

GUATEMALA COUNTRY BRIEF: PROPERTY RIGHTS AND LAND MARKETS

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1. INTRODUCTION

The purpose of this Country Brief is to assist in the assessment of USAID's investments in land markets and property rights in Guatemala since 1980. The aim is to provide a summary of the available literature related to land market interventions and its impacts in Guatemala. The preparation of this Country Brief follows the conceptual and methodological framework prepared by the Land Tenure Center (Stanfield and Bloch 2002) and the methodology consisted of a search, review and synthesis of relevant materials from USAID, the University of Wisconsin library and the Internet.

In contrast to most Latin American countries with high land concentration,¹ Guatemala has been unwilling to consider re-distributive agrarian reform.² One alternative proposed, therefore, for improving access to land for the rural poor is to make the land market more accessible. The following sections will describe Guatemala's agrarian structure and land market, and assess the various land market programs implemented in Guatemala since the 1950s, focusing mainly on those undertaken in the 1980s and 90s. USAID intervention in the land market in Guatemala has focused mainly on land purchase programs that re-sell land to landless and land-poor families, in contrast to the other Central American and East European countries in this series of country briefs where USAID interventions have focused on titling and registration programs.

2. AGRARIAN STRUCTURE AND LAND MARKET INSTITUTIONS

The land market structure in Guatemala has not permitted the participation of the majority of its population in land transactions. This is the case in spite of efforts by NGOs and state agencies, with financial assistance from USAID and other international agencies, to make the land market a dynamic, open, and transparent one. This section will outline the agrarian structure in which the land market operates and the institutions that influence the operation of that land market.

2.1 GUATEMALA'S AGRARIAN STRUCTURE

Most countries in Central America have experienced increasing poverty, income growth for a small minority, and land concentration for many decades. As a consequence, many of these countries have also experienced peasant rebellion, brutal repression, and finally civil war. Guatemala is perhaps the prime example of these unfortunate conditions and processes. The indices for poverty and land concentration are the highest for the region. Its protracted civil war finally ended in 1996 with a series of Peace Accords, but many of its provisions have not been fully implemented.

¹ Even Brazil, which also ignored land reform for decades, has recently implemented several land re-distribution programs.

² With the exception of the Arbenz agrarian reform of 1952 that was quickly stopped and reversed.

The most recent figures on poverty levels in Guatemala can be found in Baumeister (2002) who reported on the findings of the 2001 ENCOVI survey. ENCOVI data show that more than 77% of the total number of poor families in Guatemala, and 93% of those who classify as extremely poor, are found among the rural population. Rural families in both poverty categories make up 37% of the total number of families in the country. What is disheartening about these figures is that rural families make up 57% of the total number of families (which make up 60% of the total population), but represent 65.6% of the poor and extremely poor families.

One of the principle causes of poverty and of the civil war is the highly concentrated distribution of agricultural land. Access to land is very important in Guatemala—60% of its population lives in rural areas and is dependent on agriculture for its livelihood, the highest in Central America.³ The agricultural sector represents 23% of the country's GNP (compared to 10% in El Salvador and Costa Rica and 15% in Honduras).

Land distribution in Guatemala, however, is highly skewed: the Gini coefficient for land ownership demonstrates that land concentration has been on the increase in Guatemala from 0.82 in 1964 to 0.85 in 1979 (Hough et al. 1982: 2). Compared with other Central American countries, Guatemala has the highest Gini coefficient for the 1970s: Costa Rica comes close with 0.83, Honduras has 0.78, and El Salvador 0.61. Calculations by Stringer and Lambert (1989) found that between the agricultural census of 1964 and 1979, farms under 2 *manzanas*⁴ (1.5 hectares) made up about 44% of farms. By 1979, farms of that size had increased to 60% of farms. The average size of farms in this category, however, had decreased by 30% from 0.7 to 0.5 hectare. On the other hand, owners of farms 450 hectares or larger had increased the total area they controlled by 10.4%.

According to the last agricultural census (1979), 2.6% of the farms (over 45 hectares) controlled 65% of the agricultural land. The average size of these farms is 200 hectares, the largest ones being more than 9,000 hectares. In addition, the highest levels of land concentration are in those departments with the most fertile land: Esquintla, Suchitepéquez, Retalhuleu, and Izabal. Small farms (those with less than 7 hectares) control only 16% of the agricultural land, although they make up 88% of farms. These small properties are located primarily in the western highland departments of San Marcos, Quiché, Totonicapán, Sololá, Huehuetenango and Quetzaltenango (CERIGUA 1996: 7-10). These departments also have the highest indigenous population density as well as the highest levels of poverty and social marginalization in Guatemala (World Bank 1995: 2-5).

As a result of this highly skewed land distribution, the vast majority of the rural population, is either landless or does not have enough land to cover basic food needs. Rural poverty has been rising and the number of landless workers increasing while the average size of the *minifundios* is diminishing (Stringer and Lambert 1989; Hough et al. 1982). While there has not been an agricultural census done in Guatemala since 1979 (on which to base Gini coefficient construction), various survey studies indicate that land concentration has continued to increase in the last few decades. Thiesenhusen (1995: 84-85), citing a 1985 study by John Weeks, concludes that 84% of the rural population is either landless or near-landless. Hough et al (1982: 7, 72)

³ In 1999-2000, rural population in Guatemala was 60%, compared with 54% for Honduras, 53% for El Salvador, 49% for Costa Rica, and 44% for Nicaragua.

⁴ One *manzana* is approximately equal to 0.7 hectare.

calculated that 88% of the farms in 1979 were too small to provide for the needs of a family. The trend, in addition, has been increasing landlessness⁵: 2.8 million in 1950 to 5.2 million in 1973. Baumeister (2002), using data from several recent surveys, was able to calculate that the proportion of landless families in the rural sector had increased from 23% in 1979 to 29% in 2001, and that *microfinchas* (less than 1 *manzana*) had increased from 31% to 54.5% of total farms.

Regarding land use, a study commissioned by the United States Agency for International Development in 1982 found that 50% of the farms over 50 hectares were not using all of their land (Hough et al. 1982: 9). According to their calculations, almost 1.2 million hectares could be technically classified as idle land and, according to law, available for distribution (Hough et al. 1982: 34-36). The highly inequitable distribution of land, together with low levels of land use, results in the majority of the rural population without direct or indirect access to land to cultivate and low levels of agricultural wage labor opportunities. These two factors contribute to the levels of extreme poverty in which the rural population lives and works.

2.2 LAND MARKET STRUCTURE

The market for land is segmented between a submarket for owners of large estates and another for sellers and buyers of small landholdings. Information about the sale of large landholdings is passed by word-of-mouth among a limited group of people with the resources to buy large holdings either whole or in large tracts. Large commercial plantations on the south coast, especially in sugarcane, tend to be vertically integrated so that owners can maximize profits without maximizing production. In general, large landowners are unwilling to divide their holdings to sell to numerous individual small farmers or to deal with groups of small farmers that may wish to purchase large farms (Stringer and Lambert 1989). Among the rural elite, land continues to be an important source of local and national political power, encouraging them to hold on to their land.

