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The Delegitimation of Land Tenure in Tropical Petén, Guatemala

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The Delegitimation of Land Tenure in Tropical Petén, Guatemala

Abstract: Lack of legitimacy of land tenure institutions in the tropical Petén, Guatemala, contributes to the tenure insecurity that encourages rapid colonization, deforestation and forest conversion to agriculture. The author identifies historical periods of delegitimation of land tenure institutions and analyzes social, political and property rights trends which reduced the effectiveness of property rights in the Petén. Three case studies present the complexities and chaos of land tenure institutions. The first analyzes the unregulated land invasions by small farmers, the second discusses land tenure barriers to protection of indigenous cooperatives, and the third analyzes attempts by the government and non-governmental organizations to restrict settlements within the Maya Biosphere Reserve. In the absence of operative legal land institutions, campesinos create land law by their invasions, presence and practices. Unless campesinos are given a role within policy-making management decisions, there may be no means to restore legitimacy to land tenure in the Petén. The current insecurity encouraged by the Petén's land institutions promotes ecological degradation and encroachment on both indigenous and state forest reserve lands.

Key words: tropical deforestation; land tenure insecurity; colonization; legal enforcement; cooperatives; open-access; non-governmental organizations
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Introduction

Stable land tenure institutions impart rationality and regularity to a nation's social and economic transactions if defended by popularly-accepted legal enforcement. However, when social antagonisms produce political instability, the effective operation and enforcement of land tenure institutions diminishes. Governmental culpability, in terms of selective enforcement of tenure legislation, ineffective punishment of willful violators, and institutionalization of differentiated access rights in favor of wealthy clientele, often delegitimizes property rights systems and unleashes chaotic ecologically destructive forces driven by social inequities.

The case of Guatemala's tropical department of the Petén illustrates the tragic consequences of social conflict which destabilizes land tenure and leads to natural resource damage (Appendix 1.1; 1.2). Not a single property rights regime in the Petén - be it state, private, communal, or open-access (Bromley, 1991) - is safe in the wake of colonization pressures brought to bear by land invasions of landless campesinos (small farmers and farmworkers) or by expanding cattle ranches. The gravity of the ecological calamity faced by one of Central America's most expansive blocks of tropical forest habitat is demonstrated by Petén statistics: population growth in the department is over 8% per year; 50% of its forests have been converted to agriculture in the last twenty-five years; 40,000 hectares of primary forest fall to slash and burn activities yearly (APESA, 1992); 40% of private forests are severely degraded (Reyes Mayen and Larrazabal B., 1996); every one of the Petén's national parks and forest reserves except Tikal face fragmentation from expanding illegal campesino settlements.

Irony dominates this tropical tragedy. In a country whose landed elite enforced property ownership with the cruel disposition of tenurial injustice since colonial times, campesinos gather collective strength at last only to become the major force destroying the habitat on which they survive. For 480 years, the central sectors of Guatemalan society - the military, wealthy land owners, the Catholic Church, indigenous communities and poor ladino campesinos - fought bitterly over land rights to its high-altitude volcanic soils, barely giving scant notice to the wild and under-populated tropical flatlands to the north in the Petén (Cambranes, 1992). In the last thirty years Guatemalans swarmed the Petén with such ferocity and disregard for one another and the natural environment that protecting human and property rights and conserving soil and forests have become impossible tasks. This paper explores how the land situation deteriorated, enumerating which cultures and groups are central participants in land struggles and asking what measures might bring stability to the land tenure processes.

I argue that greater legitimacy in land tenure and its interdependent judicial institutions is a prerequisite for efforts to conserve critical tropical habitat, build democratic traditions, and elevate mutual respect between the parties in the Petén. Legitimacy is public acceptance of
institutional authority based on the belief that "formal procedures [will] fulfill material claims to justice under certain institutional boundary conditions" (Habermas, 1973:99). Irregular procedures, material inequalities, and a lack of clarity in institutional settings and responsibilities lead to a delegitimation of institutional authority and a rise of social conflict and anti-governmental resistance. In the Petén, Guatemala, these translate into high rates of spontaneous colonization and rapid deforestation.

Methodology

Only in 1992 did the Petén government attempt to compile systematic regional land and population statistics (APESA, 1992). Previous statistics are instructive but frankly unreliable due to the significant illegal and informal land market in the Petén that leaves the greater portion of land transactions unregistered. Fear of governmental reprisal discourages campesino participation in systematic surveys and a lack of transparency in governmental dealings makes official documentation difficult to obtain. The enormous size of the Petén (35,384 km²) and its ruggedness make potential field inspections improbable and costly for both governmental and outside investigators. Therefore, in the end, this comparative study of Petén tenure is a qualitative one, built on theoretical foundations and findings of thirteen case studies completed by non-governmental organizations (NGOs) and governmental agencies in the Petén and on the three case studies which I investigated that are presented below.

Research as a participant observer, financed through a Fulbright Scholarship, occurred in ten months during 1995-96. Interviewees included leaders and employees of twelve governmental agencies, sixteen non-governmental organizations, two private businesses, and five cooperatives. Their opinions established the operating attitudes and objectives concerning land issues. Additionally, field trips, meetings and interviews were held with campesinos in twenty communities. I observed two patrols to distant illegal settlements in the Maya Biosphere Reserve (MBR - see Appendix 1.3) in which the military, government and NGO representatives, and the Human Rights Procurator addressed village meetings of campesinos to inform them of their illegality. An unexpected source of the Petén's land tenure history came from second-hand bookstores in the depths of Guatemala City and Antigua.

The Historical and Theoretical Contexts

The land tenure history in the Petén, which consists of defined stages of conflict between government policies and campesino mobilization, demands contextual understanding. In spite of reflecting the power struggles for land in the rest of the country (Berger, 1992; Cambranes, 1992; Smith, 1990), the Petén's isolation and relative governmental autonomy left the area more as an appendage of national events than a participant in them until the mid-1980s. The overall pattern of Petén land colonization, like the rest of Guatemala, has been that landlessness and title insecurity for impoverished ladino and indigenous peasants led them to invade public and private forests while the wealthy landed elite obtained formal titles.
and ensuing commercial credit for the expansion of export cattle ranches. But in the Petén, inequitable land distribution combined with weak tenure enforcement to delegitimize the land tenure institutions and to promote a spontaneous, chaotic colonization that threatens the biodiversity of Guatemala's tropical forest. While authors have examined the Petén's deforestation (Beavers, 1994), its farm-size differentiation (Gongora, 1984), and its governmental clientelism in favor of wealthy landowners (Schwartz, 1987), none have addressed the various tenure regimes nor the internal social dynamics that make the spontaneous colonization movement so difficult to arrest. This paper responds to that need for a contextual social analysis of the colonization process.

