

**LAND MARKETS,
PROPERTY RIGHTS AND RURAL LAND OWNERSHIP
IN VENEZUELA: LEGAL ISSUES**

by Steven E. Hendrix (February 1992)*

The Venezuelan civil code is the basic document that governs property ownership and tenure. It is modeled after the French and Italian civil codes. As such, Venezuelan law recognizes standard property rights, including the right to buy, sell, trade, mortgage and inherit property.

The Venezuelan agrarian reform changed much of the conventional property law in rural areas. Thus, it too is a focal point for any discussion of tenure rights and agricultural production.

This report provides a brief overview of Venezuelan real property law. It then turns to examine the agrarian reform program, discussing: land subject to the reform, the beneficiaries of the reform and the transfer of agrarian reform property, the National Agrarian Institute, rural credit and technical assistance, dispute settlement, women, and the steps to register agrarian reform land and the national cadastre. Finally, the report makes recommendations for improving Venezuela's approach based on the regional context and empirical data.

BRIEF OVERVIEW OF VENEZUELAN REAL PROPERTY LAW:

In general, ancient Rome imposed no limits on property ownership.¹ This model was picked up in the Napoleonic Code which grants property owners absolute rights of ownership in conformity with law,² and was carried forward to Venezuela. Interestingly, however, Venezuelan legal doctrine establishes relative, rather than absolute rights to property.³ The Venezuelans view property ownership as involving a social function.⁴

* Steven E. Hendrix is an attorney, licensed in the States of Wisconsin and Pennsylvania and the District of Columbia. He occupies the position of Land Tenure, Legal and Policy Advisor with the University of Wisconsin, Land Tenure Center.

In this regard, Venezuela has carried forward Italian and German notions of property born in the aftermath of World War I.⁵ In fact, the Venezuelan definition of "property" set forth in the Civil Code states that it is a "right to use, enjoy and dispose of an item in an exclusive manner in accordance with the restrictions and obligations imposed by law"⁶ dropping the word "absolute" contained in the definition of property in the French Civil Code.⁷

Besides Italy and Germany, Venezuela has been influenced by many countries in terms of social policy and ownership issues. The ancient Greeks and Romans, revolutions in Mexico, Russia and China, and more recent social conflicts in Yugoslavia, Cuba, Bolivia, Chile, Peru and Venezuela itself, all point to the interrelationship of land and social policy.⁸

Also deep-rooted in Venezuelan law is the concept that possessors of land should have ownership interests in the land.⁹ Like the European codes, the Venezuelan code includes usucaption ("usucapión"), a method to acquire property through occupation of the land, "just cause" (ex. a title) and good faith (like ignorance, not fraud).¹⁰ Its counterpart in the Anglo-Common Law tradition is perhaps adverse possession. Venezuelan law also recognizes occupation and possession as the first steps toward ownership of property that has had no prior owner.¹¹

The usucaption rights were further extended in 1982.¹² This provided persons who had inherited property or purchased it contractually, who had been on the land at least 10 years, to receive title, provided certain formalities were met and procedures followed. In this regard, Venezuela was following the lead of other civil code jurisdictions.¹³

This "right of possession" in Venezuelan law is given protection through "interdictos," (similar to an injunction in common law) a legal procedure whereby possessors can be assured permanence on their land.¹⁴ The concept of an "interdicto" was brought forward from Roman law, which also protected possessors of land. The writ of "amparo" (assistance) is also available to renters and sharecroppers to secure their right to remain on the land.¹⁵ So strong was this tendency in Venezuelan law that even during the times of the great haciendas, the owners would not allow their workers to plant "permanent" crops (like trees) for fear that the workers might somehow gain legal rights to the land.¹⁶

In general, property in Venezuela is legally divided into real property ("propiedad inmueble") and personal property ("propiedad mueble"). Real property in particular is governed by Civil Code Articles 526-30 and 759-70. Venezuelan "inmuebles" can be either public or private property.¹⁷ And all lands that have no other owner, belong to the government.¹⁸

Property belonging to the country, states or municipalities can be characterized as public or private property.¹⁹ "Public property," as defined by the Civil Code, includes roads, lakes, rivers, property held for national defense purposes, coasts, ports and so on.²⁰ "Public property" cannot be sold or given away, and cannot be subject to a mortgage or lien.²¹

In contrast, private property belonging to the country, states or municipalities is defined most easily as whatever is not covered as "public" property. These properties can be mortgaged, given away or sold, provided the formalities are followed.²²

Public land in Venezuela is sometimes called "ejido."²³ Other times, land is called "baldía." In general terms, "ejidal" land is that land that belonged to the municipalities at the time of colonization.²⁴ It also consists of other lands acquired by the municipalities.²⁵ "Ejidal" land generally cannot be sold or mortgaged.²⁶ "Baldía" land consists basically of land belonging to the government that was not "ejidal" land, and which had no other legal owner.²⁷ This land can be sold or assigned by the government.²⁸ For example, if the government assigns the land to municipalities, it becomes "ejido" land.²⁹

Venezuelan law recognizes contractual rights and guarantees, including liens on property. These guarantees can give one creditor a preference over another, and limit the owner's right to sell the property until the underlying obligation is paid. Creditors may also demand immediate payment of a secured obligation in the event the security decreases in value, even if the term of the obligation has not passed.

Under Venezuelan law, there are four fundamental types of contractual guarantees. First, there is the ordinary lien ("prenda ordinaria").³⁰ This lien is used for personal property used to secure an obligation. The "prenda" requires the handing over ("tradición") of the collateral, and cannot be used for real estate. The physical handing over of the property is a sign to third parties that the property is being used as collateral.³¹

The second type of guarantee is the mortgage on real estate property ("hipoteca inmobiliaria").³² It can be created by law, by judicial decision or by agreement. It cannot be used for personal property, but does allow the debtor continued use of the property. To create a "hipoteca," the security must be recorded in a public document, registered in the public registry.³³

Third, Venezuelan law allows for mortgages on moveable property ("hipoteca mobiliaria:), such as motorcycles, boats, automobiles, industrial machinery, and so on.³⁴ This "hipoteca" should also be registered at the public registry.

Last, Venezuelan law provides for liens without taking possession of moveable property ("la prenda sin desplazamiento de posesión").³⁵ This can be used for agricultural and forestry products, animals and other agricultural objects.³⁶ This lien does not require the deposit of property with a creditor.³⁷ In fact, the law treats the debtor as the custodian of the encumbered property.³⁸ The law does require a public document registered with the public registry for the creation of the lien. And, the creditor has the right to inspect and appraise the collateral.³⁹ This type of lien is specifically endorsed by the Agrarian Reform as the preferred method for agrarian credit.⁴⁰

Agricultural liens are preferred by commercial lenders for two basic reasons. First, they cannot lend using agrarian reform land as collateral--it cannot legally be mortgaged. Second, the procedure for foreclosure on agricultural produce is much easier than for real property.⁴¹ In short, agricultural liens are more efficient than mortgages on property.

Unlike unsecured creditors, creditors who are secured by these types of guarantees can have preference over unsecured lenders and can also legally pursue the collateral even if in the hands of third parties.⁴²

Like most property regimes, Venezuela law allows for limitations on property rights. These limitations include the usufruct, the right of use, the right of habitation and the right of home.⁴³ Servitudes are likewise contemplated,⁴⁴ as in most jurisdictions.

Mineral rights and mining are governed by special law.⁴⁵ In general, Venezuelan law differentiates between the soil and the subsoil. The soil belongs to the owner while subsoil belongs to the government. The soil consists of the depth necessary to work the land or to build buildings. Subsoil, and the extraction of mineral substances, are regulated by this special legislation. Other special laws

govern the extraction of petroleum, coal and salt. Likewise, foreign investment is subject to constraints beyond those listed or discussed in this report.

THE AGRARIAN REFORM LEGISLATION

The Agrarian Reform Law was designed to address land ownership questions and social policy.⁴⁶ More specifically, it was conceived as a means to transform the agrarian structure from large estates ("latifundios") to small, producer-owned plots.⁴⁷ The struggle against "latifundios" is of such national importance that it was even included in the Constitution.⁴⁸ Further, social policy dictated that whoever worked the land should also own it.⁴⁹ In fact it can be safely said that Venezuelan agrarian law in general was structured to protect farmers, rural workers and campesinos.⁵⁰ In this regard, it is similar to Peruvian legislation which dictated, until recently, that in order to maintain title, the farmer had to continue in possession and use of the land.⁵¹

"Social Policy," as used in Venezuelan agrarian law, is a short-hand, catch-all term meaning, in simplified terms, that the land should not be viewed or used as simply a market commodity. Instead, it should be used to promote social and economic development among the historically disadvantaged. Land should also be used to promote social and economic equality.

This approach to land policy is typical in Latin America, especially in Peru and Mexico. "Social policy" and social concerns were behind the "land to the tiller" land reform programs in the 1960s. Implicit in this is a suspicion by Latin Americans that the market forces will act against the interest of the lower classes if left unchecked. Thus, they have written "social policy" concerns into the law.

The problem of "latifundio" began with colonization.⁵² A "latifundio" system was in place in Venezuela from this colonization period right up to the Agrarian Reform.⁵³ It was against this concentration of ownership that the Agrarian Reform was designed.

During the 1930's in Venezuela, there were a number of large-scale, violent peasant disturbances.⁵⁴ These were met by government actions to suppress the riots.⁵⁵ Rural dissatisfaction in turn led to a mass exodus from rural areas to urban areas.⁵⁶ As the crisis dragged on, there emerged a consensus among the public and the government that an agrarian reform was needed.⁵⁷

The first agrarian reform in Venezuela occurred in 1945.⁵⁸ However, one month later, a coup de etat prevented the new agrarian law from taking effect.⁵⁹ A second agrarian law was passed by Congress in 1947, but this too was frustrated, leading to the dictatorship of Pérez Jiménez.⁶⁰ Once Pérez Jiménez was removed in 1958, Venezuela once again began to consider an agrarian reform.⁶¹ And this lead to the agrarian reform law of 1960.

a. Land subject to the reform

In general, land in Venezuela is owned by (a) the country; (b) states; (c) municipalities; (d) public establishments; (e) other legal entities; or (f) individuals.⁶² As a general rule, the Agrarian Reform Law affects private property of public entities, including rural properties and "baldías" land,⁶³ although procedures exist for including other lands belonging to public entities.

Land held by individuals can also be subject to the Agrarian Reform legislation.⁶⁴ In theory, only land that is not being used in accordance with social policy is affected by the Agrarian Reform.⁶⁵ This includes, for example, land held by renters and unutilized land, but excludes lands that do meet social objectives, like parks, reserves and sanctuaries,⁶⁶ as well as private property that completely meets a list of required social objectives.⁶⁷

When the National Agrarian Institute⁶⁸ needs to expropriate a piece of property to be included in the Agrarian Reform, a number of procedures must be followed. The National Agrarian Institute must pay the owner a fair price for the land prior to its expropriation.⁶⁹ There must also be a finding that the taking is in the public interest.⁷⁰ The entire process takes a maximum of 90 days.⁷¹ Still, owners can exempt from the Agrarian Reform up to 150 hectares of first class land, or its equivalent in other classes of land.⁷² The location of this set-aside is up to the original owner.⁷³ Further, it should be noted that the Constitution guarantees private property, prohibits confiscations and any expropriations must be paid for.⁷⁴

While expropriated property is always paid for, it may not always be paid for in cash. Venezuelan law allows the Board of Directors of the National Agrarian Institute to pay for land, at least in part, using government bonds.⁷⁵ The bonds pay interest at 3-4%, may or may not be negotiable, and carry terms that can extend up to 20 years.⁷⁶

Thirty years ago the government expropriated quite a bit of land for the agrarian reform.⁷⁷ Nowadays, there are very few expropriations.⁷⁸

b. Beneficiaries of the reform, and the transfer of agrarian reform property.

The National Agrarian Institute hands out land to its beneficiaries using a number of general principles. First, it is the workers who should receive land.⁷⁹ And the workers should receive the land on which they labor.⁸⁰ Second, the Institute can provide ("dotar") land either to individuals or to collectives.⁸¹ Indeed, campesinos and rural workers are guaranteed land under the Constitution.⁸² Finally, the Institute tries to organize beneficiaries into population centers and production units.⁸³

Occupation and possession rights are given increased prominence in the agrarian reform, which guarantees the right of farmers to remain on the land where they work.⁸⁴ This has in effect created a "right of permanence" in Venezuelan legislation, enforceable through the courts using the writ of "amparo agrario."⁸⁵

The Venezuelan Agrarian Reform Law does not provide for a size limitation, although limits may be set through administrative rulemaking. In this regard it differs from a number of other jurisdictions.⁸⁶ Thus, large land estates can be held by a single owner and still be outside the legislation.⁸⁷ Similarly, an Agrarian Reform beneficiary could receive a large parcel of property, provided that social policy was served. Venezuela's agrarian reform states the standard for parcel size should be determined by the form and surface of the land itself, depending on topographic and agricultural conditions of the land and other economic variables.⁸⁸ In short, all lots are determined by their economic viability.⁸⁹

The National Agrarian Institute provides land grants ("dotaciones," from the Spanish verb "dotar" which literally means to give or hand over) subject to certain conditions. It does not give out fee simple titles ("títulos plenos"). What it does provide is akin to a use right or usufruct. The beneficiary has the right to use the land so long as the beneficiary works the land. If the land is abandoned it can revert to state control and ownership. The beneficiary cannot place a mortgage on the land, since the beneficiary is not the fee owner.⁹⁰ Interestingly, however, the Institute may allow the land to be sold, provided that the buyer meets certain qualifications and the Institute grants its authorization. The land can also be passed to heirs in wills or through intestacy, assuming subsequent holders

continue to use the land in conformity with the Institute's social objectives.⁹¹ This is similar to prior law in Perú, which required governmental authorization prior to the mortgage, transfer or sale of agrarian reform property.⁹² Current Peruvian law has jettisoned such restrictions as of August 1991.⁹³

The "dotaciones" are distinct in Venezuelan law from other forms of landholdings contemplated in the Civil Code.⁹⁴ First, it should not be confused with the usufruct. A usufruct is a civil code equivalent to a right to use and enjoy the property of another, referred to in Spanish as a "usufructo."⁹⁵ Second, the "dotación" should be distinguished from the emphyteusis. Under the civil code, the emphyteusis is basically a long-term lease with a requirement to improve the land, which also allows the right to use and enjoy the land as if it were owned outright.⁹⁶ This is referred to in Spanish as an "enfiteusis."⁹⁷ Third, the "anticresis" is a loan in which the creditor is given access and permission to use the good held as collateral, usually a house. Finally, the "dotación" should not be confused with a rental agreement ("arrendamiento").⁹⁸

In general Venezuelan law, there are two "types" of titles: provisional (sometimes called "supletorio") and definitive. The U.S. equivalent to provisional titles would be possession rights. In Venezuela, under certain conditions, an occupant to land can apply for formalization of his right to possession. If this is granted, it is referred to as a "titulo supletorio" or a "titulo provisional." After a period of time since issuing the "titulo provisional," the now possessor of the land can apply for a "definitive title" (titulo definitivo). Once a definitive title is issued, the possessor becomes an owner.

