Analysis and Possible Improvements of the Land Restitution Process in Guatemala

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by

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This document describes work undertaken as part of a programme of study at the International Institute for Geo-information Science and Earth Observation. All views and opinions expressed therein remain the sole responsibility of the author, and do not necessarily represent those of the institute.
Land Restitution in the Guatemala context follows the Peace Agreements sign in 1996 by the Guatemalan Government and the Guerrilla. This agreement was sponsored by the United Nations and ended with 36 years of civil war. Recognition of indigenous rights and land restitution were topics addressed by the Peace Agreements. Several Organizations were created in order to implement the peace agreements and address land matters.

The aim of this research was to analyze the current Land Restitution Process. This paper pays special attention to the identification of the stakeholders involved in the Land Restitution Process and to the identification of bottlenecks and gaps.

The findings of this research is that the Land restitution Process is only referred to the Land delivered by the State by programs conducted by the Ministry of Agriculture. Original owners lost their property due to the civil war. It was found that there are three organizations involved in the process but only one charged to implement it. There is no Land Policy that guides the restitution process or the organizations implementing it, this has caused overlaps in the activities that the organizations perform.

The analysis made of the current restitution process; provide the foundation to propose improvements. The formulation of the improvements is made at three levels identified in the country case study: Policy Level, Organizations Level and Process Level. The improvements proposed aims to reduce the time that the process takes, which causes dissatisfaction between the beneficiaries. The improvements seek to improve the provision of information required to realize the analysis that will end with the restitution of land rights.
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1. Introduction

1.1. General Introduction

Land has been, since human kind appears over the earth, the physical space where all its activities and manifestations take place: social, political, cultural, economic, productive, religious, etc. and Land also has provided the resources for human maintenance and development. Due to this activities man has developed strong relationships with land; a feeling of belonging and belong as individuals or as a group. This relationship makes man appropriate, claim and defend this land that is considering their property. Since the resources that land provides are able to maintain the basic needs of the population (food) and also are able to generate wealth (use of the resources land provides), the social recognition of this rights becomes very important. Historically this property rights have been recognized by society under customary and/or statutory law.

This normal relation of man with land, and the rights over it, in certain moments of history has been broken and people lost their property and the rights over it. The reasons for this looses are several: colonization, war, forced evictions, land reforms (as collectivization), human rights violations, etc. The most affected groups in such cases usually are the week ones: woman, disable people, pours and indigenous. The right to own property and the protection of it has become a human right and it is stated in the Universal Declaration of Human Rights Article 17:

Everyone has the right to own property alone as in association with others
No one shall be arbitrarily deprived of his property (UN, 1948).

Misappropriation of land, any outside case or reason, creates deep wounds in society, it faces different social groups ones against the others and is the origin of land conflicts and social claims that reach different levels of violence even could end up in a civil war. Those conflict situations and social claims create social insecurity, fear and instability; market distortion and delays the development of the country.

Land Restitution is a land policy implemented to achieve social justice by restoring land and property rights or compensation to people that for some reason have lost them or have not been recognized. Nowadays this land policy is implemented in several countries in the world due to globalization, recognition of human rights and protection of indigenous rights. The main driving force for a country to implementing such policy is concerned mainly with social justice by the restitution of land property rights. But also is important to outline that such policy takes a particular shape under the objectives the countries would like to achieve, recognition of indigenous and minorities rights, move from command economy to market economy, as a way to solve land conflicts and start a process of pacification, or in other cases a combination of these forces.
1.2. **Background**

The history of Guatemala is not different from other countries in Latin America who have been through a process of conquest and colonization, where two different cultures crush and one prevailed over the other. This is the starting point when Indigenous people of Guatemala, first land owners, start loosing their land property rights. What follows are several historical moments where this loose of property rights continued and could be basically three.

**Spanish conquest and colonization:** where indigenous start loosing their lands  
**Liberal reform of 1870:** expropriation of indigenous lands (nationalized or sold to coffee exporters) and forced eviction  
**Dictatorial Military Governments after 1954:** One of the strategies used to illegally obtain lands was the so called “titulación supleatoria” with the complicity of Judicial Power and Municipal authorities, was possible for white people misappropriate lands of indigenous although they were registered in the “Registro general de la Propiedad” (Camacho, 2003).

On the other side, 96% of producers farm 20% of agricultural land, while 4% of producers farm the remaining 80%. The consequences of this unfair situation was the increment of poverty in rural areas, land Conflicts, social insecurity and finally the appearance of the “guerrilla” who fought for indigenous rights. The Governmental response to this situation was repression and the balance: 200,000 people dead, destruction of 440 indigenous villages, internal displacement of 1 million people and 151,000 refugees and a civil war that last 36 years (Camacho, 2003).

In 1996 a Peace Agreements was signed between the Guatemalan Government and the Guerrilla, with the cooperation of United Nations. It is entitle “Agreement on identity and rights of indigenous peoples”. Between others, what is referred to land are:

**Rights relating to land of the indigenous peoples:**  
Rights relating to land of indigenous peoples  
Regularization of the land tenure of indigenous communities  
Land tenure and use and administration of natural resources  
Acquisition of land for the development of indigenous communities  
Restitution of communal lands and compensation for rights  
Legal protection of the rights of indigenous communities

In the peace agreements it is also outlined that the land that was taken in a fraudulent way from the indigenous peoples and given to politicians and army during the civil war, should return to their original owners and compensation for all land robbed from people who lost their roots during the conflict has to be executed (United States Institute of Peace, 1998).

The Guatemalan Governmental Agrarian Policy to implement the Peace Agreements of Indigenous Rights on what is referred to Land matters was the creation and implementation of three main organizations under the Ministry of Agriculture and the strengthening of the existing General Property Registry RGP (van Hemert). Figure 1.1 shows the evolution of the conflict until, the peace agreements that end the civil war and the main organizations involved in the implementation of these agreements.
The strategy developed by the Government was the creation of the following organizations charge to address the agreements related to land.

Fontierras: Guatemala Land Fund Organization has two major objectives. The first one is to facilitate access to land through credits for voluntary purchase and sale to the same time help with founding programs and technical aid to beneficiaries in order to start producing on acquired land. The second is the regularization of tenure of land delivered by the state which main beneficiaries where indigenous communities and landless people that were displaced by effects of war or they were forced to leave its property that later was occupied by the military or politicians.

Contierra: Presidential Branch Office for Legal Assistance and Conflict Resolution related to land. The main objective of CONTIERRA is to facilitate and support conciliatory or juridical solutions in all those situations in which two or more people struggle for the rights of use, tenure or land property rights.

UTJ Protierra: Cadastre Organization inside the Ministry of Agriculture, who is responsible for coordinating the creation of a National Cadastre for Guatemala. The main activities are: To elaborate and to validate the set of national technical norms of cadastral execution and to coordinate the financial, administrative and technical aspects of the execution of the National Cadastre and to define the legal frame of national operation.

RGP General Registry of Property: Institution charge to make, in conformity with the law, the registry activities related to real estate. RGP performs a variety of functions: Inscription; entails recording, alteration and determination of rights of interest, certification; used to verify ownership rights and information management.
1.3. Problem Statement

The Land Restitution Process in Guatemala should restore the property rights of the claimants, satisfy the demand of people who were forced to leave their land and is a key factor in the process of pacification and development of the country.

Till now the results of the Agrarian Policy for Land Restitution seen by the results of the main Organizations conducting it (Contierra y Fontierra) are very small as it has been outlined by international organizations and researchers as we can see below.

