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Land Tenure, Credit Access
and Agricultural Productivity in Honduras*

by

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1. Poorly defined property rights as an obstacle to agricultural growth.

Land is the principle productive resource of the Honduran economy and agriculture the central engine of growth. Achievement of macroeconomic goals in the medium term will depend on growth in the agricultural sector. But in spite of a total land area of 3.6 million hectares, the agricultural frontier in Honduras cannot be expanded without costly investments in water control, infrastructure and watershed protection. This capital constraint means that increases in the sector's contribution to overall economic growth will have to come from either increased productivity or by a transition from lower valued production to a higher value use. For these changes to occur through market mechanisms, appropriate price signals and clearly defined property rights are necessary (although not sufficient) conditions. During much of Honduran history, however, political and institutional factors have combined to prevent the establishment of these conditions. Recent liberalization of commodity pricing has sought to remedy distorted prices, but property rights for agricultural land continue to be poorly defined and enforced.

The weakness in the definition of property rights and their enforcement is a function of an historically weak state involvement in property registration and mapping, an expropriative and inconsistently applied agrarian reform law, frequent land invasions by campesino groups, and the widespread occupation of national lands both in large holdings and small parcels, by inhabitants who hold no formal title to the land. These conditions have led to sub-optimal effects on land use and resource management, created barriers to agricultural investment and complicated land transfers.

The agrarian reform legislation clouds property rights and impedes efficient use in two ways. First, it creates a sector of agrarian reform land (417,000 hectares) which is held in usufruct (garantia de ocupacion) by user groups until the government is fully paid for it. In the interim the land is not transferable, prohibited from rental and unusable as collateral for private bank loans. Failure to make the expected payments is the rule, and the only sanctions for non-repayment is suspension of borrowing privileges from the Banco Nacional de Desarrollo (BANADESA). In spite of some notable successes and levels of yields above the national average, this parallel tenure system has had the effect of isolating agrarian reform land from commercial credit and land markets. Within the groups, the lack of fully defined property rights has complicated group farm management and membership evolution.

Secondly, the agrarian law makes land which does not fulfill certain criteria of "efficient social use" and/or which is above a

variety of pre-determined ceilings subject to expropriation by the government Instituto Nacional Agrario (INA) for distribution to campesino groups. The sometimes contradictory application of these criteria has introduced an element of uncertainty into private growers' decision-making which, they argue, acts as a disincentive to investment. Furthermore, land rental is prohibited under the agrarian reform law for all classes of producers. This prohibition discourages mobility of labor and capital in the agricultural sector and makes it difficult for the landless to achieve access through mechanisms other than purchase or participation in the agrarian reform.

In addition to the threat of government expropriation, the threat of occupation by campesino groups has created further uncertainty over property rights. In practice, expropriation and land invasions are interrelated. To stimulate the legal proceedings necessary for expropriation campesino groups typically occupy the land they seek to see expropriated. The widespread use of this tactic has increased risk for private growers, making them potentially subject to protracted conflict over the expropriation, even in some situations where they are not outside the "efficient use" criteria. On the other hand, agrarian reform groups argue that they are only adjudicated land when there is an immediate conflict.

Further complicating the definition of property rights in rural Honduras is the fact that all national and ejidal land is to be used for the agrarian reform, under the management of INA, with some exceptions (military bases, dams, etc.). INA will not, however, usurp national and ejidal land which has an individual user if the occupant is farming less than 200 hectares and can prove occupation during a period of not less than 10 years prior to the date of the implementation of the agrarian reform law, i.e., December 30, 1974.

Traditionally, occupation of national land has served as an outlet for rural population growth and has been tacitly condoned by the government. Much of this land has now been occupied for several generations, usually in small parcels and, in many cases, occupants have asserted "customary" rights, selling or renting land on an informal but locally recognized basis. But capital investments are small or non-existent on many of these small holdings and commercial lending is generally unavailable. These parcels are isolated from technical assistance (except for some coffee farmers) and their activities are not coordinated for soil conservation, forest and water management or land use planning.

