



INTERNATIONAL LAND COALITION

ANALYSES AND PERSPECTIVES

# Access to Land and Recognition of Land Rights in GUATEMALA

MAURO Annalisa (Coalition)  
MERLET Michel (IRAM)

June 2003

- **The International Land Coalition**  
IFAD Secretariat  
107, Via del Serafico 00142 Roma Italia  
Phone: 39 06 54592445 Fax: 39 06 5043463  
[coalition@ifad.org](mailto:coalition@ifad.org) [www.landcoalition.org](http://www.landcoalition.org)
- **iram Paris** (headquarters)  
49, rue de la Glacière 75013 Paris France  
Phone: 33 (0)1 44 88 67 67 Fax: 33 (0) 1 43 31 66 31  
[iram@iram-fr.org](mailto:iram@iram-fr.org) [www.iram-fr.org](http://www.iram-fr.org)
- **iram Montpellier**  
Parc scientifique Agropolis Bâtiment 14  
34397 Montpellier cedex 5 France  
Phone: 33 (0)4 99 23 24 67 Fax: 33 (0)4 99 23 24 68  
[iram34@iram-fr.org](mailto:iram34@iram-fr.org)

## Table of Contents

<b>1. Original Features of the Guatemalan Agricultural History .....</b>	<b>4</b>
1.1. A Very High Concentration of Land .....	4
1.2 The Weight of Colonial Heritage .....	5
1.2.1 <u>A System of Land Rights Built from the King's Power</u> .....	5
1.2.2. <u>Rights over Land, Rights over the People</u> .....	7
1.3 Independence and Absolutism of the So-Called Liberal Reforms .....	8
1.4 The Failed Attempt at Promoting Modern Capitalism with Moderate Agrarian Reform .....	12
1.5 Improbable Land Markets .....	14
<b>2. Toward Rural Development for All .....</b>	<b>16</b>
2.1 Peace Agreement and Land Issues .....	16
2.2 Current Dynamics.....	17
2.2.1. <u>Emergence of Dynamic Sectors of Small Mercantile Producers</u> .....	17
2.2.2 <u>Difficulties in Some Large Production Sectors</u> .....	18
2.3 Different Visions .....	19
<b>3. Contributions to the Debate and Some Elements to Progress.....</b>	<b>22</b>
3.1 Deepening Reflection on Some Conceptual Aspects .....	22
3.1.1. <u>Where does Legitimacy Concerning Rights over Land Come from?</u> .....	22
3.1.2. <u>Land Property. What are we talking about?</u> .....	22
3.2. Some Central Points Requiring Support.....	25
3.2.1. <u>Helping to Document the Advantages of Family Production and Training the Professionals the Country Needs</u> .....	26
3.2.2. <u>Making Progress in the Local Management of Land</u> .....	26
3.2.3 <u>Finding the Ways to Walk Ahead and Not Stumble</u> .....	26
<b>4. The Role and Actions of the International Land Coalition .....</b>	<b>28</b>
4.1 The International Land Coalition .....	28
4.2. Background, Actions Underway in Guatemala, and Perspectives.....	30
4.3. Land and Development in Guatemala. Dynamic Plan of the International Coalition Activities in Guatemala 2003-2005: .....	32
4.3.1. <u>Action: International Forum on Land and Development</u> .....	32
4.3.2. <u>Action: Grupo Tierra, Discussion between Donors Concerning the Land Issue</u> .....	33
4.3.3. <u>Action: Strengthening the Role of Grassroots Organizations in Accompanying the Rural Poor in the Pre- and Post- Acquisition of Land Processes</u> .....	33
4.3.4. <u>Action: Analyzing and Building on Positive Experiences in Guatemala</u> .....	33
4.3.5. <u>Action: Pilot Project to Implement a Land Fund Totally Managed by a Non- Governmental Organization (based on the experience of FEPP, Ecuador)</u> .....	34
4.3.6. <u>Action: Articulation with the Research Sector to Fill Up the Existing Knowledge Gaps in Guatemala Concerning the Land Issue</u> .....	34
4.3.7. <u>Final Observations</u> .....	34
4.4 LAND Alliance for National Development .....	35
<b>5. Annexes .....</b>	<b>36</b>
5.1. Guatemala. Country Data (source: FAO) .....	36
5.2. Acronyms and abbreviations .....	37
5.3. People and Institutions Interviewed by the Mission .....	38
5.4 References .....	39

*This document has been prepared after the International Land Coalition mission conducted by Annalisa Mauro (Coalition) and Michel Merlet (IRAM) in Guatemala from March 3<sup>rd</sup> to March 11<sup>th</sup> 2003. Its objectives are to share the thoughts of the mission regarding some central aspects of the land issue in this country, and to start formulating some recommendations for the Coalition and the Organizations making it up and working in Guatemala.*

## 1. Original Features of the Guatemalan Agricultural History

### 1.1. A Very High Concentration of Land

Guatemala is characterized by a fundamentally agricultural economy and by a high degree of land concentration, by a large indigenous population and by the strong exclusion levels of a large portion of its total population.

The Gini coefficient for Guatemala, an indicator that measures the inequality in accessing land, is one of the highest in the world and probably the highest in Central America. In 1997, date of the last agricultural census, 64.5% of the land was concentrated in about 2.6% of the farms, the Gini coefficient for Guatemala was 0.88.<sup>1</sup> The strong expansion of the agricultural frontier during the last two decades made the agricultural area to grow by about 2.6%, but that was not translated into a reduction in the inequality level of access to land.<sup>2</sup>

It has been fully demonstrated that the countries that have relatively egalitarian distribution of land have historically had development levels higher than those characterized by a very unequal access to land.<sup>3</sup>

Guatemala was not able, as most neighboring countries, to perform an effective agrarian reform, nor did it establish other agrarian or fiscal policies that could have resulted in more egalitarian access to land.

Although the agrarian reforms of Mexico, Honduras, El Salvador and Nicaragua had very different characteristics and depth levels, they helped to create more favorable conditions for sustainable national development.<sup>4</sup> The attempt of creating favorable conditions for modern capitalist development that took place early in Guatemala in the middle of the 20<sup>th</sup> century with the Arevalo and Arbenz governments was quickly reverted. American intervention<sup>5</sup> and the country's social and economic structure did not allow for these transformations.

The civil war and armed conflict situation Guatemala has gone through until the Peace Agreement was signed in 1996 were kindled by this extreme inequality regarding access to land

<sup>1</sup> A Gini coefficient equal to 1.0 indicates absolute inequality, while a Gini coefficient equal to 0.0 indicates perfect equality.

<sup>2</sup> The analysis of the ENCOVI survey results of 2000 suggests that the Gini coefficient probably increased slightly, indicating that inequality is increasing. So as to have a comparative idea, the Gini index for Nicaragua was 0.79 in 1963, before the agrarian reform and is now estimated at 0.71 (last agricultural census, 2001). In countries with a relatively egalitarian access to land, this index goes from 0.20 to 0.40.

<sup>3</sup> See for example, Deininger and Squire, *New Ways of Looking at Inequality and Growth*, World Bank, DEC notes #28, February 1997.

<sup>4</sup> If Mexico had stayed with the very high land concentration level it reached during Porfirio Diaz's dictatorship (gigantic states enlarged with the privatization of communal land: 0.2% of owners possessed 87% of lands), it would not have had the development and industrialization level it has today. Besides any criticism regarding the political and social forms that agrarian distribution took and besides its limitations, it is broadly recognized that the Mexican agrarian revolution at the beginning of the 20<sup>th</sup> century played a decisive role in the country's modernization and the constitution of its foundation for development.

<sup>5</sup> To defend the interests of the United Fruit Company, among other reasons. Brockett, Charles, *Transformación Agraria y Conflicto Político en Guatemala, 1944-86*, in Cambranes J.C., *500 Años de Lucha por la Tierra, Estudios Sobre Propiedad Rural y Reforma Agraria en Guatemala, Flasco*, Guatemala, 1992, volume 2, page 7.

and because of the exclusion of a very high percentage of the population from development processes.

## 1.2 The Weight of Colonial Heritage

If the Guatemalan agricultural history has many common features with the history of neighboring countries, due to the development of civilization of the same origin in pre-Columbian times and to similar colonization processes by the Spanish, it currently presents original characteristics distinguishing itself from the others. Without attempting to analyze in detail the processes behind this differentiation, which would require a comparative agricultural study that obviously goes beyond the scope of this report, we will try to underline some differences that impacted the constitution of the current agrarian structure.

### 1.2.1 A System of Land Rights Built from the King's Power

With Spanish colonization and the papal bulls of 1493, the Spanish Crown took over all the land in the region. From then on, it started to allocate or sell land rights to those it deemed convenient, to the conquerors with the "royal favors" of lands, to the Spaniards who settled in America, but also to the indigenous communities which had been dispossessed from their original rights after the conquest. The reduction of the indigenous people, the reorganization of their houses, their farmlands, and their social structures so they could work for the Spaniards and pay taxes went along with a land "allotment" by the Crown. The tragic irony of such an absolute divestiture and of such a ferocious submission is that it denied every former right to the original inhabitants.

The National State, after Independence, received this right from the King over the whole territory and continued bestowing titles to transfer lands from the public domain to the private one. In this process of constituting privacy rights from the top, titles play a fundamental role, and they are the origin of the acquisition of rights. When we speak about "título real", the word "real" does not refer to reality (from Latin *res*, the thing), but to the King, to Royalty (from Latin *regalis*).

The transfer or sale are "in the origin" of rights: one owns a land parcel because one received it from the King or bought from the King<sup>6</sup> a certain amount of steeds. Both the Spanish Crown and the State have used this right transfer process as a source of resources, which were proportional to the area sold. Since then, areas became very important. Registering the titles and preserving the corresponding maps are in the heart of the land administration mechanism born from the Royal system.

This process of constituting rights from the top does not have a universal character. In most of the countries that were not submitted to colonial processes over the past centuries, the rights over land are born from the dynamics of social players and their struggles concerning land. We can say the rights in those cases are constituted from the bottom (see box #1).

Distinguishing these two ways of constituting land rights from the bottom and from the top, is very useful to understand the differences between the land administration systems in the world. Nevertheless we must underscore that in every case, sooner or later, past rights are extinguished. If we exclude the religious argument as an explanation supporting Pope Alexander VI's decision of acknowledging that the lands in America belonged to the Spanish and Portuguese kings, the

---

<sup>6</sup> Or later on from the State

Royal foundation of the Spanish Crown rights is based eventually in the lasting of defeated indigenous populations' rights.

### Box # 1

#### THE OTHER KIND: LAND RIGHTS CONSTITUTION FROM THE BOTTOM

The different land tenure regimes and the different rights administration systems built from the bottom all start from acknowledging *de facto* situations. They are formed and disappear as a function of changes in the power relationships prevailing among different players. They consolidate with time through different processes, which do not necessarily coincide with social justice.

Social recognition is essential to consolidate rights over time. For rights to take on legal force, society must regulate the conditions of former rights ownership. This is why adverse possession has a space of its own in European countries.

Private purchase-sale agreements in the case of some rights, provided that they are public, help to legitimize rights. The rights of one person or group have to take into account the rights acquired by neighbors. When a transaction is made, social recognition of the rights one acquires on land starts with acknowledgment by neighbors and adjacent owners. In these mechanisms, knowledge regarding the plot boundaries is more important than measuring the area.

Rights systems constituted from the bottom suppose the existence of dispute settlement and mediation efficient mechanisms.<sup>7</sup> These can be democratic or not. If they do not exist, the use of physical force becomes inevitable.

By constituting rights from the bottom, the State also has rights over its territory: it can establish rules, policies and even collect taxes on land. In this case, it needs a specific instrument, cadastre, which has a fundamentally fiscal objective. This cadastre does not guarantee or validate rights constituted and consolidated through other mechanisms.