Within this generalized description, there are significant differences in land distribution and land market structure among the country's distinct geographic regions. A brief description of two regions, the south coast and the central highlands, provides a good picture of the extremes. The fertile south coast is the most commercialized agricultural region. Almost the entire production of non-coffee export crops is grown here, along with about one-third of the coffee. Although the land sales market is relatively stagnant on the south coast and, in particular, closed to landless and land-poor farmers, thousands of these families depend on a very active land rental market. Both highland migrants and resident laborers rent land from large producers, paying either in cash, labor, or a share of the crop. This rented land is typically planted with basic food staples, mostly for family consumption. Investments for cash crops are rare because credit agencies normally will not lend to small tenants without land collateral. In many cases, parcels are rented from large landowners only for the part of the year that the land is not needed for livestock or export crop production (Stringer and Lambert 1989).

The temperate highlands is the most densely populated region of Guatemala, and most of the rural population is indigenous (Baumeister 2002; Hough et al. 1984). In contrast to the coastal

⁵ Landless population is the proportion of the population which is in the agricultural labor force but does not own or manage land (Hough et al. 1982: 8)

region, *minifundios* predominate. Land has deep cultural significance for the indigenous communities (Tapia 1990). Its fundamental function is to provide the family's traditional food staples: corn, beans, and wheat. Informal land sales and rentals are common in the region, usually on a small scale and typically within the extended family (Richards et al. 1990; Stringer and Lambert 1989).

Initial enthusiasm in the 1980s about the ability of smallholders to participate in the production of non-traditional export crops has been tempered by findings that smallholders participation is minimal because of the difficulties they encounter in accessing credit on the capital market (Barham et al. 1995). The ability of large farms to successfully compete in the production and marketing of these crops suggests that the small producers would eventually become marginalized. Larger farms (between 30 and 200 hectares) are able to devote all of their land to export crops; in contrast smallholders are able to put only a small fraction of their land into these crops. In addition, Barham et al. cite the additional costs represented by strict import controls by United States markets (Guatemala's closest export market), costs that small producers are unable to bear. Other factors such as access to information about new technologies and contracting also tend to favor large farm producers.

There was also the hope that increased income from export crops would permit smallholders to buy more land, possibly from larger landowners, in this way inducing structural change. The segmented land market in Guatemala, however, constrains the transfer of land from large to small farms. Other evidence from the mid-1980s suggested that rising production of non-traditional export crops (vegetables and fruit) on the very small farms in the highlands is increasing the demand for land and thus raising land prices, possibly making access to land even more difficult for landless and land-poor families.

2.2.1 Land Market Constraints

Land market reform programs and policies in Guatemala have been designed to remove constraints and obstacles that hinder the shifting of land from the large landholding sector to the small landholding sector via market mechanisms. The constraints can be grouped into two categories: those that affect the supply of land and those that affect the demand for land.

The constraints on demand for land by the land-poor and landless, stem from two sources: lack of equity for purchase and high land transfer costs. Assuming an ample supply of land of appropriate size, the majority of the landless and land-poor have neither equity capital nor access to borrowed financial resources for converting their land needs into effective demand. In general, small farmers and landless peasants have no access to either institutional or informal long-term credit to finance land purchases. In Guatemala, the growing disparity between wages (or returns to labor) and rent (or returns to land) makes it increasingly difficult for subsistence farmers and the landless to finance land purchases from savings.

For example, Kennedy et al. (1984) found that while there is significant demand for land among smallholders all over the country, they concluded that without a financing mechanism they have virtually no hope of being able to buy land: only 4% could make a reasonable down payment (such as 10%). The most common form of public intervention to remedy this problem is the provision of long-term financing at affordable interest rates for farmland purchases to young and otherwise landless farmers. In Guatemala, credit and long-term financing for land purchase are rarely available.

Complex transfer procedures also affect the demand for land. The high costs associated with land transfers as a result of highly bureaucratic procedures and taxes increase the cost of acquiring land and thus decrease a potential buyer's ability to purchase land. In Guatemala, verifying ownership information in the property registry is time-consuming and costly. It requires the services of a lawyer who travels to one of the two registry locations. Inaccuracies in the registry often have to be resolved before a transfer can be completed, thus adding to the costs. Also, because registrars, until the mid-1990s, earned commissions based on the value of transactions, they tended to put off cases involving only a few hectares; as a result, registration of small land transfers used to take more than a year.

The supply of land available to small farmers in Guatemala for purchase at an affordable price is constrained by land concentration, by lack of private ownership title, and by excessively bureaucratic land transfer procedures and restrictions. While the objective of land market policies is to affect land ownership concentration through the land market, this concentration itself affects land market activities. Concentration in large units that seldom go on the market limits the supply of land and thus produces land price and rent distortions. It also restricts the supply of small and family-sized parcels of agricultural land. Large farmers generally sell to other large farmers while transfers among *campesinos* are limited to smallholdings in a fraction of the total land area. Kennedy et al (1984), in a four-week study on the supply of and demand for land, identified over 95 thousand hectares of land for sale (approximately 2% of the farmland in Guatemala). Most of the owners of this land, however, indicated that they did not want to sell their land in small parcels.

Lack of a fee-simple title to the land is generally thought to keep that land off the market or, at least, to lower its value. This deficiency usually occurs when a group (for example, an ethnic community, an extended family) owns land or when land has never been officially registered—both of these conditions are operative in Guatemala. Moreover, it is the holdings of small farmers and *minifundistas*, compared to those of middle- and large-sized landowners, that are especially likely to be untitled. Without fee-simple title, sellers may underprice their properties to compensate for risk. The scarcity of institutional financing for the purchase of untitled land also lowers prices, and occupiers of untitled land may prefer to hold it off the market solely because they cannot expect to obtain a given price. More than half the landholdings in Guatemala, it is estimated, do not have up-dated registered titles.

Other supply constraints affecting the operation of a relatively efficient land market stem from legal, administrative, and fiscal impediments that discourage land transfers or at the least discourage the official registration of transfers. Transfer restrictions have been imposed on state-distributed land in Guatemala. INTA beneficiaries have been forbidden to sell or rent their parcels for 10-25 years. Thus, owners have often resorted to renting or sharecropping with relatives when the real preference may have been to sell. These regulations were intended to avoid fragmentation of smallholdings, but they also hinder development of a land market where size of parcel is determined by economic efficiency and ability to pay. Two other types of constraints can be identified: excessively complex and costly land transfer and registration procedures, and fiscal requirements, which accompany land transfers. These will be examined below under Land Market Institutions.

In summary, landless, land-poor, and smallholder families face a number of obstacles to buying land on the market: lack of capital (both equity and access to financial markets),

restricted market information, legal obstacles, fragmented credit markets, and a cumbersome registry system.