Six periods of Petén governmental/campesino tenure policy and conflict can be defined:

1) 1700-1959 Stability and Indigenous Independence A traditional and stable indigenous culture (Maya Itzá) existed in the north with communal landholdings, usufruct family plots and a social structure organized around forest-dependence (Reining et al., 1992). A ladino2 business and governmental center grew slowly in Flores, isolated by lack of road access to the rest of Guatemala (Schwartz, 1990). Mopan Maya communities existed in the mountains of the southeast region of the Petén. In 1954, the Arbenz government initiated a small colonization program in Poptún, but it chose not to colonize the Petén extensively, instead favoring the resettlement of campesinos on expropriated fincas elsewhere in Guatemala (Cambranes, 1992).

2) 1959-1974 The Early Colonization Period FYDEP,3 the governing body of the Petén, promoted colonization through cooperatives and cattle ranches. Establishing cooperatives along the Pasion and Usumacinta Rivers prevented a Mexican hydroelectric dam that would have flooded one-fourth of the Petén. FYDEP also financed cattle ranches (fincas) on the natural savanna in central Petén and encouraged conservation protection through the establishment of a forest reserve north of the 17th Parallel equal to 25% of the surface area of the Petén. A road between the Petén and the rest of Guatemala was opened in 1970. The Law of the Petén, 1972-74, established land tenure regulations (FYDEP, 1969; Schwartz, 1987; Taracenda de la Cerda, 1974).

3) 1974-1986 The Delegitimation Period FYDEP's authority declined in the wake of military anti-guerrilla objectives. The military destroyed the western cooperatives in the belief that they were guerrilla strongholds and a regional clamp-down on democratic rights and freedom of association followed. FYDEP undermined its own legitimacy by ignoring land tenure legislation, allowing the parcelation of Petén forests to large ranches, titled to military officers and the wealthy elite of Guatemala (Strothic, 1994). This established permanent juridical and land access inequality between the rich and poor and between locals and non-Peteneros. The government disbanded FYDEP in 1986 as a step towards democratization.

4) 1986-1991 Governmental Weakness and Land Invasions Reduced warfare and a weak transitional governmental structure allowed campesino mobility to increase. The rise of small farmer resistance (disrespect for authority) led to invasions of unoccupied fincas and forest lands in southern Petén and along the oil and lumber roads in the west. The national government moved towards forest protection by establishing the Maya Biosphere Reserve and CONAP4 as the protective agency (Beavers, 1994).

5) 1991-1996 Recognition of Campesino Tenure Systems A second migration wave, mostly second generation Peteneros moving from southern Petén northward, extensively colonized areas inside of the Maya Biosphere Reserve, Sierra del Lacandón National Park, and Laguna del Tigre National Park. In response to the ecological degradation, the government initiated Buffer Zone Management, recognizing invaders’ land rights along the perimeters of protected areas. The government introduced scientific regional management, NGOs played major intermediary roles in small farmer communities, and larger numbers of fincas and small farms received secure land titles (with the exception of cooperatives).

1996-1998 Peace Accord Settlement A transitional sixth period began with the signing of the Peace Accords between the Guatemalan government and the guerrillas in 1996. The government
committed to redistributing unused land to landless campesinos. Campesino groups organized land invasions and civil strife in opposition to CONAP, challenging governmental authority to protect land for conservation purposes. Political collusion with land invasions to garner votes surfaced. The military explored a new role as the chief institution in charge of conservation enforcement.

The unavoidable material reality of the invasions has forced the regional government to change its focus from support of elite land rights in the 1970s, to military struggle in the 1980s, and, following the collapse of FYDEP in 1986 and five subsequent years of indecisive interim government, to the recognition of peasant land possession (usufruct rights) in the 1990s.

Thus, the government, large landholders, and campesinos all share in the culpability for the Petén's forest decline. The Petén government shoulders substantial blame for tenure insecurity in the Petén by three arguments: (1) the government promoted class-biased land distribution that favored the wealthy classes in a country already suffering from land access inequality; (2) the government exerted weak property rights enforcement and illustrated complicity in encouraging internal migrations north into parks and forest reserves; and (3) the government tried to dissolve and discourage common property forms that root ethnic cultures in their land base. Large ranchers have exploited low-wage labor and expanded holdings to include adjacent smallholder lands, pushing poor migrants to seek new milpa lands in other parts of the Petén. They play an important economic role in the region, but do not figure prominently in legitimacy issues. The government never purposely opened land for the poor, but the campesinos themselves rewrote the book by taking lands (the agarradas) wherever they found them abandoned. Small landholders established a new "law of the land" - campesino land institutions - by respecting each other's property lines cut through virgin forests (brechas), by selling and trading "improvements," and by demanding recognition of usufruct rights on private and public lands. A weak regional government had little choice but to accept the reality of land invasions too immense to be repulsed under post-1986 democratic initiatives.

Out of this complex social situation arose seven land tenure regimes in the Petén. Each is maintained through its own specific institutional characteristics, and I call them "regimes" which indicates that each also holds regime-specific linkages to other social and governmental institutions. These seven regimes are: open-access lands without governmental tenure enforcement capability (baldios), smallholder private parcels,5 large private ranches, state-owned protected areas, cooperatives, forest concessions, and Kekchi common community property.6 In this paper, I discuss open-access, state protected lands, and cooperatives as they are central to the illustration of the delicate balance of power between campesinos and the government in the Petén's tenure institutions. I look at each case study from the perspective of ecology and archeology (ecotourism potential) and land tenure conflicts, and I raise theoretical conclusions drawn from the particular context.
The Open-access Diminution of Laguna Perdida

An open-access property regime occurs where users have unregulated access to a common resource area due to the lack of established institutional authority over the land use. Garrett Hardin's "Tragedy of the Commons" (1968) revealed the pressures towards ecological imbalance in such an ill-defined situation. At Laguna Perdida in the Petén, open-access characterizes land tenure because legal enforcement of property rights is non-existent.

