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Development

GUATEMALA

LAND CONFLICT ASSESSMENT

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ABBREVIATIONS AND ACRONYMS

ADR	Alternative Dispute Resolution
CMM	Office of Conflict Management and Mitigation
CONTIERRA	Dependencia Presidencial de Asistencia Legal y Resolución de Conflictos sobre la Tierra
CONAP	Comission Nacional de Areas Protegidas
CRS	Catholic Relief Services
FONTIERRA	Fondo de Tierras
INTA	National Institute for Agrarian Transformation
JADE	Juristas Asociados para el Desarrollo Legal
MAGA	Ministerio de Agricultura y Ganaderia
MINUGUA	United Nations Verification Mission in Guatemala
NGO	Non Governmental Organization
OAS	Organization of American States
OEA	Organizacion de los Estados Americanos
OEA/PROPAZ	Programa de la OEA, 'Cultura de Dialogo: Desarrollo de Recursos para la Construccion de la Paz'
SO	Strategic Objective
USAID	United States Agency for International Development

1. PURPOSE AND METHODOLOGY

The purpose of this report is to provide a succinct summary of the land dispute and conflict situation in Guatemala and, on the basis of this, to provide relevant recommendations to USAID. The report focuses primarily on three overlapping elements: 1) the nature of land disputes in Guatemala (e.g., types, numbers, causes, etc.); 2) the state of affairs regarding the resolution of land disputes; and 3) the economic implications of land disputes. Additional comments are also provided regarding the risk that land disputes could lead to widespread violence or political instability in Guatemala. For the sake of brevity, this document presents findings and recommendations directly, and does not go into detailed analysis.

A three-person team undertook this consultancy. A review of relevant literature supplemented over fifty in-depth interviews conducted with key individuals and experts during a preliminary round of interviews in Washington, DC, and then through a three-week field period in Guatemala. Interviews were conducted with representatives from USAID and other key international agencies, relevant government bodies, key actors from civil society organizations as well as individuals involved in specific land disputes. The Guatemalan fieldwork was divided between Guatemala City and the Department of Alta Verapaz.¹ As the fieldwork proceeded, the consultants used a 'dialogue building approach' with increasing frequency in order to go beyond the mere collection of information, and to build confidence, support and potential buy-in from the wide range of actors interviewed regarding future USAID activities in this highly sensitive subject area.

2. BACKGROUND

To set the context, background information will be presented regarding pertinent characteristics of Guatemala, the country's agrarian history and also the most relevant elements of the Peace Accords.

Guatemala is primarily agricultural, has a largely rural population, is characterized by high indices of poverty and extreme poverty, and has large numbers of landless and land poor *campesinos*. The majority of the population is indigenous, and faces profound systemic and structural exclusion on many fronts. A small and powerful agricultural private sector - with a particularly

¹ The decision to focus on a single department outside of the capital city was grounded in a desire to achieve a certain depth of analysis within a short period of time. The Department of Alta Verapaz was selected because it has the highest concentration of land disputes in the country, a number of developed dispute resolution initiatives and has also been the focus of much of USAID's support in this subject area.

influential core tied historically to a long-standing landowning oligarchy - owns enormous extensions of the country's productive land and tends to maintain political influence over whatever government is in place, especially on land and related labor matters. Importantly, the country is characterized by a dramatically unequal pattern of land distribution, constituting one of the most unequal in Latin America and the world.²

Beginning with the Spanish Conquest and also through an important period of liberal economic reforms in the late 1800's, most indigenous land was expropriated. Policies, laws and actions over time had the cumulative effect of concentrating land in the hands of few at the expense of the great majority. By the early 1950's an agrarian reform had been initiated to redistribute land to the landless and land poor, but this was brought to an abrupt close by a CIA-backed military coup in 1954. Military dictatorships ran the country for thirty years until civilian government returned in 1986. An internal armed conflict began in 1960 and came to an end in 1996 with the signing of the Peace Accords; disgruntlement over land matters represented one of the underlying root causes of the armed conflict.

The Peace Accords contained a number of important land-related commitments and a number of new land-related institutions were established within the context of the peace process (e.g., CONTIERRA, FONTIERRA, cadastral pilot projects, etc.) Unfortunately, the land aspects of the peace process have been unsuccessful in changing the land dynamic in any fundamental way. Many of the relevant Peace Accord commitments have been inadequately implemented or not implemented at all. The overall impact of the new land agencies has been very limited.

3. LAND DISPUTES

The collection and analysis of land dispute data is a relatively new phenomenon in Guatemala and much of the available information is incomplete, inconsistent and organized primarily for administrative and/or political purposes. With these

² According to the most recent Guatemalan agricultural census in 1979, 2.6% of the farms occupy 65% of the agricultural land, averaging 200 hectares in sizes. At the same time, 88% of the farms are less than family subsistence size and occupy 16% of the agricultural land. The country's land distribution pattern is reflected in a Gini coefficient of land concentration of 0.83 in 1960 and 0.85 in 1979, indicating that land concentration increased in that period. The Gini coefficient is based on the Lorenz curve, a cumulative frequency curve that compares the distribution of land (in this case) with a uniform distribution that represents equality. The Gini coefficient ranges from 0 to 1, with 0 representing an equal distribution and 1 representing total inequality. It should be noted that the Gini coefficients of Latin American countries are generally higher than those in East Asia, Southeast Asia, Africa, North America and Europe.

significant limitations in mind, we will nonetheless present as clear a picture as possible about the nature and scale of the land dispute situation.

3.1 An Enormous Number of Land Disputes

As a starting point, Guatemala faces an enormous number of land disputes. The number of registered active land disputes is very high, and there appear to be significantly more that are latent and/or have not yet been officially registered. There were 2077 active land disputes registered with CONTIERRA, the state land dispute resolution agency, in September 2003.³ This is a very high number of disputes for a country the size of Guatemala. On top of this, key land experts emphasized that up to tens of thousands of additional land disputes are not captured by this figure and remain latent or unregistered to date.⁴ As a result, one can expect the number of officially registered disputes to increase in the coming years, especially as the types of situations associated with the as yet unregistered and/or latent disputes are addressed (e.g., as cadastral activities identify more land disputes, and as unprocessed INTA applications are eventually looked into, etc.).

