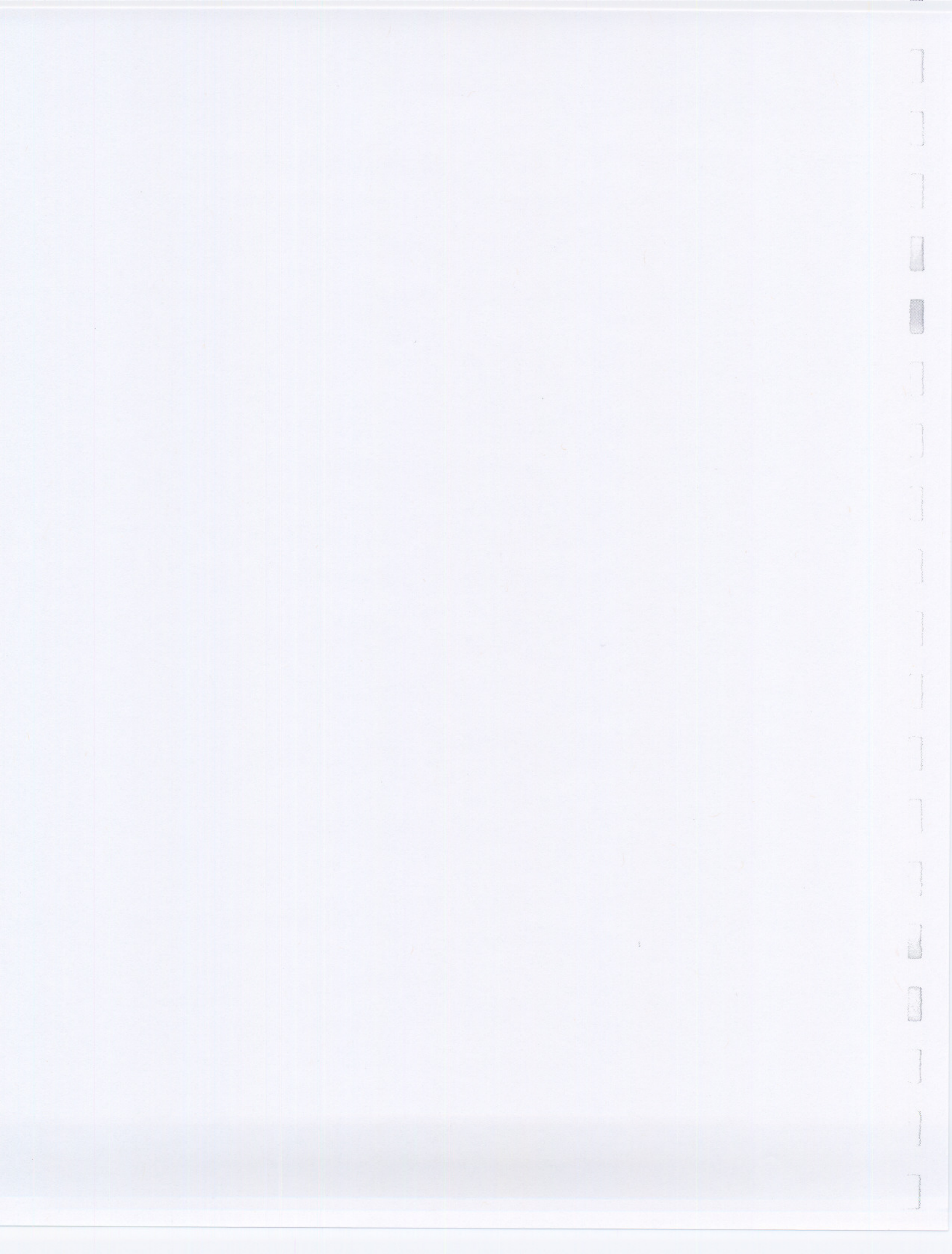


**SECTION II**

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**POLICIES RELATED TO LAND ISSUES**



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## SECTION II POLICIES RELATED TO LAND ISSUES

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Few issues are more relevant to the goals and objectives of international donor agencies than land policy. In Guatemala, relevant objectives involve the historically disadvantaged (indigenous peoples, refugees, and women), environment, constraints on investment, inoperable markets, administration of justice (including the rule of law, and participation in the benefits of democratic society), and government administration.

Guatemala's least-fortunate population suffers from lack of land access. This population is characterized by a high degree of informality (for example, untitled property, unlicensed businesses, and so on) and little access to wealth. Women in particular traditionally have been largely excluded from property ownership among even the disadvantaged. The problems for the disadvantaged have been accentuated with the recent return of refugees from Mexico. Successful repatriation will be a key ingredient to achieving a lasting peace not only in Guatemala, but for the region.

