

REPORT

Associação de Advogados
de Trabalhadores Rurais,
GRAIN

and Rede Social de Justiça e Direitos Humanos
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TIAA and Harvard's

BRAZILIAN FARM DEALS JUDGED ILLEGAL

as fires rage on their properties
in the biodiverse Cerrado



Buriti trees in the community of Baixão Fechado in the municipality of Santa Filomena, state of Piauí. Photo: Daniela Stefano

There are two important recent developments concerning foreign farmland acquisitions in the MATOPIBA region of Brazil (which comprises the Cerrado savannah portions of the states of Maranhão, Tocantins, Piauí and Bahia). Firstly, on 6 October 2020, the Bahia court of justice ordered that the records for an agglomeration of farmlands covering 107,000 hectares in the municipality of Cotegipe, known as Gleba Campo Largo, be blocked for having been illegally acquired by Caracol Agropecuária, a Brazilian subsidiary of the University of Harvard's endowment fund. Secondly, the INCRA inspection and control team for foreign land acquisitions produced a technical report, which declared invalid dozens of rural property acquisitions made by the US pension fund manager TIAA-CREF and the Brazilian sugar company Cosan S/A, via a group of companies held by their Brazilian subsidiary Radar Propriedades (Radar).

The Brazilian organisation *Rede Social de Justiça e Direitos Humanos*¹ has been denouncing the impacts of agribusiness in Brazil for some time. In 2011, the network published a report *Monopólio da produção de etanol no Brasil: a Fusão Cosan – Shell* (The monopoly of ethanol production in Brazil: the Cosan-Shell merger), which revealed how Radar was created in 2008 as a subsidiary of Cosan S/A, then already a holding company. The creation of Radar marked the beginning of intensified speculation in relation to agricultural land in Brazil. In the years following the world economic crisis of 2007-2008, agricultural commodity prices dropped on international markets, but the price of rural land continued to rise, an indication of speculative trends in the land market. This trend intensified from 2010.

In 2015, Rede Social, GRAIN and the Pastoral Land Commission (CPT) published *A empresa Radar e a*

especulação com terras no Brasil (Radar and land speculation in Brazil), which reported on the company's practices relating to land market speculation and the social and environmental impacts of its business. That year, in coordination with affected traditional communities, Rede Social, GRAIN, CPT-Piauí and FIAN filed a complaint together with the Brazilian federal ombudsman for citizens' rights to investigate Radar's involvement in land grabbing cases in the MATOPIBA area.

In 2016, the case led to three (parallel) civil inquiries being launched with the regional prosecution services for the municipalities of Balas (MA), Corrente (PI) and Diamantino (MT), which are still ongoing.² That same year, INCRA, on the basis of the same complaint and as

1. Network for Social Justice and Human Rights.

2. The civil public inquiry on behalf of the Balsas regional prosecution service was closed in 2019, but there is an appeal awaiting judgement in the regional prosecution service's 6th chamber, which deals with matters relating to traditional and indigenous communities.

part of its responsibility to monitor land acquisition by overseas buyers, started proceedings to investigate the purchases made by Radar and TIAA-CREF, as we will detail below.

In 2018 the report *Transnacionais imobiliárias agrícolas e a especulação com terras no Brasil* (Transnational agricultural property and land speculation in Brazil), detailed the deals carried out by Radar and the TIAA-CREF pension fund, as well as deals done by other companies such as Harvard's endowment fund (via its Brazilian subsidiaries Insolo and GBE), SLC LandCo.(backed by UK funds) and publicly-listed BrasilAgro. These deals, constructed so as to avoid legal restrictions on foreign acquisitions of farmland, sparked an increase in land prices. Moreover, the companies engaged in land grabbing practices, actions that were recognised as such by the judiciary.³ *These acts of land grabbing took place on public lands, many of which were inhabited by indigenous peoples and other traditional communities.*

In 2018, the Association of Lawyers and Rural Workers (AATR), which has been working to tackle land grabbing in the Cerrado region of Brazil since the 1980s, began examining the property deeds of some of the farms acquired by Radar in Maranhão and Piauí. The association concluded that the property registers contained illegal registrations, including registrations of state-owned, untitled lands. This finding demonstrates that foreign companies were engaging in land grabbing to acquire lands in Brazil, violating indigenous and other traditional communities rights to land and usurping public ownership of untitled lands.

The study published by AATR *Legalizando o ilegal: legislação fundiária e ambiental e a expansão da fronteira agrícola no Matopiba* (Legalising the illegal: land and environmental legislation and the expansion of the agricultural frontier in Matopiba), presents data about the conversion of land from "possession" to "property" status between 2006 and 2017. Data from the Brazilian national institute for statistics shows an intensification of land grabbing in the region over the same period, which marks the beginning of the speculative trend in the land market and the expansion of agribusiness, monocropping and environmental destruction.