3.2 Different Types of Land Disputes

There are three broad categories of land disputes that are most commonly used to describe the land dispute situation in Guatemala. Each of these categories will be described below, and Appendix C provides a more detailed breakdown (or 'typology') containing numerous sub-categories.⁵ Additional information is also highlighted below regarding the relative prevalence of each type of dispute, some of the root causes at play, the types of parties that are typically involved and whether the matters are of historical or relatively recent origin.

³ An up-to-date figure for the end of 2004 was not available. It seems unlikely, however, that this figure would have increased **by more than a few hundred**. This statement is not specific and hard to understand.

⁴ The following situations were specifically mentioned: 1) at least 10,000 and more likely tens of thousands of different types of land disputes are coming to light as a result of the work of the government's cadastral pilot projects (this does not include cadastral work in Peten); 2) at least 80,000 unprocessed land title applications that accumulated over decades within the former National Institute for Agrarian Transformation (INTA) are said to be associated with almost as many latent land disputes; 3) boundary disputes exist involving at least 300 different townships (*municipios*) in the country and the majority of the nation's twenty-one departments; and 4) many latent land disputes are associated with the majority of the state's approximately 120 vacant land extensions (terrenos tierras baldios-baldies) that have not been registered to change their legal status to national farms (*fincas nacionales*).

⁵ The consultants, based partly on the work of others as cited, prepared the detailed typology that appears in Appendix C.

Where straightforward, comments regarding the geographical distribution of each type of dispute are also provided.

Before proceeding further, it is important to highlight that land disputes in Guatemala are particularly complicated because many and perhaps most have multiple root causes at play often reaching back over one hundred years. To make matters yet more difficult, the root causes of most disputes are not fully known unless significant effort is invested to clarify the legal and historical dimensions involved. As a result, many disputes may be categorized under a certain heading today and could well be re-categorized as new information comes to light at a later date. In addition to this, it should be mentioned that the categories of any land dispute typology are rarely airtight and a specific dispute can often be framed to fall within more than a single heading.

All this said, the following three categories of land disputes are generally well understood within Guatemala:

1. *Disputes over Competing Property Rights (and Perceptions of Property Rights)*. These represent approximately 64% of the active disputes in the country.⁶ This category is the broadest of all, incorporating all disputes where property rights and perceptions of property rights between one or more claimants are in conflict. These rights may be grounded in land titles, private documents of any type, use or possession of land, historically grounded land claims, or government legislation (e.g., environmentally protected areas). These disputes may be between individuals, between communities, or between individuals and communities, and the state is often involved as well in some way. Many of these disputes seem to be historically based and some go back over a hundred years. Some of these disputes are grounded in legal, policy, political and/or institutional dynamic at different points in time. Some of these disputes are partially or fully grounded in mismanagement, corruption, confusion or discrimination within government land agencies (e.g., the land titling or property registry agencies). Some of these are grounded in 'bad faith' transactions that occurred and that have been legally or politically protected over the years. Some of these disputes will be grounded in erroneous perceptions of property rights on the part of one or more parties. As the broadest category, these disputes are found in all regions of the country.

⁶ The relative percentages of each type of land dispute are based on the number of land disputes 'in process' within CONTIERRA's in 2004. According to CONTIERRA's staff, the relative percentages of these disputes should be generally the same as for all active disputes registered with the agency.

2. *Occupations⁷ of Property Legally Owned by Another.* These represent approximately 16% of the total active disputes. This descriptive category is used widely in Guatemala. Many of these disputes involve relatively recent land occupations (i.e., within the last 3-4 years) by organized landless *campesino* groups that are done strategically in order to bring attention to their land needs whether from the state or from a private landowner. Disputes between *campesino* groups and private landowners are the most common. Some of these disputes use land occupations to bring attention to outstanding labor concerns. Many of the recent land occupations are done by peasant communities that have lost livelihood and/or access to land as a result of the global crash in coffee prices (i.e., the peasants have been released from a long-standing labor and living relationship with a private coffee producing landowner). Strategic occupations by organized *campesino* groups are the disputes most commonly associated with forced state evictions, a number of which have turned violent.⁸ In some cases, this category is used to describe occupations involving longer-standing use and possession of state land that has been left un-addressed for years. Many occupations have occurred in the northern departments of Las Verapaces, although these take place in other regions of the country as well. More than 75% of the forced evictions associated with these disputes in the first half of 2004 occurred in Las Verapaces.

3. *Boundary Disputes.* Approximately 14% of the disputes in the country fit into this category which covers property boundary disputes between private individuals and/or between communities, as well as more formal border disputes between townships (*municipios*) and between departments. Some of these disputes could also be framed as disputes over property rights, although the 'boundary dispute' category is used widely in Guatemala and is useful. Many of these disputes are historically grounded, although some are inevitably of more recent origin. Some of these are partially or fully based in mismanagement, corruption or confusion within government land agencies, especially the property registry. Boundary disputes with long-standing histories that are between indigenous communities – whether deemed disputes between communities, *per se*, or between townships (*municipios*) – can be

⁷ The term 'occupation' is used intentionally because it avoids the more legally charged term of 'usurpation'.

⁸ According to MINUGUA, there were 31 evictions of *campesino* land occupations between January and June of 2004. In many of these cases, judicial due process was not followed and the National Police often used excessive violence towards both individuals and property.

associated with significant violence.⁹ Boundary disputes appear throughout the country.

3.3 Geographic Distribution

Certain comments about the geographic distribution of the different types of disputes appear in the respective descriptions above. In addition to this, we know rough numbers associated with the geographic breakdown of the total number of active land disputes registered with CONTIERRA: a little more than a quarter of the disputes are in the Peten; a little more than a quarter are in Las Verapaces (also including Ixcán); almost 20% are in the eastern region; and the remaining almost 30% are spread through the rest of the country.¹⁰ The data collected from CONTIERRA does not provide any greater detail regarding which kinds of disputes characterize which regions.

