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The Reform of Property Registration Systems in Guatemala: A Status Report

Brian Trackman, William Fisher,
and Luis Salas

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Abstract

Guatemala is in the midst of a substantial reformation of its real-property registration system. The purpose of this paper is to provide the foundation for an analysis of how that reform process might be accelerated and improved. To that end, the paper describes the current condition of the Guatemalan registry and the changes that have been instituted to date. Sections II and III describe the authority, jurisdiction, and structure of the Registry. Section IV outlines the way in which the Registry is currently financed. Section V sets forth the functions of the Registry – principally inscription, certification, and information management. Sections VI and VII catalogue the respects in which the Registry is currently being reformed. Among the dimensions of change are: automation; titling projects; conversion of existing documents to digital form; streamlining the certification process; restructuring the Registry administration; and the institution of new procedures to reduce fraud. Section VIII considers the relationship between registry reform and the Guatemalan system of “supplementary title.” Finally, Section IX outlines the ways in which disputes that arise out of the registry process currently are being resolved.

Keywords: Central America; Guatemala; property; registry

JEL Codes: K11; O13; O54

Brian Trackman is a graduate of Amherst College, and a student at the Harvard Law School.

William Fisher is currently Professor of Law, Director of the Harvard Program on Legal History, and Co-Director of the Berkman Center for Internet and Society.

Luis Salas is an expert on Latin American justice systems. He is now a full professor in the College of Urban and Public Affairs at Florida International University (FIU).

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I. INTRODUCTION

After a long period of civil conflict, Guatemala has enjoyed official peace for more than two years. With the political landscape now stabilized and the economy once again growing, Guatemala faces a number of social challenges¹ whose resolution holds the key to further national development. Ownership of land is a central aspect of many of these challenges.²

Guatemala is the largest country in Central America. Its population of over 11 million is divided between people of Mayan and other Indigenous origin and "ladinos," people of mixed European and Native American ancestry. The economy is heavily agricultural. This sector accounts for more than 25% of Guatemala's GDP ("PIB") and the bulk of its export earnings. After the 1980's and early 1990's in which economic output decreased and the national debt sharply increased, Guatemala's economy is beginning to recover thanks to a combination of foreign debt forgiveness, structural adjustment policies, and reduced government spending and control.

Guatemala was colonized by Spain in the sixteenth century. Spanish colonists received large homesteads ("encomiendas") which were cultivated by Indigenous slave labor. In 1542, slavery was replaced by a feudal system of indentured servitude. The predominant land tenure regime that developed and persisted is known as the "minifundio-latifundio" system, under which workers were given small common plots ("minifundios") in return for tending the large estates ("latifundios") owned by the colonial lords.

Guatemala declared its independence from Spain in 1821, but was soon occupied by Mexico. Later, General Francisco Morazán from Honduras occupied the capital. Morazán's harsh policies led to a popular revolt and his execution in 1842. From this point forward until the signing of a new Constitution in 1985, Guatemala's political history

¹See Peace Accords, Guatemala 1997 (outlining many of the most important national issues).

²In the Peace Accords themselves, the importance of land in Guatemala is reflected both in the number of times and the variety of contexts in which it is mentioned. See *Acuerdos de Paz 1997*. Especially relevant is the section entitled "Agreement on Social and Economic Aspects and Agrarian Situation."

repeatedly shifted between conservative autocracies with close ties to the Catholic Church and liberal governments dedicated to radical social reform.³ With the election of Marco Vinicio Cerezo as President of Guatemala in 1985, democratic rule was re-established. Civil strife, however, continued.

A national reconciliation process began in 1989. Seven years later, the Peace Accords were signed. Implementation of the Peace Accords – in particular, efforts to improve conditions in rural areas and promote a well-functioning land market – has also contributed to Guatemala's rebound and remains crucial to its long-term prospects. Registry reform and modernization are central to the success of the aspirations set forth in the Accords.

II. AUTHORITY

The present Property Registry traces its roots to the Mortgage Registry set up in Guatemala in 1776 by King Don Carlos II of Spain. In 1877, General (and President) Justo Rufino Barrios issued Decree 175, which created a new Property and Mortgage Registry.⁴ Among other changes, the Registry was decentralized; a separate office was established in each department of Guatemala.

The institution was not changed again until 1933, when the new Civil Code, drafted in large part by the renowned jurist Manuel Ubico, took effect. At that time, the Registry was expanded to include personal property as well as real property.⁵

The current registry system is governed by Law 106, issued in 1963, which instituted a new registry book to record rights pertaining to designated personal property ("prenda").⁶ More

³At least in the 20th century, many of these shifts, especially to more conservative regimes were influenced by the United States, which wanted to protect the interests of the United Fruit Company. *See* Schlesinger & Kinzer, *Bitter Fruit: The Untold Story of the American Coup in Guatemala* (1982). Later, the U.S. worried about the possible spread of Communism, especially after the success of the Cuban revolution. *See* Susan A. Berger, *Political and Agrarian Development in Guatemala* (1992); Guillermo Paz Carcamo, *Guatemala: Reforma Agraria* (FLCSAO, 3d. ed., 1997). *See also* Steven E. Hendrix, *Land Tenure in Guatemala*, GIS Law 7-15 (Winter 1997) (describing the results of political shifts and foreign influence in terms of land distribution and tenure security).

⁴*See* Código Civil (1877) (incorporating Decree 175); "Reglamento para el Registro de la Propiedad e Hipotecas," Appendix to Civil Code (1877). The organization and function of the new institution were heavily influenced by the Chilean Registry and Spanish models.

⁵*See* Código Civil (1933); Decreto-Legislativo 2010 (containing a variety of reforms that expanded the Registry's function to include classes of property other than real estate).

⁶*See* Decreto-Ley 106 (Sept. 14, 1963) (establishing rules and structure of the RGP); Código Civil (1964) (incorporating Law 106).

recent reforms in 1985, a new set of registry regulations in 1987, and a variety of other legislation form the legal framework upon which the Guatemalan Registry presently operates.⁷

The official name of the registry is the General Property Registry ("Registro General de la Propiedad" or "RGP"). The purpose of the RGP is to provide legal security to property holders by publicly recording their rights and interests.⁸ It is the institution responsible for the inscription, notation, and cancellation of all acts, contracts, and rights pertaining to real property.⁹ The RGP is also charged with the duty of keeping such records current and accurate – i.e., to track changes in ownership rights and other interests in land. Such changes may be occasioned by purchase-sale agreements, inheritances, the creation or cancellation of mortgage liens, government decrees, the granting of use rights, and abandonment.

The RGP is a public institution, and its records may be consulted by anyone.¹⁰ Previously, the public was permitted to review the original registry records – a practice that created opportunities for fraud (e.g., changing or removing records) and also contributed to the deterioration of the records. Presently, visitors are only permitted to see copies of registry records, many of which have been converted to microfilm. In some instances, digital (computerized) forms are provided.

With respect to questions of legal standing, the institution of the RGP can neither bring suit, nor be named as a party in a suit. Nonetheless, parties may bring suit against the Registrar himself. The Registrar is personally liable for damages caused by any employee or by the RGP as a whole in discharging their duties. The predicate for such liability is a judicial determination that an action – or a refusal to take action (e.g., a refusal to process an inscription application presented by an interested party) – was incorrect. Civil suits may also seek to compel the

⁷See Decreto-Ley 124-85 (Nov. 29, 1985); Reglamento del Registro General de la Propiedad, Acuerdo Gubernativo No. 359-87 (1987) (passed in accordance with Código Civil, Art. 1250 as reformed by Decreto-Ley No. 124-85, Art. 17 (Nov. 29, 1985)). Among the other laws governing the Registry, the most important are the following: Ley de Rectificación de Medidas; Código de Notariado; Ley de Inmovilización; Voluntaria de Bienes Registrados; Procedimiento de Localización y Desmembración de Derechos sobre Inmuebles Proindivisos; Ley de Titulación Supletoria; Ley de Transformación Agraria; Reglamento del Registro General de la Propiedad, Acuerdo Gubernativo 359-87; Arancel General de los Registros de la Propiedad, Acuerdo Gubernativo 339-96.

⁸See Código Civil, Art. 1124 ("El Registro de la Propiedad es una institución pública que tiene por objeto la inscripción, anotación y cancelación de los actos y contratos relativos al dominio y demás derechos reales sobre inmuebles y muebles identificables. Son públicos sus documentos, libros y actuaciones.")

⁹See Código Civil, Art. 1124. In particular, fourteen classes of titles may be inscribed at the RGP. See Código Civil, Art. 1125. Included among the types of titles expressly allowed are those that confer or accredit ownership of real property, as well as those that constitute, recognize, modify, or extinguish rights of usufruct, use, habitation, familial patrimony, mortgage, servitude, and any other rights or interests in real property. See Código Civil, Art. 1125 (1)-(2).

registrar to take some action – as, for example, when someone alleges that the competing rights of a third party ought never have been inscribed and hence should be canceled.¹¹

III. STRUCTURE AND ORGANIZATION

The RGP is part of the Executive Branch, but operates autonomously. According to the Constitution, the RGP must be organized so that there exists in each department or region both a property registry office and a corresponding fiscal cadastres.¹² Currently, two main offices comprise the RGP, one in Guatemala City and the other in Quetzaltenango. The office located in the capital maintains records for the departments of Guatemala, Sacatepequez, Chimaltenango, Santa Rosa, Jutiapa, Jalapa, Zacapa, Chiquimula, El Progreso, Izabal, Escuintla, Petén, Alta Verapaz, and Baja Verapaz.¹³ The second office in Quetzaltenango has jurisdiction over the remaining 8 departments: Retalhuleu, Suchitepequez, Totonicapan, Huehuetenango, Solola, Quiche, San Marcos, and Quetzaltenango.¹⁴ While the offices do share information as necessary, each maintains its own set of records and is responsible for their safe keeping. Duplicate copies of each Registry's books are not kept by the other.

Each office is managed by a Registrar, who is named by the President.¹⁵ The Registrars exercise administrative control over their respective RGP offices in accordance with relevant law.¹⁶ For example, registrars may name auxiliary registrars to assist them in the discharge of

¹⁰See Código Civil, Arts. 1124, 1222.

¹¹The process is closely analogous to a mandamus proceeding in the United States.

¹²See Constitución Política de la República de Guatemala, Art. 230 ("El Registro General de la Propiedad, deberá ser organizado a efecto de que en cada departamento o región, que la ley específica determine, se establezca su propio registro de la propiedad y el respectivo catastro fiscal.") While the RGP is one single entity, it is organized in various offices. See Informe del Registro General de la Propiedad de Guatemala (Aug. 1998) (prepared for II Jornada del Notariado Novel de Paraguay), at 4.

