

and extension services, be available. Safeguards, such as providing legal services for those who cannot finance them, requiring bonds for private sector participation, and providing relief and appeal procedures when an apparent injustice has been perpetrated, may be provided during the transition.

3.5 Several of the conditions necessary for the existence of a free land market are not present in Venezuela. The chapter starts by itemizing changes in the present system that are needed to fulfill the conditions for an active land market—changes in tenure and credit, and changes in the way that IAN operates. The chapter concludes by proposing the framework for a much more fundamental change in the way that farm land is managed and allocated in Venezuela.

A. Land Titles

3.6 Land titles have several effects on agricultural development. Title acquisition leads to more security so that farmers can internalize the benefits of improved productivity. This strengthens investment incentives, which lead to increased demand for capital and inputs. Further, titles and a competitive land market lead to greater access to longer-term credit because land can be used as collateral. A competitive land market would allow market forces to determine farm size. There would therefore be a tendency to transfer land from large farms where the marginal productivity of land is low to holdings where it is higher. High productivity units, in terms of net income per unit of labor, are the small-to-medium family farms.^{15/} In addition, titles, along with enforcement of property rights, provide the basis for resolving land conflicts.

3.7 Resolution of tenure problems and providing well defined titles is necessary for political and civil stability, social justice, as well as economic and agricultural development. More equal distribution of highly fertile land would improve social welfare. This would also lead to more intensive exploitation of a productive resource resulting in greater agricultural output. This does not imply that government intervention, via expropriation and subdivision of large holdings, is required. Rather, clarifying land ownership and providing marketable title would allow the forces of economic efficiency to determine farm size. The opportunity cost of holding unused land will increase when land is readily marketable. Some large land-owners will decide to sell all or part of their parcels.

3.8 If, after a period of time, it is observed by policy makers that the tendency toward smaller *haciendas* is occurring more slowly than they believe is desirable, then the government could impose a flat, per unit land tax on all agricultural land in order to further raise the opportunity cost of holding unused land.^{16/} There should be little concern about large landholdings if they are being farmed. Since, after a certain size, farms tend to duplicate activities of optimal-sized farms as there are few economies of size, they will be employing local workers at about the same rate per unit of

^{15/} There is considerable cross-country evidence demonstrating this. See Eric B. Shearer, Susana Lатарria-Corneil and Dina Mesbah, "The Reform of Rural Land Markets in Latin America and the Caribbean: Research, Theory, and Policy Implications, LTC Paper 141, Land Tenure Center, University of Wisconsin, Madison, April 1991.

^{16/} The tendency for farm size to gravitate towards the optimal may occur slowly because of lack of confidence in the government to provide the conditions for an open land market or to provide a stable economy, or for various other reasons.

output as optimum-sized units.^{17/} Not every rural resident either wants to be or is capable of being a farmer. Many do not have the skills, interest or risk-profile and are better employed as farm workers. Resolving the legal status of all occupants would reduce insecurity and lead to greater and more productive land use.

3.9 In order to have an active formal land market and rental market, the owners of the land must be known and legally recognized. Also, their property rights must be enforceable. Because of the ambiguity of much of the farm land and the lack of access to it for many small operators, it is important that Venezuela designs and implements a comprehensive, integrated land information management system (LIMS). Such a system cannot and need not be created nationwide in the first instance, but the present work on the cadastre should be designed so that it can become part of a LIMS.^{18/} Priority areas, where population density is great, where disputes are numerous, or at the edge of the agricultural frontier, should be completed first. It should then be expanded over the years to include other regions until the whole country is covered. All land within areas where the cadastre has been undertaken would be registered to correspond with the cadastre, and marketable titles would be given to landholders.^{19/} Safeguards to ensure the integrity of the concordance between the cadastre and local registries will need to be established. Provision must be made to maintain the LIMS. The advent of computerized record keeping greatly simplifies the job of transferring information on land sales from registries to the LIMS office. Streamlined and strengthened enforcement mechanisms should accompany the establishment of a LIMS.

3.10 Disputes will arise over ownership in the first instance as the concordance between local registries and the LIMS is being put in place. These disputes will need to be resolved in an expeditious and equitable manner. To do this it is useful to examine the different types of occupation (tenure) of land that exists and prescribe procedures for each. The discussion assumes that the government is prepared to implement a modest, flat, per unit land tax, more as a means to establish a commitment to ownership than as a means to raise revenue, although the revenue from the tax can be used to finance the maintenance of the LIMS.^{20/} The suggestions made here can be implemented without the land tax, but the tax and a fee for providing marketable titles will simplify the land adjudication process.

^{17/} Annex 4 provides a summary of studies showing medium-sized farms to be most productive in terms of returns per unit of area. This evidence, along with reforms to activate the land market, should allay the fears of agraristas regarding the reconstitution of *latifundios*.

^{18/} A land information management system is a systematic, three dimensional arrangement of data regarding the characteristics of land related spatially to the earth. It includes the hardware, software, staff and institutional support needed to acquire, store, manipulate, analyze and display spatial data.

^{19/} The Ministry of Agriculture and the legislature are considering enabling legislation for a national cadastre (see Annex 2). It would be partially financed by the World Bank and IDB. (See Annex 5.) This is the beginning of a LIMS. Eventually, the entire country should be covered.

^{20/} The government should actively explain to the public the benefits to be derived from the land tax. The tax would tend to discourage holding unused land, would discourage the reconstitution of *latifundios*, and would provide strong legal rights to title holders who now possess land either with some ambiguity or with a conditioned title. In return for paying the land tax, owners and land occupiers will be able to internalize the enhanced value that their properties will assume on issuance of a marketable title.

