



Land Governance in an Interconnected World

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FORMS OF LAND TENURE AND PROPERTY IN A MUNICIPALITY OF ALTA VERAPAZ, GUATEMALA, AND STRATEGIES FOR COMMUNITY LAND RIGHTS PROTECTION

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Abstract

Pressure to sell land to palm oil companies after the civil war has increased the vulnerability of indigenous-peasant communities in Alta Verapaz, Guatemala. This situation stems from the forms of land allocation by the state, which do not guarantee collective rights of communities. When community land tenure is disrupted, the systems of community life are also violated.

The paper explores the material and symbolic relationship of people to land in these indigenous communities. Concepts of possession and ownership of the land have arisen as a result of the different types of political, economic and legal approaches that have emerged over time in response to indigenous concepts, generating new approaches and challenges to understanding individual and collective land rights. The tenure forms discussed include: a) state ownership, b) private ownership, c) communal tenure d) other forms promoted by agrarian programs. The paper concludes with proposals for the protection of the community lands.

Key Words:

Indigenous rights, community tenure, conflict, palm oil, VGGTs



Forms of land tenure and property in a municipality of Alta Verapaz, Guatemala, and strategies for community land rights protection.

Introduction: Conflict, Land Rights and Palm Oil in Guatemala

Indigenous peoples and small-scale farmers in Guatemala, especially women, are facing an ongoing threat to their existence due to loss of their land to agribusiness plantations. Some rural communities in the northern departments of the Peten and Alta Verapaz, and on southwestern coastal departments have already disappeared. Others have been reduced to small hamlets where community members find only low-paying, seasonal jobs with the plantations. As men migrate to find work, women are often left behind without access to enough land or water to support their families.

While all types of agribusiness have grabbed land from indigenous people, in recent years the palm oil industry has driven the takeover of community lands. Many communities are pushing back against human rights violations, misuse and contamination of water sources, and land grabbing, which have undermined local food production. Women and children are the most negatively impacted by pollution, poverty, and malnutrition connected to these changes. In 2015, a Network of Communities Affected by Palm Oil brought a case before the Inter-American Commission on Human Rights and asked that the Guatemalan government stop the expansion of the palm oil industry (IDEAR-CONGCOOP 2015). The process continued with a follow up hearing held in Mexico in September 2017.

The Struggle over Land and the Civil War

Donors have recognized that addressing issues of land distribution and access is crucial for peace and prosperity in Guatemala. The USAID land tenure profile for Guatemala notes that the country has the “most inequitable” distribution of land ownership in Central America and that 2.5% of all farms take up “nearly two-thirds of the agricultural land.” USAID stated that “land related issues were a fundamental cause of the 36 year Guatemalan Civil War,” and that “persistence of substantial inequality constitutes a risk factor for future stability.” The assessment predicts that economic development “will be stunted until land conflicts are addressed.”

Two hundred thousand people were killed and 1.5 million were displaced during the Civil War which was brought to an end in 1996, through Peace Accords supported by the United Nations and numerous



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governments. In 1999, President Bill Clinton apologized for the US role in the war, after a UN sponsored commission found that the war crimes reached the level of genocide. Most of the dead and displaced were Mayan people who suffered under tactics of indiscriminate massacre and elimination of indigenous communities by the Guatemalan Army.

Lack of Accountability for Commitments in the Peace Accords

The 1996 peace accords promised to respect indigenous community lands, resettle displaced indigenous communities, resolve land conflicts, and give the poor access to land. The United Nations, governments from the global north, and numerous European institutions provided funds to support peace-building and development. Unfortunately the international community did not provide the accountability and support needed to address the land problem.

The World Bank supported “market based land reform” by establishing the Land Fund (FONTIERRAS) which was intended to help poor families buy land on credit. The international community also supported two large World Bank projects for modernizing Guatemala’s land registry and providing land titles.