Observers have criticized Venezuela's National Agrarian Institute for following up and making sure its beneficiaries receive "definitive titles." This in part is the result of confusion over what "definitive" means. For the most part, people need a "definitive" title to document the transfer, sale or mortgage of an ownership interest. But that ownership interest may only be, for example, a use right, and not a fee simple interest. Thus, even with a "definitive" title, we must ask the question a definitive title to what?

As stated above, the National Agrarian Institute provides land grants subject to certain conditions. It does not give out fee simple interests ("títulos plenos"). Even with a definitive title, the interest in the land cannot be freely mortgaged or sold. In contrast, with just a provisional title, the land can still be passed to heirs in wills or through intestacy, assuming subsequent holders continue to use the land in conformity with the Institute's social objectives. Thus, there is little

incentive for the beneficiary to push the bureaucratic process forward to obtain a "definitive" title. In short, the peasant does a cost benefit analysis: in the case of "dotaciones" of land, the definitive title gives no additional benefit over a provisional title, while it may cost the peasant time and money to pursue the conversion of the title.

When land is given to collective organizations, the Institute also organizes "agrarian centers."⁹⁹ These agrarian centers provide the superstructure for coordination of the efforts of the individual members. Curiously, however, these agrarian centers lack legal "personality" common to corporation or other legally constituted and recognized organizations.¹⁰⁰ Yet, the agrarian centers should not be confused with agricultural cooperatives which do possess legal "personality," are composed of individual members.

The agrarian centers have an organizational structure which allows for participation by its members. There is an assembly and an administrative committee that provide direction for the center.¹⁰¹ The centers further provide courses and seminars on agricultural production for their members.

The Institute may grant "dotaciones" of land without charge ("título gratuito"),¹⁰² or may require the beneficiary to pay for the land ("título oneroso").¹⁰³ The Institute will grant "títulos gratuitos" when the economic condition of the beneficiary justifies such action and where the collective interest is served by making these beneficiaries productive.¹⁰⁴ Generally, productive farmers, graduates of agricultural education programs and veterinarians are required to pay for their land.¹⁰⁵ Yet whether the land is sold or given freely, the Institute is forbidden from trying to make a profit on any individual transaction.¹⁰⁶

When the Institute decides to sell its "dotaciones," it does so at less than market rates. First, it allows for discounts in the price for certain factors such as number of dependents, including a spouse.¹⁰⁷ Purchasers can also finance their purchase through the Institute for up to thirty years, with a two year grace period, and payments not in excess of the value of 5% of total production.¹⁰⁸

The law permits "latifundistas" to voluntarily break up estates and distribute the land, with clear title and free of charge, to renters, workers and other qualified persons.¹⁰⁹ Assuming this distribution is inadequate to address the needs of the beneficiaries, the beneficiaries retain the right to appeal to the Institute for additional land.¹¹⁰

In the 1970s, peasant groups used to organize to pressure the National Agrarian Institute to distribute land to the campesinos.¹¹¹ However today, with decreased pressure on land resources, peasants do not feel the need to organize collectively. Instead they are applying for land directly with the Institute.¹¹² The agrarian reform legislation sets forth the formalities and contents for the beneficiaries' application to the National Agrarian Institute.

The "dotaciones" under the agrarian reform law cannot be sold, rented or inherited without the express approval of the National Agrarian Institute.¹¹³ This limitation on ownership was imposed quite deliberately. The "dotaciones" were seen as a way to transform the Venezuelan agrarian structure. To prevent a return to a "latifundio" system, the legislature imposed these restrictions.¹¹⁴

In Mexico, the private sector can now purchase agrarian reform ejidal and communal properties.¹¹⁵ Prior law restricted the sale of such land. The government of Carlos Salinas de Gotari, in making the change, is trying to end a tenure system which has favored communal ownership ever since the "Land and Liberty" revolution of 1910-1917.¹¹⁶ Similarly, changes in tenure structure in Honduras have removed legal impediments to the free transfer of landholdings. Freehold interests have been created.¹¹⁷ This Honduran land can now be sold, transferred or rented.¹¹⁸ Thus, in some respects, Venezuela has not yet followed the lead of these two countries.

c. The National Agrarian Institute

Ever since 1949, Venezuela has had an agrarian reform institution, even though the new agrarian reform legislation was not passed until 1960.¹¹⁹ The new legislation did however give the entity a new identity and mission. Presently, the Institute is governed by a Board of Directors, composed of five members, one of which is the President of the Institute.¹²⁰ At least one director is selected as an agriculture professional and at least two directors are chosen as representatives of the campesinos. The Board has the responsibility to formulate the carrying out of the agrarian reform, the handing out of "dotaciones", acquire and expropriate property as necessary, return land to indigenous peoples to the extent practicable, promulgate regulations for administered lands and emit bonds to pay for property expropriated, among other duties.¹²¹

d. Rural Credit and Technical Assistance.

Venezuela has been involved with rural agrarian credit for a long period of time.¹²² In 1924, the Caracas Chamber of Commerce addressed the notion of creating an agricultural mortgage agency to provide rural credit.¹²³ In 1928, the "Banco Agrícola y Pecuario" was established to assist the commercial farm sector through a mortgage guarantee arrangement.¹²⁴

The 1960 agrarian reform legislation recognized that land alone would not bring the "campesinos" into the economy.¹²⁵ Thus, it contemplated rural credit and technical assistance as well.¹²⁶ To provide for these needs, the government created the Agriculture Credit Institute ("Instituto de Crédito Agrícola y Pecuario"), the Agriculture Credit Fund ("el Fondo de Crédito Agropecuario"), the Agriculture Development Bank ("Banco de Desarrollo Agropecuario") and funds for coffee and cacao ("Fondo de Café," "Fondo de Cacao").

Technical assistance is also included in each "dotación." As a result the government, through the Agriculture Ministry, has created an extensive system of agricultural extension.¹²⁷ Further, each agricultural center provides additional extension and outreach services.¹²⁸

Agrarian cooperatives provide a number of additional services to campesinos. They require a democratic organizational structure, organized with certain formalities. They also have as at least one goal the furthering of education among the members.¹²⁹ Other forms of collective enterprise among producers include agrarian businesses, credit unions and the Campesino Social Companies which receive property collectively from the Institute under the agrarian reform on behalf of their members.

The Instituto de Crédito Agrario ("ICAP") finances small and medium agricultural producers.¹³⁰ Its credits are supervised and directed.¹³¹ It has mainly been used to assist farmers in expanding their landholdings and agricultural production.¹³² Further, its programs enjoy a relatively positive repayment history.¹³³

At present, ICAP is undergoing a major restructuring.¹³⁴ It is looking to consolidate and computerize its operations. It will close a number of its offices to increase the staff's ability to administer the credits by centralizing some functions. Over the next year, it will be reviewing the national highway network to see what infrastructural needs there will be in agriculture. And it will continue to professionalize its activities.

The Banco de Desarrollo Agropecuario ("BANDAGRO") was designed to finance agricultural credit for medium and large producers, and is currently in the process of being phased out.¹³⁵

One idea floating in political circles now is to consolidate all public sector agrarian financing into a central Agrarian Bank.¹³⁶ This would allow for centralization of resources and continuity of administration in the future.¹³⁷ ICAP and BANDAGRO suffered from administrative inconsistency in the carrying out of their functions.

e. Dispute Settlement

To settle agrarian disputes, Venezuela has created special tribunals to adjudicate such claims.¹³⁸ In doing so, Venezuela followed the lead of Perú which created agrarian reform courts, courts of special jurisdiction, to settle matters related specifically to the agrarian reform.¹³⁹ The Venezuelan legislation also established streamlined procedures for processing claims.¹⁴⁰ Venezuela, like Colombia, also provides public defenders for the indigent.¹⁴¹

Agrarian courts have jurisdiction over rural areas: civil and mercantile courts govern urban sectors.¹⁴² Normally, agrarian disputes in court take about six months to resolve.¹⁴³ For most requirements, the ordinary civil procedure, with its time periods for each stage of adjudication, are applied.¹⁴⁴ The Superior Court (a court of appeals) hears about 800 cases annually.¹⁴⁵ The trend, however, is to look for administrative solutions to disputes, rather than litigation.¹⁴⁶

In some cases, campesinos refer their disputes directly to their elected officials. The Commission on Agriculture of the lower house of Congress in Venezuela receives many such cases. As of December 1991, it had a backlog of 500 cases unresolved.¹⁴⁷ That Commission feels that a national cadastre could help resolve nearly all of the cases pending before it.¹⁴⁸

f. Women

The agrarian reform law makes special provision for women within its framework. While the law fails to recognize that women can be the "head of household" by granting land to the father figure, it does allow for women to demonstrate that the

father has abandoned the family. In this case, the woman can receive benefits as the main breadwinner of the family, as if she were the head of household.¹⁴⁹

More thought needs to be given to women and their special needs. A specific gender analysis of tenure policy might be an appropriate way for the government to identify what factors inhibit women's participation in the economy, especially in rural areas.

g. Registration of agrarian reform lands and the national cadastre.

All property records in Venezuela, in theory, should be registered at the public registry. This includes agrarian reform properties. The public registry is used to inscribe transactions in real estate and regularize their transfer. This contrasts with the cadastre, which is used to delineate property boundaries geographically. To simplify, the registry inscribes documents, a cadastre describes property, providing an inventory of the nation's land.¹⁵⁰ Ideally, the property registry would be coordinated with the cadastre so that property documents registered would be referenced to the cadastre map.

Very little work has been done on a comprehensive national cadastre in Venezuela, although the idea is not new. In 1936, one law called for a new cadastre and even set forth its purposes and procedures.¹⁵¹ The agrarian reform law renewed the call for a cadastre, and modified some of the goals of the project.¹⁵² The idea is to survey the entire country according to some set plan, assign identity numbers ("cédulas") to each of the plots, and integrate this system into the property registry. To this end, the Ministry of Agriculture ("Ministerio de Agricultura y Cría") contains a National Land and Water Cadastre Office. The Ministry of the Environment and Natural Resources has joint responsibility for a rural cadastre.¹⁵³

Unfortunately, legislation has imposed a number of goals on any cadastre project, including (1) the determination of rights of each property owner, (2) the inscription of all properties in a special registry and (3) appraisals of the property.¹⁵⁴ Still, the Agrarian Reform law did not require completion of a cadastre prior to execution of the reform.¹⁵⁵

Government inaction on the cadastre means that Venezuela has no Torrens-like system to guarantee property boundaries.¹⁵⁶ Property transactions recorded by civil registries are not linked with a physical description and map of the actual

property. This is not unlike the current situation in Ecuador, where the Congress has been unable to pass a new national cadastre law.

Property-related documentation registration is governed by a specific law.¹⁵⁷ There is a "principal registry office" in Caracas and in each of the capitol cities of each state in Venezuela.¹⁵⁸ Each district of each state has at least one regional office as well.¹⁵⁹ Registered documents carry the weight of "public faith."¹⁶⁰ This means that their contents have been legally verified and therefore have the effect of law. Thus, registration of documents can be extremely important. As a result, in the case of any doubt concerning the merits of registration, the registrar is encouraged to deny registration.¹⁶¹

These civil registry offices record a wide variety of documents, not just titles to property.¹⁶² They also register university titles and degrees, military ranks, names of public employees, ecclesiastical qualifications, professional licenses and other documents.¹⁶³ Once registered in one registry, the document will have legal effect throughout the country.¹⁶⁴

Each principal office and each regional office has a registrar, named by the President by way of the Ministry of Justice.¹⁶⁵ The registrar must live in the same town as the office to which he is assigned.¹⁶⁶ The salary of the registrars, as well as that of their employees, is fixed by the national budget law.¹⁶⁷

The registrars have to place in trust a sum of money as a guarantee for their faithful compliance with their duties.¹⁶⁸ This sum of money, the most being Bs. 30,000 for the position of Registrar for the Liberator Department, is significantly less than \$1000,¹⁶⁹ although this can be increased or decreased by Ministerial action.¹⁷⁰ This trust money is not refunded to the registrar until three years after completing his work as registrar,¹⁷¹ to guard against discovery of abuse after the registrar has left the office.

Fees collected by the registry office are set by statute.¹⁷² No other charges can be imposed by the registrar.¹⁷³ In general with regard to records of real estate, the fees are related to operations rather than the size of landholdings or the value of the land. Registrars, and their employees are forbidden to accept "tips" or "gifts": if they do, they could be subject to fines of 25 to 400 Bs.¹⁷⁴ (less than \$10). Finally, the registrars are forbidden from registering any transaction in which the registrar is a party at interest.¹⁷⁵

In theory, real property should be registered at the local office. However, the law recognizes at times it may be necessary for documents to be recorded at a more convenient location, one other than the assigned local registry. In this case, there is an additional fee involved for the inconvenience of the registrar and the additional work involved.¹⁷⁶ At additional cost, the registrar will leave his office and travel to a requested cite to record a document. In fact, in some cases the registrar can be civilly prosecuted for not responding to such a request.¹⁷⁷

The law not only regulates the registrar, but the functions of the office as well. Photocopies and microfilm, where available, have become accepted legal documents, when produced by the registrars' staff.¹⁷⁸ Offices must be open for registration of documents at least four hours a day.¹⁷⁹ The files should be open for public inspection at least six hours a day.¹⁸⁰ Registrars are responsible for the reasonable care of the documents, and can be punished civilly and even criminally in case of negligence.¹⁸¹

The registry law contemplates the production of back-up copies of documents. Every couple of months, local registries send copies of their records to the principal registries.¹⁸² Likewise, the principal registry offices send copies of their records to the Ministry of Justice. The Ministry guards the copies.¹⁸³ Individuals can also request copies of any public document. The registrar can copy an original either by hand, on a typewriter or by photocopy (or other mechanical means of reproduction).¹⁸⁴

There are many formalities required to record a document. For example, registrars will not record a document in most cases unless it has been drafted by an attorney.¹⁸⁵ The document must be in Spanish as well.¹⁸⁶ Normally, when the document is recorded, the registrar, each of the parties at interest and several witnesses are all on hand simultaneously to record the document.¹⁸⁷

From time to time the registrar might be requested to make a certification. For example, the law contemplates that members of the public can request the registrar to certify who owns a piece of property, whether it is encumbered, whether it is subject to any limitations or conditions, and whether it can legally be sold.¹⁸⁸ This greatly simplifies the title search process, since the certification of the registrar will carry the weight of law.¹⁸⁹

As in any jurisdiction, the law on the books may not be the law in practice. An empirical study of the registries would be valuable to ascertain how in fact they

work. This will be especially important if Venezuela wishes to further professionalize the administration of its registries.

The Ministry of Agriculture and the legislature are currently studying a new proposal to create a national cadastre.¹⁹⁰ Under the proposal, all future documents recorded at property registries would have to include an parcel identity number (or "cédula") before the document could legally be recorded, assuming that parcel had been mapped and covered by the cadastre.¹⁹¹ 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." These two steps would begin the integration of the cadastre and the streamlining of the title search process.

In theory, the entire country would be included in the cadastre: there would be no exceptions. Once the law is in place, the Ministry of Agriculture would like to obtain a loan for about four years of work from the Inter-American Development Bank to finance a mapping, titling and land request project.¹⁹² This would get the project off the ground. Total implementation of the project could take years!¹⁹³

The new 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 the property).¹⁹⁴

Chapter II, "Executory Bodies and the Preservation of the National Land Cadastre," would create a new "Instituto Autónomo de Catastro Nacional" with offices through out 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 fundamentally 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. Interestingly, however, it does allow for arbitration, as provided for in the Civil Procedure Code, as appropriate.