A successful environmental policy requires policymakers to have control of the access to land and water resources. Until Guatemala can supervise its land resources, it will be crippled at any attempt to develop a natural resource policy that is sustainable and achievable. In this era of concern over deforestation, Guatemala must not fail to address this underlying cause.

An ineffective dysfunctional property registry system continues to be a restraint toward long-term investment. An efficient registry system is a necessary prerequisite to promote foreign and domestic investment. Guatemala needs to promote foreign investment, as well as avoid capital flight, to encourage broad-based and sustainable economic growth.

The Enterprise for the America's Initiative, the North American Free Trade Agreement, and the General Agreements on Tariffs and Trade all point toward the freeing of markets. Despite these policies, markets in land are constrained by institutional barriers (such as lack of adequate registries and lack of a "cadastre" or property maps) and market barriers (such as lack of access to credit and ability to assume risk). This report provides an analysis of the current situation and offers suggestions for a plan of action that could lead to greater understanding of land markets in Guatemala, while facilitating access to land through the use of a modernized land information system.

Administration of justice with regard to land issues is problematic in Guatemala. Without an adequate legal infrastructure, landholders, especially those without title, have no official recognition or support. Formal titleholders, however, are exposed to the risk of land invasions as the poor lack access to alternative resources. Accusations of corruption abound. The poor typically lack title and official documentation of their holdings—documentation that is often required to request services such as water, education, agricultural credit, electricity,

sewerage, police, fire department, and so on. Thus, the poor can be, unintentionally but effectively, shut out from the benefits of a democratic society. Meanwhile, formal property-holders have been subject to increasing land invasions, especially in Guatemala City, reflecting a breakdown in the rule of formal law.

Recently, terrorists have tried to attack the property registry in Guatemala City to destroy its records for which no backup exists. Proper administration of government requires that these important documents be safeguarded and backed up.

The new "Fondo Nacional de Tierra" (FONATIERRA) appears to be near governmental approval, creating a new land purchase and sale program. The successful implementation of this program, to be administered by INTA, will be hampered by the lack of registry reform.

In short, an MPLIS project would assess the need for modernizing governmental administration with regard to land and land resources. Guatemala can ill afford duplication of costs and efforts. Processes must be streamlined to gain efficiency, transparency and effectiveness.

**SECTION III**

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**LAND PROBLEMS AND ISSUES IN GUATEMALA**



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### SECTION III

## LAND PROBLEMS AND ISSUES IN GUATEMALA

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#### A. NATURAL RESOURCE CONSERVATION

Natural resource conservation is intrinsically related to land-tenure patterns. In the context of a predominantly agrarian society such as Guatemala, the lack of access to land has been the foremost constraint to the sustainable use of the natural resources base.

To meet their immediate subsistence needs, landless and land-poor peasants have been forced to expand the agricultural frontier, clearing and cultivating steep slopes and other fragile lands. Limited access to alternative (nonfarm) economic opportunities has resulted in continued dependence on land as the main factor of production in the rural areas, leading to overuse and subsequent environmental degradation. According to the 1979 agricultural census, sub-family farms had only 13 percent of their land in forest, compared to 30 percent of *latifundio* land.

Landlessness has also resulted in the displacement of large segments of the rural population, resulting in rural-urban migrations and the ensuing urban blight and overcrowding of Guatemala's major cities. At the same time, large-scale rural-rural migrations have resulted in the colonization of ecologically fragile frontier lands, most notably in the northern parts of the country.

Recent efforts to augment the income-generating potential of *minifundios* in lieu of increased access to land have led to the introduction of high-value nontraditional crops, such as broccoli and snow peas. Economic gains have been accompanied by environmental degradation resulting from high pesticide use and soil erosion. The introduction of nontraditional crops has also displaced basic grain production to other areas, furthering deforestation and cultivation on marginal lands.

Tenure insecurity has also played a role in environmental degradation. Because many smallholders do not possess legal title to their land, they are defenseless against outsiders wishing to force them off their property. Similarly, renters are rarely able to obtain leases for longer than one year. Renters and smallholders with insecure tenure are therefore often unwilling to invest scarce resources in soil conservation and other improvements to the land, the long-term benefits of which they may never see.

Lack of title to their land has also obstructed access to credit for most smallholders. Lack of credit has in turn inhibited efforts to implement more environmentally sustainable practices, such as the cultivation of permanent crops.

Lack of legal land title is another factor adversely affecting agricultural productivity. In her study of two Guatemalan land purchase-sale programs, Dunn (1991) found a positive correlation between possession of provisional title and technical efficiency in both corn and coffee production. Dunn claims that "tenure security motivates [program beneficiaries] to attend to their production activities more carefully since they expect to be able to receive the full benefits of any productivity gains" (Dunn 1991, p. 188). She further speculates that "if the results on titles are extrapolated to the national level, then Guatemala's system for land titling may be causing national losses in productivity due to technical inefficiency" (Dunn 1991, p. 189).