These projects failed to achieve their stated objectives with regard to addressing indigenous tenure security and the extreme inequitable distribution of land in Guatemala. In the end have made matters worse for indigenous communities in some areas. Small-scale farmers receiving land titles incurred heavy debt and did not receive sufficient support for resettlement and community infrastructure. In 2012 an independent evaluation funded by the World Bank found that 45% of land titled to indigenous and peasant farmers through the World Bank project had already changed hands, most of it being accumulated by large landholders (Grunberg et al. 2012).

A study of six municipalities in the northern lowlands found that dozens of rural communities had been gobbled up by palm oil plantations and reduced to the core housing areas, and that four communities had disappeared completely (Alonso-Fradejas 2012). Even lesser impacted communities were left with a patchwork of landholdings with an untenably weakened social organization for the remaining families.

Much land in the lowlands is being acquired under economic duress, especially indebtedness, and threats of violence by intermediaries who consolidate the land for plantation agriculture or large cattle ranches. In almost every instance land is taken or “sold” against the will of the women co-owners who are not consulted by either male “sellers” or “buyers” (ActionAid 2016). An example of organized crime linked



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to large land grabbers was exposed in the Petén in 2016, when 14 members of the “Mendoza family” were arrested. This criminal organization had accumulated 30,000 hectares of land through corruption and threats of violence (Prensa Libre 2016).

To the credit of World Bank staff, the problems with the first phase of the Land Administration Project were recognized, and the second phase included the modest objective of awarding collective titles to 25 indigenous communities in addition to continuing the process of individual titling. The project was completed at the end of 2013 and \$50 million of projected \$62 million from the World Bank was spent, but only 4 indigenous communities received titles. Meanwhile land rights were recorded for 274,536 parcels of land, and titles were finalized for 1,679 parcels belonging to indigenous persons (World Bank 2017). However, as was clearly shown in reviews of the Phase I project, individual titles do not protect vulnerable communities, instead they may merely accelerate economic and coercive pressures to sell land, leading to the dispersal and loss of indigenous communities.

Large Farms Undermine Equitable Opportunities for Local Economic Development

Some assume that large farms bring needed investment which helps rural communities. ON the contrary, policy decisions to minimize public investment in family agriculture and continued support for large-scale plantation agriculture is the reason why relatively resource rich Guatemala is so unequal and its communities are so poor. Investing in plantation agriculture has a negative impact on the local economy compared to investing in small-scale food producers. Plantations create significantly fewer jobs per hectare of land used.

A value chain study in Guatemala has found that palm oil and sugarcane plantations utilize 36 days of labor per hectare respectively, while a hectare of corn provides work for 112 days, and chilies 184 days (Dürr 2017) (Alonso-Fradejas 2015). Plantation jobs pay poorly and working conditions violate human rights to the extent that farmers displaced by expanding plantations often prefer to work for other small farmers where working conditions are more humane. Because the profits of small farmers stay in the local area, small farms create up to ten times more local wealth per hectare than corporate plantations (Alonso Fradejas 2012). The value chain study also found that small farmer grown corn and beans create a greater number of indirect jobs for every person employed than do either palm oil or sugarcane.

Municipal Case Study in Land Tenure: Indigenous Communities in Raxruhá



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There are many cases across Guatemala where communities are threatened by land loss, but a key region where indigenous communities have confronted land grabbing by palm oil companies is in the municipality of Raxruhá in Alta Verapaz. The municipality was legally carved out from the municipality of Chisec in 2008, and has growing mostly indigenous population that now exceeds 33,000 people living in 65 different communities (Caal and Gomez Willis 2015).

Historically the region is Maya Q'eqchi' territory, but in the 19th century the Guatemalan government began privatizing large tracts of land, giving it to German settlers for the purpose of establishing coffee plantations. Indigenous Q'eqchi' communities in the area were obligated by the state to provide labor to the plantations. During 20th century land reforms, the state began to reclaim these lands for the purpose of returning them to indigenous and peasant communities, but in many cases the transfer of land rights was never formalized and on paper much of the land remains "state land." Some of this land is managed by communities using traditional forms of organization, but significant portions of the land have been acquired by private companies, either through corruption, coercion, or distress sales.