3.11 There are seven land occupancy situations that can be distinguished:

- (a) Fee-simple land, *títulos plenos*, where owners are well-established commercial farmers;
- (b) State-owned land not transferred to IAN, *tierras baldías*, which are untitled and may or may not be occupied, and amount to 18 million ha;^{21/}
- (c) Municipal land, *ejidos*, which are owned by various sub-state levels of government and may or may not be occupied, and amount to 3 million ha;
- (d) IAN land, improved with rural infrastructure (roads, water, electricity) and registered;
- (e) IAN land, improved and unregistered, where (d) and (e) amount to 9 million ha;
- (f) IAN land, unimproved with occupants;
- (g) IAN land, unimproved without occupants, where (f) and (g) amount to 4 million ha.

(a) *Fee-simple land* is the easiest case to map. Most of these holdings are medium to large commercial farms. Some are traditional *latifundios* that have survived the land reform. Some of the *latifundios* are not actively farmed in their entirety and will have illegal invasions around their perimeters. Where this type of tenure is present, it may be mapped directly from the local registries following title search and survey. Disputes between neighbors concerning boundaries will be settled under the present system of land courts which will have improved procedures to streamline their functioning. *Campesinos* who have been squatting on a farm for a period of time, say three years, and where the rightful owner has not enforced his property rights, would be given title to the piece of land that they can show they have farmed, and the legal owner would be compensated. Communities of squatters on *latifundios* would be required to resolve disputes themselves, with the guidance of the land commission, and present a plan to the titling authority.^{22/} The authority and the enabling legislation would make clear that this is a one-time action to regularize land titles and once the titles are issued under the present system of registration, ownership by adverse possession on private property would be greatly restricted. All landowners, including those *campesinos* newly titled, would be required to pay a fee of, say, the equivalent of three years of land taxes, as the price for receiving clear title.

^{21/} The area that falls into each category are estimates and the actuals are unknown. Estimates were made by the mission based on discussions with individuals, both government officials and academics, knowledgeable with land ownership in Venezuela, and from official data where that exists. There are both a paucity and a lack of uniformity in official data. The estimates given here exceed the 35 million ha of land regarded as land with agricultural potential in Venezuela. This is because the *ejidos* are usually not counted, as once they fall under municipal control they are difficult to liberate for private use.

^{22/} Safeguards to prevent coercion by a powerful few will need to be developed. Representation in the *campesino* organizations would need to be specified so that the process is fair and transparent. The cadastre will help this process by registering claimants of each parcel and thereby defining the parcels and persons in dispute.

(b) *Tierras baldías* would be mapped and placed in the LIMS. If it is found to be occupied, if possessors can demonstrate that they have occupied and farmed it for, say, three years, and if they are willing to pay a fee equivalent to three years of land taxes, they will be provided with a marketable title. If indigenous communities are found in forested areas, the community would be given rights to the land in order to eliminate "open-access" exploitation of the forest.^{23/} Otherwise land will be titled to the federal government. This land would then be sold or given away, with free and clear titles, under conditions explained later in the chapter. The occupiers would be compensated for the improvements they have made. They would also be given rights of first refusal when the land is sold. A land commission will be set up to adjudicate the process and only when that channel has been followed would a plaintiff be allowed to take a case to the land courts.

(c) *Ejidal* land will present some difficulties as it is protected by common law and the constitution.^{24/} This land has belonged to municipalities since colonization or has since been assigned to them by the federal government. The *ejidos* are located at the perimeters of cities and towns, often on agriculturally productive land suitable for intensive smallholder farming. They are quite extensive and beyond any reasonable needs of many smaller municipalities. But once land is declared as *ejidos* land it cannot be sold, mortgaged or assigned. Given its location, it is reasonable to expect that much is being occupied and some farmed. In the first stage this land can be entered into the LIMS as municipal land and squatters left in place. After other steps of land regularization have been undertaken, the *ejidos* can be revisited. Several approaches could be made. The government could make the necessary legal changes so that the land can be transferred. Municipalities would then be required to submit a plan to the land commission proposing how they would deal with the situation. Alternatively, the government might require the municipalities to present a justification for possessing each parcel of land. Those parcels for which a satisfactory justification cannot be provided would be titled, under adverse possession criteria to those squatters who can demonstrate that they have lived and farmed the land for ten years and who are willing to pay a fee equivalent to, say, three years of land taxes on the land to the municipality. This would be a one-time transitory measure to allow for the titling of all *ejidal* land. Because of the difficulty of dealing with municipal land and its relative unimportance, this politically sensitive issue need not be addressed at the outset.

(d) *Agrarian Reform Land* which has been subdivided, improved and distributed will have been titled as it was provided to beneficiaries, but the titles do not allow for the sale of the land. As a result, the present pattern of land occupancy and use reflects properties that have been abandoned and others for which informal arrangement have

^{23/} The critical issue is not who owns the land but that the landowner can eliminate open-access to it and thereby manage it in a sustainable manner.

