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PAPER:

**AGRARIAN POLICY AND RURAL
DEVELOPMENT IN GUATEMALA:
VISIONS FOR A STATE AGENDA**

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AGRARIAN POLICY AND RURAL DEVELOPMENT IN GUATEMALA: VISIONS FOR A STATE AGENDA¹

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I. INTRODUCTION

AGRARIAN POLICY AND RURAL DEVELOPMENT

Defining a policy for rural development based on the conception, definition and implementation of agrarian policy is, in essence, visualizing the country we would like to have in the future or, at the very least, the country that we want and that we feel most of the population is entitled to have.

The agrarian issue is closely related to the legal framework established by the State in order to identify and characterize the relationship between individuals and land, its access, its adequate exploitation or lack of it, its uses and the guarantees needed to exercise true domain over it.

Thus, we understand that the agrarian issue comprises a set of elements that compose the rural structure of the country, and which are: The agrarian laws that regulate land ownership and the rational exploitation of natural resources; the proper use of technology; agricultural credit that is opportune and sufficient to revitalize production, transformation and commercialization, and all the other relations derived from all the former, such as the types of agricultural companies that can be established; the social structure of the agricultural sector; all the social factors related to production in the countryside, and the organization of the public sector.

¹ The opinions expressed in this document are the sole responsibility of the author

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Agrarian Policy, based on the methodical hierarchical structuring, linking and systematizing of relations among the chief elements present in the agrarian issue, indicates the direction in which the actions must be headed in order to achieve a predetermined objective. As to the hierarchical structuring of relations, there are those relations whose consideration is imperative, since they are the main ones and the prerequisites for others. This is the case of Land.

From the legal and social perspective, there is a link between individuals and land. Constitutional and legal statutes recognize, protect and guarantee the right to the private property of land; therefore, the land throughout the country, according to the legal vision, is divided into portions, whose property rights are assigned to one or several persons. This ownership bears with it the right to exercise various powers over that land, such as using it for production, leasing it, selling it, bequeathing it, donating it, etc.

A land title, which can be recorded in the Property Registry, designates an individual as owner of the land, and from the moment an individual registers such title in his/her name, it grants him/her a new economic and social dimension. That title allows him/her to enter the formal market, and constitutes the guarantee required by financial entities to provide the owner with the monetary resources he/she needs in order to achieve his/her objectives. This is the strategic power of land ownership.

A well-conceived agrarian policy cannot ignore this basic relation if it is intended to constitute the driving force for the kind of rural development that meets the demands of current times.

It is not possible for rural development to occur if, instead of rightful landowners, there are only simple landholders, when faced with a legal framework that hinders their progress and their capability to organize in order to produce and generate wealth. Even with the best of technical assistance, farmers cannot improve their production past subsistence crops if they do not have the guarantees they need to secure credit and are adequately organized.

The way in which these elements are brought together in order to generate better living conditions in the countryside constitute the seed for Rural Development.

Based on the above, it is practically impossible to try to define a rural-development policy without first defining the agrarian policy of the State.

Both the agrarian issue and the rural issue have their individual essences and expressions. The rural issue is understood as being broader than the agrarian issue, but the latter, in our opinion, defines the former.

In Guatemala, it can be said that the agrarian issue is expressed by the perception that land ownership represents a strategic axis for action in interpreting history and the changes that have come about in development, while rural development is expressed in terms and indices of the population living in poverty or extreme poverty.

A rural development policy must, eventually, seek to promote changes in the rural situation, in terms of benefiting the rural population, from a determined standpoint. And I say “eventually”, because a rural-development policy can very well maintain the *status quo* in the rural situation, especially if the agrarian issue is not addressed.

Agrarian policy, on the other hand, determines the State’s vision on land ownership, which governs the whole system of market relations and, thus, all transactions and accumulation of wealth.

The lack of a true agrarian policy eliminates the vision from rural development, but above all, it does away with the sense of direction of any effort to promote policy.

II. LAND AND RURAL DEVELOPMENT IN GUATEMALA

WE CAN OUTLINE THE FOLLOWING OBJECTIVES:

1. To combat poverty and extreme poverty, so that they are reduced gradually and ultimately disappear as a collective social expression. Even though poverty is found both in the urban and rural areas, it is in the latter where it is most evident and reaches its crudest forms.
2. To promote a more just relationship between the city and the countryside, so that the wealth being generated may be distributed in a way that can guarantee, at the very least, that the rural population will attain living conditions befitting their basic human rights.
3. To promote economic and sustainable exploitation of the scarce natural resources available.
4. To generate better economic conditions in order to increase family financial resources, so that its members can migrate to other parts of the country and engage in activities that lessen social pressure on the rural area.

ABOUT OUR REALITY

In general terms, we, as a country, have the following characteristics:

1. A substantial percentage of the rural population does not own any land where they can grow their crops, so they either engage in various activities, such as producing handicrafts, selling wares within the informal sales sector, and working in agricultural-related jobs, or they move to the city when they find no opportunities in the countryside.