In spite of the accomplishments of the AID-sponsored Small Farmer Titling Project (PTT) which has issued titles to approximately 40,000 occupants of formerly national and ejidal lands, much of this land remains in the hands of individual users who cannot use the land as collateral for commercial bank loans,

and who cannot legally sell or rent their land. The issuance of land titles to the smallholder agricultural sector will probably not in itself be sufficient to surmount this capital constraint, but it is one necessary component in a what should be a package of measures to increase capital flows to the sector.

The lack of definition with respect to property rights is a basic problem for each set of actors in Honduran agriculture: multinational corporations, large farmers and ranchers, small producers, agrarian reform beneficiaries and landless families. It should not be assumed, however, that clearer definition of property rights in itself will lead directly to higher levels of investment productivity and growth. Empirical evidence of agricultural growth from land titling in Latin America is scarce. The property rights question must be considered jointly with questions of access to technical assistance, reasonably priced credit and commodity markets undistorted by exchange rate and other governmental policy.

The property rights approach to analyzing the sluggishness of Honduran agriculture identifies a number of obstacles to investment and risk-taking. This focus, however, also has its limitations. The mechanisms through which land will be transferred into higher value per hectare uses are not entirely clear. The notion that markets will efficiently make this adjustment in the short term make a number of implicit assumptions about operators' objectives, the nature of Honduran social institutions and the availability of credit to agriculture.

2. A Changing Policy Environment: Land Tenure Issues in The Draft Law for Agricultural Modernization.

In light of these problems, the draft agricultural policy law ("Ley papra la Modernizacion y el Desarrollo del Sector Agricola") proposes to modify several aspects of the existing legislation. The changes that are most closely related to land tenure and property rights are the following:

- issuing formal title to agrarian reform beneficiaries, either on a corporate or individual basis.

- accelerating and amplifying the issuance of individual title to individual users of national and ejidal land. The law drops a previous minimum size requirement of hectares for titling eligibility for holdings without coffee and alters the requirement of 10 years occupation before 1974 to a flat three years of occupation.

- dropping the requirement that INA approve all transfers of land titled by INA.

- clarifying and limiting the criteria for land expropriation.

--permitting the rental of privately held land.

In addition to these changes in the tenure system, the draft law creates the legal basis for the establishment of private credit institutions ("cajas agrarias"), owned and operated by the agrarian reform beneficiaries. Directed funds for the agrarian reform beneficiaries in the national development bank, Banco Nacional de Desarrollo (BANADESA) would devolve permanently to the cajas agrarias as start-up capital. Another article of the draft law legislates payments of "seed capital" of L.2000 per year for three years to each agrarian reform beneficiary. The intent of these provisions is to create the basis for self-sustaining finance mechanisms in the reform sector.

The draft law has been approved by a working group composed of government officials, representatives of the private agricultural sector and representatives of the most of the major campesino organizations. Notably absent from the concertacion or agreement on the draft law is the large Central Nacional de Trabajadores del Campo (CNTC), one of the most activist campesino organizations.

The land tenure portions of the draft agricultural policy law represent practical compromises between groups of rural actors who have a history of antagonism and distrust. In this regard the agreements are major steps. The law in its present draft form successfully addresses the definition of property rights in the agrarian reform sector. To the extent that titling and the establishment of incorporated groups does occur, the historical isolation of much of the sector from financial markets, the internal management problems associated with collective ownership under uncertain property rights and the rigidities in transferring property rights will be more easily overcome.

The uncertainty created by the threat of expropriation and invasion is expected to be reduced because of the clarification of expropriation criteria in the new law. The threat of land invasion of private producers is reduced by the agreement of the major campesino organizations to the new policy. Other groups, however, remain committed to activist strategies which include land invasions and their potential membership base among the landless rural inhabitants continues to grow.

The fact of growing landlessness in spite of the agrarian reform (estimated at 100,000-150,000 families), coupled with high unemployment and underemployment in both the rural and urban sectors means that land access and land distribution issues will continue to be of concern to policy-makers, notwithstanding the improved definition of property rights in the new law.