#### **D. REFUGEES**

The violence that plagued Guatemala during the 1970s and 1980s resulted in the displacement of large segments of the populace, particularly the indigenous inhabitants of the central and western highlands. There are approximately 43,000 Guatemalan refugees in Mexico, and an estimated one million internally displaced Guatemalans.

Plans to repatriate Guatemalan refugees living in Mexico are currently under way. According to the National Commission for Attention to Repatriates, Refugees and Displaced Persons (CEAR), an estimated 30,000 refugees are expected to return to Guatemala, raising serious questions as to where they will be relocated. Despite de facto ownership of their lands, most refugees (like most smallholders) lack legal title. Many of their properties have been occupied by outsiders during the absence of the refugees these past 10 years. This complicates the possibility of repatriation to their original lands, one of the refugees' demands.

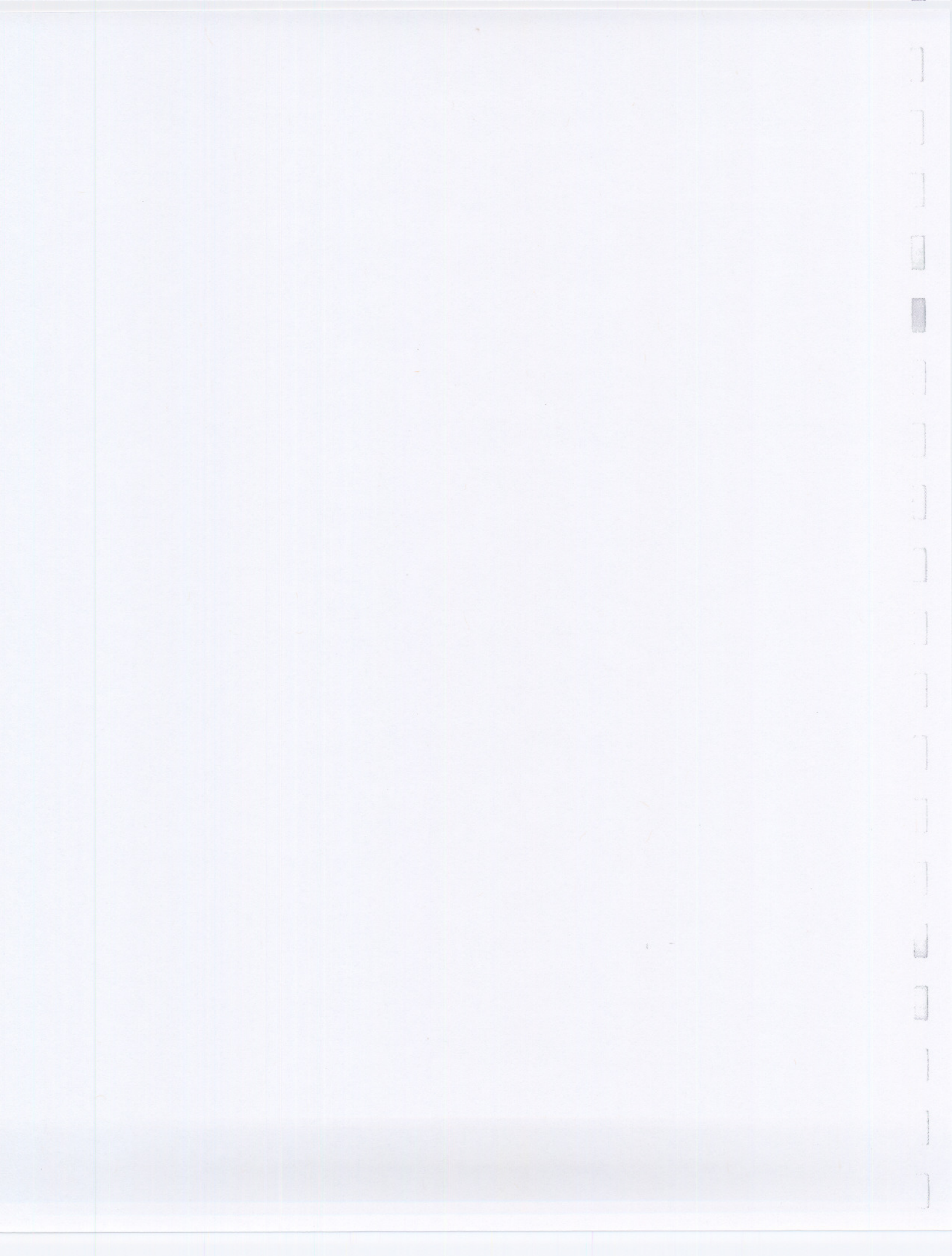
CEAR is considering buying other properties, and has performed partial cadastral studies of several of the proposed repatriation sites. However, given the disorganized and conflictive state of the property registry and the lack of a national cadastre, repatriation of the refugees promises to be a difficult process at best.