¹³Note that these departments include the region referred to as "El Petén."

¹⁴It is important to note that the trend is toward greater cooperation between the two offices, and the long-term goal is complete integration of the national registry system.

¹⁵Note that registrars may also be removed from office by the Executive. See Constitución Política de la Republica de Guatemala, Art. 183(s).

¹⁶See, e.g., Código Civil, Art. 1221 (allowing the registrar to create and change RGP operating procedures and rules as necessary). In practice, the registrars are bound by the rules set up by the special Registry Reform Commission ("Comisión de Reforma"), discussed *infra*, so that the offices in the capital and Quetzaltenango operate nearly identically.

their duties.¹⁷ These auxiliaries act in the name of the registrar and must meet the same qualifications as the registrar to be appointed.¹⁸

Within each office, the administrative structure and manner of operation are nearly identical.¹⁹ The registrar is assisted by a lieutenant registrar, a general secretary, and an office manager, together with an Executive Office staff.²⁰ The members of the staff are appointed by the Registrar.

Records in the Registry are maintained according to the Folio Real system, which tracks transactions as they relate to specific parcels of property.²¹ Each parcel ("finca") is given its own unique number ("ficha"), which is used to refer to the parcel in any transaction that affects it.²² Guatemala was one of the first countries in the Region to adopt this system, having used it since 1876. A separate registry record is maintained for each parcel and, in the case of written records, consists of two large pages.²³ On the first page, all ownership and use rights as well as legal limitations ("anotaciones preventivas") pertaining to the parcel are noted. The second page keeps a record of all financial interests relating to the parcel. If the page fills up, a new page is designated and noted.²⁴ Cross references are used to maintain continuity.

Until recent modernization efforts began, all registry records were organized into bound sections or "folios," which, in turn, were organized into large leather-bound books ("libros"). These registry books are stored in large rooms at the Registry itself. Currently, registry records are being converted to microfilm and digital form, eliminating the need for registry books and large amounts of space. In addition, problems of deterioration and the threat that records might be removed, changed, or destroyed are greatly minimized.²⁵ For safekeeping, copies of digitized

¹⁷See Código Civil, Art. 1225 (reformed by Decreto 88-97) (allowing the appointment of auxiliary registrars who may act in the Registrar's name and authority).

¹⁸Registrars must be native Guatemalan citizens, hold a law degree, and be licensed notaries.

¹⁹Though the offices maintain separate sets of books, the importance of this compartmentalization is likely to decrease as information is computerized and made available over a national network.

²⁰In Quetzaltenango, the Registrador General position is absent. Instead, a chief registrar, equivalent in rank to the lieutenant Registrar in Guatemala City heads the office.

²¹See Reglamento del Registro General de la Propiedad, Art. 3.

²²See Reglamento del Registro General de la Propiedad, Art. 11.

²³See Reglamento del Registro General de la Propiedad, Art. 8. Computerized records keep exactly the same information, but the data appears on screens, and when printed, may be in a different format than the traditional written records. Microfilmed records, on the other hand, appear just as the original pages from which they were created.

²⁴See Reglamento del Registro General de la Propiedad, Art. 9.

²⁵To be sure, electronic data may be lost, corrupted, or destroyed, but the likelihood of permanent damage is much less given the array of safeguards currently available against viruses, illegal access, etc. and the fact that data backups are both easy and inexpensive.

records are kept at other locations.²⁶ Finally, accessing, updating, and processing data contained in the new digitized records can proceed much more quickly. Despite these advances, records are still organized and easily found according to parcel number.

IV. FINANCES AND FUNDING

The Guatemalan Registry has its own operating budget, monies from which are distributed by the Registrar. Unlike the budgets of the registries in other countries in the region, the Guatemalan registry is self-financing, the service fees collected from registry users.²⁷ According to the Civil Code, these service fees must be established by an official Registry Fee Schedule ("Arancel").²⁸ The Arancel sets out the amounts that the Registry may legally charge for each of its activities, and requires that all such monies be used to pay the salaries of its employees, its administrative costs, and costs associated with records conservation and other Registry Reform efforts.²⁹ As a general rule, registry fees are determined by a combination of the function of a transaction and its underlying value.

In order to further the goals of modernization, the law permits the imposition of a special additional fee of ten quetzales (approximately \$1.75) for each inscription and of five quetzales (approximately \$.85) for each certification.³⁰ These revenues are maintained in a separate account designated for RGP modernization projects.³¹ The fees charged by the Registry cover its operational expenses and any surplus is invested in interest-bearing cash accounts.

One problem that the new system should eliminate is the fraudulent use of blank pages in old books to inscribe interests in land that is discovered to have no owner. Cases in which pages of old registry books have been torn out and replaced by others have been reported. Such frauds are "legitimized" when the property in question passes to a third party who relies in good faith on what appears in the registry. Because such frauds often involve lands that already were titled, disputes between the third party buyer and rightful landholder can emerge. As registry modernization continues, one challenge will be resolving these pending disputes. Perhaps a more important challenge will be identifying where disputes exist. Where the fraud involves a tract of land that is part of a larger, inscribed tract, neither the rightful owner, nor RGP may notice that a conflict exists.

²⁶Backup copies of RGP records are maintained at undisclosed locations. These backups are updated daily, removing all but the smallest possibility of catastrophic loss.

²⁷See Arancel General para los Registros de la Propiedad, Acuerdo Gubernativo No. 339-96 (Aug. 19, 1996) (published in *Diario de Centroamerica*, Oct. 25, 1996), Art. 1.

²⁸See Código Civil, Art. 1241.

²⁹See Arancel General, Art. 1. In effect, the Arancel provides the legal basis for the Registry's financial autonomy.

³⁰See Arancel General, Art. 4.

³¹See Arancel General, Art. 4. With respect to budgeting, the RGP has committed itself to a long-term payment structure that allows the high initial costs of modernization to be amortized over several years. Thus, the costs of modernization do not fluctuate, and the amounts collected to support the effort cover the expense.

The principal types of Registry expenditures are office expenses, personnel, professional services and consultants, maintenance, and modernization. Registry "operadores" are paid according to the number of operations or jobs that they complete, taking into account the difficulty of those operations.³² Technical and professional staff are paid according to contractual agreements, while Registry chiefs are paid according to a legislated pay scale.

Because the RGP provides a significant source of revenue to the national government, the budgeting process for the Registry is influenced by politics. A general budget framework is established each fiscal year by the President. Within this broad framework, the Registry proposes a budget for approval by the government.³³ Once the budget is approved, day-to-day management of RGP resources is handled by the accounting and internal auditing departments under the general direction of the Registrar.

V. FUNCTIONS AND OPERATIONS

The Guatemalan Registry, like the others in the region, performs a variety of functions. Chief among these are inscription, certification, and information management. Inscription involves the recording modification and cancellation of rights and interests.³⁴ Certification is used to confirm ownership rights. Corollary functions include informing the public with information about using and accessing the Registry, providing information to other government agencies and collection of registry fees.

The most important of these functions is the maintenance of records of property ownership,³⁵ as well as financial interests such as mortgage liens, and servitudes pertaining to real property.³⁶ Guatemalan law permits citizens and foreigners as well as juridical persons to register rights and interests in real property at the RGP.³⁷

³²Registry workers became unionized in 1996 and have negotiated a favorable contract that provides for annual salary increases.

³³This proposal takes account of the needs of the Registry, revenue levels, and projected expenses, and the national budget framework set up by the Executive.

³⁴One example of cancellation would be a notation that a mortgage debt has been satisfied, thereby removing a lien that existed on the property.

³⁵Ownership can be established in one of three ways: (a) acquisition of existing title; (b) acquisition of supplementary title (See Section G, *infra*); (c) acquisition of government-granted title.

³⁶See Código Civil, Art. 1125.

³⁷Foreign ownership of certain property is limited by other legislation including the Código Civil and Ley de Extranjería as well as Articles 122 and 123 of the Constitution.

The RGP records rights, but does not create them.³⁸ Thus, Guatemala's registry system is "declarative" rather than "constitutive." For property rights and interests to be enforceable against third parties they must be recorded.³⁹ In addition, any right or interest inscribed at the RGP is presumptively valid, and may be relied upon by third parties.⁴⁰

Guatemala has adopted the rule, "first in time, first in right" -- according to which the rights described in documents that are presented to and officially accepted by the RGP have priority over rights and interests described by documents presented subsequently.⁴¹

Crucial to fulfilling its primary goals is the RGP's institutional credibility. A Registry that lacks credibility among users or other government branches can do little to substantiate or guarantee the legal rights of its users. By contrast, the accurate inscription and certification of rights and interests in accordance with the law fosters the institution's credibility and encourages more use of the system,⁴² which in turn invites greater reliance on the RGP as the guarantor of legal rights and land tenure security. The RGP's mission statement acknowledges the importance of credibility, emphasizing that the registry discharges its legal mandate in order to satisfy registry users.

The Mission statement reads, "We are the Institution responsible for completing WITH HONESTY AND IN CONFORMITY WITH THE LAW, the registral activities related to real property and designated personal property, through the optimal use of our human resources, materials, funding, and technology, in order to satisfy the users, while GUARANTEEING LEGAL SECURITY, contributing to the social and economic development of the country."⁴³

³⁸See Código Civil, Arts. 1148, 1790.

³⁹See Código Civil, Art. 1146-1148.

⁴⁰According to the Principles of Inscription and Publicity ("Principio de Inscripción" and "Principio de Publicidad"), the RGP guarantees the validity of property rights and permits third parties to act in reliance on the information inscribed in its books. See Código Civil, Arts. 1124, 1146, 1148, 1179.

⁴¹See Código Civil, Arts. 1141, 1142, 1148; Reglamento del Registro General de la Propiedad, Art. 7.

⁴²Worth noting is the trend of increasing Registry use by landholders and other interested parties. At least part of this increase may be attributed to increased public confidence in the RGP. Increased credibility also increases the value of registration insofar as third parties, including creditors and potential buyers, are more willing to act in reliance on information stored at the RGP. Whereas in the past, registering one's property might only subject the owner to taxes, inscribing one's rights now may allow the owner to access credit, sell the property, or enter into other transactions relating to it.

⁴³See Mission Statement of the Guatemalan Property Registry (Printed on back of cover of Registry Pamphlet):

Misión: Somos la Institución responsable de realizar CON HONESTIDAD Y DE CONFORMIDAD CON LA LEY, las actividades registrales relativas a los bienes inmuebles y muebles identificables, mediante la utilización óptima de nuestros recursos humanos, materiales, financieros, y tecnológicos, para satisfacer a los usuarios, GARANTIZANDO SEGURIDAD JURIDICA, contribuyendo al desarrollo social y económico del país.