If during colonial times, legal access to land was made fundamentally by rights transfer from the top,<sup>8</sup> there were also processes aiming at acknowledging rights acquired after purchase.<sup>9</sup> This is the case of the land *composiciones* (arrangements) through which the Crown granted rights to individuals or groups who had taken over stretches of land without having the corresponding Royal title. The constant "re-measuring" of lands, important to update rights that had modified with time, responded to a similar concern. In these cases, "purchasing" or transferring was necessary, so that one of the founding principles of colonial power was not violated. But these changes had to be based upon a certain local social acknowledgment. If not, there would have been permanent revolts and conflicts. However, the process did not exclusively imply local government mechanisms seeking some consensus or any exercise of dispute settlement at a local level. It was a vertical updating process in which the King (or later the independent State) dictated his/its resolution.

Since 1542, administration of land rights was carried out in the Audiencias, authorities responsible for representing the Spanish Crown in these tasks. The fact that Guatemala was the head of an Audiencia of the colonial power in the region explains why these processes were

<sup>7</sup> Conflicts regarding property system *from the top* are of course also generated.

<sup>9</sup> Palma M, Taracena A. and Aylwin O. Procesos Agrarios Desde el Siglo XVI a los Acuerdos de Paz. FLACSO, MINUGUA, CONTIERRA 2002.

applied much more strongly and rigorously in this country than in far away zones. It is partly because of this that Guatemala bears a heavier colonial heritage than many of its neighbors.

### **1.2.2. Rights over Land, Rights over the People**

When we observe these past processes from our current perspective, we often forget that these royal rights over land did not correspond to what we now call "property". As Gustavo Palma and Arturo Taracena remind us, the colonial order tightly connected control over land and control over labor, which were essential to be able to accumulate wealth.<sup>10</sup> The configuration of Indian villages and the different systems the Spaniards had to provide labor (the *encomienda*, the *repartimiento*, the tributes) played a fundamental role in colonial society. The distinction between Indians and Creole people was an essential element of economy and society. Guatemala is also different from its southern neighbors in this feature, where the colonial administration had great difficulties to control the miscegenation that undermined the foundations of Creole power.

The idea of land rights that prevailed during colonial times had its origin in feudal Spain. Therefore, it would be a mistake to interpret land sales during colonial times as the beginning of the land market and the land administration processes independently from the processes of administering the Indian population, that is, of administering labor. When the Spanish Crown granted a land title to a conqueror or an indigenous community, it granted them a number of multiple rights, not only over resources, but also over the people who lived on those lands or close to them. Severo Martínez underscores, "Indians were part of the landscape" and would continue to be strongly linked to the land for a long time through different modalities that changed over time, particularly with labor in exchange for debt, which continued to exist in Guatemala until the mid 20<sup>th</sup> century.

Consequently, the property concept in Guatemala during the 16<sup>th</sup>, 17<sup>th</sup> or 18<sup>th</sup> century did not correspond with the absolute property concept that would develop and be imposed later after the French Revolution.<sup>11</sup>

To summarize a subject that is highly nuanced and complex, we can say that:

- The colonial social and economic system was founded on the difference of rights between races, the Spaniards on the one hand, the Indian on the other, with specific organization systems and government mechanisms for each one and the principle of Spanish dominion over the Indians.<sup>12</sup>
- The relationships between Spaniards and Indians were mainly feudal in inspiration, after the limitations of slavery became apparent. The Spanish Crown, after the New Laws, played the role of middleman, of arbiter, and even "protector" to limit the abuse and exaction of Creoles against Indians.
- The government systems and the administration of rights over land and natural resources imposed on the Indian Villages were partly based on their former organization history, but were strongly intervened upon by colonial power and the religious authorities. The colonial system would hardly have functioned for four centuries without these local level governance mechanisms.

---

<sup>8</sup> Palma M, Taracena A. and Aylwin O. Op cit. See also the exceptional historical work by Severo Martínez Peleas, *La Patria del Criollo* and the compilation by Cambranes J.C. *500 Años de Lucha por la Tierra. Estudios Sobre Propiedad Rural y Reforma Agraria en Guatemala*. Flacso, Guatemala, 1992 (two volumes).

<sup>9</sup> As a reaction against feudal lords, property was supposed to gather in a single hand the old rights of the lord and the rights of producers.

<sup>10</sup> The mestizos were excluded from colonial law. However, the colonial system characterized them with a complete range of "intermediate tones and colors" without having them occupy a clear social position in the colonial society.

How did this situation change with independence and how are the rights over land transformed?

### 1.3 Independence and Absolutism of the So-Called Liberal Reforms

Independence in Central America materializes with the victory of Creole people against Spain, not of Indians against colonial power. However, the disappearance of colonial order (racial and territorial segregation - Indian villages, taxes, etc.) has important consequences.

It became more and more difficult for estate owners to have the labor needed to establish plantations which would permit them to accumulate wealth (for example: coffee, banana). Mestizos and Indians can migrate to virgin lands and establish themselves as independent producers.<sup>13</sup> In Central America, the 19<sup>th</sup> century is marked by the struggle between dominant groups (the Creole, recent immigrants, new bourgeoisie) and the ascending popular layers, the mestizos and the Indians freed from the colonial yoke or in the process of being liberated.

The dominant groups related to the world market and capitalist development (with the development of coffee farming, of course, but also with other products). They paradoxically had to reinforce or reestablish feudal relationships so as not to lose economic and political power. In the field of work relationships, the return to compulsory work, the laws against vagrancy and the increase of labor in exchange for debts illustrate this fact. Liberal reforms of the end of the 19<sup>th</sup> century and the beginning of the 20<sup>th</sup> century established new forms of servitude that lasted until 1945 in Guatemala.<sup>14</sup>

Something similar happens concerning the control of access to land, but under modalities that make the process more difficult to read. Behind the alleged liberalization of access to lands, a very different process is hidden. The main purpose of reclaiming and selling barren lands, of disentanglement of church goods, of the division of community lands (*ejido* lands) and of indigenous communities is blocking the development of peasant family agriculture that would compete not only with big production in the markets but would also take all the labor it needs to survive.

In this regard, transferring the land administration system from the colony to the independent state creates the conditions for violent dispossession. Different laws and procedures were used to privatize lands, even through rental arrangements that increased the tension between *ladinos* (mestizos), communities and municipalities.<sup>15</sup>

---

<sup>11</sup> They do so massively in some countries. In Nicaragua, the colonial control over the population had lost much strength during the 18<sup>th</sup> century. The massive reconstruction of the free peasantry endangers the oligarchic power in the 19<sup>th</sup> century and at the beginning of the 20<sup>th</sup> century. See Merlet, *El Siglo Diecinueve en Nicaragua. Auge y Derrota de la Vía Campesina (1821-1834). La Importancia del Renuevo Campesino y de la Colonización Masiva de las Tierras Vírgenes del Siglo XIX*. Lecture presented in July 1990 at the Conference of the Rural History of Central America. San José, Costa Rica.

<sup>12</sup>With the abolition of the law against vagrancy and the approval of the first labor code.

<sup>13</sup>See Palma M. and Taracena A., op cit p. 46 and following pages. "In 1877, after decree 170 was enacted, mandating the redemption of the emphyteutic census to all the properties affected by it, the State's interest in regulating access to land property became even more evident. This decree acknowledges the use that said juridical figure had had as a way to generalize access to land use, but also stated that since there was not juridical certainty and direct dominion over it, instability among individuals and little value in market terms were generated (...). Therefore, no more land concessions under that modality were considered pertinent and clear standards were established to proceed to transfer property of non censured lands belonging to municipal *ejidos* (communities) as well as transferring the property of those who did not pay any pension or had been transferred to any census. (...) Properties should be cleared from any acknowledgment of interest payment due to census. (...) by freeing these lands from any encumbrances, these lands could get into the land market and be bought by the best bidder".



The social groups that control the state were those which needed these divestitures to keep their dominant position. Behind an alleged transition towards market arrangement for access to lands, the Creole and the *ladinos* were actually favored and the community lands were disintegrated.<sup>16</sup>

It is essential to analyze in detail how the transition from colonial and feudal relationships to the new land property relationship occurred in Guatemala after the French Revolution. The elements and cues we now present would demand a broader juridical historic study. However, even at sketch levels, they help us to understand and analyze the fundamental blockage that still exists in Guatemala today.

The application of liberal reforms in the second part of the 19<sup>th</sup> century or the beginning of the 20<sup>th</sup> century is translated into the introduction of important changes and agrarian laws in Central America. The changes were introduced with the civil codes and the constitutions with the principle of absolute property over land. Private property was then acknowledged as a fundamental right. This formulation introduces the idea of an absolute property that breaks with the feudal tradition of sharing rights among different social actors (see box #2).

In the correlation of existing forces in Guatemala after the Independence, the combination between colonial heritage and liberal concepts take to a much more radical system than the one applied in continental Western Europe, with terrible lack of local governance and the establishment of a true despotism by the new dominant segments.

---

<sup>14</sup>"When such use of lands was suppressed, direct and effective access to land property was sought, but depriving communities from their ancestral lands and from the irregular revenue they obtained from the payments made by those who used the lands. We could say that after these provisions, the doors to land access basically regulated by market laws were opened. Also that the Creole and *ladinos*, protected by the access to republican citizen status had a clear advantaged over the Indians, framed within protected citizen status since the Indies Laws were re-implemented by conservatives in 1839. (...) This meant a "general assault" to the lands that had been until then under local control. Palma M, Taracena A, op cit pages 52 and 53.

## Box #2

### THE INTRODUCTION OF ABSOLUTE PROPERTY: HERITAGE FROM THE FRENCH REVOLUTION

The first formulation of the declaration of human rights during the French Revolution did not say "property is a right..." but "properties are a right...". Before the revolution, the overlapping of rights over the same land were typical and the rights of the feudal lords, called the *direct property*, were distinguished from the *useful property* belonging to the subject who would turn into the absolute "owner" after the revolution.<sup>17</sup> Absolute property is then born at a very peculiar historical moment, the struggle of the bourgeoisie against feudal rights and privileges, later becoming a central ideological concept that excessively simplifies reality.

The "direct dominion" and "useful dominion" terminology can still be found in the Political Constitution of the Republic of Guatemala in 1944. Article 93 reads:

"Article 93. The direct dominion of the State over its goods is inalienable and does not lapse. Excess of private property, acquired rights for titling, movable goods, rights and shares are excepted.

The State may grant, under the conditions defined by law, the useful possession of its rustic real estate so it is tilled, preferably to collectivity and if not, to family, non-equity companies -except those organized by the State and in which the State participates- to Guatemalan individuals, or to immigrants hired by the government. (...)"

This terminology will disappear later. The transition towards the concept of absolute property deepens more and more. The feudal lord had rights but also obligations. The State, as heir of the colonial power, also inherits some of these obligations, such as for example providing lands to people who did not have them or guarantee that the use of the land agrees with the country's interest.

In Latin America, this oversight was translated into the concept of property social function. In Guatemala, the Political Constitution of 1965 suppressed this concept, consolidating this absolute character of property.<sup>18</sup>

Importing the civil code to Latin America introduced a new element that was very important in agrarian law, adverse possession. This concept regulates the mechanism of property law from the bottom, a mechanism that prevailed in European countries. It is not easy to have such different law traditions together. In Latin America the juridical figure of the supplemental title was used to make it possible to acquire property by acknowledgment of a de facto of possession after a certain time<sup>19</sup>.

Guatemala is different from other countries of the region for having practically erased this fundamental element of right from its legislative body and for having established a figure which adds colonial heritage of constituting rights from the top with the concept of absolute property (see box #3).

<sup>15</sup> J. Comby's article "The Impossibility of Absolute Property", in ADEF, *Un droit inviolable et sacré, la propriété*. Paris, 1989.