4. RESOLUTION OF LAND DISPUTES

This section is divided into four parts. The first two parts highlight briefly the role of state and civil society in land dispute resolution. Key patterns evident in current practices to resolve land disputes are then presented. Lastly, key hurdles regarding land dispute resolution are summarized.

4.1 The State and Land Dispute Resolution

The most important findings regarding the state and the resolution of land disputes are presented below.

The legal and policy regime. Guatemala has lacked a clear, coherent and integrated agrarian policy for many years. This remains a critical factor causing much confusion and contradiction regarding the state's position on land and land dispute matters, and limiting effective coordination of state agencies. Guatemala also lacks a clear and systematized land law regime. As well, many aspects of existing laws – whether land-specific or not - cause or exacerbate certain types of land dispute situations.

Key land institutions. The country's key land agencies relevant to dispute resolution were all created and/or re-structured within the context of the peace

⁹ The risk of violence is most significant when the history of the dispute has involved violent confrontations between the parties in the past.

¹⁰ By 'rest of the country', we are referring to the Western Highlands, the central region and the western part of the southern coast.

process. Overall, these agencies reflect a number of systemic problems including lack of clear and coherent operational policies and strategies, frequent mismanagement, instances of corruption, under resourcing, and degrees of political influence. Two particularly relevant agencies are:

- CONTIERRA is the state agency designed to resolve land disputes primarily through conciliation and the provision of free legal advice, although this latter service has never been provided as planned. The agency is desperately under-resourced and faces numerous significant limitations related to its mandate and functions. As a result of these and related problems, the agency resolves relatively few disputes. The agency is, however, perceived as generally credible and legitimate, and is seen as an essential actor regarding land dispute issues. CONTIERRA's main success over the years is probably in having mitigated the level of tension and conflictivity around land matters in general, although it has also resolved some important land disputes. The agency has been moved around within the governmental structure over the years for various reasons and currently sits within MAGA, an institutional location that limits CONTIERRA's impact in ways discussed below. The agency has a new Executive Director with a positive reputation who is committed to doing a good job and, as part of this, is prioritizing attempts to overcome systemic problems.
- FONTIERRA is an autonomous executive agency with a multi-sectoral board of directors that has dual functions of regularizing land titles, and facilitating access to land via the provision of financial and related technical assistance. Many land disputes in the country are resolved via FONTIERRA-based land purchases, and the regularization services are also part of the resolution process of numerous disputes. The institution faces very serious corruption problems in various aspects of its work. One problem largely tied to the corruption challenges is that *campesinos* purchasing land via FONTIERRA often acquire a debt that is so large they will be unlikely to ever pay it off. Slowness and inefficiency in the institution also works as a bottleneck to the resolution of many disputes (i.e., those that involve a FONTIERRA-based land purchase). As it stands, the situation is dire and profound changes are needed.

The courts Standard civil courts have been and will remain of limited use in resolving land conflicts for various reasons (i.e., they are slow, inefficient, overburdened, inaccessible, lacking relevant rules of evidence and expertise, and are also perceived as lacking neutrality on land issues). There is, however, a potentially useful role for the increased use of pre-trial hearing procedures in certain situations (e.g., land eviction orders). Although contemplated in the Peace Accords and urgently needed, no specialized land courts or tribunals currently exist.

Political dynamic within government regarding land issues, and a window of opportunity. Since signing the Peace Accords, the political will to address land-related matters in a committed way has been consistently lacking. This remains the case in certain ways, although two distinct groups with distinct visions regarding land matters can be identified within the current government. The first group has strong influence within MAGA and is tied to the conservative agricultural private sector. This camp wants to keep CONTIERRA within its current institutional location (i.e., within MAGA), and sees the land dispute resolution agency's role as promoting the rule of law to protect private property rights, and is not supportive of efforts to address the historical root causes of land disputes. The second group is clustered around Vice-President Stein and represents a more forward thinking perspective that is closely associated with the peace process. This group supports efforts for CONTIERRA to play a more pro-active role in land dispute issues and sees that the country must address the root causes of land disputes in order to modernize and develop economically. This group is supportive of promoting urgently needed multi-sectoral initiatives aimed at developing a coordinated agrarian policy in order to promote integrated rural development.¹¹ This second group represents an important window of opportunity that could play a critical role in achieving urgently needed changes.

4.2 Civil Society and Land Dispute Resolution

Differing perspectives on land dispute issues. Relevant civil society sectors vary dramatically in regard to their perception of land disputes and related matters.¹² The agricultural private sector, especially those tied to the historical land-owning oligarchy, has no appreciation for historically-grounded land claims, sees Guatemala's dramatically unequal pattern of land distribution as normal and acceptable, does not see that lack of land access by *campesinos* to be one of the most significant issues underlying land conflictivity and, rather, sees the fundamental problem as being poverty and lack of employment opportunities.

¹¹ At the time of doing the fieldwork for this consultancy, initial steps were being taken within the office of the Vice-President to lay the political support within government to promote development of a '*Pacto Agrario*', as a kind of high-level, multi-stakeholder dialog and decision-making process. Efforts along this line have continued, and the consultants understand a position has been taken internally within government to support this kind of process. For a series of reasons related to the political sensitivity of land issues, however, this initiative has been and continues to be treated with a significant degree of discretion and even secrecy. Respecting the sensitive nature of this information is important and more detail on this appears in the recommendations below.

¹² This section summarizes some of the findings of a UNDP-funded report that specifically addressed differing perspectives on these matters; the findings were further confirmed through the course of this consultancy's fieldwork.

From this perspective, the solution to land dispute problems involves the protection of private property rights through application of the rule of law (without – it should be added – necessarily addressing the manner in which the private property rights were acquired originally), and too much money is already seen to have been spent on agencies such as CONTIERRA and FONTIERRA. The indigenous and *campesino* organizations along with many NGO's that support them have an historical and human rights-based perspective on the issue, see the problem in structural and systemic terms and focus on the majority population's lack of access to land as a central element. These sectors see that the state must play a critical role in resolving disputes, they want an integrated agrarian policy in place, and they want to see a more robust, empowered, committed and aggressive role for agencies such as CONTIERRA and FONTIERRA.