The principal activities of the Registry are described in more detail below.

Inscription

To have a property right inscribed, the interested party must prepare an inscription application, the most important component of which is a legal title. To be suitable for inscription, the title must describe legally recognized rights or interests in real property.⁴⁴ The kinds of interests that are susceptible of inscription are specified in Article 1125 of the Civil Code.⁴⁵ In addition, the title must be authorized by a notary, judge, or specially designated government agency.⁴⁶ The inscription application must also estimate the value of the property or relevant transaction, set forth any existing rights or interests ("gravámenes") pertaining to the land, and present personal information about the applicant that may not appear in the title.⁴⁷ The title and inscription application as a whole must be reviewed, stamped, and signed by a notary in order to be a valid public document ("escritura publica") that may then be presented at the RGP for inscription.⁴⁸

Once prepared, the inscription application is presented in duplicate to the RGP. Voluntary presentation by the interested party is a crucial step in the process, as the RGP cannot initiate an inscription on its own.⁴⁹ Both the original and duplicate copies must be legible and facially legitimate (e.g., bear the signature of a practicing notary), and be printed on the legally prescribed paper. In addition, at least part of the required service fee must be paid at the time of

The Mission statement responds to a number of complaints and problems that historically have plagued the registry, including corruption, inefficiency, and imprecision in inscribing rights. Announced in 1996, it represents a major advance in the aspirations, quality of service, and focus of the RGP.

⁴⁴In this regard, lease agreements ("contratos de arrendamiento") may be inscribed because they are specifically permitted. See Código Civil, Art. 1125(6).

⁴⁵Note that the list is not formally exclusive; that is the Civil Code does not explicitly limit inscribable titles to those that are listed in Article 1125. Nonetheless, in practice, the list is treated as complete and closed.

⁴⁶These sources of authorization correspond to the way in which title was acquired. See note 35, supra.

⁴⁷See Reglamento del Registro General de la Propiedad, Art. 18. Note that any other relevant requirements set out in the Código Notariado must also be satisfied.

⁴⁸See Código Civil, Art. 1576 ("Los contratos que tengan que inscribirse o anotarse en los registros, cualquiera que sea su valor, deben constar en escritura publica...") See also Código Notariado, Art. 66 (indicating that a public document is one which has been stamped and signed by an authorized notary).

⁴⁹See Código Civil, Art. 1127 (establishing "Principio de Rogación": "La inscripción en el Registro puede pedirse por cualquier persona que tenga interes en asegurar el derecho que se deba inscribir.") Despite this requirement that the party petition the RGP to inscribe a right or interest, inscription is legally necessary to enforce most rights against third parties, and it is sometimes required by other law. See Informe del Registro General de la Propiedad, at 14 (citing Código Civil, Arts. 1193). See also Código Civil, Art. 1129 (requiring inscription to enforce rights pertaining to real property).

the application.⁵⁰ The transaction is then assigned a number, and the documents are officially accepted. At this point, the Registry employee marks the documents with a time/date stamp. The receipt of the documents is also marked in an official Receipt Book ("Libro de Entregas de Documentos").⁵¹ In addition to the date and time, the employee assigns and notes the application's document number, the name of the individual presenting the application, and his or her employee identification number.⁵² Finally, where the inscription would affect the rights of other parties, proof of their consent is also required.⁵³ The applicant, or his designated representative, receives a receipt with similar information about the application and a note indicating the fee that has been paid.⁵⁴

From the Registry window, the application is immediately passed to an area where it is scanned. Scanning is a process by which photo-images are made of the various pages of an inscription application. Those images are then saved on optical disks in computer-readable format.

The application next passes to pre-examination ("pre-calificación"), where it is reviewed to ensure that basic formal requirements are satisfied and that the application represents a bona fide valid transaction. Although the process is not rigorous, it exposes various errors and even cases of fraud. During this check, three outcomes are possible.⁵⁵ The application may be rejected outright. Obvious fraud will trigger rejection, but otherwise this outcome is quite rare. Small errors, by contrast, may cause the inscription process to be suspended pending their correction by the interested party. Third, if all legal formalities are met and no fraud is apparent, the documents are sorted and assigned to an "operadora," who checks them against existing Registry records.⁵⁶ The operator's number is noted in the Receipt Book. Work is divided equitably among the operators who are paid on the basis of how many inscriptions they complete and the

⁵⁰See Arancel General, Art. 5 (allowing a minimum of 50 quetzales to be deposited when the value of the transaction cannot be determined prior to submission).

⁵¹See Código Civil, Art. 1142; Reglamento del Registro General de la Propiedad, Arts. 7, 21.

⁵²See Reglamento del Registro General de la Propiedad, Arts. 7, 21.

⁵³See Informe del Registro General de la Propiedad, at 14 (describing the "Principio de Consentimiento").

⁵⁴See Reglamento del Registro General de la Propiedad, Art. 22. A copy of the receipt is sent to the RGP's accounting office.

⁵⁵See Informe del Registro General de la Propiedad, at 17, 23 (citing Código Civil, Arts. 1128, 1164).

⁵⁶See Reglamento del Registro General de la Propiedad, Art. 23.

difficulty of the transactions. The sorting process is supervised by the Secretary General of the RGP through the Distribution Office ("Departamento de Reparto").⁵⁷

Once the operator receives the application, he or she conducts a title search to ensure that the inscription may proceed.⁵⁸ If any discrepancies or problems are discovered, the documents are marked and sent to the judicial function, which investigates further.

Inscription applications with problems are either rejected or returned to the user for corrections.⁵⁹ Assuming no problems are found, the inscription is completed.

Each RGP record consists of two large pages in a folio. Folios, in turn, are assembled into registry books ("libros"). Each page is divided into three columns. The middle column of the left page is used to record rights in real property including ownership, servitudes, and usufructs. The other columns are used to note judgments or other relevant information, and cancellations of rights. The center column of the right-hand page is used to record financial interests like mortgages. The left and right columns contain notations and cancellations.

When a parcel is inscribed for the first time, a legal definition of the property, its location, size, and borders, and the source of the title (whether a grant from a private party or a judicial order) must be recorded in addition to a description of the right being recorded and information about the beneficiary.⁶⁰ In subsequent inscriptions, reference need only be made to the parcel number and any changes in the original information.⁶¹ As the original pages of the record become full, references are made to a new page, where the record continues.⁶² All inscriptions must clearly indicate the parcel affected by the inscription, the right or interest that is being inscribed, and the titleholder.⁶³

⁵⁷See Informe del Registro General de la Propiedad, at 23.

⁵⁸See Reglamento del Registro General de la Propiedad, Arts. 24-25. Titles can be inscribed in the applicant's name only if a continuous chain of title can be established. See Código Civil, Art. 1130. Exceptions can be granted by courts – for example, in a Supplementary Title proceeding. See generally Ley de Titulación Supletoria, Decreto-Ley 49-79 (1979) (as reformed).

⁵⁹See Informe del Registro General de la Propiedad, at 23. The possible outcomes in the examination stage ("calificación") are the same those in the pre-examination review.

⁶⁰See Código Civil, Art. 1131; Reglamento del Registro General de la Propiedad, Arts. 8, 11; Ley de Titulación Supletoria.

⁶¹See Código Civil, Art. 1134 ("En las inscripciones relativas a un bien anteriormente inscrito, se omitaran aquellas circunstancias que respecto de el conten ya en el Registro, hacendose solo referencia a ellas y citandose el numero, libro y folio en que se encuentran; pero se cuidara de expresar las alteraciones que el mismo haya sufrido.")

⁶²Over time, the records for a parcel become fragmented, and if the handwritten reference is illegible or misread, mistakes may be made. Moreover, records in older books may degenerate. Prior to the current modernization effort, a contingent of Registry personnel was assigned to maintain records by copying the older records into new libros.

⁶³See Código Civil, Arts. 1131, 1133, 1135-1139 (establishing the "Principio de Especialidad o Determinacion").

Once the inscription is complete, the application is sent to the judicial section for review and approval. If problems are discovered with the inscription itself, these may be corrected by making a new entry in the parcel record and canceling the incorrect entry. If a problem with the application is discovered, the inscription process is suspended pending necessary corrections by the interested party, or terminated if the discovered error may not be legally rectified.⁶⁴ If all is correct, the application passes to the Accounting Department where the correct registry service fee is calculated.

From the Accounting Office, the application is sent to be stamped and signed by the Registrar.⁶⁵ The application is finally sent to the Payments Office ("Tesorería"), where the interested party pays any outstanding balance for the inscription and picks up the newly registered title.⁶⁶ A corresponding notation is made in the Diario to indicate the time and date when the document leaves the Registry, and that all fees have been paid. From start to finish – i.e., from the presentation of an application to the time the registered title is ready to be picked up – the inscription process should take no longer than eight (8) days, but in no case may legally exceed fourteen (14) days.⁶⁷

Copies of titles are kept by the Registry in a set of 300 large tomes, which date back to 1933.⁶⁸ Each tome contains about 300 documents and each document has approximately 4 pages. Since 1982, the documents have not been bound.⁶⁹ Because these documents (like all Registry records) are public, but are not copied or otherwise backed up, users who request to see them have the opportunity to remove or change them. The scope of this potential problem has not been investigated. More recently, documents have been saved on microfilm – a practice that

⁶⁴This third review is analogous to the pre-examination ("pre-calificación") and examination ("calificación") of the document.

⁶⁵Designated officials may sign on the Registrar's behalf.

⁶⁶See Reglamento del Registro General de la Propiedad, Art. 27.

⁶⁷See Código Civil, Art. 1127 ('Los registradores harán toda la inscripción, anotación o cancelación, dentro del término de ocho días, contado desde la fecha de recepción del documento. Si este diere lugar a varias de las operaciones antes indicadas [applications legally presented to the RGP], el término se ampliará a seis días más.') Despite this legal mandate, some registry users report delays in processing inscription applications of several weeks, without explanation.

⁶⁸See Código Civil, Art. 1132.

⁶⁹Finding all of the documents that relate to a particular parcel can be a problem, not only for registry users seeking to verify rights and interests, but also for registry staff who are presently in the process of scanning these documents into the automated registry system.

both saves space and prevents the problems of deterioration and security inherent in the old system.⁷⁰

At any point during the inscription process, a decision taken by any registry employee (including the registrar) may be challenged by any interested party. Such challenges must be brought before the Court of First Instance with jurisdiction in the department where the RGP office is located.⁷¹

The Automated Registry

While the legal framework of the RGP has not changed substantially in recent years, the process by which inscriptions are completed has improved.⁷² The traditional manual process is being replaced by an automated registry system that makes use of electronic "books" –computer database records – to track rights and interests in real property.

