way of solving grievances and inconsistencies in land use and land use management in perspective to the principle of environmental integrity. Another hearing took place in February 2018. Two decisions taken are likely to adversely interfere with the situation in Piauí. One relates to the possibility of accounting a Permanent Area of Protection (APP) as part of the percentage required for a legal reserve, meaning that if a water spring or a water head is registered as part of a property, its banks can be accounted as a legal reserve. In addition, the Court decided that areas concerned by the amnesty for environmental irregularities committed before 2008 can be the target of regularization processes, such as the Program of Environmental Regularization. This means that public money may be channeled to support the implementation of the CAR and restoration activities in areas that have been illegally grabbed and deforested.

### The extraterritorial human rights obligations of home states of international investors

The impairment of the human rights of rural people and communities in the south of Piauí and the MATOPIBA region are the result of agribusiness expansion and land speculation, which is made possible through the investments of international financial actors. This report has particularly focused on the involvement of the pension funds TIAA, AP2, ÄVWL, and ABP in land grabbing and land speculation in MATOPIBA.

<sup>206</sup> An example of this is the Terra Legal Program, implemented in the Legal Amazon, beginning in 2009, the Law 13615/2017, which individualized agrarian reform plots and, currently, legislation at the sub-national level to develop land regularization at the individual level as an efficient way of land governance disregarding land conflicts and overlapping already established, as it is the case in the states of Maranhão and Piauí.

TIAA and its affiliates may not be directly involved in land grabbing and ecosystem destruction, nor in the operations on the farms. However, the mentioned pension funds are an essential part of the destructive business model applied in the MATOPIBA region by providing the capital that is needed for the system to work the way it does. As has been described, the process leading to the dispossession of communities and massive deforestation involves several actors and the creation of farms – including the driving out of local people, in many cases with use of violence – is often carried out by local land grabbers who then sell the farms to land companies or agribusiness enterprises – in many cases through multiple selling operations. Fraud and violence are intrinsic parts of the process of how lands are made available for investments.

In the region of MATOPIBA, TIAA (through Radar) bought several of its farms from Mr. Euclides de Carli (or his company CODECA), who is allegedly one of the biggest land grabbers in the region. Mr. De Carli's titles, over more than 124,000 hectares, have been cancelled by the agrarian court because they had been fraudulently acquired. There are several indications that the Ludmila farm was also acquired through him. This farm is situated on a plateau where a big part of the land titles of the surrounding farms are under judicial investigation for illegal appropriation (*grilagem*). There is also information that TIAA's subsidiary, Radar, bought lands in Piauí that were contested in court.

Through their investments, these pension funds are, firstly, financing and fueling land grabbing and environmental destruction and, secondly, aiming to extract substantive wealth from the region. Whereas these pension funds stress that they are not involved in land speculation, given that their mandate requires them to seek long-term investments with manageable risk, they directly profit from the rising land prices, as this increases the value of their farms and their portfolios. In addition these funds are financing a destructive model of agriculture, which has extremely detrimental long-term consequences for the environment, biodiversity, and climate. In addition to

the immediate impacts, the agro-industrial farming carried out by agribusiness companies in the region is destroying soil and water resources.

The argument brought forward by some of the funds, where they argue their concern is to contribute to "global food security" is contradicted by the fact that only some 4% of the produce grown on the TCGA farms is food, while the rest is for industrial processing and export.

TIAA, AP2, ÄVWL, and ABP are thus – directly or indirectly – involved in the impairment of human rights of local people. Crucially, the funds knew – or should have known through an appropriate due diligence process – that they were investing in a region and sector with high risks, given that land conflicts and deforestation have been increasing in MATOPIBA for more than ten years. The funds have also been made aware about the impacts of their investments by reports in media and by CSOs from 2012 onwards, but have not taken adequate measures to ensure that their investments do not lead to the impairment of human rights of local people and environmental destruction.

These pension funds are under the jurisdiction of the USA, Germany, the Netherlands, and Sweden. This means that these states have the power and the obligation to regulate them, in order to prevent their investments/financial operations from causing human rights harm. As such, these states' extraterritorial human rights obligations (ETOs) are at play. International law stipulates that ETOs apply: 1) when states can exercise authority or effective control over the key actors involved; 2) in situations over which states' acts or omissions bring about foreseeable effects on the enjoyment of human rights, whether within or outside their territory; or 3) in situations in which the states, acting separately or jointly, whether through their executive, legislative, or judicial branches, are in a position to exercise decisive influence or to take measures to realize human rights extraterritorially, in accordance with the UN Charter and general international law. This means that states have an obligation to monitor and regulate economic

actors and to hold them accountable for abuses and crimes, including pension funds, in order to protect human rights in situations where a corporation, or its parent or controlling company, has its center of activity, is registered or domiciled, or has its main place of business or substantial business activities, in the state concerned.<sup>207</sup>

It should be noted that control need not be exercised on the basis of ownership (parent company), but refers to economic and financial control as well.<sup>208</sup> As this report has shown, the companies operating in the MATOPIBA region largely depend on international investments, and in particular on international pension fund investments, and these financial actors are making economic gains at the expense of human rights abuses and violations. Foreign states are therefore under an obligation to regulate the controlling companies, to ensure that the Brazilian companies do not abuse human rights. Such regulation must not apply to measures that interfere with the sovereignty of Brazil, but could proceed via “parent-based regulation” or duty of care along the supply or commercial chain,<sup>209</sup> i.e. by making the US-pension fund, TIAA, or its agricultural fund, TCGA, in which European pension funds have invested, instruct its affiliates to disconnect its business links to all partners involved in crimes and human rights abuses. In addition, the countries where the controlling companies are based and Brazil

are obliged to cooperate to stop existing abuses and prevent future abuses.<sup>210</sup>

The extraterritorial obligations of the home states of international investors towards the victims in Brazil exist independently of, and in parallel to, the territorial obligations of Brazil. They are incumbent no matter whether Brazil’s territorial obligations were kept or breached in this regard. The existence of these ETOs does not relieve Brazil of its territorial obligations, nor does the failures of Brazilian authorities make the ETOs of foreign states any less incumbent.