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

Chapter IX, "Defense of the User," allows the Public Minister 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.¹⁹⁵

The drafters do not foresee an immediate, full implementation of the draft law, even if passed. Rather, they intend the law to be phased in progressively. This should allow for greater coordination. It will also allow the cadastre to be formulated in a more rational manner.¹⁹⁶ Beyond these measures, the methodology for carrying out the project is not clear. It may be that the government will contract out at least a portion of the work.

Since the cadastre project attempts only mapping and not normalization, the drafters hope that there will be little opposition to the mapping.¹⁹⁷ Still, criminal sanctions will apply to anyone interfering with the mapping process.¹⁹⁸

The term "normalization" means formalization of tenure. The peasants may be living on land owned by third parties or the government. A cadastre project will map the area--it will not throw the peasants off the land. Thus the project does not contemplate a policing of the property, leaving it as it is: informal.

The cadastre project may run into opposition from squatters. The peasant squatters might believe that once the land was mapped, the authorities would know who the squatters were, and that they were trespassers. They might be afraid that the authorities would remove them from "their" land. Thus, they might be inclined to resist the government's mapping effort, despite criminal sanctions. To counter this, the Inter-American Development Bank will promote a public

relations campaign to inform the peasants of the purposes of the project.¹⁹⁹ This has worked already in several areas of Venezuela to deter resistance to cadastral efforts.²⁰⁰

The bill for a national cadastre does not contemplate any new procedures for disputes settlement, if and when mapping uncovers a conflict in the registry.²⁰¹ In this case, the parties at interest would be left to litigate the case according to standard procedure in the courts. We might question whether a dispute settlement mechanism should be included in the new legislation. This should be the subject of additional study before a conclusion is reached.

The Inter-American Development Bank will contract out the cadastral work to a private entity.²⁰² This will be up for open international competitive bidding.²⁰³ Thus, there is no guarantee that a Venezuelan company will be the one to perform the cadastral work, although a Venezuelan firm certainly would have an competitive advantage in the bidding process.

OBSERVATIONS AND RECOMMENDATIONS

A review of the Venezuelan agrarian reform and related property law highlights a number of concerns:

- (a) Should Venezuela allow a consolidation of small landholdings?
- (b) How might the Venezuelan agrarian structure affect natural resource management?
- (c) What role can titling play in the land market?
- (d) How can tenure policy be used to professionalize the administration of government?
- (e) What impediments to investment are found in the Venezuelan property system?
- (f) How can reform of the tenure structure promote Democratization?

Each of these questions is discussed individually below, placing Venezuela's situation in a regional context. This is followed by a summary of the main hypotheses or conclusions.

a. Should Venezuela allow a consolidation of small landholdings?

The Venezuelan agrarian reform demonstrates a preoccupation with "latifundios." This preoccupation is typical of Latin American agrarian reform legislation. However the present government's policy is to establish private land holding that include free transferability rather than guarantee approximate equality of land holding.²⁰⁴ Land reform, at least in the popular media and politics, has seemed to be overtaken by efforts to "privatize" and make the agricultural land use more efficient.

Assuming Venezuela would be interested in allowing consolidation of landholdings, this would bring up a very important policy consideration: does a larger farm size have a positive impact on productivity?

Conflicting data exist in the region with respect to this important question. There are really two questions involved: (1) What is the engineering relationship of production per inputs actually used in the production process? and (2) What is the degree of utilization of the available land resources and the related use of labor?²⁰⁵

With regard to the first issue, regional data have shown that the returns to scale are approximately constant in developing country agriculture and, therefore, neutral with respect to the more general issue of farm size as related to productivity.²⁰⁶ In fact, it is common to observe even large plantations repeating many-fold the operations carried out by the single farmer on a small family establishment, so that changes in efficiency with scale would not be anticipated.²⁰⁷

It is the second issue--that of utilization--that is perhaps the most important one. "In an agricultural structure composed of very large estates holding most of the land on the one hand, and a large number of small farms on the other, agricultural production tends to be below its maximum potential level because land is under-used on the large farms, while excess labor without opportunity for fully productive work is crowded onto the small farm sector (or in the landless labor force)."²⁰⁸

Dwight Steen, an Agriculture Development Officer with the Agency for International Development (A.I.D.) has commented on this observation. He wrote "Concentration of land holdings per se may not be detrimental to the

economic social and political development of a country. However, concentration of holdings in situations where land is under-utilized and under conditions of abundant rural labor, coupled with a lack of non-farm employment opportunities (characteristic of the Central American countries), may indeed prove to be a major obstacle to increased economic development."²⁰⁹

In Latin America, a number of studies have cited data supporting the conclusion that small farmers (characterized by intensive land use) are more productive than their larger counterparts (characterized by under-utilization of land).²¹⁰ This expected inverse relationship between farms size and various measures of production per land unit was recently reaffirmed in a study in Brazil.²¹¹ Productivity is greater on small farms because of their intensity of resource use, even though large farms are characterized by higher-valued export crops and greater yields.²¹² One recent paper provides a comprehensive, in-depth economic analysis of this phenomena, integrating land with labor and capital markets.²¹³

Similar results have been recorded in Jamaica. There, the best land in the country is held in large estates and has been extensively farmed. Yet this land has had the lowest level of return per acre, despite having the physical and financial resources to produce more intensively. In contrast, small farmers, situated on hillsides, performing both land- and labor-intensive agriculture, have contributed a higher return per unit of land, and provide greater returns in terms of foreign exchange saved by producing foodstuffs which otherwise would have to be imported.²¹⁴

Interestingly, lot size and productivity have been studied by the World Bank, not only for owned farms, but also for rented properties. In that study it was shown that, all other things remaining constant, a tenant's optimal effort per hectare is a decreasing function of the size of the plot he cultivates.²¹⁵

The notion that land reform can be justified using both equity and productivity considerations has been referred to as the "Institutional School" of thought.²¹⁶ The main proponent of this theory has been Peter Dorner of the University of Wisconsin's Land Tenure Center. The School developed out of the perceived shortcomings of traditional development theory.²¹⁷

"The dynamic growth of Latin [American] agriculture became that of large-scale export production wherein more capital intensive technologies promoted the concentration of landholdings of increasing size. Unsurprisingly, the

displacement of peasant farmers from the land and the substitution of capital for labor in the choice of technologies became the dual accompaniment of growth... The innovative approach provided by the (Institutional School's) reformulation of development theory indicated that both growth and equity could and should occur together."²¹⁸

While the factors that appear to underlie the high yields per land unit on small farms should eventually come into play whenever a large farm is split into small ones, such productivity also depends on the operators.²¹⁹ The pay-off to expanding the land under small farms and increasing its productivity also depends on how long the country will have a surplus of labor at low opportunity cost. The administrative capacity to support small farms must be developed in countries that have a history of neglecting them.²²⁰ For example, credit and educational extension programs could be offered to assist the small farmer.

It is often asserted that "...large farmers are more dynamic in the adoption of technological innovations. The premises are that their superior education makes them more aware of technical advances, and that their greater margin for risk-taking and access to capital enables them to shift to new techniques sooner."²²¹

This would appear to be a solid argument against land redistribution or other strategies relying on small farms.²²² **However, we do have some data on this issue, and from an empirical vantage, this conclusion has not been supported by the data.**²²³ Looking to data in Colombia, Pakistan and India, one report concluded that "The popular association of mechanization with more dynamic adoption of new techniques is generally erroneous. Large-farm adoption of mechanized techniques may just as well reflect the distortions of the factor price incentives facing them (cheaper capital, dearer labor) away from the social scarcity values of factors, as any technical superiority over small farms in the appropriate choice of modern techniques... Even though the larger farms are likely to be the first to adopt innovations, small farms are likely to follow--and sometimes do so very soon."²²⁴

In recent years the inverse relationship between productivity and farm size appears to be changing because of technological progress and the Green Revolution.²²⁵ Still, data from Brazil and India indicate that, even after new Green Revolution technologies were introduced, output per farm area declines as farm size increases.²²⁶ Economies of scale in terms of technology, credit markets, labor supervision and labor markets are impacting the historic inverse

relationship, and possibly eliminating the advantages of breaking up large estates.²²⁷

"In as much as this is the case, one can argue that there are no productivity gains to be made by breaking up the larger farms through land reform. In this respect the presence of internal and external economies of scale on large farms would be ignored only at the risk of a loss of efficiency."²²⁸ Of course, this is true only if the large estates are fully utilized. And, land reform can be justified for social equality reasons in addition to arguments for enhanced efficiency. Thus, in Venezuela's case, it may be that there are few gains to be made in terms of efficiency of production, by allowing consolidation of landholdings. This, at least could be a hypothesis for further study of this empirical question.

Making titles freely transferable means that consolidation of landholdings would be possible. Still, given that there may not be an automatic economic benefit via efficiency for consolidation of landholdings, this may not be likely to occur. After all, the granting of freehold interests allows the market to determine ownership. Property will flow to its most productive use. As we have seen, the large estates are not necessarily more productive than the small estates. Thus, it is unlikely that property will be consolidated by the largeholders,²²⁹ even though the Venezuelan government would be allowing such a possibility to exist legally.

The conclusion that consolidation of landholdings is unlikely depends, however, on the assumption that the market is functioning properly. This may not be the case. Possibly smallholders in Venezuela have less capacity to absorb risk. They may also have less access to capital. If these are true, we might expect consolidation to occur.

Answer Summary: As a matter of course, large landholdings are not necessarily more efficient than small landholdings. Granting freehold interests could theoretically allow consolidation of interests. However, if the market is functioning properly, this is an unlikely outcome. This conclusion, based on data from the region, should be monitored and tested in the Venezuelan context.

b. How might Venezuelan agrarian policy and structure affect natural resource management?

Land tenure policies are relevant to resource management in a number of ways. For example, without well-defined property boundaries, it is difficult to imagine

how nature reserves and parks can protect themselves from encroachment by squatters and land invaders. In Venezuela, the lack of a national cadastre makes clear determination of such boundaries difficult.²³⁰ Further, many properties are not even titled, further complicating the determination of tenure.²³¹

In Honduras, an A.I.D. titling project was successful in providing, for the first time, detailed information concerning the distribution of landholdings located in national and ejidal land.²³² One study in particular showed that people who have been farmers (including cattle ranchers practicing extensive grazing) consider the creation of national park boundaries as limiting their "traditional rights" to use these lands.²³³ Property delineations proved helpful "...for the planning of development projects which affect the land, such as soil and water conservation, watershed management programs, technological transfer oriented toward particular crops, as well as programs oriented to the solution of problems of extreme poverty due to fragmentation of land."²³⁴ We might expect similar results if Venezuela becomes increasingly involved in property formalization efforts.

Experience in the Latin America region has taught us that titling around reserves, combined with access by farmers to affordable intensification technologies, helps stabilize land use in surrounding areas.²³⁵ This in turn generally has several effects.

First, people sometimes invade reserves because of "land hunger."²³⁶ Titling of property may thus allow people to purchase land in titled areas, diminishing the need for invasion of reserves. Fortunately in Venezuela's case, land invasions do not seem chronic, at least in some regions. Thus, this rationale for titling may not be as relevant.

Second, people sometimes move into forest reserve areas to access resources such as timber. In an A.I.D.-sponsored study in Uganda, residents of a forest reserve and a game reserve were compared.²³⁷ These two groups had differing expectations of their tenure rights and behaved accordingly: people on the game reserve felt secure in their rights, and planted trees, mulched soils and built permanent structures, while those in the forest reserve had temporary housing and engaged in short-term agricultural practices, using the land as an extractive resource. The difference between these groups was security of ownership, which in the Latin American context, under most conditions, most probably means titling.

Titling of property surrounding the reserve may promote investment in renewable resources in these areas. This in turn may relieve some of the pressure to invade reserves. In other words, land security in outside property will encourage the use of outside property as an alternative to the reserve. This was also found to be the case in Madagascar.²³⁸ Thus, as Venezuela attempts to manage and protect its natural resources and forest reserves, it should consider titling as one tool in the effort.

Buffers surrounding land reserves can also be important.²³⁹ People sometimes invade reserves in search of wood. Peter Bloch of the Land Tenure Center at the University of Wisconsin supports the notion that buffer zones can offer agro-forestry projects or wood lots around reserves. In (possibly over-) simplified terms, these lots would take away the uniqueness of the reserves as a supplier of wood. People would then have access to the wood without invading the reserves. This was shown to be the case in Madagascar.²⁴⁰ The Venezuelan Ministry of Agriculture might research this issue to determine if buffers are relevant in the Venezuelan case.

Land-titling also provides incentives to individual landowners to engage in environmentally and agriculturally sound practices.²⁴¹ Further, people who have security in their land tenure may depend less on reserves, and may be more willing to plant trees and other long-term crops.²⁴² Conversely, if landowners lose secure title, they lose an incentive to plant trees.²⁴³ We might postulate that this may be especially true in Venezuela on agrarian reform land where landholders cannot freely transfer their property without government authorization. An empirical study of this could prove very interesting, if not eminently valuable.

In a study of short-term contract renters in the southern Honduran highlands, farmers had insecure tenure on very small plots. That study showed that they exhibited the poorest of conservation practices. They tended to grow mostly annual crops, to farm the worst and steepest property, to burn crop residues and to clear the land of all trees. In contrast, smallholders who owned their properties, farmed intensively. They preserved trees, constructed rock-wall barriers to prevent erosion and followed other soil conservation measures.²⁴⁴

Similarly, a study in Amazonia found that "the lack of secure title and the precarious de facto hold over land mean that reinvestment in erosion control, fertilizer, and irrigation are... both costly and irrational."²⁴⁵ It may well be that property formalization efforts in Venezuela could produce similar effects.

Interestingly, in Costa Rica, it was found that exactly where tenure rights were ambiguous, farmers plant trees. They do so as a means to prolong the farmer's possession of a parcel. Similarly, landowners often react against this possibility by refusing to allow tenants to plant trees, regarding this as an attempt on the part of the tenant to tie down the land indefinitely.²⁴⁶ Similar results were uncovered in Haiti.²⁴⁷ This is analogous to the situation in Venezuela where landowners did not allow their tenants to plant trees in the times of the great haciendas.²⁴⁸ Fortunately, this pattern was broken with the agrarian reform law, which gave ownership to the workers--the exact outcome feared by large landowners in Costa Rica and Haiti.