A portion of this segment of the rural population rents small portions of land and they, basically, plant corn. Generally, they are illiterate. This is the segment in which the highest percentage of the indigenous population and the population living in extreme poverty are included. They engage in seasonal work in farms producing permanent export crops.

2. Another significant percentage of the rural population does own land to plant, but their plots are so small, that they can only engage in subsistence-crop farming. They constitute the most numerous poverty-stricken rural population. They are those inhabitants who own lands in accordance with the German-Community and Roman legal systems, brought to us by the Spanish conquerors and furthered by agrarian policies implemented during the past century, falsely seeking to avoid small landholdings.

These types of community property, especially the ones that follow the Roman system, which is very widespread in the national territory, have inherent legal obstacles that hinder transfer of joint land rights to third parties. Because of these impediments, the person purchasing a plot of land whose property is shared by several individuals does not register it accordingly. The process of executing contracts of successive execution is interrupted, and a process of transfers that are not registered, or informal transfers, is thus begun. Such circumstances wreak havoc within the current mandates of Law of Property and Possession. They also constitute a huge obstacle for development initiatives that are to be implemented within the framework of a financial system that is governed by the market and that requires verifiable guarantees of private property in order to grant credit. Additionally, these segments of the population have not accepted the Property Registry as the entity governing land transactions, and they continue their traditional practices, by which property rights are transferred merely through a verbal agreement among the parties or by means of a simple document and the subsequent delivery of goods or property. These are enough to confer obligatory force to every transfer agreement.

3. A much lower percentage of the rural population owns land that they can use to generate surplus crops, and thus, to accumulate wealth from selling them in the market. With a few exceptions, these landowners have no problems with their property rights. They engage in planting permanent crops and in the agricultural industry. Their educational level is higher as is evident if one considers that part of their success depends on their ability to market their crops in foreign countries.
4. The industrial sector is underdeveloped and has suffered from structural stagnation since the 1970s. The service and financial sectors, however, absorb most of the economically-active population, although their degree of development is only relative.

In regard to Guatemala, much has been said about there being great extensions of land owned by a few landowners. This statement is based on the statistics from the 1950, 1967 and 1979 agricultural censuses. The first real results from the national cadastral process show otherwise, as we will see further on.

Moreover, as can be seen from the essay presented by the Directors of UTJ-Protierra at the University of Buffalo, in February 2001:

“According to a recent analysis (January 2001), the Secretaría de Planificación de la Presidencia de Guatemala—SEGEPLAN (Planning Secretariat for the Office of the President of Guatemala) indicates that, using the international poverty line as the baseline, there are around six million inhabitants in the country whose monthly incomes are below Q389.30 (US\$600.00 per year). Additionally, it underscores that 27.8% of the total population live in extreme poverty, with annual incomes that total an equivalent of US\$300.00.”³

³ State University of New York at Buffalo. After Peace Agreements, Page 8, February 2001

This disparity in the national *per capita* income and the incomes of the population living in poverty and extreme poverty can be explained by means of the Gini Coefficient, which is 0.58 for Guatemala.⁴

Social indicators for Guatemala are unequivocal. According to statistics contained in the Human Development Program report, Guatemala: La fuerza incluyente del desarrollo humano (Guatemala: The Including Force in Human Development), prepared in the year 2000 by UNDP, in 1998, 31% of Guatemala's inhabitants were illiterate; of the population who was literate, according to the figures for net school attendance, 55% received a grade-school level education, 19.5% received a junior high-school education and only 4.8% studied at the high-school level. In Guatemala, it is definitely a privilege to sit in a classroom at a university.⁵

The infant mortality rate, again in 1998, was 45 per 1,000; the chronic malnutrition index reached 46.4%; the general mortality rate was 7.4 per 1,000. Average life expectancy in 1998, both for men and women, was 63.5 years old, and 43.8% of the population was under 14 years old then, thus resulting in a wide-base population pyramid. 26.4% of the economically-active population is covered by social security.

38.8% of urban homes are connected to a water-supply system, while in the rural area, the percentage is a much lower 24.7%. As to sanitation, 31.8% of urban homes are connected to a drainage system, while the indicator for sanitation in rural areas is a mere 0.8%. Furthermore, 39.5% of urban homes have electricity, while only 24.6% of rural homes have that infrastructure, which is crucial to development.

⁴ SEGEPLAN. El drama de la pobreza (The Tragedy of Poverty). Page 13. January 2001.

⁵ United Nations Development Program. Guatemala: La fuerza incluyente del desarrollo humano. Report on Human Development, 2000.

This social reality has a negative impact in every circumstance of national life: in the exploitation of natural resources; in the relationship between man and the environment; in the perspective of building a future for coming generations; in the overall social behavior towards the political system and the population's willingness to participate in it; in whether to believe in democracy or authoritarianism; in the interrelations of the population as a social conglomerate of segmented visions: urban and rural, rich and poor, indigenous and non-indigenous peoples, men and women; even in how political power is applied, at the central, departmental, municipal and community levels.

We are, then, a country with great social inequalities, with a population that is fundamentally characterized by poverty.