<sup>16</sup> Article 90 of the 1944 Constitution said that "The State acknowledges the existence of private property and guarantees it as a social function with no more limitations than that determined by law, due to public need or use or national interest." In IPES. Tierras Ociosas en Guatemala. Pulso Temático Magazine, Year 4 #9, December 2001.

<sup>17</sup> At the same time, there are always doubts regarding the acceptance of the word supplemental. It is often mentioned that the supplemental title is issued when the "true title" has been lost, to replace it, but, in the end, the ideological rationale is of little importance: it is a totally different mechanism by nature from the titling mechanism that operates from the top.

### Box #3

#### ADVERSE POSSESSION IN CENTRAL AMERICA

The civil codes inspired in the Napoleon Code, a product of the French revolution, tell apart two types of lapsing: *regular lapsing* and *adverse possession*. This mechanism is essential in the systems that build rights over land from the bottom.

1. Regular lapsing for real estate requires the possession of the thing or right to lapse. Possession must be "as owner", public, pacific, and uninterrupted. It must be in good faith and be based upon a "just title", legal foundation of possession. It can be applied after a relatively short time.
2. Extraordinary lapsing permits to acquire property after a longer time and does not require good faith or just title.

The introduction of civil codes was a generalized process in Latin America at the time of liberal reforms, but the comparison between the current Guatemalan and agrarian law with the agrarian law of some neighboring countries shows substantial differences. Regular lapsing is considered by the Honduran and Nicaraguan civil codes after a 10-year period. In Mexico, the duration foreseen for regular lapsing is only 5 years. Extraordinary lapsing requires 30 years in Nicaragua, 20 years in Honduras and only 10 years in Mexico.

In these three countries, several complementary laws limited the application of this basic principle of law that contradicted the practices in effect during colonial times. In Nicaragua, where position rights start to be acknowledged after one year,<sup>20</sup> jurisprudence has validated the application of adverse possession while in Honduras it seems to have not been very much applied although the legal texts are still in force.

In Guatemala, the civil code solely mentions the possibility of regular lapsing and the extraordinary lapsing possibility has been erased.<sup>21</sup> The formulation is confusing and contradictory: Article 590 specifies that real estate cannot be acquired by occupation and that those which are not reduced to private property belong to the Nation, while Article 651 provides that "possession over real estate and other real rights on the same are acquired by lapsing, after ten years."

Obvious colonial regime features persist in the current constitution of Guatemala, obliging the State to protect the Indians and to provide them with lands.<sup>22</sup> It acknowledges that indigenous populations could go on administering the lands that "historically belong to them" in a special way, but it does not specifies the possession regime different from the dominant possession regime.

The wording of the current Constitution of Guatemala "guarantees private property as a right inherent to the human person. Every person may freely dispose of his or her goods according to law." (article 39).

Absolute property has a fundamentally ideological role. In fact, since land is not a good like others, the absolute property concept is incomparable with its practice. Even the countries that have pushed this concept to its limits<sup>23</sup> recognize that the State keeps the right and duty of

<sup>18</sup> This possession is exercised "as owner" and without prior relations or agreements with another person who might have rights over the land.

<sup>19</sup> It would be interesting to know when exactly these important changes occurred.

<sup>20</sup> The constitution in force in Guatemala reaffirms in its articles 66, 67 and 68 the protection of indigenous communities by the State, even though it has been little applied during the last 150 years. "... through special programs and appropriate legislation, the State shall provide indigenous communities with state lands that are necessary for their development".

<sup>21</sup> As Costa Rica in Central America, or France, which history was related to its birth.

looking after the well-being of all, and that property has to be limited so that well-being is achieved. In fact, the Guatemalan constitution specifies that "the State guarantees the exercise of this right (of private property) and must create the conditions to facilitate the owner the use and enjoyment of his/her goods, so that individual progress and national development are attained to benefit all Guatemalans."<sup>24</sup> Similarly, the Guatemalan Civil Code introduces "property limitations" in Article 473 and Article 494, starting with the provisions of special laws and incorporating the "established rights."

How are these restrictions managed? What policy definition and decision making devices are used? Colonial heritage is very heavy again in this area. The indigenous communities' rules, traditional right, were not formally acknowledged until recently and outside indigenous territories, and vertical practices of managing the rights over land did not allow for the creation of local management mechanisms that would have permitted to acknowledge rights to other subjects different from the owner.

To conclude, in Guatemala, the 19<sup>th</sup> century capitalist development did not lead to the liberation of labor and land or to the creation of the corresponding market. On the contrary, there was a return, even deeper than in neighboring countries, to servitude and feudal relations, without local or general regulation mechanisms. The large capitalist coffee production (with strong German presence) and banana plantation (with the presence of the United Fruit Company) were developed from the conditions inherited from the colonial situation, both in what concerns possession regimes and in the situation of labor. As in Mexico, at the same time, and to a lesser degree than in other Central American countries, land starts to be concentrated in the hands of small groups of people.

#### **1.4 The Failed Attempt at Promoting Modern Capitalism with Moderate Agrarian Reform**

In Mexico, El Salvador and Nicaragua, broad revolutionary movements were born as a reaction to this transformation. Numerous revolts and resistance actions that were harshly repressed also sparked in Guatemala, but it is only in 1944 that this country assumes a national reform initiative. The Arevalo and Arbenz governments promoted for the first time a series of fundamental political and legislative changes that dealt with the two issues of land and labor management, aiming at creating conditions for a modern capitalist development and at overcoming the obstacles that kept Guatemala as a dependent and extremely poor country.<sup>25</sup>

These two governments modernized infrastructure and focused their policy in:

- Abolition of compulsory work, in rural milieu, establishing the first work code, the right to strike, the minimum salary, aiming at creating free labor markets.
- Agrarian reform, through the expropriation of part of unused lands and by making lands available to individual peasant families, being as property or rent for life.

---

<sup>22</sup> Besides, article 40 of the Constitution acknowledges the possibility of expropriation with prior payment of the good at market value due to proven collective interest, social benefit or public interest, and explicitly refers to the possibility of expropriating useless lands. Article 41 guarantees that the "protection to the property rights" prohibiting "confiscation of goods and the imposition of confiscation fines," specifying the prohibition of confiscation due to political reasons. It is not a coincidence that the exceptions to general declarations on properties refer precisely to land and not to other goods.

<sup>23</sup> Gleijeses, Piero. La Reforma Agraria de Arbenz. in Cambranes J.C., 500 Años de Lucha por la Tierra. Estudios Sobre Propiedad Rural y Reforma Agraria en Guatemala. Flacso, Guatemala, 1992.

It was also in 1945 that the Supplemental Titling law, "establishing a mechanism by which the land property title could be granted to whom had worked the land for ten years,"<sup>26</sup> was passed.

Another law, in 1949, sought to provide the tenants with more security and tried to force the land owners to rent their unused lands to producers at controlled prices.<sup>27</sup>

Decree 900 of the agrarian reform (Arbenz, 1952) did not have a socialist or revolutionary character but it generated a broad mobilization and a very quick organization in the rural milieu. It thus broke the mechanism to control labor and the subordination system of indigenous workers.

Probably it is more due to this reason than to the loss of its lands that the United Fruit Company and the land owners, supported by the United States and the armed forces, overthrew Arbenz in 1954. Land redistribution was reverted and the peasant and indigenous organization were harshly repressed.<sup>28</sup>

#### Box # 4

##### AMERICAN INTERVENTION IN TAIWAN AND GUATEMALA IN THE 50s

In 1954, the United States intervened to support the overthrowing of Arbenz, accused of promoting the progression of communism by agrarian reform. During these same years, the United States of America imposed in Asia in defeated countries such as Taiwan or Japan, much more radical agrarian reform processes to create the conditions of a vigorous capitalist development.

Although it is true that the average quality of soils has to be taken into account, the lack of proportion between these policies is flagrant:

1. In 1953, in Taiwan, under USA control the "Land to the Tiller Program" limited land ownership to 2.9 hectares, expropriating and redistributing the remaining lands to the peasants.
2. In Guatemala, the agrarian reform that caused American intervention considered as untouchable estates those of less than 90 hectares. The proposal was to expropriate unused lands of estates that had from 91 to 272 hectares, only if less than two thirds of the lands were farmed, and unused lands of estates of more than 272 hectares.

If development has been so spectacular in Taiwan and Japan, it is due to a great extent to the impulse these agrarian reforms caused and to the related agricultural policies.

In Guatemala, as we know, the social and economic situation evolved very differently.

The failure in the attempt to modernize and democratize the country in the mid 20<sup>th</sup> century resulted in the persistence of extreme land and wealth concentration and in the exclusion and extreme poverty of most of the peasant and indigenous population. Obviously, this is where to

<sup>24</sup> Although this law meant some progress in what concerns the colonial approach of the land issue, it probably had a nefarious effect on indigenous communities. The very reduced access of Indians to judicial mechanisms, the operational failure of publicity mechanisms that should have permitted protection of third-party rights and the bad functioning of Property Registries (in principle, the rights over community lands lasted forever) or even corruption, transformed the supplemental title as one more means towards privatizing community lands.

<sup>25</sup> José Alwyin Oyarzun, Op cit page 81. Decree 712. Law of mandatory rental. However, the used modalities do not seem to have been the most appropriate. The law forces owners that had rented land parcels during the last four years to go on renting them for two more years.

<sup>26</sup> Handy, Jim. *Reforma y Contrarreforma: Política Agraria en Guatemala. 1952-1957*, in Cambranes J.C., Op Cit., 1992.

look for the causes of the internal armed conflict of more than 30 years between 1962 and 1996 that resulted in more than 200,000 deaths.

## 1.5 Improbable Land Markets

With a broad virgin forest area and an active process of agricultural frontiers, a positive evolution of access to land could be expected even though the agrarian reform had been impossible, based upon gradual development of the true land market.

From 1955 to 1962, settlement projects were promoted by allocating lands to peasant as individual properties. Accumulation in the hands of social non-peasant groups was the result. From 1963 to 1979, with the creation of INTA and within the framework of policies committed by the Alliance for Progress, the settlement process continued with little impact on the agrarian structure. During the 70s and 80s, settlement was intensified on the lower Northern Part of the country (Alta Verapaz, Sur del Peten and Franja Transversal del Norte). However, the El Peten Promotion and Development Corporation (FYDEP, in Spanish) reproduced and expanded, in its settlement endeavor, the traditional polarized tenure structure of Guatemala.

Since the 80s, before the state lands availability susceptible of being handed over to requesting peasant was exhausted, the purchase of lands started to be used. INTA abandoned the settlement programs and started a "land bank" program based on buying and reselling lands to organized groups. The "Peasant Association Enterprise" model was promoted and the land was handed over as an Agrarian Collective Heritage.<sup>29</sup>

Between 1984 and 1996, three land purchasing programs were implemented, the Cent Foundation Program (FUNDACEN, in Spanish), the National Land Fund and a program promoted by FORELAP (Fund for the Labor and Productive Reinsertion of Repatriated Population). According to Jaime Carrera, 7,191 beneficiaries were able to access 51,377 hectares with the support of this program.<sup>30</sup> This is not very significant in the frame of the agrarian problem breadth nationwide.

These programs worked with different modalities, but all operated by the purchasing of state land at market prices. FUNDACEN promoted the settlement of individual producers, with USAID support, sponsored by the *Asociación General de Agricultores* (General Farmers Association, or AGA)<sup>31</sup> and without taking into account the peasant organizations. It was a mechanism of purchasing, division and sale on credit of estates bought in the market, which permitted the creation of 1400 parcels of four blocks in average each. The governmental initiative was even more reduced. From 1986 to 1989, the national lands commission handed 2430 hectares over to 1600 families, preferably collectively. It could not go on with this mechanism due to the lack of resources.