In 1999 12,000 peasants marched 70 Kilometres to Guatemala City to protest lack of government progress in implementing the peace accords. Demand efficiency in issuing land titles and asks for a review of the performance of CONTIERRA. (Bailliet 2000)

An evaluation of the Agreements overall indicates that the process of resettlement and integration is still inadequate and continues to suffer from the lack of a comprehensive development strategy that would help make it sustainable. The situation has become critical and deserves urgent special measures. (MINUGUA 2002)

European Parliament expresses its concern at the weaknesses of CONTIERRA and therefore calls on the Guatemalan Government to give CONTIERRA a political and legal mandate within the new Secretariat for Agricultural Affairs and the resources necessary to impose settlements effectively in specific disputes, by exercising the authority of the State. (European Parliament resolution, 2003)

Until the middle of 2001 Contierra had realized 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 organization involved. (van Hemert 2004)

Profile of Internal Displacement: Guatemala, made with compiled information available in the Global Internal Displaced People concludes in:

The military and non-state actors continue to occupy land taken during the war and appropriate additional property by way of forced evictions
4% of producers own 80% of the land in Guatemala (2003)
The Agreement on Identity and Rights including restitution, compensation, and acquisition of land for indigenous communities remains unaccomplished by the government (2003)
The absence of a national land registry system is the main obstacle to conflict resolution
The most serious obstacle to Internal Displaced People’s land legal security is secondary occupants, and annulment of their land rights on the basis of improper application of “abandonment” criteria (Norwegian Refugee Council, 2004)

The failure in the performance of CONTIERRA, FONTIERRA and the other organizations charged to implement the peace agreements on matters related to Indigenous Land Rights added with other facts as seen by international organizations are to little and could drive to Guatemala to a Second Conflict. Improvement of the current Land Restitution process is required.
1.4. Objectives
The main objective of this research is to analyze the Land Restitution Administrative Process in Guatemala and make recommendations for improvement. In order to achieve the main objective the following sub objectives arise from the main:

- To analyze the Land Restitution Process and identify gaps and bottle necks.
- To make recommendations for improvement of the Land Restitution process in Guatemala.

1.5. Research Questions
In order to achieve the research objectives, the following questions need to be answered:

Which countries and how they have successfully implemented Land Restitution Process? to which extend are similar or different from the Guatemala LRP?
What management and implementation strategies can we draw from these experiences and to which extend they can be used in the Guatemala LRP?
What does literature suggest on the criteria for successfully implementation of a LRP?
How is the existing LRP in Guatemala taking place, how do stakeholders perceive its success, and what do they consider are the major bottlenecks and possible solution strategies? Why is important to improve the process?
Which are the organizations, what are their roles and responsibilities and what are the management criteria in the LRP in Guatemala?
Under which parameters the performance of the LRP in Guatemala can be assessed and which are the improvements that can be made to the process?
How the improvements can be implemented and what are the critical issues to consider for implementing them?

1.6. Methodology
1.6.1. Literature Review:
Literature review will provide the theoretical frame to answer question number three. A review on the main concepts and definitions related to Land restitution, Land Conflict, Land management, Land administration and the instruments of land administration as the way to implement land policies. Literature review will include Thesis, Books, Research Paper, articles conferences, reports and web references related to the topic. Literature review will also answer question number five; it will allow a pre-identification of actors in the Guatemalan Land restitution Process.
1.6.2. Country Case Study

Land Restitution is a policy that has been implemented in various countries all over the world. A review of some of these international experiences is conducted in order to identify the way this policy was formulated and implemented. These countries cases studies will provide lessons learned that together with what literature suggests for the implementation of land policies, will be used to assess the current land restitution process in Guatemala.

The countries selected for the country case study should fill two conditions, first should be from different parts of the world and second, the driving force to run such land policy should be different between each other. These two conditions will provide a wide range of characteristics for the study in order to identify communalities for the implementation of a land policy and specifically a land restitution policy.

Bulgaria: Land restitution in a country of moving economy, from command economies to market economies.
South Africa: Land Restitution in a country where discriminatory law stripped indigenous people from their land and addresses injustices from apartheid.
Peru: Land Policy implementation in the Latin America context, land restitution used to restore property rights of indigenous communities and natives, the main task was the improvement of tenure security as a way to rise from poverty.

1.6.3. Fieldwork

The field work conducted in Guatemala is going to be used to find the answers to questions four, five and six. The methods proposed to collect data on field are: interviews, questionnaires and a focus group.

Interview: This method is going to be used to obtain information about the administrative procedures underpin in the land restitution process. The interview will tend to the identification of the major bottlenecks of the current process and possible improvements.

Questionnaire: The main purpose of the questionnaire is to know the policies related to indigenous property rights and the procedures a user must follow to successfully obtain the restitution of their property rights. Obtain data about what is the role and what kind of information (spatial and non spatial) the different organizations involved in Land Restitution Process require and the identification of common information providers.

Focus Group will be use to collect data directly from the users and beneficiaries in the land restitution process in Guatemala. Assess how clear and comprehensive are the administrative procedures for the users; indigenous people. What is their point of view on what kind of improvements could be made to the current land Restitution Process?
Table 1.1 Methodologies

Table 1.1 shows the method used to solve each one of the research questions.

1.7. Scope of the Research

There are two considerations to take in account in this research. Land Restitution has to processes, legal and administrative; this research is going to look only to the administrative process. The other consideration is that Land Restitution also implies compensation and reallocation. Some times is not possible to give back the land so compensation is provided or reallocation of new land is provided. This research is going to look only at the Land Restitution Administrative Process.

1.8. Prior Researches

Land Restitution in Guatemala is very close related to the recognition of indigenous rights, reparation of human rights violations, conflict resolution and return of refugees and internal displace people. Many researches have been conducted with different approaches: ones address the cultural aspects; the differences between cultures (Spanish and Maya) on the way they understand land matters, others under the legal point of view (National and International Legislation and Rights); indigenous, internal displace people and refugees rights, and finally under a technical scope; status of land administration instruments in order to implement and carry out land policies.

- (Grunberg, 2003) addresses the differences between Land and Territory making a historical review of the times and ways how Indigenous people of Guatemala lost their lands and the role of the Cadastre to aid land conflicts.
• (Camacho, 2003) looks to the problematic of land conflicts not only from the Legal aspects but also from the cultural political religious and ethnical point of view identifying types of land disputes.

• (Bailliet, 2002) concentrates the study on the Human rights of indigenous and displaced people and their rights to claim and restore their land property rights. Also identifies the organizations that deal with the land restitution process and the performance of Contierra, Presidential Branch Office for Legal Assistance and Conflict Resolution.

• (Bailliet, 2002a) in the Paper Property Restitution in Guatemala: a Transnational Dilema takes a look to property restitution as a way to ensure the return of refugees and displace people after the civil war in Guatemala, seen under international legislation and Human Rights.

• (Godinez, 2001) makes recommendations for the development of a Cadastral Infrastructure that supports the implementation of a Land Administration System.

• (Flewelling, Knigge, Badurek, 2002) feasibility study for the development of LIS benefits of it and definition of the frame work data and technical requirements.

• (Williamson, 2001) addresses the importance of land administration system and its components for the implementation of Land Policies. States that driving forces for land administration reform are two: first: the desire of countries to promote economic development and second; political and is concerned with the restitution of land rights.

• (Norway Registry Development AS, 2002) conducted a study with the objective to develop a project plan and description for the development and implementation of the cadastre and real register infrastructure in Izabal. Outlines the leading character of the Register as the only tool that enables the protection of the right to ownership.

1.9. Thesis Structure

Chapter 1: Introduction
This Chapter provides and overview of the research; presents the background information of Land Restitution, the implementation in Guatemala, previous researches done and states the research problem. It further outlines the scope of the research, the objectives and the methodology proposed to answer the questions.

Chapter 2: Land Restitution Theoretical Framework
Chapter two provides the theoretical framework that guides the research, the key concepts under which the Land Restitution is studied based on literature review and a country case study.

Chapter 3: Land Restitution Process in Guatemala
The objective of this chapter is to describe the activities and the data collected during the fieldwork, covers the methodology for collection of primary and secondary data and the sources of the date collected.
Chapter 4: Analysis of Land Restitution Process in Guatemala
This chapter first describes the current situation in Guatemala. Further an analysis and interpretation of the data collected is done, the land restitution processes are modelled and gaps and bottlenecks in the land restitution processes in Guatemala are identified.

Chapter 5: Improvement of Land Restitution in Guatemala
Based on the analysis made before, improvements are developed at Policy, Organizations and Process Level.

Chapter 6: Implementation Requirements
Requirements for implementing the improvements at Policy Level, Organizations Level and Process Level are proposed.