Under this system, documents are first presented to the window attendant who scans them and saves them to optical disks.⁷³ All entries to the Receipt Book are also computerized. Document numbers are distributed to operators who can then process the application, whether an inscription or certification, entirely on-line. If an on-line title search reveals no problems or errors, the inscription is completed on the computer system. The legal department can then call the record up to complete its review before approving the operation. Once approved, the inscription is finalized on the system and electronically signed. A receipt is made available to the user. The Registry keeps only digitized copies of documents stored on optical disks and back-up discs kept in a separate, safe location.

Currently, inscriptions for new parcels, "vivienda popular," "fincas conservadas," and horizontal property; transactions in Escuintla, El Petén, El Progreso, Sacatepequez, and the "Grupo Norte" region; transactions involving mines, government concessions, and agrarian reform are all completed with a computerized system. In addition, the Registry now regularly issues electronically prepared certifications and responses to user inquiries.

⁷⁰See Código Civil, Art. 1221 (expressly allowing the use of microfilm).

⁷¹See Código Civil, Art. 1237; Informe del Registro General de la Propiedad, at 9.

⁷²The legal basis that has facilitated technical modernization within the RGP is Article 1221 of the Civil Code, which was amended in 1985 by Article 16 of Law 124-85 to permit the registrar to implement the use of microfilm, computers, and automated networks. See Código Civil, Art. 1221 ("[El Registrador] queda facultado para innovar progressivamente el actual sistema, adoptando la microfilmación de los documentos, la computarización y teleproceso, de acuerdo con las posibilidades económicas del Registro.")

⁷³See Informe del Registro General de la Propiedad, at 27-32 (providing detailed explanation of process).

Once completed, automation will allow the Registry to conduct all of its operations with computers. All records will be kept in electronic form. Although the same basic process is employed, the automated system has reduced the time each step requires. Moreover, the automated system holds the promise of allowing instantaneous access to centralized information from any location, greatly reducing the transaction costs associated with Registry operations.

Role of the RGP - A Typical Purchase-Sale Transaction

To better illustrate the importance of inscription in the Registry as support for land transactions, consider a typical sale of a small home situated on a rural lot of 10 manzanas.⁷⁴ Suppose (as is often the case) that the house had been mortgaged by the seller and will likewise be mortgaged by the buyer. First, the purchaser and seller must agree to terms. These are then written into a purchase-sale contract, and a closing date is fixed. The purchaser will have already secured the necessary approvals from the lending institution that will provide the mortgage. That institution will have conducted a title search on the land to be certain that the current owner can pass good title and to encumbrances on the property. The lender will obtain from the Registry a certification to determine the status of rights and obligations pertaining to the land. It is likely that a condition of providing the mortgage would be cancellation of the seller's existing obligation. (In the Guatemalan system, if the obligation is not canceled, it runs with the land and is the responsibility of the subsequent owner.) At the closing, the parties will exchange a number of documents, including a deed for the property, payment pursuant to the purchase-sale contract, and notarized documents from the seller's lender indicating that the mortgage should be canceled. The purchaser then records the deed as proof of ownership. Once this process is complete, the lender can inscribe the mortgage and cancel the former encumbrance.

As can be seen, the Registry is used at least four times for this simple land transaction. The importance of efficiency and accuracy cannot be overstated.

⁷⁴One manzana is a measure of land equivalent to 0.7 hectares.

VI. CURRENT REGISTRY PROJECTS AND GOALS FOR IMPROVEMENT

Modernizing the Registration Process

The Guatemalan Registry appears to be committed to modernization and change.⁷⁵ In 1990, a new National Commission ("Comisión Nacional de Reforma Registral" of "CNRR") was created to plan and implement efforts to automate the RGP and conserve registry records. In 1993, a new government accord called for reformation of the existing registration system through the implementation of a new inscription process.⁷⁶

The reform initiative derived in large part from recognition of a number of problems facing the Registry, including "excessively slow discharge of Registry activities, frequent loss of documents, disorder in the maintenance of records, disregard of authorized fees (workers would regularly complete work based on the amount which they were offered by the applicant), the rejection of documents without just cause, and a failure to observe the work schedule by Registry personnel."⁷⁷

Responding to the call for reform, the National Registry Reform Commission began feasibility studies to develop a comprehensive, workable modernization plan. In 1995, work began on two interrelated projects. One, to implement an automated registration system and the second to transfer all of its existing paper records into an electronic format that could be accessed by computers and saved on optical disks. A final component of the modernization plan entails implementation of a system of maintenance and support services for the newly automated system to ensure that it stays on-line.⁷⁸

⁷⁵See, e.g., Editorial, Registro General de la Propiedad, p. 2 ("Como institución integrante de la estructura administrativa del Estado, el Registro General de la Propiedad también está comprometido en los cambios que exigen las circunstancias, en el marco de su competencia.") The Registry has identified not only speed -- an area current RGP users cite as its biggest weakness -- but overall customer service, elimination of corruption, and minimization of errors as key goals in its reform efforts.

⁷⁶See Informe del Registro de la Propiedad, at 19 (citing Acuerdo 317-93).

⁷⁷See Registro General de la Propiedad, 2. See also generally Registro General de la Propiedad, Plan Estratégico (1997). The average time for an inscription has been reduced to about 25 working days; the goal is to process inscriptions in an average of 10 work days.

Prior to reform, the rate of error for documents processed by the RGP was high (e.g., about 30% in 1996), necessitating follow-up actions, which bogged down the system, frustrated users, and created insecurity. See Plan Estratégico. The goal is to reduce that number to zero. The Registry also recognized that corruption was commonplace, the institution's infrastructure required modernization, and that the Registry was overly centralized and bureaucratic. See Registro General de la Propiedad, at 3. As a result of these faults, the Registry lacked public confidence hindering efforts to regularize land titles and ownership throughout the country. Information, whether about the Registry and its operations or about the records themselves, was difficult to obtain. This greatly increased the transaction costs and further augmented the lack of public confidence in the Registry.

⁷⁸These three projects taken together formed what was termed a "total solution."

Since 1997, Registry reform has proceeded in accordance with the Strategic Plan developed by the CNRR. Work to automate the inscription process continues. Equipment has been purchased; the necessary software has been developed (through pilot projects); operators have been trained; and the system has been refined. The automation project includes not only the folio real, but also the document submission area and other stages in the inscription process. With regard to document submission, for example, automation has already been implemented. Now, when an inscription application is presented, the anticipated registry fee is calculated, the time and date noted, a unique document number assigned, and the notary name checked against a current list of active notaries in good standing – all by computer. As described previously, the application is then scanned and processed.⁷⁹

The records conservation project is also moving forward. This project involves transferring over 100 years of handwritten registry records to computer-readable format. First, the Registry books are examined to find all the inscriptions that pertain to a parcel and any errors that may exist in the records themselves. Second, the books corresponding to a particular region are collected, and their records are scanned electronically. Then, the images are indexed and reviewed to ensure that the chain of title for each parcel is correct and complete.⁸⁰ The fourth step in the process is "consolidation": all of the images corresponding to a single parcel are linked. Finally, a short abstract of the current legal status of the parcel is entered into the system.⁸¹ The result is saved on the Registry's main system servers and the entire system is backed up on optical disks that are stored at a separate location each day.

Already, the Registry has converted records covering "horizontal property" (condominiums and other structures with multiple owners) in the departments of Guatemala, Escuintla, and Sacatepequez; many other records from the departments of El Petén, El Progreso, and

⁷⁹See Section D: "Automated Registry," *supra*.

⁸⁰In this stage, at least 3 challenges present themselves: missing antecedents; legitimizing an erroneous status quo; and multiple chains for the same parcel. The first is self-explanatory; without the full set of documents pertaining to a parcel, its complete legal history cannot be known. The second challenge arises because older land descriptions are not only imprecise but are often tied to impermanent landmarks ("mojones"). Moreover, the boundary lines between these markers are not always well defined. Thus, even if certain points can be determined along the perimeter of a tract, the shape or orientation of the tract may still be in doubt. Where owners have deliberately taken advantage of imperfections in the registry system, these changes can be "legitimated" during the modernization process, possibly to the detriment of third parties, and may give rise to disputes and confusion. Finally, it is unclear how modernization efforts will deal with situations in which it is discovered that the same tract has two separate chains of title. Other than highlighting the problem, the RGP has no authority to resolve it.

⁸¹This abstract is, unlike the other scanned document images, an interactive database record, which can be amended and added to as necessary.

Sacatepequez; mines; government concessions; and agrarian reform titles. Through this effort, over 570 books have been digitized, and 700 more are in progress.

Among the benefits of modernization is enhanced accuracy of registry records. Automation reduces error as it eliminates manual copying of information both from original documents into registry books, and between registry books as pages are filled. Each parcel can be maintained on a single electronic "page," avoiding the need for cumbersome cross-references. Likewise, converting records to electronic format allows information to be more safely stored and easily safeguarded,⁸² thereby facilitating more rapid processing of inscription applications and provision of other Registry services as well as enhancing the credibility of the RGP. The possibility of tampering or fraud that existed in the traditional paper-based system, where any party could gain access to original records, is greatly diminished. In the modern system, registry users see either electronic or paper copies of registry records, not originals. Unauthorized changes to records are almost impossible. Registry operators have unique passwords to the system, and the actions of each are recorded daily. Thus, any illicit actions can be tracked.⁸³ Taken together, individual RGP users enjoy better service at a lower cost, while the institution as a whole can provide greater legal security to land market participants.

The Strategic Plan originally foresaw completion of the modernization initiative by 1999. Because of the size and complexity of the project, original estimates for completion have had to be revised somewhat, but all records should still be converted by late 1999.

In addition to the projects already described, reform of the registry system in Guatemala has also included a number of other initiatives, described below.

Inter-institutional Coordination

In 1996, a new inter-institutional council was created to assist the CNRR in the planning and implementation of registry reform, especially as it related to other national efforts, including urban development, agrarian and land reform, and development of the primary and secondary

⁸²For example, previously, Registry records might be destroyed or changed by outsiders or bribed Registry employees. With paper records, making changes, tearing out pages in a Folio, or simply destroying records is much easier than with properly protected and backed-up electronic records.