**SECTION IV**

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**THE LAND REGISTRY SYSTEM IN GUATEMALA**



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## SECTION IV THE LAND REGISTRY SYSTEM IN GUATEMALA

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### A. FUNDACEN's INTEREST IN REGISTRY REFORM

The Penny Foundation (Fundación del Centavo, or FUNDACEN), a Guatemalan non-governmental organization (NGO), is currently implementing a USAID-funded land purchase-sale program. The program functions as a land bank, purchasing farms offered for sale on the open market, dividing them into three-hectare parcels, and selling them to landless and land-poor *campesinos* on an individual basis.

FUNDACEN policy regarding the provision of title has varied over the years. In the initial phases of the project, beneficiaries were to receive title on acceptance in the program. A demonstrated interest in the immediate provision of title was ultimately thwarted, a result of difficulties and delays encountered in the property registry.

Title transfer from the original owner to FUNDACEN was largely accomplished with few problems. Difficulties arose, however, when FUNDACEN attempted to subdivide the farms and register the plots in each beneficiary's name. Since the property registry operators are paid on a commission basis (based on property value), FUNDACEN claims they had little incentive to process the new titles promptly, the commissions being very low.

Thus, despite a legal mandate for the property registry to process all title transfers in a maximum of eight days, there were delays of up to several months in providing FUNDACEN beneficiaries with title to their newly acquired properties. The Foundation's failure to immediately provide title to the parcels intensified already widespread mistrust of the program, fueling rumors that the beneficiaries would be used to clear the land and plant coffee, and then be thrown off the farm.

Due to a number of factors, FUNDACEN policy regarding the provision of title has changed over time—title is now provided only when FUNDACEN deems the beneficiary will remain in the program. The Foundation is planning to provide many beneficiaries with title during the next few months, and is expecting renewed problems similar to those previously encountered with the property registry.

The immediate impetus for this report arose as the result of the experience of FUNDACEN. A major frustration of the Foundation has been with the poor condition of the land title registry system and its records. These conditions have often made FUNDACEN unable to provide a secure title, in spite of all its efforts. Therefore, the Foundation is urging that land title registry reform be made a top priority, to facilitate the work of the Foundation and similar philanthropic agencies working on land-tenure reform in Guatemala.

## **B. PREVIOUS STUDIES AND PROJECTS RELATED TO LAND TITLE REGISTRY REFORM**

The need for land title registry reform has not gone unnoticed in the past. Several studies have been undertaken over the past several years, sponsored by development agencies outside of Guatemala as well as by interested groups within the country. These earlier studies are briefly reviewed here to put current activities in a context.

### **1. Guatemala Land Markets Project—Accelerating Property Registration (by Jack D. Rosholt, December 1988)**

The USAID Commercial Land Markets Project, initiated in 1984, has been amended several times to a current funding level of \$13.5 million. The project operates through FUNDACEN, which is dedicated in general to rural development.

To address the problem of skewed land ownership distribution in Guatemala, FUNDACEN, through the Commercial Land Markets Project, has been using a voluntary program to purchase land and resettle *campesinos* on small land parcels. A serious problem that the project has faced is the inefficiency of the land title registry system. Problems with the registry system have made it difficult to provide a clear title to the newly resettled peasants.

In 1988, Rosholt was asked to review and summarize the major problems that existed in the land title registry system in Guatemala. In his 22-page report, Rosholt described Guatemala's property registry system and the process necessary to verify quality of title in Guatemala, and provided recommendations for improvements.

Rosholt noted several factors that both complicate the title registry system in Guatemala and make it relatively difficult to reform. First, original land grants were made by the Spanish Crown (as well as the Spanish Viceroy in Guatemala). These grants were based on metes and bounds descriptions of tracts (*sitios*). These title tracts originally included three types of land: communal (*ejidal*), state and national (originally crown lands), and private landholdings. A public land class of tracts was later established to include national parks, forest reserves, tidal flats, and road rights-of-way.

Second, Guatemala uses a deed registry system, similar to that used in most parts of the United States, as opposed to a title registry system, which is used extensively in other parts of the world such as Australia and Canada. In a deed system, only evidences of title are recorded, with no specific assurance of the quality of title claim provided by the registry system. In a title system, registry of the title provides a guarantee of title, warranting the quality to the owner, with only a few minor exclusions or conditions.

Third, the current deed system in Guatemala was established in 1878 and has continued with little change. As in many deed systems, the Guatemalan system was developed without the benefit of good surveys of land parcels. This shortcoming results in parcels that grow or