Chapter 7: Conclusions and Recommendations
Finally conclusions, recommendations are made.
2. Theoretical Framework

2.1. Introduction
This Chapter will provide the theory behind the implementation of Land Policies. For such purpose several concept are discuss. This chapter also includes a theoretical review on land restitution, objectives, driving forces, and processes. Further more a review on international experiences, country case studies, is done to gather lessons learned on the implementation strategies of a land restitution policy. This chapter will provide a general criteria and methodology for the evaluation of the land restitution policy implementation in Guatemala.

2.2. Key Concepts

2.2.1. Land Policy
Policy is defined as a general principle by which a government, company, or organization is guided in its management. This term, as applied to a law, regulation, or rule, denotes a general purpose to direct the welfare of the community or a group.

The highest level in a hierarchy is land policy, which falls under the national development plans of a country (Dale & McLaughlin, 1999). In this context land policy is taken as a governmental instrument that states the strategy and objectives of a country. It is considered of the utmost importance that a country trying to organize its land matters with the development of a land policy that fits with in national objectives and leads to concrete actions.

Land policy consists of a whole complex of socio-economic and legal prescriptions. Also dictate how the land and the benefits from the land are to be allocated. A balance must be struck between the exploitation, utilization and conservation of the land as a resource in order to obtain the necessary level of sustainable development for the survival of humankind (ECE, 1996)

Land Policies are of fundamental importance to sustainable growth, good governance and the wellbeing of economic opportunities, open to rural and urban dwellers particularly for the poor people. The potential for using land policies as a catalyst for social and economic change is of great importance; land policy can support country development and contribute to poverty alleviation. Nowadays land Policies are concerned in developing countries and in countries in transition to the following three topics:

- First, providing secure tenure to land can improve the welfare of the poor, in particular by enhancing the asset base of those, such as women, indigenous and disable people are often neglected or not recognized.
• Second, facilitating the exchange and distribution of land, whether as an asset or for current services at low cost, through markets as well as through non-market channels,

• Third, governments have a clear role to play in promoting and contributing to socially desirable land allocation and utilization. This is clearly illustrated by farm restructuring in the context of de-collectivization and land reform. Also in post-conflict land policy in economies of highly unequal distribution of land ownership. This land issue is often a key element of social strife. (Deininger, 2003)

### 2.2.2. Land Management

Land management includes the formulation of land policy, the preparation of land development, land use plans, and the administration of variety of land-related programs. It also included the processes of decision making whereby resources are allocated over space and time. This according to the aspirations and desires of man within the framework of his technological inventiveness, his political and social institutions, and his legal and administrative arrangements. (Dale and McLaughlin, 1988)

Land management is the process by which the resources of land are put into a good conception. It covers all activities concerned with the management of land as a resource both from an environmental and economic perspective. It can include farming, mineral extraction and estate property, estate management, and physical planning of towns and the countryside. (ECE, 1996)

### 2.2.3. Land Administration

Land administration helps to fulfill the distributive function of land management. The main task are organizing, directing and controlling the land registration systems. In turn, land registration is the major means by which the information management of land administration is achieved (Nichols, 1993).

The UN-ECE defines land administration as the processes to determining, recording and disseminating information about the tenure, value and use of land. When implementing land management policies it is to considered include land registration, cadastral surveying and mapping, fiscal, legal and multi-purpose cadastres and land information systems (UN-ECE, 1996).

Dale and McLaughlin (1999) define land administration as the process of regulating land, property development, the use and conservation of the land. Part of this definition, is gathering of revenues from the land through sales, leasing, taxation and the resolving of conflicts concerning the ownership and use of the land. They identify three attributes of land: Ownership, Value and Use. Further more they divide the land administration in four functions: Juridical, Fiscal, Regulatory and Information management.
2.2.3.1. Components of Land Administration

The following definitions of the components of land administration are also based on Dale and McLaughlin, (1999).

**Land Registration:**
Land registration provides the means of recognizing formalized property rights and regulating the character of transfer of these rights. Land registries document assure the certain interests in land included information about the spatial extent of this interest. They also provide the names of the individuals, to whom these interests are related.

**Land Valuation:**
Land, seen as a resource is one of the basic elements from which a Country can obtain wealth. Land as capital and labour are considered by classic economy as the major generators of wealth for the economy. One of the ways to generate this wealth is the use of taxes. The claims of taxes on land property are based on the value of the land. This value is defined by a variety of factors that include the quality of land, legal constrains, the intended use of the land and the general state of the local economy.

**Land Use:**
Land use has many definitions and interpretations for example in the context of sustainable development. Defined as a economic and cultural activities practised upon the land. These activities are object of regulation and restriction according to the authorities. From a land administration perspective all this activities and restrictions which take place in the land, should be recorded.

**Cadastre Surveying:**
Cadastral surveying is the term generally used to describe the gathering and recording of data about parcels. Cadastral survey is concerned with geometrical data, size (significant one), shape and location of the parcels.

2.2.4. Land Policy Implementation

Land administration is one, if not the main land policy instrument (GTZ, 1998). The implementation of any land reform, policy or program relies in some form of Land Administration. This permits the complex range of rights, restrictions and responsibilities in land to be identified, mapped and to be managed as a basis for policy formulation and implementation (I. P. Williamson, 2001). Land administration processes are used to implement land management policies. Therefore, land administration processes (e.g. adjudication, survey and registration) are used to realise land restitution.

We can conclude that Land Policies which are formulated at Land Management level have political intention and they are implemented by Land administration and the tools of it. The state of the art of those instruments allows decision makers the formulation of Land Policies as it is showed in Figure 2.1.
2.3. Land Restitution

2.3.1. Definition

Restitution is “an equitable remedy under which a person is restored to his original position prior to loss or injury, or placed in the position he or she would have been” (Black’s Law Dictionary, 1991).

Land Restitution as a land policy, addresses a political objective or/and achieves social justice. The definition is very much country oriented. United Nation ECE defines it as process that involves the restoration of land rights to previous owners, a process known as land restitution (ECE, 1996).

It happens some times that land rights can not be restored due to many reasons, so compensation for those lost rights is provided. A definition that includes the concept of compensation is more suitable due to ‘world’ experiences. Restitution is the process by which land and other property rights that were forcibly removed from its owners, is restored or compensation of equivalent value is provided. (R. Grover and M. Florez-Borquez, 2004)

2.3.2. Objectives

The main objective of Land Restitution is to achieve social justice. Land Restitution policies have to do with the need to make correction of the past, solve or rectify unfair situations. These correction must be fitting with the own political objectives of a country. It is concerned with the policy of
providing Land Restitution to those whose real estate was forcibly removed without receiving adequate compensation. It has to do with situations in which one group has unjustly enriched itself at the expense of other groups or individuals, through the forcible removal of property from its owners. And it is also concerned with the recognition of property rights of minorities such as indigenous people who have their own way and right to use and usufruct the land that has belonged to them since long time in history.

The forcible removal of property, the lost of the property rights and not recognition of property rights of minorities, individually and/or collective, can happen in a variety of ways including:

- Colonization
- Ethnic cleansing in which a social group is driven from its property
- Forced sales at below market prices
- Treaties in which land transfer was not the result of informed consent as one party had different concepts of land rights from the other
- Collectivization so that individual property is expropriated and replaced by ownership or control by the state or collective organization
- The dispossession of the vanquished in a war, civil war or internal conflict by the victors
- The dispossession of those branded as the enemies of the state or of society

2.3.3. Driving Forces

The main driving force for a country to implementing such policy is concerned mainly with social justice by the restitution of land property rights. But it is not the only one; Land restitution is a policy that is taking place in several countries in the world with different driving forces that goes from recognition of indigenous and minority’s rights to moving from command economy to market economy. What comes next are some of the driving forces identified due to literature review.

- Recognition and protection of indigenous land rights

  Indigenous rights in the past decades have been a matter of continental and international discussion. In Latin American many countries have been recognised as multiethnic and multicultural societies that provides special protection for indigenous lands. In the ILO indigenous and Tribal Peoples Convention N. 169 on what is related to land, between others it is established that the states must:

  a. Identify indigenous lands and guarantee the effective protection of rights of ownership and possession.
  b. Safeguard indigenous right to participate in the management and conservation of resources.
  c. Consult with indigenous peoples over mineral and surface resource development and any policy that could affect them.
  d. The possession and property right will have to be recognised the towns interested on the land or territory that they had traditionally occupy.
e. Whenever it is possible, these towns must have the right to return to their traditional earth as soon as they let exist the causes that motivated their transfer and relocation.