Laguna Perdida, the fifth largest lake in the Petén, is located some twenty-three kilometers to the northwest of Petén's central city complex of San Benito/Santa Elena/Flores (see Appendix 1.2; 1.4). The state granted special protection status to the area under the Ley de Areas Protegidas (1989) for historical, economic, and ecological reasons. Laguna Perdida ("Hidden Lake") contains an unexcavated archeological site, a large lake with obvious ecotourist potential, and, as late as spring of 1992, a bountiful mature tropical forest with howler and spider monkey troops and macaw nesting sites. The lake, muddy as are most tropical lakes, has plentiful fish, alligator, and turtle populations, typical of the fauna of Petén lakes with active inflowing streams. Satellite imagery analysis in March of 1995 showed 14% of the area as open agricultural fields and 37.1% as agricultural land with tree patches. Only 7.1% remained intact as mature forest, mostly located around the ruins (ProPetén analysis, 1996). The southern shore fincas have never been worked and their forests, while younger and shorter than those to the north side of the lake, remain largely intact. This southern swampy forest, once proposed by the United Nation's Man and the Biosphere Program as the Laguna Perdida Biotopo, is under consideration as a relocation site for returnees (retornados) from Mexican refugee camps.

The land tenure situation near the lake is best classified as open-access because both ranches and state lands remain unoccupied and unprotected, allowing uncontested land invasions. Large fincas of 5-15 caballerías (1-3 square miles) surround the lake, titled in the 1970s when FYDEP targeted areas near water supplies for cattle production (Arriola, 1996, pers. com.). The northern lakeshore falls within the Buffer Zone of the Maya Biosphere Reserve, a fifteen kilometer wide strip around nuclear areas in the MBR in which management plans unite habitat recovery and community development. Even though private land titles may be granted within the Buffer Zone (illegal within nuclear zones), the government cannot guarantee title security. The ranches, themselves, have questionable legal status because the law recognizes legal abandonment if no improvements are made the year following the granting of provisional title. Expropriation is a discretionary governmental power, and land agencies have generally refused to expropriate unused finca lands and return them to state ownership (Rodríguez Sánchez, 1996, pers. com.). Only two finca owners in the area ever made improvements on their lands. On the other hand, just two small farmers possess legal provisional titles to their land.

Rapid colonization and deforestation of the north shore proceeds along a logging road opened by a local finquero in 1990. In the seven years since opening the road, the park's forested integrity and the area's once remarkable old growth have become fragmented and diminished by milpas - small farmer cornfields - as farmers invaded the unoccupied fincas. Laguna Perdida contains one village of 42 families, San Jorge, established by land invaders.
after the MBR restricted colonization within its borders, and the archeological site. The ruins and surrounding tall forests received legal protection prior to the area's land invasions but IDAEH, the archeological wing of the government, never surveyed and demarcated the boundaries of the park due to lack of resources (see Appendix 1.5). The *campesinos* never asked about or investigated the tenure status of the land.

According to locals, much of the original settlement of Laguna Perdida was the work of professional land speculators - *campesinos* who recognized a gold mine in the colonization process. Speculators, then and now, cut openings in forest patches on private fincas and in state reserves, then sell the parcels and improvements to immigrant landless farmers. Neither buyer nor seller ever obtains official title papers for the parcels. Paperwork of plots near Laguna Perdida lack plot maps, estimate land measurements ("about a caballeria of land") and identify former owners by vague qualities ("sold by Señora Cachiz who has a daughter Carolina"). For this reason, possessors must identify their plots and usufruct rights by cutting property lines (*brechas*) through the forest before others do the same. *Brechas* are respected by other campesinos while unidentified forest plots are not.

These purchasers, largely from San Luis, plan to stay and establish productive farms. The immigrants moved to Laguna Perdida for many reasons: flight to escape the effects of violence, desires to expand the size of landholdings under cultivation, and the search for more fertile land. One such story behind the move indicates the complex relationship between events in the southern Petén near San Luis and the tragic deforestation being felt along the outskirts of the Maya Biosphere Reserve:

"My family is pure Petenero. We grew up in San Luis where my father, Kekchi and my mother, Mopan Maya, farmed 40 manzanas of ejido land for years. We lived in town but worked the land in the hills outside of the area. The land wasn't highly productive as we had to use herbicides and commercial fertilizers. But it produced high quantities of beans which usually received a good price and because my father worked with FYDEP as a translator we lived pretty well. Then, in 1982, several men from Southern Guatemala came and threatened my father with rifles and pistols, demanding that he give up his land. We agreed to keep only 15 manzanas to be safe, and after that, life was much harder but still we survived.

"Our family followed our cousin's family to Laguna Perdida. They came in 1987 and bought the improvements to several large pieces but eventually had to sell some of them. I moved to Sacpuy in 1992 and lived there two years working as a shoe repairman until we bought a caballeria long the lake. We moved here two years ago and began clearing our land and planting corn. Life is much better here, with all the fish from the lake, but there isn't a school for my kids. Also, we'd like to grow diversified crops, but no one comes here to help us. They say they are going to measure our land soon and give us title, but they never come."

In 1995, following pressure by the non-governmental organization CARE and the Catholic diocese in Libertad, the government instituted a land titling program in the Buffer Zones to create a security ring around the Maya Biosphere Reserve. That program began legalizing usufruct rights and *campesino* land claims at Laguna Perdida in 1997.

In the resident's description above lie essential theoretical points in discussing land use and tenure in the Petén. Perhaps the most important is that Petén residents already see mobility as a means to improve their livelihoods. This is in direct conflict with the distrust of mobility evident in the discussions of land invasions by members of the agencies responsible for land use planning and management - CONAP, INTA, SEGEPLAN and the NGOs in the Petén.
Authorities view the development and sale of remote land as a step in planned black market profiteering. Under the Petén's development strategy which tries to encourage long-term forest conservation, legal provisions restrict campesino mobility through prohibitions against land sales for ten years (20 years before 1996) after provisional titling. Regional planners estimated that 70% of lands in the southern Petén were being possessed for future market disposition (Arriola, 1996, pers. com.).