Actions taken by the prosecution service and other bodies within the judiciary to annul titles corresponding to usurped rural property and to dismantle land

3. Particularly between the years 2016 and 2018, tens of records were suspended or annulled by the Bom Jesus district agrarian court judge, in cases between individuals or those brought by the state prosecution service through GERCOG, the team responsible for land-title regularisation and the fight against land grabbing.

grabbing practices, even if only sporadic, have forced public authorities to recognise that the new agribusiness landowners in the MATOPIBA region have risen as a result of fraudulent registrations and illegal land deeds.^{4 5} In this context, there is a tendency for the local political and economic elite to legitimise these "rotten deeds" by issuing titles recognising private citizen ownership that transcend constitutional parameters, to the detriment of the communities who are legally exercising their occupation and use of these lands.

The TIAA-COSAN-RADAR case: INCRA technical report declares rural property acquisitions by this financial group invalid

Since 2016, the INCRA inspection and control directorate (DFC) has been performing many different administrative procedures to identify illegalities in land acquisitions made by Cosan S/A and the US pension fund manager TIAA-CREF. The financial architecture of the group was structured to cover up the real owners and those profiting from land sales.

Radar was created on 28 August 2008 as a result of a merger between Cosan S/A Indústria e Comércio (Cosan) and Mansilla Participações S/A (Mansilla). The initial capital put up for Radar was nearly US\$400 million, or approximately 1.4 billion reais, of which 18.9% was contributed by Cosan and the remaining 81.1% by the majority shareholder, Mansilla. Cosan, however, was identified as the company's director. The foreign capital invested in Radar originated from TIAA-CREF, a private US pension fund manager, but specifically from the TIAA-CREF Global Agriculture HoldCo, a holding company created to purchase land internationally on behalf of TIAA and other financial companies.

TIAA-CREF Global Agriculture HoldCo created a Brazilian company with foreign capital called Mansilla. In 2010, Cosan and TIAA-CREF Global Agriculture HoldCo created another company - Tellus Brasil Participações S/A (Tellus). In this company, 51% of the stocks are owned by Cosan and 49% by Terra Viva Brasil Participações Ltda. (Terra Viva Ltda.), a subsidiary of TIAA-CREF. This is how the overseas owner hides its name.

4. An example of the cases underway in the Bom Jesus (PI) regional agrarian court is the investigation into the Faroeste Operation, Formose de Rio Preto, Bahia.

5. As has been highlighted by the governments of Piauí (<https://www.cptpiaui.org.br/artigo/w-dias-afirma-que-cerrados-tem-pistoleiros-e-parece-velho-oes>) and Tocantins (<https://afnoticias.com.br/estado/governo-regulamenta-o-maior-programa-de-regularizacao-fundiaria-da-historia-do-tocantins>).



Baixão Fechado community in the municipality of Santa Filomena, state of Piauí. Photo: Daniela Stefano

The mechanism consists of creating many companies, as well as subsidiaries, with the same controlling shareholders to make it seem like they are different entities, and then leave these companies to negotiate the purchase of lands between themselves. So, Cosan and TIAA/CREF Global Agriculture HoldCo (via Mansilla and Terra Viva Brasil Participações Ltda) are partners in Radar and Tellus, respectively. TIAA-CREF Global Agriculture HoldCo owns other companies in Brazil with 100% shareholding such as Nova Gaia Brasil Participações Ltda. These companies have offices at the same location. Radar, Tellus, Nova Gaia Ltda and Terra Viva Ltda are all registered on the same floor of a building in the city of São Paulo.

In 2010, the Brazilian solicitor-general issued an interpretation of a law governing foreign acquisitions of farmland in Brazil. The new interpretation clarified that companies registered in Brazil but effectively controlled by foreign companies are to be regarded as overseas companies and must be subject to the same limitations and controls set out in Federal Law 5,709/1971.

Foreign companies and Brazilian companies controlled by non-Brazilian companies must comply with

special procedures for land acquisition, including the obligation to provide INCRA with all information relating to the acquisition prior to receiving authorisation for the purchase.⁶ Failure to comply with the legislation means the land acquisition registration deed should be considered null and void, possibly involving criminal responsibility on the part of the property register office official.

In its investigation relating to Radar's land acquisitions, INCRA verified that, in November 2012, Radar

6. To summarise, Law 5709/71 imposes the following limitations: limiting the extension to 50 undefined exploitation modules in a continuous or noncontinuous area (art. 3); to report on the agricultural, fishing and industrial plans linked to the business objectives as set out in the bylaws and documented by the Brazilian ministry for agrarian development (art. 5); need for a separate record of the property to be communicated to INCRA and the state inspector-general offices and the Brazilian ministry for agrarian development (articles 9 to 11); and a maximum extension of 25% of the surface area of a municipality when all the rural areas are combined under the property of foreign companies or companies controlled by foreigners, limited to 40% per nationality (art. 12 e § 1º).

was the owner of 392 farms that covered 151,468 hectares - of which 182 (43,285 hectares) were bought in the 2012 tax year. These lands were distributed through the following states: São Paulo (72,911 ha), Maranhão (37,654 ha), Mato Grosso (29,482 ha), Bahia (7,155 ha) and Goiás (672 ha).