The UN Draft Declaration on Indigenous Rights reiterates the preference for restitution of land, but leaves open the possibility of alternative compensation: Article 27, notes: “Indigenous peoples have the right of restitution of the lands, territories and resources which they have traditionally owned or otherwise occupied or used. Which have been confiscated, occupied, used or damaged without their free and informed consent. Where this is not possible, they have the right to have an compensation. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size, and legal status.”

• Human Rights Violations:
  One of the Human rights stated under the Universal Declaration of Human Rights Article 17 says as follow:
  1. Everyone has the right to own property alone as in association with others
  2. No one shall de arbitrarily deprived of his property (UN, 1948)

In the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of Human Right restitution appears as the way to protect these human right and restoration as compensation is included.

Restitution should, whenever possible restore the victim to the original situation before the violations of international human rights or humanitarian law occurred. Restitution includes: restoration of liberty, legal rights, social status, family life and citizenship, return to there own residence, restoration of employment and return of property.

• Conflict Resolution
  Land Conflicts are very complex problems and they usually don’t have one single origin, they have multiple causes that articulate juridical, cultural economic, political, ethnic and religious facts. Usually all these facts have an historical evolution and have different shapes through time. In social sciences, conflict is a general denomination for the differences such as tensions, rivalries, discrepancies and disputes. Fights of different intensity could happen between different social units (Vinyamata, 1999).
  The natures of the land conflicts are many:
  
  o As the result of Land Policies: Collectivisation, expropriation, policies of apartheid or ethnic cleansing etc.
  o Overlap between customary and statutory law
  o Unclear definition of property rights, double titling
  o National, District, Local or Parcel boundaries not defined; etc

In some of these Conflicts, Land Restitution is a way to solve this conflicts that in some cases are the beginning of a process of reconciliation of a country.
• **Internal Displaced People**
  The property rights of displaced people are protected by international law. The property is protected from destruction and illegal appropriation which could end in a restitution of Property rights. The reasons that motivate the displacement of people are many: could be policies of apartheid or ethnic cleansing, armed conflict, large-scale development projects, in cases of disasters or when it is used as a collective punishment. In any case the Human Rights Guiding Principles on Internal Displacement protect their property rights as it is stated:

I.  No one shall be arbitrarily deprived of property and possessions.

II.  The property and possessions of internally displaced persons shall in all circumstances be protected, in particular, against the following acts:
(a) Pillage;
(b) Direct or indiscriminate attacks or other acts of violence;
(c) Being used to shield military operations or objectives;
(d) Being made the object of reprisal; and
(e) Being destroyed or appropriated as a form of collective punishment.

III. Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use (Human Rights, 1998).

Only the guarantee of the end of the causes that motivate the displacement and the security of displaced people to return to the place they left and the restitution of their property rights could ensure their right to return home.

• **Environmental Protection**
  This driving force is very much related to the right and recognition of indigenous land rights and the right they have to claim back the lands they once owned. There are three main conceptual approaches to indigenous land rights.

  o Protective approach: indigenous people need special protection
  o Right based approach: indigenous people have special rights to land and resources under the parameter of multicultural and multiethnic states
  o **Environmental approach**: argues that indigenous people have great capacity to manage natural resource in fragile areas

  The environmental approach takes the protection of the environment as its main point, some environmentalists see indigenous people as the best keepers or protectors of the rain forest and fragile ecosystems. It is recognised as a special value the relationship indigenous people have developed with the land, not seen a commodity, but as the space that supports its
development; physical, cultural and religious. Under this environmental approach land restitution becomes a driving force (Plant & Hvalkof, 2001).

- Poverty alleviation
  Land policy which main objective is, fight against poverty and uses the Recognition, Restitution and Regularisation of individual or communal property rights, as a way to raise from poverty providing tenure security that enables owner’s access to financial markets.

- Economic Growth
  Due to world globalisation of the economy and the change of political regimens in the world especially in formerly communist’s countries; land restitution is seen more as a privatisation of properties. From an economic point of view, it has significant implications for the functioning of the property markets. In countries where these occurs, it has an impact on foreign investors, who have interest in invest in real estate.
  It means that owners, who previously thought they had good title to a property, no longer enjoy this. The wealth of the previous owner is destroyed or, at least, reduced. Restitution is therefore associated with the redistribution of wealth. Often the owner, who had previously enjoyed a good title, was the Government and the new owner is a private individual. Restitution is therefore one of the means by which private property markets and individual decision-making over real estate has been created in transitional economies.

2.4. Land Restitution Instruments
As it was stated in the definition of land restitution, the main purpose for Land Restitution is the achievement of social justice. The reparation in cases when people lost their property rights is not only land restitution, but also compensation and reallocation. As it was stated in the definition of land restitution, it is not only the restoration of property rights when possible but also the compensation or reallocation of the same value of the lost property. Figure 2.1 shows the ways of restitution.
2.4.1. Land Restitution

Land Restitution in itself as the restitution of property rights is based on the identification of the original owners. The provision of the information required for the identification of the original owners is provided by two organisations: Cadastre that provides the physical description of the land (area, boundaries). The Registry which provides the description of the owner-rights that owner has over the land. Depending on the country these two organisations could functioning separately or integrated as one.

2.4.2. Land Reallocation

Land reallocation is the provision of alternative land of the same value and characteristics as the one owned originally had.

2.4.3. Land Compensation

The concept of Compensation in Land Restitution appears when the restitution of the property rights is not possible due to external facts. Under the principles of international and human rights, the person could then make a compensation claim. An economic valuation of the lost property has to be made and the provision of payment for it also.

2.5. Country Case Studies

Land Restitution is a policy that has been implemented in various countries all over the world. A review of some of these international experiences is conducted in order to identify the way this policy was formulated and implemented. This will provide lessons learned that together what literature suggests for the implementation of land policies, this will be used to assess the current land restitution process in Guatemala.

The countries selected for the case study, are countries in some cases with more that ten years experience running land restitution process (Bulgaria and South Africa) the case of Peru, is due that both countries share cultural similarities. This is to say, a countries define as multicultural.

Bulgaria: Land restitution in a country of moving economy, from command economies to market economies.

South Africa: Land Restitution in a country where discriminatory law stripped indigenous people from their land and addresses injustices from apartheid.
Peru: Land Policy implementation in the Latin America context, land restitution used to restore property rights of indigenous communities and natives, the main task was the improvement of tenure security as a way to rise from poverty.

2.5.1. Bulgaria

Bulgaria, like all the countries of central and Eastern Europe is undergoing rapid change, politically, socially and economically. Bulgaria is moving towards a market oriented economy the classical economic theory identifies the resources of capital. Such are labor and land as the basic components which will determine their future wealth. The status of private property is a major difference, perhaps the main force between capitalism and communism. For Bulgaria the land restitution is seen as privatization process (Dale, 2000).

There are significant differences between the general definition of the word “restitution” and its meaning within the context of Bulgarian land reform. In Bulgaria, “restitution” does not stand for the process of returning all seized or expropriated property by the Communists during their rule; legislators concluded this option was logistically impossible. Rather the restitution process has been a narrow program, designed to provide compensation for the people who are able to satisfy several necessary preconditions. A sizable number of Bulgarians who apply for restitution cannot meet this heavy burden (Miller, 2002).

2.5.1.1. Historical Background

The pattern of land tenure and ownership in Bulgaria has been as complicated as the country political history, it is a sequence of different historical and political facts that evolved and change at the present day.

- 1904, the first Nation’s law on real property rights based on the French Civil Code, by Law of Properties, Ownership and servitude’s.

- 1944, after the Russian occupation, many changes concerning the ownership rights to all types of property were made. The private means of production was expropriated and State ownership became predominant. Private ownership was prohibited and replaced by the concept of public ownership, accompanied by making allowance for “personal ownership”. This allowed individuals to possess only certain limited real property and other objects needed specifically to satisfy their personal needs.

- 1951, a new Ownership Act was adopted formally replacing the earlier 1904 Law of Properties and by 1956 the first agricultural co-operatives were organised.