2.2.2 Land Market Transactions

There are few studies on rural land market transactions in Guatemala. A 1988 survey of members of a rural credit cooperative provides information on the smallholder land market in the highlands. About two-thirds of the sample had purchased at least one parcel at some time, but the average size of these parcels has declined steadily over the last few decades, from 3.5 hectares prior to 1949 to 1.4 hectares from 1980 to 1988. Typically purchases were financed with off-farm wages, earnings from an exceptional harvest, or savings accumulated over a number of years. Only 22 (7%) of the purchases were financed with loans and, of these, only three were obtained from a bank. Most of the land was purchased from neighboring small farmers or family members; about one-fourth of the land purchases came from large farms (Richards et al. 1990).

The highlands survey also found that land prices have gradually risen over the last four decades. Prices for 1988 transactions varied from 1,500 to 3,000 quetzals per *manzana* (0.7 hectare), or about 3.3–6.6 years' wages per hectare for an unskilled farm laborer (US\$1.00 = Q2.60). The majority of the land purchasers surveyed obtained a legal bill of sale but did not register their parcels, partly because of the high cost involved. Of the total of 293 parcels purchased and the 179 inherited over the decades by individuals in the survey, fewer than 13 percent were registered.

Nearly 40% of the farmers in the survey rented in some land in 1988. The modal size group of the farms (comprising one-third of the total) was 2.2 hectares, of which roughly one-half was rented. Rented land was important for all farm size groups. Those with the smallest farms relied completely on rented land (average 0.4 hectare). The next two groups (0.7–3.5 hectares) rented one-half their total farmland, but the 84 largest farms rented less than 20 percent of their average farm area of 8 hectares.

Another study on the south coast examines changes and land transactions within smallholder communities created the *Dirección General de Asuntos Agrarios* (predecessor of INTA) during the 1950s. Schweigert's 1988 study of two *parcelamientos* examines changes in land distribution within peasant communities created by the settlement program. Initially, land distribution in the *parcelamientos* was highly egalitarian; landless peasant families were granted relatively large parcels of 18 to 20 hectares. Thirty years later, two marked, opposite tendencies can be observed: fragmentation and consolidation. A moderate number of holdings preserve the original parcel size or have been consolidated (that is, have increased in size). The majority of the holdings have been subdivided, in most cases through inheritance. Usually five to six plots have been carved out of one original parcel. Once an original parcel is fragmented through inheritance, the successors may sell their shares to other family members, neighbors, or other *campesinos* of the area. These sales are financed by family loans. Interestingly, an outsider (Schweigert 1989: 14) has bought no fragment of an original parcel.

On the other hand, 15 percent of the families interviewed owned consolidated holdings, but half of them were either non-*campesinos* or smallholder families who were not part of the original group of land grantees. Almost one-fourth of the land that had been originally allotted to the two *parcelamientos* has been purchased by non-*campesino* owners. At least one of these buyers was able to secure a loan from BANDESA, the state agricultural development bank. Most

of the consolidations are multiples of the original parcels of 18–20 hectares and by 1988, one-fourth of the land was held by just six families (4% of the total number interviewed).

Schweigert's findings show two patterns in the land market in this coastal area. Peasant farmers either subdivide their land among their children or sell the entire parcel to an unrelated buyer; they do not dispose of the parcel piecemeal. Some peasant heirs do sell the inherited land, usually to another peasant. In the other pattern, the buyers of large tracts, including entire parcels, are outsiders, that is, persons who have moved into the area since the *parcelamiento* was established; in many cases, these buyers are urban professionals, ranchers, or military personnel.

Schweigert also looked at land prices and rental rates. Land prices, adjusted for inflation, increased at a rate of about 8% per year from 1974 to 1988. Calculations comparing 1965 and 1987 data in La Máquina *parcelamiento* show that as land-use intensity increased over the twenty-year period, average real land-rental rates rose 280%. Few families rented in land. Schweigert estimates that about 5 percent of the land is rented out, usually to other peasant families. Rents today probably absorb about half or more of the surplus after all other costs have been paid.⁶ Returns to land increased 150%, while machine plowing rates declined 25%, and real wages barely held their own.

A more recent study (Carrera 2000) examined the supply and demand for land during the 1990s. Carrera found significant differences between three major regions: the north (El Petén and Norte Bajo), the south (Boca Costa Sur), and the central highlands. In the north and the south, there is an ample supply of land. The north tends to offer large estates with poor soil (most of the north can be characterized as a fragile ecosystem), minimal productive infrastructure, and pasturelands; in addition they are isolated (far from urban centers with poor roads). Consequently, prices are low. Farms in the south, while smaller than those in the north, are also large commercial farms. They have good productive infrastructure and permanent crops, such as coffee trees and cacao. They are either close to urban centers or are connected by all-weather roads. The prices of these farms were the highest in the study. The central highlands, where most of the indigenous population lives on extremely small farms (*minifundios*), had a very limited supply of land for the market, at prices between those of the south and the north. Land sales in the highlands are generally between family or community members and are not registered.

On the demand side, Carrera found that 90% of those wanting to buy land are smallholder and agricultural wageworker families. The majority of these families are from the highlands region, many who have migrated to the south or the north looking for wage labor and for land.

Several conclusions regarding the land market in Guatemala emerge from these studies. The land market is segmented and land transactions, particularly sales, generally occur within submarkets. Large properties constitute one market and are sold as large units; subdivision of large farms into smaller parcels for sale is not common. Another land market is that of small farms. Smallholders do sell land among themselves; however, the evidence indicates that these parcels are becoming smaller and that their unit price is increasing, suggesting a scarcity of small parcels on the market relative to the demand. Research findings also indicate that small farms are usually not registered to the current owner. Small parcels, when inherited or bought and sold, are

⁶ All nominal figures in Schweigert's study were deflated by the price of corn, a more realistic measure of rural prices and wages in smallholder rural areas than the urban consumer price index.

not formally registered nor are titles updated. Most smallholders cite the high costs, in time and money, involved with legal registration of title.

2.3 LAND MARKET INSTITUTIONS

The land market involves a number of private and state institutions. The principal objective of state institutions is to protect land and property rights established in legislation and to ensure secure tenure rights. By maintaining clear and open records with regard to land rights, transactions on the land market are facilitated. The state also has the moral mandate to ensure that all its citizens have just opportunities to access land. Tax policy and public financing for land acquisition are mechanisms used by the state to provide such opportunities. Private institutions contribute to functioning of the land market by providing information on land and properties, information needed by buyers and sellers to make an informed decision. Private financial institutions can also provide the long-term credit needed to finance land sales.

2.3.1 Land Registry and Cadastre⁷

The two principal land administration institutions in Guatemala are the property registry, Registro General de Propiedad (RGP), and the physical cadastre. State land administration institutions that function well, that is keep updated records of property rights and property transactions in a transparent and timely manner, protect property owners rights, prevent land conflicts and assist in their resolution, and provide information on land market conditions and opportunities to buyers and sellers. In Guatemala, these institutions do not function as they should, putting at risk property rights held by landholders and obstructing the functioning of the land market.