The farms acquired by Radar and Tellus were negotiated through a known land grabber in the south of Maranhão and Piauí. The Sagittarius farm (10,890 ha), in Balsas, is located in an untitled area of land in Chapada, part of an area called Batavo, where CODECA (Colonizadora De Carli), the “principal land grabber in the region” and part of the Carli business group, began planting soybeans in the 1990s. Tellus acquired the Santana farm (Riachão-MA) (4,066 ha), Marimbombo farm (Balsas-MA) (4,803 ha) and Ludmila farm (Santa Filomena-PI), (6,270 ha) all from the same Euclides de Carli.

To date, the remaining farms verified as illegally acquired by Tellus are: Santa Tereza Magno (351 ha) (Alto Parnaíba-MA); Planalto 2 (1,927 ha) (Diamantino-MT), São Jorge (636 ha) (Paraguaçu Paulista-SP), Ipiranga (567 ha) (Echaporã-SP), Santa Rita (567 ha) (Mirandópolis-SP), Brilhante (1,927 ha) (Diamantino-MT).

To date, those verified as illegally acquired by Radar Propriedades Agrícolas are: Mariana farm (Formosa do Rio Preto-BA) (7,155 ha), Preciosa farm, (4,190 ha) (Balsas-MA), Ribeirão do Meio (1,696 ha) (Riachão-MA); Mandacaru (617 ha) (Balsas-MA), Janaína (2,892 ha) (Tasso Fragoso-MA), Guadalajara (641 ha) (Tasso Fragoso-MA), Santa Amélia (953 ha) (Tasso Fragoso-MA), Santa Terezinha (966 ha) (Tasso Fragoso-MA), Faz. Brasil (921 ha) (Tasso Fragoso-MA), Mariana II and IV (3,951 ha) (Formosa do Rio Preto-BA), Perdizes (9,203 ha) (Diamantino-MT), Itagaçava (280 ha) (Porto Feliz-SP), São Jorge (162 ha) (Porto Feliz-SP), São Bernardo (17,352 ha), Vitória (436 ha) (Balsas-MA), Faz. Santa Rita (3,098 ha) (Diamantino-SP).

Having analysed the cases opened by INCRA, we discovered that the INCRA technical team had issued an opinion on 21 May 2019 recommending that **all the rural properties acquired after the emission of the Attorney General's interpretation in 2010 be declared null and void.**⁷ The opinion was issued after INCRA had requested and received documents from Tellus and Radar by subpoena and had provided these to the INCRA inspection and control directorate. The opinion states:

“Tellus Brasil Participações is the owner of various properties in the states of: Maranhão, Mato Grosso, São Paulo and Piauí, as seen in document number 1228767. All these properties were acquired while Opinion SGU (sic) no. LA-1/2010 has been in effect, which means that they are in contravention of Law No. 5,709/71 considering that the company identified itself as an foreign-controlled Brazilian legal entity.

In view of this, it is possible to conclude, pending a decision, that the rural properties acquired by the company Tellus Brasil Participações S/A, occurred after the period between 7 June 1994 and 22 August 2010, and are all therefore in contravention of legislation that governs the matter, failing to comply with the terms of the Interministerial Decree No 04/2014 and are therefore null and void, considering that the majority shareholders of the companies are foreign legal entities and as such the controlling shareholders are too. Therefore, Tellus Brasil Participações S/A is characterised as a foreign-controlled Brazilian legal entity, according to Opinion AGU/LA/2010, and the acquisitions were made contrary to the law. (...)

Therefore, the aforementioned company is considered within the concept of a financial group, according to that set out in Law 6,404/1976 (of corporations) and of art. 494 of IN RFB no 971, of 13/11/2019. (...)

Following the same line of reasoning, the cases against these affiliated companies will be analysed: Terra Viva Participações Ltda., Tellus Brasil Participações S/A Cosan S/A Indústria e Comércio; Radar Propriedades Agrícolas S/A; and Terrainvest Propriedades Agrícolas S/A.”

The opinion from the INCRA inspection and control directorate recommends that INCRA adopt measures to ensure that all the land acquisitions be considered null and void, that is, invalid from a legal perspective. In accordance with an AATR study, the same report concludes that the lands “did not fulfil the requirements to be converted from public lands to private property”, that is, the illegality of the acquisition is characterised both in the origin of the properties, subject to forgery for land usurpation (Public Registry Law - 6,015/1973) and the illegal acquisition by foreign-controlled legal entities (Federal Law 5,709/1971).