From 1954 to 1996, numerous laws foresaw the taxing on unused lands and even sometimes expropriation, but none was really applied.

Between 1954 and the signing of the peace agreements, the problem of access to land went on growing in importance. The historical elements we formally summarized show that in the mid

<sup>27</sup> Fontierras: El Modelo de Mercado y el Acceso a la Tierra en Guatemala. Balance y Perspectivas. Byron Garoz, Susana Guaster. CONGCOOP, CNOC. April 2002. IRDC Canada. Guatemala. Page 15 and following.

<sup>28</sup> Garoz et al. Op Cit, page 25.

<sup>29</sup> Asociación General de Agricultores (General Farmers Association), which represents the large producers.

20<sup>th</sup> century, a true land market had not been developed.<sup>32</sup> The observation of land policies and interventions that occurred in Guatemala in the last five decades seem to confirm that this blockage persisted even in 1996. In an agrarian situation such as that of Guatemala, land market segmentation is extreme. Between the small owner rights market, often based in documents not legally validated and the landowner state market, there is no possible articulation. This last market of rights over large properties is probably not very active, except at moments in which, for one or another reason, a certain production item undergoes important difficulties. However, in these cases, strong producers have the necessary weight in the state to benefit from exceptional assistance that distorts the market on their behalf.

It is known that small-scale family production tends to be generally more efficient than large production, but market distortions and market blockage on the rights over land help to explain why there were no significant changes in the agrarian structure in spite of the great expansion of the agricultural frontier.<sup>33</sup> Since land is not a merchandise as others, but something inexplicably related with humans institutions, it is clear that, even without apparent distortions, the land market can hardly regulate itself.<sup>34</sup>

In Guatemala, with such a polarized agrarian structure and social and political structure still dominated by colonial heritage, we must not be surprised that in the absence of a mechanism that could cause a quick and substantial change in the correlation of forces, the market has failed in redistributing access to land to those who could have been able to optimize its use for the well-being of the majority.

---

<sup>30</sup> The agrarian reform helps to create active land markets. This has been proven in several Latin American countries. It is one of the conclusions reached by professor O. Delahaye (Agricultural School, Universidad Central de Venezuela). Renta y Mercado de la Tierra Agrícola: Algunas Indicaciones de los Casos Venezolano y Chileno. Land Reform Bulletin, FAO, 1996.

<sup>31</sup> See Binswanger, Feder, Deininger, Power, Distortions, Revolt and Reform in Agricultural Land Relations. Working Paper. World Bank, July 1993.

<sup>32</sup> See Merlet, synthesis of the Agrarian Reform and Land Policy Proposal Agenda, as well as its whole version, Politiques Foncières et Réformes Agraires. Cahier de Propositions. APM, IRAM, October 2002.

## 2. Toward Rural Development for All

### 2.1 Peace Agreement and Land Issues

The signing in 1996 of a peace agreement between the government of Guatemala and the Guatemalan National Revolutionary Unity is the historical event that ends a bloody internal conflict of more than three decades and opens the doors to the search of solutions to the difficult situation in the country under the supervision and with the support of the United Nations Verification Mission in Guatemala, MINUGUA.

The Peace Agreements recognize that the land issue is one of the structural causes of the contradictions that cause the armed conflict. Several agreements contain elements related to land. We will address these further below.<sup>35</sup>

The agreements acknowledge the identity of indigenous people and their rights, emphasizing the need to eliminate discrimination against them. They open the door to make progress in acknowledging their social regulation norms and their traditional law. The Agreement on the Identity and Rights of Indigenous People acknowledges the special importance of the land issue and proposes new elements, although not always very clearly. This lack of clarity is evidenced in what concerns the restitutions of communal lands and the compensation of rights, which need a more detailed legal analysis (point F7).<sup>36</sup> It still refers to the registry titles as sole proof of the existence of rights (see point F2), but at the same time it introduces important elements to acknowledge multiple rights to land and resources (see point F6). The government's commitment of adapting or promoting "the development of legal regulations that acknowledge land management by indigenous community according to the administrative laws" is particularly important but the idea that breaks the concept of absolute property and prepares conditions for the promotion of a local territorial management mechanism is merely sketched out. As the agreement is drafted, the acknowledgment of indigenous people's rights concerns mostly cultural rights, and the part corresponding to the rights over land shows some progress which needs to be consolidated.

The Agreement on Socioeconomic Aspects and the Agrarian Situation clearly establishes in its introduction the need for an "Integral strategy that facilitates the access of peasants to land and other productive resources, to provide juridical security and to favor the settlement of disputes." It also establishes the government's responsibility of building a Guatemala that permits a dignified life for of all its population. It insists on the need of having all sectors participate in defining the policy and on the importance of decentralizing socioeconomic decisions with real transfer of governmental economic resources to the local level.

Part III of the agreement also deals with the topic of agrarian situation and rural development. It specifically considers the creation of a trust fund of lands as a direct means of promoting access to land. This fund is aimed at promoting "the establishment of a transparent land market" and at granting natural resources management concessions according to their sustainable use.

The agreement promotes a legal reform "that permits to end the defenselessness and dispossession that have affected peasants and, particularly, indigenous people; that permits the whole integration of the peasant population to the national economy; and that regulates the use

<sup>33</sup> Agreement on social and economic aspects and agrarian situation, agreement on the identity and rights of indigenous people, agreement for the resettlement of communities uprooted by armed conflict.

<sup>34</sup> Particularly, conditions of the legal applications of regular lapsing. We can assume that the absence of regular lapsing in this case would favor the community, see line c of point F7 in the agreement.



of land in an efficient and ecologically sustainable way in accordance with needs for development.” This reform considers “simplifying the entitlement and registration of property rights and other real rights”, creating “a specific agrarian and environmental jurisdiction,” revising and adapting the legislation on unused lands, and protecting *ejido* lands and municipal lands. The agreement proposes the creation of institutions that help solve land conflicts, “the establishment of a decentralized registration and catastrophe system, that is for multiple users, efficient, financially sustainable and of easy and mandatory updating”. Without the need to enumerate all the provisions contained in the agreement, it is important to underscore that it includes the promotion of an easy-to-collect territorial tax for municipalities, to contribute to discouraging the tenure of unused and sub-used lands, as well as a significant increase of the annual tax on unused lands.

If the agreements point to essential objectives of great importance for Guatemala, the means to achieve them are still to be built, to a great extent. We can doubt, based on country’s history, that distortions of agrarian structures may be corrected in a short time only through market mechanisms. The establishment of effective taxes on land will probably be difficult, as it has always been in a social and political situation as the one prevailing in Guatemala.

There is a strong risk that the cadastre and the registry do not privilege local management, as agreements require. Strengthening local management, be it in *ladino* or indigenous territories, will take a long time.

But the agreements created a basis for progress and permitted the generation of a very strong participation dynamic in different sectors, as it can be seen today in the country. The peace agreement and the United Nations oversight permitted a civil society emancipation that had not been seen in Guatemala before. They generated rural organizations and recognition of indigenous organizations. In fact, important negotiation spaces were created, and alliances of different sectors were begun to be built. In this regard, the perspectives that they opened go much further than what is described by their specific proposals.

## 2.2 Current Dynamics

### 2.2.1. Emergence of Dynamic Sectors of Small Mercantile Producers

In spite of adverse conditions in Guatemala’s rural milieu, during the last decades interesting development dynamics involving small producers, indigenous and non-indigenous, have developed. As AVANCSO points out in its resource supplement 15, we cannot longer speak only of a large estate versus small agricultural property in Guatemala. “*Currently, agrarian reality is much more than that*”.<sup>37</sup> Some of these dynamics are developed below, notwithstanding the existence of others in other sectors.

#### **a. A certain development of small coffee production.**

Although coffee in Guatemala is mostly produced in large estates, small- and medium-scale producers are in the process of emerging. From 1988 to 1998, the production of small coffee producers almost tripled in value, representing 9% of national production.<sup>38</sup>

<sup>35</sup> C.E. Ordoñez, S. Kristoffer Kloft, et al, AVANCSO. Research supplement 15. Regiones y zonas agrarias de Guatemala. Una visión desde la producción social y económica de los campesinos. Guatemala, May 2001. p. 213.

<sup>36</sup> E. Baumeister, *Formas de acceso a la Tierra y al Agua en Guatemala*. Human Development Supplements 2001-4. UNDP. Also see AVANCSO, Op ci, P32.

We can assume that if there were an easier access to land, the relative weight of the small coffee production would increase very much, as happened in Honduras, a neighboring country where small producers are responsible for most coffee production, one of the first exports of the country. In several Central American countries, the capacity of small farmers for producing quality coffees and inserting themselves in fair-trade mechanisms became an important factor of resistance to the fall of world prices.

#### **b. Efficient indigenous producers of vegetables in the High plateau<sup>39</sup>**

In the 80's, a significant part of the high plateau agriculture turned back to producing vegetables for exports. The labor intensity and fine agriculture knowledge required by intensive vegetable production in such diverse ecologic milieu made peasant production the most appropriate. Different vertical and horizontal integration systems have been developed to permit exporting – with its accompanying advantages and disadvantages – with vulnerability for producers that depend on agribusiness chains over which they have little control. In general, however, employment and family income improved, labor migration decreased and the indigenous producers' know-how was acknowledged as a great potential for the country.

In other regions, small peasant mercantile production for the national and Central American market has developed in relation with growing potatoes, vegetables and fruits. Producers are small farmers and they trade through private traders that buy directly from them in their farms or at locals markets, and in some cases through cooperatives such as in Almolonga, one of the experiences quoted by several mission interlocutors as being successful.

Large Guatemalan entrepreneurs acknowledge the efficiency of vegetable production by peasant in the high plateau.

#### **c. Exemplary community forestry producers in the northern low land**

During the last years, the indigenous communities were able to obtain large forest areas in concession within the framework of the promotion of the Maya Biosphere reserve sustainable management. Out of 450.000 ha tropical forest control by the Peten forestry communities' association (ACOFOP), more than 70% is certified by the Forest Stewardship Council. The quality and sustainability of lumber products and of non lumber products use has been acknowledged worldwide.<sup>40</sup>

The community forestry concessions in Peten have shown that the communities can make their livelihood from forest management and that they can take care of forests when they are given the possibility of doing so. Articulating sustainable exploitation of resources, biodiversity protection, cultural heritage enhancement and eco-tourism activities are promising perspectives for Guatemala that can obtain significant weight in the country's economy.

### **2.2.2 Difficulties in Some Large Production Sectors**

Another important element of the rural sector's current outlook concerns some problems that large-scale production must face.

---

<sup>37</sup> AVANSCO, Op cit, pages 29 and 33.

<sup>38</sup> Guatemala has the first place in the world concerning certified community production surfaces, more advanced than countries with much larger tropical forest areas such as Brazil, for example.

The first problem is related with the fall in traditional export product prices, the clearest example in the last years is coffee. The sector of coffee corporate producers is in crisis, mainly where ecological conditions are not optimal for coffee and in estates that had not sufficiently diversified their production. Bankruptcy has led to land sales. Of course, the simple reproduction of the same production system in other hands is not an alternative. A comparative analysis of the capacity to resist crisis in the different production systems existing in Guatemala would help to design in what direction to take the re-conversion of this sector. FONTIERRAS could help transition in this case, favoring the establishment of viable family units or cooperatives.

The historical exploitation mechanism based on using servile labor has been transformed with time. The weight of colonization in the coffee estates has decreased much, and a true labor market has been created with the implementation of the minimum regulations existing in every modern society (minimum salary, union rights, etc). These changes have forced large producers to transform themselves.