The land transfer process in Guatemala is complex, expensive, and excessively bureaucratic for both buyer and seller. As a consequence, many transfers among smallholders are completed with private documents and without the benefit of formal registration. Such land is vulnerable to disputes and competing claims, and owners cannot use it as collateral for agricultural production loans from commercial institutional lenders. In addition, the property registry in Guatemala is not supported by a cadastre to verify the location, size, and boundaries of registered properties.

The legal/property cadastre at the national level is not yet a legal institution because Congress has not approved the laws that attempts to reform land administration institutions and establish a linked registration and cadastre system. The Ley de Registro de Información Catastral was presented to Congress in October 2001, but has not been passed. Although the Instituto Geográfico Militar (IGM) has the capacity to make cadastres and has created maps based on aerial photography and geodetic measurements for many areas of the country, the IGM does not share its information with the registry. Therefore, a national physical and legal cadastre for landed property does not exist. It is expected that once the Ley de Registro de Información Catastral is approved and regulations written, a national system that links registry and cadastral information, the Sistema Nacional de Información Registro-Catastral, will be established.⁸ This

⁷ This section on the property registry and cadaster is based on: Rosholt (1988), Rowles (1991), Hendrix et al. (1992), and Trackman et al. (1999), Guatemala (2001).

⁸ In the meantime, the World Bank has given Guatemala a \$31 million loan to establish a linked legal cadaster and modernized registry in the Petén region (World Bank 1998b).

system would coordinate, exchange, and update information between the registry and the cadastre.

Legal property rights are recorded in the Registro General de Propiedad (RGP) at the property owner's initiative; the registry does not create nor does it concede property rights. The registry utilizes the Folio Real system (records are based on property, not owner) and assigns a unique identification number to each piece of property. In Guatemala it is not obligatory to register property rights in the registry, although once a property is registered all subsequent transactions need to be recorded in order to be legal. The first person to register a property and to record its transactions protects his/her rights against a third person, irrespective of the date of the documentation.

The information that should be included in the registry includes the property's location, its boundaries, size, as well as, easements and encumbrances. There have been many deficiencies in how this information has been recorded: for example, the information on the property owner may not include his/her identification number, or the description of the boundaries and its size are vague. Until 1940, only a sketch of the property was required to register it; in that year, Decreto 24-76 stipulated that properties larger than one *caballería*⁹ and those that requested a *título supletorio* (title for adverse possession) had to present a property map. This survey map, however, does not have to be to scale or referenced to the national geodesic network. This practice, together with the earlier drawings, has created problems and sometimes conflicts since the boundaries of properties and its size cannot be determined with any degree of certainty.

The deficiencies in the RGP are a consequence of that institution's disorganization, its deficient legal framework, corruption, and the slow bureaucratic registration process. Significant reforms to the RGP began in the early 1990s, but these have focused mainly on the registration process itself in order to make it more efficient, and on the modernization of the system through computerization of the system. These reforms have corrected some of the problems—it is now more difficult for non-authorized persons to enter or change registry records, or for the same property to be registered more than once under different names, practices that were not uncommon previously.

The RGP, however, still has many records with serious problems such as: uncertainty as to the location of the property, inexact or vague descriptions of the boundaries, approximate information with regard to size, lack of correspondence with regard to the size of the property between the description on the deed and the map (when there is a map), and the registration of several titles for the same property.

In addition to these procedural problems, the RGP also has serious structural problems. One major problem is that there are only two registry offices in the whole country: one in Guatemala City and the other in Quetzaltenango. Persons who want to register their property or record a transaction are forced to travel long distances—this is particularly onerous for smallholders with limited resources. As a consequence, many properties are not registered, or even if registered, subsequent transactions are not recorded. Thus, the RGP does not fulfill its basic objective to be the depository of property rights for the entire country. Estimates have been made that approximately 70% of the country is not registered in the RGP—the majority of the properties

⁹ One caballería equals 45 hectares.

only have some type of land certificate (e.g., adjudication documents from INTA) or simply a purchase contract.

Another structural problem is that peasant or indigenous communities that hold land as a community cannot register it as communal land. Even though the 1985 Constitution recognizes indigenous communities and communal property, Congress has not approved legislation that establishes administrative procedures for communal property. As a result, over the years indigenous communities have either lost their land to private landowners, have had to register their land as municipal property (putting their rights at risk), or have simply not registered their lands at all.

The creation of a linked registration and cadastral system (Sistema Nacional de Información Registro-Catastral) that coordinates, exchanges, and updates information between the registry and the cadastre would be a big step towards creating efficient and effective land administration institutions. It will take quite a number of years, however, before all properties are in the system. In the meantime, the legislation for the legal cadastre as well as to link registration and cadastral information into one system needs to be approved by Congress.

2.3.2 Financial Markets

Effective demand for land depends on a number of factors, including people's ability (that is, income above subsistence needs) to pay for land and financial institutions to provide the long-term credit necessary to finance the purchase. Guatemala's formal financial institutions do not offer this type of long-term credit (Carrera 2000). For example, a study on the supply of and demand for agricultural land undertaken in the mid-1980s found that at that time there was little agricultural financing in the banking sector for the purchase of land (Kennedy et al. 1984). Inquiries in 1991 (Strasma 1991: 15) confirmed that Guatemalan banks, both private and public, do little lending for land purchase because of high transaction costs for land purchases and low interest rates, particularly for long-term loans.

Several studies in Guatemala have looked at small farmers' capacity to repay mortgage loans at commercial interest rates (Tsuji 1988; Schweigert 1989; Richards et al. 1990). Calculations by Schweigert (1989: 51-54) using the south coast *parcelamiento* data, considering land prices, wage rates, prices for corn and sesame, and average productivity in 1988, suggest that a 3-hectare parcel under rain-fed double cropping could produce sufficient net income to support a family and repay a loan at market terms (10–20 years at 14 percent), leaving a net family income equivalent to that of a fully employed worker at the going wage rate. On the other hand, the 1988 survey of small highland farmers who were members of a rural credit cooperative indicates that the typical small farm in this region does not generate enough surplus to pay off a land purchase loan: nearly 40 percent of the sampled households had farms of less than 1.4 hectares in 1987, and the climate allows only one rain-fed crop per year (Richards et al. 1990).

2.3.3 Taxation

Taxation policies can both inhibit and encourage land sales. High taxes on land transfers may inhibit some land sales, particularly formal land sales, but also result in under-reporting of land prices. This underreporting may represent an obstacle to an efficient and open land market by limiting the public information available to potential buyers and sellers. In Guatemala, land transfer fees and taxes are extremely high: Carrera (2000: 34) cited an FAO-World Bank study

that for a normal land transaction, the buyer pays 13% (value of the property) in taxes and fees and the seller pays a 10% (value of the property) transfer tax. If a real estate agent is involved, that can cost an addition 6% to the buyer's costs.

On the other hand, land taxes that castigate landowners who do not put their agricultural land into production can motivate them to sell off that part of their land that they do not put into production. This would increase the supply of land. A tax on idle land instituted in the late 1950s that was to motivate owners to put unproductive lands on the market has not been put into practice either. This mechanism has not been implemented according to the purpose of the law. In the ten-year period between 1963 and 1972, only 263 farms were assessed an idle land tax; most of these taxes, however, were not paid, and in 1973 government decrees exonerated all delinquent landowners from these taxes (Hough et al. 1982: 29, 35-36).