On 11 May 2020, nearly a year after the publication of the internal opinion, the case was passed to the specialist federal prosecution service, INCRA's legal division. On 31 July 2020, Radar and Tellus appeared before the PFE in their own defence, despite the companies' own admission of their corporate purpose as foreign-controlled companies. In this hearing they issued a petition

7. Order in Case nº 54000.000473/2016-10/INCRA.



Margins of the Parnaíba River in the quilombola community Artur Passos, in the municipality of Jerumenha, state of Piauí.

Photo: Daniela Stefano

to demand the dismissal of the case and argued that the companies are, in reality, controlled by Cosan, the majority shareholder of which is Mr Rubens Ometto, a native Brazilian. On 3 August 2020, they reiterated the application to terminate proceedings, even if these had not been submitted for the opinion of the specialised prosecutor's office.

The two companies in their statements, however, do not refute the central grounds from which the report draws its conclusions, in that it characterises the mentioned companies as a single "financial group", acting in harmony to achieve common aims, independently of who is formally in control of the business. On 31 October 2019, five months after the DFC/INCRA report, changes to the composition of the preferential and ordinary shares of some of the Radar group's companies were made, including to Radar and Tellus.

The changes in the structure of these companies, apparently done in the hopes of avoiding the nullification of land titles, are of little relevance, given that the illegalities identified are based on the corporate structure at the time of the property acquisition. In this case, following the recommendations of the report itself, the

federal land-titles body is obliged to, immediately suspend the titles of the properties, and to then cancel them by means of administrative procedures brought forward with the state inspector-general offices of the Brazilian courts of justice and/or before the Brazilian national justice council.

These investigative proceedings concern thousands of hectares of public lands that have been illegally appropriated and sold by foreign companies, many of which are occupied by traditional communities and indigenous peoples who have as a result suffered enormous social and environmental impacts.

Harvard University: adjustments to the financial architecture of the company and property registration suspension in Bahia reveal the limitations of aggressive land acquisition as a strategy for financial companies

The Harvard Management Company (HMC), which manages the University's large endowment fund, also acquired agricultural land in Brazil through a complex and opaque corporate structure, passing through

multiple offshore entities. Available tax returns and documents from a case before the labour court in Brazil show that the University had acquired more than 40 rural properties, covering a total of approximately 405,000 hectares in the region of Matopiba by 2016. This area is twice the size of all the agricultural land in the US state of Massachusetts, where the University is headquartered.

In 2016, HMC started to try to sell lands in various countries and hired the Brazilian businessman Colin Butterfield, the former CEO of Radar, to manage the company. This change in management coincided with the arrival of a new CEO at HMC and with international media attention on Harvard's land global land acquisitions ([Bloomberg](#), [Mongabay](#)). A [report by GRAIN and Rede Social de Justiça e Direitos Humanos](#) documented HMC's suspected illegal land acquisitions in Brazil. And HMC's difficulties in selling its Brazilian farms seemed to increase.

HMC's tax returns for June 2018 to June 2019, appear to show some sales and/or restructuring of its land holdings in Brazil. For example, the set of farms belonging to its subsidiary Gordian Bioenergy (GBE) was put up for sale. Other farms controlled by HMC-linked companies in Bahia and Piauí underwent restructuring, such as in the cases of the Caracol Agropecuária company, then managed by Granflor and the farms managed by the Brazilian subsidiary Insolo.

Caracol belonged to HMC's affiliate company Guara LLC, registered in the US state of Delaware, a known tax haven. Tax returns show that Caracol's assets declined from US\$ 43 million in June 2018 to US\$ 0 in June 2019. Guara LLC's assets went from US\$10 million to US\$ 0 in the same period. Granflor says that Caracol was sold in June 2019 and that their relations with the company ceased at that time. However, the Brazilian company register still counts Guara LLC as property of Caracol and the company still has the same operations manager. Data Coelho farm in Piauí is also listed as an asset, with Granflor's address provided as the contact. Besides this, the HMC's tax returns make no mention of any Caracol fund transfer, which would be expected should it have been sold to a third party.

As regards the Insolo farms, the value of the agricultural operations remained relatively stable, however there was an unusual money or property transfer during this period, from Insolo to HMC for the amount of US\$ 322 million. On 25 September 2019, Solum Partners LP was registered in Delaware, with a branch located in Boston (where HMC is headquartered).