III. HOW WILL WE ATTAIN OUR RURAL DEVELOPMENT OBJECTIVES?

In theory, it is difficult to find any opposition to the above rural development policy objectives. Nevertheless, there are very conflicting opinions on how to attain them, as a result of the different individual perceptions of the reality we live in and of each person's degree of awareness in regard to it. These varying degrees of awareness only hold back the process, since it is necessary that everyone be equally aware of the circumstances in order to generate consensus for a proposal.

Thus, the two extreme perceptions would be, on the one hand, those who believe that if land is distributed, the situation would improve in the rural area: by hurting only a few landholders who have agricultural enterprises, the vast majority of the poor *campesino* population would be benefited. On the other hand, there are those who insist, without clearly understanding the core of the problem, that distributing land is not the answer, and that the solution lies in clear rules that allow, promote and consolidate private investment, opening new markets to secure better prices, productivity to improve profitability, a favorable fiscal environment, and a government that provides subsidies. Both stands must merely be taken as references, so as not to make incongruous proposals; the first one because it is based on untruthful data, and the second one because of its simplistic viewpoint.

1. WHAT DOES COMBATING POVERTY MEAN?

First of all, if we speak of extreme poverty levels, the most important thing is to prevent the population from dying from hunger and its related illnesses. Thus, it is convenient to think about a mixed short-term program, which combines the provision of foodstuffs with preventative health actions during a specific period, and targets children, pregnant women and nursing

mothers, while it distributes improved seeds and low-cost fertilizers in order to increase basic-grain production. This is an action that is focused on those segments of the *campesino* population who do not own any land, those who rent or own small plots, but do not have any technology or resources.

At the same time, a program to generate massive employment sources should be implemented, seeking to generate income alternatives for the rural population. At present, we find ourselves with temporary crops whose prices have decreased in the international market, and unemployed labor that is completely unqualified for anything save subsistence-crop farming⁶. Besides, employment must be generated in those activities that show some degree of sustainability. Which are those activities? What kind of investment are we talking about?

Another option that can be considered a short-term measure is to furnish rural inhabitants with lands or to give them the opportunity to access them by means of the market. Why? Because by doing this, the demand for food can be diminished, since individuals can then plant subsistence crops, which does not require any qualification, and because the population can use them at once.

That is why rural inhabitants demand land at any cost, because with it, they ensure their survival in the short term.⁷ If this reality is ignored, it is easy to envision that land invasions will occur, bringing about the corresponding effects to the economic structure of a rural country.

There are options to accessing land through the market, such as the actions being implemented in Guatemala by the Fondo de Tierras (Land Fund) since 1999, within the framework of the Peace Accords. The advantage of this alternative is that the individual does not necessarily acquire

⁶ According to the UNDP's 2001 Report on their Human Development Program, Guatemala has one of the lowest medium-productivity rates in Latin America, which is easily explained by the fact that Guatemala also has one of the lowest labor-qualification levels in Latin America.

⁷ Since the 50s, Latin America has experienced structural-adjustment policies in those agricultural sectors that depend on macroeconomic policies. In regard to agrarian policies, the tendency has been to strengthen the land markets that promote transparency in providing access to land. Titling, modernization of land-registry systems and the creation of land banks are some of the measures that have been promoted.

lands without improvements, since the State subsidy allows him/her to pursue land in which there are crops planted and to which some technical improvements have been made. Thus, it is very probable, in general terms, that every time a plot of land is purchased, the beneficiaries' standard of living is raised almost automatically. Conversely, this alternative can also generate a vicious circle in rural poverty, as the beneficiary family will only live and work to pay off a debt, since in current times, the markets for the main agricultural products are very slow. In both cases, there is also a need for technical assistance, has still not been adequately implemented owing to various reasons, among them that there is not past experience of the private sector providing it and that it has always been plagued by the corrupt practices of the public sector.

On the other hand, it is important to select those individuals obtaining lands in the market, in order to guarantee that only the ones with the will to pay and with real possibilities of paying their debt will be benefited. If this is not done, the subsidy policy will be disparaged, and the productivity of land resources will be shackled to the financial market, a circumstance that will harm the very people it is supposed to benefit.

The cost of this short-term policy, in financial terms, is very high; not only because the demand has been estimated in millions of U.S. Dollars, but also because of the characteristics of partial offer, which raises prices. Considering that the records of almost 70% of the lands in the national territory have titling disparities and discrepancies, those plots with "their papers in order" tend to increase in price, as this is an advantage that is valued above others, surpassing even the better quality and the adequate use of the soil of those lands that have no official papers.

Supplying land by way of expropriation has the same characteristics as supplying them by means of the market, since the State must pay for expropriated lands and, besides, must infringe on the right to private property stipulated by the Constitution of the Republic. Confiscating lands cannot be considered a political proposal, since it would call to mind the very reasons that caused the country's armed conflict that lasted 36 years.

It is important that a short-term policy to combat poverty also implement an emergency program to combat malnourishment in children, and malnourishment in pregnant women and nursing mothers, two problems that are usually related.