- 1971, the old “Dimitrov” constitution of 1948 was replaced with a new version. Contain articles specifically allowing the expropriation of property in a variety of instances. Though “personal property” was still theoretically allowed, in practice “the State could base on the
Build-up and Regulation Plan (BRP). Expropriate any ‘personal property’ at any moment even if this was the person’s only property.

- 1989, the quarter-century Communist dictatorship collapsed together almost half century of Communist dictatorial rule.

- 1990, the Bulgarian Constitution, as well as the Ownership Act were amended and supplemented. In July 1991 replaced by a new Constitution. Bulgaria continued on its transition from totalitarian dictatorship to democracy and from centrally planned system to free market economy.

2.5.1.2. **Strategy and Policy**

Bulgaria as many countries of central and eastern Europe are undergoing rapid change, politically, socially and economically. It is moving from command economies towards market oriented economies. Classical economic theory identifies the resource of capital, labor and land as the basic components which will determine their future wealth (Dale, 1999).

The status of private property is a major difference, perhaps the major difference, between capitalism and communism. The transition from a centrally planned economy to a free market economy in the Republic of Bulgaria called for changes in the agricultural sector. In the early 1990s Bulgaria launched extensive reforms. The principles of private real rights and liberalised land markets were restored in the legislation. Several land restitution laws were passed, affecting farmlands, forests, nationalised immovable properties, and expropriated properties. The land restitution policy implemented in Bulgaria is seen as a process of privatisation and as a way to move from command economy to a market oriented economy.

2.5.1.3. **Legislation**

In February 1991 a Law of ownership and use of farming land were passed. This law stated that the land expropriated by the State would be returned to the rightful owners or heirs before 1946. Land is to be returned in equal quality and quantity to the legitimate proprietor. The main objective of the Law is restitution of private property rights to the rightful owners or their heirs. Under the Law of Ownership and Use of Agricultural Land (LOUAL) land can be restituted in the following two ways:

1. Restoration within existing or restorable old boundaries. Actual old boundaries that have been preserved on the terrain are defined with respect to topographical features.
2. Under plans for land reallocation which will take place in cases where it is impossible to provide evidence of boundaries but in which the former owners or their families are deemed entitled (Kopeva, et al., 2002).
2.5.1.4. Organisations
The Land restitution in Bulgaria is conducted by three organisations: Municipal Land Commissions, Cadastre and Registry. The cadastral and land registration function is in radical transition. The old land administration structure does not efficiently perform its tasks, the major problems are:

1. Legal land records generated by land reform and especially by the subsequent conveyance are still kept in an outdated negative personal deed registration system. Covering only private land transactions.
2. The cadastral survey/mapping and land reform output information are kept by either the Municipal Land Commissions (MLC, Ministry of Agriculture and Forestry) for agricultural and forest domains, or by the Technical Services (TS, Municipal Administrations) for the urban areas. As a rule there are conflicts between the records at the LC.s and at the TS.s, especially the edge-matching issues of land domains.
3. Maintenance of the cadastral survey/real rights record is now insecure; due to the registration system is not mandatory for transactions between public bodies.

In January 1, 2001 the new Cadastre and Property register Law start taking place. The changes include the integration of the current fragmented cadastral survey/mapping records. Along with transformation of real right records into two institutions: the Cadastre Agency and the Registration Offices (RO) at the District Court combined with a parcel-based deed system. The development objective of project is to improve the coverage, completeness, accuracy, and responsiveness of the cadastre and real property registration systems. Therefore contribute to the development of secure tenure of real estate, the reform was broken-up into four components:

1. The first component is cadastre system development consisting in the design and implementation of a national cadastre system.
2. The second component is property registration system development. The purpose of that is there is a start-up of a new real property based system in all 112 district courts.
3. For the third component of the project there will be cadastre and property registration operations. Introducing the property-based registration system and the creation of an effective data link exchange between all agencies.
4. The last component of the project management and development of a policy and legal framework. It will finance the cost of project implementation unit which is responsible for training activities and technical assistance (Spurling, 2002).

2.5.1.5. Process
The institutions primarily responsible for the initiation of land restitution process throughout Bulgaria are the 301 Municipal Land Commissions (MLC). The procedures for restitution of property rights are of long term. The following stages are involved in the land restitution process:
1. Former landowners or their heirs petition the relevant MLC for restitution of their property.

2. Within one month of receiving of the petition, the MLC should issue a decision on the reinstatement of property rights, this is either:

   (a) When land can be restored in its real boundaries and the decision issued is final owners recover their land property
   (b) When land cannot be restored in its real boundaries, but the ownership right is acknowledged, owners must wait until after the plan. Land reallocation is enacted, for the final decision regarding the specific area in which their land is to be allocated.

3. A sketch for each plot must be prepared by the MLC with reference to existing or new cadastral maps. Owners are considered to be granted into possession. On receipt of the sketch from the MLC.

4. The notary office issues a legal deed of ownership based on the MLC final decision and the sketch of the plot. After the amendment of the law in 1991 final decisions issued by the MLC along with the sketch of the plot. Juridical power corresponding to the notary deeds. landowners can use them as collateral for any land transactions (Kopeva, et al., 2002).

2.5.2. South Africa

It is well known that the political history of South Africa has given rise to inequalities in the ownership of land. South Africa was a site of prolonged struggle between native peoples, and European colonists throughout the eighteen and nineteenth centuries, which saw the defeat and subjugation of the African chieftaincies and the loss of the majority of territory to white settlers in the twentieth century, under policies of segregation and apartheid. The separation of people along racial lines was accompanied by massive forced removal of African, Indian and colored people. Together with the widespread dispossession of land and other properties, the severe restriction of social economical and political rights. The result was one of the most unequal societies in the world with a relatively small white minority enjoying high standards of living. The great majority of the black population consigned to a life of extreme exploitation and poverty (May, Woolard and Klasen 2000: 26).

2.5.2.1. Historical Background

South Africa suffered a long history of colonisation, racial domination and land dispossession. Resulting in a bulk of agricultural land owned by the white minority. Black people resisted being dispossessed but were defeated by the superior arms of the newcomers. Although dispossession of black people initially took place through conquest and trickery it came to be a major policy of the state supported by an array of laws from the early days of colonisation. The most systematic land dispossession by the state came into effect after 1913.
1913 The Native Land Act apportioned 8% of the land area of South Africa as reserves for the Africans and excluded them from the rest of the country, which was made available to the white minority population. Land available for use by Africans was increased by 5% in 1936 bringing the total to 13% of the total area of South Africa. Thus 80% of the population was confined to 13% of the land while less than 20% owned over 80% of the land. Black people were prohibited from buying land in areas outside the reserves. The objectives of this Land Act were mainly three:

- Firstly to make more land available to white farmers.
- Secondly, it was to impoverish black people through dispossession and prohibition of forms of farming arrangements that permitted some self-sufficiency and they became dependent on employment for survival, thus creating a pool of cheap labour for the white farms and the mines.
- Thirdly, there was also the purpose of enforcing the policy of racial segregation, which had previously not been consistently enforced.

1950 The Group Areas Act, passed soon after the National Party took over government in 1948. Used by the apartheid state to carry out forced removals of black people from land declared to be white areas. To complete so the policy of racial segregation by removing "coloured" and Indian people from so-called white areas. Remain black farmers who had escaped the 1913 Land Act because they had title deeds to their land.

1951 The Prevention of Illegal Squatting Act augmented the Group Areas Act and other racially based land laws. Making provision for the eviction of people who had no formal rights on land. It authorised the state and private landowners to evict people and demolish their homes without court orders. It is estimated that 3.5 million people were forcibly removed under various apartheid laws between 1960 and 1983.

1994 The transition to democracy, liberation and democracy were ultimately not won through armed struggle. But won through negotiated settlement which necessitated compromises on the issue of land. The policy of the incoming government of the African National Congress (ANC) was to effect land reform that would be a significant extent, ameliorate the injustices of deprivation and denial of access to land. In the policy document, the Reconstruction and Development Programme (RDP) the ANC undertook to carry out, land reform under three major strategies: restitution, redistribution and tenure reform.