3. Policy Implementation Components: Land Titling, Conversion of Agrarian Reform Groups, Support of Private Local Services.

3.1. Towards policy goals.

The changing policy environment creates a new set of challenges for parties interested in the development of Honduran agriculture. The most immediate of these is to ensure the successful implementation and effectiveness of the new policies and to seek that the expected increases in investment and efficiency which are predicated on undistorted markets and clear property rights do, in fact, occur. The draft agricultural policy law creates some of the necessary conditions for increased investment and efficiency in Honduran agriculture, but without effective implementation the new policy will be insufficient to ensure the desired changes in the country's agricultural growth.

A policy implementation strategy should take as its point of departure the different impact that tenure insecurity has for different groups of landholders in Honduran agriculture and the heterodox package of measures necessary to reduce it for each of them. In this regard the goal of a policy implementation project would be a reduction of tenure insecurity to a level which is manageable, i.e., to a level at which investors' risk-adjusted returns are greater than or equal to alternative investments. This analysis also takes as a point of departure the observation that tenure insecurity, credit access and capital investments on land must be considered as interrelated issues.

The problem statement identified the causes of tenure insecurity. This section identifies the possible steps for reducing tenure insecurity for different groups of landholders, charts the connections between insecurity and credit access for each of the groups, and proposes a general implementation strategy to reduce insecurity and boost credit flows and capital investments in agriculture. Outlines of the pros and cons of specific implementation procedures and institutional arrangements are then discussed.

Speaking only in terms of land tenure, and simplifying slightly, Honduras can be divided into three categories of landholding. These are privately held land, whose title can be traced back to colonial times or early government grants, national land which belongs to the state and is generally under the purview of INA, and agrarian reform land, which is land of either national or private origin and which is assigned to specific users, but also legally under the responsibility of INA. There is also some ejidal land which was originally assigned to municipalities but is now under the management of INA and some land which is "title deteriorated," i.e., land which was at one point privately titled, but whose documentation has disappeared or become incomplete. This

land continues to be privately managed.

Again in general terms, certain characteristics of the users of these types of land can be identified and used to outline the impact of tenure insecurity, and the strategy for its reduction in each group. Much of the large-farm and ranching sector holds its land privately, although in the more remote regions of the country (eastern Olancho, eastern Colon and parts of Gracias a Dios), large cattle operations occupy national land as well. For this group tenure insecurity occurs through the threat of invasion or expropriation of land. Although this group is generally considered to have good access to credit, many of their representatives express an unwillingness to make investments on land because of the potential threat. The general approach to reducing these risks, as contained in the draft agricultural policy law, and the concertacion process among campesino organizations, private producers and the government is based on the following steps:

- 1) A change of strategy by several of the major campesino organizations toward market based land acquisition strategies and recognition of expropriation guidelines.
- 2) Reducing the potential pool of persons interested in invading land by permitting land rental.
- 3) Clarifying and consistently enforcing expropriation rules.
- 4) The ultimate creation of a land bank/land fund mechanism for facilitating transfers of land to users with low initial levels of endowments.

One potential problems with this approach is the fact that several campesino organizations are not in agreement with the new policies of the government and remain committed to strategies which include land occupation. Questions also remain about the willingness and ability of INA, law enforcement organizations and judicial bodies to enforce regulations expeditiously. Beyond this set of questions are the issues of actual changes in investment behavior by private growers. A number of other risk and portfolio questions play a part in investment decisions, especially among producers who hold diversified urban/rural investments. Attention must be paid to those issues as well for the policies which improve tenure security to have an impact.

A second group of producers whose capacity to transfer land or invest in it is potentially limited by poorly defined property rights are the occupants of national lands. For these land users commercial credit is virtually nonexistent, technology primitive and yields generally low. Many of the country's approximately 70,000 coffee farmer fall into this category.

Even in the absence of bank loans, however, some producers,

particularly in the coffee sector, have made significant investments in long-term planting and some infrastructure. The initial evaluations of the PTT did not show significant relationships between investments in infrastructure or permanent crops and the receipt of title. The size and quantity of bank or institutional loans to title recipients also did not increase relative to non-title users. A recent re-analysis of the same data, restricted to coffee growers and using a different methodology, showed some connection between title and some infrastructural improvements.