The Q'eqchi' community of Sechaj in Raxruhá is an example of the process happening throughout the region. Of 70 households in Sechaj, 44 have lost access to land, while 26 retain it. The community is now surrounded by palm oil plantations on three sides. Even so, the indigenous communities of Raxruhá municipality are working to retain their land and hold the companies accountable by participating in the Network of Communities affected by Palm Oil (Comunicado de Prensa 2016). They have organized a peasant market to provide small farmers with an alternative for selling locally produced food. They have taken actions such as road blockades to demand that palm oil companies pay taxes and contribute to local economic development. They are demanding that they treat workers fairly and stop contaminating water and taking land.

The historical case for indigenous territorial claims in Raxruha

The land within the current municipality of Raxruha was taken from indigenous peoples through claims of "empty land" awarded as political favor during the government of Rufino Barrios in the 1880s. Yet these claims of "empty land" contained within them numerous references that are clear evidence of the presence and use of the land by indigenous peoples, specifically the mention of indigenous named landmarks for claim demarcations, and also the fact that local peoples formed the labor force for the new plantations. For example an 1881 land claim in Sechaj said "I declare that it does not belong to any



private property or community, while many indigenous families live on this land, they do not have any right of possession.(Gomez Willis 2017: 27)”

While some of the present Q’eqchi’ communities were established more recently as a result of displacements during the civil war period, archaeologists establish that local sacred sites such as caves were in use by Mayan ancestors as early as 200 BC (Bastos y Cumes, 2007:275).

Indigenous Concepts of Land and Territory

Q’eqchi’ people describe themselves as “R’al Ch’och” or “sons and daughters of the earth.” Thus they see themselves as belonging to the land rather than land as being the “property” of people. However, Q’eqchi recognize and manage long term land-use rights through agreement among community members (Grandia 2012: 90-95). They respect the rights of community members who have used a piece of land previously, asking for permission if they wish to use a piece of land left fallow by another member and marking out areas they intend to clear for planting before doing so. Rather than owning contiguous plots of land as families or individuals they customarily access pieces of land in different ecological niches and set aside areas of land include village centers and forests for common use by the community. Many features of the landscape, especially mountains, hills, and caves are seen as sacred and are accessed by all for religious purposes. Unfortunately the land tenure regimes promoted by the Guatemalan government and the World Bank have recognized some sacred sites, they have privatized many others and undermined rather than supporting community management of land.

Current Forms of Indigenous Land Tenure in Raxruha

The first official analysis of land tenure in the municipality after it was constituted in 2008 found that 77.8% of the land was registered as “state property” 1.5% is “municipal property” and 21.7% is “individual property” It’s clear from this data that the numerous indigenous forms of community ownership were not recognized in the registry. This situation created a climate in which individual titles were seen as providing more legal certainty (Gomez Willis 2017:34-35). By 2012, as indigenous communities began to demand that their rights be recognized, 48% of the “state land” was recognized as “private property” belonging to indigenous communities. While this can be seen as improvement, the classification of indigenous community lands as a kind of private property, fails to adequately protect indigenous people’s rights to land and territory.



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The actual situation of land tenure Raxruha communities is extremely complex. Research by CONGCOOP has identified three main categories of land tenure in the municipality with multiple subcategories, created by the inconsistent approaches the government has taken over many years, often with the result that the interests of communities have not been protected (Gomez Willis 2017).

Forms of tenure were categorized as follows (Gomez Willis 2017):

1. Forms of tenure on lands designated as belonging to the Guatemalan State.
 - 1.1. Tenure within land designated as a national park
 - 1.2. Tenure in “empty lands” (tierras baldias)
 - 1.3. Tenure in “protected areas.