Key initiatives. A range of civil society organizations are involved in conflict resolution activities of different types. Their role is essential given the weakness of relevant state agencies. In general, these initiatives either provide support specifically and uniquely to poor *campesino* and indigenous communities on land matters (e.g., the Catholic Church's *Pastorales Sociales* and *Pastorales de la Tierra*), or they provide impartial dispute resolution services such as mediation to parties involved in disputes (e.g., Mercy Corp/JADE). Appendix D provides a description of four key civil society initiatives.¹³ Given their explicit reference in the SOW for this consultancy, it is worth stating that: 1) the Mercy Corp/JADE project is doing good work, is well regarded, represents an important and rare example of a land dispute resolution initiative that is sufficiently funded to do the background investigations required to resolve disputes properly, and is playing a critical role in managing land disputes in what is probably the most land conflictive departments in the country (i.e., Las Verapaces)¹⁴; and 2) the CRS Land Tenure Security Project does good work as well, using land regularization to prevent and resolve disputes, and also linking this to parallel community development activities.

4.3 Key Patterns Evident in the Resolution of Land Disputes

Increased land dispute resolution efforts, and increased use of alternative dispute resolution (ADR) techniques. The number of individuals and institutions involved in land dispute resolution generally, and particularly in forms of ADR, has increased significantly over the period of the peace process. Important

¹³ Civil society land dispute resolution initiatives described in Appendix D include: Mercy Corp/JADE; the Land Tenure Security Project Coordinated by Catholic Relief Services; the *Mesa de Negociaciones para Conflictos de Tierra en Alta Verapaz*, and OEA/PROPAZ.

¹⁴ Note that over 75% of the land evictions that took place in the country during the first half of 2004 occurred in the departments of Las Verapaces.

experience in useful and efficient dispute resolution techniques is being gained, although conciliation and mediation alone cannot resolve all of the disputes and is often being used inappropriately (e.g., disputes over legal rights should generally not be resolved through negotiated solutions).

Dispute resolution capacities and approaches are totally insufficient. While it is impossible to determine with any degree of certainty how many land disputes in Guatemala have been resolved in recent years¹⁵, it is obvious that the existing capacities and approaches are totally insufficient given the nature and magnitude of the problem. Mediation/conciliation activities regarding complex cases require the kind of resources only available through initiatives such as Mercy Corp/JADE to perform essential background investigations; typically the required resources are not available. Arbitration and some form of specialized land court or tribunal are urgently needed. Broadly applicable policies and legislative changes are also urgently needed; these could facilitate standardized solutions to resolve cases with similar root causes, as opposed to current tendencies to negotiate each case as though it is unique in nature.

Many resolutions are achieved through land purchases, especially via FONTIERRA. A majority of land disputes are resolved through land sales transactions, particularly disputes over property rights and land occupations. Specifically, this pattern dominates disputes between poor *campesinos* and large landowners when, typically, the land purchase is done through FONTIERRA. There are at least three serious problems with this: 1) sales transactions through this agency typically involve inflated purchase prices and corruption in the process, resulting in debts that will often be too large for *campesinos* to repay; 2) this approach likely represents a superficial means of resolving disputes that often have more nefarious root causes (e.g., a careful historical and legal analysis may often bring into question the validity of the large landowner's claim to the land); and 3) resolving most disputes through a state-funded land purchase mechanism is not a sustainable solution in a country like Guatemala because there will never be sufficient resources available to address all of the cases.

Final negotiated agreements between parties in dispute are not legally binding. None of the initiatives reviewed have created a mechanism to ensure final negotiated agreements between parties are legally binding. CONTIERRA is restricted from doing this as a function of its currently framed mandate and functions, and Mercy Corp/JADE prepares notarized documents in an attempt to ensure agreements possess a degree of formality. Without legally binding

¹⁵ CONTIERRA does not collect data regarding the number of cases resolved but, rather, they only record the number of files closed. Mercy Corp/JADE does document that it has resolved 42 land disputes in Alta Verapaz over its one-year period of operation.

solutions, however, there is a very significant risk that resolutions will not be respected over time and will therefore prove unsustainable.

4.4 Principal Hurdles in the Resolution of Land Disputes

The most significant obstacles to the resolution of land disputes in Guatemala are listed in bullet form below; some of these relate to points highlighted earlier.

- *Intransigence on the part of the land-owning elite.* A deep, profound and long-standing lack of desire on the part of the country's most powerful social sectors (i.e., those private sector agricultural interests most closely tied to the old land-owning oligarchy) to address the root causes of land conflicts.
- *The legal and policy regime.* The lack of an integrated agrarian policy and the lack of a clearly systematized land law regime.
- *Limited range of dispute resolution approaches.* A limited range of available conflict resolution approaches given the scale and complexity of the challenges. There is an urgent need for conflict resolution options including arbitration and some kind of specialized land court or tribunal system.¹⁶ The existing options for conflict resolution are insufficient in light of the number and nature of disputes.
- *Limited resources for background investigations.* Limited access to resources to do the legal, historical and technical field survey investigations that are required to resolve many specific disputes.
- *No legally binding mechanisms regarding negotiated final agreements.*
- *Existing laws that cause or exacerbate certain types of land dispute situations.* Examples of these include: lack of enforcement of labor legislation results in labor problems being expressed as land disputes; relatively recent legal changes that have made land occupations easily actionable under the criminal code as land invasions; lack of legal clarity on the status of indigenous territorial rights issues; lack of legislation allowing fee simple land rights to be held within the buffer and multiple-use zones of environmentally protected areas (assuming certain environmental limitations are imposed); the annulment of supplementary land titles; vulnerability of indigenous community land because it cannot be registered as such and has therefore often been legally entrusted to municipalities.

¹⁶ It is important to highlight that a specialized land court or tribunal would have to be designed to specifically avoid the problems that limit the standard civil courts, as described earlier.

- *FONTIERRA's slow and often-corrupt procedures.* This represents a principal bottleneck in the resolution of the many cases involving a FONTIERRA-based land purchase.
- *Limited strategic coordination between the various conflict resolution institutions and initiatives.* This applies to both state and civil society initiatives. The limited coordination that does occur is *ad-hoc* and not systematic.

