

Experiences with Land Registration in Guatemala

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1. Summary

In this presentation is described how the last half century the problems around land have regulated the development of Guatemala, from the revolution in the fifties in the last century, the armed conflict during more then thirty years and after the peace agreements of 1996 the attempts to stabilise the country. An important part of this process of stabilisation is to resolve the problems around land ownership. The presentation describes the problems concerning land ownership, the way the country has tried to solve them and finally the description of the actual situation with some suggestions for the future.

2. Some facts about Guatemala

The country.

Guatemala is located in the Central American Isthmus. It is bordering Mexico, Belize, Honduras and El Salvador and also the Pacific Ocean and the Caribbean sea. It comprises an area of about 109,000 square kilometres. The climate is tropical, hot and humid in the low lands and cooler in the high lands. The terrain is mostly mountainous with narrow coastal plains and in the northern part of the country, in the Yucatan peninsula a rolling limestone plateau.. From the Northwest to the Southeast is stretching out the central American Mountain Range with several, some active volcanoes. The highest mountain is more then 4200 m.

A country of striking features and a strong indigenous culture, Guatemala's natural beauty and powerful identity stand in stark contrast to its bloody past and troubled present. Mountainous, heavily forested and dotted with Mayan ruins, lakes, volcanoes, orchids and exotic birds, Guatemala is one of the most beautiful countries in Central America. Its indigenous population, the Maya, makes up about half of the population and continue to speak Mayan languages and follow Mayan traditions.

The people.

Guatemalans (about 12.3 million following UN statistics of 2003) live in one of the most iniquitous societies in the region. Poverty is particularly prevalent in rural areas and in indigenous communities. In 2002 the World Bank estimated that two-thirds of Guatemalan children were living in poverty. Illiteracy, infant mortality and malnutrition are among the highest in the region, life expectancy is among the lowest and the country is one of the most violent in Latin America.

Actual political situation.

Since the beginning of this year Mr. Oscar Berger is the new president. He belongs to the group of wealthy Guatemalan families. Traditionally Guatemala has been governed by the representatives of the big farmer and banking families.

It seems that his priorities during his presidency will be the fight of crime, corruption and poverty. Especially in the former presidency of Mr. Alfonso Portillo the crime and corruption has grown considerably. Investigations to the participation of this former president in corruption has started.

Another important issue is the case of the ex military ruler, General Efraim Rios Montt, who faces genocide charges for his role during his dictatorship in the eighties of the last century. General Rios Montt loses his immunity from prosecution when he gave up his seat as a member of the Guatemalan Congress in early 2004. However, during his election campaign Mr. Berger refused to commit himself on whether he thought the former dictator should stand trial.

3. The Guatemalan recent history.

Land and Peace are two items which were always strongly related in Guatemala.

As an example, in the following article produced by the NGO "La via Campesina en Tegucicalpa, Honduras" is the situation described in a poor village situated in a remote area of the Guatemalan inland.

In Quiche the Pearl propriety (la finca Perla) in the mountainous area, is not the only one with beautiful hills and valleys. In the village Ilom, a poor village of an ethnic group called IXIL the people still wear there beautiful local colourful clothes. This village tells intensively the history of a country what is still trying to find the PEACE. Here you can see how the land was robbed from the Indian population to whom from old times the land belonged to. At this moment, the 400 families of Ilom do not have enough land to feed themselves. Following the public registers, in the name of the community are inscribed 1400 hectares. But actually the people of the community have access to less then 10 percent of this area. The finca 'la Perla' which is a private property and is bordering the land used by the people of Ilom has an extension of nearly 6000 hectares but following the information of the public registers it should have only half of this number.

It has to be mentioned that Guatemala has an completely outdated public register based on the traditional Spanish legislation what is a so called declarative system. This means that it is not a requirement for the judicial delivery of the land to inscribe a document of transport into the public registers. Besides that in Guatemala does not exist a cadastre what describes on a mathematical way (maps) the real properties.

In Ilom it is possible to analyse the history of a suffering people; the robbery of their lands, the terror of the army and paramilitary groups, the massacred, the vanished. And also here in Ilom it is possible to see that peace has not arrived yet to the rural areas.