For the USA, where TIAA is registered and domiciled, the extraterritorial human rights obligations are immediate.<sup>211</sup> Extraterritorial obligations are, however, also incumbent on those states, where investors in TCGA have substantial business activities. Germany, the Netherlands, and Sweden cannot, of course, intervene against TCGA on US territory, nor can they interfere with the US regulations on TCGA, both for reasons of general international law and the UN Charter. But they can – and, by virtue of their human rights obligations, have to – exercise their obligations to protect against TCGA in their own territories, by ensuring that national investors do not contribute to, and make financial gains from, the impairment of human rights in the MATOPIBA region, including by prohibiting national investors to invest substantially in funds, which are involved in human

<sup>207</sup> See General Comment 24 of the Committee on Economic, Social and Cultural Rights and the sources included in the Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural rights: [www.etoconsortium.org/nc/en/main-navigation/library/documents/?tx\\_drblob\\_pi1%5BdownloadUId%5D=63](http://www.etoconsortium.org/nc/en/main-navigation/library/documents/?tx_drblob_pi1%5BdownloadUId%5D=63), Commentary to Article 25, p.37.

<sup>208</sup> Maastricht Principle 25 c) on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights. Commentary to the Maastricht Principle 25.

<sup>209</sup> On the duty of care along the value chain see: Amnesty International and Business and Human Rights Resource Centre (2017), *Creating a Paradigm Shift: Legal Solutions to Improve Access to Remedy for Corporate Human Rights Abuse*. Available at: [www.business-humanrights.org/sites/default/files/documents/AI\\_BHRRRC\\_Paradigm\\_Shift\\_print\\_version.pdf](http://www.business-humanrights.org/sites/default/files/documents/AI_BHRRRC_Paradigm_Shift_print_version.pdf). A first example of regulation is the recently adopted French Law No. 2017-399 on the Duty of Vigilance, English translation available under: [www.business-humanrights.org/en/french-duty-of-vigilance-bill-english-translation](http://www.business-humanrights.org/en/french-duty-of-vigilance-bill-english-translation).

<sup>210</sup> The obligation to cooperate is stipulated also in the UN Charter Art. 56 and ICESCR art. 2.1. See also ETO Maastricht Principle 30 on the coordination and allocation of responsibilities between states, for the fulfilment of ESCR, explained in the Commentary to the ETO Maastricht Principles, p. 45-46

<sup>211</sup> Even if the US has not ratified the ICESCR, it is obliged by the Universal Declaration on Human Rights, which has been recognized by diverse international law experts as customary law. See, for instance, Burgenthal, T., (1995), *International Human Rights in a Nutshell*, p. 21-35; Henkin, L., Pugh R., Schachter, O., Smit, H. (1993), *“International Law*, pp. 599-608; Eibe Riedel, E. (1991), *“Standards and Sources. Farewell to the exclusivity of the Sources Triad in International Law?”* EJIL, p. 69.

rights abuses, such as TCGA, and holding them to account when they do.

The results of the fact-finding mission in Europe in January 2018 and of additional research conducted for this report show that Germany, the Netherlands, and Sweden have breached their ETOs by not putting in place effective regulation that prevents human rights harm through these pension funds' activities and by failing to ensure rigorous monitoring of these activities. They have further failed to ensure accountability of these actors, nor have they provided remedy for affected people in the specific case of MATOPIBA.

Firstly, none of these states has policies and effective legal frameworks, which clearly define the duties of corporations and financial actors, such as these pension funds, including rules on prior human rights impact assessments (HRIA), responsibility of due diligence and criteria for the determination of liability. The existing frameworks also do not contain clear provisions on legal accountability by these actors for human rights abuses and crimes.

Sweden has provisions that require funds to take into account "ethical and environmental issues," but does not establish clear human rights criteria on how this should be done. In addition, the existing framework establishes the achievement of "high revenue" as its main objective of AP2's operations. In the case of the Netherlands, the Pensions Act contains a number of legal requirements that pension funds have to fulfil as part of their risk management and good governance, in order to act "in the interest of the pension beneficiaries." There are no requirements however, to protect individuals or communities that are not beneficiaries and who are – potentially or factually – affected by investments. The Dutch government has also stated that it expects investors to abide by international standards, but has also expressed the view that ABP is a private company whose policies and investments cannot be dictated by the government. Regulation of business enterprises is, however, at the core of states' obligation to protect human rights.

Regarding ÄVWL, the State of North Rhine-Westphalia's framework establishes that pension schemes fulfil their tasks in "accordance with applicable law." The ICESCR details in Article 28 that all its provisions "shall extend to all parts of federal States without any limitations or exceptions."<sup>212</sup> This means that North Rhine-Westphalia is required to take human rights into consideration when overseeing and regulating pension schemes like ÄVWL. In addition, the existing framework establishes that the supervisory body reviews primarily financial regulations, but must also investigate violations of other laws, on notice. Under German federal law, however, only overall "risks" have to be assessed. The existing framework does therefore not establish criteria for human rights or social and ecological aspects and leaves it to the pension funds to define what they interpret as "risks."

During meetings with government representatives of the three countries during the international fact-finding mission, authorities have repeatedly referred to the UN Guiding Principles on Business and Human Rights and the National Actions Plans (NAP) to implement these. These guiding principles have, however, considerable shortcomings and are non-binding and voluntary. As such, compliance depends solely on the goodwill of corporations and financial actors to abide by the principles and the willingness of individual states to regulate them to respect human rights. The guiding principles also do not clearly refer to states' obligation to protect, but establish in its Article 2 that "states should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations."<sup>213</sup> Principle 2 includes ambiguous language which risks undermining the protect obligation as interpreted by the UN Treaty bodies. Furthermore the guiding principles are ambiguous in the application of the ETOs and focuses on remedy measures taken by the involved companies, which, consequently, act as judges and parties in a context of power asymmetries. At the same time, they do not strengthen or clarify how access to legal resource or remedy for communities affected by the transnational activities of business

<sup>212</sup> ICESCR, Article 28

<sup>213</sup> Italics by the authors.