Since being a campesino implies the need for clearing and use of new land for milpa farming and because having more land under cultivation is seen as the manner to improve economic productivity, moving to remote unused (i.e. forested) lands is an accepted practice in spite of its extensive hardships and costs. Long dusty travel to and fro, lack of educational opportunity for the children, and little outside entertainment become a way of life in the search for more land. From the campesino's perspective, the buying and selling of improvements, mandated by the lack of titles and high transaction costs of official land procedures, is a rational means to seek economic advancement through mobility. Thus what is a rational but costly economic strategy to the campesino is an illegal and destructive act according to the government and to conservationists.

Secondly, colonization of the Petén occurred in distinct stages, each with its own particular driving pressure. The original migration, 1950-70, incorporated Kekchi Maya from Alta Verapaz who escaped debt-ridden working conditions on plantations by moving north to southeastern Petén where they integrated into Mopan Maya culture. Later military and political strategies, particularly the granting of large fincas to military personnel north of San Luis, dislocated large numbers of Kekchi campesinos again, initiating an internal movement towards the north. When political and economic unrest led to a new wave of immigration to the Petén by poor ladino and indigenous campesinos in the 1970s, more "pure Petenero" families were pushed northward. Finally, the lack of job opportunity, soil depletion and weed invasion resulting from imported farming techniques inappropriate to the tropics, combined with large family size which made heritable subdivision of small parcels unreasonable, drove young families north where land scarcity forced them into state-owned protected areas characterized by weak tenure enforcement.

The invasion into protected areas created friction with northern Itzá Maya who consider the Kekchi "foreigners" (extranjeros), partly because Kekchi agricultural practice is perceived as not including a positive valuation for forest protection (Soza, 1995). However, revelation by the press in 1996 that the deputy from the ruling party PAN won votes in San Luis with promises to provide lands in the Maya Biosphere Reserve for campesinos indicates that the movement into the forest reserves and national parks to the north has many causes - environmental, social, economic, political and cultural.

A final conclusion from the quote above is that campesino reliance on and expectation of outside inputs for social institutional advancement limits development options in many areas. Without patrimonial intervention on the part of the government, agricultural organization, schools, medical clinics, and community structure rarely develop. The Guatemalan government is prohibited from relations with groups lacking personería jurídica - legal standing given to small villages, cooperatives and corporate entities. Thus, social improvements needing governmental funding require prior community status authorization by the local government, rarely obtained by remote communities located on illegal land holdings.
standing - *personería jurídica*. Cooperatives are not limited to indigenous landholdings, however. Under the development programs of FYDEP in the 1960s, the titled cooperatives along the Usumacinta and Pasion Rivers in western Petén were ladino or ethnically mixed.

The history of the Petén cooperatives, unlike other tenure forms, dovetails with national events. After brief governmental and church support for cooperatives from 1966-1972, governmental relations with cooperatives grew combative with the rise of guerrilla movements. The left-wing insurgency found sympathy among *campesinos* who understood self-organization and the need for better survival strategies for *campesino* households. The military attacked the western Petén cooperatives with a vengeance between 1980 and 1982, killing many and driving nearly a thousand *cooperatistas* into Mexico to join 45,000 Guatemalan refugees amassed in squatter camps to await safe return to their country. Fourteen cooperatives and four communities in the Petén suffered massive dislocations during the unsuccessful campaign to dislodge the guerrillas (*Reencuentro*, 1993). Were it not for the work of INACOP, the Agrarian Institute for Cooperatives which registers cooperatives, few cooperatives today could prove their claims to historical land rights because of lost records and malfeasance against the coops by the government’s tenure institutions. INACOP kept duplicate records and continued to accept and officially register applications after FYDEP stopped processing cooperative titles in 1974.

Many Kekchi/Mopan cooperatives established in the southeast quadrant of the Petén, the most accessible area to incoming colonists, never had a chance to survive. They fell victim to the migrant tide, unable to protect their boundaries from invaders. Required to have twenty-five households, the impoverished cooperatives, composed mostly of landless and fleeing immigrants themselves, received land concessions of over four square miles of uninhabited tropical forest. Given governmental opposition to collective land ownership and the lack of juridical redress, cooperatives simply could not prevent invasions. Gun-toting, land-grabbing ladinos arrived in the early 1980s and used the years of lawlessness to lay claim to lands throughout the area. Many cooperatives disbanded, leaders of others parcelled out lots illegally for private gain, and a few exploded in internal violence or joined guerrilla activity. Given these pressures, perhaps more surprising than the precipitous decline of cooperatives between 1980 and 1992 is that any Kekchi cooperatives, such as Santa Marta, Concomá, Unión-Itzá and Tanhoc, survived at all.

That they did so was largely the work of one man, the regional director of INACOP in Poptún, who steadfastly recorded each and every legal paper for the cooperatives, retaining records through the years of violence and invasion that establish, with unequivocal certainty under Guatemalan law, the legal and indivisible rights of the cooperatives. Today, indigenous groups, returning refugees, and titled members of long since forgotten cooperatives are demanding the return and secure titling for their legal land possessions. To the government’s chagrin, re-establishing legal legitimacy for land tenure begins with respect for the organized and documented indigenous and collective rights of the cooperatives.

The Kekchi cooperative of Tanhoc provides a clear example of land tenure idiosyncrasies in the Petén. The original Kekchi arrived in Tanhoc in the 1940s, well before the migrant swell. In 1976, thirty-six families founded the cooperative to protect customary lands against invaders, registering with INACOP. In 1986, after securing the proper paperwork, Tanhoc representatives went to the FYDEP office to make its required 10% downpayment only to
find FYDEP's operations suspended. Since then, Tanhoc tried unsuccessfully ten times make its downpayment.\textsuperscript{16} Eleven years later, the government still refuses to grant Tanhoc a land title. In the meantime, INTA raised the Tanhoc land-value six-fold, leading to new petitions and rounds of legal haggling.