5. ECONOMIC IMPLICATIONS OF LAND DISPUTES

The economic implications of land disputes are very significant. As things presently stand, implications are evident at three distinct levels:

The national economy. The land dispute situation exposes a wide range of institutional and governance weaknesses that diminish predictability and certainty from an investment and business perspective thereby decreasing the country's economic potential. Lost investment opportunities translate into losses in job creation, salary improvements, access to new technologies, higher tax revenues and an ability to penetrate new foreign markets. The more that land dispute difficulties highlight security problems, weak governance and social unrest, the greater the economic impact. Certain nationally important economic sectors also likely to be affected negatively by land disputes and related problems (e.g., mining, tourism).

The regional economies. At a different scale, regional economies have parallel economic implications to those discussed regarding the national level. Other implications evident in areas with high numbers of land disputes include the regional economic impact associated with diminished public service provision (e.g., maintenance of the transportation network) because regional government authorities dedicate enormous amounts of their time and energy to managing land disputes. Non-agricultural economic activities can also suffer negative implications in many direct and indirect ways when land disputes disrupt regular commercial activities by, for example, blocking or slowing down transportation networks.

Households and businesses (farms). Some of the most obvious costs at the household and business level include: 1) lost time invested into the dispute dynamic rather devoted to more productive activities; 2) transportation costs associated with having to interact frequently with local authorities (particularly significant for some isolated poor rural *campesinos*); 3) cancellation or postponement of plans to introduce new agricultural products, purchase key inputs or make a range of other significant investments as a result of uncertainty;

and 4) security costs that can be very high, especially for large farm owners, thereby diminishing competitiveness.

In addition to this reality, certain potential longer-term economic implications are also worth mentioning. To set the stage, let us imagine the population continues to increase at a high rate, land values increase accordingly in many areas of the country, and the number of land disputes does not diminish significantly and perhaps increases (e.g., as latent and as yet unregistered land disputes become more evident, as is likely). If there is no significant increase in the ability to resolve land disputes in Guatemala, one can imagine a situation in which frustration continues to mount, social unrest increases and the rule of law is openly defied. These dynamic would, in all probability, exacerbate many structural problems that already exist in the country's economy. Compounding any diminished political credibility, the country could face economic implications such as: significant increases in security costs for private businesses; significantly diminished potential benefits from non-traditional export crops, tourism and mining sectors to name a few key economic sectors; increased risk ratings by foreign creditors thereby increasing the cost of borrowing in international capital markets; ongoing low rates for domestic savings and shorter-term deposit instruments; dramatically diminished direct foreign investment (losing out to neighbouring countries); increased economic dependence on foreign remittances; and an increasingly significant potential economic role for illegal activities. Clearly, the longer-term implications of not addressing the land dispute situation in Guatemala are potentially very serious.

6. RISK OF WIDESPREAD VIOLENCE AND POLITICAL INSTABILITY

Although this consultancy did not undertake a formal Conflict Vulnerability Assessment related to land issues, the following three observations are worth mentioning:

- *The land dispute situation is unlikely to cause widespread violence in the near future* because the organizations that promoted violent strategies aimed at toppling the state during the armed conflict have disappeared as a result of peace process activities and there was a general fatigue with the armed struggle.
- *Low intensity localized violence linked to land disputes is probable.* Individual land disputes will almost inevitably be associated with violence. This will be a more significant problem if the state continues to promote violent evictions of *campesino* groups involved in land occupations. In addition to isolated violent clashes, localized clusters of violence may take place regarding

larger-scale development projects (e.g., gold mining in San Marcos, hydro-electric developments, the 'dry canal' free trade zone, etc.).

- *The land dispute situation could lead to political instability.* If the land situation goes un-addressed or is allowed to deteriorate, significant frustration - especially if politically coordinated - could translate into political instability over the next few years. Along this line, it is important to note that the upsurge of land invasions during the recent FRG government were associated with a degree of coordination between certain elements of the *campesino* and FRG leaderships.

7. RECOMMENDATIONS

In this section, a series of general recommendations are followed by programmatic recommendations organized according to the SOs in the Guatemala Country Plan. In a few instances, justifications are provided. Recommendations are generally presented within each sub-section according to their relative priority and, in a few cases, specific comments about priority are provided.

7.1 General Recommendations

A two-pronged strategic approach is recommended. ***First***, top priority should be placed on supporting the Government of Guatemala in efforts to address land disputes and related matters through a high-level multi-stakeholder dialogue and decision-making process that will hopefully lead toward urgently needed legal, policy and institutional reforms. Although the first set of programmatic recommendations provide greater detail below, the idea is to take advantage of a political window of opportunity that currently exists within the office of Vice-President Stein regarding land and related matters, and to support efforts that are taking root within government to develop some kind of "*Pacto Agrario*". ***Second***, a range of specific support activities are also proposed that can proceed whether or not there is success regarding the first element of the strategy. The *justification* for this dual strategy is as follows: 1) Guatemala's economic development and competitiveness will be dramatically curtailed if the structural and systemic underpinnings of the land conflict situation are not addressed; 2) multi-sectoral dialogue processes are the most effective means of addressing such matters in a politically sensitive context like Guatemala's; 3) a critical window of opportunity currently exists; and 4) certain programmatic activities should achieve results whether or not high-level dialogue and decision-making is successful.

USAID should promote and support donor coordination on land issues. While always important, strong donor coordination on land matters at this particular time should be prioritized in order to leverage influence to support modernizing elements around the Vice-President to address the systemic and structural dimensions of the land situation through high-level dialogue as described above. Establishing a degree of consensus among key international actors including (among others) USAID, the World Bank, Norway, Holland and Sweden could be enormously influential. To achieve this kind of consensus, the focus must be on the urgent need to support a process that will lead to changes, rather on the substantive content of what such changes should look like; this is important because international consensus on the need for change is infinitely more likely than agreement on what changes are needed.

USAID should frame land dispute interventions under the SO related to economic matters, in order to get away from the polarizing effect of discussing land matters within a human rights or rule of law discourse, as has been the norm within Guatemala.