enterprises could be assured. In addition, in the case of Sweden, the government makes no mention of the AP funds in its Action plan for Business and Human Rights.<sup>214</sup>

Secondly, the existing frameworks in Germany, the Netherlands, and Sweden do not ensure adequate monitoring of the human rights impacts of pension fund activities. Sweden and the Netherlands have provisions regarding reporting, including on social and environmental issues but rely – just as Germany – almost exclusively on the information provided by the respective funds, as well as on their decision of how to report on these issues. This is despite the fact that the Dutch and Swedish governments have seats on ABP's board and appoint AP2's board respectively. In both countries, reports on the pension funds' activities are made annually to the parliament, but this has not impeded or stopped human rights abuses in the MATOPIBA region. ÄVWL is a public law entity and the regulatory framework also establishes a reporting duty, which, among other aspects, gives the federal Ministry of Finance the power to define the content of the reporting.<sup>215</sup>

It becomes clear that all three states largely rely on the pension funds to provide information on their investments and to decide whether actions are required or not. The Dutch and Swedish government representatives have referred the fact-finding mission team to ABP and AP2 in order to discuss the abuses identified. In the case of Germany, the government of North Rhine-Westphalia has even refused to meet the delegation, arguing that any issues need to be addressed with ÄVWL first. This means that the involved pension funds report on the basis of their own guidelines and no independent oversight over human rights, social, and ecological issues (for instance by the national institutes on human rights) is required or ensured.<sup>216</sup> As has been shown regarding TIAA/Nuveen, the reporting of the funds responds, in

the first place, to satisfy their own interests, i.e. to present their investments in a good light and to show due diligence and compliance. In this sense, the indicators used, are designed to focus on procedural issues (e.g. the existence of required licenses etc.), rather than on the actual situation on the ground, in particular the concrete impacts on affected people and the ecosystem.

It is important to underline in this context, that the involved pension funds have referred the fact-finding mission team to TIAA/Nuveen, stating that it is the fund manager who is responsible for monitoring and compliance with existing standards. This leads to the conclusion that the pension funds are not proactively monitoring the impacts of TCGA's operations in the MATOPIBA region, despite existing reports on human rights abuses and ecosystem destruction. This allows us to express serious doubts about the due diligence of these funds, a situation, which remains unaddressed because of the absence of binding provisions in this regard in the existing legal frameworks.

A major obstacle for any independent monitoring of human rights issues linked to TCGA's operations, is the lack of transparency regarding the details of these investments. In Sweden for instance, the research NGO Swedwatch was denied any details regarding AP2's land investments in Brazil when it first took up the issue in 2013. Through persistent CSO collaboration and investigation, it was possible to identify at least one farm acquired by AP2/TCGA (Ludmila farm). Since then, as previously stated, TIAA/Nuveen has provided a map, which does not allow to locate the exact position of its farms. There is also still a lack of transparency when it comes to AP2's risk assessment. In response to a report published in 2015,<sup>217</sup> AP2 claimed that TCGA, through independent external auditors, reviewed the process leading up to the purchase of the Ludmila farm and maintained their claim that there were no wrongdoings during

<sup>214</sup> Government of Sweden (2015), Action plan for business and human rights. Available at: [www.government.se/contentassets/822dc47952124734b60daf1865e39343/action-plan-for-business-and-human-rights.pdf](http://www.government.se/contentassets/822dc47952124734b60daf1865e39343/action-plan-for-business-and-human-rights.pdf).

<sup>215</sup> VersWerkVO NRW, §3(3)

<sup>216</sup> The Ministry of Finance has an overview of this, but this refers only to financial issues.

<sup>217</sup> Rede Social et al. (2015).



the process. Nevertheless, AP2 refused to share the auditors' report on that occasion.

TIAA/Nuveen and the pension funds involved in TCGA refer to the Principles for Responsible Investment in Farmland (Farmland Principles) and the Principles for Responsible Investments (PRI). In fact TIAA, ABP, and AP2 were among the initial signatories of these voluntary self-regulation schemes. The Farmland Principles were launched in September 2011 by a group of institutional investors, with – according to its promoters – “the goal of improving the sustainability, transparency and accountability of investments in farmland”.<sup>218</sup> The principles, which investors that sign up to them commit to implementing in all farmland investments, include, *inter alia*, the promotion of environmental sustainability (Principle 1); the respect of labor and human rights (Principle 2); and the respect of existing land and resource rights (Principle 3). In August 2014, the Farmland Principles were incorporated into the PRI, which concern the economic, social, and (corporate) governance (ESG) principles, which adhering investors commit to implementing, in order to ensure sustainability of their operations.

Even though these two sets of principles are presented by the involved investors as “UN-supported” initiatives,<sup>219</sup> they are in fact voluntary self-regulation schemes created by investors. This is well illustrated by the fact that the CEO of AP2 and a board member and former vice president of ABP are among the PRI directors, in other words two investors involved in land grabbing in the MATOPIBA region.<sup>220</sup> The deeper issue with these principles is that it is not at all clear what it means to adhere to these principles beyond the statement of intention investors make when joining them. This refers particularly to the lack of accountability. As already said, reporting by the involved funds is a self-assessment based on self-defined criteria and indicators. As such, they cannot

provide a basis for ensuring and assessing human rights-compliant behavior of pension funds and other business enterprises.<sup>221</sup>

CSR and voluntary guidelines and schemes such as the PRI have, however, been used by states as an argument to avoid binding regulations on the activities of transnationally operating companies and financial actors. The EU has, for instance, pointed to existing voluntary instruments (including the Guiding Principles on Business and Human Rights) in order to obstruct the process towards an international legally binding instrument on transnational corporations with respect to human rights, which is currently taking place at the UN Human Rights Council.<sup>222</sup>

The severe limitations of such voluntary self-regulatory schemes become most evident when abuses are reported, as they do not establish any accountability mechanism, nor do they ensure adequate remedy for affected people. The complete absence of accountability is well illustrated by statements by TIAA/Nuveen, in which the fund dismisses allegations regarding its activities by referring to “the high standards of responsible investing principles to which we hold ourselves to account.”<sup>223</sup>

In the responses by the involved states to the reports regarding the impairment of human rights in the MATOPIBA region, they have, however, referred to these and other corporate self-regulation frameworks. Regarding accountability and remedy in particular, these states have further referred to the mechanisms established by the National Action Plans (NAP) on Business and Human Rights as well as the OECD Guidelines on Multinational Companies, which allow for complaints to the National Contact Point (NCP) in the concerned country. Neither of these mechanisms is integrated into the national legal systems though. Furthermore, the remedy mechanism of the National Action Plan for Human Rights is of strictly voluntary

<sup>218</sup> See [www.unpri.org/investor-tools/responsible-investment-in-farm-land/716.article](http://www.unpri.org/investor-tools/responsible-investment-in-farm-land/716.article).