2.5.2.2. Strategy and Policy

Land its ownership and uses has always played an important role in shaping the political, economic and social processes. Land is an important and sensitive issue in South African Past. Land policies were a major cause of insecurity, landless citizens and poverty in the country. The policy for the country as a corner stone for reconstruction and development was meant to deal effectively with:

1. The injustices of racially-based land dispossession of the past
2. The need for a more equitable distribution of land ownership
3. The need for land reform to reduce poverty and contribute to economic growth
4. Security of tenure for all
5. A system of land management that will support sustainable land use patterns and the rapid release of land for development.

With the advent of majority rule in South Africa following the 1994 elections, the government was under constitutional obligation. Making land reform as a priority by means of redressing the inequalities of the past. The White Paper on Land Policy was drawn up in 1997 as the policy document that would facilitate the redress of this inequality.

**Land Reform Policy Objectives:**
1. Redress the injustices of apartheid
2. Foster national reconciliation and stability
3. Underpin economic growth
4. Improve household welfare and alleviate poverty

It listed its objectives under what is called the Three Pillars of Land Reform: Redistribution, Restitution and Tenure Reform (Commission of Restitution, 2003).

**Redistribution**
*Objective:* Provide the landless, disadvantaged and poor with the ability to acquire land for residential and productive uses.
*Beneficiaries:* The poor and marginalized communities as well as those who wish to acquire more land to benefit the rural and urban poor, labor tenants, farm workers and new entrant’s to agriculture.
*Mechanism:* The Settlement Land Acquisition Grant of R 16,000 per family for the purchase of the goods and services.

**Restitution**
*Objective:* Enable people who have been dispossessed of their land to receive compensation in the form of the land they lost, alternative land or alternative land and cash settlement.
*Beneficiaries:* Those dispossessed of their land through racially biased legislation.
*Mechanism:* Land Claims Court and Commission.
*Criteria:* A person or community dispossessed of property after 19 June 1913 as a result of racially discriminatory laws or practices.

**Tenure Reform**
*Objective:* Strengthen land rights of people with insecure land rights.
*Beneficiaries:* Those people with a hold on farms, those who were moved to or lived in the old Bantustans and Colored Rural Areas, those living as residents on church-owned land etc.
*Mechanism:* Land Rights Bill is being developed, interim Protection of Land Rights Act was passed in 1995. There is also the Land reform Act which protects labor tenants and their families. The Transformation of Certain Rural Areas Act which will transfer 1.7 million hectares of land to those people in the former “colored” reserves. The Extension of Security Tenure Act protects the more than 6 million people living in the former Homelands.
2.5.2.3. Legislation

South Africa's land restitution process was born out of the Constitution of 1993. This Constitution conferred upon persons who were dispossessed of their land under racist legislation. The right to claim restitution against the State. Further it mandated the establishment of a Commission on the Restitution of Land Rights and a Land Claims Court to give effect to this process.

One of the very first pieces of legislation that the new government promulgated was the Restitution Act No 22 of 1994 as amended. The main aim of the Act was to provide for the restitution of land rights to persons or communities dispossessed after 19 June 1913 as a result of past racial discriminatory laws or practices. The Restitution of Land Rights Act was amended by the Land Restitution and Reform Laws Amendment Act 63 of 1997 by the inclusion of a new Chapter III A. The chapter allows claimants to approach the Land Claims Court directly without first going to the Commission.

The restitution process enables individuals (or their descendants) and communities who were dispossessed of their rights of land. In terms of racially discriminatory laws or practices have the right to claim restitution against the State. All claims must first be submitted to the Commission on the Restitution of Land Rights whose role is to investigate the merits of claims and attempt to settle them through mediation. Where a claim cannot be settled through mediation, the Commission must prepare a comprehensive report. Refer the claim to the Land Claims Court for final determination. Successful settlements must also be referred to the Court in order for the Court to scrutinize them and give them the status of court orders. Thus all restitution claims ultimately reach the Land Claims Court. (White, 1998)

2.5.2.4. Organizations

To investigate and adjudicate on land claims South African Government order to implement the land restitution policy based on the Land Restitution Act. Which provides the establishment of an independent Commission for Land Restitution and Land Claims Court. The main objectives of these two organizations were:

- Provide equitable redress and restoration to victims of these dispossession; particularly the landless and rural poor.
- Contribute towards equitable redistribution of land in South Africa.
- Promote reconciliation through the restitution process.
- Facilitate development initiatives by bringing together all relevant stakeholders, especially the Provincial Government and Municipalities.

One of the objectives of the constitutional principle of restitution is the restoration of land. Lost by parties dispossessed by virtue of racial legislation. Other forms of restitution such as monetary compensation and provision of alternative land are possible.
Land Claims Court is to decide which form of restitution is appropriate and fair in each case. Restitution can take the form of returning the original piece of land that was taken (this is called restoration). If this requires expropriation of the current owner, he or she is entitled to fair compensation. Restitution can also take the form of granting the claimant alternative state owned land or monetary compensation. Where compensation is payable either to a claimant or to a current owner who is being expropriated. It is also the task of the Land Claims Court to decide on the amount of compensation.

South African Land Registry Organizations
The Department of Land Affairs (DLA) is mandated with the distribution of Geo Information in South Africa. It consists of the National Mapping Organization (NMO) and the Deeds Office. The two departments are under different ministries but share their information. The NMO is reorienting its services in order to meet the land information requirements of all South Africans especially the Landless.

The Deeds Office maintains centralized modern deeds registers, which are computerized and form part of a Wide Area Network (WAN). Processing of Deeds, changes and enquiry’s are done from eight deeds offices. The department provides an online enquiry facility where users can access the deeds database. The National Mapping Organization and the Deeds Department form the Land Registry Organization in South Africa.

The relative successes of the Restitution and Redistribution policies can be attributed to their association with the existing cadastral system. Redistribution is simply a transfer of ownership through the current registration system. Restitution although more complex, involves either a transfer of ownership or the valuation of historical rights. With a view to comparable redress through either financial compensation or alternative land. (Dylan RAWLINS, South Africa)

2.5.2.5. Process

Clear Restitution Claims Process
The Commission crystallized the manner in which claims are to be processed and this includes the following phases:

1. Lodgement and Registration (closing date 31/12/98, establish database)

2. Screening and Categorisation (initial screening, preliminary option, advanced screening, preliminary feasibility, batching and prioritisation, preliminary field research)

3. Determination of qualifications in terms of Section 2 of the Restitution Act (assessment of gazette needs, assessment of notification needs and the gazetting/notification of the interested parties),

4. Preparation for negotiations (project plan for claimants, representation of claimants if required, research in order to obtain any outstanding information, valuations, Monitory Value
of Claim (MVOC), verification, preliminary planning, preliminary case report, negotiation position, prepare and obtain mandate.)

5. Negotiations (agreement, preparation of memorandum for approval, Deed of Settlement, deal with disputes, obtain Ministerial approval/Court Order)

6. Implementation/Settlement support and development planning (detailed land planning, transfer of land, development funds, grants, post-award support and handover. Financial compensation or other redress is implemented in cases where claimants are not restored to the claimed land.)

2.5.3. Peru

The History of Peru is not much different than the others countries in South America. Peru was firstly populated by Andean civilisations until the 12 of October of 1492 when was conquest by Spain. The process of colonisation was slow and last until 28 of July of 1821 when Peru obtains its Independence from Spain. To the original Andean population was added the Spanish and different times of History the Africans and the Asians. The Andean civilisations were disposed of their lands in the Spanish conquest. The process of recovery of their lands was slow and in some cases were product of social mobilisations that reach certain levels of violence. The land matters in Peru runs from the recognition of customary lands possessed by Andean Communities (Andes Region), Peasant Communities (Coast Region) and Natives (Rein Forest). The restitution of land what was Displaced People by Terrorism and Drug Cartels. Has to do also with the registration of lands, which is one of the objectives of the latest governments as a way to raise from poverty, providing secure tenure, formalising informal tenure and giving the possibility to access to financial markets. The latest land projects in Peru where related to the formalisation of informal tenure in urban areas but in the last years it has done also in rural areas (Montufar, 2002)

2.5.3.1. Historical Background

- 1824 – 1825 The first legislation of the Republic considered that the Andeans were the legitimate proprietors of the lands. This legislation gathered under the Customary Right statement "the single land possession and operation by the Indians of the Land, turns them into owners". Nevertheless, this attempt of legitimating did not have the opportunity of being protected through a registry. This made possible that the land lord groups found mechanism which they allowed them to neutralize the principle of the Customary Right and to undress of land to the minorities.