Governmental intransigence and clientelism in support of disruptive cooperative factions, documented in the Tanhoc files (expediente) at INACOP, promoted difficulties for Tanhoc. The government reasoned that the presence of land invaders on Tanhoc land did not allow INTA to offer provisional title until all land disputes were legally settled. The irony of the situation is that the land invaders were former members of Tanhoc. They had voluntarily left the cooperative, only to return three separate times when other plans did not work out. Twice, Tanhoc actually paid the land invaders for their "improvements" and allowed them to harvest seeded crops in exchange for legal papers guaranteeing that they would depart from the cooperative's land. Each time INTA inspectors certified afterwards that no invaders existed, yet INTA continued to refuse to accept Tanhoc's 10% payment to formalize the landholding. Once, the Guatemalan Office of INTA ordered the Regional Office to accept the payment. They still refused. Today, the original invaders have returned, this time bringing many new families to bolster the invasion.

Concoma, formed in 1978, is another Kekchi community facing titling difficulties. The village contains forty-four families, twenty-three of which participate in cooperative management. It includes two churches, a small cooperative-run store, and a primary school. Villagers practice extensive agroforestry (home orchards and live fences) and maintain modern latrines and a central water source. Cooperative land suffered from a runaway milpa fire a few years ago, but the cooperative inventoried the remaining forest and developed a forest management plan for it. Cattle production is the cooperative's prime industry, and Concoma plans to sell cattle annually to make land payments. That is, if they ever are allowed to make them.

Secure land title is a constantly receding dream with high transaction costs for the Concoma members. Concoma lacks an all season road or trucks of its own. To plead their titling case, they must find transportation out of the cooperative, catch a 5:30 A.M. bus to reach the INTA office in Santa Elena by 8:00 A.M., then must wait hours in line at the INTA office. If asked to return another day (the usual procedure) members must spend the night in a hotel. Concoma's members estimate that they made 20 trips to INTA's office pushing their land claims forward, not to mention the many trips by FEDECOAG\textsuperscript{17} and INACOP\textsuperscript{18} over the years to promote their cause. FYDEP and INTA both lost Concoma's folder (expediente) and only INACOP's diligence in keeping past copies of all transactions allowed the cooperative to replace and prove the existence of their claim.

Concoma now awaits resolution of its land survey results. In early 1996, the INTA office in Guatemala City measured the cooperative's parcel after the regional office refused to do so. Two years later, no map of cooperative lands exists, supposedly held up while the regional INTA office measures adjacent private parcels inscribed in the Property Registry during FYDEP's years of malfeasance in the 1970s. In spite of ten solicitations asking INTA to accept their 10% payment, after two field inspections to verify that there are no invaders within the cooperative's territory, and after a resolution by the regional office that stated that
they, too, agreed that no land invasion existed at Concomá (Resolución #104), the Concomá cooperative still awaits permission to make its initial land payment (see Appendix 1.6).

Furthermore, and perhaps more disastrous to the cooperative at this moment, is that the land value tables have twice been updated by INTA. The Concomá property that was worth about Q13,000 in the 1980s (when compared to similar property) is now between Q5000 and Q10,000 per caballería - a whopping total of some Q240,000. With a 5% titling fee to INTA and the payment of 5% compounded interest per year, it appears that the cooperative will now have to pay nearly a half-million quetzals instead of the Q78,000 initially owed (in 1996 quetzals).

Tanhoc and Concomá faced four difficulties. First, because the government sought to eliminate cooperatives rather than support them, the cooperatives shouldered the burden of boundary enforcement themselves. Second, in spite of fulfilling titling requirements on several occasions, governmental recalcitrance denied the cooperatives legal justice while tripling the price of their land as the cooperatives waited for adjudication. Third, the government imposed such high transaction costs for the two cooperatives that they remained active land claimants only through assistance from outside NGOs or from INACOP, which in the Guatemalan system operates with a fair degree of autonomy from other governmental agencies. Finally, the government clearly failed to support indigenous autonomy based on customary and legal rights. The four points unequivocally illustrate governmental culpability in the tenure insecurity of indigenous cooperatives. Thus, the region's tenure and democratic institutions were undermined as the government failed to back legal structural forms of campesino organizations - the cooperatives - and failed to stand behind constitutional protections for indigenous land rights. Instead, the government supported campesino land invasions against other campesinos.

**Boundary Enforcement and Relocation in the Maya Biosphere Reserve**

The third case study of tenure enforcement efforts in the Yaxhá (ya-sha´) Biological Corridor within the Maya Biosphere Reserve provides a closer look at juridical problems encountered during enforcement procedures. This studies shows that the effectiveness of tenure regulations is intricately linked to other social institutions.

A greater governmental/NGO presence near the Yaxhá Biological Corridor (see Appendix 1.7) allowed the government to try, in the spring of 1996, a strategy to impose legal restrictions against colonization through negotiations. Yaxhá, located inside a nuclear zone of the Maya Biosphere Reserve (MBR), was selected as an area for the implementation of stricter boundary protection due to its wetland importance for wildlife and its two large archaeological sites. Both CONAP and the military established outposts at Yaxhá. Due to its nuclear zone designation, land invasions at Yaxhá face constitutional prohibition (private titling is expressly forbidden) and thus fall under the jurisdiction of the regional court system rather than the Petén Lands Commission. While empowered to protect the MBR against incursions, the courts remain reluctant to enter land issues - a reluctance blamed on corruption, lack of land tenure experience, fear of violent reprisals, and lack of legal precedents. Even when courts issue land decisions, there is no clear power hierarchy to
enforce them - the National Police rarely exert influence outside of urban areas and the military has its hands tied by the Peace Negotiations. At the time of the democratic transition in Guatemala, the Petén was institutionally under-developed in terms of resolving land conflicts. With court support for land management policies in the Petén itself insecure, legal procedures consume large amounts of time and resources, making field enforcement unresponsive to rapidly developing land invasions needing urgent attention. This explains the continuing land crisis within the Maya Biosphere Reserve.