<sup>219</sup> In written responses by TIAA/Nuveen and ABP to a draft version of this study, both funds refer to the PRI as “UN Principles on Responsible Investments.” Also, the website of the PRI is [www.unpri.org](http://www.unpri.org). The attempts of business actors to present corporate-led initiatives as UN-sponsored in order to give them more “official” legitimacy is sometimes referred to as “blue washing.”

<sup>220</sup> See [www.unpri.org/pri-governance/board-members](http://www.unpri.org/pri-governance/board-members).

<sup>221</sup> In its 2017 report on Responsible Farmland Investments. TIAA/Nuveen lists a number of conferences on responsible/sustainable investments and research initiatives in this field, which the fund has sponsored, as if this could weigh up against adverse impacts of its investments.

<sup>222</sup> See the EU's statements at [www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Pages/IGWGOntNC.aspx](http://www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Pages/IGWGOntNC.aspx).

<sup>223</sup> Statement by TIAA from February 2016 to ÄVWL communication, after the latter requested a clarification regarding allegations made by an NGO report published in November 2015.

nature, while the mechanism under the OECD Guidelines does not lead to any sanctions, but to a mediation between the parties. Regarding the OECD Guidelines, there are several examples that show that they have not provided remedy to affected people.<sup>224</sup> In one case in Belgium, the National Contact Point deplored the lack of collaboration by the involved company, pointing to the fact that the application of the Guidelines depends entirely on the good-will of companies, thus raising serious concerns about their effectiveness in terms of ensuring accountability.<sup>225</sup>

As has been stated, it is part of states' human rights obligation to adequately regulate corporate and financial actors, such as the pension funds involved in the MATOPIBA region. The reliance by Germany, the Netherlands, and Sweden on self-regulation by the funds that are based in their territory, which is used as a justification for binding standards, is therefore a breach of their human rights obligations. In the case of Sweden, the UN Committee on Economic, Social and Cultural Rights found in its 2015 review that

there was a "lack of systematic control by the State party of the investments made abroad by enterprises domiciled under its jurisdiction, including by the Swedish National Pension Funds, which weakens the ability of the State party to prevent negative impacts from such investments on the enjoyment of economic, social and cultural rights by local populations." In its concluding observations, the committee emphasized the state's obligation to fully exercise its regulatory powers and ensure that the national pension funds (a) undertake a systematic and independent human rights impact assessment prior to making investment decisions; (b) establish effective monitoring mechanisms to regularly assess the human rights impact of such projects and to take remedial measures when required; and (c) guarantee that there are accessible complaint mechanisms in case of violations of economic, social and cultural rights arising from investment projects.

In this regard, the ongoing process to revise the regulatory framework on pension funds is an important



<sup>224</sup> See, for instance, the cases in Cameroon and Uganda mentioned in Borras, S., Seufert, P. et al. (2016), *Land Grabbing and Human Rights*, pp. 55-56.

<sup>225</sup> Point de contact national belge pour les Principes directeurs de l'OCDE à l'intention des entreprises multinationales (2015), Communiqué du 5 octobre 2015 du Point de contact national belge pour les Principes directeurs de l'OCDE à l'intention des entreprises multinationales relatif à la circonstance spécifique SOCAPALM / SOCFIN / SOCFINAF. Available at: [www.oecdwatch.org/cases/Case\\_202/1611](http://www.oecdwatch.org/cases/Case_202/1611).

opportunity for ensuring Sweden's compliance with its human rights obligations. As shown in this report, the Netherlands and Germany are also required to take the necessary steps in this regard. Given that all three countries are member states of the European Union, it is important to mention that an EU Directive on the Activities and Supervision of Institutions for Occupational Retirement Provision (IORPs Directive 2016/2341) was adopted in 2016 by the European Parliament and the Council of the EU.<sup>226</sup> In recognition of the huge role that occupational retirements play in the EU economy,<sup>227</sup> the Directive explicitly respects and recognises fundamental rights. It aims to ensure a higher level of transparency of retirement provisioning and requests that the risk-management system shall adequately cover "environmental, social and governance risks relating to the investment portfolio and the management thereof." (Art. 25 II (g)). Members of the European Parliament who have been involved in the process leading to the adoption of this Directive, stated during a meeting with the international delegation

in January 2018 that human rights are part of the social risk assessment and management. All EU Member States are required to translate this Directive into national law by January 2019. Although this EU Directive is relevant for occupational retirement only – and does, therefore, not apply to ÄVWL – the national implementation processes present an opportunity to make the legislation on regulation of pension funds human rights-compliant and to ensure accountability.



<sup>226</sup> Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L2341&from=EN>.

<sup>227</sup> The Directive states that occupational retirement pensions hold "assets worth EUR 2,5 trillion on behalf of around 75 million members and beneficiaries."

## 6. Recommendations

### 6.1. To the State of Brazil

#### To the Municipal Executive Branches:

- The municipalities in Piauí with existing land conflicts driven by agribusiness expansion and land speculation as well as mining activities (in particular Santa Filomena Bom Jesus, Baixa Grande do Ribeiro and Gilbués) must perform their constitutional duties and provide adequate infrastructure to the communities, especially regarding health, education, access to the communities (adequate roads) and environmental protection.
- Put in place effective and accessible complaint mechanisms for the communities in order to allow the authorities to identify abuses and ways to address these. This should be done in partnership with the state government.
- Establish a registry of agribusiness companies and large land owners, listing the exact location of the farms as well as the quantity and type of jobs they have created.
- Ensure the recognition and registry in good faith of collective tenure by traditional and indigenous communities and ensure their protection from displacement or any kind of harm produced by the agribusiness sector.