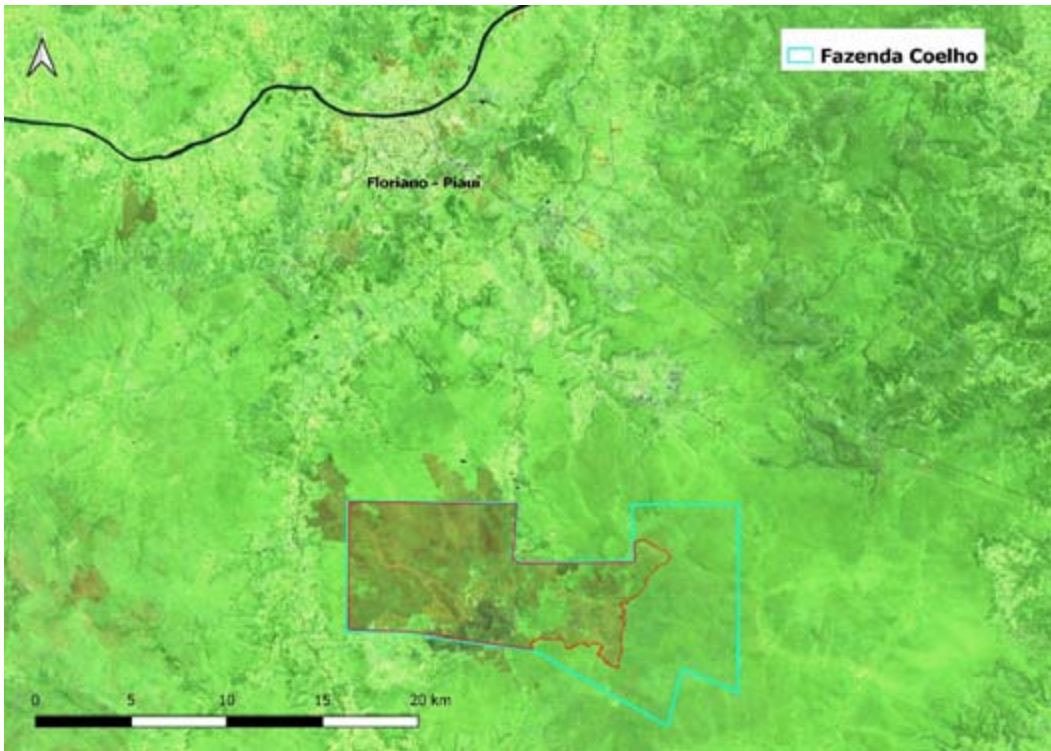
On 8 October 2020, HMC announced that it had spun-off its natural resources team to form a new

private equity company called Solum Partners, which would continue to be led by Colin Butterfield. HMC announced an initial investment of US\$200 million in Solum, with another US\$ 200 million coming from the American Insurance Group (AIG). At the same time, Solum announced that it had acquired "*selected investments that the team managed or made while part of the HMC*", including "*avocado, olive oil, apple and soybean production assets*". It is likely that the Caracol farms belonging to HMC and possibly those belonging to Insolo have been acquired by Solum, and that Solum will be able to assume the management of the GBE property.

This move by HMC seems to have been designed to reduce its direct involvement in agricultural/farmland acquisitions, while it maintains its investments intact. According to the CEO of the HMC: "*Instead of simply closing all direct investments, we limit exposure to these investments through a limited partner and maintain the capacity to add more convincing opportunities in the future.*" The Solum investment managers are the same as the ones who worked with HMC. The farms in Brazil are still the property of the same corporate structures, but now some have become the property of Solum instead of being the direct property of HMC. With this new architecture, HMC can claim that it is not the sole owner of these farms, since AIG is also involved through Solum.

Besides being an attempt to improve its image, given its links to allegedly illegal purchases which resulted in serious consequences for local communities, the move also serves as a strategy to avoid accountability and responsibility for the property in the case of an unfavourable court ruling. On 6 October 2020, the third civil chamber of the [Bahia court of justice](#) ordered the suspension of the Gleba Campo Largo farmland registration, in relation to approximately 107,000 hectares of farmland belonging to Caracol in the municipality of Cotegipe, as well as the reopening of the land delimitation process to collect evidence relating to illegal appropriation of public land by individuals. In December 2018, the legal action was inexplicably terminated by a local judge. However, this decision was contested by the state prosecutor's office, which went on to compile evidence of land grabbing, and ordered that the land be recovered by the state as public untitled land.

This decision links HMC to land grabbing in Brazil. The ruling ordered that all property registry records and deeds belonging to Caracol/HMC be suspended, which will affect Solum and AIG if they go on to control these farms. These lands should be returned to local communities with traditional possession of these areas. HMC is trying to escape its responsibility in Brazil with the new operational structure Solum takes. Butterfield



Fazenda Coelho - Caracol Group, Floriano, Piauí - Sep 03, 2020 (area burned in red, 11,000 ha). (Credit: AidEnvironment)

was already starting to do this during his final year at HMC, when he declared some farm purchases in Peru and Chile. Solum says its goal is to invest US\$ 1 billion in agriculture deals.

Duty to reclaim and return illegally acquired and grabbed land

In 2017, the publication *No Rastro da Grilagem [On the tail of land grabbing]* by AATR described different forms of land grabbing, ranging from crude forgeries to sophisticated schemes involving registrars and judges. Such studies were confirmed by the Bahia court of justice (in the HMC case) and by the DCF/INCRA report (in the TIAA-COSAN case).