Centered locally around five lakes, the Yaxhá area provides unique ecological habitat and archeological components to the Maya Biosphere Reserve (see Appendix 1.8). SEGEPLAN designated the thirty kilometers of forest between Tikal National Park and the shores of Yaxhá as a biological corridor to serve as a dry season relief valve for the Tikal and MBR wildlife populations. Two large lakes, Laguna Yaxhá and Laguna Sacnab, the Petén's 7th and 10th largest lakes, are tied in a chain with three smaller lakes, Lagunita Juleque, Lagunita Lancajá, and Laguna Champoxté. Together they form the line between large, little used fincas to the south and the multiple use/nuclear zone northward. The forested fincas offer an opportunity for co-management of the area with private finca owners, since they, by law, must follow CONAP's master plan for the benefit of forest habitat and biological integrity.

The richness of the archeological areas around Yaxhá offers great ecotourism potential. IDAEH built a central encampment on the shore of Lake Yaxhá from which its crew of 180 workers spreads out each week to rebuild and excavate four sites: Yaxhá whose towering pyramid rises above the lakes of Yaxhá and Sacnab, giving the tourist an unparalleled view of tropical and riparian habitat; Topoxté, the miniaturized remains of a later civilization on an island in Lake Yaxhá; Nakúm, twenty-two kilometers north of Yaxhá, whose six large pyramids and extensive living quarters are reminiscent of a small Tikal; and Naranjo, a ruin of one of Tikal's major rival city-states. Unlike at Laguna Perdida, the constant presence of IDAEH at Yaxhá eliminated hunting near the ruins where the cries of howler monkeys (zarahuates) now reverberate through previously quiet forests.

On the narrows between the Yaxhá and Sacnab Lakes, CONAP maintains check station where it enforces prohibitions against timber removal from the Maya Biosphere Reserve. CONAP workers cross the lake in a skiff provided by USAID to check on boundary lines and intrusions into the MBR. Three years ago, guards at Yaxhá first reported the land invasions by campesinos on the interior lakes to higher authorities. In June, 1996, the army moved to reinforce the CONAP check station as part of an NGO/Governmental effort to prevent further families from entering the Yaxhá Biological Corridor.

The Yaxhá land conflict actually began five years ago when the first settlers arrived at the shore of Lake Champoxté to set up an encampment, shortly after the designation of the Maya Biosphere Reserve the preceding year. Unlike kinship groups found in Kekchi settlements, these campesinos arrived from many Petén locations and lack family unity. The first settlers came from the southern Petén, later joined by ladinos from outside and inside the Petén. Many Yaxhá families have lived in several Petén rural areas, exhibiting the campesino mobility of residents of Laguna Perdida. According to Champoxté residents, the move from southeastern Petén responded to economic conditions:

"My family had thirteen children, six boys and seven girls. My father only had 30 manzanas, not enough to divide among us. There aren't enough jobs in San Luis. It used to be that one could
find plenty of work on the fincas, clearing and planting milpa. But when they all converted to
cattle ranches and pastures, there wasn't any work anymore. The land isn't very good in San Luis.
They didn't take care of the land like we want to here and it doesn't produce very well. What could
we do, we had to find land to feed our families. A campesino has to have land."

The recent arrival of campesinos gave authorities the hope of dislodging the families
before they caused environmental damage and before their usufruct rights could be
established. Of fifty-one families working in the area by March, 1996, only ten had
permanently moved to houses along the 200 meter riparian buffer zone along the shoreline
(which should receive special protection under national laws).25 This number grew weekly
during April and May as the slash and burn summer months passed, rising to 26 families
during planting season. Planting in the area is monoculture, either corn, squash or a
combination of the two; thus, campesinos invested little other than the labor in cutting down
and burning mature timber for their milpas (see Appendix 1.8 for a list of problems
associated with colonization in the area).

Agricultural clearings within the core of the Yaxhá Biological Corridor fragment
fast-declining mature forests, but these are not the only sources of environmental degradation
in the area. Critical lakeshore habitat is disappearing rapidly. Invading families opened land
for homes and small milpa plots along two lakes, clearing 40% of Champtox't's southern
shore. More destructive yet, a renter of a finca on Lake Champtox't cut to the waterfront,
destroying the habitat utility of the lake's only wetlands and best riparian nesting habitat.
Next to wetland grasses now spreads an illegal 100 acre opening planted in pasture grasses,
contrary to CONAP's master plan.

Land titling complexities at Yaxhá possess their own irony. Were the land situated in the
Buffer Zone eleven kilometers to the south, the invading campesinos might have claimed
usufruct rights and received provisional titles for cleared land. However, the national
constitution prohibits the granting of private titles within the MBR. Even if the government
expropriated the legally abandoned fincas south of the lakes as a source of land outside of the
biological corridor for campesino relocation, it isn't clear that private titles could be granted
because the fincas, too, are within the MBR. The ambiguity of law and legal enforcement
produces complicated legal situations like this throughout the Petén, but the primitive court
system with its complicated relationships to the region's hierarchy of authority lacks the
means to resolve them. Resolution, it seems, must come through negotiated settlement rather
than from legitimized enforcement by state institutions.

Negotiations between the government and invading campesinos over settlements within
the Maya Biosphere Reserve hold all the elements of a cat and mouse political game - land
take-overs, military sweeps, organized resistance, kidnapping, placating social services, media
posturing. In their effort to colonize protected areas, campesinos burned a forest guard
station in Cruce Dos Aguadas, held military and CONAP leaders hostage in Laguna Del
Tigre National Park, and kidnapped scientists and torched a scientific compound studying
endangered macaws at El Peru. Yet the government generally responded with tolerance,
offering road improvements, schools, and forest concessions to communities. Continuing
immigration, however, has forced the government to consider the relocation of some
communities. Yaxhá, with its unstable community and low-impacted environment was the
first area in which relocation negotiations were tried. Their failure provides a worthwhile lesson that may guide to future attempts to negotiate land tenure settlements in the Petén.

In the spring of 1996, the conservation NGO ARCAS, upon discovering the widespread expansion of agricultural clearings in legally protected riparian zones, entered negotiations with the Champoxté community as a quasi-official spokesman for the government. ARCAS promised to seek relocation lands for the campesinos while the campesinos promised to cease clearing land and to limit the community to current resident families. The object was to buy time for possible land swaps by stopping forest harvests in trade for promises of no forced evictions. Neither side had the capability to live up to their agreement because fulfillment involved actions on the parts of agencies and campesinos not participating in the negotiations. The clearing continued, no relocation ground could be found, and more families moved into the area. Negotiations broke down and the military entered the picture to enforce what amounts to a stalemate between campesinos and the authorities.