Accordingly, the short-term measures of a program to combat poverty would be the following:

- Providing emergency foodstuffs
- Implementing Food for Work programs
- Supplying inhabitants with improved seeds
- Providing fertilizers
- Generating employment sources on a large scale
- Providing access to land via the market and technical assistance
- Implementing a program to combat malnourishment in mothers and children

If this short-term policy is implemented without measures of structural policy, it will become stagnated, it will worsen rural poverty, and it will only defer the definitive solution to the problem. This policy must also be coherent in its physical space; otherwise, resources will be hopelessly disseminated and they will only cause undetectable impacts.

2. THE SEARCH FOR JUSTICE IN THE RURAL AREA

A Rural Development Policy must, *ex-officio*, seek to raise the standard of living of the population it means to benefit. Nevertheless, care must be taken not to try to transfer the idea of urban development to rural areas. In addition, the values and culture of the rural population must be given every consideration.

Thus, the minimum elements in which equality must be sought should be coherent with the following universal human rights:

- The right to life
- The right to work
- The right to health
- The right to education
- The right to housing
- The right to recreation
- The right to spiritual freedom

In the case of Guatemala, any Rural Development Policy tends to become State Policy, since the target population is estimated to be a total of 1.6 million families.

3. EXPLOITATION OF NATURAL RESOURCES

Guatemala is a country where there is a great potential for exploiting natural resources. It is estimated that 70% of national soils are adequate for forests and, indeed 22% of the territory is composed of primary forests and protected areas. However, most of the areas that might be exploited commercially are located in the western highlands.⁸ Paradoxically, this is the area where the highest poverty indexes occur and most of the indigenous population lives. We are a country of paupers who sit at a golden table for their meals.

Because Guatemalan soils are adequate for forests, Rural Development is often seen as a long-term goal that will be achieved in 20 or more years, the time needed for forests to grow and become commercially feasible, and then, their exploitation is subject to many variants that could easily make any policy fail.

⁸ FAO/UNESCO. Revista Presencia No. 30 (Magazine). School of Economics USAC. November 1997, page 31.

Other policies that must be considered as essential are those relating to water resources, whether they are used to generate electricity, for human and animal consumption, or to irrigate lands used for intensive planting.

The minimum elements that a rural development policy must consider in regard to exploiting natural resources are the following:

- Soils that are adequate for forests
- Protected areas
- Water for human and animal consumption
- Water to generate electricity
- Water for irrigation

IV. AGRARIAN POLICY AS THE AXIS FOR A RURAL DEVELOPMENT POLICY

A genuine agrarian policy for Guatemala must rest on at least three main bases.

1. AGRARIAN REGULATION AND INSTITUTIONALITY

As a result of its history, Guatemala's agrarian reality is totally disorganized.

In addition to the policies implemented in Colonial times, which included large landed estates obtained by denouncements, *pueblos de indios* (Indian townships established by the Spanish), *encomiendas* (land and inhabitants granted to conquistadors), and *repartimientos* (distribution of Indians in territories and among the Spanish), there have been other arbitrary and wrongful policies implemented throughout Guatemala's history as a free country. Some of the most

notorious were the expropriations that took place at the end of the nineteenth century to accommodate the expansion of coffee plantations, the agrarian reform of 1952, and the settlements policy implemented from the seventies to date.

The result of the various agrarian policies implemented from the time the current Modern State came into being is the fragmentation of our rural history. In order to understand Guatemalan agrarian reality, one must understand that everything that we now have before us are pieces of history, the fragments of some policy measure taken without considering other measures, repeating them, and in some cases, ignoring the previous norms.

Historical passages can now be perfectly perceived in all their dimensions. For example:

- To this day, there is a very serious conflict between the *pueblos de indios* of Nahualá and Santa Catarina Ixtahuacán, both in the Department of Sololá, because there are no territorial limits between the towns. The record that appears in the Second Registry of Quetzaltenango for lands in the area reads “it is recorded on behalf of the sister towns of Nahualá and Santa Catarina Ixtahuacán”. These problems recently escalated, to the point of claiming several lives and, to this date, there is underlying tension in both towns.
- The *encomiendas* of Huité, Zacapa, where lands that were already inhabited and owned by locals were granted as private property in the 1700s. Proof of this is the fact that the rightful owners finally obtained the registration of their land rights as joint

owners of undivided plots, in the 1900s. At present, these lands are held by agricultural workers, who own one or more isolated plots.

- The large coffee plantations in the Pacific Piedmont and the Las Verapaces region, established as a result of German immigration.
- The Property Registry and the Second Registry of Quetzaltenango, established at the end of the nineteenth century.
- The *Parcialidades* (lineages) that were created, the property that was granted in joint ownership to the members of the “militia”, and the Indigenous Agrarian Communities that were created in the 20’s to benefit those who befriended then President Manuel Estrada Cabrera.
- The expropriations that took place in the Southern Coast, which land was granted to *campesinos* who did not have any, and subsequently given back to its previous owners by recording it in their names.⁹ Some of these owners never succeeded in removing

⁹ From the 765 *manzanas* (land measure = 1.75 acres) that were expropriated through Decree 900, 603,775 were given back to their original owners; however, some of those owners had to surrender part of their lands in order to avoid confrontations with the *campesinos*.

from their land those *campesinos* who had been benefited from these expropriations.¹⁰ Such is the case of “El Pilar” in the municipality of La Democracia, Department of Escuintla.