According to one study funded by the Africa Bureau of A.I.D., titling of property may lead to enhanced rational irrigation schemes.²⁴⁹ Watershed management may also be improved.²⁵⁰

Freely-transferable titles in Venezuela may provide property buyers with access to quality land. Research has shown that lack of access to quality land may increase environmental degradation.²⁵¹ One report concluded that:

"Examining the relation of unequal resource distribution to the environment involves a recognition that groups of users place differential demands on resources; the poor have a proximate, direct effect on them, while the impact of those who own ample land and water is indirect but just as decisive, if not more so, in determining resource destruction. Indeed, it appears that if the environmental problem is ever to be alleviated, the lock which large landlords have on most of the productive resources in some Third World areas must be substantially modified or broken through land reform. Problems of deforestation, for example, probably need to be solved in the major farming regions of the countries involved, far from the site of actual resource damage."²⁵²

This comment would seem to apply to the Brazilian case, as recorded by Martinez-Alier.²⁵³ It also applies to the Dominican Republic, Guatemala and Haiti, as explained by Thiesenhusen.²⁵⁴ Fortunately, a land market appears to be working already in Venezuela, either formally or informally, providing buyers with access to land. The introduction of freely-transferable titles might increase this access further and enhance the market's ability to deter environmental degradation. Indeed, the World Bank's projects are heading in the direction of linking land regularization efforts to the promotion of sustainable development

programs that incorporate indigenous peoples' knowledge of natural resource management and environmental conservation.²⁵⁵

Based on the above regional perspective, we would hypothesize that Venezuela's management of land could be improved via titling. Upon the implementation of any titling project in Venezuela, the government should monitor and evaluate the impact of titling on the environment. Armed with this data, it will be in a position to make mid-course corrections in its land management.

Answer Summary: Venezuela could improve its environmental management of natural resources by (1) establishing a national cadastre, (2) providing a formal title to landholders, and (3) making titles transferable. Progress should be monitored and evaluated.

c. What role can titling play in the land market?

Tenure policy should seek to correct market imperfections in the land market. At present, in many Latin American countries, as much as half of the country's land plots may be without title. These plots, lacking documentation of formal ownership, command less market value than plots with formal documentation. As a result, property value is based in part not on the productive value of the land, but rather on its formality. Further, plots without formal title are less desirable and therefore harder to sell.

In Latin America, land is often held informally, that is, without legal title.²⁵⁶ This is certainly true in Venezuela.²⁵⁷ Why do people not have title to their land? Studies in Latin America show that they may lack title because it may cost more to register the land than the land is worth. They may lack title because registration requires repeated and expensive travel to a capital city. It may be because they do not occupy the land legally. May be the registration process itself is not understood.²⁵⁸ Exact definition of the causes in Venezuela will be important to determine. The consequences of this policy are numerous.

First, persons without secure title may have less incentive to invest in their property. Similarly, persons without title may invest less "sweat equity" (time and effort) into their land.²⁵⁹ "Analyses of rural areas of Latin America and the Caribbean have frequently concluded that the lack of an adequately secure ownership title to land, especially for smallholders, is a major constraint on the development of agriculture in the region."²⁶⁰ Indeed, in Costa Rica it was shown

that there is a significant positive relationship between greater tenure security and the level of income per farm.²⁶¹

Not all the data support the same conclusion, however. In Ecuador, data appear to demonstrate that receipt of clear titles has little impact on behavior: there was little or no difference between titled and untitled land with regard to (1) use of agricultural inputs; (2) investment in infrastructure; (3) credit use; (4) investment of cash savings; and (5) crop yields. The data are more surprising because the titled land received more visits from an agricultural engineer than the untitled lands did.²⁶²

Second, persons without title have less incentive to use sustainable agricultural practices or protect the environment. Instead they use less expensive, short term methods, strip the land and leave. Having a title helps titleholders to take a long-term perspective.

Third, persons who lack title probably pay no property taxes. For example, Jamaica was able to successfully implement a property tax with relative simplicity of administration and practical methodologies after it conducted a simple land survey, instead of pursuing a full legal cadastre.²⁶³ Yet, with the exception of "Chile and Jamaica and, to a lesser degree, Colombia, there has not been a systematic effort in any of the countries to make land taxation an effective fiscal policy tool."²⁶⁴

Fourth, persons without title have less security in their existence: they are in greater danger of eviction. However, it should be noted that landholders often have some documentation to support their claim to the land (ex. a sale document or a will). Thus, even persons without a registered deed may have **some** security in their real property.²⁶⁵

Fifth, persons without title cannot sell their land, or will receive a lesser value for the land and investors will not purchase land in which they have no security, or will pay little for it.²⁶⁶ The recent A.I.D. land titling project in Honduras demonstrated that the value of titled land has increased more than the value of untitled land.²⁶⁷

Sixth, persons without title may produce products that require less investment or have a shorter season, given the lack of security in land. It was concluded that this was not the case for coca production.²⁶⁸

Seventh, formal credit often requires that the borrower mortgage land. Mortgages on land in Venezuela require that the property be registered. Thus, persons without title have no formal opportunity to borrow against equity in land. Other forms of collateral could be farm equipment, expected produce, accounts receivable, buildings, movable property, and so on. However, land is often the preferred form of collateral. And, without collateral, even if credit is available, it is likely to be for a shorter term or at a higher interest rate, reflecting the greater degree of risk involved. Studies in Costa Rica, Thailand, and St. Lucia confirm that titles have a positive impact in expanding the availability of cheaper and longer-term credit.²⁶⁹

An A.I.D. Titling Project in Honduras found a dramatic increase in credit available for agriculture to newly titled property, as opposed to property in a control group (left untitled), although some of the increase may be attributable to other factors in addition to titling.²⁷⁰ Interestingly, however, farmer behavior in such areas as investments in new coffee plantation and infrastructure, orientation of family labor toward farm production, yields, use of production technology and overall production, did not change between titled and untitled groups engaged in agricultural production.²⁷¹ "These results underline the need for a wide variety of programs for improving the productivity of agriculture, one of which may be the titling of untitled farmers."²⁷²

Still, "A study... connected to the land titling project in Ecuador, concluded that legal title in Ecuador made little difference with regard to use of agricultural inputs, investment in infrastructure, credit use, or crop yields. The study did not investigate the impact of titling on land market activities."²⁷³

At present the short time frame for the evaluation of titling projects "means that little information is available on the long-term impact of titles on agrarian structure and land market activity. This is an important area for longitudinal research and evaluation in the future."²⁷⁴ Such a monitoring and evaluation process should be included in Venezuela's efforts.

Eighth, persons without title operate outside the legal institutions of government.²⁷⁵ Persons with title operate within the formal, regulated economy. This will be important for the large, informal sector of the Venezuelan population.

Ninth, formal landowners may have greater incentive in participating in democratic society. Insecure landholders have less to lose by engaging in counter-societal behavior. Samuel Huntington "argues that a suffering peasantry

is profoundly revolutionary; when peasants own land of their own, in contrast, they are a generally conservative force in politics."²⁷⁶ Given the social disturbances of the last several years in Venezuela, efforts to stabilize and pacify the population should be encouraged.

The development importance of security of ownership should not be overstated, however. Land policies have to be balanced between private security of ownership and social needs which may limit that security.²⁷⁷ In the U.S., the fifth amendment to the constitution guarantees the federal government the right to take private property for public benefit, provided there is compensation. Development programs should be attentive to both needs.

In addition, titling of land ownership itself is not a guarantee of economic development. While titling of property may give security, other factors may make investment less attractive: Inappropriate banking policies, the overall availability of credit and technical assistance²⁷⁸, produce markets and pricing of products all play a role. Titling, therefore, should be one element of a broader development strategy.

The World Bank found in one of its projects working with lowland, forest-dwelling indigenous people in Brazil, that "land regularization in and of itself will not be sufficient to protect indigenous peoples' land security. Thus, even in those projects where large amounts of land were set aside, indigenous people remained vulnerable to the destruction of their resource base and their cultural integrity."²⁷⁹

Any method of titling should be tailored to the specific conditions of the country. In Honduras, for example, David Stanfield has shown that much of the property there went unregistered, despite titling efforts. This was due to (1) the legal restrictions on titling parcels smaller than 5 hectares, and (2) lingering suspicions by the peasantry of the state. Curiously, data from the Honduran case also show a continued use of "customary" rather than legal procedures for land transactions even after an A.I.D. titling project.²⁸⁰ The land formalization process in Venezuela should therefore take local history and culture into consideration.

In addition the method of titling should also be tailored within the country. For example, Venezuela's peri-urban areas require greater precision in measurement. Thus, more expensive methods may be used to generate more exact data. In contrast, in the rural areas, less accuracy is needed. Therefore, less expensive measures are more appropriate.

In Venezuela, titling could compose an element of a broader program for democratization of the political economy.²⁸¹ However, titling itself is not likely to be a sole instrument for social re-organization. David Stanfield notes that linking titling reform with reform in the banking sector could provide greater participation in the political economy, especially if the reform included the development of banks specifically capable of dealing with small scale agriculture.²⁸²

Typically, titling is part of a broader registration reform process.²⁸³ Registration reform often requires special expertise.²⁸⁴ However, it appears that this process is necessary for the maintenance of a modern cadastral land information system (a database to be used for property taxation, zoning and many other land use purposes). This can lead to an enhanced utilization of land resources.²⁸⁵ Properly implemented, this broader land information system should also contain an effort to monitor and evaluate the effects of the changes to the land market.

The titling formalization process can have other negative impacts: women²⁸⁶, secondary right-holders and absentee holders may be excluded from the system. Thus, the approach should take the under-represented into account.

By inference, land-titling and formalization also require subsequent maintaining of the records, and legal enforcement of boundaries.²⁸⁷ This represents another negative aspect of titling.

Further, titling makes land a commodity, able to be bought or sold. Without titles, it is difficult to sell property. It may be that giving titles to the poor will in effect make them able to lose the land. Critics have held that titling is a method enabling the elite to obtain access to the land. Still, if land markets allocate land to the most efficient user, and the smaller farmers are the more efficient users, then this concern will be mitigated. Thus, it will not be a serious concern in the formalization process.

In short, land titling is not a panacea: It is likely to have different impacts on different countries, depending on custom. Further, it is not a substitute for providing production credit. Grenville Barnes lists titling's private sector benefits (incentives to increase investment in land and availability of cheap, long-term credit, citing cases of Thailand, Costa Rica and St. Lucia; increased investment in agricultural inputs, citing a study in Costa Rica; increased productivity, citing Brazil and Ecuador; higher farm income, citing Ecuador; and improved marketability of land) and public sector benefits (improved land administration;

public planning and development capabilities; improved land valuation capability; facilitating land acquisition for public projects; providing a better basis for land use control; and other benefits).²⁸⁸

After an analysis of the benefits of titling, Barnes provides an extensive look at the costs of land titling projects in the LAC. Costs are generally the best-documented aspects of a titling project, but they are almost always portrayed in general budgetary terms.²⁸⁹ Barnes compares and contrasts costs in Honduras, Ecuador and St. Lucia. He recommends, in great detail, how the following factors could be used to evaluate the costs and benefits of titling projects: efficiency, cost, maintainability, quality, complexity and utility. He also lists a number of factors which can frustrate the realization of the benefits from land titling.²⁹⁰

In short, Barnes does not say that, in titling projects, the benefits always exceed the costs. Instead, he states that:

"The quick 'band-aid' solutions envisaged by many titling projects are in most cases inadequate for the accomplishment of the long-term goals associated with tenure security. It is recommended that a long-term program mentality be adopted in place of the short-term project counterpart which is characteristic of current [land titling] implementation efforts."²⁹¹

In Japan, a land titling and nationwide cadastre project, which is viewed as quite successful, cost one year's property tax revenue to generate.²⁹² This can be used as a rough estimate of the costs. In the U.S., between 1987 and the year 2000, the nation will invest more money in property registry modernization than it spent on the entire national highway network!²⁹³ Thus, while the benefits are high,²⁹⁴ costs are high too.²⁹⁵ Therefore, care should be taken to insure that the project is designed correctly and is properly administered. Constant monitoring and evaluation will be required.

In addressing the costs and benefits of titling, along with why property holders have title, the above analysis has examined other countries in the region. While these analogies help us to anticipate or hypothesize what the situation might be like in Venezuela, we should be careful not to assume that Venezuela's case always fits the mold. An empirical evaluation of why people lack title in Venezuela would be invaluable to the design of a titling project there. Similarly,

Venezuela will have to put together a cost-benefit analysis to determine if, under local conditions, titling makes sense.

Answer Summary: Venezuela could probably improve the efficient functioning of a land market by formalized titling. This would in turn enhance tenure security in most cases, and would provide an important element for a broader program aimed at improving agricultural productivity. Local empirical data should be gathered on these subjects to assist in project design.

d. How can tenure policy be used to professionalize the administration of government?

Tenure policy often attempts to professionalize the governmental operations of land titling. In some Latin American countries, the formalization of titling property can cost more than the property itself, due to the bureaucracy involved. Long delays and bribes also come into play. In Peru, the Instituto Libertad y Democracia (ILD) asserts that the government itself is so full of expensive red tape, that the process is impossible for the least able of society. Foreign investors complain that Venezuelan registries are full of these kinds of hassles. Venezuela should cut that red tape, train officials to perform tasks in a more efficient manner, and modernize the process.

Similarly, tenure projects have the potential to streamline tax collection. At present, it is nearly impossible in many Latin American countries to collect property taxes, since the governments are often not aware of what property exists. Without a comprehensive cadastre in Venezuela, the government is unaware of the entire inventory of properties from which it could be collecting revenue. Informal property owners pay no tax. Lack of established property boundaries could mean that some owners pay more than their share, others escape taxation. Tenure formalization may enable the government to collect taxes and generate revenue in an efficient, low-cost and equitable manner.

Professionalization of the administration of land may also mean improvement of dispute resolution mechanisms. At present, agrarian legislation has been going in the direction of administrative solutions rather than judicial action. However, the new cadastre bill does not provide for any additional mechanisms for dispute resolution. Still, formalization of Venezuela's property system will require clarification of the system. This clarification will require sorting out who owns what--and this means dispute resolution. The Venezuelan government should

anticipate increased land disputes, at least in the short to medium term, as it formalizes landholdings. Thus, it should take measures to promote dispute resolution as part of the modernization package.

Finally, a coordinated approach may eliminate duplicative efforts in government. At present in most Latin American countries, tax authorities, municipalities, the military, housing and urban development planners, and Agriculture Ministry officials all keep some sort of records as to who holds what property in the country. These records are often inconsistent and coordination among these divergent groups has been spotty. In Venezuela, a comprehensive information management system, integrating tenure and management concerns, could bring these interests together and promote coordination among them.

An empirical evaluation and study of the Venezuelan case could prove very helpful to the design of any titling and cadastre project. Having data on weaknesses in government administration of land management would allow the project design to take these factors into account. It would also assist the government in its cost-benefit analysis.

Answer Summary: Improved efficiency of property registries is an important element toward professionalization of government. It can increase participation in the system, provide for a more efficient and equitable property tax system and eliminate duplication of effort. It will also mean providing increased dispute resolution opportunities and mechanisms. We can speculate that these benefits will accrue from implementation of new tenure policies. However, an evaluation of the local Venezuelan conditions will be necessary for a more exact estimate of the value of the new policies.

e. What impediments to investment are found in the Venezuelan property system?

Tenure analysis is helpful in the promotion of investment in three important ways. First, some foreign firms have to-date been reluctant to purchase property in Venezuela due to a lack of faith in the judicial system and especially the system of property law. Throughout Latin America, the chaos in the registries, the lack of standardized procedures and the non-comprehensive nature of the record-keeping system are all warnings to potential investors that their land purchases may not be secure. As a result, these firms simply go to other markets. Venezuela could make itself a more attractive market for foreign investment simply by cleaning up the registry system.

A number of improvements to the registry system could be implemented. Most importantly, the national cadastre should be integrated with the property registry.²⁹⁶ This will increase the public confidence in the registry system and thus should have a positive impact on security and clarity of tenure.²⁹⁷ It would also provide the first step toward a new land information management system--governmental infrastructure necessary for the rational management of land and water resources.