^{24/} The history of *ejidal* land is discussed in Luís González Vale, *Ensayo Sobre Derecho Agrario y Reforma Agraria en Venezuela* (Caracas, 1963) Pages 58-74.) Art. 3, Ley de Tierras Baldías y Ejidos (Aug. 19, 1936). Art. 136, Constitution of the Republic of Venezuela (January 23, 1961).

been made between the two parties. Once cadastral points have been established, the local *asentamiento* would be required to submit to the land commission a plan agreed by the majority of the *asentamiento* under the rules and guidance of the land commission, that establishes individual and common ownership of plots within the area. Marketable titles would then be provided and recorded on the LIMS. Where informal arrangements have been made between beneficiaries, the original owner has no further claim on the land but may register to become a new beneficiary of the agrarian reform. If abandoned land is unoccupied, title reverts to IAN who then finds suitable potential farmers (including neighboring farmers who may want a larger parcel) and provides it to them, with marketable title, under existing mechanisms. Taxation of land that falls under this category commences from the day that owners obtain a marketable title. The land commission would be available to provide guidance at local meetings where the ownership plan is being decided and to ensure the integrity of the process. But basically the responsibility for providing resolution to local disputes on IAN land would be that of the local community.

(e) *Other IAN land* has been subdivided and occupied but has not yet been issued with any type of title. These are areas of recent occupancy where IAN has identified eligible farmers but has simply not issued titles. Since many of these areas contain the original illegal occupants, there are likely to be disputed property and boundaries. Again, the responsibility for clarifying these situations should rest with the local organizations, *sindicatos*, *asentamientos*, farmers unions and the like. An appeals process for those who feel seriously aggrieved could also be established. The land commission would hear such cases and where merit exists on both sides and good faith has been used by both, the commission may rule that the aggrieved party receive compensation from the state in the form of an equivalent plot of land in a newly developing area.^{25/}

There is another class of occupants on IAN land that may need to be treated differently. These are the large landholdings that have been invaded by politically powerful interests and by organized crime. The activity described earlier in the *Sur de Lago* region (para. 1.29) characterizes this situation. Where such cases can be identified, then the state has a role to intervene. Again, the intervention should be premised on the objective of regularizing titles with minimum social friction subject to meeting "socially just" criteria. In these cases, an ideal solution would be for the government to exercise its ownership rights to the land and offer the land for sale at auction. The present occupiers would have the first right of refusal at the auctioned price less the value of the improvements that they have made. If they decide not to exercise their option, they would be compensated from the selling price for the improvements they have made. A marketable title would be issued and registered in the LIMS following the auction, and

^{25/} The objectives of the exercise must always be kept in mind. The purpose is to regularize land titles with the minimum of social conflict and provide farming opportunities to those who wish it. The purpose is not to maximize government revenue from the sale of all its land. The provision of "free" land can be justified as state compensation for failure by the state to supply the legal infrastructure necessary to provide clear title in the first instance.

land taxes would be payable on the land from that time. Safeguards that protect the integrity of the process would need to be designed, as the proposal has difficulties that could prevent a transparent and unbiased outcome. But this ideal solution may not be practical in situations where powerful vested interests have the ability to coerce and intimidate participants, and to manipulate the system in other ways. Judgements of those more familiar with the actual situation will need to be made in these situations to ensure a desirable outcome.

(f) and (g) *Unimproved IAN land*, yet to be improved, subdivided or titled, and which may or may not be occupied, should be privatized. Those squatting on the land who are using the land in a "socially beneficial" way and have occupied the land for three years, should be given clear title if they are willing to pay a fee equivalent to, say, three years of land taxes. If the land has been adversely possessed in a situation similar to that described in the *Sur de Lago* region then remedies similar to those described above could be used. At the end of the process fee-simple titles would be recorded on the LIMS.^{26/}

In agricultural frontier areas, where government presence at any level is weak, the enforceability of property rights may become a problem. Experience from other countries in the region demonstrates that when incentives are given to claim frontier land in the absence of strong government, private and often violent enforcement by the most powerful interests prevails. As part of the design of the land privatization/regularization program, the government will need to specify a mechanism for enforcing the property rights that it is providing to its citizens. The success of the program depends critically on the ability and willingness of the government to enforce its laws.

3.12 A further issue concerns the selling of public land suitable for agriculture which has not been transferred to IAN. It involves redirecting the efforts of IAN and redefining the role of the state in the process. Following the placement of *tierras baldías* in the LIMS and the recording of titles in favor of the government, the land would be divided into three categories. The first is land unsuitable for agriculture that should remain in reserves. The second is land suitable for agriculture that is set aside to be used by the government to compensate those with secondary claims on other land. The third is land suitable for agriculture that the state would sell within five years of being registered in the LIMS. The method of selling would be by auction and be regulated by IAN, which would be revamped under the plan.

^{26/} In several countries in Central and South America and Asia, the record of payment of land taxes is *prima facie* evidence of ownership when titles are disputed or being provided. If an occupant can show that he has paid land taxes for ten years on state land, he is given title to the parcel. Should the Government of Venezuela encourage voluntary payment of back taxes when it implements a land tax and should payment of taxes be a criteria for ownership claims? In the case of Venezuela, this is not a good idea. Besides the obvious difficulty of making a tax retroactive, it fails to solve boundary issues. Without a cadastral system the authorities do not know on what parcel the person has paid tax. Taxes could inadvertently be collected from two individuals on one parcel. Further, sanctioning the payment of back taxes will bias the process against the poor, illiterate and ill-informed. It will also encourage massive invasions of public land while the cadastre is underway as entrepreneurs realize that this is their last opportunity to get "cheap" land.

B. Changes in IAN

3.13 The National Agrarian Institute has been less than fully effective at carrying out its mandate. Many of the reasons are beyond its control. It has had a limited and variable budget with which to operate. This has resulted in it not being able to adequately supply infrastructure and services to the communities it has established. The pressures of quickly placing landless on the land during the early years of the program resulted in it spreading its efforts too thinly. Further, it failed to get adequate and timely assistance in clarifying disputed land, so that considerable time and resources were expended on this problem. In addition, some of the laws under which it operates have restricted its effectiveness. Specifically, the law that it may not make a profit is unfortunate, especially given its limited budget allocation.