- The small landholdings granted as Collective Agrarian Patrimony in the 1950’s, vacation homes now stand because they are so near to the beaches on the Pacific Ocean. Cuyuta and Río Blanco, in the Department of Escuintla, are good examples of such cases.
- Land granting and distribution in the areas of the Franja Transversal del Norte and Petén in the 70’s. In 2002, it has been estimated that 90% of the current owners have no legal backing for their land title and are not the original beneficiaries. In addition, protected areas were created in the 1990’s, 90% of which are in Petén, where there are numerous legal conflicts in regard to delimitation, property and ownership. For example, the core area of the Xutilhá and Machaquilá Reserve is one of the nine

projects promoted by FYDEP when it awarded lands. In other words, it is usual to find legitimate landowners at the very core of this protected area.

¹⁰ Handy, Jim. Reforma y Contrarreforma: Política Agraria en Guatemala, 1952-1957 en 500 años de lucha por la tierra. Page 380.

- In 1984, the decision to create territorial reserve areas was made, without having a genuine policy for exploiting and promoting them. This measure only generated widespread confusion among the population that lives along the Pacific coast of the country. Iztapa and Puerto San José are clear examples of this, as well as the banks of Río Dulce and the shores of the Flores lake in Petén and the Izabal lake in Izabal.
- Land purchases in any part of the country through an assisted market, subsidized by the current Fondo de Tierras (Land Fund), in effect since 1999. Some of them have been granted as Collective Agrarian Patrimony, in accordance with the mandates of Decree 1551 but without exercising any real conviction or fully understanding what this legal mode of grant implies.

Each one of these decisions taken in the past has now acquired great relevance; they have become an expression of accumulation or non-accumulation of wealth. Each of these decisions was, at the time it was taken, part of a vision of policy, part of a perception of how development should come about in the countryside and how the Guatemalan rural population should act.

Many policy measures were taken considering that the State would play an important role in developing agriculture; others were taken in detriment of indigenous and poor *campesino* communities, which historically have been denied the right to individual private property, and have been compelled to exercise joint ownership over their lands, allegedly because that would keep them from dividing and selling the land; still others have been taken considering both of these premises (establishing the Instituto de Transformación Agraria—INTA, and the Family Agrarian Patrimonies, which remain under the auspices of the State for 20 years).

At present the Fondo de Tierras (Land Fund) is undergoing a process of transition, understanding and reflection about how transcendent policy measures are, especially the ones that must be implemented to regulate the land granted by the State between 1960 and 1999.

A policy of sustainable Rural Development cannot and must not ignore this extremely complex agrarian reality. Approximately 70% of the country's territory is immersed in this confusing tangle of limits, locations and legitimate property rights.

In order to generate sustainable development in the use and management of land resources, transcendental decisions must be taken in regard to property rights. These decisions will be pivotal for the country, and will constitute the difference between maintaining the current conditions or transforming the country in twenty or thirty years.

It is important to point out that the axis is called Agrarian Regulation and not Territorial Regulation, which is ensuing and deals with applying and using the Cadastre. It is called Agrarian Regulation because it must rule on the new relationship that we want to establish between the population and the land in the countryside. We need to decide whether to keep things as they are and delay any solution; to implement an intermediate model that combines realities with objectives, or to go the way of an open market economy, based strictly on private property.

The decisions that we make in regard to these matters, as a society, must be accompanied by the institutionality needed to shape and provide contents to the law, taking into account past experiences, which have shown that State intromissions have been so ineffective that they have actually excluded from the market those very people they have sought to benefit.

Here are two examples that will further the topic of institutionality:

- a. We have a Property Registry based on a civil statute, copied word for word from the Spanish Civil Code that was in effect during the past century. The landholding rights on real estate are recorded in the Registry, but there is no control of this property by means of a cadastral system. Institutionality to protect

landholding rights has not been modified for the past 120 years, and when it was established, it was in response to the expansion of coffee plantation and the need to secure credit with mortgages. The lands granted by the State have been recorded in the “Books of Agrarian Transformation”; the question is: How does one verify that a plot registered in these books has clear boundaries with the plots transferred by civil means and recorded in the regular registration books? We are one of the few countries in Latin America that does not have cadastral regulations, and where the legal conservative sector is afraid of it, considering it a tool that will harm the Registry, when, in fact, it is a tool that will provide real life to it.

- b. In 1967, when Decree 1551 establishing INTA was issued, a policy of agrarian settlements was provided with institutionality and legal grounds. However, forty years later, the State is unable to sustain this institutionality that was characterized by corruption, chaos and lack of control. The whole purpose of granting lands in joint ownership —Family Agrarian Patrimony— was that the State, through INTA, would provide technical and credit assistance to the beneficiaries of land-granting programs, and that the land would not be sectioned, attached or sold during a period of 20 years. 38,000 files of lands granted in Petén, managed manually, completely surpassed the institutional capabilities of this policy. Furthermore, the State turned into a “renter”, selling land, accepting a down payment of 10%, not collecting the rest or collecting it by corrupt means, and registering lots, which were never physically inspected or measured, as land with reserved ownership.