⁸³It is of course possible that a third party could gain access to the RGP's computer system, but this represents a very remote threat.

credit markets. This Users Council ("Consejo de Usuarios") consists of six representatives from entities involved in the areas mentioned above in addition to the registrar and appointed staff.⁸⁴

Increasing Public Access to Registry Records and Services

Not only does new technology help improve the registry records, but it also facilitates public access to property records. For example, a new process has been developed to allow certifications to be requested without having to visit an RGP office personally. The keys to this system are national bank branches, which are linked to the RGP by an on-line network. Direct access to registry records for title searches or general consultation will be possible over this network as of early 1999.

The initiative entitled "Apertura de Oficinas registrales" also seeks to increase user access to registry services by decentralizing the availability of those services. Plans are in place for new branch office in the Peten, which will be administered by the RGP office in Guatemala City. Efforts to equip this office and prepare it for operations are underway.

Saturday hours and special intake windows designated for notaries, the most frequent users of the registry system, have also been implemented to increase access to the registry and the efficiency of service.

Restructuring Administration

Efforts to restructure the administration of the RGP seek to streamline the provision of registry services to users and increase overall efficiency. The creation of a General Administration ("Gerencia General"), headed by the registrar, is one important step. Another has been the restructuring of each RGP department, each of which reports directly to the General Administration.

A related effort has been the implementation of an improved accounting system with better controls that allow the RGP to take full advantage of its resources and also facilitates budgeting. One result of this effort has been a thorough revamping of the budget to direct money toward automation, improving the institution's infrastructure, and appropriate worker compensation.

⁸⁴Specifically, the Council includes representatives from the Instituto Guatemalteco de Derecho Notarial, Instituto Nacional de Transformación Agraria (INTA), Fondo Guatemalteco para la Vivienda (FOGUAVI), Colegio de Abogados y Notarios, Asociación Bancaria Guatemalteca, and Gremial de Bienes Raíces de la Cámara de Comercio. See Registro General de la Propiedad, at 8.

Eliminating Fraud

One focus of registry reform has been the elimination of corruption. Prior to reform efforts, registry staff were regularly offered (and often expected) "grease payments" to expedite or simply complete the processing of inscription applications. Operators were sometimes offered money to process fraudulent or otherwise deficient applications, change records, or falsely certify documents. A number of steps were taken to reduce both forms of corruption.

- Explicit rules prohibiting acceptance of any outside payment
- Prompt discipline and/or dismissal of employees who solicit or accept payments
- Increased employee salaries to reduce the pressure employees might feel to accept illicit payments
- Development of career paths within the RGP and employee education programs

There is no question that these policies have been effective. Despite them, however, the perception that money payments can result in faster work persists among some notaries and members of the public.

Other Reforms

Other initiatives include:

- Efforts to increase worker morale and performance, including a rotating lunch schedule, support teams for operators who fall behind in work, and a new compensation structure tied to performance.
- Increased emphasis on security – in particular, the hiring of personnel dedicated to maintaining the security of RGP records and infrastructure.
- More detailed document management. Inscription applications may now be tracked during their progress through the inscription process.

VII. RELATED INITIATIVES

The government of Guatemala has established a special interinstitutional commission to oversee land mapping, titling, acquisition, development, and dispute resolution projects. This

commission is known by the acronym PROTIERRA.⁸⁵ PROTIERRA is committed to fostering integration and cooperation -- both among the agencies that comprise the organization and between PROTIERRA and the Guatemalan public. These initiatives focus on seven areas:

- Rural Investment
- Development of Agricultural Production
- Property Taxation
- Land Credit and Finance
- Dispute Resolution
- Registry and Cadastres
- Development of a National Geographic Information System

Among PROTIERRA's projects, many involve the RGP directly, as described below.

Updated National Cadastre

Since 1940, the Property Registry has required each user to provide a description and a plat map or plan ("plano") of his parcel and the surrounding area.⁸⁶ Guatemala, however, lacks a current geographic cadastral map.⁸⁷ Without a cadastral map, conflicts between different plans are difficult to detect, and the individual plans are not fixed to any common, designated geographic points. Boundary disputes are much more likely to arise -- and in fact have been a persistent problem in Guatemala. The Ministry of Finance ("Rentas Internas") finished partial fiscal cadastres in the early 1970's, which the government intended to be used in order to increase revenues from property taxes, but that initiative stalled, and the maps were not kept up to date.

The need for a new national cadastre is clear.⁸⁸ Efforts to address this need in the early 1990's involved five agencies, including the Registry.⁸⁹ Progress, however, was slow. Since the

⁸⁵The full name of the commission is "Comisión Institucional para el Desarrollo y Fortalecimiento de la Propiedad de la Tierra."

⁸⁶See Decree 2476 (1940) (mandating that any transaction involving more than 300 quetzales and/or an area larger than one caballeria [equivalent to 45 hectares] must be accompanied by a cadastre plan).

⁸⁷One historic reason may be that the creation of a geographic cadastre was never mandated by law. Stanley et al., at 6 (1996).

⁸⁸In accord with numerous scholars and outside observers, the Guatemalan government recognizes "the development planning and construction is only possible with precise, sufficient data about the physical and socioeconomic characteristics of the land and its wealth." See PROTIERRA, "Lo nuestro Tiene Valor" (1998) (presentation document containing a collection of charts and graphics).

recent Peace Accords, the importance of developing a national cadastra has received renewed emphasis.

The National Geographic Institute ("Instituto Geografico National" or "IGN"), and the "Registro-Catastro," an institution within PROTIERRA, are at the center of the mapping effort. Formerly a military agency,⁹⁰ the IGN since the peace accords has been a civil agency open to the public. As its name suggests, the focus of its work is on the gathering of geographic information, which can then be used to create accurate maps. The Registro-Catastro takes the geographic information and incorporates other relevant data -- including current parcel boundaries, registered owners, the location of utilities and other improvements -- to form the cadastre.

The long-term goal of this process is to create a multipurpose cadastre that incorporates geographic, legal, and fiscal data. This single database could then be accessed by a variety of government institutions. Currently, for example, the Tax Service ("Rentas Internas") keeps its own cadastral records. Many municipalities also keep local cadastres that are not integrated into a national database. This system is plainly inefficient. However, most observers think that the establishment of a fully integrated cadastre is at least 10 to 15 years away.

Land Titling

Land titling projects have been a part of Guatemalan politics for at least 35 years and are outgrowths of agrarian land reform efforts that have a much longer history. From the sixties through the eighties, INTA was the government agency primarily responsible for implementing

⁸⁹Stanley et. al., *Land Information Sources in Latin America: Vol. II: Central American Countries* (June 1996) (prepared for the Land Tenure Center, University of Wisconsin-Madison), at 5. The four other institutions were the Instituto Geográfico Militar (IGM); the Dirección General de Catastro y Avaluos de Bienes y Inmuebles (DICABI), Instituto Nacional de Transformación Agraria (INTA), and the Oficina de Control de Areas de Reserva Nacional (OCREN).

⁹⁰See Hendrix et. al., *La Reforma del Registro de la Propiedad en Guatemala: Informe de la Situación con Recomendaciones* (June 1992), at 23-24.

land titling projects.⁹¹ During much of the same period, a non-governmental organization known as "Fundación del Centavo" or "FUNDACEN" was also carrying out land titling initiatives.⁹²

The Guatemalan government is now beginning a new national initiative aimed at granting titles to unregistered lands and resolving cases of multiple titles, overlapping borders, and other land-related disputes. The purposes of the venture are to stimulate development and to increase overall land tenure security.⁹³ PROTIERRA is overseeing this effort.

INTA administers a six-step titling program.⁹⁴ To obtain title, apparent owners must possess land that is neither already privately owned, nor part of a protected reserve.⁹⁵ Assuming these preconditions are met, the owner may file an application that is much like an inscription application at the RGP. Requirements include a description of the property, a history of how it was obtained, and information about the apparent owner. An official survey of the property is completed, which includes relevant zoning rules. The applicant must then pay the necessary fees, both for the survey and to INTA for processing.⁹⁶ A title search is performed, and if all is in order, the application is granted and mailed to the appropriate RGP office, where the title is inscribed.

In addition to granting titles to those who already have land, the project also seeks to help nonowners to acquire and title property. The National Land Fund ("Fondo de las Tierras"), also

⁹¹INTA was created in 1962 to administer land-reform initiatives, especially the provision of land titles to small rural owners ("campesinos"). Two persistent problems with such programs were, first, that new title holders often did not complete the process by recording their ownership in the Registry. Second, new owners were limited in the use of their land pursuant to Decree 1551, and often lacked the resources and expertise necessary to make the best use of the land they acquired. Over time, a well developed arbitrage market developed whereby land speculators acted as intermediaries between those who acquired land directly from INTA and wealthy land owners who bought it from them. The net effect was a vicious cycle of land clearing, conversion from forest to agriculture, and cheap sale, leading to a concentration of land in a few hands.

⁹²FUNDACEN focused on rural development. The organization acquired lands and then distributed them to landless peasants, financing the costs of cultivation and land improvements. The project was supported by USAID, but ceased to function effectively during the Guatemalan civil conflict in the 1980's. *See* Marisol de la Cadena and Ronald Strohlic, *Los Estudios de Caso de la Fundación del Centavo y el INTA: Conclusiones y Recomendaciones* (Nov. 16, 1990) (comparing the strengths, weakness, and success of FUNDACEN and INTA); Hendrix et al., *La Reforma del Registro de la Propiedad en Guatemala: Informe de Situación con Recomendaciones* (June 1992), at 10.

⁹³Note that while titling often does improve land tenure security, no generalized conclusions may be drawn about the effects of lack of title on tenure security. *See* Hendrix, "Myths of Property Rights."

⁹⁴Note that INTA has been refocused away from redistribution of land to legitimization of ownership – i.e., titling. Also, since the formation of PROTIERRA, INTA has been reformed and modernized. Among many changes are increased training and salaries for INTA staff, simplified procedures, increased security, and improved equipment. Interview with Eddy Giro, INTA, Santa Elena Office (Oct. 1998). Problems still remain, but the organization is unquestionably extricating itself from the shadow of distrust it engendered during the 1970's and 1980's, largely a consequence of its inefficiency and corruption.

⁹⁵Note that possessors of land in reserves may still be able to obtain limited use rights from CANAPÉ, the government agency that administers natural preserves.

a component of PROTIERRA, is charged with coordinating and financing this process.⁹⁷ In 1996, USAID helped the Guatemalan government finance a revolving trust fund of approximately 107 million quetzales (\$17 million). This fund is used to finance purchases of land by campesinos and others who meet the project's criteria.