The problem of the robbery and the unfair distribution of the land in Guatemala exists since centuries and has its origin in the invasion and the conquest by Spain. Another factor was the implementation of the systems for agricultural export, like it was done for the coffee at the end of the nineteenth century.

The first serious attempt to change something in this economical model was the revolution from October 1944 to 1954. The first result was the introduction of the Code for Labour and Agrarian Reform (Codigo Laboral y la Reforma Agraria) realised by the government of Jacobo Arbenz. In spite of the relative short existence this reform realised the re-distribution of about 20 % of the total cultivable area of the country and has benefited to 24 % of the population.

The opponents of all the changes discovered on one moment that they were losing their benefits and these changes were not in favour of the big landowners and also not in the favour of foreign organisations, such as the United Fruit Company so they tumbled the government in 1954 of Mr. Arbenz.

Nearly all the people who were benefited by the reform activities were expelled of their recently obtained new parcels and these parcels were returned to the big landowners.

As a kind of contra reform the government of Guatemala developed from 1954 a program for the distribution of state owned land, specially used for the pacification in the rural areas of Indians and farmers.

Finally, very few farmers and Indians obtained land on this way. Besides that, the better land of this state owned land was mostly going to the big farmers or to people related to the army. Because of the worsening of the circumstances of life in the rural areas in the sixties of the last century there came a climate in which guerrilla organisations found a place to develop themselves. Their objective was the mobilisation of the rural population to realise a radical re-structure of the Guatemala society.

The governmental answer to this movement was a policy of oppression, that continued during the sixties and the seventies in which especially during the seventies and eighties cruelties came to their maximum when the army together with military groups used the tactic of finally wiping out whole villages. Statistics learn that during 36 years of conflict in total 200.000 people were murdered, about one million refugees, inside and outside the country and the destruction of about 420 villages.

Finally in 1996 a peace agreement was signed by the Guatemalan government and the guerrilla, in what was stated that the respect for - and execution of - political, cultural, economical and spiritual rights of all the Guatemalans is the base of a new society that reflects the diversity of the Nation.

The Peace Agreements, especially the Socio-economic and Agrarian parts, the Agreement for the Identity, the Rights and the Resettlement of the Indian People underline the importance of land for the peace process.

The Agreements are saying that a strategy has to be developed which will make possible the access to the land for the farmers and Indians. Also the farmers and Indians will have access to other production facilities. Also will be necessary a transformation of the land use and land tenure.

One of the political parties reached the introduction of some definition of the policies and the agrarian and programs and introduced the land market as a central mechanism to reach the transformation of the land tenure and land use.

This principal, the use of the land market was strongly supported by international organisations like the World Bank and others. It includes different instruments:

The strengthening of the propriety rights. (register, cadastre, legal reform, titling procedures.) Resolving Conflicts., Access to the land by buying and selling voluntarily land, land tax, higher tax on not used land. The education and technical assistance decentralised and inside the private sector.

The aspect in the Peace Agreements that differ considerably from the market approach is that in the Peace Agreements it is required that the land that was taken on a fraudulent way from the population and given to members of the army and politicians has to return to the previous owners. This requirement has especially to be fulfilled in some areas in the central high lands and in the northern province of Peten.

Compensation for all lands robbed from people who lost their roots during the time of conflict has to be executed.

Even after such a past full of blood over the question of the land, after a revolution in the middle of the last century, still in Guatemala the problem of the land is not resolved yet. The division of land in Guatemala continues to be a political very heavy point and it will stay so. The former president, Alfonso Portillo said the big problem in Guatemala is the land, do not take it as an audacity, but in this country there must be an agrarian reform or the problem will not be solved.

4. Actual Governmental Policy concerning Land in Guatemala.

Directly after the Peace Treaty the item of Land Conflicts was one of the main objects to address in the Government policy.

a. Fondo de Tierras.

One of these measures was to establish a land fund (Fondo de Tierras: Fontierra) The most important function is to facilitate the access to land by credits for the voluntary buying and selling movements and the support for financing programs and technical assistance for the beneficiaries. Also support to start production processes is part of the activities of FONTIERRA. However the activities of the Fund are until now quite extensive, the results are limited.

The reason is that a long list of problems is faced by Fontierra. All the movements related to land tenure require a certain level of intellectual knowledge and this knowledge in the mostly illiterate rural areas is quite small.