2. Forms of privatization and individualization of tenure
 - 2.1. Communities with Individual land tenure
 - 2.2. Individual land tenure in dispersed parcels
 - 2.3. Individual tenure in urban lots
 - 2.4. Large-scale properties
 - 2.5. Tenure by occupation or possession
 - 2.6. Leased land

3. Forms of community tenure as co-property
 - 3.1. Associated Peasant Enterprises
 - 3.2. Collective Agrarian Patrimony
 - 3.3. Recognized Indigenous Communities
 - 3.4. Collective Property - New Registration (Case of Valle Verde)

Communities with legitimate tenure claims to “state land.”

Over 20 indigenous peasant communities in the municipality of Raxruha manage forests and live and farm on land that is still registered as belonging to the Guatemalan state. While it is critical that the state assume its duty to support and ensure the conservation of natural and cultural heritage, these lands should be recognized as indigenous territories belonging to particular communities. Fourteen communities live and work in the Sierra de Chinaja which was declared a protected area in 1996. Progress has been made in



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recognizing the rights of these communities, and they have achieved some successes in community forest management. However, additional support is needed to resolve conflicts and to achieve both conservation of the forest and full recognition of indigenous rights to land and territory. The same applies to the sacred Mayan site of *Caves of Candelaria National Park* established in 1999 on the land of three indigenous communities. A conflict exists on this land between the indigenous communities who have established an ecotourism project and an ecotourism lodge established in 1990 by a private individual, preventing the communities from enjoying full rights to their land and recognizing them as the rightful custodians of their cultural heritage and their sacred natural sites.

In addition, land belonging to some communities still holds the designation “Empty State Lands” (Terrenos Baldios) since it was classified as such in the late 1800s and early 1900s. Most of these lands in fact were never empty and have been long occupied and used by Q’eqchi communities. Q’eqchi peoples, who have suffered numerous displacements throughout their history, began to formally lay claim these lands in the 1970s. Yet in Raxruha there are at least four communities on “Terrenos Baldios” who have not been able to conclude the process of getting recognition their land rights..

Relationships between community tenure and individual or private property.

Communities with Individualized land tenure

Four indigenous communities in Raxruha received recognition of land rights in the form of individual titles through agrarian reform processes. Two of these communities originally received individual titles and two were converted to individual titles in the land administration process after being initially recognized as Collective Agrarian Patrimony. Government actions to encourage the individualization of tenure threatens the very existence of indigenous communities, however, some of these communities continue to maintain communal forms of organization, primarily due to internal agreements among community members not to sell land to persons outside of the community.

Municipal land records also show that 138 individuals or households in Raxruha have recognized rights to rural or semi-urban parcels of land without community organization. In many cases this land was awarded to men and the rights of women may have been overlooked. Furthermore around the town of Raxruha, five neighborhoods have been subdivided into urban lots, some of these have been titled with property rights, others are simply held by right of possession.

Disputes with large properties



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The cadastral registry shows that there are 25 large properties of more than 2 caballerias (approximately 80 hectares or more) in Raxruha. Two of these tracts are disputed between the resident indigenous communities and the wealthy Dieseldorff family.

Land leases

Many landless people can only access farmland through renting it. This is especially true of women. In Raxruha several hundred men and women have participated in the Land Fund's rental program, however this does not provide any solution to the lack of equity in landholding and lack of long term access to land. In addition, leasing is used by palm plantations to expand their area through 25 year leases covering the productive life of a plantation. These types of leases provide minimal income and remove land from control of indigenous people. If the land is ever returned it will be in a degraded state, not readily converted to other productive uses..

Communities with forms of Co-Property

Of several forms of co-property there are two main types that have been recognized by law in Guatemala and predominate in the land registry in Raxruha, these are Collective Agrarian Patrimony, and Associated Peasant Enterprises (Empresas Campesinas Asociativas). In addition, one indigenous community is registered as a Cooperative, and one has begun the process of registering as an "Collective Property" under more recent law. While most communities identify themselves as both peasant and indigenous communities, several have recently taken the step of formally registering themselves as Indigenous Communities with the municipal registry. This is part of a process of building the collective strength of indigenous communities throughout the region in spite of the history of their receiving differing legal forms of land tenure.