USAID should use the final consultancy report for internal purposes only, because the contents are extremely sensitive in political terms. If required, specific materials could be prepared at a later date in order to share any specific findings or recommendations if deemed useful.

7.2 Programmatic Recommendations

An Open, Diversified, Expanding Economy

USAID should support the office of the Vice-President in developing a high-level multi-stakeholder dialogue and decision-making process to address land-related issues. This should receive top priority, as stated earlier. With diplomatic subtlety, USAID should inquire what support is needed to generate consensus around some kind of 'Pacto Agrario'. It must be emphasized that this initiative has not been made public, so the matter must be broached with great sensitivity and discretion. It should also be noted that support of this type is relatively inexpensive and could have very significant long-term impact. Regarding this process, additional considerations and recommendations include:

- **A detailed stakeholder and issues assessment could be a very useful next step, resulting in a detailed roadmap for USAID to move forward.** This initiative would clarify matters relating to issues, actors, sectors, agendas, strategies and timing. To do this, a 'dialogue-building approach' should be used. In other words, the approach taken should not only collect key

information but, at the same time, should use an approach that builds support, coordination and buy-in on the part of key actors (i.e., both Guatemalan and international actors). One product of this assessment could be a draft Scope of Work regarding follow-on USAID activities that, at the same time, are closely coordinated with initiatives supported by other international agencies.

- ***USAID could support multi-stakeholder driven research initiatives into the economic implications of land disputes***, as a means of contributing to this high-level dialogue and reflection processes. In the course of this consultancy, all sides involved in land issues expressed interest in gaining greater insight into the economic aspects of land disputes. A 'dialogue building approach' should be used to ensure that the process of collecting, analyzing and presenting findings builds dialogue between the divergent perspectives in a constructive manner and generates buy-in regarding conclusions. Various issues could be investigated such as: 1) an empirical study of the economic costs of land disputes; or 2) local consultants could research aspects of the market-driven land access initiatives related to either the over-valuation of land prices, or the accumulation of personal debt.
- ***USAID should consider supporting one or both of two initiatives with relevant experience in facilitating high-level multi-stakeholder dialogue processes in Guatemala***. A project run by the OAS that used to be called OEA/PROPAZ (and is now called the *Programa Centroamericana para el Fortalecimiento del Dialogo Democratico*) has an excellent track record and reputation regarding land issues in Guatemala. The War-Torn Societies (WSP) Project has successfully worked on public security issues in the country. It should be emphasized that land-related experience is essential, although there are ways to build this into a project that currently lack it. Perhaps CMM's current support to WSP could be directed to an activity that supports the efforts within the Vice-President's office.
- ***Any USAID support already planned regarding activities of this type should not proceed unless coordinated with any initiative coming out of the Vice-President's office*** (e.g., Chemonics support to SEGEPLAN).
- ***To increase the likelihood of sustainability, significant buy-in should be developed beyond a key individual (i.e., Vice-President Stein) or the current party in power***, thereby increasing the likelihood of sustainability beyond the mandate of the current government. Strategies to achieve this could be another product of the stakeholder and issues assessment proposed above.

USAID should consider continuing to support civil society land dispute resolution initiatives. Aside from whether high-level policy dialogue is generated, support to civil society land dispute initiatives is very important given the weakness of state agencies and the poor track record of government will regarding land matters. To increase impact, however, it is important to ensure: experience and lessons learned are systematized and shared (perhaps even formulated into proposals for legal and policy reforms); closer coordination takes place between relevant initiatives (perhaps through a network of mediation/conciliation activities); coordination with CONTIERRA is deemed essential; and support go to organizations with a track record in land-related matters. With this in mind, USAID should consider continuing its support to Mercy Corp/JADE and could also consider supporting the CRS's Land Tenure Security Project. Appendix E contains certain considerations in the event that USAID were to continue its support to Mercy Corp/JADE.

USAID should only support CONTIERRA if certain conditions are satisfied such as:

- 1) If the agency emerges as a key player in the high-level dialogue process already discussed, then support could be targeted specifically to support their role in this.
- 2) If the agency is moved outside MAGA and/or other concrete indications of an increased political will to address land disputes are evident, then targeted support could be considered. If support were given, important considerations should include: creation of legally binding mechanisms for negotiated agreements; provision of legal assistance to parties with economic need; direct or indirect provision of arbitration services; establishing a legal department to support individual cases as well as to generate policies and guidelines to resolve paradigmatic disputes more efficiently.

USAID could support initiatives to change various aspects of the law that are urgently needed and that affect land dispute issues. Importantly, however, most of these legal changes could not proceed unless the kind of high-level dialogue process described above takes place. Accordingly, any interventions in this area should only be taken if a specific legal matter is prioritized by the Vice-President's office or through the process of high-level dialogue. Key legal needs - some of which could overlap - include: an adequate cadastral law; a new agrarian law or agrarian code; need for land courts or tribunals, as well as arbitration regarding land disputes; legally binding mechanisms for negotiated agreements of land disputes; changes such that land occupations are not easily framed as aggravated usurpation or invasions; land tax reforms to put idle and unused land to productive use; application of the law to address illegal land

grants (e.g., in *Franja Transversal del Norte* and Peten); and mechanisms to allow communal titling of indigenous land.

USAID could consider efforts to promote greater enforcement of the labor code on rural farms in order to diminish the number of labor disputes that are transformed into land occupations due to the unresponsive legal system regarding labor issues. Significant resources should not be invested in this, but relevant efforts should be considered when appropriate.

USAID support to CONAP regarding protected areas co-management could incorporate land dispute resolution objectives. In addition to case-by-case support, an initiative could be designed to develop draft legislation to facilitate efficient resolution of land disputes in protected areas.

More Responsive, Transparent Governance

USAID should support - in whatever manner is most appropriate - a review and significant overhaul of FONTIERRA to ensure transparency and accountability in its regularization and access to land operations. The World Bank plays a lead role in supporting this agency, so indirect support and/or political pressure may be most appropriate.