The evolution of the sugar production shows an agribusiness evolution, which responds partly to changes in the labor market and which would merit a more careful analysis. Sugar mills have promoted production modernization processes and have opted to directly control most of the sugar cane plantations in their own lands or in rented ones.<sup>41</sup> There are other evolutions in large-scale production, toward what is called agrobusiness, with production for export – for example, berries – that requires cutting-edge technology and high investment levels per hectare. However, it seems that for a large part of Guatemalan production, there is not a massive transition to those forms of intensification.

The large entrepreneurs with whom the mission met acknowledge that the internal market weakness, an immediate consequence of poverty, was one of the greatest problems for development. This seems to indicate that part of the business sector would support a different development model, one that is not longer based on exclusion and discrimination of the majority but , on the contrary, on a great dynamics that is not only supported by exports, but also the expansion of internal consumption and demand.

## 2.3 Different Visions

One of the important achievements of the process born after the peace agreement has been to permit the participation of all social sectors in the reflection regarding possible development ways. MINUGUA synthesized in 2002 the different visions of the main players involved in rural development.<sup>42</sup> Let us see some main differences.

The sectoral representatives of large entrepreneurs, CACIF (Agricultural, Commercial, Investment and Financial Associations Coordination Committee) and the Agricultural Chamber, propose a poverty reduction strategy of equitable development that would permit the modernization and increase of agricultural production. This approach would be fundamentally based on market mechanisms, not only for merchandise produced in agricultural processes or inputs, but also for land and labor. Both institutions underscore, with some differences, that land on its own is not a source of wealth but that it is “a means of production” and that it requires appropriate conditions to be able to produce. Both state the need for a free land supply and demand market, but recognize that it does not satisfactorily exist for the moment and it

<sup>39</sup> Before 1980, they controlled only 20% of sugar cane. Between 1996 and 1997, they directly controlled 79% of production achieving higher yields than external supplier s' estates. AVANCSO. Op cit. p.69.

<sup>40</sup> MINUGUA. *El debate sobre la política de desarrollo rural en Guatemala: Avances entre octubre de 2002 y abril de 2002*. April 2002. 43 pages.

needs to be strengthened by ad-hoc intervention (rural financial market, market information, etc). Both consider it is convenient to strengthen the decentralization and territorial administration modality. Both consider that agribusinesses are essential, but the Agricultural Chamber thinks that commercial opening policy must be appropriately managed. CACIF seems to insist more in the need for consolidating juridical certainty on land property, while the Agricultural Chamber emphasizes the business aspect and the promotion of agribusinesses, showing some concern for expanding the internal market as a complement to external market processes.

The platform for rural development (made up by several NGOs and peasant organizations<sup>43</sup>) and CNOC (Peasant Organization National Coordination Entity) aim at changing the commodity agro-export model. They consider it indispensable that processes to distribute land and agrarian reform are not limited to market mechanisms, if there is to be improved access to land. They point at the need of having a specific agrarian jurisdiction, the need for a “social function” of property, and the importance of the small and medium producers in national development. They consider that public policies should have a fundamental role in the construction of the development project.

The Agricultural Ministry (MAGA) and the Planning and Programming Secretary, which is responsible for preparing the Poverty Reduction Strategy, are the governmental institutions accounted for in the MINUGUA work. These agencies advocate for a “new rural character” with human development without exclusion, with food security and responsible management of natural resources and for local government strengthening. For them, existing mechanisms to access land (FRONTIERRAS) and to mediate (CONTIERRA) are adequate tools.

There are numerous specific aspects for which there appear to be coincidences between organizations whose global positions are relatively different. For instance, the need to preserve natural resources, the possibility offered by rural tourism and the importance of conceiving rural development beyond strictly agricultural activity, but also the promotion of business initiatives and particularly small and medium companies.

In general, awareness in all sectors of changes occurring is perceived to a larger or smaller extent. Also, old schemes and ideas are thought as not longer appropriate for analyzing reality, and obstacles for achieving sustainable development with equity are no longer acceptable.

However, discourse is still quite marked by the past, both on the side of the business groups and on the side of peasant organization.

The main difficulty seems to be in generating processes that permit these main contradictions to gradually evolve toward more favorable actions for majorities, without reaching antagonism and confrontation levels that could endanger peace. Probably, work should be oriented more toward “processes” that could permit to progress toward “a consensual development model.”

In fact, beyond differences, there is a shared will of building together a country with less poverty, more development and wealth. Peace agreements insisted in this fundamental point and, beyond difficulties that naturally persist, there is evidently an increasing capacity of acknowledging

---

<sup>41</sup> The Association for the Advancement of Social Sciences (AVANCSO), the Legal Action in Human Rights (CALDH), The Indigenous and Peasant National Coordination Entity (CONIC) and Inter-dioceses Land Pastoral (PTI).

differences and of seeing the advantages that can be obtained by diversity, not only biological, but also economic, social and cultural.<sup>44</sup>

---

<sup>42</sup> In this regard see chapter two “From Unequal Development to Differential Development” in the MINUGUA report of April 2002, debate on rural development policy in Guatemala.

### **3. Contributions to the Debate and Some Elements to Progress**

#### **3.1 Deepening Reflection on Some Conceptual Aspects**

The words and concepts used to discuss land issues always constitute traps, and are lent to an endless number of contradictions in terms. This difficulty is due in part to the existing contradictory interest concerning land, but not that alone. It also stems from the fact that the historical reality and, at times, cultural context that existed when these concepts were defined are different from those prevailing today.

Recommendations constitute an invitation to generate a process of deepening reflection, which should not start exclusively from current laws and should not deal exclusively with legal matters, but in fact with the reality of social relationships which are interwoven around the land issues.

##### **3.1.1. Where does Legitimacy Concerning Rights over Land Come from?**

Laws change with time. Their adaptation and modification is one of the important functions of the Legislative power. There can exist at a certain point in time a contradiction between rights acknowledged by law and the possibility of having this right recognized by part of the population. There can be rights without the legal proof of the existence of these rights.

In the case of land rights, this issue is transcendently important and the debate on the Property Registry modernization and the organization of a multi-end cadastre evidently follows it.

Would not it be convenient to wonder if acknowledging rights following the issuances of the real title is the only viable proof of legitimacy or if, in fact, there are other legitimacy sources that have different origins? Asking this question does not necessarily imply to change the legal mechanism to acknowledge property acquisitions immediately, but would require deepening our acceptance of legitimacy. Would not it be worth to approach the issue of lapsing beyond the protection of Indian lands and the untouchable private property? These two concepts inherited from history may not be operational anymore in a society in the process of becoming modern.

##### **3.1.2. Land Property. What are we talking about?**

The concept of “land property” represents an exemplary case of the vocabulary difficulties we mention before. In the first part of this report we saw some elements that could help us understand how the concept was created in Guatemala. Being aware of where this conception comes from (colonial history and importing the absolutist concept from the French Revolution) and having in mind it is in no way universal or eternal in human society helps to interpret reality differently and to have new ideas about laws.

The promotion of new mechanisms to manage resources (the destruction of which does not affect only the apparent owner, but the whole society) in a sustainable manner, and of development processes for the whole population lead to establish standard rules, which express the rights of every society on earth. Some of these rights can be managed from the central government, many others cannot. Therefore, decentralization processes, local power strengthening and land management become ever more important. A reflection concerning the plural character of land rights, not only in the indigenous community where this concept has perpetuated, but in every land tenure system, is necessary while registration forms and protection of these rights are discussed.

Optimization of business functioning does not necessarily depend on land property. In many cases, it is the opposite, access to land as “production means” can become safer without depending on property, as the agrarian structures of many development countries show, through renting or similar modalities.

Probably, it is not enough to go on distinguishing among private property, communal property, *ejido* property and national property, but it is necessary to reflect on the different possible relationships between all the rights involved by these terms. The success of the forestry concession of Peten is just one example of how a process of this kind can be inspired.

In this regard, instead of speaking about land markets, would it not be better to speak about land rights markets? The value of property is measured more and more by what we can do with it, rather than by its physical dimensions.

Any social system contains in it contradictory relationships, and there is a necessary dialectical movement between private and collective interests. From this fundamental contradiction, the possibility of balance, progress and evolution is born. Denying either of the two poles of this contradiction and recognizing only one leads ineluctably to disaster. This contradiction must be subject to arbitration<sup>45</sup>, to explicit and transparent mediation in social institutions. The relationships between Man and Land are not just another detail, but a substantial element of the social system.

In Guatemala, peace agreements establish mediation and consensus building instruments directly related with this arbitration between individual and society. This historical option, by avoiding extremes (private property in the one hand, and individualism and collectivism denied on the other), leaves to Guatemalans the grand task of sustainable development through the building of “property systems”. Redefining basic concepts is inevitable, not so much theoretically or scholarly, but practically (at social experience level), which should then be expressed in laws<sup>46</sup>. The discussions around the cadastre illustrate this process, with the risk of thinking that starting with a law is the safest way, something that is not completely evident.

### **3.1.3 Can Land Market Mechanisms Reach Desired Objectives of Optimizing Resources for the Country?**

Before being able to answer this question, it is necessary to consider the production forms that could optimize the use of land for the country. It is not a simple question and answers can change all the time. If at a certain point family units that use much labor can optimize the production of wealth, at another point in time mechanized units with a higher productivity can be the ones to do so.

What is important is to debate what is wanted, not on ideological terms, but in economic and social terms. Economic evaluation criteria are not the same for companies and for society as a whole. The option of modernizing sugar production is probably the best option for large Guatemalan companies in the south, but is it the best option for the country? Maybe, maybe not. Before discussing any proposal of access to land in the southern coast for small producers without or with little land, it will be fundamental to have an idea of what is to be promoted and

<sup>43</sup> Napoleon’s civil code does not arbitrate but overlap private property and public interest, increasingly prioritizing the first one.

<sup>44</sup> Things never occur in the opposite sense in reality. First, reality is change, usually little by little and, based on these changes, the relative weight of the different position changes. Then laws are passed to regulate and make official the changes already experienced in one way or the other. If necessary, at this stage the Republic’s constitution can require amendment, but this is the last step and not the first one.

why. If we can prove that small or medium producers would use the rich lands of this region in Guatemala in a more appropriate way for the country – with more creation of wealth, with more value added per hectare, with more employment – by using different production systems, then it is worth asking how we can go towards this situation.<sup>47</sup> Not only landless peasants would be interested in this process but also entrepreneurs and the poor in the cities. Besides, the necessary alliances could be made so as to reach the objectives of optimizing the use of resources on one way or the other through agrarian reform processes or through other mechanisms.

In the opposite case, debate remains moral, at the level of conceptions of what is fair and what is not. And if in these conditions, changes in the sugar cane production control occur, probably they will not modify the production systems, and will just replace the owner for a “collective company”, which is not likely to have the economic efficiency of current systems.<sup>48</sup>

We have seen there is an incipient acknowledgment of the efficiency of family production in some sectors. The large corporate production is also historically acknowledged. What comes out in these evaluations are individual success criteria. Would it not be useful to study the respective advantages of the different production ways from the point of view of society and considering this time the interest of the country as a whole instead of the business owner’s individual interest?

The answers concerning who is more efficient are not predefined and are not known beforehand. Large properties in Guatemala today can not be wholly assimilated to the extensive estates that prevailed in agriculture one century ago. This Sector obviously contains very different productive realities. Agrarian reform traditional solutions applied in Latin America are not necessarily convenient to solve the agrarian structure problems. But, can market mechanisms of the Land Fund kind do it? This is a question the country must ask, stipulated by the peace agreement, after an initial phase of the functioning of FONTIERRAS.