The political appointment system lends itself to criticisms that the process is biased or involves favoritism, whether this is true or not.²⁹⁸ Moving such positions into career, professional staff appointments might be the preferred method of employment. Still, it should be noted that such an appointment system is typical in Latin America.²⁹⁹

The "trust" money that registrars deposit with the government is ridiculously low--less than USA \$1000. Loss of these funds would be negligible compared with the potential gains to be made from abuse. Similarly, sanctions for abuse are minimal. Venezuela should re-think whether these mechanisms are really suited to achieve their intended purpose, and modify the registry law accordingly.

Still, the Venezuelan system already has advantages over other registries in the region:

- (1) It operates on a non-profit basis, unlike offices in some other countries that are organized as lucrative businesses.³⁰⁰
- (2) Statute regulating fees imposes a single charge per operation, rather than by lot size. This structure, although nominally regressive in nature, insures that the smallholders will have their transactions processed at the same rate as other players. In other countries, where fees are based on lot size or value, it is asserted that largeholders' transactions receive priority--in order to get the higher fee.³⁰¹
- (3) Unlike Guatemala and Jamaica, for example, Venezuela provides offices throughout the country for convenience of registration.
- (4) Venezuela's system creates safe back-up records in case of destruction. In Nicaragua, that country lost at least two civil registries, and all corresponding documentation, when two offices were completely

destroyed during the civil war. Guatemala today has only two registries.³⁰²
The majority of Guatemala's records are at the Guatemala City registry--
an old building which could potentially be destroyed by fire or flood. No
back-up records exist.³⁰³

Second, as the ILD found in Peru, persons who lack formal title are less willing to invest in their property. For example, a homeowner would be reluctant to install running water or reforest portions of his land if he thought he might be later evicted from his property due to the lack of a formalized title. Giving formal titles to property owners would promote a more logical process of decision-making and promote investment in the land.

Finally, formal land registration would promote investment by allowing banks to provide property equity loans. Today in Venezuela, persons without formal title are unable to tap available credit markets because, even if they have collateral, they have no way to record a mortgage on unregistered property.

Modernization of the registries should be the subject of a serious evaluation and study. It should include a comprehensive land information and cadastral management system. This is an important element of tenure security, environmental protection, zoning, taxation and land use and management.

Conclusions: Investment and access to credit can be promoted by improving and mechanizing the registration process, integrating a cadastre into the property registry, planning a land information management system, and providing titles to landholders. Modification of the registry law to increase "trust" funds and penalties should also be considered in the modernization process.

f. How can reform of the tenure structure promote democratization?

Tenure policy in general, and the agrarian reform legislation in particular, have obvious implications for the disadvantaged. And Venezuela's historically disadvantaged rural population may be better off with formalized, registered, transferable titles. With formalized titles, they would be able to buy and sell land: They would be brought into the formalized economy, as the Instituto Libertad y Democracia found in the case of Peru. As a result, these individuals may be afforded access to the legal and political systems of the country for the first time.

Implications for country stability are also present. Giving people an incentive and a way to participate in the system goes a long way towards deterring counter-societal behavior. This is important in a country like Venezuela that has had problems in recent years with protests and disturbances.

Tailoring the reform process to promote these types of goals should be promoted. Study should concentrate on incorporation of the disadvantaged into the market economy. Continued evaluation and monitoring should also be implemented to insure that the disadvantaged are in fact participating, and not being left behind. This constant feedback of information would permit mid-course corrections in tenure policy to include the disadvantaged.

Answer Summary: The disadvantaged likely would be better-incorporated into a democratic society if they had formalized, registered, transferrable titles. Monitoring of this process will assist Venezuela in making mid-course corrections in the case the disadvantaged are being excluded from the democratic economy.

MAIN CONCLUSIONS, RECOMMENDATIONS AND FINDINGS:

Venezuela should consider moving towards a system of freehold titles. As a matter of course, large landholdings are not necessarily more efficient than small landholdings. Thus, consolidation of landholdings may not be a likely result of such an action. Venezuela also should improve the efficient functioning of a land market by formalized titling. This would in turn enhance tenure security in most cases, and would provide an important element for a broader program aimed at improving agricultural productivity. Unfortunately, most Venezuelan agrarian law at the moment supports limitations on titles and free transferability. Modernization to include freehold interests in formerly agrarian reform property would probably mean new legislation and amending the Constitution.

Combined with efforts to title unregistered property and movements toward granting freehold interests, Venezuela should begin planning a land information management system. One key element of this would be the integration a cadastre into the property registry. The registry should also provide for meaningful enforcement of registry rules, possibly to include an increase in the "trust" fund requirement and increases in the sanctions for abuse.

Investment and access to credit can be promoted by improving and mechanizing the registration process and the land information system. Similarly,

environmental management of natural resources should be improved by these measures. In addition, these efforts should promote professionalization of government. They can increase participation in the political and economic system, provide for a more efficient and equitable property tax system and eliminate duplication of effort within government. Finally, the campesinos themselves would be better able to participate in the democratic society if these measures were implemented.

Finally, the Venezuelan government should identify special concerns of rural women³⁰⁴, secondary right-holders and absentee holders, who may be excluded, as Venezuela attempts to modernize its system of property registration and ownership. Thus, the changes to the system should take these under-represented groups into account. This will be especially important, as Venezuela focuses attention on dispute resolution mechanisms under the property formalization and modernization process.

Initial investigation of the land market in Venezuela will greatly assist the project design, since little data is available on Venezuelan land markets. Constant monitoring, study and evaluation of the land markets will be necessary to make sure that the objectives are being met.

Below is a list of specifically legal steps recommended, in a descending order of priority.

- a. Design a comprehensive, long-term, integrated, multi-purpose land information system ("MPLIS"). The MPLIS would include the cadastral work contemplated by the World Bank and the IDB.
- b. The Venezuelan government should grant freehold interests to land once a "dotación" has been paid for.
- c. The Venezuelan government should commence a national titling and registration program to move land from the informal to the formal sector. This is a logical follow-up to the establishment of an MPLIS design.
- d. The Government of Venezuela should assist the activation of land markets by ending incentives for holding large estates by (i) ending any subsidies to cattle production, and (ii) establishing an effective land taxation system (the lack of which is in effect a subsidy to large estateholders). Land taxation can be implemented using data from the MPLIS.

ENDNOTES:

1. José Luis Aguilar Gorrondona, Cosas, Bienes y Derechos Reales (Caracas, 1991) at 171.
2. José Luis Aguilar Gorrondona, Cosas, Bienes y Derechos Reales (Caracas, 1991) at 171.
3. Ramón Vicente Casanova, Derecho Agrario (5th Ed., Caracas, 1990) at 39.
4. Art. 99, Constitution of the Republic of Venezuela (Jan. 23, 1961); See also Congreso Nacional, La Ley de Reforma Agraria en las Cámaras Legislativas (Caracas, 1960) (Vol. I) at 32-3.
5. Ramón Vicente Casanova, Derecho Agrario (5th Ed., Caracas, 1990) at 41.
6. Art. 545 of the Civil Code. Translation is of the author. N.B. Art. 99 of the Constitution of the Republic of Venezuela (Jan. 23, 1961), guarantees the right of property. However, it also subjects property to a social function, allowing for restrictions on the rights of property holders.
7. José Luis Aguilar Gorrondona, Cosas, Bienes y Derechos Reales (Caracas, 1991) at 170-1.
8. Ramón Vicente Casanova, Derecho Agrario (5th Ed., Caracas, 1990) at 41, 113-17.
9. Ramón Vicente Casanova, El derecho a la reforma agraria (Mérida, Venezuela, 1989) at 37-40; For a historical perspective, see Aníbal Dominici, 1 Comentarios al Código Civil Venezolano (Caracas, 1896)(reprinted 1962) at 820-68.
10. Art. 796 of the Civil Code; Ali José Venturini and Román José Duque Corredor, La usucapión especial agraria (Caracas, 1991) at 23.
11. Emilio Calvo Baca, Manual de derecho civil venezolano (Caracas, 1984) at 145; Interview with Israel Arguello Landaeta, Superior Court Judge, Second Circuit, Civil and Mercantil (Dec. 10, 1991, Caracas), who asserts that the "acción de permanencia" is the most popular claims made in agrarian tribunals. This is based on Art. 690 of the Civil Procedure Code ("Código de Procedimiento Civil").

12. Art. 14, Ley Orgánica de Tribunales y de Procedimientos Agrarios, Gaceta Oficial No. 3.015 (extraordinario), Sept. 13, 1982; Ramón José Duque Corredor, Derecho Agrario: Instituciones (Caracas, 1985) at 306-21.

13. Ali José Venturini and Román José Duque Corredor, La usucapión especial agraria (Caracas, 1991) at 41-2 notes that Brazil has had a very active policy of promoting usucaption interests. Colombia's period for adverse possession is only five years--more advantageous still for the campesinos. See Ali José Venturini and Román José Duque Corredor, La usucapión especial agraria (Caracas, 1991) at 42-3. Other countries with similar provisions include Costa Rica, Italy and Peru. See Ali José Venturini and Román José Duque Corredor, La usucapión especial agraria (Caracas, 1991) at 43-5.

14. Ramón Vicente Casanova, El derecho a la reforma agraria (Mérida, Venezuela, 1989) at 40-1.

15. Ramón Vicente Casanova, El derecho a la reforma agraria (Mérida, Venezuela, 1989) at 41-3.

16. Josefina Ríos de Hernández, La hacienda Venezolana: una visión a través de la historia oral (Caracas, 1988) at 26-7.

17. Art. 525 of the Civil Code.

18. Art. 542 of the Civil Code.

19. Article 539 of the Civil Code.

20. Art. 539 of the Civil Code; José Luis Aguilar Gorrondona, Cosas, Bienes y Derechos Reales (Caracas, 1991) at 77-81.

21. José Luis Aguilar Gorrondona, Cosas, Bienes y Derechos Reales (Caracas, 1991) at 81; Civil Code Art. 543.

22. José Luis Aguilar Gorrondona, Cosas, Bienes y Derechos Reales (Caracas, 1991) at 83-4

23. The history of "ejidal" land is discussed in Luís González Vale, Ensayo sobre derecho agrario y reforma agraria en Venezuela (Caracas, 1963) at 58-74.

24. Art. 3, Ley de Tierras Baldías y Ejidos (Aug. 19, 1936).
25. Art. 3 (1) through (4), Ley de Tierras Baldías y Ejidos (Aug. 19, 1936).
26. Art 32 of the Constitution of the Republic of Venezuela (Jan. 23, 1961).
27. Art. 1, Ley de Tierras Baldías y Ejidos (Aug. 19, 1936).
28. Art. 136, Constitution of the Republic of Venezuela (Jan. 23, 1961).
29. Art. 30, Ley de Tierras Baldías y Ejidos (Aug. 19, 1936).
30. Civil Code Art. 1837 and 1843; For a historical perspective, see Aníbal Dominici, 4 Comentarios al Código Civil Venezolano (Caracas, 1896)(reprinted 1962) at 262-271.
31. José Luis Aguilar Gorrondona, Contratos y garantías (7th Ed., Caracas, 1989) at 68.
32. Civil Code Art. 1877; For a historical perspective, see Aníbal Dominici, 4 Comentarios al Código Civil Venezolano (Caracas, 1896)(reprinted 1962) at 303-45.
33. José Luis Aguilar Gorrondona, Contratos y garantías (7th Ed., Caracas, 1989) at 82.
34. Civil Code Art. 21 lists objects which can be used. See also the Ley de Privilegios a Hipotecas Navales, Art. 16; Ley de Hipoteca Mobiliaria y Prenda sin Desplazamiento de Posesión, Gaceta Oficial No. 1.575 (extraordinario)(April, 4, 1975).
35. Ley de Hipoteca Mobiliaria y Prenda sin Desplazamiento de Posesión, Gaceta Oficial No. 1.575 (extraordinario)(April, 4, 1975).
36. Civil Code Art. 51 lists the objects available for this "hipoteca."
37. Emilio Calvo Baca, Manual de derecho civil venezolano (Caracas, 1984) at 497.
38. Civil Code Art. 55.

39. Civil Code Art. 59.
40. Art. 74 of the Agrarian Reform Law, Gaceta Oficial No. 611 (extraordinario), March 19, 1960.
41. Interview with Israel Arguello Landaeta, Superior Court Judge, Second Circuit, Civil and Mercantil (Dec. 10, 1991, Caracas). It is not uncommon for repossessions of real estate to take a year or more in the courts.
42. José Luis Aguilar Gorrondona, Contratos y garantías (7th Ed., Caracas, 1989) at 24.
43. Art. 582 of the Civil Code.
44. Articles 709 et seq., of the Civil Code; For a historical perspective, see Aníbal Dominici, 1 Comentarios al Código Civil Venezolano (Caracas, 1896)(reprinted 1962) at 713-812.
45. The Mining Law of Dec. 28, 1944, Dec. 2039 of Feb. 15, 1977, Res. 528 of Dec. 17, 1986 and Res. 429 of Nov. 11, 1982.
46. Art. 1 of the Agrarian Reform Law, Gaceta Oficial No. 611 (extraordinario), March 19, 1960.
47. Articles 1, 19 and 20 of the Agrarian Reform Law, Gaceta Oficial No. 611 (extraordinario), March 19, 1960; Ramón Vicente Casanova, Derecho Agrario (5th Ed., Caracas, 1990) at 42.
48. Art. 105 of the Constitution; See also Ali José Venturini and Román José Duque Corredor, La usucapión especial agraria (Caracas, 1991) at 28; Ali José Venturini, Derecho agrario venezolano (Caracas, 1976) at 57. For the importance of land in the popular debate, see such works as "Nos han dado la tierra," by Juan Rulfo and Los de abajo by Mariano Anzuela.
49. Ramón Vicente Casanova, Derecho Agrario (5th Ed., Caracas, 1990) at 48
50. Ali José Venturini, Derecho agrario venezolano (Caracas, 1976) at 56-8.
51. Texto Unico Concordado de la Ley de Reforma Agraria, Decreto 17716 (Peru), Decreto Supremo No. 265-70-AG, Art. 7(a).