The available land is generally of a very poor quality and over valued and the landowners use these possibilities to sell these, for them not interesting, lands.

The payments, coming from governmental funds are paid very late because of the lack of the resources by the central government. The effective technical assistance to the new landowners to help them establish methodologies to cultivate the land on an effective way is also missing. In general the situation is that the funds available for Fontierra are far too small to support all the existing wishes of the population and the land on the market is too limited, too expensive and of poor quality.

For the conflictive area, the highlands and the northern part of the country there is still not a governmental decision on the way to solve the conflicts in those regions.

b. Contierra.

An other instrument of the agrarian policy established following the Peace Accords is Contierra, the so called Presidential Department for Legal Assistance and for Solving Conflicts related to Land.. The activities of this organisation are unfortunately limited to two

items: legal assistance and the mediation in conflicts without any formal legal repercussions in the final solution of the conflicts.

Until the middle of 2001 Contierra had realised about 100 cases of a pile of about 1400 applications. However this does not mean that this 100 cases are solved, they only left the offices of Contierra on their way to the next organisation involved.

c. Cadastre.

A third measure taken by the government directly after the signing of the Peace Accords was to establish a Cadastre Organization inside the Ministry of Agriculture.

It is important to explain something more about the registration of land tenure in Guatemala at the moment of the signing of the Peace Accords.

Since the end of the nineteenth century Guatemala has a Public Register for the Registration of legal facts concerning activities related to land. The legislation was based at the Spanish legislation concerning these activities what more or less means the possibility to register legal acts if the concerned parties so desire, the so called declarative system. It means that in a case of transport of land it is not required to register the deed in the Public Register for the realisation of the deliverance.

The result of this principle is that not everybody is offering his deed to the Public Registers for registration. Only in the cases the involved parties have special intentions, for example the establishment of a mortgage the parties presented the deeds for registration.

In the less developed rural areas mostly the transports took place without any document, so also without registration.

In general can be said that the information in the public register is far from complete.

A Cadastre organisation as a technical component to the Public Register, like it is in the most countries, was never established in Guatemala. So, in the transport deeds the identification of the land involved in the transport was done by a description in the deed without any graphical description (a cadastral map).

Since many years the IGM/IGN (Instituto Geografico Militar and later on National, later on Instituto Geografico Nacional)) had developed in limited areas a cadastral map. This cadastral map had no legal base and was used for several purposes such as taxes and infrastructure activities. A formal relationship with the Public Registers did not exist. There was no systematic maintenance system.

The start of a cadastral organisation inside the Ministry of Agriculture after the signing of the Peace accords was the moment to start with the development of a complete new activity in Guatemala. Until that moment there was no knowledge inside the country to execute this new activity, so Guatemala started to look abroad for getting support. From all sides the support came, because of the international community was very involved in the peace process in the country. Inside the Guatemalan Government the decision was taken that the country was very interested to obtain all the support from abroad, but in the policy development about how to develop and to establish a cadastral structure the country was reluctant to be overruled by foreign organisations. For that reason they decided that the foreign organisations should especially be used to execute several projects over the country and the co-ordination should be done by the Guatemalan experts. So all the donors got their own area or province where they should do the realisation of the Cadastre.

The development of the national philosophy for the establishment of a Cadastre was reserved to the central organisation inside the Ministry of Agriculture.

An important item in the development of a national policy was the definition of the legal base for the land tenure.

The existing system was based on the old Spanish legislation, The real situation concerning the registration of real rights on land in the public registers was very poor. Especially due to the underdevelopment of the traditional rural population and the oppression during so many years the knowledge about their legal rights was also very poor.

The government policy had to start with the execution of the cadastre in different areas to show the population that something concerning the conflicts around the land issue is happening and at the same time to start with the development of the legal requirements for the cadastral activities. The most important subjects in the legal part is of course to create legal bases for the new cadastre organisation and the new data that the process of cadastration will generate.