#### To the Executive Branch of the State of Piauí:

- Take proactive measures to protect and secure the legitimate land rights of communities and rural people.
- Ensure that the assessment and revision process regarding State Law nº 6709/2015 (Law on Land Regularization of the State of Piauí) prioritizes the rights and needs of local people and ensures adequate participation/involvement of communities and other CSOs, in accordance with international standards such as Convention Nº 169

of the ILO and the Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests.

- Develop, through an inclusive process ensuring effective participation of communities and CSOs, a policy on land tenure and sustainable land use, which is based on human rights and the preservation of the Cerrado ecosystem through agroecology.
- Review the criteria for issuing water grants in order to make sure that communities have stable access to sufficient water of good quality.
- Continuously monitor the situation of water streams, ground water
- and aquifers, and make this information available.
- Develop policies and programs aiming at the recovery of water springs and the revitalization of rivers, streams, and other water bodies.
- Perform a toxicology analysis on soil and water contamination by pesticides and waste from mining activities in the areas in which agribusiness and mining companies operate and those areas that are affected by these operations.
- Immediately outlaw the aerial application of pesticides.
- Immediately enact a zero deforestation policy, in particular in aquifer recharge areas (the plateaus), water spring areas and areas situated over water tables.
- Take measures to ensure the recovery of aquifer recharge areas (especially on the plateaus), which have already been deforested.
- Ensure that the police forces properly perform their duties regarding law enforcement in rural areas, ensuring due process and the protection of local people. Create additional police stations in the municipalities most affected by land conflicts.
- Open inquiries in the Department of Internal Affairs of the police forces regarding the complaints heard

by the fact-finding mission and mentioned in this report.

- Ensure there are doctors and a basic health care infrastructure in the region's communities.
- Provide priority support to the schools in rural areas, including in the municipalities visited, in collaboration with their local governments, in order to increase their human and material resources. Guarantee the continuity of existing schools, reopen closed schools and open new schools in rural areas in order to guarantee access to primary and secondary education, providing education, which is adapted to the realities of traditional peasant communities.
- Improve the infrastructure for communities in rural areas, among others by: maintaining existing roads and building new ones, in order to ensure an easier access to those communities; expanding the public electric power distribution to the communities that still do not have access to this essential public utility; and creating a basic telecommunication infrastructure in the communities, including provision of public internet access.
- Put in place effective and accessible complaint mechanisms for the communities in order to allow the authorities to identify abuses and ways to address these. This should be done in coordination with the authorities at municipal level.
- Carry out an information campaign for rural communities to inform them about the ombudsman at state level.
- Strengthen the environmental agencies so that they are able to enforce environmental laws, supervise and manage the CAR to ensure that this system does not lead to impairments of the human rights of traditional, indigenous and other peasant communities, and monitor and regulate the use of water by agribusiness companies.
- Carry out analyses of the air and water quality in areas near soybean plantations, in order to monitor the contamination by pesticides and determine needed sanctions and reparations.

## To INTERPI

- Adhere to the Brazilian Public Prosecutor's Office's recommendation from 18 December 2017 by immediately suspending the application of state law N° 6.709/2015 and the land regularization program, until concrete safeguards and mechanisms are in place in order to prevent and remedy violations of local people's tenure and human rights, and measures have been taken to respect and protect communities' traditional forms of tenure and land use, e.g. through collective titling, ensuring their free, prior and informed consent.
- Initiate procedures to assess and cancel land titles that have been acquired by private actors over community lands, in accordance with its mandate. In particular, initiate such procedures regarding the lands of the communities of Sete Lagoas, Brejo das Meninas, Baixão Fechado and Melancias.

## To the Legislative Assembly of the State of Piauí (ALEPI):

- Promote and participate in the assessment and revision process regarding State Law n° 6709/2015 (Law of Land Regularization of the State of Piauí), ensuring that it prioritizes the rights and needs of local people and ensures adequate participation/involvement of communities and other CSOs, in accordance with international standards such as Convention N° 169 of the ILO and the Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests.
- Propose budget laws that strengthens the Public Prosecutor's Office and the rural court of the State of Piauí (Vara Agrária), and allows to create Rural Public Prosecutor's Offices along with new police stations in the municipalities that lack them.
- Monitor the situation in the areas affected by agribusiness expansion and land grabbing through periodical visits of ALEPI's Human Rights Commission to. These missions should lead to recommendations to the respective administrative authorities regarding required preventive,



corrective and remedy measures to be taken in order to ensure the protection of the human rights of the indigenous, traditional and peasant communities.

- Establish mechanisms to receive complaints from communities affected by land grabbing and agribusiness activities.
- Strengthen the land regulation agencies so that they are able to attend the communities demands, enforce their rights, and create task-forces to regularize the land possession (individually or collectively) of those traditional populations;
- Immediately initiate a legislative process to outlaw the aerial application of pesticides.
- Make available information on the amounts of money the companies save in tax exemption and debt cancellation schemes, and initiate a legislative process to put an end to tax exemptions for agribusiness.
- Ensure implementation of state legislation prohibiting deforestation in aquifer recharge areas.

### **To the State Judiciary Branch (Piauí):**

- Take the necessary steps to protect and secure the legitimate land rights of traditional peoples and communities.
- Investigate all the situations regarding human rights abuses and violations mentioned in this report.
- Provide the necessary human and material resources needed by the Rural Court of the State of Piauí, and guarantee its continuation, in order to ensure access to justice for the individuals and communities affected by the activities of finance corporations and agribusiness companies.
- Ensure that public prosecutors are present in all municipalities. In particular, nominate prosecutors in the municipalities of Gilbúes and Correntes.
- Include Ludmila farm into the ongoing judicial action against Mr. Euclides de Carli.