52. Ramón Vicente Casanova, Derecho Agrario (5th Ed., Caracas, 1990) at 81
53. Ramón Vicente Casanova, Derecho Agrario (5th Ed., Caracas, 1990) at 81-95.
54. John Duncan Powell, The Politics of Agrarian Reform in Venezuela: History, System, and Process (Ph. D. thesis at the Univ. of Wisc., 1966) at 35-6.
55. John Duncan Powell, The Politics of Agrarian Reform in Venezuela: History, System, and Process (Ph. D. thesis at the Univ. of Wisc., 1966) at 37.
56. John Duncan Powell, The Politics of Agrarian Reform in Venezuela: History, System, and Process (Ph. D. thesis at the Univ. of Wisc., 1966) at 37-8.
57. John Duncan Powell, The Politics of Agrarian Reform in Venezuela: History, System, and Process (Ph. D. thesis at the Univ. of Wisc., 1966) at 54-65.
58. Salvador de la Plaza, Wenceslao Mantilla and Ramón Losada Aldana, Reforma agraria venezolana: concepción evaluación y perspectivas (Caracas, 1968) at 36.
59. Salvador de la Plaza, Wenceslao Mantilla and Ramón Losada Aldana, Reforma agraria venezolana: concepción evaluación y perspectivas (Caracas, 1968) at 36.
60. Salvador de la Plaza, Wenceslao Mantilla and Ramón Losada Aldana, Reforma agraria venezolana: concepción evaluación y perspectivas (Caracas, 1968) at 36-7.
61. Salvador de la Plaza, Wenceslao Mantilla and Ramón Losada Aldana, Reforma agraria venezolana: concepción evaluación y perspectivas (Caracas, 1968) at 37; The history and story behind the new legislation is found in Congreso Nacional, La Ley de Reforma Agraria en las Cámaras Legislativas (Caracas, 1960) (Vol. I & II).
62. Salvador de la Plaza, Wenceslao Mantilla and Ramón Losada Aldana, Reforma agraria venezolana: concepción evaluación y perspectivas (Caracas, 1968) at 40.
63. Art. 10 of the Agrarian Reform Law, Gaceta Oficial No. 611 (extraordinario), March 19, 1960.

64. Art. 22 of the Agrarian Reform Law; Salvador de la Plaza, Wenceslao Mantilla and Ramón Losada Aldana, Reforma agraria venezolana: concepción evaluación y perspectivas (Caracas, 1968) at 40.
65. Ramón Vicente Casanova, Derecho Agrario (5th Ed., Caracas, 1990) at 227.
66. Article 26 of the Agrarian Reform Law, Gaceta Oficial No. 611 (extraordinario), March 19, 1960.
67. Art. 19 of the Agrarian Reform Law, Gaceta Oficial No. 611 (extraordinario), March 19, 1960. N.B. Non-compliance with any one social policy objective is still grounds for expropriation. See Art. 22 of the Agrarian Reform Law, Gaceta Oficial No. 611 (extraordinario), March 19, 1960.
68. The "Instituto Agrario Nacional," often referred to by its acronym "IAN."
69. Art. 101, Constitution of the Republic of Venezuela (Jan. 23, 1961) sets forth the framework for compensation in case of expropriation. See also the Ley de Expropiación por Causa de Utilidad Pública o Social (Nov. 4, 1947); Articles 18-122 of the Ley de Minas (Dec. 28, 1944); Articles 26 et. seq., Ley de Reforma Agraria (March 5, 1960); Articles 132 et seq., Ley de Tierras Baldías y Ejidos (Aug. 19, 1936).
70. Ramón Vicente Casanova, Derecho Agrario (5th Ed., Caracas, 1990) at 232-3.
71. Ramón Vicente Casanova, Derecho Agrario (5th Ed., Caracas, 1990) at 232.
72. Art. 29 of the Agrarian Reform Law, Gaceta Oficial No. 611 (extraordinario), March 19, 1960; Congreso Nacional, La Ley de Reforma Agraria en las Cámaras Legislativas (Caracas, 1960) (Vol. I) at 34. Ramón Vicente Casanova, Derecho Agrario (5th Ed., Caracas, 1990) at 237.
73. Ramón Vicente Casanova, Derecho Agrario (5th Ed., Caracas, 1990) at 238.
74. Salvador de la Plaza, Wenceslao Mantilla and Ramón Losada Aldana, Reforma agraria venezolana: concepción evaluación y perspectivas (Caracas, 1968) at 42.
75. Art. 173 of the Public Credit Law.

76. Ramón Vicente Casanova, Derecho Agrario (5th Ed., Caracas, 1990) at 242-44.
77. Interview with Nora Vázquez de Escobar, Superior Court Judge, Agrarian Court (Dec. 10, 1991, Caracas).
78. Interview with Nora Vázquez de Escobar, Superior Court Judge, Agrarian Court (Dec. 10, 1991, Caracas).
79. Articles 2(d) and 104 of the Agrarian Reform Law, Gaceta Oficial No. 611 (extraordinario), March 19, 1960; Ramón Vicente Casanova, El derecho a la reforma agraria (Mérida, Venezuela, 1989) at 90-1.
80. Ramón Vicente Casanova, Derecho Agrario (5th Ed., Caracas, 1990) at 247.
81. Ramón Vicente Casanova, El derecho a la reforma agraria (Mérida, Venezuela, 1989) at 93. For a discussion of the differences between individual and collective "donaciones," see Ramón José Duque Corredor, Derecho Agrario: Instituciones (Caracas, 1985) at 184-5. The Venezuelan system differs from the Mexican model which, at least until this December, provided land only for collective ownership. See Ramón Vicente Casanova, Derecho Agrario (5th Ed., Caracas, 1990) at 249; "Nueva legislación agrícola aprueban en Mexico," Economía Hoy (Dec. 13, 1991) at 10, col. 4.
82. Art. 105 of the Constitution.
83. Salvador de la Plaza, Wenceslao Mantilla and Ramón Losada Aldana, Reforma agraria venezolana: concepción evaluación y perspectivas (Caracas, 1968) at 42.
84. Art. 2 (c) of the Agrarian Reform Law, Gaceta Oficial No. 611 (extraordinario), March 19, 1960.
85. Ramón José Duque Corredor, Derecho Agrario: Instituciones (Caracas, 1985) at 235-59.
86. Ramón Vicente Casanova, Derecho Agrario (5th Ed., Caracas, 1990) at 47 notes that Yugoslavia imposes a maximum size limit of ten hectares. Cuba sets the limit at five "caballerías." Also, for the case of Perú, meeting with Ing. Manuel Cristobal Nuñez, Program Director for Cadastres and Titling, Department of

Agriculture, Office of Titling (Lima, Perú) and Ing. Carlos Mendoza Mejía, also of the Peruvian Department of Agriculture, Office of Titling (Lima, Perú)(June 28, 1991).

87. Provided these lots meet the social policy criteria, as specified in Art. 19 of the Agrarian Reform Law, Gaceta Oficial No. 611 (extraordinario), March 19, 1960.

88. Art. 76 of the Agrarian Reform Law, Gaceta Oficial No. 611 (extraordinario), March 19, 1960; Ramón Vicente Casanova, Derecho Agrario (5th Ed., Caracas, 1990) at 256.

89. Art. 24 of the Agrarian Reform Law, Gaceta Oficial No. 611 (extraordinario), March 19, 1960.

90. Art. 15 of the Agrarian Reform Law, Gaceta Oficial No. 611 (extraordinario), March 19, 1960.

91. Art. 73 of the Agrarian Reform Law, Gaceta Oficial No. 611 (extraordinario), March 19, 1960.

92. Texto Unico Concordado de la Ley de Reforma Agraria, Decreto 17716 (Peru), Decreto Supremo No. 265-70-AG, Art. 86 (a,b and c).

93. Art. 7 of Decreto Legislativo No. 653 (Aug. 1, 1991)(Perú).

94. Ramón Vicente Casanova, Derecho Agrario (5th Ed., Caracas, 1990) at 254-55.

95. For a general discussion of the usufruct in Venezuela, see Emilio Calvo Baca, Manual de derecho civil venezolano (Caracas, 1984) at 177-82; For a historical perspective, see Aníbal Dominici, 1 Comentarios al Código Civil Venezolano (Caracas, 1896)(reprinted 1962) at 634-90.

96. For a historical perspective, see Aníbal Dominici, 4 Comentarios al Código Civil Venezolano (Caracas, 1896)(reprinted 1962) at 10-16.

97. The concept of "enfiteusis" is discussed in Ramón José Duque Corredor, Contratos Agrarios (Caracas, 1986) at 48-53.

98. The concept of rental agreements is discussed in Ramón José Duque

Corredor, Contratos Agrarios (Caracas, 1986) at 56-60. For a historical perspective, see Aníbal Dominici, 4 Comentarios al Código Civil Venezolano (Caracas, 1896)(reprinted 1962) at 17-79.

99. Art. 58 of the Agrarian Reform Law, Gaceta Oficial No. 611 (extraordinario), March 19, 1960.

100. Ramón Vicente Casanova, Derecho Agrario (5th Ed., Caracas, 1990) at 249.

101. Ramón Vicente Casanova, Derecho Agrario (5th Ed., Caracas, 1990) at 249.

102. Art. 63 of the Agrarian Reform Law, Gaceta Oficial No. 611 (extraordinario), March 19, 1960; Ramón Vicente Casanova, El derecho a la reforma agraria (Mérida, Venezuela, 1989) at 95.

103. Ramón José Duque Corredor, Derecho Agrario: Instituciones (Caracas, 1985) at 186; Articles 61 and 62 of the Agrarian Reform Law, Gaceta Oficial No. 611 (extraordinario), March 19, 1960.

104. Ramón Vicente Casanova, Derecho Agrario (5th Ed., Caracas, 1990) at 251.

105. Ramón Vicente Casanova, Derecho Agrario (5th Ed., Caracas, 1990) at 251-2.

106. Art. 165 of the Agrarian Reform Law, Gaceta Oficial No. 611 (extraordinario), March 19, 1960.

107. Art. 65 of the Agrarian Reform Law, Gaceta Oficial No. 611 (extraordinario), March 19, 1960. Ramón Vicente Casanova, Derecho Agrario (5th Ed., Caracas, 1990) at 252.

108. Art. 65 of the Agrarian Reform Law, Gaceta Oficial No. 611 (extraordinario), March 19, 1960. Ramón Vicente Casanova, Derecho Agrario (5th Ed., Caracas, 1990) at 252.

109. Ramón Vicente Casanova, Derecho Agrario (5th Ed., Caracas, 1990) at 253.

110. Art. 87 of the Agrarian Reform Law, Gaceta Oficial No. 611 (extraordinario), March 19, 1960.

111. Interview with Nora Vázquez de Escobar, Superior Court Judge, Agrarian

Court (Dec. 10, 1991, Caracas).

112. Interview with Nora Vázquez de Escobar, Superior Court Judge, Agrarian Court (Dec. 10, 1991, Caracas).

113. Ramón José Duque Corredor, Derecho Agrario: Instituciones (Caracas, 1985) at 213; Articles 15 and 74 of the Agrarian Reform Law, Gaceta Oficial No. 611 (extraordinario), March 19, 1960.

114. Ramón Vicente Casanova, Derecho Agrario (5th Ed., Caracas, 1990) at 260.

115. "Nueva legislación agrícola aprueban en Mexico," Economía Hoy (Dec. 13, 1991) at 10, col. 4.

116. "Nueva legislación agrícola aprueban en Mexico," Economía Hoy (Dec. 13, 1991) at 10, col. 4.

117. See Paragraph 20 of Mario Nufio Gamero, Ministro de Recursos Naturales, Proyecto de Ley para la Modernización y el Desarrollo del Sector Agrícola: Documentos de Apoyo (Tegucigalpa, Sept. 9, 1991) at 4.

118. See Mario Nufio Gamero, Ministro de Recursos Naturales, Proyecto de Ley para la Modernización y el Desarrollo del Sector Agrícola: Documentos de Apoyo (Tegucigalpa, Sept. 9, 1991) at 4.

119. Decree 173 (June 28, 1949) created the National Agrarian Institute under the Military Junta governing at that time. See Ramón Vicente Casanova, Derecho Agrario (5th Ed., Caracas, 1990) at 332.

120. Art. 158 of the Agrarian Reform Law, Gaceta Oficial No. 611 (extraordinario), March 19, 1960.

121. Art. 161 of the Agrarian Reform Law, Gaceta Oficial No. 611 (extraordinario), March 19, 1960.

122. See, for example, Banco Agrícola y Pecuario, Revista del Banco Agrícola y Pecuario (Caracas, April 1946), which discusses the diverse activities of the Bank even at that time.

123. John Duncan Powell, The Politics of Agrarian Reform in Venezuela: History,

System, and Process (Ph. D. thesis at the Univ. of Wisc., 1966) at 26.

124. John Duncan Powell, The Politics of Agrarian Reform in Venezuela: History, System, and Process (Ph. D. thesis at the Univ. of Wisc., 1966) at 26; Banco Agrícola y Pecuário, El Banco Agrícola y Pecuário en su Vigésimo Quinto Aniversario: 1928-1953 (Caracas, 1953).

125. Salvador de la Plaza, Wenceslao Mantilla and Ramón Losada Aldana, Reforma agraria venezolana: concepción evaluación y perspectivas (Caracas, 1968) at 56.

126. See, for example, Banco Agrícola y Pecuário, El Crédito Agrícola en los Sistemas de Riego (Caracas, 1971) at 1, which discusses the role of agricultural credit as one element of a plan for economic development.

127. Articles 125-127 of the Agrarian Reform Law, Gaceta Oficial No. 611 (extraordinario), March 19, 1960.

128. Art. 80 of the Agrarian Reform Law, Gaceta Oficial No. 611 (extraordinario), March 19, 1960.

129. M.A.C., "Ref. Arg.:", Informe de la Subcomisión Agrotécnica, . III, p. 182; Ramón Vicente Casanova, Derecho Agrario (5th Ed., Caracas, 1990) at 280.

130. Interview with Nora Vázquez de Escobar, Superior Court Judge, Agrarian Court (Dec. 10, 1991, Caracas).

131. Interview with Nora Vázquez de Escobar, Superior Court Judge, Agrarian Court (Dec. 10, 1991, Caracas).

132. Interview with Johnny Guarenas Borges, Director General of the Ministry of Agriculture (Dec. 12, 1991).

133. Interview with Nora Vázquez de Escobar, Superior Court Judge, Agrarian Court (Dec. 10, 1991, Caracas).

134. Interview with Johnny Guarenas Borges, Director General of the Ministry of Agriculture (Dec. 12, 1991).

135. Interview with Nora Vázquez de Escobar, Superior Court Judge, Agrarian

Court (Dec. 10, 1991, Caracas).

136. Interview with Israel Arguello Landaeta, Superior Court Judge, Second Circuit, Civil and Mercantil (Dec. 10, 1991, Caracas).

137. Interview with Israel Arguello Landaeta, Superior Court Judge, Second Circuit, Civil and Mercantil (Dec. 10, 1991, Caracas).

138. Ley Orgánica de Tribunales y Procedimientos Agrarios, April 4, 1976.

139. Decreto-Ley of June 24, 1969 (Peru).

140. Ramón José Duque Corredor, Derecho Agrario: Instituciones (Caracas, 1985) at 283-95.

141. Interview with Nora Vázquez de Escobar, Superior Court Judge, Agrarian Court (Dec. 10, 1991, Caracas).

142. Interview with Nora Vázquez de Escobar, Superior Court Judge, Agrarian Court (Dec. 10, 1991, Caracas).

143. Interview with Nora Vázquez de Escobar, Superior Court Judge, Agrarian Court (Dec. 10, 1991, Caracas).

144. Interview with Nora Vázquez de Escobar, Superior Court Judge, Agrarian Court (Dec. 10, 1991, Caracas).

145. Interview with Nora Vázquez de Escobar, Superior Court Judge, Agrarian Court (Dec. 10, 1991, Caracas).

146. New decrees regarding land invasions (Decreto 5 of 1983) and a 1990 provision regarding disputes processing try to seek administrative solutions. Interview with Nora Vázquez de Escobar, Superior Court Judge, Agrarian Court (Dec. 10, 1991, Caracas).