Notwithstanding the impact that titling has had thus far, the clear and transferable definition of property rights for these producers will continue to be a condition for an increase of credit flows. For this reason, the continuation of efforts to issue fee simple titles for small and medium-sized holding is a logical policy intervention. For farmers outside the coffee sector, however, the possibility of realizing significant profitability gains through new investment or new technology are limited. These producers face the alternatives of continuing to be subsistence farmers, be absorbed by expanding farms, or increase nonfarm activities.

The third group which is addressed by the policy implementation component are the agrarian reform beneficiaries. Tenure insecurity for this group, both in the sense of being able to use land as collateral and of having clearly defined property rights within a group framework will be reduced through the implementation of the draft agricultural policy law which provides for the titling of individual family parcels on the reform group lands, the creation of worker-managed farms with a system of shares, or a mixture of these two models.

Taking into account the above analysis of tenure insecurity, the goals of a policy implementation project would be to accelerate agricultural growth and efficiency in an ecologically sound manner by making agrarian reform and national land transferable and useable as loan collateral, decreasing uncertainty for private investors and facilitating the delivery of technical and financial services to small and medium-sized producers. Furthermore, the project seeks to address the potential barriers which may impede free market processes as the agent of this transformation.

The activities proposed to realize these goals would be: 1) technical support for the carrying out the new GOH policies with respect to titling of agrarian reform and national land, 2) support for demand driven, base-level efforts to strengthen the orientation of agrarian reform producers toward viable and sustainable commercial operations under changed tenure status, and 3) technical assistance in the cheap and efficient delivery of financial and agricultural services to small and medium-sized producers. It should be noted that these measures would be focussed on the

existing land reform enterprises. The re-orientation of policy to stress the strengthening of existing enterprises instead of the creation of new ones from the landless population will, in effect, exclude the landless population from future widespread involvement in agrarian reform activity.

3.2 Land Titling.

In light of the provisions of the draft agricultural policy law which ease restrictions on the eligibility requirements for title on national and ejidal land and the priority given to the titling of agrarian reform land, the rapid and widespread titling of agrarian reform land program is a policy implementation priority.

The PTT has developed the procedures and institutional capacity for fairly efficient and effective parcel delineation and adjudication. As of 1990 the project had delineated 3.7 million hectares, issued 40,000 titles and collected 5.4 million lempiras in payments for titled land.

But the new policy environment will create new demands on INA's titling program. An estimated 200,000 individuals may be eligible for title under the new law. Furthermore, recent anecdotal evidence suggests that in the regions where the PTT issued titles, land users who did not want title during the operation of the project are now wanting and INA title. This fact may represent a "learning curve" during which the validity and value of the INA titles are established. If this is in fact true, then demand for INA titles may grow even more rapidly, especially since some of the restrictions which made the INA titles cumbersome are to be dropped under the new law.

Agrarian reform groups will create another new source of demand. If substantial numbers of the 2,800 groups decide to title their lands according to individual parcels, the number of titles required for this groups alone could total 60,000.

What is called for is a fast and efficient system of titling which is driven by user demand and paid for by the fees charged for the land. In order to achieve this profile the accessibility of title must be increased, cadastral mapping of the country expanded and the steps necessary for soliciting and acquiring title must be made simple and well-known. Furthermore if the effort of titling is to have its intended impact, bankers, lawyers, judges, property registry personnel and local leaders should be informed about the meaning and use of INA titles.

Specifically, the titling operation of INA will require:

- 1.) expanded presence of titling personnel at the local level.

2) the technical capacity to perform the minimum cadastral mapping where the national cadaster is unavailable or where new plots will be created by the division of existing agrarian reform holdings.

3) adequate transportation in the countryside, and a review of procedures to minimize the time and cost of the titling process.

4) a public information campaign aimed at banks and other users of land titles.