The Cadastre and the National Registry as the Transversal Axis for the New Agrarian Policy

In numerous countries, the cadastre is a tool that has been used regularly and historically for planning purposes. In fact, some European countries cannot conceive development without a

cadastre, which is the inventory and registration of the location and position of land and its legal status in regard to the population. Additionally, in countries like Holland and Sweden, the cadastre is an essential requirement in order to exercise any property rights over a given piece of land.

In Guatemala, however, the cadastre is much more than a mere tool for development. The Cadastre is the activity that can technically verify the true circumstances of Guatemalan agrarian reality. It is the process that is gradually ascertaining the actual links that exist between man and land, whether legal or in fact. Reality cannot and must not be changed without first being well versed on it.

The document “El contexto económico y social de Guatemala y el catastro como instrumento de desarrollo” (“Guatemalan Economic and Social Context and the Cadastre as a Tool for Development”)¹¹ poses the questions: Why is it so important to be clear about the rights to use, hold and own the land? What does that have to do with poverty? Is this element a fundamental input to promote the country’s genuine development?

Preliminary estimates based on the registration research performed by UTJ-PROTIERRA, as part of the pilot cadastral projects, show that in the Property Registry, there are problems of location and registration of real rights in over 70% of the national territory. The impact of this data is devastating considering that Guatemalan historical reality is based on the agrarian issue, and that major wealth and principal relationships among the country’s population occur within an agrarian context.

The agrarian context is linked to the following elements, which must be adequately addressed so that the country and its population are not hopelessly condemned to moving through paths of eternal poverty and social exclusion:

¹¹ State University of New York at Buffalo. Ibid page 7.

- a. The General Property Registry—the entity that preserves an individual’s property rights from any claims from third parties, and that allows internal business transactions between individuals and institutions through credit—is, basically, a record of rights and does not provide adequate evidence of measurements. This triggers problems regarding physical location, and, thus, makes it impossible to recognize the land that is the object of said rights, and bringing about conflicts, dispossessions, scams, general lack of credibility in the economic system, etc.
- b. The core of the agrarian conflict stems from undefined boundaries and rights, and the lack of legal instruments to address the whole set of national agrarian problems.
- c. The process of configuring the location and shape of the lots in the national territory and determining the relations and types of ownership held by landowners stems from the lack of rights to use, hold and own land, and it is also a source of trouble and confrontation when pursuing efforts to accomplish any territorial regulation.
- d. Because legal agrarian reality has no physical bases, the regulating process with a cadastral basis becomes a strategic element in defining the new economic development policy. However, this process could take up to 50 years if the actions needed are not undertaken swiftly and assertively.
- e. Municipal development, whose sources are each municipality’s population and territory, is reduced municipalities are not aware of their potential and of the links between their residents and the financial and natural resources in their jurisdiction. People living in a municipality are not able to consider themselves as a group, nor do they fully realize what their resources are and how and to whom those resources are linked.
- f. Long-term projects, such as crop diversification, irrigation, exploitation of forest resources, rural agricultural credits, protected areas and eco-tourism require the legal certainty of land ownership in order for them to be genuine development projects.
- g. Urban and rural housing projects begin by identifying and purchasing lands, as does urban planning for population growth and service demand. Implementing a distribution

policy through long-term credit is based on unambiguous rights and the possibility of investment recovery. If there is no legal certainty, there cannot be any housing policy.

- h. When exercising justice in agrarian issues, such as in the case of ownership or boundary conflicts, it is imperative to have the necessary precise and concrete elements in order to pass speedy, opportune, and efficient judgment. How can a land conflict be resolved if the rights of those who presumably own it are not clear? Or worse still, when the physical identification of the property in question is equivocal?
- i. If we are not aware of our resources, their location, their potential and their relation with the population and its needs, it is impossible for us to emerge from poverty.
- j. Without a permanent and clear policy that seeks legal certainty of land use, holding and ownership, all the measures, actions, projects and programs—whether they are private or public—that are implemented in the national agrarian context will lack the element of sustainability that only the certainty of a peaceful future can provide.

The cadastre, in contrast with the registration reference in the historical context, is confirming the impact caused by agrarian policy measures in the past. For example, it is now clear why in San Jacinto, a municipality located eighteen kilometers from the Departmental capital of Chiquimula, in the eastern region of the country, no bank in Guatemala has established a single branch office to provide growers with credit. The land in that area was recorded on behalf of the municipality in 1933, and it has never been dismembered to allow and guarantee the ownership rights to the urban lots where homes have been built or to the rural plots. The land market, then, is entirely informal and it is linked to hereditary rights more than to purchase and sale transactions. The same is true in Petén, where, for thirty years, all the municipal governments have had the power to sell to the inhabitants those municipal public lands used for urban development, but have never done so because they have lacked the support to accomplish it.