The lesson of Yaxhá is that stalemate works to the advantage of invading campesinos and for the degradation of habitat components in the MBR. Only after failed negotiations at Yaxhá did INTA step forward with guidelines for relocations, though no government agency has yet attempted to construct a relocation plan for any of the illegal communities. Negotiations appear meaningless in a vacuum of hollow threats and promises when campesinos, aware of military retrenchment and democratization, have little fear of punishment for agricultural incursions into the MBR even though firmly prohibited by law. This is a crisis of legitimacy of the highest proportion because the government can provide neither relocation solutions nor adequate boundary enforcement.

Discussion

Today, only 45% of Petén forests remain intact and 90% of all lands within two kilometers of a major roadway are deforested. Forty-one illegal campesino settlements already exist within the Maya Biosphere Reserve and the advancing slash and burn deforestation and colonizing pressure remain unchecked. Several trends suggest ways to reverse this migratory pressure. First, the legal restriction against land sales under provisional title failed to stabilize the land tenure situation because campesinos see mobility as a rational household survival strategy and a democratic right. Prohibitions on sales of private lands only guarantee that transactions go unregistered and that the government knows little about them. My interview with small farmers indicate that farmers can feasibly farm only a third of what they are now receiving, indicating that smaller private plots created by a land market and greater emphasis on protected forest patches might serve the population and environment in the Petén better. Second, campesinos, not the government, create land tenure arrangements. Recent titling efforts in the Buffer Zone by INTA reflect usufruct rights put into effect by the campesinos themselves. Third, the culpability for land transgressions is founded on governmental policies which historically distributed land to wealthy families rather than to the land poor, delegitimizing the tenure system and forcing impoverished campesinos to take the law into their own hands. Fourth, campesinos themselves have yet to accept responsibility for conservation protection which is the only long-term solution for land and forest preservation.
As colonization pressure shifted in the 1990s from private lands to the Maya Biosphere Reserve, conservationists stepped in with community development strategies that promise to buy time for the establishment of legitimate enforcement procedures. These projects tend to address only the communities already within the MBR or its Buffer Zone (e.g., with forest concessions, eco-development, and agricultural intensification under NGO training). Little attention has been given to the colonization tide itself and what demands its continuation will elicit on the political-social structure of the Petén. The repossession of abandoned fincas outside of the reserve for the relocation of illegal settlers provides a short-term strategy that needs serious planning to be practical and enforceable. However, planners must also begin to address larger structural questions. How can the rural wage structure, providing below household subsistence wages since 1976, be reconstructed to provide higher household income? What type of jobs need be created to produce higher wages and greater job opportunities in the urban areas in order to reduce the need for subsistence agriculture in rural areas?

Finally, the delegitimation process itself must be reversed. Without effective administrative and judicial institutions to provide a measure of land security to smallholders, indigenous groups, and protected areas, titling and agricultural extension programs will remain ineffective in stopping uncontrolled deforestation. Delegitimation arose from unclear institutional responsibilities, inequitable and unfair land distributions, civil and military violence, and the exclusion of peasant and indigenous groups from decision-making and positions of responsibility. Agricultural families and indigenous groups demand a share of power over landuse decisions as much by their presence as by their organization. Finding the means to incorporate that power into legitimized institutions, such as locally-based land commissions built from representatives of campesinos, NGOs and the government, will be the test of the future for the Petén. Such incorporation would stabilize legitimacy in the short-run, opening the door for long-term cultural reconciliation and a regional consensus for tropical forest protection.
I would like to thank the Latin American Institute at the University of New Mexico and the thoughtful suggestions of Richard Wood, Les Field and others for assistance in revamping and publishing this article. I also want to thank the Kekchi campesinos who helped me become aware of the internal subtleties of the move to colonize the Petén's tropical forests and the members of FEDECOAG, ARCAS, and CARE who took every effort to support my work in Guatemala.

2 *Ladino* - a word used in Guatemala to describe non-indigenous people. It includes both *criollos* of pure Spanish descent and *mestizos* of mixed Spanish and Indian races. *Ladino* also carries cultural connotations as well as racial ones, describing an indigenous person who has taken on a non-indigenous lifestyle and attitudes - hence *ladino-ization* is a word describing the process of modernization in indigenous life in Guatemala.

3 It is customary in Guatemala to use the anacronym FYDEP for the Empresa Nacional de Fomento y Desarrollo de el Petén.

4 Comisión Nacional de Areas Protegidas - the National Commission on Protected Areas made up of representatives of fourteen different ministries in the national government. CONAP's centralized power remains in Guatemala City while its administrative duties are greatest in the remote department of the Petén where it has regional offices and field stations of forest guards. Conflict between ministries and between the central office and the regional one create difficulties that greatly reduce its ability to run enforcement programs in the Petén.

5 The Law of the Petén takes as its goal the avoidance of *minifundios* (sub-subsistence small farms so common in the rest of Guatemala). For this reason, the law grants the right to a *caballería* (112 acres) to each family in the hopes of stimulating farm production capable of market production. Since most farmers can only manage planting a third of that, remaining land is either left fallowed or in forest cover. Recent land distributions have been unable to match the full *caballería* due to growing land scarcity and smaller amounts are being titled in many areas.


7 IDAEH - Instituto de Arqueologia e Historia

8 Given the illegality of land holdings, improvements actually are valued more than the land itself.

9 INTA - Instituto Nacional de Transformación Agraria

10 It is estimated that recent warfare and civil disturbance left over 150,000 dead, 1% of the population in Mexico, and between one and three million internal refugees forced to flee their indigenous homelands (Robinson, 1991).

11 This popular perception is, itself, problematic. In Kekchi cosmology, the world is governed by Tzuul Tak 'A, god of mountain and valley and many religious ceremonies used to be located explicitly in mountain caves (Estrada Monroy, 1990). As my study shows, Kekchi in cooperatives have strongly supported forest protection. Yet the cultural dedication to their 2000 year old heritage of *milpa* practice is likewise strong and not always properly adapted to fragile tropical soils.