- Ensure the adequate involvement of communities as well as of organizations of small-scale food producers and CSOs in the Task Force on Land Regularization (Núcleo de Regularização Fundiária), including in its advisory council (conselho consultivo). Ensure an inclusive process ensuring effective participation of communities' representatives and CSOs at all stages of the Task Force's work and prioritize the rights and needs of local communities, in accordance with the human rights framework and the Tenure Guidelines.
- Systematically identify and verify irregularities related to land possession and ownership in the region's registry offices.

### **To the Federal Legislative Branch:**

- Guarantee that the law that deals with land ownership by foreigners (law n° 5.709) also considers as owners the investors in companies, in particular rural real estate and agribusiness companies, in accordance with the legal opinion AGU/LA 2010; and guarantee that this law contains concrete measures to hold these actors accountable for the human rights, social and environmental consequences of their business activities.
- Initiate a revision of the Forest Code in order to ensure its compliance with the Federal Constitution and human rights, ensuring that it effectively stops deforestation, including in the Cerrado.
- Approve Constitutional Amendment Proposal 504/2010, which includes the Cerrado and the Caatinga in the list of biomes that are considered as part of Brazil's national heritage.
- Reject Constitutional Amendment Proposal 215, which transfers from the executive to the legislative branch the jurisdiction to decide on the delimitation of indigenous lands, and reject other proposals that weaken indigenous rights, such as the Bill n° 490/2007.
- Reject Bill n° 3729/2004, which exempts agricultural projects of environmental licenses.
- Revoke Law n° 13.465/17, which weakens the legal framework concerning agrarian reform.

**To the Federal Executive Branch:**

- Review the criteria for issuing water grants in order to guarantee the human right to water, including stable access to safe drinking water and water for peasant food production.
- Carry out a diagnosis of the current situation of rivers and aquifers, in particular in the Cerrado.
- Initiate a revision of the Forest Code in order to ensure its compliance with the Federal Constitution and human rights, ensuring that it effectively stops deforestation, including in the Cerrado.
- Monitor and make available updated information on deforestation in the Cerrado, and put in place programs to effectively protect this biome.

**To the Federal Judiciary Branch:**

- Investigate all the situations regarding human rights abuses and violations mentioned in this report.
- Systematically identify and verify irregularities related to land possession and ownership in the region's registry offices.
- Perform, along with environmental agencies, an audit in the Rural Environmental Registry (CAR), in order to prevent it from being used for the formalizing land grabs. This includes to cross the data from registry offices and other existing registries.
- The public prosecutor should investigate, together with the INCRA of the MATOPIBA region, the georeferencing of agrubusiness and mining companies.

Federal, state and local authorities are required to cooperate with the states in which the involved foreign companies and funds are based, in order to ensure the substantiation of the cases, adequate judicial decisions and the implementation of administrative or judicial decisions.

**6.2. To the Home States of the Pension Funds Involved in TCGA and Farmland Investments in the MATOPIBA Region**

- Establish the necessary regulatory mechanisms to ensure that the involved pension funds do not impair the enjoyment of human rights of communities and people in the MATOPIBA region. This entails, among others, to:
  - » Develop policies and frameworks for the conduct of pension funds over which they have jurisdiction (adapting existing regulations or introducing new regulations) to effectively regulate these actors, through a process of dialogue with individuals and communities affected by human rights abuses, taking into account their experiences and needs.
  - » Clearly define, in civil, administrative, commercial, environmental and criminal regulation, the duties of corporations and financial actors, including rules on human rights and environmental impact assessments, responsibility of due diligence and victim-centered criteria for the determination of liability, and develop clear provisions on legal accountability by these actors for human rights abuses and crimes. The requirements regarding land-related investments need to be based on the Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests.
  - » Impose a legal duty of care on parent companies to exercise due diligence by controlling their subsidiaries to prevent human right abuses and make it a criminal offence for companies to contribute to human rights abuses abroad.
- Proactively track and monitor the activities of pension funds and other actors, especially in sectors with high human rights risks, such as farmland investments. This includes to

- » Put in place mandatory disclosure rules to require these actors to provide all information relevant to assess human rights risks and impacts in relation to their business activities, and to report on their subsidiaries, wherever incorporated and operating, and their business relationships.
- » Carry out monitoring through the embassies in the target countries of investments.
- » Assess compliance of investments with national law as well as human rights standards, including the Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests.
- Ensure affected people's access to effective judicial remedies, including by assuming jurisdiction in cases of corporate human rights abuses committed by actors under their jurisdiction, and removing obstacles for people affected abroad to bring a case in the home state of the involved fund.
- Establish a complaint mechanism for individuals and communities whose rights have been negatively affected by actors under their jurisdiction

### Specific Recommendations to Sweden:

- Clarify the binding character of Sweden's international human rights obligations in the law regulating the AP funds.
- Require the AP funds to carry out human rights and environment risk and impact assessments before an investment is made and to apply a precautionary principle in investment decisions. Require them to refrain from investments in cases where they risk countering Sweden's international human rights obligations.
- Establish provisions requiring the AP funds to carry out ex post human rights and environment impact assessments in order to adopt corrective measures in current investments, which are impairing or nullifying the enjoyment human rights. Such measures should explicitly include the cancelling

of an investment. Corrective measures need also to be taken in the specific case of AP2's investments in MATOPIBA.

- Establish an independent Sustainability Council with the mandate to analyze and evaluate the AP funds' achievements in terms of human rights-based investment.
- Put in place mandatory disclosure rules to require the AP funds to provide all information relevant to assess human rights risks and impacts in relation to their investments.

### Specific Recommendations to Germany:

#### *To the State of North Rhine-Westphalia (NRW):*

- Clarify the binding character of the ICESCR for the state of NRW concerning its human rights obligations and in line with articles 4 and 28 of the ICESCR.
- Undertake immediate measures to monitor the human rights and ecological impact of pension fund investment in TCGA I in Brazil, as part of NRW's duty to oversee and regulate the pension schemes of professionals.
- Integrate obligatory human rights impact assessments in regulations related to pension schemes of professionals.
- Improve the reporting format for pension schemes for professions (VersWerkVO §3(3)) to the regulatory authorities ensuring that human rights and environmental impacts of investments are addressed.
- Take concrete steps towards a process of remediation for people and communities whose human rights have been impaired by investments that are regulated/overseen by NRW.
- Establish a complaint mechanism for people and communities whose human rights have been impaired by investments that are regulated/overseen by NRW.