Public bodies should defend the rights of the people and traditional communities that occupy the Cerrado lowlands, valleys and plateaus, who with their ways of living, growing and livestock raising, promote balance between economic use, social functions of land and the preservation of the environment.

There is enough evidence to warrant action by the relevant authorities, particularly from the public data itself and from the investigations performed by social organisations in collaboration with local communities. It is now to INCRA, the federal prosecution office, the state and regional prosecutor's offices, the inspector-general offices of the courts of justice and the Brazilian national justice council, to take the administrative and legal measures with the urgency that is required given the seriousness of the accusations, to ensure that the

way TIAA-COSAN and Harvard (HMC) groups are undermining Federal Law 5,709/1971 is definitively recognised, as well as recognising the illegal origin of the acquired untitled lands, to enable states to recover these lands and return them to local communities.

Fires and clearance of the Cerrado lands under foreign investment control

In 2019, the *Rede Social de Justiça e Direitos Humanos* and GRAIN documented fires in areas of farmland linked to HMC and to the TIAA fund. This year the situation in the Cerrado has been equally alarming with new fires on farmland linked to both funds.

One of the first occurred in land exploited by Caracol Agropecuária, a subsidiary of HMC that also holds Gleba Campo Largo, which is involved in the land grabbing dispute. In June 2019, Granflor stated that Caracol had been sold and ties cut, but the Delaware subsidiary of HMC, Guara LLC, is still listed as the owner of Caracol Agropecuária, including the farm operations in Bahia and Piauí.

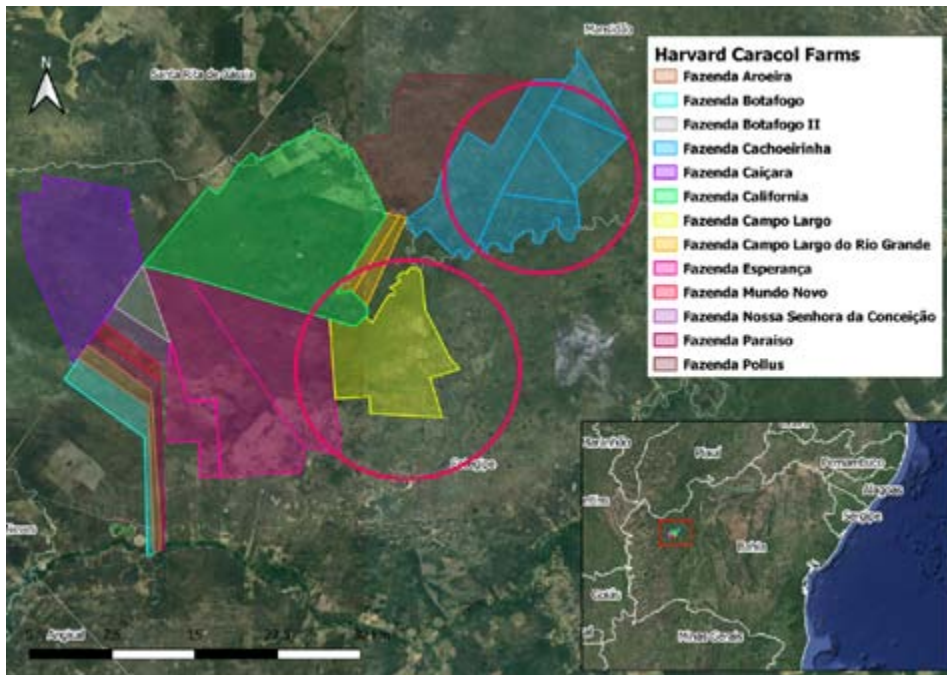
In Piauí, satellite images obtained by AidEnvironment show a fire that burned over 8,600 hectares within the borders of the property by September 2020, consuming more than half of the Data Coelho Farm. This farm in the municipality has been operated by Caracol until recently. A total of 11,000 hectares were burned.

At the Caracol farms in Bahia, a fire started in August 2020 and spread, consuming nearly the entire forested area of the farms, burning more than 8,500 hectares by