12 Patrimony (*patronismo*) refers to a system of reciprocation in which a dominant figure or institution provides subsistence in exchange for subordinate loyalty, particularly forms of support beyond just wages. Guatemala has experimented with a variety of patrimonial forms, but at root in all of them is the idea that *campesinos* are unable to organize themselves and must rely on the decisions of their *patron* or government.

13 Perhaps the best examples of on-going local organization by a group of workers are the cooperative of chicle workers and the trade association of tourist guides.

14 As Rosenbaum (1993), Smith (1996) and Warren (1989) point out, ethnic identity undergoes change in relation to the greater society and to pressures of internal differentiation. In Guatemala, Mayan identity is self-created and developed in opposition to ladino (mestizo) culture (Gallo 1995; Hale 1996). As a group, the Kekchi of the Petén are strongly associated with communal land and collective work methods. But it is common to find those Kekchi that prefer private land holding and mestizo culture and no claim is made here that all Kekchi hold identical attitudes.
15 SEGEPLAN - Secretariat General de Planificación

16 The information from Tanhoc and Concoma was taken from documents in the files of the two cooperatives kept by the national governmental agency which registers cooperatives, INACOP.

17 Federación de Cooperativas Agrícolas de Guatemala

18 La Institución Agraria de Cooperativas

19 Yaxhá (Ya-sha') comes from the Mayan words Yaax = green and ha = water.

20 Tikal contains the most spectacular of Mayan ruins in the Petén and was the center for Classic Period Mayan culture.

21 There seems to be administrative confusion over the actual designation of land in the Yaxhá Biological Corridor. Maps of the MBR indicate that initially, the lakes were left out of the MBR, later being added as an element of the multiple use zone. Redesignation of the MBR elevated the area to a multiple use zone, though many members of CONAP insist that the area is a nuclear zone. For the purpose of this study, multiple use and nuclear zones are effectively the same as the law (Decreto 4-89) prohibits forest conversion to agriculture and the titling of private property in both zones.

22 United States Agency for International Development

23 The limited ability of the system to protect local resources was shown in May of 1996 when an armed robbery of a newly discovered tomb in Yaxhá under its great pyramid was pulled off without a hitch. A Guatemalan archeological crew uncovered the tomb at the end of its 22 days on/8 days off cycle. The archeologist in charge ordered the tomb closed for the week off while he returned to Guatemala City to obtain additional funding for the project, stationing four guards at the site. Two nights later ten armed looters gained control of the area, removing urns, two jade pieces, and others objects not yet recorded by Guatemalan anthropological authorities. It is not clear if the objects were removed from the area by foot or vehicle, though a CONAP guard reported that a vehicle passed through the unmanned station during the night. CONAP lacks funding for a 24 hour operation in remote posts like Yaxhá.

24 At the same time, the army also set up posts in El Caoba, Paso Caballos in the MBR and in Santa Amelia in Parque Laguna del Tigre.

25 "Artículo 122.- Territorial Reserves of the State. The state reserves dominion over a strip of ... 200 meters around the edge of lakes."

"Artículo 126.- Reforestation. Reforestation and the conservation of forests in the country are declared urgent national and social interest. ... The forests and vegetation in the edges of rivers and lakes ... enjoy special protection." Constitución Política de la República de Guatemala

26 Asociación de Rescate y Conservación de Vida Silvestre

27 According to my calculations, inflation has left real rural wages (U.S. $3.30/day) below those calculated by the CUC in 1976 as necessary for survival for a family of four (U.S. $3.40).
References

APPENDIX 1

MAPS OF THE PETEN
The Land Tenure of These Communities Is Discussed in This Report
Fall 1996
Maya Biosphere Reserve

Laguna del Tigre National Park

Multiple Use Zone

Biotopo Laguna del Tigre

Buffer Zone

Sierra del Lacandón National Park

Usumacinta River

Private Land

Belize

Mexico

Funded Titling Projects in the Buffer Zone of the MBR

- Albor Project
- Cruce Project
- Laguna Perdida Project
- Care Project
The Area Around Laguna Perdida and Its Archaeological Park

Plot Map from FYDEP 1986, courtesy of CONAP
Laguna Perdida - Park, Ruins, and Agricultural Incursions

Clearings made by three Salvadoran immigrants who failed to pay former claimant for land

Clearings made by family who paid claimant for unregistered rights to land

Macaw nesting tree toppled

Clearing made by family who are expanding former openings

Potential Forested Park Boundary

--- Cleared Lines Within Park

Ruins and Pyramids

Forested Area

Older openings purchased by non-resident family seeking additional income
LAND TENURE PROBLEMS AT CONCOMA

1 - INTA forces Concoma to give up parcel to widow who has invaded their property.
2, 3, 4 - During discouraging years in late 1980s, several members file for private titles but later think better of it. INTA refuses to process title application.
5, 6 - Former members who resigned and signed agreements with cooperative. Papers were lost and INTA maintains they are invaders.
7 - Neighbor invades cooperative. Concoma files complaint to INTA.
8 - Brother of neighbor invades and applies for title to Concoma land.
9 - Neighboring ranch claims land to the Machaquilá River which would include a portion of Concoma Cooperative. INTA stops survey of Concoma in middle and never returns.
Location of Fincas in the Yaxhá Case Study Area
Problems
1. Five years ago settlers appeared. CONAP fails to heed warnings of its forest guards to take action.
2. Settlers make openings along the lake, slashing and burning old growth tropical forest to make corn and squash fields.
3. Finca owner rents farm to rancher who clearcuts 90 hectares for pasture and cuts wetland nesting area.
4. Invaders from neighboring communities, having claimed all intervening land, begin clearing in private fincas.
5. New arrivals begin clearing deeper into the abandoned fincas.
7. Outsiders, not actually living in the area, leapfrog over the clearings and cut lines deep within the MBR to claim land.
8. Robbers steal priceless objects from tombs of ruins during excavation in 1996.
9. River/estuary has critical turtle and crocodile nesting habitat, high bird diversity in rare scrub/marsh habitat. Possibility exists for purchasing for protection.
10. District from neighboring communities, having claimed all intervening land, begin clearing in private fincas.


OCCASIONAL PAPER SERIES


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