This project differs in two respects from earlier "land reform" programs. First, participants acquire full ownership rights, rather than limited use rights ("tutela") as had been the case under Decree 1551. Second, the participants themselves look for the property, and make the purchase decision, not a government agency. Legislation to increase the size of the trust and expand the authority of the agency is pending before the Guatemalan legislature.⁹⁸

As land titling efforts progress, disputes invariably emerge. The Dependencia Presidencial de Asistencia Legal y Resolución de Conflictos Sobre la Tierra, commonly known as CONTIERRA, was created in 1997 to help resolve land-related disputes in an effort to comply with the spirit of the Peace accords.⁹⁹ This national agency is specifically charged with opening constructive dialogue and facilitating the resolution of land conflicts between disputing entities.¹⁰⁰ With trained staff including lawyers, topographers, cartographers, and mediators, CONTIERRA handles disputes involving various parties and of varying complexity, often sending teams into the field to collect information and assist disputants in reaching a satisfying resolution to their conflict. CONTIERRA also makes use of existing Registry records to provide the legal context of a dispute,¹⁰¹ and, when resolutions are reached, assists parties properly register their rights.

Both the World Bank ("Banco Mundial") and USAID have been heavily involved in the titling and cadastre efforts, providing financial support and technical assistance.

⁹⁶For those with limited resources, government credit is available.

⁹⁷Cf. Guatemalan Peace Accords, Section III Agrarian Situation and Rural Development (calling for and establishing the basic structure of the land trust).

⁹⁸See Anteproyecto de Ley del Fondo de Tiers (Comision Pretoria sobre Derechos Relativos a la Tierra de los Pueblos Indigenos, Guatemala, Oct. 1998). This new legislation might effectively supplant INTA's role. Articles 43-46 of the proposed bill are especially pertinent in this regard.

⁹⁹CONTOUR handles cases in all areas of the country, but its case load will necessarily increase with the new initiative.

¹⁰⁰ Mission Statement: "Propiciar el diálogo constructivo entre las partes para la búsqueda de mecanismos y alternativas de solución de conflictos de Tierra, appendage a Lo que se establece en los Acuerdos de Paz con relación al team, y al marco jurídico Nacional."

¹⁰¹As users of the Registry system, CONTOUR officials indicate that service and overall cooperation between the organizations is quite good. Nonetheless, there are sometimes lengthy delays in receiving requested information from the RGP.

Pilot projects set up in the large, thinly settled department of El Petén in northern Guatemala seek to test and refine the land titling program for national use. A plethora of government agencies and non-governmental organizations are involved in the project.¹⁰²

The system being used in the district of San Francisco, Peten is representative. First, an effort is made to assess the problems facing the area. In San Francisco, these include a perceived shortage of available land, no current cadastra, out-of-date registry records, border disputes among neighbors, land invasions, lack of resources and infrastructure, no systematic property valuation or use data, and growing distrust of the government and its agencies charged with carrying out land reform.¹⁰³ Next, town meetings are conducted to educate the local people about the issues they face and possible ways to address them. The importance of a cadastral survey is emphasized.¹⁰⁴ The costs of the survey are paid by the government.¹⁰⁵ To be successful, however, the cooperation of local citizens is required.

VIII. SUPPLEMENTARY TITLE (ADVERSE POSSESSION)

Since Decree 70 was passed by the Guatemalan government in 1945, it has been possible to obtain ownership of land through possession without acquiring a title.¹⁰⁶ In 1979, the rules for acquiring "Supplementary Title" were reformed.¹⁰⁷ The Law of Supplementary Title was modified slightly in 1982 and again in 1985, but the basic legal requirements and the process by which a possessor of land who lacks title may acquire legal ownership set forth in the 1979 legislation remain intact.

To be eligible to obtain a supplementary title to property, the claimant must be able to demonstrate 10 years of continuous, quiet, good-faith, public possession.¹⁰⁸ This ten-year period

¹⁰²The list includes PROTIERRA, CONTOUR, IGN, RAG, FONATIERRA, ADEPAC, CALDH, CIDECA, FEDECOAG, FUNDATEP, and CONGCOOP.

¹⁰³Interviews with representatives from Coalicion por la Tierra.

¹⁰⁴In addition to mapping parcels within a geodetic network, the survey gathers other information about the property and its owners. The project in San Francisco is just beginning and is projected to be completed by mid-1999.

¹⁰⁵The World Bank and UNDP are underwriting much of the cost. When citizens without title are discovered and subsequently found to meet the legal requirements to legitimize their ownership, they will have to pay the state or local government the value of the land.

¹⁰⁶Indeed Decree 70 was part of a larger agrarian reform inactive. *See* Guatemala: Reforma Agraria 95-100 (1997) (describing President Arevalo's attempt to solidify support for the his new administration among "campesinos" and resolve doubts about the ownership of large portions of the country's land that had been allocated among rural farmers through various agrarian reform initiatives).

¹⁰⁷*See* Ley de Titulación Supletoria, Decreto-Legislativo 49-79 (Jul. 26, 1979).

¹⁰⁸*See* Ley de Titulación Supletoria, Art. 1.

may accrue from one possessor to another through bona fide, good faith transfers of possessory title. Only native Guatemalans or juridical persons that are majority owned by Guatemalans may apply for supplementary title.¹⁰⁹ In addition the land itself must be eligible for supplementary titling. The total area of the parcel must be no greater than one caballeria (45.125 hectares) and may not be located in the Franja Transversal del Norte (a strip of land in the northern region of Guatemala) nor any specially designated agricultural development zone.¹¹⁰ Likewise, the land may not be located in a national reserve or protected area. Any effort to gain supplementary title over ineligible property exposes the claimant to criminal prosecution and a fine.¹¹¹

If the prerequisites are satisfied, a claimant must bring an action before a Civil Court of First Instance.¹¹² The claim must comply with all formalities and requirements set out in Article 61 of the Code of Civil Procedure, and in addition, must contain the following elements:¹¹³

- A description of the land being claimed, indicating its name and address if applicable, the district, municipality, or department in which it is located, and whether it is "rural" or "urban" property;
- The names of current owners of neighboring tracts, the property's borders and perimeter measurements, any servitudes, any improvements (including buildings and crops), and whatever detail might help to identify the property with certainty;
- The names of those from whom possession was acquired, the manner in which it was acquired, and any relevant documents;
- The amount of time that the claimant has possessed the property, whether it is the subject of any pending litigation or limitations, and whether it is or is not inscribed in the RGP;
- A map or document prepared by a topographer ("medidor experto");
- An indication of whether the property is registered for tax purposes and a declaration of the approximate value of the property;

¹⁰⁹See Ley de Titulación Supletoria, Art. 2.

¹¹⁰See Ley de Titulación Supletoria, Art. 3. Note that INTA was solely authorized to grant titles in these areas according to a separate process.

¹¹¹See Ley de Titulación Supletoria, Arts. 4, 13.

¹¹²See Ley de Titulación Supletoria, Art. 1.

¹¹³See Ley de Titulación Supletoria, Art. 5.

- Affidavits from two witnesses that are neighbors or landowners in the same municipal jurisdiction as the property being claimed, verifying the information presented by the claimant.

Finally, the value of land must be officially assessed.¹¹⁴ The purpose of the valuation is to determine the taxes due. All taxes must be paid prior to the granting of supplementary title.

If all the requirements are met, the judge will order that notice of the claim be published three times in one month and posted on the property and at the local courthouse.¹¹⁵ In addition, the judge will solicit reports from the Public Ministry and Municipality with regard to the claim.¹¹⁶ The Public Ministry will submit a report either summarizing any problems it finds relevant to the applicant's request or confirming that no obstacles to a favorable judgment exist. The report from the municipality must affirm the existence of the property, its location, borders, area, improvements, name and address if applicable, legal jurisdiction, and whether it is rural or urban.¹¹⁷ In addition the municipality's report must indicate: whether the claimant is the reputed owner of the property and acts as such; if the claimant is up to date in the payment of municipal property taxes; if the witnesses cited in the claim are qualified; and any other relevant information with regard to the property and the claim for supplementary title.¹¹⁸

If no new information comes to light and no challengers present themselves during the notice period, the judge will grant supplementary title to the land.¹¹⁹ This title must clearly identify the land and the new owner. In addition, an order must be attached to have the title inscribed at the RGP. The claimant himself, however, must present this judicial order to the RGP for inscription. If the claim is denied or if a third-party challenge to the application is rejected, an appeal may be taken.¹²⁰

During the ten-year period following the grant of supplementary title, the case may be reopened and reexamined in light of new information or opposition to the claim.¹²¹ If such a later

¹¹⁴This may involve both a surveyor and architect, depending on whether the property has structures on it. Note also that the timing of the valuation is not important (except that it must occur before a final judgment granting title is rendered), because the municipality must supply the claimant and judge proof that the property is current with respect to property taxes.

¹¹⁵See Ley de Titulación Supletoria, Art. 7.

¹¹⁶See Ley de Titulación Supletoria, Arts. 7.

¹¹⁷See Ley de Titulación Supletoria, Art. 8(a).

¹¹⁸See Ley de Titulación Supletoria, Art. 8(b)-(e).

¹¹⁹See Ley de Titulación Supletoria, Art. 11.

¹²⁰See Ley de Titulación Supletoria, Art. 12.

¹²¹See Ley de Titulación Supletoria, Arts. 14-15.

claim is successful, the Supplementary Title will be revoked, nullifying any right or interests made in reliance on it during the interim period.¹²² After this ten-year period, supplementary title may still be canceled in the face of a stronger claim of right – i.e., one that relates back to a registered title holder -- but any third-party interests in the property will persist.¹²³

Supplementary Title is potentially important because the bulk of private Guatemalan land is not currently registered,¹²⁴ and, demand for land is high.¹²⁵ Nevertheless, because of the time and costs associated with obtaining supplementary title, many eligible claimants do not bring actions. Others choose to bring actions for supplementary title in order to avoid the even higher costs of probate (settling wills) or formalized land transactions.¹²⁶ Thus, informal land transactions persist. The cycle in which formerly inscribed properties are reinscribed through supplementary titles, thus creating potentially two (or more) chains of title has proven difficult to break, and undermines the RGP's efforts to provide legal security to its users. The following stylized case illustrates this point:¹²⁷

After being granted a supplementary title to Llanoverde, Barrios sells the land to Aval. The rightful owner of Llanoverde, Cheng, who had been absent from the country for some time, brings a claim to nullify the inscription of Barrios's supplementary title at the RGP, alleging that Barrios filed fraudulent documents in support of his claim, and that in any event, Cheng has a clear title to the land. Barrios never appears to defend his title, and the court grants Cheng's claim and the property reverts to him. Aval, who after consummating the sale from Barrios dutifully inscribed his property at the RGP, brings a claim, arguing that he had a right to be notified of Cheng's claim, to defend his interests, and should prevail since he is was a good-faith third party who acted in reliance on information certified by the RGP.