147. Interview with Walter Marquez, Member of Congress and President of the Agriculture Committee of the House of Representatives, Tersio Andrade, Member of Congress of the Agriculture Committee of the House of Representatives, and Tomás Armas, Member of Congress of the Agriculture Committee of the House of Representatives (Dec. 9, 1991, Caracas).

148. Interview with Walter Marquez, Member of Congress and President of the Agriculture Committee of the House of Representatives, Tersio Andrade, Member of Congress of the Agriculture Committee of the House of Representatives, and Tomás Armas, Member of Congress of the Agriculture Committee of the House of Representatives (Dec. 9, 1991, Caracas).
149. Ramón José Duque Corredor, Derecho Agrario: Instituciones (Caracas, 1985) at 261-2; see also Articles 73 and 93 of the Constitution.
150. Interview with Jesús Antonio García and Marino Ostos Flores of the Cadastre Office, Ministry of Agriculture (Dec. 9, 1991, Caracas).
151. La Ley de Tierras Baldías y Ejidos (Aug. 19, 1936); Reglamento de Catastro de Tierras Baldías (Aug. 21, 1936).
152. Art. 167 of the Agrarian Reform Law, Gaceta Oficial No. 611 (extraordinario), March 19, 1960.
153. Art. 36 (16) of the Ley Orgánica de la Administración Central.
154. Ramón José Duque Corredor, Derecho Agrario: Instituciones (Caracas, 1985) at 275.
155. Art. 56 (second paragraph) of the Agrarian Reform Law, Gaceta Oficial No. 611 (extraordinario), March 19, 1960.
156. Interview with Jesús Antonio García and Marino Ostos Flores of the Cadastre Office, Ministry of Agriculture (Dec. 9, 1991, Caracas).
157. Public Registry Law, Gaceta Oficial No. 2.209 (extraordinario), April 4, 1978; For a historical perspective, see Aníbal Dominici, 4 Comentarios al Código Civil Venezolano (Caracas, 1896)(reprinted 1962) at 346-58.
158. Art. 2, Public Registry Law, Gaceta Oficial No. 2.209 (extraordinario), April 4, 1978.
159. Art. 2, Public Registry Law, Gaceta Oficial No. 2.209 (extraordinario), April 4, 1978.
160. Art. 10, Public Registry Law, Gaceta Oficial No. 2.209 (extraordinario), April 4,

1978.

161. Art. 11, Public Registry Law, Gaceta Oficial No. 2.209 (extraordinario), April 4, 1978.

162. Interview with Jesús Antonio García and Marino Ostos Flores of the Cadastre Office, Ministry of Agriculture (Dec. 9, 1991, Caracas).

163. Art. 54, Public Registry Law, Gaceta Oficial No. 2.209 (extraordinario), April 4, 1978. A separate "Mercantil Registry" records commercial acts. For example, the Mercantil Registry would record the incorporation of a new business.

164. Art. 54, Public Registry Law, Gaceta Oficial No. 2.209 (extraordinario), April 4, 1978.

165. Art. 13, Public Registry Law, Gaceta Oficial No. 2.209 (extraordinario), April 4, 1978.

166. Art. 25, Public Registry Law, Gaceta Oficial No. 2.209 (extraordinario), April 4, 1978.

167. Art. 16, Public Registry Law, Gaceta Oficial No. 2.209 (extraordinario), April 4, 1978.

168. Art. 19, Public Registry Law, Gaceta Oficial No. 2.209 (extraordinario), April 4, 1978.

169. The Bolivar trades at a free rate of exchange. It is more or less Bs. 60 = \$ 1.

170. Art. 19, Public Registry Law, Gaceta Oficial No. 2.209 (extraordinario), April 4, 1978.

171. Art. 21, Public Registry Law, Gaceta Oficial No. 2.209 (extraordinario), April 4, 1978.

172. Art. 113, Public Registry Law, Gaceta Oficial No. 2.209 (extraordinario), April 4, 1978.

173. Art. 124, Public Registry Law, Gaceta Oficial No. 2.209 (extraordinario), April 4, 1978.

174. Art. 39, Public Registry Law, Gaceta Oficial No. 2.209 (extraordinario), April 4, 1978.
175. Art. 29, Public Registry Law, Gaceta Oficial No. 2.209 (extraordinario), April 4, 1978.
176. Art. 113 (first paragraph), Public Registry Law, Gaceta Oficial No. 2.209 (extraordinario), April 4, 1978.
177. Art. 131, Public Registry Law, Gaceta Oficial No. 2.209 (extraordinario), April 4, 1978.
178. Art. 31 (only paragraph), Public Registry Law, Gaceta Oficial No. 2.209 (extraordinario), April 4, 1978.
179. Art. 42 (sole paragraph), Public Registry Law, Gaceta Oficial No. 2.209 (extraordinario), April 4, 1978.
180. Art. 48, Public Registry Law, Gaceta Oficial No. 2.209 (extraordinario), April 4, 1978.
181. Art. 48 (first and second paragraphs), Public Registry Law, Gaceta Oficial No. 2.209 (extraordinario), April 4, 1978.
182. Art. 60, Public Registry Law, Gaceta Oficial No. 2.209 (extraordinario), April 4, 1978.
183. Art. 56, Public Registry Law, Gaceta Oficial No. 2.209 (extraordinario), April 4, 1978.
184. Articles 104 and 105, Public Registry Law, Gaceta Oficial No. 2.209 (extraordinario), April 4, 1978.
185. Articles 64 and 85, Public Registry Law, Gaceta Oficial No. 2.209 (extraordinario), April 4, 1978.
186. Art. 78, Public Registry Law, Gaceta Oficial No. 2.209 (extraordinario), April 4, 1978.
187. Art. 91, Public Registry Law, Gaceta Oficial No. 2.209 (extraordinario), April 4, 1978.

188. Art. 108, Public Registry Law, Gaceta Oficial No. 2.209 (extraordinario), April 4, 1978.
189. Art. 10, Public Registry Law, Gaceta Oficial No. 2.209 (extraordinario), April 4, 1978.
190. Interview with Jesús Antonio García and Marino Ostos Flores of the Cadastre Office, Ministry of Agriculture (Dec. 9, 1991, Caracas).
191. Interview with Jesús Antonio García and Marino Ostos Flores of the Cadastre Office, Ministry of Agriculture (Dec. 9, 1991, Caracas).
192. Interview with Jesús Antonio García and Marino Ostos Flores of the Cadastre Office, Ministry of Agriculture (Dec. 9, 1991, Caracas).
193. England began a project to require that newly registered properties be integrated into a cadastre. It took several decades to implement.
194. Comisión Permanente de Agricultura y Política Agraria, Cámara de Diputados, Congreso de la República, "Exposición de Motivos y Proyecto de 'Ley Orgánica de Catastro Nacional'," (December 4, 1991) at 3.
195. Comisión Permanente de Agricultura y Política Agraria, Cámara de Diputados, Congreso de la República, "Exposición de Motivos y Proyecto de 'Ley Orgánica de Catastro Nacional'," (December 4, 1991) at 2-3.
196. Comisión Permanente de Agricultura y Política Agraria, Cámara de Diputados, Congreso de la República, "Exposición de Motivos y Proyecto de 'Ley Orgánica de Catastro Nacional'," (December 4, 1991) at 8.
197. Interview with Jesús Antonio García and Marino Ostos Flores of the Cadastre Office, Ministry of Agriculture (Dec. 9, 1991, Caracas).
198. Interview with Jesús Antonio García and Marino Ostos Flores of the Cadastre Office, Ministry of Agriculture (Dec. 9, 1991, Caracas).
199. Interview with Dr. J. David Stanfield, University of Wisconsin--Madison Land Tenure Center (Feb. 12, 1992).
200. Interview with Dr. J. David Stanfield, University of Wisconsin--Madison Land

Tenure Center (Feb. 12, 1992).

201. Interview with Jesús Antonio García and Marino Ostos Flores of the Cadastre Office, Ministry of Agriculture (Dec. 9, 1991, Caracas).

202. Interview with Dr. J. David Stanfield, University of Wisconsin--Madison Land Tenure Center (Feb. 12, 1992).

203. Interview with Dr. J. David Stanfield, University of Wisconsin--Madison Land Tenure Center (Feb. 12, 1992).

204. Interview with Johnny Guarenas Borges, Director General of the Ministry of Agriculture (Dec. 12, 1991).

205. R. Albert Berry and William R. Cline, Agrarian Structure and Productivity in Developing Countries (1979) at 5.

206. R. Albert Berry and William R. Cline, Agrarian Structure and Productivity in Developing Countries (1979) at 5.

207. R. Albert Berry and William R. Cline, Agrarian Structure and Productivity in Developing Countries (1979) at 5.

208. R. Albert Berry and William R. Cline, Agrarian Structure and Productivity in Developing Countries (1979) at 7.

209. Dwight Steen, "Land-Related Problems: Central America" (undated photocopy) at 7.

210. See, for example, Hans P. Binswanger and Miranda Elgin, "What are the Prospects for Land Reform," (World Bank, Report No. IDP-21, Aug. 1988) at 3; R. Albert Berry and William R. Cline, Agrarian Structure and Productivity in Developing Countries (1979) at 7.

211. William C. Thiesenhusen and Jolyne Melmed-Sanjak, "Brazil's Agrarian Structure: Changes from 1970 through 1980," 18 World Development 393-415 (1990).

212. William C. Thiesenhusen and Jolyne Melmed-Sanjak, "Brazil's Agrarian Structure: Changes from 1970 through 1980," 18 World Development 393-415

(1990).

213. See Michael R. Carter and Dina Mesbah, "Economic Theory of Land Markets and its Implications for the Land Access of the Rural Poor," Annex I at 11, in Eric B. Shearer, Susana Lastarria-Cornhiel and Dina Mesbah, "The Reform of Rural Land Markets in Latin America and the Caribbean: Research, Theory, and Policy Implications," LTC Paper No. 141 (June 1990).

214. Randy Stringer, John Bruce and David Stanfield, "Reform among the Smallholders: St. Lucia, Jamaica, and Implications for the Caribbean," in William Thiesenhusen, Searching for Agrarian Reform in Latin America (1988).

215. "Agrarian Reforms in Developing Rural Economies Characterized by Interlinked Credit and Tenancy Market," World Bank Staff Working Paper, No. 433 (Oct. 1980).

216. Michael Carter and Jon Jonakin, "The Economic Case for Land Reform: An Assessment of the 'Farm Size/Productivity' Relation and Its Impact on Policy," (Dep't of Agric. Econ., Univ. of Wisc., 1987) at 1.

217. Michael Carter and Jon Jonakin, "The Economic Case for Land Reform: An Assessment of the 'Farm Size/Productivity' Relation and Its Impact on Policy," (Dep't of Agric. Econ., Univ. of Wisc., 1987) at 1.

218. Michael Carter and Jon Jonakin, "The Economic Case for Land Reform: An Assessment of the 'Farm Size/Productivity' Relation and Its Impact on Policy," (Dep't of Agric. Econ., Univ. of Wisc., 1987) at 1, comments in brackets added.

219. R. Albert Berry and William R. Cline, Agrarian Structure and Productivity in Developing Countries (1979) at 3.

220. R. Albert Berry and William R. Cline, Agrarian Structure and Productivity in Developing Countries (1979) at 3.

221. R. Albert Berry and William R. Cline, Agrarian Structure and Productivity in Developing Countries (1979) at 27.

222. R. Albert Berry and William R. Cline, Agrarian Structure and Productivity in Developing Countries (1979) at 27.

223. R. Albert Berry and William R. Cline, Agrarian Structure and Productivity in Developing Countries (1979) at 27-8..
224. R. Albert Berry and William R. Cline, Agrarian Structure and Productivity in Developing Countries (1979) at 28.
225. Michael Carter and Jon Jonakin, "The Economic Case for Land Reform: An Assessment of the 'Farm Size/Productivity' Relation and Its Impact on Policy," (Dep't of Agric. Econ., Univ. of Wisc., 1987) at 15.
226. Michael Carter and Jon Jonakin, "The Economic Case for Land Reform: An Assessment of the 'Farm Size/Productivity' Relation and Its Impact on Policy," (Dep't of Agric. Econ., Univ. of Wisc., 1987) at 22.
227. Michael Carter and Jon Jonakin, "The Economic Case for Land Reform: An Assessment of the 'Farm Size/Productivity' Relation and Its Impact on Policy," (Dep't of Agric. Econ., Univ. of Wisc., 1987) at 26-7.
228. Michael Carter and Jon Jonakin, "The Economic Case for Land Reform: An Assessment of the 'Farm Size/Productivity' Relation and Its Impact on Policy," (Dep't of Agric. Econ., Univ. of Wisc., 1987) at 27-8.
229. Ecuador is moving away from the latifundio via the market. See Carlos Camacho, Evaluación del Proceso de Cambio en la Tenencia de la Tierra en la Sierra Norte y Central (1964-1991) (Quito, 1991).
230. Interview with Jesús Antonio García and Marino Ostos Flores of the Cadastre Office, Ministry of Agriculture (Dec. 9, 1991, Caracas).
231. Interview with Israel Arguello Landaeta, Superior Court Judge, Second Circuit, Civil and Mercantil (Dec. 10, 1991, Caracas).
232. David Stanfield, Edgar Nesman, Mitchell Seligson and Alexander Coles, "The Honduras Land Titling and Registration Experience," (LTC paper, 1990) at 11.
233. Gerardo Budowski, "The Socio-Economic Effects of Forest Management on the Lives of People Living in the Areas: The Case of Central America and Some Caribbean Countries," in Socio-Economic Effects and Constraints in Tropical Forest Management, ed. E.G. Hallsworth, 87-102 (1982).

234. David Stanfield, Edgar Nesman, Mitchell Seligson and Alexander Coles, "The Honduras Land Titling and Registration Experience," (LTC paper, 1990) at 11.

235. See, for example, Stonich's observations based on data in Honduras, in William C. Thiesenhusen, "Implications of the Rural Land Tenure System for the Environmental Debate: Three Scenarios," to be published in J. of Dev'ing Areas (1991).

236. A study in Uganda found, after an extensive examination of empirical data, that an inactive land market was a major cause for encroachment in reserves and parks. See John Aluma, Christine Drennon, John Kigula, Steven W. Lawry, E.S.K. Muwanga-Zake and John Were, "Settlement in Forest Reserves, Game Reserves and National Parks in Uganda," (LTC Research Paper 98) (1989). A study in Nepal found that lack of access to land and the lack of a land reform lead to deforestation and cultivation of marginal land. See Integrated Development Systems, The Land Tenure System in Nepal (Kathmandu, 1986) at 91.

237. John Aluma, Christine Drennon, John Kigula, Steven W. Lawry, E.S.K. Muwanga-Zake and John Were, "Settlement in Forest Reserves, Game Reserves and National Parks in Uganda," (LTC Research Paper 98) (1989).

238. World Bank and the Government of Madagascar, Environmental Action Plan (Washington DC, 1989).

239. The case in Niger is discussed in John W. Bruce and Louise Fortmann, "Agroforestry: Tenure and Incentives," (LTC Paper 135, 1989) at 17.