This Cadastre Law should be a law that gives the legal base for the Cadastre organisation and the regulations for the integration with the Public Registers. This integration should be focused on the integration of data and not yet on the integration of organisations. It is more or less a technical law what will make possible the functioning of a cadastral organisation together with the Public Register

The second law should be the law of titling. The titling process should be done in three cases:

- A This law should be the legal base to title land what is free of owners,
- B land to title to the users if the formal owners for what ever reason are not using the land anymore and
- C land to title to users or people who want to use land in the conflictive areas in accordance to what is said about it in the Peace Accords.

5. The actual situation in Guatemala

The establishment of Fontierra and Contierra has not been a big success.

In principle the idea behind it was not bad, but the difficulties in the circumstances have been the reason that the results after 7 years are poor. The cases realised by the two organisations is small.

As mentioned before, the main reasons for the poor results are:

The lack of sufficient financial resources

The poor intellectual development of the target group.

The bureaucracy inside the Government.

The always present corruption.

The real willingness of the Government to realise the targets

With the establishment of the Cadastre organisations the situation in the beginning of 2004 is also disappointing.

The policy of the government to realise a cadastral law and a titling law has not been realised yet.

Since several years a draft for the Cadastre Law exists, but until now it was not approved by the Congress. At the moment it is a question what will happen in the presidency of the new president; Mr. Oscar Berger.

All the foreign donors were pressing the Guatemalan Government to pass the legislation. The last year under the guidance of the Dutch they gave more or less an ultimatum to the government to pass the legislation or to face a freeze of the financial support for this the development of the Cadastre, the last happened.

In nearly all of the local projects financed by different donors; Germany, Spain, Sweden, the Netherlands, European Union, World Bank, the activities have stopped with exception of the World Bank project in the department of Peten.

Norway who intended to start a new project last year has frozen his involvement.

The local people who were working in the different projects financed by the foreign resources are fired now. Inside the national organisation the staff has been diminished considerable.

For the second part of the necessary new legislation; the titling law (ley de regularizacion) no visible activities have taken place. A draft legislation has not been discussed or presented yet. During the last years the realisation of the titling law was always considered as a second phase for the legislation activities after the realisation of the Cadastre Law.

Besides the disappointing situation concerning the progress in the realisation of the legislation it is interesting to analyse the results of the technical cadastral activities.

It has to be considered that due to the lack of the necessary legislation it was not possible to start a titling process like foreseen in a titling law that still has to be developed. So what happened in most of the cases was to make a technical inventory of the users of the land (administrative and technical information) what in later phase can be used with the assistance of a titling law to produce new titles for these users.

In areas where the ownership of the land belonged to a governmental organisation (central government or municipalities) the ownership of the land was transferred to the users. So in this areas there really appeared new titles but following a process of legal transfer of land using the normal procedures of selling land. In these cases the price of the land was symbolic. However this was only possible in limited areas.

Real statistical information about the progress in the production of cadastral data for the whole country is very difficult to obtain. In the project the Netherlands has financed , about 20 % of the project area that has been executed, equal to 100.000 ha of a total of 500.000 ha. In this area around 15.000 parcels have been realised of a estimated total of 130.000 in the project area. The total amount of realised titles is about 1500 and this area concerned governmental land which was transferred through the normal transfer process for a symbolic amount. The rest of the cadastrated parcels (13500) cannot be titled because there is no legal instrument to do so.

The total costs were about US \$ 7.000.000.-

6. How to continue?

It is quite clear that the actual situation concerning the development of cadastre and land registry is not favourable in Guatemala. The main reason is also clear. The government has to

fulfil their obligations following from the peace accords, no matter how difficult it will be. These obligations are a number of complex measures, each of them very well tuned to all the others. Until now it did not happen. The missing chances to come with a good legislation is only one of them.

Much of the actual problems can be related to the traditional problems such as: underdevelopment and the extreme poverty of the original Indigenous population and due to these facts their second class role inside the Guatemalan society, the corruption, the lack of resources and most probably also the lack of willingness in the former government to really solve the problem. Now again it is a question how the new government will attack the problem.

On the other way also the International Society has his role to stimulate the country. What happened last year; the international pressure to the Guatemalan Government and finally the blocking of the donor resources for the cadastral activities and due to that the collapse of the cadastral activities is also not a solution.

Like Portillo said before:

Land is the big problem in Guatemala, do not take it as an audacity, but in this country there has to be an agrarian reform, or the problem will not be solved.

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