***To the Parliament of North Rhine-Westphalia:***

- Reassess the cooperation with ÄVWL concerning the management of pensions of members of parliament, especially in case of continued involvement of ÄVWL in land grabs in Brazil.

***To the German Federal Government:***

- Initiate a comprehensive process to identify regulatory gaps concerning the human rights obligations of Germany in relation to investments made abroad by German actors that risk leading to land grabbing and other human rights abuses and environmental crimes.
- Establish adequate access to national courts and effective remedies for people whose human rights have been impaired by investments of pension funds.
- Adopt legislative measures related to investments that include robust human rights and environmental standards. Accordingly, implement the EU Directive on occupational pensions (IORPs Directive 2016/2341 ) in such a way that human rights and environmental standards must be taken into account ahead of an investment decision as well as for monitoring of investments. Take the opportunity of the implementation of the EU directive on occupational pensions (due in January 2019) into national law to integrate robust human rights standards.
- Adopt all measures needed to ensure that the financial support that GIZ/KfW gives to the CAR does not lead to human rights abuses of traditional, indigenous and peasant communities, especially in the Cerrado.

**Specific Recommendations to Germany, the Netherlands and Sweden:**

- Include clear human rights criteria when integrating the EU Directive on occupational pensions (IORPs Directive 2016/2341) into national law, including a human rights related duty of care for investments,

monitoring, complaint and remedy mechanisms for individuals and communities affected by the activities of pension funds under their jurisdiction, independently of the location of the victims within or beyond the borders of the respective state

- Cooperate with the authorities of all the involved states in the MATOPIBA case and other similar cases, in order to ensure that the human rights abuses and violations caused with the contribution of the pension funds' investments stop and that caused damages are repaired and the victims adequately remediated.

**Specific Recommendation to the European Commission, the European External Action Service and the European Parliament:**

- Carry out monitoring of the situation in MATOPIBA through the EU delegation in Brazil, including through field visits.
- Ensure that human rights are adequately included into the new European Strategy on Sustainable Finance.
- Monitor the implementation of the EU Directive on occupational pensions (IORPs Directive 2016/2341) in EU Member States and ensure that human rights criteria are included when this Directive is integrated into national law.
- Create an EU-wide independent complaint mechanism for individuals and communities whose rights have been negatively affected by actors under the jurisdiction of the EU or EU Member States, which complement judicial remedies at member state level.
- Establish a registry at EU level of all EU actors involved in land deals and land-related investments abroad, as a basis for accountability.

### 6.3. To all states:

- Support and engage in good faith in the on-going process towards the adoption of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights at the UN Human Rights Council, in order to define clear and obligatory international standards on duties of transnational corporations and other business, including rules on impact assessments, due diligence, duty of care and liability, and hold them legally accountable for human rights abuses and crimes. States should also support any regional initiative in this regard.
- Adopt the United Nations Declaration of the Rights of Peasants and other people working in rural areas, which is currently developed in the UN Human Rights Council, in order to increase protection of the human rights of these groups, including in the context of resource grabbing.
- Adopt all needed measures to prevent harm and criminalization of human rights and environmental defenders by transnational companies under their jurisdiction, in close cooperation with the competent authorities of other states involved in the specific cases on which they receive complaints or any additional information, including in the MATOPIBA region

### 6.4. To the World Bank

- Adhere to the Brazilian Public Prosecutor's Office's recommendation from 18 December 2017 by immediately suspending the project "Piauí: Pillars of Growth and Social Inclusion" and its support to the land regularization/titling process in Piauí, until concrete safeguards and mechanisms are in place in order to prevent and remedy violations of local people's tenure and human rights, and measures have been taken to respect and protect communities' traditional forms of tenure and land

use, e.g. through collective titling, ensuring their free, prior and informed consent.

- To respond to the demand of affected communities – which is supported by the Public Prosecutor's Office – to establish a dialogue round table in order to assess the effects of the World Bank-financed land regularization program in Piauí, in order to prevent and remedy violations and to put in place mechanisms, which guarantee local communities control over their territories as well as effective remedies, including the restitution of community lands. As requested by the affected communities, such a round table should involve representatives of the affected communities, the agrarian court of the state judiciary (Vara Agrária da Justiça Estadual), INTERPI, the state and federal Public Prosecutor's Offices, the State Parliament of Piauí, FAO and support groups from civil society. This dialogue round table should be convened by FAO as the leading UN agency for the implementation of the Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests.
- To publicly disclose how the land regularization project in Piauí is in compliance with the Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests. This includes providing detailed information on the measures the World Bank has taken and will take in order to ensure compliance with these Guidelines, in order to ensure the recognition and protection of communities' legitimate tenure rights, in particular their collective rights over lands and forests that are collectively used and managed.

### 6.5. To FAO

- Provide technical assistance to ensure that the land regularization process in the state of Piauí complies with the Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests.
- Respond to the demand of affected communities to convene a dialogue round table in order to assess



the effects of the land regularization program in Piauí, in order to prevent and remedy violations and to put in place mechanisms, which guarantee local communities control over their territories as well as effective remedies, including the restitution of community lands.