3.14 But more fundamental changes are required in IAN if a serious effort is to be made to regularize and privatize land ownership. Under usual conditions, a reform would be implemented and then the implementing agency would shrink out of existence having completed its task. After 32 years, IAN remains a healthy bureaucracy with considerable land to distribute and little to show in terms of enhanced small farmer productivity, provision of titles, or rural development. New ways of operating to reactivate the agency are needed and "sunset" provisions for it should be made part of the LIMS project. A plan to undertake fundamental changes in IAN and privatize public lands is needed. The following proposal is modelled after the experience of other countries (Annex 5).

3.15 A regulatory land commission, IAN, would be established to regulate, manage and oversee the distribution of land. All the land falling into category three, state land suitable for agriculture, would be placed in the custody of IAN. IAN then would undertake one of two actions. It would either contract out the development and subdivision of parcels to land developers, or it would sell land to developers and farmers at auction. The second alternative is favored as it allows the market to determine the value of land and allows the selection of farmers based on the value they place on the land.²⁷ IAN would establish general criteria that bonded developers must follow in terms of the infrastructure they must provide and the time over which development must occur. The developer would present a more detailed plan of development showing the location of infrastructure, the boundaries of each parcel, and the approximate number of farmers to be settled on the land. The developer would subdivide the land and sell it to *campesinos* and others wishing to farm. The developer could be a *campesino* union whose pooled resources provide the down payment for a loan to pay for the acquisition of the land. A loan would be secured on the basis of title to the land. In the case where a union of farmers buys the land, they would be collectively responsible for the loan. If individual members cannot service their share of the mortgage, then another member of the union would temporarily operate his plot until the union is reimbursed for the loan payment it made on behalf of the delinquent borrower. This process is not unlike that of the role of land developers in

²⁷ When any government asset is to be privatized or allocated to the public, the question arises as to the rules under which individuals will be queued to receive their share of it. If it is free, everyone would like their share and if everyone were granted a share, each share would be infinitely small. In the final analysis, it is found that the fairest mechanism to allocate an asset is to provide it to the individuals who value it the most. The only way these individuals can be identified is to ask them to place a value on the asset at an auction (say). The highest bidder then receives, and pays for, the asset and the rest of society is compensated by the revenues going into the government coffers to finance public activities.

industrial countries except that the credit arrangements are designed to make the servicing manageable for the smallholder. On completion of the last payment, the owner receives freehold title. IAN would exercise a regulatory role, would not be a fiscal liability on the treasury, and could satisfy *campesinos* demands for land much more rapidly. If there remains concern about agglomeration of small plots into large *latifundios*, then transfer of this land could require the approval of IAN.²⁸ Since IAN acquires government land freely, the private developers bidding on the land, reflecting what they know they can sell the land for (based on its productivity) would establish the market price. Owners of *latifundios* who are now using their very fertile land extensively, would be tempted to sell it to a developer or become developers themselves.

3.16 For this outcome to result, the other necessary prerequisites of a land market are essential. Land must be documented and titling clear. That is, the cadastral part of the LIMS must be complete. Credit must be available to at least the developer, the regulatory functions of IAN must be well defined, and the government must have undertaken an inventory of its land so that it can place the appropriate parcels on the market at the appropriate time. Privatization of suitable agricultural lands would be the object of the exercise. Making a profit from the sale for the government would be secondary but is the logical outcome of the process of allocating land to those demanding it.

3.17 The distribution of land would change. The number of small subsistence farmers and small farms would fall, the number of medium-sized commercial farms would increase. The number of large farms would probably increase as new farm land in the hinterlands is brought into extensive production and as very large *latifundia* are subdivided into several large farms. The total number of farms, after consolidation, is unclear. There could be more or fewer, depending on the number of smallholders who decide to sell and the number of new farms registered under the land development program.

3.18 As with all land sale programs through market mechanisms, payments due must be low enough to permit repayment out of the income earned by farming. Since land is being auctioned to developers for subdivision and sale, the price of land offered at auctions will reflect this. But the market value of land often includes elements of prestige, inflation-hedging, or other non-farming values.²⁹ If this is the case then the government may need to provide a one-time cash grant to small farmers for the down payment on their new property. When land is being sold in sizeable amounts, and to developers who will be required to on-sell it, this phenomenon of the "overvaluation" of land should be minimal.

²⁸ If Venezuela has a free market in land, there should be little fear of reconstitution of *latifundios*. The only reason to be concerned about resales of land by smallholders is a political one. Approval of sales by IAN would be *pro forma* but would provide political comfort. Lack of approval by IAN would need to be made exceptional in order to ensure market processes and in order to avoid misuse of IAN's authority.

²⁹ Binswanger argued at the XX IAAE Conference (Buenos Aires, 1988) that non-output related elements of land prices make it impossible for *campesinos* to buy land through market processes, or for governments to make land reforms in which beneficiaries pay for land received. While there is some validity to this view, it is not always the case. Some farmers are able to make down payments and other mechanisms, such as mortgage insurance, could be designed. Also, in a stable macroeconomic environment where land is being colonized, taxed, and expropriated if unused, land will likely be priced according to its productive value.

3.19 Success also requires that governments and lenders abandon their view that *campesino* land buyers must be kept on the land even if they do not earn enough money to meet their debt service. Those who suffer personal misfortunes or are not successful farmers, should be encouraged to transfer their land to another *campesino* and seek other employment. The legal structure that allows foreclosure should be reviewed and strengthened if necessary.