¹²²See Ley de Titulación Supletoria, Art. 15. The net effect of this rule is to make access to credit for supplementary titleholders almost non-existent as the creditor risks losing its security if the supplementary title is revoked.

¹²³In Guatemala, once owned, a parcel of land cannot be reacquired. In the United States, adverse possession provides that anterior ownership rights can be extinguished completely by a subsequent possessor.

¹²⁴Currently, approximately seventy percent of Guatemalan territory is not officially registered either to the current occupant or to the holder of a prima facie valid title. Instead, most landowners have informal documents attesting to their dominion over the parcel.

¹²⁵The return of expatriates who fled during Guatemala's long civil war; the resurgence of historic conflicts over ownership rights between municipalities, Indigenous Groups, and landless peasants; the Peace Accords, which call for government initiatives to mitigate disparities of wealth, ownership, and political enfranchisement; and the global trend toward consolidation of agricultural production to benefit from economies of scale are four of the most important factors.

¹²⁶Anecdotal evidence suggest that notaries may charge up to 40% of the value of the land, which is usually greater than the total costs of bringing a supplementary title action.

DISPUTES

Resolution Mechanisms

Like its Central-American neighbors, Guatemala faces a variety of disputes related to property ownership. Indeed, during the many years of civil unrest, rebel leaders used the "land question" as a rallying cry. It is not surprising that the Peace Accords that ended the conflict addressed the issue directly.¹²⁸ In particular, the Accords expressly tie greater legal land tenure security and credit access to land reform more generally.¹²⁹

Most government officials and outside observers agree that the most expeditious means to increase investment, improve Guatemala's rate of social and economic development, and resolve disputes relating to the historic claims of Indigenous Peoples, those who have been displaced during the civil war, and others whose lands were seized or are otherwise in question, is to implement the Peace Accords. Insofar as both legal security for property owners and access to credit for modernization, land improvement, and better agricultural practices require owners to possess precise registered titles, the RGP is consequently indispensable to the achievement of the Peace Accord's objectives.¹³⁰ Disputes relating to the fulfillment of the goals described in the Accords are typically less legal than political, but nonetheless have important ramifications for

¹²⁷The facts described are loosely based on a recent case reviewed by Guatemala's Constitutional Court. See Corte de Constitucionalidad, Expediente No. 932-95 (Feb. 27, 1996) (published in *Gaceta Jurisprudencial* No. 39, at 464).

¹²⁸ The Accords were the product of long and difficult negotiations between the government and guerrilla leaders mediated by the United Nations. During the negotiations, those opposing the government sought to give voice to what they described as Guatemala's historic underclass. The Peace Accords refer to this group as the "majority" who have been deeply affected by often tragic events. It exhorts the subsequent Guatemalan government and the country's citizens to overcome historic prejudices, unequal distribution of resources, and poor resource management. See Peace Accords, Section III, Agrarian Situation and Rural Development, at 27-32. More generally, the Peace Accords sought to provide mechanisms to correct past wrongs and better incorporate this group into Guatemala's mainstream society, while allowing Indigenous cultures to be preserved.

¹²⁹See Peace Accords, Section III, Agrarian Situation and Rural Development, at 27-28.

¹³⁰Indeed, the Peace Accords recognize this connection explicitly:

G. Land Register

38. On the basis of the provisions of paragraph 37, the Government undertakes to promote legislative changes that would make it possible to establish an efficient decentralized multi-user land registry system that is financially sustainable, subject to compulsory updating and easy to update. Likewise, the Government undertakes to initiate, by January 1997 at the latest, the process of land surveying and systematizing the land register information, starting with priority zones, in particular with a view to the implementation of paragraph 34 on access to land and other production resources.

Guatemalan Peace Accords, para. 38. Note that paragraph 37 relates to legal reform, the resolution of land disputes, and institutional reform. Paragraph 34 relates to the creation of a land fund to make funds available to small owners and equalize ownership.

the overall security of title that landowners enjoy. Thus, the RGP is inevitably drawn into a highly politicized and delicate arena.

More commonplace disputes also arise in Guatemala. These may involve parcels for which multiple titles have been issued, disagreements over property boundaries, actions brought against squatters and trespassers, and claims against the government for failure to provide just compensation in expropriation cases. The role of the Registry in these disputes is restricted to providing evidence and implementing judicial decrees, since the Guatemalan RGP lacks legal competence to resolve land disputes on its own.¹³¹

To resolve a land dispute, the parties must appear before a civil tribunal. Under Guatemala's laws of civil procedure, most real-property disputes are subject to the ordinary process.¹³² That process has three stages. The pretrial stage includes the filing of the complaint, service, and answer. The complaint must state a valid cause of action, and indicate the evidence to be presented and persons to be served.¹³³ Faulty complaints are dismissed by the judge. Once served,¹³⁴ defendants can raise exceptions in the form of motions to dismiss the complaint.¹³⁵ If the case proceeds, the defendant files an answer and any counterclaims, to which the plaintiff

¹³¹See Código Civil, Arts. 1242-1250. Despite the persistence of the strict rule against adjudicating disputes, officials at the Registry have indicated that certain "corrections" are handled immediately and directly by the Registry. Where only the rights of the individual or entity bringing the complaint are at stake, the RGP usually can fix the problem. Thus, for example, where the spelling of a name has been transcribed incorrectly, the error can be fixed without judicial decree. (A misspelling can be significant, especially in Central America, where family members often have the same or similar names.)

The Registry will also make any change that all interested and affected parties agree to in a public, notarized writing. Thus, the outcome of disputes that are resolved informally among the parties can be made legally binding without resort to a civil court judgment. In such cases, it is the Registry that determines whether in fact all interested parties have been represented and are in agreement with the resolution. Where the Registry harbors doubt, it will require a judicial decree.

¹³²Landlord-tenant disputes, attachment actions, and injunctions, and cases in which the parties agree to use an expedited dispute resolution procedure represent exceptions. See Código Procesal Civil y Mercantil, Art. 229. In these cases, the civil code defines a summary process according to which claims are resolved. In essence, summary trials are condensed ordinary trials, maintaining the same structure, but allowing less time for each step, and less possibility for dilatory tactics. Compare Código Procesal Civil y Mercantil, Arts. 232-234 (defining the summary process) with Código Procesal Civil y Mercantil, Arts. 106-197 (describing ordinary process).

¹³³See Código Procesal Civil y Mercantil, Arts. 106-107.

¹³⁴See Código Procesal Civil y Mercantil, Arts. 207-223 (explaining the procedure for service). Service must be personal or, when this is impossible, "specific" which usually means publication in national newspapers. Service cannot be "constructive." Guatemalan courts have consistently held that the public character of the Land Registry does not create a presumption of notice with respect to third parties to an action. See, e.g., Expediente 23, Gaceta Jurisprudencial No. 26, at 126 (Dec. 15, 1992) (outlined in Registro General de la Propiedad, Jurisprudencia Registral y Criterios de Calificación (1997), at 47-48). In all cases, the moving party must provide legally adequate notice in order to ensure that third parties whose rights are affected may not come months or years later to challenge the actor's title or other ownership rights. Thus, a party is not considered "served" from the time a right or interest in opposition to its rights is inscribed in the Registry even though all registry documents are public.

¹³⁵See Código Procesal Civil y Mercantil, Arts. 116-120.

may raise exceptions, and then answer. In the second stage, testamentary and written evidence is presented.¹³⁶ Finally, issuance of a judgement is the last stage of the trial.¹³⁷

Most claims must be brought within thirty (30) days of the time at which the plaintiff receives legally valid notification that the claim exists. As with service, the fact that documents are filed in the registry does not constitute legally adequate notice. Legally adequate notice requires that the interested parties receive specific information advising them that their rights may have been infringed.

Because changes to Registry records are only made in accordance with a court order, a large backlog of cases involving contested ownership rights has developed. Moreover, given the financial and time costs of bringing suit, it is likely that many with property-related disputes that implicate the Registry simply have not brought their claims, however meritorious they may be.

Illustrations

1. Boundary Disputes or "Overlapping" Parcels

Boundary disputes or claims to overlapping parcels are the most common land-related conflicts in Guatemala.¹³⁸ Generally, these disputes involve relatively small strips of land. Each owner has apparent title to the area in dispute, based upon the legal description of the parcel included in its registry record. Some cases, however, are more complicated as the case of Chiantla illustrates:

This dispute involves two municipalities, San Juan Ixcoy and Todos Santos Cuchumatán, and a private landowner, Chanco, all of whom own land in the department of Huehuetenango. The three parties each lay claim to adjacent lands, and the essence of their dispute relates to the correct location of the corresponding boundaries. The dispute is over 70 years old, originating in the colonial period when the lands each party currently claims were originally granted. Recently, efforts to resolve the matter have intensified. Because two of the parties are municipalities, the resolution procedure is determined by the municipal code. According to that code, a petition must be made to the Ministry of Government ("Ministerio de Gobernación"), which will first gather information (including historical data) relating to the borders and legal status of each tract,

¹³⁶See Código Procesal Civil y Mercantil, Arts. 123-195.

¹³⁷See Código Procesal Civil y Mercantil, Arts. 196-197.

and then seek to reach an accord acceptable to the interested parties. Because the dispute also involves a private party, which sought CONTIERRA's help, CONTIERRA has been heavily involved in trying to mediate a solution.¹³⁹

The first problem in the case was determining exactly which lands were in dispute. The documents that legally granted the lands of each party were all over 100 years old. In one instance, the actual title could not be found, only a certification that was kept by the municipality after a certification in 1954 that was based on a more recent topographic survey. Thus the total original area of the municipality could not be determined precisely. Trying to ascertain what each original grant included has proven even more difficult.¹⁴⁰

The initial work demonstrated that the two municipalities likely have overlapping borders and that San Juan Ixcoy also had an overlapping border with Chanco. Although Chanco and Todos Santos Cuchumatán originally thought they also had a border dispute, the initial research proved that they did not.¹⁴¹ Determining the exact amount of overlap has been hindered by the fact that San Juan has not allowed a field team to conduct measurements of its legal territory.¹⁴²

Once the dispute is defined, two difficult questions remain. First, what should be done about those individuals who are currently living on lands that, though claimed by one municipality, legally belong to another. Because municipalities are often not merely political entities, but represent distinct cultural groups who identify very strongly with the lands on which they and their ancestors may have been born, this question is both difficult and delicate. Second, the cultural issues are compounded by the need to determine a sole legal owner. A third issue is how

¹³⁸See Organización de los Estados Americanos, *Diagnostico de Conflictividad* (Feb. 15, 1996), at 15 (unpublished working document).