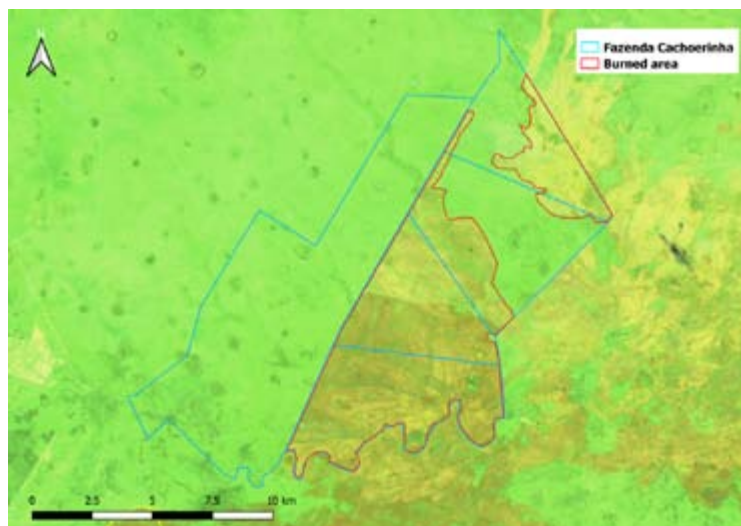
October 13. Of these, 7,626 were within the Cachoerinha Farm in Mansidão and 878 hectares within the Campo Largo Farm, both located within the 107,000 hectare area of Gleba Campo Largo.

At the beginning of October 2020, the fires also reached areas of legal reservations of the TIAA farms

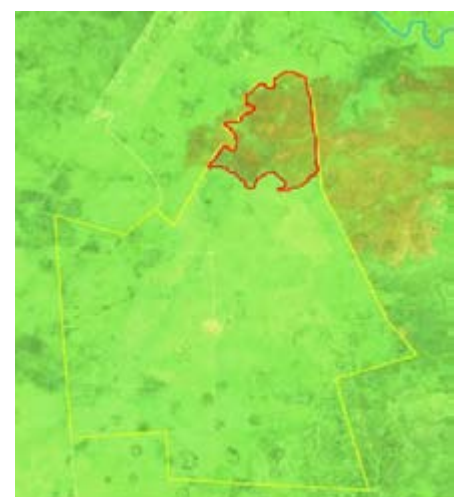
in Santa Filomena in Piauí, turning nearly 1,360 hectares into ashes. In Riachão, Maranhão, more than 500 hectares of Santana Farm, property of Tellus, a TIAA subsidiary, were burnt.



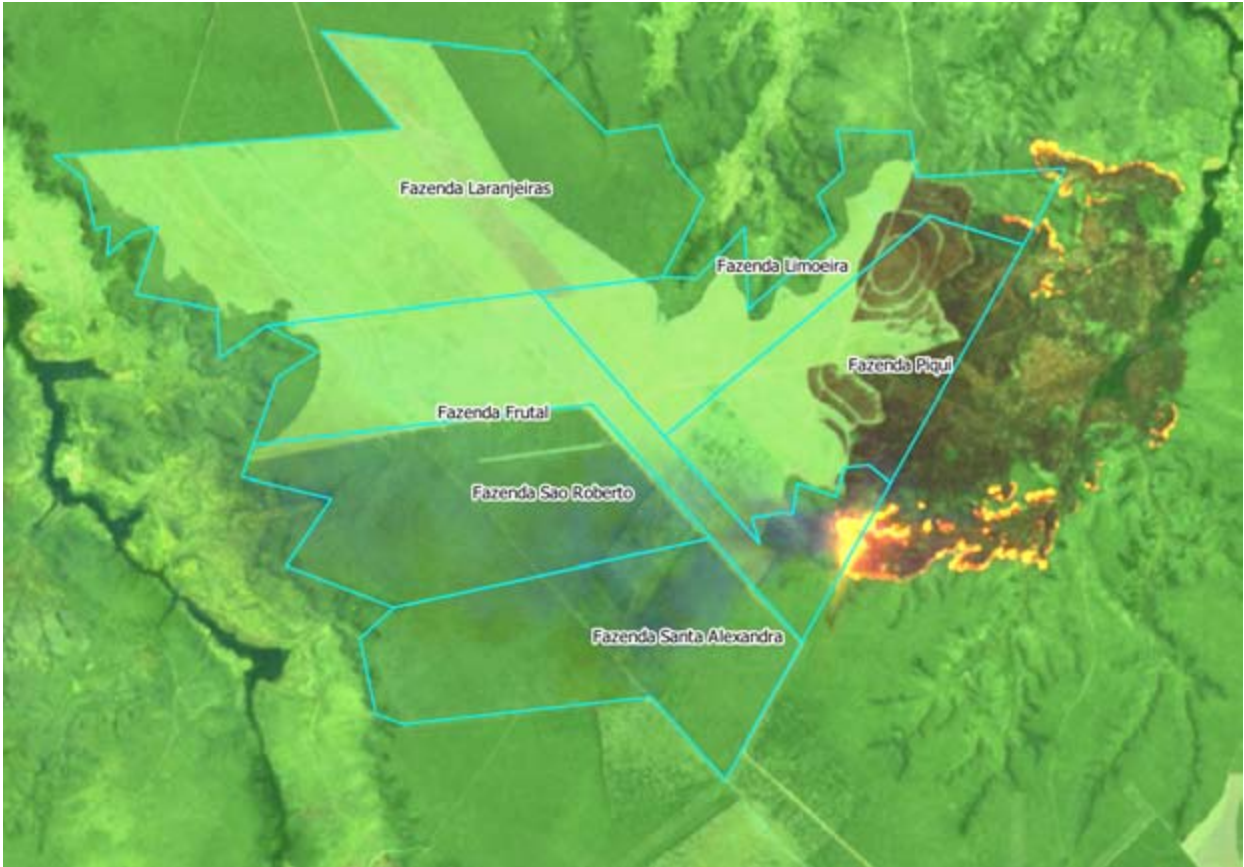
Farms acquired in Bahia, Brazil, by Harvard through its subsidiary Caracol Agropecuaria Limitada. (Credit: AidEnvironment)