C. Credit

3.20 For agriculture to develop, credit needs to be available to a broad spectrum of farmers. Farmers will not have access to long-term credit if land or physical improvements to the land cannot be used for collateral. Only if clear ownership exists, as demonstrated by a transferable title to land, will farmers be able to use land for collateral.

3.21 The present situation in Venezuela results in size-stratified access to credit, severely limiting small farmers' ability to obtain capital and leading to lower productivity and subsistence production. A lack of credit restricts small farmers from moving out of their semi-subsistence situation, keeping those families in a low income/poverty status. In order to provide access to capital, smallholders must be able to use their major asset--land--as collateral. For this they require a marketable title to the land.

3.22 In the past, the government has had numerous programs and agencies to provide credit at below market rates to farmers. But an extensive body of literature and experience shows that availability of credit, rather than its price, is the factor that limits the use of credit by farmers.^{30/} As part of the structural reforms, the government is substantially reducing its participation in agricultural credit. As the government withdrawals from the agricultural credit market it will leave a temporary hole in the farm credit system for a large segment of Venezuela's farmers (those without title). Transition provisions need to be considered while the private (formal and informal) sector develops to fill the gap. Commercial banks have been unwilling to finance small-farmers because the banks have little experience with them. More importantly, the transactions costs of lending and of maintaining a small-farmer loan portfolio are high. Banks prefer to lend to fewer large farmers. Input suppliers, product traders, agroprocessors, and informal rural sources will start providing credit to smallholders, but these sources require time to develop.

3.23 One possible measure to bring commercial bank lending to small farmers is to subsidize the transactions costs for individual or group loans that commercial banks make to them during a

^{30/} See "Government Policies Towards Rural Finance," in *Rural Financial Markets in Developing Countries*, J. D. Von Pische, et al., Johns Hopkins University Press, 1983. Some other literature shows that land collateral is less important in small farming credit and repayment performance is the criteria that determines the availability of credit. These studies fail to note that collateral is less important in some countries because of the inability or costliness of enforcing the contract. Foreclosure is virtually impossible.

transition phase.^{31/} This would be done by paying a fixed fee, of say \$100, to any bank that makes a loan to the target group. The social service for which the government would pay is making term or production credit available to the small viable farmer. This intervention is the least distorting in terms of economic efficiency, it achieves the goal of small farmer access to credit during the transition, and it appears to be a much smaller fiscal cost than the government credit agency (ICAP). After a number of years, the banks will have accumulated sufficient experience with a set of client-farmers and with cost-minimization loan servicing so that the subsidy will be unnecessary. Unions of farm producers may also be formed in order to reduce the transactions costs to banks of fragmented loan portfolios. The risk of default can be shifted to the group rather than the individual farmer thereby lowering the risk of default.

3.24 In brief, there exist creative mechanisms that can be tailored to ease the transition and enhance private sector development as the public sector moves out of farm credit. Marketable titles will give smallholders greater access to credit. With credit and a land market, agrarian reform beneficiaries will be able to form larger units on reform lands and evolve into commercial farmers. This is ideal from the standpoint of agricultural output, level of agricultural income, income distribution, and rural development. To be beneficial to society as a whole, there need to be viable opportunities for those who choose to leave farming. Overall, the present land tenure situation is hindering access to credit and thereby restricting agricultural development.

D. Concluding Comments

3.25 There is much to be done to develop the land market in Venezuela. But the steps are largely mechanical, and the process is clear. What is required is financing to establish a LIMS, time to resolve land disputes in a fair and transparent manner, vigorous enforcement of the newly acquired property rights, and political determination to ensure that the process is well-planned, well-managed, well-explained and carried to completion.

3.26 In many ways, the task in Venezuela is more manageable than in other countries. No systematic land-based recording system exists so a state-of-the-art system can be implemented without the constraints of marrying it to an existing system. The proportion of the population affected by the regularization of land is much smaller than other countries. Venezuela has the means to compensate those who are harmed by the regularization by providing them with alternative farm land that is presently undeveloped. And the private benefits from implementing the plan would be significant and apparent.

3.27 There are wider public benefits also. A more productive agriculture would emerge as on-farm investment increases with the enhanced security of land titles. This increased activity will spill over into invigorated rural communities and will be reflected in lower food and fibre prices to consumers. And a vigorous and profitable agricultural sector will provide a larger tax base for rural communities and for the central government. Having noted these benefits, it must also be understood that developing the land market is not the panacea for agriculture in Venezuela. It is one essential

^{31/} Binswanger has suggested this approach for Mexico where official credit institutions for small farmers have been undergoing major reforms as part of the Article 27 reforms. A pilot scheme along these lines is being prepared. See Binswanger, Hans, "Mexico--The Future of Small Farmer Lending," Unpublished mimeo, 1992.

step in the development process, the absence of which is perhaps the most restrictive bottleneck in the present development of agriculture in Venezuela.

3.28 The program that would emerge would be private and market driven. The land market would be truly activated and privatized. An agrarian reform of dramatic dimensions, with very positive distributional and output results, could emerge.

ANNEX 1: THE AGRARIAN REFORM OF 1960

Statement of Purposes of the Agrarian Reform Law

1. Agrarian Reform in Venezuela relates to the political change in 1958, when peasants exerted pressure to obtain land, and organized invasions and a mass rural exodus to the cities in search of better living conditions. The Agrarian Reform Law, enacted in March 1960, arose as a consequence of the above. Its main objective was to achieve the transformation of the country's agrarian structure and the incorporation of the rural population into the economic, social and political development of the nation.