Recent attempts to approve tax levels that effectively tax idle lands in Congress, such as INTA's initiative in 1988 and the more recent one in 2001, have been unsuccessful. According to Thiesenhusen (1996), land tax rates are extremely low in Guatemala and are poorly enforced. The highest rate is only 0.9% and the most common rate is 0.3%. In addition, land assessments for tax purposes are self-declared resulting in undervaluations and low tax returns.

3. EFFORTS TO DEVELOP A DYNAMIC LAND MARKET

After the aborted land reform of 1952, Guatemala passed several laws annulling Arbenz' agrarian reform law (Decreto 31) and replacing it with other mechanisms for land re-distribution such as a land tax and an idle land provision (Decreto 559). The principal legal framework for distributing land to landless and land-poor rural families is Decreto 1551 (Ley de Transformación Agraria), passed in October 1962 and modified several times over the years. In general, there are three legal mechanisms for making land available for distribution: distribution of state-owned land (*terrenos baldíos*) by state agencies such as INTA from the 1950s until the late 1990s, and by FONTIERRAS since 1999; taking of privately-owned idle lands (*tierras ociosas*) to be distributed by INTA and FONTIERRAS; and taxing underproductive land in order to move it into the land market.

Decreto 1551 established the National Institute of Agrarian Transformation (INTA), the agency that was to distribute land to the landless and land-poor, implement a titling program, and establish a land purchase program. While the state had distributed mostly state-owned land in the 1950s, INTA was to enlarge this program. INTA distributed land owned by the state under several different programs (described below) until the supply of state lands was nearly exhausted.

The option of taking and distributing idle lands has not really materialized. Although INTA had legal jurisdiction to distribute idle land, INTA did not have the capacity to identify these lands. The process in Guatemala for having lands classified as *tierras ociosas* begins with the landowner declaring that his/her farm has idle land. This land is then surveyed and technically inspected; if it is found to be in fact idle land, the owner has two years to put it into production. Thus, the process of identifying these lands is sufficiently onerous to make the *tierras ociosas* option not very functional, particularly taking into account the minimal resources available to INTA. According to Hough et al. (1982:34-35), "INTA has not expropriated any appreciable amount of arable land since the law was passed."

As we saw above, a land tax that motivates owners to put unproductive lands on the market has not been put into practice either. Once again, this mechanism has not been implemented according to the purpose of the law. So what has INTA been able to do to increase access to land for the landless and land-poor?

3.1 INTA *PARCELAMIENTOS* (1955-1960s)

After reversing the agrarian reform of 1952, the Guatemalan State attempted to reduce the exhortations for land from the rural poor through various land distribution programs. From the mid-1950s through the 1960s, the Dirección General de Asuntos Agrarias (the predecessor of INTA) subdivided large farms owned by the state and sold 18-20 hectare parcels among a group of families—these were called *parcelamientos*. These small farms were to be paid off in ten years. In the meantime, families received provisional titles with the promise that definitive titles would be issued when the land debt was totally paid. Most of these farms, located in the south coastal region, had excellent and fertile soils. A total of 50,267 families were settled on 664,525 hectares under this program (Hough et al. 1982).

Schweigert's study (1989) of two *parcelamientos* formed in the 1950s concluded that these smallholder families were able to turn their parcels into viable agricultural enterprises. Land use is intensive and the smallholder owners have been adopting new technology and profitably introducing new commercial crops such as sesame. In addition, they supply significant amounts of basic grains for the domestic market. They have created jobs for their own family members and non-family workers. In other words, smallholder families are able to farm successfully on good agricultural land, with minimal state assistance, by producing the crops they are most familiar with. The one problem that is emerging from these *parcelamientos* is the subdivision of the farms because of inheritance—future generations, if they are not able to access more land, will find themselves farming micro-farms too small to support a family.

During the 1970s, INTA also gave out coffee farms (that had been confiscated from German families during World War II) to groups of families, but this time the farms were not officially subdivided, but kept as one production unit called Empresas Asociativas Campesinas. These farms were located in the south coastal and *bocacosta* regions.

The state also distributed state-owned land to large landowners during this period. An assessment on land distribution attempts between 1954 and 1962 by Hough et al. (1982: 29-30) concluded that the principal beneficiaries were large landowners who received large extensions of prime agricultural land: 39 landowners received 122,000 hectares, an average of 3,128 hectares per farm. The landless rural families received small plots of land to plant corn and other crops for their food needs.

3.2 COLONIZATION IN THE NORTH (1960s-1990s)

Colonization programs in Guatemala occurred during the entire 20th century. The settlement of landless and land-poor families in frontier areas increased significantly, however, during the late 1960s and continued until the late 1990s, as a substitute for land reform. With the supply of state-owned farms quickly disappearing, INTA and FYDEP (Fomento y Desarrollo de El Petén) began to distribute other state-owned land in isolated regions, such as El Petén and in the Franja Transversal del Norte. Groups of rural families were formed into production cooperatives and the land was given to the cooperative; some land was given out to individual farmers. Multiple

problems were experienced by families settled in these isolated areas: minimal, if any, infrastructure; no farm improvements or investments; and fragile soils not suitable for long-term farming. While the number of small landowners increased, because of the type of land they acquired and the lack of infrastructure and social services in these areas, it is not certain that their quality of life improved. In addition, these ecologically fragile areas resulted in low agricultural productivity, extensive deforestation, and environmental damage.

Large tracts of land (450 hectares or more) in El Petén were also sold to individuals at below market prices who generally cut down the forest and turned the land into cattle ranches (Kaimowitz 1995). This subsidized land market was particularly active during the 1970s and 80s when FYDEP favored land purchase applications from ranchers, politicians, and military. Because of its isolated location and the civil war of the 1980s and 1990s, many of these farms have been abandoned and occupied by squatters. It is in this region that the Guatemalan government, with a World Bank loan, is currently implementing a pilot titling and cadastre project.

3.3 INTA LAND MARKET PROGRAM (1986-1997)

As the number of state-owned farms reached low levels, the Guatemalan State began a land market program in 1986 and charged INTA with running it.¹⁰ Between 1986 and 1991, the government had purchased 11 farms, totaling more than 16,000 hectares, and resold them to landless and land-poor families, benefiting about 1,800 families.¹¹ Beneficiaries on each farm were organized into a “peasant business association” (*empresa campesina asociada*), which holds a collective title to the land and is responsible for the land debt. In most cases, the farms were divided into parcels for individual farming. The program was very constrained by lack of funds for land purchase, inadequate technical assistance from state extension agencies, and adequate and timely production credit from BANDESA, the state agricultural development bank. In addition, most of these farms were abandoned farms or located in isolated areas, resulting in difficult living and working conditions for beneficiary families.