The PTT established that the final per hectare cost of land titling ranged from 3 to 7 Lempiras/hectare. The cost for this proposed titling effort would probably be considerably higher, because it will probably not be able to take advantage of economies of size in mapping and transportation as well as the PTT. In general, however, the cost is clearly not beyond the capacity of title beneficiaries to pay, particularly if amortized over a period of time. The establishment of specific implementation procedures will require a much more in-depth review of past experience, an analysis of expected demand for titles under the new law, and a thorough review of cost-effectiveness alternatives in the execution of claim filing, mapping and issuance of titles.

3.3. Re-orientation of Agrarian Reform Groups.

The new agricultural policy law creates the legal foundation for new tenure forms on agrarian reform groups' land (individual, mixed, collective) and, in the cajas de credito rurales, a financing mechanism in the hands of the campesinos themselves. The success of these mechanisms, however, depends not only on the successful implementation of these conditions but also on the capacity of the agrarian reform beneficiaries to manage their funds and use their land as a financial asset (loan collateral), a factor of production and a means for the accumulation of savings.

To strengthen the capacity of the beneficiaries to manage the transition from their quasi-dependent status to an independent role as commercial producers with full freedom to manage their productive operations and their assets, two policy implementation steps are called for:

1) Development of the steps for creating independent corporate entities out of the agrarian reform groups or other groups of small producers, establishment of the legal processes necessary for their creation and diffusion of information concerning the same.

Several possible forms exist: "sociedades de responsabilidad limitada," "empresas asociativas," "sociedades colectivas" or

"cooperativas." Legal and institutional study of the existing models and the current management regimes of the agrarian reform groups is necessary as a first step. Then, the incorporation or (in some cases of existing cooperatives which wish to dissolve) the deincorporation process needs to be publicized and facilitated at the group level.

2) Promotion of farm management training, financial planning and marketing for users of agrarian reform lands and other small and medium-sized producers under a demand-driven model paid for by users.

Under a new policy regime in which agrarian reform land holders will manage their own financial portfolios and, in the absence of continual state-provided assistance, be much more reliant on their own productive and managerial acumen, it is important that training and assistance be available, and that its allocation be made to those who value it most. A variety of institutions and methods for this type of training are available from the private sector through such entities as the University of Zamorano, the Instituto de Fomento Profesional (INFOP), and the Centro para Estudio y Promocion del Desarrollo (CEPROD). A possible role would be created for USAID as an initial facilitator and information provider, supporting contacts between users and training organizations. It is expected that, because of the very low levels of wealth in the sector, arrangements to advance services which will be paid for through gains in production will be necessary. AID could play a role as a guarantor of some of these arrangements initially.

3.4 Support for Private, Local Services.

This component would go hand in hand with the management training support component, but would deal directly with the establishment and management of the cajas de credito rurales, institutions which are included in the draft agricultural policy law principally because campesinos doubt that even with title, commercial banks will be willing to lend to them.

Because the cajas de credito rurales are only a legal construct at this time, technical assistance in their creation and management is necessary. Specialists in rural Honduran finance are needed to work together with government officials who will write the actual regulations governing the cajas and the campesinos who will own and operate them. A series of allocational and institutional questions arise in the creation of the cajas. How will the BANADESA source funds be allocated? How many cajas will be created? Who will be the shareholders and managers and how will they be selected? What will their loan and asset portfolios look like and what will their depositor base be?

Once these questions have been established, the technical assistance in the operation of these new institutions under the ownership of campesinos with limited experience in finance will be necessary. The Small-Farmer Organization Strengthening Project of AID has extensive experience in this respect and is already working with campesino cooperatives from ANACH and FECORAH. The communal bank pilot project (AID Project 522-0241), based on the Grameen Bank in Bangladesh, could provide assistance in the establishment of repayment procedures and the specific problems of financing the rural poor.