Associated Peasant Enterprises

In 1984 the reformist military government of Oscar Mejia decreed a law governing the establishment of Associated Peasant Enterprises (ECAs) which allowed for the recognition of co-property rights over communally managed land of peasant and indigenous communities, in many cases this was applied to land that had been recovered from large plantations during World War II. Fourteen communities in Raxruha hold their land under this type of organization. One feature of this form is that new members of



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the Associated Peasant Enterprise can be accepted by the community assembly. Also land rights within the community can be annulled if abandoned for more than a year according to the law. Land can also be passed on to heirs within the organization.

Collective Agrarian Patrimony

Prior to the Law of Associated Peasant Enterprises many communities were recognized by Guatemala's National Institute of Agrarian Transformation (INTA) as holding land rights through Collective Agrarian Patrimony. (This was intended to be a temporary status until the community paid for the subdivision of its land rights into individual titles.) In Raxruha there are 18 communities that received provisional land rights in this manner, including the community of Sechaj which was also organized as a cooperative, the only one in Raxruha.

Registration as Indigenous Communities

As indigenous peasant communities have begun to recognize the rights they have under international law (and to some degree Guatemalan law) as indigenous peoples, they have begun to seek formal recognition. Ten communities in Raxruha have registered with municipality as indigenous communities (irrespective of how their land is legally titled). One community, Valle Verde, has taken steps to change its land title to that of a collectively held indigenous community. However, it is not clear that this change offers greater security than the other types of co-property held by the other communities.

Irregularities in selling or mortgaging community land

In spite of strong indigenous norms of making decisions about land allocation as a community, there are numerous cases where individuals have sold their land use rights to outsiders or mortgaged community land for credit without permission of indigenous leaders and the community assembly. The many historical changes in land policy, corruption and confusion about rights and the law, have led to the loss of land within numerous communities.

Women's land rights within indigenous communities

While donor institutions have given some emphasis to strengthening women's land rights through their inclusion on individuals' titles, frequently this has not prevented men from selling land without the permission of their spouses (cite ActionAid paper). While the need to strengthen women's rights is an issue everywhere, community management of land offers more protection. In communities that assert



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their rights to manage land allocation collectively, research by CONGCOOP found examples of communities protecting the land rights of women when their spouses have been abusive or tried to dispossess them.

Strategies for Community Land Rights Protection

At the local level

There is a need to assist communities with soliciting the immobilization of their lands, so that no one else can attempt to file claims on community land as their private property. Communities need assistance in taking the necessary steps to register themselves as indigenous communities. Indigenous communities are establishing their own norms about how they manage the land, but legal reforms are needed to help them reclaim land that was sold from within the community.

Raxruha is the municipality with the largest number of Associated Peasant Enterprises, fourteen, recognized by the national Land Fund. The law of Associated Peasant Enterprises (ECAs) provides good legal precedent for managing land collectively and protecting community land as indivisible. While the law uses the language of “peasant communities”, it also applies to indigenous communities that have organized as an Associated Peasant Enterprise. Communities organized as ECAs can simultaneously formalize their registration as indigenous communities.

According to the ECAs law this type of “enterprise” is defined as social in nature, in other words they exist for the purpose of satisfying the socioeconomic needs of the members. The assets are indivisible and access is shared so that the members of the community can directly and personally work the land. The law prohibits agreements which transfer the land or assets or benefits to businesses outside the community. Decisions are to be made in community assembly and for the benefit of all members.

Given the absence of any better land legislation for indigenous communities, the ECAS law provides the legal precedent needed to stop the expansion of palm oil and for communities to manage their land through community assemblies. Indigenous and peasant communities with differing patterns of land tenure could benefit from adopting a similar legal configuration.