Bases of the Agrarian Reform Law

2. Objectives and Principles

The objectives and principles of the present law appear in its Preliminary Title, "Regarding the bases of Agrarian Reform," whose nine articles are as follows:

Article 1

The objective of the present law is to transform the country's agrarian structure and to incorporate the rural population into the nation's economic, social and political development, through the substitution of the large landed estate system with a just system of property, ownership and use of the land, based on an equitable distribution of the land, proper organization of credit and integrated assistance to farmers, in order that land constitute for the person who works it, the basis of his economic stability, the foundation of his progressive social well-being and the guarantee of his freedom and dignity.

Article 2

With regard to the indicated objectives, this Law:

- (a) Guarantees and regulates the right to private land ownership, in keeping with the principle of the social duty that such ownership should fulfill and other regulations established by the Constitution and Laws;
- (b) Guarantees the right of all individuals or population groups capable of agricultural or livestock work, who lack land or own insufficient quantities of it, to be granted ownership of economically workable (farmable) land, preferably in the places where they work or reside, or, when circumstances deem it necessary, in zones which are duly selected and within the limits and norms established by the Law;
- (c) Guarantees the right of farmers to remain on the land they are cultivating, on terms and conditions stated in the Law;

- (d) Guarantees and recognizes the indigenous populations, providing protection for them where necessary.
- (e) Specially favors and protects the development of small- and medium-sized rural property and agricultural cooperatives so that they may become stable and effective.

To this effect, the right to small family property is established, in accordance with norms on free grants contained in this law.

Article 3

Both private persons and the State have obligations stemming from the principle of social duty of land ownership.

Article 4

For purposes of the statement in Article 2(b), the State will progressively incorporate into the country's economic development, those zones or regions which are under-used or inaccessible to technical and rational use due to lack of means of communication, irrigation, drainage or similar works.

To this effect, integrated development plans for economic or hydrographic regions will be promoted, but in any case, hydraulic and agricultural development works should be planned for the purpose of integrated development and be in accordance with Agrarian Reform plans.

Article 5

The state shall establish and increase adequate and necessary public services for rural transformation and to support farms and farmers in newly established farm communities.

Article 6

The corresponding items will be assigned under the Law of the General Budget for Income and Public Expenditure, for the financing of the agrarian reform and consequent agricultural plans.

Article 7

The State shall be obliged to create the bases and conditions required to dignify salaried farm work, by means of proper regulation of the same and its legal relationships, in accordance with the transformations stemming from agrarian reform.

Article 8

Under conditions established or which may be established, foreigners will enjoy the same rights as Venezuelans and be subject to the same obligations in areas which are the object of this Law.

Article 9

Those persons who have the right to request land grants, may denounce the existence of persons who do not fulfil their social obligations. Accusations shall be made before the respective Delegation, which shall open an investigation and inform the plaintiff within thirty (30) days.

If the accusation is found admissible, the lands will be subject to purchase or expropriation, in accordance with the present Law.

Article 9 of the Law further states that "For purposes of the agrarian reform, private land ownership fulfills its social duty when it adjusts to all of the following essential elements:

- (a) Efficient working of land and its appreciable use in such a way that production factors are applied efficiently therein, according to the zone where it is located and its particular characteristics;
- (b) The personal work and administration, and financial responsibility of the agricultural enterprise, by the land owner, except in cases of occasional direct exploitation with justified cause;
- (c) Fulfillment of provisions on renewable natural resource conservation;
- (d) Observance of legal norms regulating salaried labor, other rural working relations and agricultural contracts under the conditions indicated by this Law;
- (e) Registration of rural property in the National Land and Water Cadastre Office, in accordance with relevant legal provisions."

Content and Regulation of the Agrarian Reform Law

3. Land Appropriation

The appropriation of both public and private lands for agrarian reform is one of the fundamental functions of the agrarian reform. Public lands in general (uncultivated, national rural land, rural land belonging to autonomous institutes, and rural buildings belonging to the government and villages), are affected by the law in accordance with Article 10. In the case of private lands, there is an appropriation procedure for those lands which do not meet the function of property; this may be by purchase or expropriation. Nevertheless, the Law does not limit the extension of rural properties which fulfill their social duties.

The Law also gives peasants the right to land where they work, as long as the land is not subject to fulfillment of social duty or is being worked by tenants. In this case the owner may reserve for himself a 150 hectare first-class portion, or its equivalent in other quality land, which the law considers to be non-expropriable. Non-expropriability ceases when rural property, constituted by uncultivated or fallow land, has not been cultivated in three years, or efficient cattle-raising organized in 5 years.

With reference to land classification, the Law and its regulation in Article 198, is governed by a value scale, ranging from first-quality and with a maximum of 150 ha assigned, to seventh-quality with a maximum of 5000 ha, which the farmer may reserve for himself. In accordance with article 142, lands improved with irrigation works should be used for intensive crops.

4. Grants

Agrarian Reform beneficiaries older than 18 years of age have the right to be granted "ownership of economically workable land" (Article 61), preferably in places where they work or live. These grants may be either individual or collective, and awarded in two stages: first, possession (ownership) is given, then a year later title is granted (Art. 95 to 101).

5. Expropriations

Agrarian expropriation is a legal instrument of Public Law which the law has created to obtain land by judicial means for the agrarian reform. The most important cause of expropriation established by the Law is the non-fulfillment of social duties of the property. Rural properties which are fulfilling social duties may also be subject to expropriation by exceptional means (Articles 27 and 33 of the law). Payment shall be made by agrarian debt vouchers.