Furthermore, it is undeniable that the cadastral graphic and alphanumerical database constitutes, with the corresponding training course, a genuine treasure for municipalities and their governing bodies. With it, they can further the decentralization process and strengthen local power; they will also be able to have an adequate vision of the needs of the population in their geographical context, which is one of the aims of territorial regulation.

The Role of the International Community in Establishing the National Cadastre:

One of the major efforts of the international cooperation agencies in Guatemala has been to strengthen the rule of law in Guatemala by means of providing the financial and technical support needed to establish the Cadastre in Guatemala.

At present, cooperators are providing their support; following is a description of their contributions and the objectives and results that they seek, most of which have already been achieved.

- **Sweden.** In 1997, a grant totaling US\$2.2 million was secured in order to: a) Support implementation of Governmental strategy in regard to lands, in the context of the Peace Accords (US\$1.1 million), to be managed by the UNDP, and b) obtain international technical assistance in order to accompany the processes that were being developed, especially those regarding geographic information, registration and cadastre (US\$1.1 million), managed directly by the Swedish Cooperation. The second phase of the support provided by the Swedish cooperation is now being executed. The agreement signed by the UNDP and Sweden on October 3, 2001, for the project “Strengthening the Guatemalan National Cadastre, Phase II” supporting the execution of the cadastre in Escuintla. A grant of US\$2.4 million in financial resources and US\$1.1 million in technical assistance.
- **World Bank.** With a loan from that bank, the following actions are being executed: a) Establishing a cadastral process, regularizing landholding and registration in Petén; and b) designing a model for the administrative modernization and operations of the Property Registry in the context of the cadastral process. Loan agreement BIRF four thousand, four hundred and fifteen hyphen GU (BIRF 4414-GU) between the World Bank and the Government of Guatemala, signed on August twelfth, 1997 for the project Cadastral Land Management and Registration in Petén. A loan for US\$31.0 million. Between 1992 and 1996, the World Bank, by means of the RUTA Project, headquartered in Costa Rica and with offices in each Central American country, provided its support to a think tank for the cadastral project in Guatemala.
- **European Community.** A grant to execute a pilot project in the Department of Sacatepéquez, and later transfer the experience to the whole Department and to other selected Departments. This cooperation effort started in September 1998 and ended in December 1999. Grant: US\$1.0 million.
- **Germany.** Technical assistance from the German Cooperation through GTZ, which is providing support to the Guatemalan Government in order to define the technical guidelines for a cadastral survey and the execution of an exercise in the Las Verapaces region. It began in October 1998, and will conclude its second phase in December 2002.

- **Holland.** With the support of the Government of the Netherlands, cadastral actions and execution have been defined, and the cadastre is being implemented in the Departments of Zacapa and Chiquimula. An agreement was signed by the UNDP and the Netherlands on March sixth, 2001, for the project “Support for the Cadastre, Regulation and Registration in Zacapa and Chiquimula. Previously, between 1998 and 2000, a pilot project was executed in two municipalities. Grant: US\$7.0 million.
- **Navarra, Spain.** An agreement was signed on April 25, 2001 by the Government of the Statutory Community of Navarra and the Government of the Republic of Guatemala, through the SEGEPLAN (Planning Secretariat for the Office of the President of Guatemala), to provide support for establishing and maintaining a cadastre and to coordinate with the entity in charge of registering property rights in the Department of Sacatepéquez. The grant was for US\$500 thousand.
- **France.** It has provided its support to the National Cadastre effort since 1997 by means of permanent technical assistance provided by a technician with a Master’s Degree in Geodesics and Cadastre, and through the planning of the higher-education program for cadastral training.
- **Norway.** In January 2002, the Government of Guatemala published a Governmental Decree validating the grant in technical assistance for a feasibility study on the Cadastral and Registration Project in the Department of Izabal, which began in March 2002.
- **USAID, United States of America.** In October 2000, USAID provided its support to the National Cadastre for cadastral information survey activities in conjunction with the Fondo de Tierras in those lands purchased during the 1998-2000 period. Grant: US\$120.0 thousand.
- **UNDP.** Between 1998 and 2000, the UNDP has provided US\$500.0 thousand in financial support in order to consolidate the national cadastral strategy.
- **Mexico.** In 2001, UTJ-Protierra and the Instituto Nacional de Estadísticas, Geografía e Informática de México (Mexican National Institute for Statistics, Geography and Computer

Science) signed a Letter of Understanding that has made it possible for Guatemalan technicians to attend specialized training courses in that country.

- **Colombia.** In March 2002, UTJ-Protierra and the Instituto de Geografía Agustín Codazzi (Agustín Codazzi Geography Institute) in Colombia signed a Letter of Understanding that seeks the same objectives and results achieved with the Mexican Cooperation.

The International Community has been a key factor in backing the national cadastral strategy. In developed countries the links among land, cadastre, property, market and development are very clear and indivisible.