Indigenous authorities known as Presidents of Land Committees or “cabecillas de tierra” or yuwa’ ch’ooch’. Have an important role to play in indigenous and peasant communities, whether they are organized as Associated Peasant Enterprises or as Collective Agrarian Patrimonies. There is a need to



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support the organization of intercommunity councils for the exchange of information and the defense of territory against “coyotes” (buyers for land speculators) and the expansion of the palm oil industry. At the level of the municipal level government it is important to declare and maintain the recognition that indigenous communal property is indivisible and that this is supported by national law, as well as international law and principles of human rights. The municipality should nullify sales of parcels of community land found in its registry.

At the National Level

There is a need for moratorium legislation protecting forests, and for the conservation of seeds, native plants and biodiversity. Due to the lack of sufficient land and water for Guatemala’s indigenous people and peasant communities, a moratorium is needed against the expansion of palm oil plantations at the farm level, the regional level and national level. The Latin American Water Tribunal proposed such a moratorium in October 2016.

There is also a need for the active role of the state in redistributing land to the landless, and stopping the sale of already redistributed land to large landholders. Land should be distributed for use by the beneficiaries. The Land Fund as currently constituted only collects payment of credits but does not provide the needed support to indigenous and peasant agriculture, which has fostered the sale and loss of land by indigenous communities in municipalities like Raxruha.

Support for Social and Political Organization

Indigenous and community authorities should be given training and support to empower them to orient their communities over the risks of the loss of land through sales to intermediaries and companies. Community assemblies should be empowered to take decisions by consensus and look for solutions and set norms so that land does not continue to be lost by communities. For example, community agreements can be reached to regulate land sales so that if someone has a need to sell land it that it can be transferred to children or others indigenous persons who participate in the community organization, supporting a territorial order that promotes the self-determination of the Q’eqchi’ and other indigenous peoples. Free, Prior, and Informed Consent of indigenous communities needs to be the standard for the approval and continuance of any large scale projects that affects the municipality, such as the operations of large-scale agroindustry.

The Opportunity of the UN Tenure Guidelines



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Many governments and donors from Norway to Japan assisted with Guatemala's post-conflict process, and in 1999 a "Group of 13" was formed to continue to support Guatemala's economic and political development.¹ These donors have played an important role in supporting the International Commission Against Impunity in Guatemala (known by the Spanish acronym CICIG), which has launched investigations resulting in human rights and anti-corruption trials.

However, human rights violations against community leaders land rights defenders continue and progress will only be made if the root causes of conflict and inequality be addressed. In 2014 the government of Guatemala recognized the UN Land Tenure Guidelines (the VGGTS) as a foundation for rural development policy (FAO). This represents an important opportunity for the government and international donors to address the unfinished commitments of the Peace Accords. Funding is needed for community land rights and small farmer oriented development programs that actually meet the commitments of the international community toward a peaceful Guatemala that is working to eliminate poverty. The state of Guatemala must be held accountable to respect the rights of indigenous peoples and to rectify historic dispossessions of land. This can only be accomplished through recognitions and distributions of land rights that are based in community tenure systems that provide greater security for families and women.

Recommendations to governments and policy makers:

- Stop all projects and land acquisitions that do not have the ongoing and legitimate Free Prior and Informed Consent of affected indigenous peoples, as required by international law.
- New funding for land tenure administration should prioritize community land rights in areas where there are conflicts with agribusiness, rather than simply modernizing the land registry.

¹ Canada, Germany, Italy, Switzerland, Spain, Sweden, United States, France, United Kingdom and the following multilateral organizations: Inter-American Development Bank (IDB), World Bank, International Monetary Fund United Nations Development Program (UNDP), the European Union (EU) and the Organization of American States (OAS).



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- Programs should work with indigenous and peasant organizations, and communities, in addition to the national and municipal governments.
- Communities and indigenous organizations should be supported in analyzing land tenure problems to develop solutions based on indigenous culture and experience, making use of the legal forms of community tenure, such as ECAs, currently used in Guatemala.
- The State of Guatemala should recognize community land rights as a first step toward realizing the right to food for marginalized communities and the rights of indigenous peoples to exercise self-determination in their territories.



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