- 1920 The new Constitution considered that the best way to protect the indigenous rights and the lands occupied by them was concentrate into Communities. The land property rights of these Andean communities were declared imprescriptibly, untouchable and inalienable. With this, the Government far from solving the problem which was done to confirm despoliation
ANALYSIS AND POSSIBLE IMPROVEMENTS OF THE LAND RESTITUTION PROCESS IN GUATEMALA

previous to this date. Forcing the Andeans to resign the right of individual property and imposed to a communitarian system the so called operation of the Earth.

- 1950 The relation between land lords and Andeans still continue with difficulty. Land Lords continue expanding land. This turn into conflict and became critical until it reach levels of violence especially in the south region of Peru. This conflict continues till 60’s. The legal answer of the State was the Agrarian Reform.

- 1964 and 1969 The Agrarian Reforms tend to solve unequal distribution of land and the high levels of concentration. The Agrarian Reformation almost imposed a system of collective property creating near 1500 companies. Associated by farmers, without considering the opinion of the own farmers. This Agrarian Reform established minimum and maximum sizes of rural properties. Under the state ‘the land is for whom works it’ land expropriations took place. In most of the cases the expropriations processes were not ended and land was re allocated. This made almost impossible the registry of the new owners.

- 1980 As from the 80’s two new problems appear, terrorism and drugs cartels. In both cases violence caused the displacement of communities of Andeans and Natives. The results of this violence and displacement of the communities was the lost of properties which in many cases was not registry due to reasons above explained.

- 1991 As many other Governments looking for the modernization and development of the economy, Peru put special emphasis in the subject of the security this means in the social, political and legal aspects. In the Peruvian case it was necessary to generate the conditions for a climate of legal security that allow investment and open rural market. This was possible with the Law of the Agrarian Transformation. The base for this modernization of the agricultural sector was based on the provision of tenure security. This means the formalization of property rights the registration of rural properties was at that moment not more than the 8% of the total rural lands (Montufar, 2002).

2.5.3.2. Strategy and Policy

The main task of the Peruvian Government to achieve economic growth and heal poverty was between several parties, the provision of tenure security. This task was conducted first in urban areas and then to rural areas. This project was initiated in the 90’s and continues running nowadays. The project of formalization of informal tenure included the urban and rural informal lands. The project included three action lines:

1) Reinforcement and creation of organizations charged to conduct the policy as Cadastre and registry organizations
2) Modification of the current institutional and legal frame work
3) Program of regularization of land property rights in country scale that will reduce individual costs

The implementation of the policy took several years and included also several phases as follows:
• 1990 – 1993 Pilot project “Land Titling and Registration Program” for the formalization and registry of informal property in urban and rural areas. This included the development of Procedures, Methodologies, Technologies and Systems for that purposes. It also includes the creation of new institutions charged to conduct the process.

• 1993 – 1996 Creation of the institutions charged to conduct the Land Titling and Registration Program, for the Rural Lands: SUNARP National Superintendence of Public Registries and PETT Special Project for Land Titling (Rural Cadastre). In the case of urban areas: RPU Urban Property Registry and COFOPRI Commission for the Formalization of Informal Property (Urban Cadastre)

• 1997 Peru presents this Titling and Registry Program to the World Bank in order to ask for financial support. The main topics to be asses were Procedures, Methodology, Technology and Systems.

• 1998 World Bank agrees in the provision of financial support for this Land Titling and Registry Program.

2.5.3.3. Legislation

A key element of the structural reforms launched in 1991 was the government’s plan to afford certainty as to ownership rights to land, formalize land tenure, particularly in rural areas, and expedite title registration. In pursuit of those policies a set of important laws was passed governing ownership rights. A corpus of laws liberalizing individual ownership of land was put into place in the early 1990s, but the kind of institutional support and financing needed to implement the legislation on a large scale was not forthcoming.

• Legislative Decree 667 of 1991 regarding the Rural Property Register, which established an administrative procedure for acquisitive prescription and revamped the Rural Property Register
• Decree-Law 653 of 1991 Agricultural Sector Investment Promotion Law, which guarantees private ownership of land and permits its sale, lease, and use as mortgage security
• Law 26505 of 1995, aimed at spurring private investment in rural land and doing away with maximum and minimum land-ownership requirements
• Law 26845 N° - Law of Degree of Territories of the Communities Farmers of the Coast, published the 26 of 1997 July
• Law N° 24656 - General Law of Communities Farmers, published the 14 of April of 1987
• Law N° 24657 - National Necessity and Social Interest Declare of Deslinde and the Degree of the Territory of the Communities Farmers, published the 14 of April of 1987
2.5.3.4. Organizations

To implement the land policy in Peru that will provide and improve tenure security it was necessary the creation of new organizations that will carry out the policy. The policy will cover informal urban tenure and separately rural informal tenure. For that reason where created two different cadastral organizations and also two different property registries, one for rural areas and the other for urban areas.

Cadastre Organizations:

COFOPRI Commission for the Formalization of Informal Property: COFOPRI is a decentralized public organism of the Ministry of Justice that acts like Technical Secretariat of the Provincial Commissions of Formalization of the Informal Property making the physical and legal cleaning of urban estates at national level. The purpose of providing the population with land titles is to improve legal security that allows the access to financial markets to thousands of families of limited resources.

PETT Special Project for Land Titling: The PETT is the technical and normative organ of the Ministry of Agriculture that is in charge of the formalization of rural land tenure at a National level at a Legal and Physical level. This work is developed in three areas: Rural Informal Lands, Vacant lands dedicated to agriculture and Native and Peasant Communal Lands. Also, the PETT is the organism in charge to carry out the, modernization, consolidation, conservation and update of the Rural Cadastre of the country (Deininger, 2001).

Registry Organizations:

RPU Urban Property Registry: Urban Property Registry is in charge to register properties located in slums and popular urbanizations at national level and rural estates in the Department of Lima. Account with offices interconnected at national level, which allows the accomplishment of proceedings from and for any part of the country in where the Registry has offices. It is transitorily an organ dispersed that has national competition, with registry, economic and administrative autonomy.

SEPR Special Section for Rural Property: This is a registry for rural property attached to the SUNARP (National Superintendence of Public Registry) charge for the registry of rural properties.

SUNARP National Superintendence of Public Registry: Is the organization in charged for the property registry and the one who is carrying out the process of integration of the urban property registry and the rural property registry.

2.5.3.5. Process

The formalization of property rights in rural areas is a program conducted by the state. So between deferent parties done by the cadastral organization has three main phases (www.cofopri.com.pe).
Preliminary analysis:
1. Identification of informal tenure rural areas
2. Compilation of existing graphical information of the area
3. File with preliminary information of the area, legal and graphical

Physical Analysis:
1. Generation of graphic information and maps (Aerial flight, ground control and triangulation, photogrametric restitution, editing, unique identifier)
2. Identification of restricted areas (archeologically, reservoirs and risky areas)
3. Identification of registered areas
4. Definition of final maps

Legal Analysis:
1. Identification of parcels and boundaries
2. Definition of legal file
3. Pre evaluation of legal file
4. Cadastral certificate
5. Registry of the property
6. Issuance of titles of ownership

2.6. Findings and Concluding remarks

The implementation of a land restitution policy as literature review suggests relays not only in the land administration instruments or organizations charged to run the policy. It has also to do with the clearness of the formulation of the policy. Based on the literature review and the lessons learned from the country case studies. It has been identify in three levels that are closely related to the implementation of a land restitution policy: Policy Level, Organizational Level and Process.

Policy Level
This level is where the policy design and formulated the policy. The stakeholders at this level are the Government and the parliament. The objectives are discuss and formulated, the legal framework; laws and regulations, economic and social aspects, the beneficiaries of the policy and the duration of the policy.

Organizational Level
This is the level of the organizations charged to conduct the land restitution policy. At this level the strategic aspects will be discussing. Designing the internal organizational structure and the external structure, meaning the way related organizations are going to communicate.