If we start from the hypothesis that small mercantile family businesses have interests in the country’s agriculture, we will have to evaluate how long it is necessary for a Land Fund type mechanism to permit the transfer of a significant part of property to that type of producer. The mobility rate observed in systems with established land markets could be taken as an indicator, and an indicator better adapted to the reality of Guatemala could be calculated, if necessary.<sup>49</sup>

It will also be worth to ask about the global transfer implied by the purchasing of this land, a transfer from the poorest producers, called to play an important role in economic development, to the current land owner. From the point of view of the country, the brake to the accumulation and modernization that paying the land would imply, should be compensated by the use that those who sell would give to those capitals. If in just one purchase/sale transaction things may seem easy to understand and control, things become complicated when we speak about a process and about transforming the whole of the agrarian structure and not just part of it.

---

<sup>45</sup> In the 80s, it was shown in El Salvador that large sugar cane production produced much less added value for the country than small peasant production.

<sup>46</sup> As it happened many times in the last decade in Honduras and Nicaragua during agrarian transformation processes.

<sup>47</sup> With a “normally active” market land in a developed country, 2 or 3% of land changes hands through purchase/sales every year. In Guatemala around 2% of producers control about 65% of land. An objective of redistributing through purchasing/selling half of this higher stratum would imply more than 30% of farming land. With a land market that we assume as little active in Guatemala, let us hypothesize that 1% of the farming surface is sold each year. Let us assume, which is false, that 1% involves only the largest estates. Let us suppose on the other hand that there are not concentrations for division processes. It will be necessary to wait at least 30 years so the market redistributes half of the largest estates and it would require long-term financing mechanisms with extremely large financial means, even assuming it is achieved without regulation mechanisms to avoid speculation processes and increase in land prices. Under these conditions, we understand why CNOO incorporates to its proposal agrarian reform with expropriation processes.



As the Agricultural Chamber points out correctly, land property is not enough and you need other ingredients so wealth can be created. A test of agricultural policy, of direct or indirect subsidies, of tariff protection or frontier opening, must be part of the discussion on the type of society and agriculture to promote.

With markets, a similar mystification to what we describe for property is found again. Regulating markets is not a sin, and all developed countries have used this mechanism to support their development (see box number 5). It is a need, when it concerns marketing very particular kinds of merchandise, such as land rights.

#### Box # 5

##### EXAMPLES OF REGULATION POLICIES IN THE LAND RIGHTS MARKETS IN EUROPEAN COUNTRIES<sup>50</sup>

**Denmark** has been the first country in Europe to have a modern agriculture policy based on promoting and modernizing small family agriculture, since the middle of the 13<sup>th</sup> century. This policy includes intervening in the land sale and rent market so as to limit land concentration and having policies for the settlement of young farmers.

**The Netherlands** created a Land Administration Foundation in 1950 that operated mainly in settlement areas, linking state institutions and producers' organizations.

**France** has gone very far in the regulation with a range of policies that point to obtaining the desired agrarian structure in each region. **SAFER** (Land Regulation and Rural Settlement Companies<sup>51</sup>) created in 1960, are an original intervention organism of land sales market. They must be informed of every transaction occurring in their territory; SAFER permanently follows up land prices and has the priority to buy parcels at prices corresponding to prices observed in the market, even if it is inferior to the price asked by the farmer who sells, so as to participate in the creation of viable family farms, reselling it to the producers who need it most. They work in coordination with the Agricultural Credit Bank.

In the south of **Italy**, **Spain**, and **Portugal**, there were **agrarian reforms** in the 20<sup>th</sup> century to correct the strong polarization of agrarian structures and to aid development.

So as not to get into fruitless ideological debates, this area is one that would permit to progress at local level and to experiment options that are convenient for the country. Current debate concerning the reform of FONTIERRAS includes a regionalization proposal that could be an excellent base to work and prepare proposals. Guatemala can profit from the experience of other countries in these aspects, and particularly of European countries, which have been regulating land markets for a very long time in different ways according to different places. It would be convenient to distinguish between property and the rights to produce. Optimizing the use of land is not necessarily achieved through regulating property or having agrarian reform.

These short lines do not pretend to close the issue but, on the contrary, to open debate.

### 3.2. Some Central Points Requiring Support

The points we have just mentioned take us to specify some fields requiring special effort and support from cooperation institutions.

<sup>48</sup> See Merlet Michael. *Cahier de propositions Politiques foncières et réformes agraires*. IRAM-AM, Oct,2002 and Hernandez Maria Isabel, *Ejemplos de políticas de tierra en varios países de Europa Occidental*. IRAM, RESAL, August, 2001.

<sup>49</sup> They related public organizations and producers' representatives.

### **3.2.1. Helping to Document the Advantages of Family Production and Training the Professionals the Country Needs**

Cooperation is not fond of financing studies, thought or training processes. However, the debate above concerning the respective advantages of small production and large production could not be possible without a specific research effort, without surveys and analyses to generate data that do not exist in the country.

Besides specific studies, it would probably be necessary to strengthen training at universities so that agriculture studies can better contribute to national debate. Probably the same is required for jurists concerning property issues.

### **3.2.2. Making Progress in the Local Management of Land**

Work at local level is particularly important today. On the one hand, decentralization and support of municipalities are basic links to build a more efficient and democratic social system.

The territorial management local mechanism permits to overcome the old separation existing in many development programs between poor and not poor. Besides, the local level has revealed it is more appropriate to solve conflicts created by access to resources and their use. Both the Peace Agreement and the CACIF development proposals highlight the importance of strengthening territorial administration processes.

Besides at local level, tomorrow's models can be invented and new ways to solve the contradictions between individuals and society in each case can be found. This is true for the acknowledgment and administration of rights and also for regulating the rights market.

The creation of true local governance is a great challenge and international cooperation must go on contributing in this aspect.

### **3.2.3 Finding the Ways to Walk Ahead and Not Stumble**

International cooperation has difficulties in supporting processes, when the objective is not quantitatively defined beforehand. Supporting processes means supporting players and therefore accepting risks. It means to accept not to have absolute control of what is happening and to obligate oneself to influence without having nationals lose leadership.

We must point out several issues:

- It is necessary to learn and integrate experiences from other countries, other regions, but not only the best practices or success stories: much is also learned from mistakes and failures, and sometimes more than from success. One can never mechanically extrapolate these experiences. They are useful for providing ideas, not solutions.
- The gravity of problems and the importance of challenges require being audacious. But audacious does not mean irresponsible and the mechanism used must be conceived so that mistakes are not fatal for the whole process.
- Pilot projects allowing for mistakes and for learning by doing are required. On the contrary no social capital is accumulated.

- Mediation and peace culture have to be built. It does not imply to stop fighting to satisfy one's interest, but fighting otherwise. Generally, projects do not favor learning governance and they work as a small vertical state whose influences disappear when resources are exhausted. Several international cooperation organizations have started processes aimed at correcting this problem (World Bank CDD Projects<sup>52</sup>, European Union Sustainable Development Territorial Projects, for example)

The most important effects after intervening are not always what were expected. Mobilizing players, involving them in formulating proposals, are a considerable progress after peace agreements. This is a reform that does not solve everything, but allows for progress, and this is better than a reform which would go beyond, but which would mean going backwards due to the reactions it would generate.

The main difficulty now for all actors, either large private corporations or peasant organizations, is to go on building without getting into open confrontation and chaos.

---

<sup>50</sup> Community Driven Development.

## 4. The Role and Actions of the International Land Coalition

### 4.1 The International Land Coalition

#### Box # 6

##### MISSION OF THE INTERNATIONAL LAND COALITION

The International Land Coalition is a world alliance of intergovernmental, governmental, and civil society organizations (OSC).

The Coalition cooperates with poor people in the rural areas to provide them with a larger and safer access to natural resources, especially lands, and to permit them to participate directly in the policy and decision making affecting their livelihood at local, national and international levels.

The Conference on Hunger and Poverty that took place in Brussels (Belgium) in November, 1995 and was sponsored by the International Fund for Agriculture Development – IFAD, created the Popular Coalition to Eradicate Hunger and Poverty, which has become the International Land Coalition, aiming at rekindling support for agrarian policies to favor the poor in international plans and programs. It was acknowledged that to do so it was necessary to tackle problems already presented in former agrarian reform initiatives. This would be achieved by creating favorable conditions for dialogue on appropriate policies and for practical actions in the communities at domestic and international level. The organizations committed themselves to form an alliance of peers that would include their common concerns in a single program: leveraging the action capacity of poor people in rural areas, by improving their access to productive assets. Additionally, they determined that a coalition should stress the experience of civil society and its initiatives to secure rights over resources for the rural poor and to increase their participation in decision making.

Those who were directly interested gathered in a peer alliance to exchange opinions on existing problems. A common perspective was obtained in this way concerning the conditions and strategies for action. The common perspective reveals that the policy and institutional reforms and measures exceeded the areas and specialties of each stakeholder. It also shows that the coalition needed to be a neutral space where dialogue and negotiation of differences should be possible within a flexible framework in what concerns the degree of commitment. Thus, the Coalition is not the projection of any of its members. On the contrary the Coalition acknowledges that effective alliances made up by multiple direct stakeholders start from understanding all the members' programs, because a real value of the Coalition is adding up the knowledge and capacity of its members, profiting from synergy opportunities, establishing new ways of cooperation among different members and influence each other to incorporate the improvement resulting from the coalition's analysis, demonstration projects and of studies aimed at action in their organizations. In this context, the Coalition is also a mechanism through which members can try innovative designs to strengthen the participation of poor people in rural areas, to improve the creation of strategic policies and to channel resources more effectively. The basic idea is that members incorporate the positive result and lessons learnt from joint initiatives started through the Coalition in their policies and programs.

The Coalition's strength lies precisely in the different influence spheres of its members. The founding members of the Coalition are IFAD, The European Commission, FAO, the World Bank, and the World Food Program (WFP), as well as numerous civil society organizations and different governmental institutions. This composition reflects the Coalition's objective of

gathering civil society experiences in a common center aiming at formulating policies and carrying out demonstration programs. The number of members has increased to include a much wider set of civil society participants including farmer organizations, women, and landless people and indigenous populations, nongovernmental organizations and other community organizations of more than 40 countries together with other international organizations and regional development banks such as the Inter-American Development Bank that recently joined the group. Such diverse characteristics among the International Land Coalition's members give it a considerable capacity to achieve tangible improvements joining its members' policies and resources in coherent and well-aimed programs.

Establishing genuine partnerships and creating new ways to cooperate among organizations with different backgrounds is usually difficult. The problems and the difficult political issues related to land make it indispensable to have a neutral integration mechanism. In this regard, the coalition's gathering power lies in the fact that it does not set policies, programs or accurate technological approaches. Its function consists in establishing the necessary political space to dialogue on matters concerning land, acting as mediator and contributing with reflections and knowledge of how other countries and communities have approached and solved problems. The Coalition's members are among the most expert organizations in the necessary technical aspects to improve access to land and natural resources used on development systems. These members have joined the Coalition to contribute to creating the appropriate environment and conditions to formulate adequate policies and have forged program alliances from the local to the global levels. They consider that the coalition is a mechanism permitting them to instill the necessary political value to approach systemic obstacles that have disturbed the poor people's initiatives in the rural areas to obtain safe access to land and the necessary elements to improve production and family income, such as credit, training, extension services, technology and access to markets.

So that the corresponding political and practical changes occur in order for the rural poor to come out from poverty, the Coalition has created six interrelated programs:

- Knowledge Promotion Program
- Network Strengthening Program
- Community Empowerment Facility
- Women's Resources Access Program
- Towards a Common Platform for Access to Land
- LAND Alliances for National Development

These six programs developed as a response to the Coalition members' needs and resulted from the Coalition's promotion initiatives so that safe access to natural resources, especially to land, could have an important place in national and international programs. The Coalition's foundation programs were the agricultural reform network (ARnet) and the Service to Promote Community (SPC). ARnet has become the Knowledge Promotion Program and the Network Strengthening Program. Women's Resource Access Program was created to strengthen the initiatives of many organizations to take more into account the needs for women's resources. Towards a Common Platform for Access to Land and LAND Alliances were natural consequences of the good results obtained by the Coalition in the promotion of agreements concerning the land and the creation of collaboration formulas among multiple stakeholders.