3.4 FUNDACEN LAND MARKET PROGRAM (1983-1994)

USAID supported an alternative approach through a local NGO, the Fundación del Centavo (FUNDACEN), between 1984 and 1994.¹² The FUNDACEN program negotiated the purchase of farmland on the open market, with the owner receiving up to 50 percent of the price in cash and the balance over 3 to 5 years through certificates of guarantee. FUNDACEN purchased large blocks of land, subdivided them into economically viable, family-sized units, and resold them individually to selected landless families. The recipient was to pay FUNDACEN for the parcel with a 10% down payment and the balance over a 10 year period with a 12-14% interest rate, during which time FUNDACEN provided technical assistance and credit for production of commercial crops. FUNDACEN also concerned itself with other aspects of integrated rural

¹⁰ Information for this section comes mainly from Stringer and Lambert (1989), Strolich and Schweigert (1994), Dunn 1991.

¹¹ This author did not have access to updated information on the INTA land market program.

¹² Total AID financial assistance to the FUNDACEN project was approximately \$14.5 million.

development, including education and housing. More than 1,731 rural families, most of them previously landless, were settled on 28 farms covering 6,252 hectares in seven of Guatemala's 22 departments. Most farms grew coffee or other export crops such as winter vegetables.

Under this approach, FUNDACEN acted as broker, banker, and technical advisor for rural families who aspire to become independent farm producers on their own land. As broker, FUNDACEN's technical personnel appraised the farms offered for sale, negotiated with the landowners, and registered the properties. As banker, FUNDACEN provided long-term financing for rural families, who have no assets for collateral other than the mortgage on the newly acquired land, as well as short-term production credit and medium-term investment financing for planting permanent crops. As advisor, a FUNDACEN agronomist was assigned to live on each farm and provide technical assistance to the new family farmers resettled on the former large holdings.

FUNDACEN program demonstrates the multiple components of an effort to help landless families overcome the barriers they face in the land market. At the same time, this project illustrates the high cost involved in assisting landless and land-poor families become landed commercial farmers. Land purchase (including purchase price, interest, unrecovered defaults, and possible capital erosion from inflation) is only a small part of the total cost; overhead for administration and support services such as technical assistance as well as the production credit that makes it possible for new owners to pay for the land make up the bulk of the financial cost. One problem with such an approach is that limitations of human and financial resources tend to confine it to such a small number of beneficiaries that it cannot make a tangible impact on the vast numbers of landless families in Guatemala.

A review (USAID/Guatemala 1990) of FUNDACEN's land purchase/sale program revealed a number of problems, some of which are most likely endemic to this type of program. One of the more serious problems is a cash flow one growing from the desire to guarantee that smallholder families buying land could pay for it through revenues from the land and also enjoy an improved standard of living. Beneficiaries under the program are required to grow a cash crop—in most cases, coffee. The crop requires a large investment up-front in labor and inputs and generates no income for at least three years. Beneficiaries' land payments are therefore deferred for three years. In the meantime, FUNDACEN had covered 50 percent of its purchase of the land from the original owner with five-year certificates, which are now coming due. FUNDACEN is paying out on the certificates yet getting no income from the beneficiaries. Although the original project design anticipated this timing problem and included a schedule for land purchases which would balance outputs and inputs, FUNDACEN accelerated the pace of purchases in order to take advantage of temporarily favorable conditions in the land market.

In order to become a continuing but self-supporting program, the project was to pace the number of farms purchased and the amount of production credit advanced such that there would be no cash-flow problems over the life of the project and by the end of the project revenues (in the form of payments for both long-term and short-term credit) would be coming into the program from the beneficiaries. The technical assistance provided by FUNDACEN would also eventually be withdrawn and it was expected that beneficiary families would contract their own technicians and agronomists. A cash-flow analysis undertaken in August of 1988 showed that "the chief cause of the cash flow shortfall can be attributed to the accelerated purchase of land" (Reyes and Graves 1988: 1). Apparently FUNDACEN had, by 1988, purchased so many farms that they had achieved 1991-hectare levels as projected in the project design. Since the purchase

of large volumes of land involved large amounts of credit for both land sales and agricultural production, credit outlays that would not be paid back for quite some years yet, the land purchase/sale program was experiencing serious cash flow problems.

The other cause for the cash-flow shortfall was the crop mix selected by the technicians and agronomists. The resident technician on each subdivided farm was actually a farm manager who decided what the beneficiaries would plant, where they would plant it, and how they would cultivate it. In the original project design, only about 30% of the land purchased was to be put into permanent crops. Since 1985, however, about 78% was planted to coffee, and since 1988, 98% was put into coffee production (Reyes and Graves 1988: 2).

Another serious problem in the FUNDACEN program is the high costs borne by the beneficiaries. Analyses of agrarian reforms have shown that they fell short of their goal of improving the living standards of rural residents and increasing land use and production because they had inadequate funds for technical assistance and production credit. These two factors are important components of the FUNDACEN program, but they are very costly both to FUNDACEN in the short run and to the beneficiaries in the long run since these costs are added to the land purchase price as part of the beneficiary debt package.

The tradeoffs to resolve this problem are difficult. One possibility would be to buy more developed land (for example, with coffee trees in place) and thereby cut the cost of technical assistance and credit, provide immediate income, and shorten the beneficiary grace period. Unfortunately, more developed land is also more expensive. On the other hand, cheaper land has higher technical assistance and investment credit costs, especially up-front, and contributes to more difficult living conditions for the beneficiaries and probably to the dropout rate as well. Beneficiaries could be allowed to grow subsistence crops for a few years while getting established, which would lower the initial technical and credit cost but would also delay repayment and may decrease the likelihood of improved living standards in the near future.

The living conditions on many of the farms are extremely low, contributing to illness, intragroup conflicts, and abandonment. While the FUNDACEN program provides for strong technical assistance for agricultural production, little attention has been given to the problems of community organization (Dunn 1991, 1992) and household survival in the new communities being created. Case studies of FUNDACEN farms (Cadena and Strolch 1990) have shown that families that are most likely to survive the first years on the farms have had savings to support their subsistence or other adults in the household who could bring in outside income. Unfortunately, the workload on FUNDACEN farms in the initial years, to clear the land and put in and nurture the coffee plants, does not allow time for off-farm employment unless there are several adult family members.

FUNDACEN provided “subsistence” credit in addition to production credit so that families could buy food products during the initial period. This credit added to the overall debt load and has contributed to abandonment (a familiar problem on agrarian reform farms). When new beneficiaries are found for an abandoned parcel, the price of the parcel for them includes not only the initial land price but also the accumulated debt attached to it. Subsistence credit also increases the up-front cost of the program for FUNDACEN.

Paternalism, a problem often associated with government-directed land reforms, was also apparent in the FUNDACEN program. As FUNDACEN became more worried about the cash-flow problems and about its debt, its approach to the beneficiaries and to the farms became

increasingly paternalistic. FUNDACEN was reluctant to allow government agencies or other NGOs to provide any services in the farm communities because it does not want any other entity to have any claims on the beneficiaries' income, time, or loyalties. More importantly, increasingly FUNDACEN was attempting to control all aspects of the beneficiaries' lives and especially the income from crop production and credit repayment. As farms came into production, FUNDACEN sold the harvest from the farms (without participation by the producer families) and deducted payments to FUNDACEN for production credit and land payment before the *campesinos* have received any money from the sales. Until families on a number of farms strongly protested, FUNDACEN was arbitrarily deciding how much to deduct from the sale proceeds based on its own evaluation of how much a smallholder family needed to survive. In other words, FUNDACEN was controlling the families' level of consumption and level of subsistence in order to guarantee repayment.