¹³⁹At least one of the municipalities questions CONTIERRA's competence to be involved in the case, arguing the agency can only resolve disputes between private parties and not municipal entities. However, the agency takes the position that it is only acting as a mediator and not an arbitrator in the case. Thus far, the government has supported CONTIERRA's involvement.

¹⁴⁰Topographers can reconstruct a map from only two fixed points, using the measurements given for each boundary and the corresponding angles between the lines, but the original documents often cited landmarks that were not permanent. Field work was thus necessary to reconstruct the landmarks. More field work is needed once a draft map is drawn in order to correct for two factors. One is that the magnetic north pole gradually shifts. Topographers must thus "correct" the map drawn today to reflect the difference between the current and original north poles. Second, imprecision in older documents is much greater, so that the reconstructed map based on two fixed points really requires more points as "checks" to improve its precision.

¹⁴¹Thus, this case demonstrates the potential value of a national geographic cadastre, which is in essence, what was created for this relatively small area.

¹⁴²This suggests to those involved that the municipality knows that its claims to at least some of the disputed territory are unfounded.

to balance the interests of a municipality that may represent hundreds of families against those of a private party whose rights to ownership are guaranteed in the Constitution.

In the Chiantla case, field work to date indicates that some land along the disputed borders is legally unclaimed. CONTIERRA hopes to be able to use this land to reach a negotiated solution in this case. However, no resolution for the difficult political and cultural issues presented by the case is yet apparent.

Chiantla-type cases involving local government entities and private parties are becoming increasingly common and public as the national government seeks to resolve disputes that often have been festering for decades. For example, in the Petén region, there are twelve municipalities, each of which has its own "ejido" -- land that is rented out to municipal residents for agriculture and raising livestock. Unfortunately, there is uncertainty concerning the boundaries of each ejido. Informal markets have developed among renters and third parties who want to use the land but are ineligible because of local regulations. Similarly, land owners face greater tenure insecurity because of the uncertainty of municipal boundaries.

2. Multiple Titles

Multiple-title disputes generally take one of two forms. In the first, two owners have apparent title to exactly the same parcel. Such controversies generally cannot be resolved through conciliation, but instead must be resolved through a legal action. In the second type, the apparent owner of a large tract is challenged by another person who claims title to a portion of that tract. This is the situation in the Simientos case, which involves the claims of two indigenous groups, the Ixiles and the Quiches. While more complex than usual, the facts are illustrative:

In the territory of Chajul, there is a tract of land of approximately 1600 caballerias (72,000 hectares). Within this tract there is another, separately titled and inscribed parcel, which is 30 caballerias (1350 hectares). This smaller parcel was acquired through a testamentary trust by members of the Quiche Community from ancestors who had lived on the land. After acquiring this land (which they called Simientos), however, the present Quiche claimants did not occupy it because the civil conflict and tensions in the area forced Quiches to relocate. In 1992, they returned to Simientos to find that it had been completely occupied by Ixiles, who as a community

had title to the same land within their much larger tract. The Quiches settled nearby on land, which though also legally owned by the Ixiles, remained unsettled. From that vantage point, they initiated efforts to regain their ancestral land. CONTIERRA then entered the dispute, hoping to negotiate a solution.

Working with other government agencies (in particular, FONAPAZ), CONTIERRA was able to work out a possible resolution, in which the Quiches would give up their claims to Simientos in return for lands in the southern coastal region which were more fertile and economically valuable (though slightly smaller in size) than Simientos. The Guatemalan government through FONAPAZ would finance the purchases. The individuals in the Quiche community appeared to be in agreement, but their political leaders persuaded them that the offer was unacceptable.¹⁴³ Claims were filed in the Inter-American Court of Human Rights. Complicating matters in the interim were well-intentioned support efforts by the European Union and other donor organizations that appeared to favor the Quiches over the Ixiles, leading some in the Quiche community to believe their claims were stronger than those of the Ixiles and that they should persist in their claims, while simultaneously angering the Ixiles and other Indigenous groups in the area whose humanitarian needs were at least as great.¹⁴⁴ Currently, the Simientos case is still pending.

3. Ejection/Trespass

Squatting is a recurring problem throughout Guatemala. Historically, the most common cases have involved a family or a small group of people. The occupants would lay claim to a small section of private or state property and use the area for subsistence farming until they were discovered by owners, who would seek to eject them. The execution of legal judgments to eject

¹⁴³At the political level, the Quiches argue that this "resolution" sets a precedent of "surrender" with regard to their claims to ancestral lands. Nonetheless, observers have questioned the motives of the Quiche leadership, which receives support from a number of international agencies. A resolution to the dispute would end such support, at least some of which finds its way to the hands of Quiche leaders.

¹⁴⁴These international efforts were not coordinated with CONTIERRA's efforts to resolve the dispute, nor with a more comprehensive approach or policy to the treatment of Indigenous claims nationally in Guatemala. The results in Simientos highlight the importance of coordination between the government and international agencies in addressing land-related issues.

squatters is problematic in Guatemala.¹⁴⁵ Often they are not enforced. When enforcement does occur, it can be unnecessarily violent.¹⁴⁶

Recently, there have been more incidents of organized land invasions of private property by rural workers and indigenous groups who have no land of their own. The groups that organize and encourage these actions make two broad claims. First, they argue that the Guatemalan government is not acting in good faith to implement the Peace Accords, sections of which promise (a) the return of lands to those with historic claims and (b) land regularization generally.¹⁴⁷ Second, they claim that necessity requires decisive, even if illegal, action.¹⁴⁸ Their organizers argue that the squatters are desperate, and insist that large-scale invasions are the only way to attract the government's attention.

Frustration and tension are high on both sides. Landowners feel insecure, especially in light of recent kidnappings, and also claim that, too often, authorities do not enforce their legal rights against squatters.¹⁴⁹ The government is attempting to resolve these conflicts, using CONTIERRA and the National Land Fund ("Fondo Nacional de Tierras" or "Fonatierra").

4. Fraudulent Conveyances

A fraudulent conveyance of property describes any situation in which the rightful owner does not legally transfer the property in question to the purported acquirer of the property.¹⁵⁰ The following case illustrates a common form of fraudulent conveyance.¹⁵¹

Unbeknownst to the rightful owner of Llanoverde, Aval, another party, Barrios, lays claim to the parcel and is able to gain a registered title as owner of the property by using fraudulent documents in the inscription application. Subsequently, Barrios signs a mortgage agreement with a creditor, Cheng, using the Llanoverde property as collateral. With money in hand, Barrios

¹⁴⁵See Organización de los Estados Americanos, Diagnóstico de Conflictividad (Feb. 15, 1996), at 17 (unpublished working document).

¹⁴⁶The case of the Olga María property is but one example. National police in 1992, carrying out a judicial ejectment order, opened fire and one person was killed. The story was cited by the prosecutor in charge of Human Rights cases in Guatemala ("Procuraduría de los Derechos Humanos").

¹⁴⁷See, e.g., Arnulfo Chapas Perez, *Invasion Covadonga tensa negociaciones*, Prensa Libre (Oct. 31, 1998); *Demanda de tierras*, Prensa Libre (Oct. 31, 1998).

¹⁴⁸See, e.g., Arnulfo Chapas Perez, *Invasion Covadonga tensa negociaciones*, Prensa Libre (Oct. 31, 1998); *Demanda de tierras*, Prensa Libre (Oct. 31, 1998).

¹⁴⁹See, e.g., Julio Amilcar Nulia, *Témen invasión*, Prensa Libre (Oct. 31, 1998).

¹⁵⁰A fraud may be perpetrated either by the owner (e.g., not transferring valid title to the land) or by the acquirer (e.g., by laying claim to the land without the owner's approval).

disappears. The loan defaults, and Cheng brings an action to foreclose on Llanoverde, notifying Aval who had been oblivious of the fraud committed by Barrios. Aval brings a counterclaim against the RGP, Cheng, and Barrios, seeking to nullify the illegal inscription of Llanoverde by Barrios, and pursuant to the law, all inscriptions that related to it.¹⁵² Aval initially prevails, but Cheng appeals, arguing that he was a good-faith third party who could not have known that Barrios acquired Llanoverde illegally. After all, the RGP records indicated at the moment the loan was granted that Barrios was the rightful owner. The Appeals Court agrees with Cheng, but the Constitutional Court overturns this ruling. The Court upholds the principle that fraudulent inscriptions by the RGP are null and void, and can give rise to no legally enforceable rights.

5. Rules of Priority

Priority cases often involve creditors, who either have potentially conflicting liens on a single property or find themselves at risk of losing their claims to a parcel as a consequence of another transaction. For example, in a recent Guatemalan case,¹⁵³ a buyer and seller reached an agreement to purchase property. The buyer recorded a sales contract, and, following the closing, the title. Before the closing occurred a creditor sought to attach the property; an inscription was made in the registry. When the creditor subsequently attempted to foreclose, however, the claim was rejected, because the new owner had established a claim of right, through the inscription of the promise of purchase-sale prior to the creditor.

In a similar case,¹⁵⁴ the new owner failed to register the title after the closing. The sales contract, which had been inscribed, expired after the thirtieth day. The creditor's attachment of the property, relating to a loan made to the former owner, inscribed during the interim period was effective and had priority over the new owner's rights, which the owner attempted to inscribe subsequently.

¹⁵¹See Corte de Constitucionalidad, Expediente No. 123-93 (Sept. 23, 1993) (published in *Gaceta Jurisprudencial* No. 29, at 197).

¹⁵²See Código Civil, Arts. 1146, 1301.

¹⁵³See Corte de Constitucionalidad, Expediente No. 71-91 (July 12, 1991) (published in *Gaceta Jurisprudencial* No. 21, at 82).

¹⁵⁴See Corte de Constitucionalidad, Expediente No. 225-91 (Nov. 7, 1991) (published in *Gaceta Jurisprudencial* No. 22, p. 130).

6. *Administrative Error*

Where an error is made in the inscription of a right or interest, changes may be made by the RGP so long as the registrar has not signed the entry.¹⁵⁵ Once signed, no change, however small, may be made by the RGP to any record without the consent of the interested party. Where the change would affect the rights of other parties, their unanimous approval is required as well.¹⁵⁶ If such agreement cannot be obtained, a judicial order is required to effect any change.¹⁵⁷

¹⁵⁵ See Código Civil, Arts. 1242-1243.

¹⁵⁶ See Código Civil, Arts. 1244-1246.

¹⁵⁷ See Código Civil, Art. 1247.