Any support USAID provides regarding Justice Centers and/or alternative dispute resolution should be reviewed to determine how this could link to land dispute resolution (e.g., could pre-trial hearings be used to review eviction order applications in cases of land occupations, potentially diminishing the number of violent evictions). This is especially relevant at regional levels.

Any support USAID provides to Development Councils should be reviewed to determine how participatory development planning within the councils could link to land dispute resolution at local and regional levels.

APPENDIX A – LIST OF REFERENCE MATERIALS

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APPENDIX B - LIST OF PEOPLE INTERVIEWED

Aguilar, Mariel (Licda.)	Directora Ejecutiva, Comisión Presidencial de Resolución de Conflictos sobre la Tierra (CONTIERRA)
Álvarez Bobadilla, Marco Tulio (Lic.)	Jefe Unidad de Comunicación Social, Departamento de Comunicación, Procuraduría de los Derechos Humanos (PDH)
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Bravo, Beatriz	(PRODECA)
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Carrato, Mark	El Salvador Desk Officer, USAID
Cucul, Felipe	Pastoral Social
Chavarría, Juan Carlos	Coordinador Interinstitucional, Mercy Corps
Chavarría, Oscar	Gerente de Proyectos sobre Estados de Derecho, Oficina de Iniciativas Democráticas, USAID/Guatemala
Chévez, Robinson (Lic.)	Asesor Legal, Comisión Nacional de Áreas Protegidas (CONAP)
Childress, Malcolm	Land Expert, Latin America and Caribbean Region, World Bank
Chinchilla, Borys	Director Nacional, Mercy Corps
Coy, Jorge Mario	Coordinador, Programa de Tierras, Pastoral Social, Alta Verapaz
De Leon, Juan Antonio	Mediador, Equipo de Reacción Rápida, CONTIERRA, Alta Verapaz
De la Cruz, Marco Tulio	Coordinadora Nacional Permanente de Derechos Relativos a la Tierra de los Pueblos Indígenas (CNP-Tierra)
De Voogd, Ella	Embajada de Holanda
Del Valle, Carolina (Licda.)	Coordinadora de Proyectos de Seguridad de la tenencia de Tierra, Catholic Relief Services (CRS)
Dibos Ayers, Lydia	Sub-Directora, Catholic Relief Services (CRS)
Estrada, Fanny de (Licda.)	Directora Ejecutiva, Asociación Gremial de Exportadores de Productos no Tradicionales (AGEXPRONT)
Euler Pacay, Edgar	Gerente, Proyecto Promoviendo Soluciones Pacíficas

Romeo (Ing.)	a Conflictos de Tierras en Alta Verapaz, Mercy Corps
Figueroa, Léster	Técnico, Juristas Asociados para el Desarrollo Legal (JADE)
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Garbers, Frank (Dr.)	Consultor en Políticas de Agro, Coordinación de Organizaciones no Gubernamentales y Cooperativas (CONGCOOP) y Coordinadora Nacional de Organizaciones Campesinas (CNOC)
Gil, Liliana	Especialista en Programas, Oficina de Desarrollo y Administración de Programas, USAID/Guatemala
Godínez, Manuel de Jesús (Lic.)	Gerente General, Fondo de Tierras (FONTIERRA)
Haffe, Ariel	Coordinador de Servicios Agropecuarios, Fundación Talita Kumi
Hernández, Raúl (Lic.)	Director Ejecutivo, Cámara del Agro de Guatemala
Huete, Stephen	Consejero para Asuntos Agrícolas, Departamento de Agricultura, Embajada de los Estados Unidos
Kranstover, Peter	Director of Development, Immigration and Refugee Services of America
Macours, Karen	Assistant Professor of International Economics, SAIS, Johns Hopkins University
Marchetti, Peter E. (Dr.) (S.J.)	Director, Dirección de Investigaciones y Postgrado, Universidad Rafael Landívar (URL)
Menéndez, Roberto	Coordinador Regional, Programa Centroamericano para el Fortalecimiento del Diálogo Democrático, Unidad para la Promoción de la Democracia, Programa Especial para la Promoción del Diálogo y la Resolución de Conflictos - OEA
Monge, Patricia (Licda.)	Asesora Específica del Ministro, Ministerio de Agricultura, Ganadería y Alimentación (MAGA)
Morales, Roberto Armando (Lic.)	Coordinador Área Jurídica, Unidad Técnico Jurídica, Comisión Institucional para el Desarrollo y Fortalecimiento de la Propiedad de la Tierra del Ministerio de Agricultura, Ganadería y Alimentación (UTJ/PROTIERRA/MAGA)
Olson, Steve	Consejero Económico, Embajada de los Estados Unidos
Ortega Pinto, Herbert	Consultor Internacional, Unidad para la Promoción

David	de la Democracia, Programa Especial para la Promoción del Diálogo y la Resolución de Conflictos - OEA
Orantes Thomas, Ana Patricia	Secretaría Técnica de Gabinete Social, Secretaría de Planificación y Programación de la Presidencia (SEGEPLAN)
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Tun, Héctor	Pastoral Social
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APPENDIX C – DETAILED TYPOLOGY OF LAND DISPUTES

The following typology of land disputes in Guatemala provides a more detailed breakdown of the three main categories of dispute used in the main text of this report. This typology was developed by the consultants based on their experience in the field and also based on review of more than a dozen distinct typologies summarized in an undated FAO report cited in the list of references in Appendix A.