The six program areas are framed by the following principles:

- Promoting active cooperation among civil society organizations, governmental institutions and intergovernmental organizations;
- Developing common points of view and practical knowledge;
- Improving the technical capacity of partner organizations and communities;
- Leveraging the capacity action of the rural poor by strengthening their organizations;
- Promoting open, participatory and transparent political spaces for a dialogue between those who influence changes related to distribution and land ordering and those affected by those changes;
- Creating processes to promote consensus, participatory formulation of policies and joint implemented programs.

In addition, the programs have five fundamental common characteristics, and each one responds to a different aspect in the institutional change process necessary to create appropriate conditions for all Coalition members and to increase their capacity. These five characteristics are:

- Aiming at reaching more common agreements regarding critical matters around land and resources and regarding related challenges;
- Improving practices, approaches, instruments and methods;
- Adopting new practices, instruments and methods;
- Creating new links and partnerships among communities, their representative organizations, governments (from local to national level) and relevant intergovernmental organizations, including bilateral institutions;
- Improving the stakeholders' knowledge concerning the scope of the contributions civil society organizations can make if they are accepted as full members.

## **4.2. Background, Actions Underway in Guatemala, and Perspectives**

The Agrarian Reform Network (ARnet) was established in 1998 with cooperation from UNRISD. On behalf of the Coalition, it carried out research on the most representative peasant organizations and NGOs in the debate concerning the land issue. The selection process has identified relevant domestic and regional partners that are still, in most cases, Coalition members. Among the Central American partners, CONGCOOP has qualified as the organization responsible for ARnet in Guatemala.

With CONGCOOP, the work relationship was established in 1999 aiming at carrying out joint analysis with other organizations concerning agrarian reform and rural development in Guatemala. The debate has been hot and results were presented in a public forum organized in October 2000.

The debate has encouraged and enriched proposals on priority issues in the Guatemalan agrarian agenda (Land Fund, registry and cadastre, rural credit, etc.). The steps taken in the past have permitted grassroots organizations to improve their proposals and renovate their visions, always close to real rural needs. Support offered to CONGCOOP by the Coalition and vice versa is still fruitful and renders mutual benefit. Exchange starts at local levels and reaches national and international level, as witnessed by the participation of CONGCOOP's representative in international events (IDB - Fortaleza; WSSD Johannesburg; ECOSOC Geneva and others) supported by the Coalition.

CONGCOOP has also promoted Coalition programs offering new opportunities to grassroots groups in direct support to landless peasants. Particularly the Service to Promote the Community was promoted in two Guatemalan departments to support UVOC (Las Verapaces) and CODECA (Mazatenango) to establish juridical offices to solve problems related to land. CONGCOOP has supported both organizations, CNOC members, in preparing the proposals and in executing the programs. UVOC's experience, which has just ended, to strengthen and clarify CODECA's role, is being structured along these months. Additionally, CONGCOOP has shared knowledge of other national experiences, as the analysis of their results and methodologies have permitted us to extrapolate elements to improve the CODECA project effectiveness.

What have been the benefits generated by the Coalition support to grassroots organizations involved in juridical aid for peasants? Reports and direct oversight project activities implemented by UVOC permit us to highlight the importance of the support of professionals in the solution of problems related to land.

The project became an institution that gathers individuals and groups, playing a unique social inclusion role. Juridical support for individuals who have always been marginalized and who were limited to occupy survival spaces has been shown to be as a fundamental element for changing the perception they have concerning their rights and responsibilities, acknowledging them the dignity of citizens. Thanks to the work performed by a lawyer and two legal assistants in Las Verapaces, the negotiation mechanisms and the perception of power in the localities has radically changed. Through the project, the vicious circle of local power that repressed the defense of rights by the poor has been broken. The people feel more secure and encouraged because they are backed by a professional who can help them in formal matters. The juridical office has permitted evolution through a new balance in local negotiations. On one hand, open conflicts have become consensus processes, and on the other, conflicts that remained latent could finally be expressed and the solution found. Guatemala teaches us, also through this experience, that land conflicts are multi-causal and multidimensional and that they are difficult to deal with.

The Coalition considers that the investment made in Guatemala has generated positive and sound experiences and relationships. They are useful for defining a new dynamic plan of activities nationwide. The Coalition's objective is facilitating processes through contributions from other realities, promoting a language that is clean from ideological pollution so that the people can really communicate in favor of future collective visions, break pre-manufactured schemes so that the significant players make timely decisions that are appropriate to the country's context.

The local will of breaking the dualism existent between society and violence as well as economy and inequality shows that there is a favorable social moment for articulated action by the Coalition. Besides, many of the members of the Coalition itself, active in the country around the land issue invite us to play a dialogue and innovation role.

### Perspectives

Concerning the elements contained in the first part of the document, elements that are particularly relevant for the Coalition can be defined.

1. The full integration of the peasant and indigenous populations in domestic economy.

2. The identification of production systems that may optimize the use of land for national benefit.
3. The strengthening of all social sectors' local power for a consensus management of resources, stressing the importance of the relationship between society and land / space.

These three aspects permit us to define a strategy similar to that which the Coalition expresses: maintain a neutral role, construct space for dialogue, and actively consider interventions by other active multi and bilateral organizations in the country, as well possible contributions from other experiences, to reduce the risk of repeating the mistakes made elsewhere.

The intervention strategy (related to the points mentioned in paragraphs 3.2.3.) is defined at two different moments: the first moment permits us to create conditions to find useful debate elements to define a viable route to favor structural changes concerning land in the country. This can be found together with the work promoted nationwide by researchers and professionals. The second moment considers the execution of the program promoted by the Coalition called *Alliance around Land*.

Besides, the Coalition recognizes that working as *facilitator of processes* instead of as achiever of clear objectives requires a *flexibility* inherent in human processes and very long-term *social times*.

### **4.3. Land and Development in Guatemala. Dynamic Plan of the International Coalition Activities in Guatemala 2003-2005:**

#### **4.3.1. Action: International Forum on Land and Development**

*Description:* Two days of debate to build new visions with contributions on experiences from other countries. Innovative approach for the public and private sector and for social movements.

A list of experiences to be considered in selecting the cases that are more appropriate to the country's reality:

- Lessons learned in the agrarian reform in the Philippines ANGOC - Tony Quizon
- Land and modernization – the Mexican case - Arturo Warmann
- Definition of a land and property rights reform to eradicate poverty and for security - Michal Carter - The University of Wisconsin
- Poverty eradication through access to land: the agrarian reform experience in Brasil - José Eli de Veiga - Universidade de São Paulo
- Needs for a modern vision of the State concerning the land issue: the case of Ecuador - Manuel Chiriboga
- New ways to access land: dinamization of the land renting market. Alain De Janvry - University of California - Berkeley
- Context analysis and recommendations for international organizations and social movements - Michel Merlet - IRAM
- Building alliances for land: the case of Indonesia - Noer Fauzi Rachman - KPA
- Land management forms: the case of the Leader programs in the European Union for poor Mediterranean areas.
- Productive alliances in Colombia
- Agricultural sector modernization: the cases of Chile and Costa Rica
- Positive experiences in small scale agriculture in Guatemala



- Lessons learned by the implementation and management of land funds in other countries.
- Mechanisms for regularizing land market, the French case.

*Involved players:* The Coalition is in charge of organizing the event, choosing panelists and subjects. The list of participants in the forum will be validated with some key references of the Coalition in the country.

#### **4.3.2. Action: Grupo Tierra, Discussion between Donors Concerning the Land Issue**

*Description:* Reflections coming from the contributions presented at the international forum. New ways to conceive an articulation of interventions around the problems related to land in Guatemala.

*Involved players:* The Coalition shall facilitate the meeting. The initial participants are UNDP, IFAD, FAO, The World Bank, IDB, MINUGUA, European Union, USAID, GTZ, the Dutch, Swedish, Canadian, Japanese, Norwegian, Swiss, French and Italian Cooperation, governmental institutions: MAGA, UTJ, FONTIERRAS, CONTIERRA.

#### **4.3.3. Action: Strengthening the Role of Grassroots Organizations in Accompanying the Rural Poor in the Pre- and Post- Acquisition of Land Processes**

*Description:* The experience accumulated by the Coalition “partners” in different countries (FEPP Ecuador, Fundación TIERRA Bolivia, ULA Uganda, CARRD the Philippines) besides those in Guatemala, shall facilitate the definition of actions to strengthen the role of grassroots organizations in aid to the rural poor concerning land issues. After the first Coalition experience through which UVOC was supported, the simple juridical support is being enriched by other necessary components such as dispute settlements, technical aspects related to the valuation of parameters in land purchase-sell processes and the definition of agricultural production plans, new economic and social organizational forms and others. Actions foresee the definition needs, relevant gathering of experiences, a selection of contexts and appropriate local organizations for implementing action, knowledge transfer phase, local judicial power sensitization phase and process supervision. To reduce the strain possibly generated through the new role of grassroots organizations, some international observers will be invited. They will be appropriately trained to help in implementing this action.

*Involved players:* CONGCOOP, CJDES, Fundación Toriello and other Guatemalan organizations, IDRC, Scuola Sant’Anna di Pisa, CONTIERRA and FONTIERRAS

#### **4.3.4. Action: Analyzing and Building on Positive Experiences in Guatemala**

*Description:* In Guatemala there are integration examples of the peasant and indigenous groups to the country’s economy, as has been mentioned before. These cases show the possibility of articulating the interests of small and large farmers with positive results. Some documents illustrate cases describing the advantages of small production by indigenous vegetable producers in the high plateau; the case of a mayor who has been able to implement a territorial plan with local tax collection and following reinvestment in favor of collective well-being in the Municipality; the case of the group that has been able to transform land received through FONTIERRAS in an efficient productive activity; the case of forestry concessions in el Peten with a strong link to the quality export market. The selected and analyzed cases will be presented

and disseminated nationwide to create a positive sensitization concerning an economic and social inclusion of peasants and indigenous groups.

*Involved players:* CONGCOOP, World Bank and Universidad Landivar

#### **4.3.5. Action: Pilot Project to Implement a Land Fund Totally Managed by a Non-Governmental Organization (based on the experience of FEPP, Ecuador)**

*Description:* Currently the only mechanism to access land in Guatemala is FONTIERRAS, which has generated huge expectations without having the capacities and resources to respond to them. Through an honest grassroots organizations with strong roots in the territory and technical capacities an alternative mechanism to access land could be experienced as Coalition partners in Ecuador has been able to attain. The advantages of having NGO management instead of government management had been shown in different researches that describe how market distortions reduce and access possibilities by the poorest increase. The action foresees context analysis to select the most appropriate organization to implement the pilot project, definition of the most appropriate way to establish the fund, financial terms, additional services the organization may offer the beneficiaries, implementation of the fund and supervision of results.

#### **4.3.6. Action: Articulation with the Research Sector to Fill Up the Existing Knowledge Gaps in Guatemala Concerning the Land Issue**

*Description:* This document asks many questions that have no answers. Its purpose is to clarify the contribution that the Coalition can make in the current national process and kindle debate that could offer Guatemala new opportunities. Some subjects require more depth to obtain objective and analytical elements and to avoid proposing mistaken solutions to existent problems:

- Production ways that could optimize the use of land in benefit of all the country
- Mixed individual and collective land management systems. Definition of alternatives to establish viable family units and cooperatives as a result of land granting by FONTIERRAS
- Effective promotion of the land rent market as a way to guarantee the rights to produce without affecting property (dynamizing the land “rights” market)
- Cases of territorial development with a peasant vision.