240. SAVEM (Sustainable Action for Viable Environmental Management), A.I.D.-Madagascar Project Paper (1990).

241. See also, for example, Peter C. Bloch, et al., Land Tenure Issues in Rural Haiti (Madison, 1988); William C. Thiesenhusen, Land Tenure and the Environmental Debate (Madison, 1989); William C. Thiesenhusen, Implications of the Rural Land Tenure System for the Environmental Debate: Three Scenarios (Madison, 1991) at 21-23. Nevertheless, no tenure system, not even one providing registered freehold interests, is fail safe against destructive land use. For example, farmers may at some time need to maximize short-term production in order to survive, despite long-term resource costs. See John Bruce, Land Tenure Issues in Project Design and Strategies for Agricultural Development in Sub-Saharan Africa

(Madison, 1985) at ix.

242. John W. Bruce and Louise Fortmann, Agroforestry: Proprietary Dimensions (San Francisco, 1989). For the African case regarding forestry, fuelwood and resource conservation projects, see John W. Bruce, Land Tenure Issues in Project Design and Strategies for Agricultural Development in Sub-Sahara Africa (Madison, 1985) p. xix.

243. This conclusion was documented in Gerald Murray, Mountain Peasants of Honduras: Guidelines for the Reordering of Smallholding Adaptation to the Pine Forest (A.I.D., 1981).

244. Noted by William Thiesenhusen, citing Stonich, "Dynamics of Social Processes," p. 289.

245. Noted by William Thiesenhusen, citing Schmink and Wook, "'Political Ecology' of Amazonia," at 41.

246. John W. Bruce and Louise Fortmann, "Agroforestry: Tenure and Incentives," (LTC Paper 135, 1989) at 6.

247. Peter C. Bloch, Virginia Lambert, and Norman Singer, "Land Tenure Issues in Rural Haiti: Review of the Evidence," (LTC Research Paper 94, 1988) at 67.

248. Josefina Ríos de Hernández, La hacienda Venezolana: una visión a través de la historia oral (Caracas, 1988) at 26-7.

249. Peter C. Bloch, Land Tenure Issues in River Basin Development in Sub-Saharan Africa (Madison, 1986) p. 26.

250. Peter C. Bloch, Workshop on Land Tenure Issues in Watershed Management (Camp-Perrin, Haiti, 1988).

251. William C. Thiesenhusen, "Implications of the Rural Land Tenure System for the Environmental Debate: Three Scenarios," J. of Developing Areas (accepted for publication, 1991).

252. William C. Thiesenhusen, "Have Agricultural Economists Neglected Poverty Issues?," (Lecture at the Annual Meetings of the Pakistan Society of Development Economists, Islamabad, 5-11 Jan., 1991) at 19.

253. Noted in William C. Thiesenhusen, "Implications of the Rural Land Tenure System for the Environmental Debate: Three Scenarios," to be published in J. of Dev'ing Areas (1991).
254. William C. Thiesenhusen, "Implications of the Rural Land Tenure System for the Environmental Debate: Three Scenarios," to be published in J. of Dev'ing Areas (1991).
255. Alaka Wali and Shelton Davis, Land Regularization in Special Amerindian Components of Bank-Funded Projects in the LAC Region (Washington, 1991) p. ii.
256. For example, one study in Jamaica noted that 40% of the country's land parcels were outside the formal registry process. See David Stanfield, Land and Capital Markets in Jamaica (Madison, 1991) p. 3. A general discussion of the situation in Peru is found in Hernando de Soto, The Other Path (New York, 1989) pp. 19-57.
257. Interview with Israel Arguello Landaeta, Superior Court Judge, Second Circuit, Civil and Mercantil (Dec. 10, 1991, Caracas).
258. See, for example, Richard Barrows and Michael Roth, Land Tenure and Investment in African Agriculture (Madison, 1989) p. 19.
259. In Costa Rica it was concluded that the presence of tenure security, particularly a full title to land, substantially accounted for higher farm performance. See Grenville Barnes, A Comparative Evaluation Framework for Cadastre-Based Land Information Systems (CLIS) in Developing Countries (Madison, 1990) at 29. In Ecuador, one study found that titled landholders had a farm income 2.7 times greater than untitled property-holders. USA.I.D. (U.S. Agency for International Development), Ecuador Land Titling Project (Washington, 1985) at 9. In these cases, it is somewhat difficult to sort out in which direction the causation runs: does titling lead to increased income, or do only those with increased income bother to get titles? Thus, quantifying the value is often difficult.
260. David Stanfield, Edgar Nesman, Mitchell Seligson and Alexander Coles, "The Honduras Land Titling and Registration Experience," (mimeograph from the Land Tenure Center, Madison, WI, 1990) at 34.
261. Peter Dorner and Bonnie Saliba, "Interventions in Land Markets to Benefit the Rural Poor," (LTC Research Paper No. 74, 1981) at 23.

262. Observations made by Susana Lastarria, based upon James S. Boster, Mitchell A. Seligson, Katherine Terrell, and Jose V. Zevallos, "Land Tenure Security in Ecuador: A Preliminary Study of Cayambe and Pedro Moncayo," (Center for Latin American Studies, University of Pittsburgh, 1989).
263. Peter Dorner and Bonnie Saliba, "Interventions in Land Markets to Benefit the Rural Poor," (LTC Research Paper No. 74) at 18.
264. Eric B. Shearer, Susana Lastarria-Cornhiel and Dina Mesbah, "The Reform of Rural Land Markets in Latin America and the Caribbean: Research, Theory, and Policy Implications," (LTC Paper 141, 1991) at 41.
265. Customary practice often provides the landholder with the feeling of security, despite the lack of a title. See Alexander Coles, *Land Transactions and the Land Titling Project in Honduras* (Madison, 1989) p. 12-13.
266. Studies in Colombia, Thailand, Honduras and elsewhere indicate that titled land is worth at least 50 to 100% more than comparable untitled land. See Herman Felstehausen, Juan Carlos Castaldi and David Stanfield, *Urban Land Access by Informal Sector Households in Honduras* (Madison, 1990).
267. David Stanfield, Edgar Nesman, Mitchell Seligson and Alexander Coles, "The Honduras Land Titling and Registration Experience," (LTC paper, 1990) at 21.
268. Steven E. Hendrix, "Interplay among Land Law and Policy, the Environment, the War on Drugs, Narco-terrorism and Democratization: Perspectives on Peru's Upper Huallaga Valley" (Aug. 1991).
269. Grenville Barnes, *A Comparative Evaluation Framework for Cadastre-Based Land Information Systems (CLIS) in Developing Countries* (Madison, 1990) p. 29. Contra, Richard Barrows and Michael Roth, *Land Tenure and Investment in African Agriculture* (Madison, 1989) p. 19, which describes the African market. Barrows and Roth maintain that in Kenya, Zimbabwe and Uganda there is little evidence to support the hypothesis that registration has increased investment in agriculture. Further, there is no evidence in these African markets that the demand for capital increases if tenure is changed to freehold. Barrows and Roth state "Small farmers generally appear unwilling to risk their land for credit, and banking procedures impose high costs on smaller borrowers... Credit is biased toward larger, more influential farmers." The conclusions of Grenville Barnes on the one hand and

Barrows and Roth on the other can be reconciled as follows: In economies where factor markets (ex. land, labor, etc.) are functioning relatively well, land titling can lead to increases in credit and investment. Such is the case stereotypically in Latin America. In economies where factor markets are less efficient, fixing a land market constraint may not automatically lead to increases in credit or investment. Other factors prevent improvement. This is stereotypically the case in Africa.

270. David Stanfield, Edgar Nesman, Mitchell Seligson and Alexander Coles, "The Honduras Land Titling and Registration Experience," (LTC paper, 1990) at 28-33.

271. David Stanfield, Edgar Nesman, Mitchell Seligson and Alexander Coles, "The Honduras Land Titling and Registration Experience," (LTC paper, 1990) at 32.

272. David Stanfield, Edgar Nesman, Mitchell Seligson and Alexander Coles, "The Honduras Land Titling and Registration Experience," (LTC paper, 1990) at 33.

273. Eric B. Shearer, Susana Lastarria-Cornhiel and Dina Mesbah, "The Reform of Rural Land Markets in Latin America and the Caribbean: Research, Theory, and Policy Implications," (LTC Paper 141, 1991) at 45.

274. Eric B. Shearer, Susana Lastarria-Cornhiel and Dina Mesbah, "The Reform of Rural Land Markets in Latin America and the Caribbean: Research, Theory, and Policy Implications," (LTC Paper 141, 1991) at 45.

275. One study found that in Honduras, as a result of irregular or illegal access to property, and unclear property status, many urban settlers fail to qualify for streets, public services and education. Herman Felstehausen, Juan Carlos Castaldi and David Stanfield, Urban Land Access by Informal Sector Households in Honduras (Madison, 1990).

276. William C. Thiesenhusen, Searching for Agrarian Reform in Latin America (Boston, 1989), p. 23.

277. See, for example, John A. Humbach, "Law and a New Land Ethic," J. of the Land Trust Alliance (Fall 1990) p. 13-15, 24.

278. Randy Stringer argues convincingly that establishing a land-financing system in Latin American countries may represent a viable institutional mechanism to assist some landless in overcoming difficulties caused by land market imperfections. See Randy Stringer, Farmland Transfers and the Role of Land

Banks in Latin America (Madison, 1989) p. 11; Randy Stringer, A Profile of Land Markets in Honduras (Madison, 1989).

279. Alaka Wali and Shelton Davis, Land Regularization in Special Amerindian Components of Bank-Funded Projects in the LAC Region (Washington, 1991) p. ii.

280. Alexander Coles, "Land Transactions and the Land Titling Project in Honduras," (LTC, 1989) at 32.

281. Certainly the Venezuelan legislators see that a national cadastre is an important element to a democratic society. See Comisión Permanente de Agricultura y Política Agraria, Cámara de Diputados, Congreso de la República, "Exposición de Motivos y Proyecto de 'Ley Orgánica de Catastro Nacional'," (December 4, 1991) at 2.

282. A.I.D. financing projects exist, for example, in Costa Rica, Guatemala, Honduras and El Salvador. See Eric B. Shearer, Susana Lastarria-Cornhiel and Dina Mesbah, "The Reform of Rural Land Markets in Latin America and the Caribbean: Research, Theory, and Policy Implications," (LTC Paper 141, 1991) at 45-54.

283. For example, the A.I.D. Ecuador project involves broader registration reform issues.

284. For example, the Bar Association and the Property Registrar in Guatemala are consulting with technical experts from Costa Rica in the design of the titling reform project in Guatemala.

285. Interview with Israel Arguello Landaeta, Superior Court Judge, Second Circuit, Civil and Mercantil (Dec. 10, 1991, Caracas).

286. See John W. Bruce and Louise Fortmann, Agroforestry: Tenure and Incentives (Madison, 1989) pp. 7-8, discussing ownership rights of women; Constantina Safilios-Rothschild, "Women and the Agrarian Reform in Honduras," Land Reform: Land Settlement and Cooperatives (Rome, 1983); Constantina Safilios-Rothschild, The Impact of Agrarian Reform on Men and Women in Honduras (1983).

287. In Brazil, the World Bank found that subsequent to legal demarcation of the land, violations of the boundaries occurred from a variety of sources, including

official acts (revocation of decrees, building of roads through reserves) and incursions into indian lands by poor colonists who themselves lacked alternatives for access to land and resources. See Alaka Wali and Shelton Davis, *Land Regularization in Special Amerindian Components of Bank-Funded Projects in the LAC Region* (Washington, 1991) p. 17.

288. Grenville Barnes, *A Comparative Evaluation Framework for Cadastre-Based Land Information Systems (CLIS) in Developing Countries* (Madison, 1990)

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292. Peter Dorner and Bonnie Saliba, "Interventions in Land Markets to Benefit the Rural Poor," (LTC Research Paper No. 74, 1981) at 19.

293. *Property Registry Modernization* (video produced by the Univ. of Wisc., 1987).

294. Titling is usually considered the best method to secure property rights. However, in unusual cases, it may not be the "best" method to obtain property security. For example, it may not be cost effective. In rural Peru, for example, some areas are titled to the municipality rather than to individuals. Within the municipalities, local custom insures property security.

In some cases, titling may not be the most respected by the local inhabitants. For example, in some remote regions of Latin America, informal boundaries are respected by the local inhabitants. However, this is less useful where the population is mobile, or where the country is trying to attract foreign investment--conditions prevalent in Venezuela. As a result, titling and property formalization will be prerequisites to this type of investment.

Another drawback of titling is that it may lead to property insecurity. Titled property can be taken away for (1) a land reform, (2) unpaid debts, and (3) unpaid taxes. Titled property can also be easily sold off in case of squandering of assets. These

are the risks associated with the market-based economy, and more specifically, with a land market.

Titling may have yet another drawback--it can be irrelevant. In Nicaragua today, landowners with title have insecurity of ownership as a result of political indecision. Yet Venezuela today does not exemplify this political turmoil. Thus, this is of very minor concern.

Despite these examples, however, in the majority of cases, titling will be the best vehicle to security of ownership. Of course, local conditions should always be taken into consideration in the design of any property securitization plan.

295. The value of titling, and its impact on productivity, is to some degree a function of customary practice and perception. In some places, customary practice will limit the benefits to be derived from titling. For example, in the Caribbean, where titling has not historically been used to secure property, titling may have little impact on the small farmer. However, in more developed countries, like Venezuela, Chile, Argentina and Mexico, titling and the formality of land are more important. Thus we might expect Venezuela's efforts to produce better results than in other places in the region.

296. Interview with Jesús Antonio García and Marino Ostos Flores of the Cadastre Office, Ministry of Agriculture (Dec. 9, 1991, Caracas).

297. Interview with Nora Vázquez de Escobar, Superior Court Judge, Agrarian Court (Dec. 10, 1991, Caracas).

298. In the U.S., many civil registrars are directly elected by the population. In Guatemala, the property registrar is directly appointed by the President.

299. For the case of Guatemala, see Harvey Alvarado Herrera, Guillermo Sandi Baltodano and Jorge Rafael Recinos Acevedo, La Modernización Registral de Guatemala (Guatemala City, Sept. 1991) at 3.

300. For example, in Guatemala, the registrar does not receive a salary. He is on a commission basis. The employees in the Registry are not public servants, but employees of the registrar himself. See Harvey Alvarado Herrera, Guillermo Sandi Baltodano and Jorge Rafael Recinos Acevedo, La Modernización Registral de Guatemala (Guatemala City, Sept. 1991). In the U.S., registry employees are

public servants and the registrar is salaried, as in Venezuela.

301. For example, this charge was made by the Penny Foundation in Central America. In the U.S., most jurisdictions charge on a per operation basis, rather than on a lot size or value basis.

302. Harvey Alvarado Herrera, Guillermo Sandi Baltodano and Jorge Rafael Recinos Acevedo, La Modernización Registral de Guatemala (Guatemala City, Sept. 1991) at 3.

303. Harvey Alvarado Herrera, Guillermo Sandi Baltodano and Jorge Rafael Recinos Acevedo, La Modernización Registral de Guatemala (Guatemala City, Sept. 1991) at 9.

304. See John W. Bruce and Louise Fortmann, Agroforestry: Tenure and Incentives (Madison, 1989) pp. 7-8, discussing ownership rights of women; Constantina Safilios-Rothschild, "Women and the Agrarian Reform in Honduras," Land Reform: Land Settlement and Cooperatives (Rome, 1983); Constantina Safilios-Rothschild, The Impact of Agrarian Reform on Men and Women in Honduras (1983).