Types of Land Conflict
<p>1. Disputes over Competing Property Rights (and Perceptions of Property Rights)</p> <ul style="list-style-type: none"> i. between more than one title for the same land. ii. between a title versus some form of private document for the same land. iii. between more than one private document for the same land. iv. between use/possession based on a real or perceived authorization from the owner versus some form of public or private document. v. between a possession that has been public, peaceful and in good faith versus some public or private document. vi. where an individual private 'landowner' has inappropriately registered state land (either vacant land/<i>tierras baldias</i> or a national farm) in his name (these are often 'bad faith' registrations). vii. between an indigenous community that registered its communal land in the name of a municipality to protect it versus: a) supplementary titles acquired to this land; b) titles granted to this land by the municipality or mayor; and c) environmental reserves and biospheres declared by the state on this land. viii. between an indigenous community making an historical claim to land versus: a) another indigenous community claiming the same land; b) a private landowner with a public or private document; the state as a landowner. ix. between communities living within the nuclear zones of environmentally protected areas and the state. x. between communities living within buffer and multiple-use zones of environmentally protected areas and the state.
<p>2. Occupations of Property Legally Owned by Another</p> <ul style="list-style-type: none"> i. private farm occupied because labor services have not been paid ii. private farm occupied because long-term agricultural 'servants' (<i>mozos colonos</i>) have been dismissed/'fired' iii. private farm occupied to acquire the specific plot of land in question iv. private farm occupied to because of a need to access land in general (rather than the specific plot in question) v. state land occupied (either vacant land/<i>tierras baldias</i> or a national farm) by <i>campesinos</i> vi. state land occupied (either vacant land/<i>tierras baldias</i> or a national farm) by an individual (claiming to be the private landowner)
<p>3. Boundary Disputes</p>

- i. between townships (*municipios*)
- ii. between departments
- iii. between communities
- iv. between communities and private individuals
- v. between private individuals

APPENDIX D - CIVIL SOCIETY LAND DISPUTE RESOLUTION INITIATIVES

The following list of civil society initiatives involved in land dispute resolution is not exhaustive and is intended to provide a sample of the kinds of activities taking place in Guatemala.

Mercy Corp/JADE

This USAID-funded project is an important dispute resolution initiative based out of Alta Verapaz that is having significant success in addressing various dimensions of land problems including the resolution of specific disputes. As part of its mandate, the project provides conciliation and mediation services regarding specific disputes and has the resources required to do this properly through the use of legal, historical and technical survey investigations. The project also coordinates with other conflict resolution initiatives in the department in a range of activities related to land conflict matters. The project involves close coordination between Mercy Corp (an international NGO) and JADE (a small Guatemalan NGO of lawyers). Project staff come from both organizations, although the majority are from Mercy Corp at this time.

Land Tenure Security Project Coordinated by Catholic Relief Services

The project was initiated by CRS and seven local partners¹⁷ affiliated with Catholic Church and located in different regions of the country. An important dimension of the project is to coordinate land regularization activities to benefit poor *campesino* communities in situations of tenure vulnerability. While the land administration aspect of the project aims to help the beneficiaries achieve clear legal title to their land, these activities are done in parallel to a series of community development activities. In other words, secure land title is sought as a means to help the communities achieve sustainable economic development rather than as an end in itself. Through the process of regularizing the land, a number of land disputes are resolved and latent future disputes are avoided. The project focuses primarily on communities located within State farms (*fincas nacionales*) and vacant State lands (*tierras baldios*), where land regularization is less problematic because relatively fewer claims to privately titled land are encountered.

OEA/PROPAZ

The OEA/PROPAZ program played a very important and well-respected behind-the-scenes role regarding land dispute issues in Guatemala through the years of the peace process. Building on the program's success, a local independent

¹⁷ The seven partners are: Pastoral Social of Ixcan, Pastoral Social of Verapaz, Parish of Livingston, Parish of Rio Dulce, Fundacion para Ecodesarrollo (FUNDAECO), Proyecto Chorti, and the Fundacion Guillermo Toriello.

Guatemalan organization called Fundacion PROPAZ was created in 2003, and the OAS formed a new Central American program for strengthening democratic dialogue in the region called the *Programa Centroamericana para el Fortalecimiento del Dialogo Democratico*. OEA/PROPAZ played a very important role in training key actors in the land conflict context in critical skills related to dispute resolution, facilitated many important dialogue spaces related to land conflict issues (including spaces related to land policy and legal matters) and helped resolve specific disputes. The program opened the eyes of many senior government and civil society representatives about the potential value of alternative dispute resolution (ADR) approaches and the importance of carefully designed dialogue processes as techniques to address complex land-related matters. The two offshoot organizations remain active in Guatemala and continue to work closely together using the same methodological approaches and sharing certain staff.

Mesa de Negociaciones para Conflictos de Tierra en Alta Verapaz (and other Mesas)

Formed in 1997, this multi-sectoral roundtable has gained widespread recognition in the country for its efforts in the Department of Alta Verapaz to bring parties together to discuss land disputes in an open and trusted space. While it may not have formally resolved a large number of disputes, it has helped clarify many issues of tension in numerous cases and facilitated access to government agencies such as CONTIERRA who often contribute their services constructively. The members of the roundtable are from both state and civil society organizations involved in land-related matters and include both *campesino*/indigenous representatives as well as members who are associated with large private landowners. Over the years, a number of somewhat similar roundtables have been established in departments such as Huehuetenango. While each is distinct in its own way, they all play a very important role where constructive dialogue around land dispute matters can take place in an atmosphere of trust, and where specific land disputes can be resolved.

APPENDIX E – CONSIDERATIONS REGARDING MERCY CORP/JADE

If USAID were to continue supporting the Mercy Corp/JADE project, the following points should be considered. These are presented in addition to the general considerations listed in the programmatic recommendation pertinent to supporting civil society land dispute resolution initiatives:

- The institutional strengthening of JADE should be given greater focus, and JADE should demonstrate its commitment to remain in Alta Verapaz on a long-term basis (e.g., perhaps staff from Alta Verapaz should hold senior positions and participate in institutional decision-making).
- Important elements of the project’s experience should be systematized, including: the time and costs involved in resolving the different types of land disputes; the legal and historical root causes of paradigmatic land disputes in order to identify potential legal and/or policy reforms that could facilitate more efficient resolution; and a review of cases currently resolved through land sale transactions via FONTIERRA should be undertaken to determine if the private landholders’ property claims are consistently valid when subject to a detailed legal analysis¹⁸.
- Efforts to coordinate and share experiences between different initiatives involved in land conflict prevention and resolution in Guatemala should be supported. This applies to specific events such as workshops, but also to longer-term institutional mechanisms such as networks of mediation/conciliation activities.

¹⁸ In other words, to determine if this form of resolution glosses over disputes that may, in fact, have more nefarious root causes as mentioned in Section 4.3.