*Players involved:* Universities and local research centers

#### **4.3.7. Final Observations**

The actions presented are the beginning of the Coalition’s dynamic plan in the country. The results of these initiatives may permit to identify the steps to follow for the process to be coherent, appropriate and effective.

Legal and professional training aspects through joint actions with research centers and universities have not been taken into account, except for initiatives underway promoted by qualified sectors of Guatemalan society. The Coalition’s secretary shall guarantee the articulation with the results of these activities.

#### 4.4 LAND Alliance for National Development

The LAND Alliance is an initiative to mitigate rural poverty by strengthening cooperation at country level between the State, civil society and bilateral and international direct stakeholders. The establishment modality of the alliance in Guatemala shall be defined based upon debate and the existing round tables around the country in the specific moment in which the program implementation is considered appropriate.

This cooperation is necessary for: a) establishing a participatory dialogue; b) improving policy formulations; c) establishing joint action to assure resource tenure for households with use rights; and d) increase access to land among those who do not have it or those who have very little.

The group of initial partners must include a) appropriate government authorities and sectors; b) all the organizations representing the agricultural and agribusiness sector; c) non governmental and civil society organizations (including landless people organizations, small scale farmers, women and indigenous population); and d) intergovernmental institutions and bilateral donors.

The key to create the Alliance around land consists in motivating the agents so that they go from dialogue to action as soon as possible within a reasonable term. It is recognized that the matters to approach usually have deep historical roots and comprise complex systems of land ordering that could not be easy to overcome.

The saying that “success breeds success” must guide initial activities. The activities with good results would make up the alliance’s base. The process is geared in such a way that the LAND Alliance may establish agreements and act. By making progress in aspects in which an agreement can be established, obstacles to solve other more difficult aspects would be overcome. The LAND alliance is an opportunity for all parties to go from individual to collective positions and, thus, take advantage of synergy possibilities.

## 5. Annexes

### 5.1. Guatemala. Country Data (source: FAO)

**Area:** total: 108,890 sq.km, *land:* 108,430 sq. km, *water:* 460 sq. km

**Land boundaries:** total; 1,687 km. *Border countries:* Belize 266 km, El Salvador 203 km, Honduras 256 km, Mexico 962 km

**Land use:** *arable land:* 12%; *permanent crops:* 5%; *permanent pastures:* 24%; *forests and woodland:* 54%; *other:* 5%.

**Irrigate land:** 1,250 sq km (1933 est.)

**Population:** 12,974,361 (July 2001 est.)

**Age structure:**

*0-14 years:* 42.11% (male 2,789,189; female 2,674,747)

*15-64 years:* 54.25% (male 3,158,209; female 3,519,851)

*65 years and over:* 3.64% (male 220,640; female 251,725) (2001 est.)

**Population growth rate:** 2.6% (2001 est.)

**Net migration rate:** -1.84 migrant (s)/1,000 population (2001 est.)

**Infant mortality rate:** 45.79 deaths/1,000 live births (2001 est.)

**Life expectancy at birth:**

*Total population:* 66.51 years

*Male:* 63.85 years

*Female:* 69.31 years (2001 est.)

**Total fertility rate:** 4.58 children born/woman (2001 est.)

**Ethnic groups:** Mestizo (mixed Amerindian-Spanish or assimilated Amerindian - in local Spanish called *Ladino*), approximately 55%, Amerindian or predominantly Amerindian, approximately 43%, whites and others 2%

**Languages:** Spanish 60%, Amerindian languages 40% (more than 20 Amerindian languages, including Quiche, Cakchiquel, Kekchi, Mam, Garifuna, and Xinca)

**Literacy:** *definition:* age 15 and over can read and write: *total population:* 63.6%; male: 68.7%; female: 58.5% (2000 est.)

## 5.2. Acronyms and abbreviations

ACOFOP	Asociación de Comunidades Forestales de Peten (Peten's Forestry Communities Association)
AGA	Asociación General de Agricultores (General Farmers Association)
APM	Agricultura Campesina y Mundialización (Peasant Agriculture and Globalization)
ARnet	Red sobre reforma agraria (Agrarian reform net)
AVANCSO	Asociación para el Avance de las Ciencias Sociales en Guatemala (Association for the Advancement of Social Sciences in Guatemala)
CACIF	Comité coordinador de asociaciones Agrícolas, Comerciales, Industriales y Financieras (Agricultural, Commercial, Industrial and Financial Associations Coordination Committee)
CIEDEG	Confederación de Iglesias Evangélicas de Guatemala (Evangelic Churches Confederation of Guatemala)
CNOC	Coordinadora Nacional de Organizaciones Campesinas (Peasant Organizations National Coordination Entity)
CNP- Tierra	Comisión Nacional sobre los derechos relativos a la Tierra de los Pueblos Indígenas (National Commission on Rights Concerning the Land of Indigenous Peoples)
CODECA	Asociación Comités de Desarrollo Campesino (Peasant Development Committees Association)
CONGCOOP	Coordinadora de ONG y Cooperativas (NGO and Cooperatives Coordination Entity)
CONTIERRA	Dependencia Presidencial de Asistencia Legal y Resolución de Conflictos sobre la Tierra (Presidential Agency for Legal Aid and Dispute Settlement on Land Issues)
COPART	Comisión Paritaria sobre Derechos Relativos a la Tierra de los Pueblos Indígenas (Peer Commission on Rights Concerning the Land of Indigenous Peoples)
ENCOVI	Encuesta Nacional de Condiciones de Vida (Living Standards National Survey)
FAO	Food and Agriculture Organization
FONTIERRAS	Fondo de Tierras (Lands Fund)
FUNDACEN	Fundación del Centavo (Cent Foundation)
FYDEP	Empresa de Fomento y Desarrollo de El Peten (Peten's Promotion and Development Corporation)
ILC	International Land Coalition
INTA	Instituto Nacional de Transformación Agraria (Agrarian Transformation National Institute)
IRAM	Institut de Recherches et d'Application des Méthods de Développement (France) (Institute for the Research and Application of Development Methods)
MINUGUA	Misión de Verificación de las Naciones Unidas en Guatemala (United Nations Verification Mission in Guatemala)
PAMUR	Programa de Acceso de la Mujeres a los Recursos (Access of Women to Resources Program)
SPC	Servicio de Potenciación de la Comunidad (Community Promotion Service)
UTJ	Unidad Técnica Jurídica (Juridical Technical Unit)
UVOC	Unión Verapacense de Organizaciones Comunitarias (Community Organizations Union of Verapaz)
MAGA	Ministerio de Agricultura (Ministry of Agriculture)
OSC	Organizaciones de la Sociedad Civil (Civil Society Organizations)
FIDA	Fondo Internacional de Desarrollo Agrícola (International Fund for Agricultural Development IFAD)
ONG	Organización no Gubernamental (Non Governmental Organization NGO)

### 5.3. People and Institutions Interviewed by the Mission

Helmer Velásquez y Byron Garoz	CONGCOOP
Rafael Dario Chanchavac y Gilberto Atz	CNOC
Daniel Pascual Hernandez	CUC
Patricia Castillo Huertas	Fundación Toriello
Edin Barrientos	Agriculture Minister
Vitalino Similox	CIEDEG
Sergio Fuentes	CNP Tierra
Carlos Camacho Nassar	MINUGUA
Oto Peralta	CNP Tierra
Patricia Monje y Eduardo Figueroa	Cámara del Agro (Agriculture Chamber)
Jesus Godinez	FONTIERRAS
Michael Collins	IDB
Mario Marroquin Rivera	World Bank
Mario Bay	CODECA
Carlos Morales	UVOC
Padre Rosolino Bianchetti	Associazione Chajulense Val Vaq Quyol
Maritza Ramirez e Massimiliano di Tota	MOVIMONDO
Juan Pablo Corlazzoli	UNDP
Jean Pierre Llabres	European Union
Bettina Durocher	Researcher
Alfonso Jimenez	UTJ

## 5.4 References

- **Baumeister, Eduardo.** Formas de acceso a la Tierra y al Agua en Guatemala. Cuadernos de Desarrollo Humano. #2001-4.UNDP.
- **Binswanger, Feder Deininger.** Power, Distortions, Revolt and Reform in Agricultural Land Relations. Working Paper. World Bank, July 1993.
- **Cambranes J.C.,** editor. 500 años de la lucha por la tierra. Estudios sobre propiedad rural y reforma agraria en Guatemala. Flacso, Guatemala, 1992. Two volumes.
- **Carrera, Jaime Arturo.** El estudio de mercado de tierras en Guatemala. ECOSOC, Santiago de Chile, July 2000.
- **CNOC,** Propuestas de Desarrollo Rural. Plataforma política de la Coordinadora Nacional de Organizaciones Campesinas. Guatemala, January 2000.
- **Comby, J.** Artículo “la imposibilidad de la propiedad absoluta”, In ADEF, Un droit inviolable est sacré, la propriété. Paris, 1989.
- **CONGCOOP,** El catastro: instrumento para el desarrollo nacional. Guatemala. February 2001.
- **Deininger y Squire,** New ways of looking at inequality and growth, World bank, DEC notes # 28, February 1997.
- **Delahaye, Olivier.** (Facultad de Agronomía, Universidad Central de Venezuela). Renta y mercado de la tierra agrícola: algunas indicaciones de los casos venezolano y chileno. Land Reform Bulletin, FAO, 1996.
- **Fundación Guillermo Torriello,** Análisis de la política de acceso a la tierra. Un aporte para la discusión. Guatemala. October 2000.
- **Garoz, Byron y Guaster, Susana.** Fontierras: el modelo de mercado y el acceso a la tierra en Guatemala. Balance y perspectivas. CONGCOOP. CNOC. April 2002. IRDC Canada. Guatemala.
- **Gobierno de Guatemala.** Acuerdos de paz.
- **Gobierno de Guatemala.** Código Civil y sus reformas. Decreto número 106. Librería jurídica. Guatemala. 2003.
- **Gobierno de Guatemala.** Constitución de Guatemala.
- **Hernandez, Maria Isabel,** Ejemplos de políticas de tierra en varios países de Europa Occidental. IRAM, RESAL, August 2001.
- **IPES.** Tierras ociosas en Guatemala. Revisa Pulso Temático Año 4 # 9, December 2001.
- **Martinez Palaez, Severo.** La patria del criollo. EDUCA.
- **Merlet, Michel.** El siglo diecinueve en Nicaragua. Auge y derrota de la vía campesina (1821 - 1934). La importancia del renuevo campesino y de la colonización masiva de las tierras vírgenes en el siglo XIX. Lecture presented in July 1990 on the Conference of Central America rural history. San José, Costa Rica.

- **Merlet, Michel.** Synthesis of Cuaderno de propuestas sobre reforma agraria y políticas de tierras and its completa version. Politiques foncieres et Réformes agraires. Chier de propositions. APM, IRAM. October 2002.
- **MINUGUA.** El debate sobre la política de desarrollo rural en Guatemala: Avances entre octubre de 2000 y de abril de 2002. April 2002.
- **MINUGUA.** La situación de los compromisos relativos a la tierra en los Acuerdos de Paz. May 2000.
- **Ordoñez, C.E., Kloft Kristoffer, S. y al, AVANCSO.** Cuaderno de investigación # 15. Regiones y zonas agrarias de Guatemala. Una visión desde la reproducción social y económica de los campesinos. Guatemala, May 2001.
- **Palma M, Tacarena A., y Aylwin O.** Procesos agrarios desde el siglo XVI a los Acuerdos de Paz. FLACSO, MINUGUA, CONTIERRA, 2002
- **Sistema de las Naciones Unidas en Guatemala.** Desarrollo humano, mujeres y salud: quinto informe 2002. Guatemala. 2002.
- **Sistema de las Naciones Unidas en Guatemala.** Guatemala: la fuerza incluyente del desarrollo humano. Informe 2000. Guatemala. 2000.