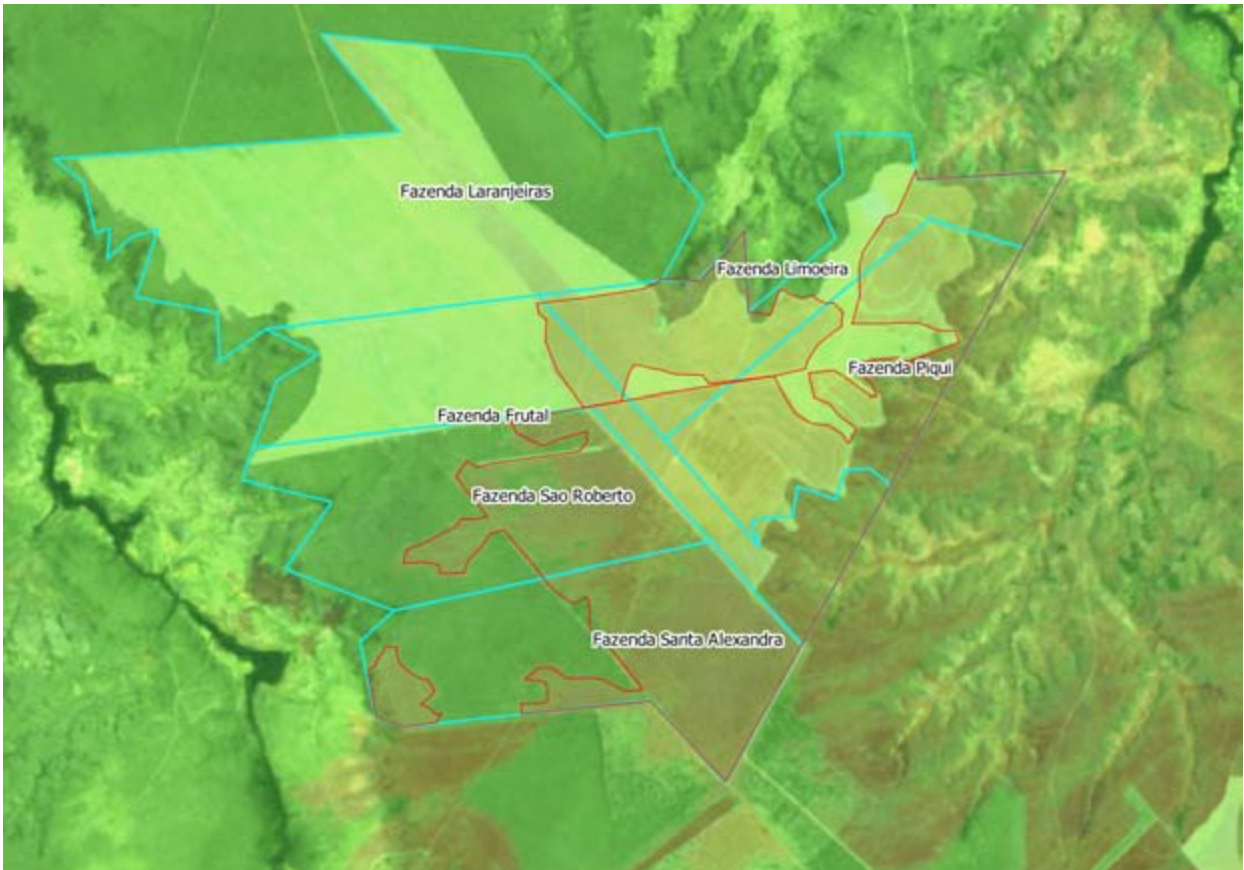
Fazenda Cachoerinha - Caracol Group - August 29, 2020 (7 626 ha burned). (Credit: AidEnvironment)



Fazenda Campo Largo - Caracol Group - mid-October (area burned in red, 878 ha). (Credit: AidEnvironment)



Farms in Santa Filomena, Piauí - registered in the name of Tellus Participações S/A, a subsidiary of TIAA.
Active fires on 1 October 2020 ▲ and burnt area on 16 October 2020 (1360 ha of burnt area in red) ▼
(Credit: AidEnvironment)



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