Finally, FUNDACEN also increased its control over land rights. Instead of issuing fee-simple titles with a mortgage when families had made a down payment of 10% of the value of the parcel as FUNDACEN had initially promised, it proposed the issuance of certificates that guarantee title when both parties have met all conditions to sale, as specified by FUNDACEN. In 1990, six years after the program began to sell land parcels, many beneficiaries of the project had no documentation of land purchase, neither title nor certificate. On farms purchased before 1987, only 28% had registered titles. The lack of legal title is apparently due to two factors: (1) a unilateral decision by FUNDACEN to delay the transfer of registered title until after the beneficiary is in the program three years, and (2) the difficulty presented by the General Public Registry in the recording of land transactions.

Several lessons can be learned from the FUNDACEN project. First, a broad program that includes land payments, technical assistance, and production credit is very expensive. It is probably not possible for a landless family to absorb the total cost. Also, young families without additional adult labor and impoverished families without savings or other assets probably cannot economically survive in the program. In addition, program self-support and sustainability are very difficult in the short term. Outside financing is indispensable for a long period of time, at least ten or twenty years and probably longer; experiences with financial institutions in Guatemala have shown that this type of financing is not available. In summary, one can conclude that donors such as USAID cannot have a significant impact on land distribution through land market programs—the need is too large and the cost too great.

3.5 LAND BANK, FONTIERRAS (CREATED IN 1997)

The Fondo de Tierras, FONTIERRAS, was created after the 1996 Peace Accords, initially to provide a land fund for returning war refugees. Returning refugees were settled on land already owned by the state—much of this land consisted of farms that were abandoned by its owners and whose ownership was taken over by the state and administered by INTA.¹³ Often, rural families were already occupying some of this land. FONTIERRAS has been adjudicating and titling this state-owned land to returning refugees and smallholder families already on the land. A study by

¹³ When INTA was disbanded, FONTIERRAS took over many of its activities, such as adjudicating state-owned land and issuing definitive land titles.

CEPAL (2001: 61) reports that by September 2000, 100 farms had been adjudicated or were in the process of adjudication to over 9,000 families (see Table 1).

Table 1: Land Adjudicated by FONTIERRAS

Adjudication Type	No. of Farms	Total Hectares	No. Families	Ha/Family
State-owned farms 1999 - Sept 2000	100	160,932	9,132	17.6
Private farms 1997 - Sept 2000	55	22,873	3,459	6.6

Source: elaborated from data provided in CEPAL 2001.

FONTIERRAS also facilitates the purchase of land on the market by smallholders. The CEPAL study (2001: 61-69) reports that owners of these farms are increasing their land prices beyond their productive value. But Carrera (2000) thinks that the procedures and methodology FONTIERRAS is currently utilizing keeps agricultural land prices from becoming speculative.

A land purchase through FONTIERRAS is initiated by a group of rural families who have already identified a farm they want to buy. The families must meet a set of criteria¹⁴ established in the 1999 legislation that legally established FONTIERRAS. The group may have already started negotiating a price with the owner of the farm. They then contact FONTIERRAS and ask for a loan to buy the farm. FONTIERRAS commissions an independent assessment of the farm, as well as a technical assessment of its productive capacity. It then leaves it to the seller and the group of buyers to negotiate the price, with these assessments in hand, and with the technical assistance of FONTIERRAS. Often an NGO also provides technical assistance to the group of buyers. If buyer and seller agree on a price, FONTIERRAS extends the buyers a loan, using the land as collateral.

The farms are turned over as whole units to the group of families, they are not subdivided into family parcels—legal title is issued to the group as a collective agrarian patrimony (Patrimonio Agrario Colectivo). The group decides the legal status they prefer, such as a production cooperative, an indigenous community, or a peasant association. The group also makes its own internal decisions such as how to farm the land, whether collectively or individually. Once the loan is paid off, the group can decide whether to want to officially subdivide the land among its families and obtain individual land titles.

Between 1997 and September 2000, FONTIERRAS had facilitated the purchase (with soft loans) of 55 farms to almost 3,500 families (CEPAL 2001: 62). The hectare per family ratio varies widely by farm and region between 0.9 hectare in one of the highland departments (Sololá) to 14.4 in El Petén; the average size is 6.6 hectares (see Table 1). Many of these farms

¹⁴ In Article 21 of the Ley de Fondo de Tierras (Guatemala 1999: 34-35), the eligibility criteria listed are: peasant men and women without land, peasant men and women with insufficient land (less than 1 hectare), and peasant men and women classified as poor (families whose income is less than four minimum salaries for agricultural workers).

had also been abandoned for many years (thus, one reason why owners are willing to sell), and require much capital and labor investment to make produce commercial crops.

FONTIERRAS provides technical assistance to farm buyers, financed by both the group of families and FONTIERRAS, and production credit. It also covers 100% of the costs of production investment projects during the first year, 65% during the second year, and 30% the third year. Beginning in year four, the group receives no subsidies from FONTIERRAS (CEPAL 2001).

The CEPAL (2001) study reports that FONTIERRAS does not have the adequate financial resources to provide long-term credit for the majority of families that wants to buy farmland. FONTIERRAS receives scarce financial resources from the state. While it does receive some resources from international donors for land loans, such as the Inter-American Development Bank, the total amount available for land purchase comes up short.

Besides lack of financial resources, FONTIERRAS does not have an adequate amount of land to adjudicate or sell to land-poor families. Most of the state-owned land inherited from INTA is already occupied and has been or is in the process of adjudication. And the land market (willing sellers for willing buyers) does not appear to provide the amount of land needed. CEPAL (2001: 64) estimates that applications for land could increase to 2,000 (each application for 80-100 families). The state could acquire more land for adjudication and for sale by utilizing legal measures already available to it such as (a) state land that was adjudicated illegally, particularly since the 1950s¹⁵; (b) *tierras ociosas* (as mandated in Article 40 of the Constitution); and (c) surplus land that results from title regularization.¹⁶ Currently, because the coffee crisis, it may also be possible to purchase good farmland at good prices, particularly those farms that have defaulted on mortgages.

In addition, FONTIERRAS does not have adequate resources to provide new buyers of land with investment loans for production. Carrera (2000: 71) points out the lack of investment credit could put at risk the buyers' capability to pay the mortgage credit on their land. The World Bank has granted Guatemala a \$23 million loan for institutional strengthening, to provide technical assistance to FONTIERRAS families, and for production investments that benefit the community (World Bank 1998a).