6. The Law's Guarantees to Peasants

The Law guarantees individuals or peasant groups the right to agrarian centers which shall have the necessary land to found the population center and later expand it, the local government office, schools, machinery sheds, playgrounds, etc. (Article 57).

Furthermore, for agrarian reform purposes, the agricultural credit service shall be organized by the State in such a way that it may be applied preferably to meet the credit needs of small and medium farmers as well as agricultural cooperatives (Art. 109 to 118). Marketing and technical assistance services (Art. 127 and 128), minimum prices (Art. 131), as well as fostering the formation of cooperatives for credit, production, consumption, machinery procurement (Art. 137). These guarantees must be fulfilled by IAN. Nevertheless, it should be pointed out that these are a financial obligation of the National Government.

7. Water and Irrigation

The Law dedicates a chapter to water, giving importance to the appropriation of water for agrarian reform purposes, in which the use, possession and benefit of water are subject to limitations, regulations and restrictions determined in the present Law, in laws and regulations on water, irrigation works, land drainage and improvement, and concerning the use of zones benefitted by these laws (Art. 41 to 51).

Chapter II of the Law on "Irrigation works, drainage and other water uses" (Art. 180 to 189), highlights the creation of an Irrigation Institute in charge of coordinating, planning, building and operating irrigation works, drainage, and other water uses carried out with "national funds"; these must always be carried out in accordance with the "agrarian reform plans". Even though this Irrigation Institute does not exist, some of its functions are carried out by the National Directorate of Agricultural Infrastructure of the Ministry of Agriculture and Livestock (MAC).

In order for agrarian reform to be carried out, the Law created the "National Agrarian Institute" (IAN), the Agricultural and Livestock Bank (BAP), now the Agricultural and Livestock

Credit Institute (ICAP) for credit to small and medium farmers. For its part, MAC is in charge of organization, technical assistance and formulation of irrigation development plans.

ANNEX 2: PROPOSED MODIFICATIONS TO LAND LEGISLATION

1. The Ministry of Agriculture and Animal Production and the legislature are currently studying a proposal to create a national cadastre. Under the proposal, all future documents recorded at property registries would have to include a parcel identity number (or *cédula*) before the document could legally be recorded, assuming that the parcel had been mapped and covered by the cadastre. The *cédula* corresponds to a case file which contains a number of characteristics of the land, including its boundaries. Title searches would only be required to research back to 1936, the original year of the "*Baldías* Land Law."^{1/} These two steps would begin the integration of the cadastre and the streamlining of the title search process. Eventually, the entire country would be included in the cadastre.

2. The proposed cadastre bill is divided into ten chapters:

Chapter I ("General Provisions") integrates the legal aspect (the registry) with the physical aspect (the cadastre) and contemplates further integration with the economic aspect (valuation of property).

Chapter II, "Executory Bodies and the Preservation of the National Land Cadastre," would create a new "Instituto Autónomo de Cadastro Nacional" with offices throughout the country in each municipality.

Chapter III, "Regional Cadastral Offices," and Chapter IV, "Municipal Cadastral Offices," further define the local level implementation of the planned cadastre.

Chapter V, "Implementation of the Cadastre," is a procedural text.

Chapter VI, "Connection between the National Cadastre and the Public Registry," establishes the general rule that judges, notaries and registrars should refuse to acknowledge land transactions unless the land is registered with the public registry and the cadastre office.

Chapter VII, "Administrative Resources," contemplates the use of the normal administrative process for resolution of most disputes.

Chapter VIII, "Penalties," provides for civil and criminal punishments for non-compliance with the law.

^{1/} Now, title searches have to go back to 1848 in order for a "land owner" to demonstrate that the land was not illegally taken *baldías* land. Even a search back to 1936 is onerous. In many U.S. state jurisdictions titles need only be searched back for 30 years. But in Venezuela the dates have a political importance. It is likely that many large *haciendas* were established on *baldías* land after 1848 but before 1936. It will be a divisive political issue if the Government provides clear title to large landholders who have occupied land before 1936 (illegally) but cannot trace ownership back to 1848.

Chapter IX, "Defense of the User," allows public officials to act as counsel to landholders with disputes before the National Cadastre or Public Registry Offices.

Chapter X, "Final and Transitory Provision," discusses the transition to a new cadastral system.

3. The drafters do not foresee an immediate, full implementation of the draft law. Rather, the law will be phased in progressively to allow the cadastre to be formulated and completed. Beyond these measures, the methodology for carrying out the project is still being developed.

4. Since the cadastre project attempts only mapping and not normalization (the formalization of ownership and tenure), the drafters hope that there will be little opposition to the mapping. Still, criminal sanctions will apply to anyone interfering with the mapping process. The concern is that peasants living on land owned by third parties or the government may suspect that once the land is mapped the authorities will know they are squatters and attempt to remove them. In order to prevent interruption of the mapping process and allay the fears of peasants, the Government will undertake an education effort with local leader participation.

5. The bill for a national cadastre does not contemplate any new procedures for dispute settlement, if and when mapping uncovers a conflict in the registry. In this case, the interested parties would be left to litigate the case according to standard procedure in the courts. A dispute settlement mechanism would be a useful inclusion in the new legislation.