In addition to the cajas de credito rurales, local small farmer initiatives for lowering transaction costs, distributing risk and realizing economies of size in the procurement of private bank credit, inputs and technical assistance, should be supported. Such initiatives should be supported whether or not the participants are members of the agrarian reform or not. One model for doing this has been proposed by the Federacion Campesina Agropecuaria Diversificada de Honduras (FECADH) which seeks to create its own private lending and service institution for members who are organized into community based "comites agricolas." Again the policy implementation project will play the role assisting in the start-up of these initiatives through financial and management consulting with the goal of bridging the gap between commercial credit and small producers.

4. Continued Land Policy Analysis.

4.1. Land Access through the Market: Toward a Land Bank/Fund.

Policy implementation directed toward the definition of property rights and the reduction of uncertainty in agriculture needs to be complemented by policy which works to ensure that land is available to those who value it most. For historical and institutional reasons, many potential high value producers do not possess sufficient initial endowments to make land purchases on the "open market." Furthermore, the "market" itself for land is often characterized by large, indivisible units. A viable market response to this problem would be the creation of a land bank/fund which would acquire land from a variety of sources and then sell that land to peasant buyers, either individually or as groups. The land bank would provide an alternative to invasions and expropriation as means of land access by landless families further reducing uncertainty while simultaneously facilitating the transfer of lands to higher value users.

The issues in the creation of such a bank have been discussed widely by academics and policy-makers and much has been written on the institutional mechanisms and structure of such a bank. A further goal of the policy implementation project is to move the discussion of the land bank forward to the place where a working

plan for its implementation could be put forward.

4.2. Land Tax Study.

A property tax already exists at the municipal level. With fuller information and more effective appraisal and collection, a wider-based tax could be applied which could serve as an incentive to put land into its highest sustainable use. A second advantage of a more effective tax system is its usefulness as a way to keep track of land use and land transactions.

Policy issues to be resolved concerning the land tax idea are the following¹:

A. Approval by the Supreme Court of the Folio Real system and implementing mechanisms in place. Included in the would be the requirement for using the cadastral maps as legal descriptions of parcels, and a mechanism for updating the cadaster database when parcels change hands or when they are subdivided.

B. Issuance of the regulations of the Cadastral Law.

C. Review of Acuerdo 235 concerning property tax collections to determine the viability of a progressive rate with higher taxes for larger parcels, and the introduction of mechanisms for penalizing the late or non-payment of taxes. In addition, improved procedures for property valuation should be introduced and means for training people in their use put in place.

D. Improvement of the National Cadaster's abilities to provide training and follow-up for supporting the municipal cadasters.

E. Decentralization of the National Cadaster database to the Departmental level to facilitate the maintenance of the data base. The present plans of CN are to centralize in the Tegucigalpa database all the information concerning tax payers. If the cadastral program achieves its objectives on the national level, it seems unwieldy to keep the information management centralized. One alternative is to create in each Department a computer facility to manage the information, which would require a substantial investment in training and follow-up.

The resolution of these issues requires the development of a work plan similar to that proposed for the land bank. The development of the work plan will bring together land tax experts, personnel from the National Cadaster, municipal tax officials and government finance personnel. The work plan developed would be a

¹ These issues are taken from David Stanfield, "Land Use and Development: An Analysis of Problems and Policies in Honduras." mimeo, Land Tenure Center, University of Wisconsin, 1990.

blueprint for the implementation of a nationwide property tax system.

4.3. A Work Plan for National Cadastral Mapping.

Given the focus of policy implementation on land titling, clear definition of property rights, clarification of national and private boundaries and the general policy goal of moving toward more efficient and productive and ecologically sound land use, a full national cadaster is required. A complete cadastral mapping of the country would facilitate land titling, clarify which lands were available for expropriation or inclusion in a land bank scheme, provide the necessary information for improved property taxation, settle boundary disputes across municipios and departments and generate the data for land use and watershed planning.

Extensive mapping as a part of the PTT and local tax schemes has been carried out in 10 departments. No department is completely mapped, however. The complete mapping will require an expansion of staff and equipment in the National Cadaster well beyond their current scope. The policy implementation component will work with cadaster to develop a work plan and a proposal for international donors based on analysis of the tax revenues, land use productivity increases and natural resources savings generated by the mapping.