The 2001 CEPAL study points out potential problems for FONTIERRAS operations. Financial resources for future land purchase loans are dependent on the repayment capacity of current loan holders. The capacity for these smallholder families to repay their loans depends on their success in commercial farming. As we saw with the FUNDACEN experience, there is the dilemma of buying cheap farms (low prices because the soil is not fertile, the farm has no productive infrastructure, and/or it is too isolated) and having to provide high amounts of production and investment credit. Or of buying expensive farms (with fertile soils, high productive capacity and infrastructure, and located on good roads) that have lower investment credit needs.

¹⁵ State agencies such as INTA have improperly given state land to large landowners, military officials, and friends.

¹⁶ Surplus land is that area of a property that is claimed by the owner but that is clearly not part of the property as stated in the title or in the survey map.

The CEPAL study also points out that many of these farming groups do not have the skills to effectively organize a viable production enterprise. The training being offered to them is not adequate—they provide general information and orientation on administration and organization, without giving them the specialized and technical training they need for economically producing crops they are often not familiar with. This is particularly needed for those that attempt to farm as a group.

Besides facilitating the purchase of farmland by landless and land-poor families, FONTIERRAS also took over from INTA the responsibility of titling and registering land given out by the various state and INTA programs before 1999. Because of the bureaucratic and procedural difficulties in issuing land titles and in recording them in the property registry,¹⁷ the majority of land parcels distributed and sold to smallholder families do not have definitive (i.e., registered) land titles.

3.6 SOCIAL EQUITY IN THE LAND MARKET

Although Guatemalan law gives all citizens equal rights, including equal property rights, gender bias and racism deny many Guatemalans the opportunity to enjoy equal rights. Some of these biases are reflected in law, conflicting with general declarations of equal rights.

With regard to women's access to land, both legislation and programmatic practices deny women their legal rights. Reforms to Guatemalan legislation during the 1980s and 90s have strengthened women's rights to property by explicitly recognizing women's equality, including married women. Thus, the Family Code recognizes women's rights to marital property. Other legislation, however, retains gender bias; for example, Article 131 of the Civil Code recognizes the husband as the head of the household and administrator of the family economy and its assets, denying wives their role also as head of household.

State and private land programs have not recognized women's rights to be property owners in equal conditions as men. Land parcels distributed and adjudicated to rural families are actually given to the head of household, in most cases, a man. When land certificates and titles were issued by state agencies such as INTA and FYDEP, only the head of household is named—women households heads (with the exception of single women such as widows) have not been considered property owners. Private sector land market programs such as FUNDACEN followed the same pattern. In fact, FUNDACEN would not consider single women as eligible for their land market program—only couples were selected. When women do figure as beneficiaries, it usually is the result of separation or death of the husband. A study undertaken on the women's access to land in the early 1990s (Fundación Arias 1993) estimated that women made up only 7-9% of INTA and 1.2% of FUNDACEN beneficiaries.

In the case of cooperatives and *empresas campesinas asociadas*, once again the great majority of members are men: only one person per family can become a member and that person is generally the male head of household. Very few single women have been accepted as members. Consequently, women are also excluded from derived rights that members have to the collective title. In all these cases, women may find themselves in a very vulnerable situation in

¹⁷ A contributing difficulty was the high levels of incompetence and corruption found in INTA and the Registro General de Propiedad.

case of separation or divorce since they have no legal rights to property or to cooperative benefits.

Ironically, the experience gained by women who were forced to migrate during the civil war heightened consciousness of their rights and responsibilities. Worby (1998) describes how, during the peace accord discussions of the early and mid 1990s, women refugee organizations, supported by the United Nations High Commission for Refugees, put pressure on the state to recognize women's rights, and more specifically, that the names of both spouses be put on titles for land distributed to rural families. Possibly as a result of this pressure, the 1999 law that created FONTIERRAS¹⁸ stipulates that the land titles issued by FONTIERRAS have to include the name of both spouses.

Another type of social inequity prevalent in Guatemala's history and still practiced today is racism. Guatemala's indigenous population has experienced social exclusion based on race and ethnicity, contributing to its poverty, and they continue to suffer economic, legal, and social discrimination. Racism is utilized to keep the indigenous population from participating fully in civil society, to deny indigenous communities their property rights, to keep agricultural wages low, the absence of basic social services such as schools and health care, and political powerlessness vis-à-vis the minority *ladino* population.

Over the centuries, racism has been used to dispossess Guatemala's indigenous population of its land and to deny its participation in civil and economic spheres. Non-recognition of indigenous tenure forms is another result of this social bias. Peasant or indigenous communities that hold land as a community cannot register it as communal land. Even though the 1985 Constitution recognizes indigenous communities and communal property, Congress has not approved legislation that establishes administrative procedures for communal property. As a result, over the years indigenous communities have either lost their land to private landowners, have had to register their land as municipal property (putting their rights at risk), or have simply not registered their lands at all.

4. CONCLUSIONS

Landless and land-poor rural families in Guatemala, as in other countries with concentration of land ownership, are not able to participate in land and capital markets because most of the land offered on the market (supply) is too large for them to purchase. In other words, their demand is for small land parcels. Transaction costs on the formal financial market for sub-dividing large farms into small parcels are too high; the extremely high cost of titling and registering land in Guatemala adds to this cost. The same can be said of production and investment credit from formal financial institutions. For this reason, land market programs, such as FUNDACEN and INTA in the 1980s and 90s and FONTIERRAS since 1999, are needed to purchase large parcels and sell land on credit to land-poor rural families: there is not a cost-efficient way for the agrarian structure and the land market in Guatemala, as it currently functions, to service small buyers.

¹⁸ Article 20 of the Ley del Fondo de Tierras, Decreto Número 24-99 (Guatemala 1999) says: "... los títulos serán emitidos a favor de los cónyuges o convivientes, jefes de la familia beneficiaria."

Guatemala's agrarian structure strongly affects other dynamics in the rural sector, such as non-traditional export crop production by smallholders. As we saw, smallholder participation in commercial farming such as export crops is highly constrained by lack of access to factor markets. Policies and programs that have as their objective modifying land distribution without questioning the basic inequitable agrarian structure and the legal and political base that maintains such a structure are likely to be unsuccessful. This has been evident in land purchase programs such as FUNDACEN and INTA where opposition to this type of program has resulted in minimal resources from the state. The high level of landless and land-poor families is barely affected by these programs.

Because of the subsidies large landowners enjoy in countries with high land concentration, Binswanger et al. (1993) argue that land banks cannot work because asset-poor rural families can pay for the land only by cutting back on subsistence or tapping nonfarm income sources. As the experience on FUNDACEN farms has shown, families that are most likely to survive the first years on the farms had savings to support their subsistence or other adults in the household who could bring in outside income. The workload on these farms in the initial years, to clear the land and put in and nurture the coffee plants, does not allow time for off-farm employment unless the family has several adult members.

Thus, an agrarian structure based on high levels of land concentration, with the economic and political power that large landowners possess, puts high obstacles in the way of land-poor families who attempt to acquire enough land to provide for themselves. Even land market programs that have as their objective to facilitate the transfer of land from the large-farm sector to smallholders find that obstacles, such as cost and minimal support and resources, are extremely high.

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