ANNEX 3: CREDIT FOR LAND ACQUISITION

1. In addition to the goal of restructuring land ownership in rural areas, a major feature of the Agrarian Reform Law is to provide supporting services and technical assistance to increase agricultural productivity. Successive governments have considered access to credit at affordable interest rates as a key objective of the agrarian reform process. To meet this objective, a number of public sector agricultural finance institutions have been established, while legislation has forced private banks to make credit available to agriculture on favorable terms. This annex provides an overview of credit for private land acquisition. The topic is divided into three main components -- sources of credit, availability of credit, and constraints on access to credit.

A. Sources of Credit

2. The Instituto de Credito Agrario (ICAP) is a first-tier government operated and financed institution, created in 1975, set up to provide short- medium- and long-term financing to individual small producers and organizations of small producers (*campesinos*) in accordance with a program established by the Directorate for Coordination and Development of the Directorate General for Reclamation and Irrigation. Beneficiaries of ICAP loans may or may not be recipients of land under the Agrarian Reform Law. Agricultural projects receiving ICAP loans are closely supervised and directed, and have been used mainly to provide farmers with working capital (six-month term) or capital for purchase of equipment (five-year term). Because ICAP has subsidized interest rates (ranging between 3-7%), a great number of applications for loans are filed each year. Interest rates in 1991 were set at 7% (nominal), an increase from the previous 3%. ICAP also charges an additional 3% fee for technical services. This fee is used to circumvent the congressionally-mandated interest ceiling, but even with it, real rates of ICAP loans to farmers are negative. At present, ICAP is undergoing a major restructuring, with a consolidation and computerization of its operations. It will close a number of its offices to increase the staff's ability to administer the credit by centralizing some functions.

3. The Banco de Desarrollo Agropecuario (BANDAGRO) was created in 1967 and focuses on providing finance for medium and large producers, and agribusinesses at low interest rates (e.g., in 1989 the rate was 8.3%). BANDAGRO has recently encountered financial problems resulting, in part, from a failure to recuperate outstanding loans. It is being liquidated and will soon be closed. After submitting a project proposal, ICAP and private sector lending institutions obtain funds from the Fondo de Credito Agropecuario (FCA), a second-tier state bank, established to direct credit for agriculture to the private and public banking institutions. Funds that it provides banks must be lent to producers at no more than 84% of the commercial rate offered by large banks.

4. In the private sector, legislation forces commercial banks to provide a certain amount of credit to the agricultural sector. Currently, banks are obligated to allocate 22.5% of their lending portfolio to the agricultural sector, of which 17.5% is for primary production, and 5.5% for agro-industry. Mandatory lending to agriculture will be phased down to 12% under the present credit reforms.

B. Availability of Credit

5. It is the view of many commentators that the available financial resources of the ICAP, and the private banks are smaller than the amount required to meet the needs of land preparation, crop husbandry, and harvesting. This, together with delays in loan approval and authorization of the corresponding disbursements and the lack of assistance by the credit organizations in the actual application of loans that have been issued, results in crops being sown after the most favorable time of the year. With low or negative real rates of interest it is to be expected that the demand for ICAP funds exceeds the amount available. Only when credit policies are reformed and agricultural credit is priced similarly to that of other credit, will it be possible to get an idea of credit constraints in agriculture.

6. Despite the lack of collateral and crowding out by public lending institutions, private banks do make agricultural loans as a result of legislation requiring banks to keep a certain share of their portfolio for agricultural loans. While loans are available from the private banking sector, the terms and conditions of such loans are high. Typically, collateral is required at a rate of at least 2.5:1. Loan conditions are based on the number of factors including title, the size of farm, the productivity of the land, the market price of the land and output, and history and credibility of the individual applicant. Loans are evaluated by agricultural advisors in regional offices. Typical loan terms might be five years for investment on property. The maximum under the law is 10 years. Short-term loans are typically for about 180 days for crop production and these make up the bulk of loans. Private banks keep an agricultural portfolio of about 75% short-term and 25% medium-term loans. Interest on agricultural loans by law is 84% of the commercial interest rate. Clear title is an important factor in evaluation loan applications, but those without title are not automatically excluded, especially if the farmer has a long history of farming in the area, or if a farmer is a member of a farmers credit groups (union of debtors). These unions informally guarantee the repayment of loans made to individual members. Considerable peer pressure is placed on individuals to repay loans and because of the better credit risk of union members, bankers are more willing to make loans to them.

7. Short-, medium-, and long-term credit disbursed by ICAP for the period 1986-90 is reported in Annex Table 3.1, along with the number of beneficiaries and area covered. Disbursements are reported in constant 1985 Bolivars, using the consumer price index as deflator. In 1986, Bs. 1.25 billion were disbursed by ICAP, of which 68% were short-term credit, 25% medium-term, and 7% long-term. In 1987, total disbursements increased about 14% in real terms, with short-term loans declining, and medium-term loans increasing. In the late 1980s, total lending fell dramatically, falling to Bs 1.03 billion in 1988 and to only Bs 0.6 billion in 1989. Thus in the four years between 1986 and 1989, total lending fell by about 50% in real terms. During this period, the proportion of short-term loans increased at the expense of medium- and long-term loans. In 1990, total lending recovered slightly, reaching Bs. 0.9 billion in constant 1985 Bolivars. However, the trend towards greater short-term credit and less medium- and long-term continued. In 1990, 75% of loans were short-term, 22% medium-term, and 3% long-term. Of the short-term credit disbursements, 70%-80% were used for cereals, oilseeds, vegetables, and annual horticultural products. This pattern of lending supports the argument that the lack of clear title to land by the applicants limits their access to credit. Short-term credit is available because the annual production is used as a lien for the loans, but long-term credit is generally not available because it cannot be secured.