2. MEDIATION OF AGRARIAN CONFLICTS IN THE LEGAL AND CIVIL-LAW CONTEXT

One of the major obstacles to implementing an agrarian policy in Guatemala is the severity and intensity of deep-rooted rural conflicts, in which the difference between simple ownership resulting from a distribution measure and the conception of property rights derived from the Civil Code is blurred, aggravated by issues stemming from cultural aspects and historical rivalries between neighboring towns.

As long as a policy for agrarian regulation is not defined and the cadastre is not implemented, the State should apply a specific mediation policy, specifically conceived to solve conflicts in the rural area. The situation is so complex that sometimes those conflicts being resolved by the legal

system are wedged in court while the parties engage in a full out war, giving up their lives for something that nobody, not even the judges, fully understand.

Both the Cadastre and this initiative to mediate conflicts were clearly visualized in the Peace Accords, specifically in the Accord on Socioeconomic Issues and the Agrarian Situation. However, the magnitude of these tasks, as projects, is immense and long-term, and, as time goes by, it is becoming clearer that they are constrained by the lack of an agrarian regulation, a fact that was not considered in the peace talks.

Agrarian regulation will determine whether the role of the State will be limited to an office where agrarian conflicts are mediated and parties are encouraged to pursue out-of-court settlements or whether a General Attorney's Office for Agrarian Rights and an Environmental/Agrarian Jurisdiction will be established, as stipulated in the Peace Accords. These will have no real basis or sense, though, until the State establishes clear guidelines regarding property.

Conversely, the free legal assistance established by the Peace Accords should be provided when land conflicts arise, so as to preclude the obvious conflicts of interest arising from the State's providing said assistance to any of the parties, without the proper regulatory framework to guarantee its impartiality.

V. POLICY AND PROGRAM PROPOSALS

Whatever we do to implement a long-term rural development policy must be linked to the solutions and policies that we find in the agrarian scene. Thus, policy objectives may remain the same, but the way—"how"—to achieve them will not be the same, and the course of action will be completely different.

In the short term, rural development policy could be taken for a policy to combat poverty due to some of the measures that have already been explained in this case study and that are not sustainable, from the economic standpoint, nor feasible in the medium and long terms.

For the medium and long terms, there are three scenarios for rural and agrarian development policies:

- a. One that endorses the principle of private property, seeks to preclude the role of the state in the long term and legislates the exploitation of land resources by the market. This scenario seeks equal consideration of the whole population by the law, leaving indigenous expressions only for the folkloric, artisan and tourist sectors. It eliminates all subsidy policies.
- b. One in which historical and cultural reality is interpreted, generating a policy of regulated voluntary options to agrarian or private property, regulated in regard to the benefits afforded by the actions of the law and the State. It establishes a complementary and integral subsidy policy to aid in complying with responsibilities and benefits.
- c. One that endorses the principle of attaining total land distribution granting it in holding, in usufruct or in ownership to those who farm it and need it. Not necessarily “providing each inhabitant with a pot of soil” as it has been pointed out. It seeks to strengthen the role of the State and to maintain existing subsidies and establish others.

The first scenario reflects the neo-liberal tendency that has been permeating the thought of those generating policy for the past decade. It is adequate for countries where the cultural tradition does not differ from the dominating culture, and where there are other alternatives for development apart from those originating in rural areas.

The third scenario is the classic unfulfilled dream of Latin American revolutionary movements stemming from the Cuban Revolution in 1960, and which has been the banner of all chief armed conflicts that seek revindication.

The second scenario is the one that, in our opinion, should be applied to a country like Guatemala, and that is why it should be executed in conjunction with the principal actors, so that it produces a genuine “empowerment” of the policy and an appropriation by the actors and beneficiaries.

Today, opinion generators are becoming increasingly aware of the topics dealing with Rural Development and Combating Poverty. The Coordinador Nacional de Organizaciones Campesinas –CNOC– has just issued an outline of its rural development proposal, so that its conception, acceptance and implementation can be discussed with the Government. Private-enterprise organizations have their own rural-development strategy.

Both proposals can be inserted into scenarios 1 and 3, with the Government playing a role as mediator and generator of proposals and consensus. We have before us a budding discussion about a deep-rooted and obscure problem, but the outlook does not allow any hesitations...every long route starts with a first step.

Less than 250 years ago, the Egyptian Pharaonic culture, one of the greatest, most beautiful and ancient cultures of humanity, remained hidden in its hieroglyphs. Alexander the Great, Cesar, Marcus and Napoleon admired the pyramids, without deciphering the enormity of that which lay hidden among the rocks. But then, Champollion came along and, suddenly, with the Rosetta Stone and his knowledge, he uncovered the secret of that language; thousands of years of culture appeared before our very eyes.

Until a few years ago, we traveled through the rural areas of Guatemala and we could not understand the pain, the poverty and the reality of our indigenous and campesino populations.

Today, the images of the cadastre and legal research, like letters from a most ancient agrarian alphabet, conjure up hidden historical truths, impacts of decisions made 100, 200, 300 and 400 years ago, thus making the whole outlook much clearer. Understanding reality brings about insight, and insight brings about the commitment to search for answers. That is the goal of all our ongoing efforts.

Thank you.

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