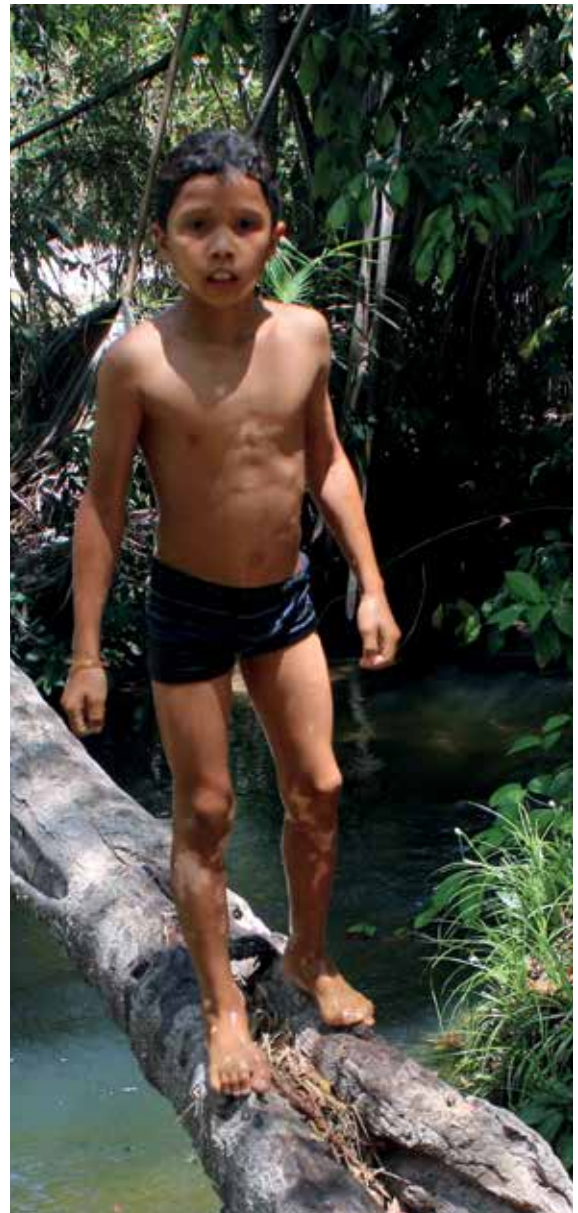
- Collaborate with state authorities in the context of the land regularization process in the region by providing all information about their farms and how the respective lands have been acquired and by restituting and restoring lands that have been irregularly and/or illegitimately acquired.

## **6.6. To the Inter-American Commission on Human Rights**

- Issue directives for the defense of the threatened communities of Brejo das Meninas, Sete Lagoas, Santa Fé, Melancias, and Baixão Fechado in order to guarantee their safety.

## **6.7. To the companies and funds involved in agribusiness activities and investments in the MATOPIBA region**

- Immediately cease all acts of intimidation, violence and abuse of power – including those committed by private security firms hired by them – against the traditional communities affected by their operations and their leaders, especially in areas of conflicts.
- Immediately stop deforestation, the undue use of pesticides, the excessive extraction of water resources, and other practices that have led to the impairment of the human rights of affected communities.
- Take full responsibility for the social and environmental damages caused by their operations and collaborate to ensure adequate reparation of these damages.
- Withdraw all investments, which have led to the impairment of human rights and eco-destruction or which carry the risk of doing so.



## 7. ANNEX

Synthesis of the main violations of economic, social, and cultural rights enshrined in the ICESCR.

Article	Normative content	Violation	State obligation infringed	Duty bearer	Third parties involved
Article 1	Self-determination and sovereignty over natural resources	Deprivation of means of subsistence	Respect Protect Fulfil	Piauí State: INTERPI, police	Agribusiness companies, international pension funds, private security companies
Article 2	Progressive realization of ESC rights	Regressive development for communities	Respect Protect Fulfil	State and federal parliaments	
Article 3	Equal rights of women and men	Women bear the brunt of impacts of agribusiness	Respect Protect Fulfil		
Article 5	Prohibition to use the Covenant to destroy any of the rights or freedoms recognized herein	Compulsory schooling of children used for forcing families to leave their lands	Respect	Municipal, state, and federal authorities	
Article 6	Right to work and vocational training	Lack of jobs and vocational training in the region	Protect Fulfil		Agribusiness offers few, precarious jobs
Article 7	Right to just working conditions including living wages, equal pay for equal work, safe and healthy working conditions, etc.	Few, precarious jobs, unable to ensure decent living conditions. High exposure to pesticides	Protect Fulfil	Municipality	Agribusiness
Article 8	Right to form trade unions and strike	Agribusiness interference in the functioning of trade unions	Protect	Inadequate labor inspection and recourse mechanisms	Companies using trade unions also for acquiring land rights

Article	Normative content	Violation	State obligation infringed	Duty bearer	Third parties involved
Article 9	Right to social security	Limited access Regressive measures	Fulfil Non-retrogression	Inadequate inspection and recourse mechanisms	
Article 10	Right to special protection to family, women, and children.	Limited access Regressive measures	Fulfil Non-retrogression	Labour Prosecutor's Office	Agribusiness and private militias
Article 11	Right to an adequate standard of living, including food and housing	Destruction of food sources and food producing resources. Destruction of livelihoods Forced displacement and dispossession of lands, fisheries, and forests	Respect Protect Fulfil Non-retrogression	Piauí State, federal state	Local <i>grileiros</i> , security companies, agricultural real estate companies, agribusiness companies, and international investors
Article 12	Right to the highest attainable standard of physical and mental health, which includes measures to improve environmental hygiene	Environmental pollution due to pesticides. Stress and suffering due to land grabbing and environmental destruction Lack of health services	Respect Protect Fulfil Non-retrogression	Health ministry, IBAMA-Ministry of Environment	Local <i>grileiros</i> , real estate companies, agribusiness companies, and international investors
Article 13 and 14	Right to education	Regressive measures Closing down of schools	Respect Protect Fulfil Non-retrogression		
Article 15	Right to take part in cultural life	Destruction of traditional knowledge related to plants, animals, and the Cerrado ecosystems Destruction of traditional livelihoods	Respect Protect Fulfil		



With the participation of:

**act:onaid**

**aidenvironment**



**CÁRITAS  
BRASILEIRA**  
Regional do Piauí



**Development  
and Peace**  
CARITAS CANADA



**FASE**



**Friends of  
the Earth  
United States**



**Grassroots  
INTERNATIONAL**  
FUNDING GRASSROOTS MOVEMENTS FOR SOCIAL CHANGE



**HEKS  
EPER**



**SEM CERRADO  
ÁGUA  
VIDA**



**Solidarity Sweden-  
Latin America**



**WhyHunger**