Process Level
On this level the processes are defined, it has to do with a number of procedures that have to take place, in order to achieve the final objective. It is directly related with the land administration instruments as cadastre and registry.
The process of land restitution based on the country case study is shown in figure 2.3. What follows is a summarized description of the process.

1. Submission of the request: Is the first step of the process. Elaboration of a request for land restitution and presentation to the organization charged for this.
2. Evaluation: At this step the request is evaluated and a decision for acceptance or rejection of the request is made.
3. Analysis: Provision and compilation of relevant available information of the land. Includes physical and legal data.
4. Resolution: Delivery of the analysis in terms of recognition of the restitution of rights.
5. Cadastral Process: This process is conducted in order to deliver the land owned by the State to the beneficiaries includes de adjudication, demarcation, survey and mapping.
6. Registry: After the adjudication to the new owners, the land should be registry and further the Title is provided.
3. Fieldwork Data Collection

3.1. Introduction

The previous chapter reviewed what literature suggest on the way land policies and international experiences where analyse. These provide the criteria for the analysis of the current land restitution process in Guatemala. This chapter attempts to answer questions 5 and 6 of the research by describing the way the Land Restitution Process is taking place in Guatemala. Identification of major actors and their responsibilities in the restitution process is made. This Chapter will start with pointing out the objectives of the fieldwork, a description of the information required, the methods used for the collection of data. After been explained the methods used, a description of the Land Restitution Processes is done, which starts with the definition of the land restitution policy, identification of the Stakeholders roles and responsibilities, the different restitution process are modelled and the identification of major bottlenecks is made.

3.2. Area of Fieldwork

The Fieldwork was done in Ciudad de Guatemala, the capital city of Guatemala. Guatemala is located in Central America, bordering the North Pacific Ocean, between El Salvador and Mexico, and bordering the Gulf of Honduras (Caribbean Sea) between Honduras and Belize, it has a land area of 108,430 sq km. It has a population of 14’280,596 Inhabitants which are distributed in: 55% Mestizo (mixed Amerindian-Spanish or assimilated Amerindian - in local Spanish called Ladino), 43% Amerindian or predominantly Amerindian, 2% whites and others. Guatemala is the largest and most populous of the Central American countries with a GDP per capita roughly one-half that of Brazil, Argentina, and Chile. The agricultural sector accounts for about one-fourth of GDP, two-thirds of exports, and half of the labour force. Coffee, sugar, and bananas are the main products.

The 1996 signing of peace accords, which ended in 36 years of civil war, removed a major obstacle to foreign investment, but widespread political violence and corruption scandals continue to dampen investor confidence. The distribution of income remains highly unequal, with perhaps 75% of the
population below the poverty line. Ongoing challenges include increasing government revenues, negotiating further assistance from international donors, upgrading both government and private financial operations, curtailing drug trafficking, and narrowing the trade deficit (CIA, 2004).

3.3. **Objectives of Fieldwork**

The objective of the fieldwork was to analyze and collect data and references about how the Land Restitution Administrative Process is taking place in Guatemala; identifying actors, roles and responsibilities, bottlenecks, gaps, business processes and workflow in and between the organizations involved in the LRAD of the processes. These typical questions are:

- How is the existing LRP in Guatemala taking place?
- Which are the processes or sub processes in land restitution in Guatemala?
- Who are the stakeholders and what are their roles and responsibilities in the LRP in Guatemala?
- How do stakeholders perceive its success?
- What are the major bottlenecks and possible solution strategies?
- Why is important to improve the process?

3.4. **Fieldwork Methodology**

Having stated the objective of the fieldwork and the research questions needed to be answered, the type of data to be collected is conformed by primary data and secondary data. Primary data collection provides first hand information about the current situation that is being investigated. It was collected making use of three kinds of tools: questionnaires, interview and focus group. Secondary data comes from document review. The secondary data is extracted from books, records, articles journals, newspapers, monthly and annual reports and internet. In the methodology followed was included also the preparation process for the work in the field. It included the coordination with two lectures, contact persons, of the Faculty of Agronomy of the University of San Carlos, and consultation and coordination with a representative of UTJ Protierra, the Guatemalan Cadastral Organization. The advice of these two local experts contributed to the identification of other actors that at that moment were not considered because they did not appear in the literature reviewed or were organizations that no longer plays any role. It was very important the assistance provided by the university of San Carlos in the realization of the focus group with peasant organizations, not only facilitating the formal invitation for it, but also in the identification of the participants and cooperating in the realization of it.

**3.4.1. Stakeholder Identification**

Literature review had provided a general identification and categorization of the stakeholders involved in this process. This primarily list was verified with the contact persons in Guatemala for the conformity of the stakeholders or to add actors that did not appear in the literature that was reviewed. The stakeholders identified were:
• Decision and Policy Makers
• Organizations and Institutions involved in Land Restitution Process
• Organizations involved in indigenous rights
• Beneficiaries of the Land Restitution Process

The stakeholders that were identified represent the groups to be visited and interviewed and in the other case an invitation was sent to attend the focus group. Table 3.1 shows the stakeholders identified and the responsibility and role they carry out.

<table>
<thead>
<tr>
<th>Level</th>
<th>Stakeholder</th>
<th>Role/Responsibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>Policy Level</td>
<td>MAGA Ministry of Agriculture and ranching</td>
<td>Formulates and executes the policies related to land in accordance to the peace accords</td>
</tr>
<tr>
<td></td>
<td>SEGEPLAN General Secretary of Planning</td>
<td>Facilitates the strategic planning process to facilitate the implementation of land policies</td>
</tr>
<tr>
<td>Organization Level</td>
<td>FONTIERRAS Land Fund</td>
<td>Provides access to land by providing funds to buy land and regularize property rights</td>
</tr>
<tr>
<td></td>
<td>CONTIERRA Conflict Resolution</td>
<td>Provides Legal assistance for solving land conflicts</td>
</tr>
<tr>
<td></td>
<td>CTEAR Technical Commission for resettlement</td>
<td>Follows, executes and supervises the global strategy for resettlement of displace persons after conflict</td>
</tr>
<tr>
<td>Process Level</td>
<td>IGN Nacional Mapping Institute</td>
<td>Provides Topographic information, distributes the official cartographic information and define the administrative boundaries of the provinces</td>
</tr>
<tr>
<td></td>
<td>UTJ Protierra Cadastral Organization</td>
<td>Organization responsible for the establishment of a cadastral information registry</td>
</tr>
<tr>
<td></td>
<td>RGP General Registry of Property</td>
<td>Provides legal security to property holders by publicly recording their rights and interests</td>
</tr>
<tr>
<td>User level</td>
<td>CNOC National Coordinator of Peasant organizations</td>
<td>Coordinates peasant organizations claims related to land and peasants rights in agreement with the peace accords</td>
</tr>
<tr>
<td></td>
<td>CONIC National Coordinator of peasants and indigenous</td>
<td>Coordinates peasant organizations claims related to land and peasants rights in agreement with the peace accords</td>
</tr>
</tbody>
</table>

Table 3.1 Stakeholders in the Land Restitution Process

3.4.2. Primary Data Collection

3.4.2.1. Interview

Interviews were useful in obtaining information as well as clarifying a number of issues for this research. Interviews were oriented to obtain information about the administrative process and the role of the organization in the Land Restitution Process. These interviews could clarify the legality of the mandate of the institutions that are involved in this matter. Another issue to be concerned in the interviews was to know the opinion of this institutions or groups on the way to improve the current land restitution and the identification of the major bottlenecks. The interviews were recorded with the
consent of the interviewed. It started with the presentation of the interviewer and the short explanation of the research and provides a general over view of the topics to be discussed during the interview.

Although an interview, depending on the way that is conducted, can provide very detail information. On the way certain task is done within the institution and/or the organization. One disadvantage of this kind of interviews is that are time consuming. So it should be carefully planed to avoid that the interlocutor looses interest.

3.4.2.2. Questionnaires

The purpose of the questionnaire was to identify the role, functions and activities of the organizations that are conducting the Land restitution Process and to determine the level of information exchange between organizations involved in the restitution processes. The questionnaire was open one, it includes the identification of the major gaps and bottlenecks and suggestions on what could be the possible improvements to the Land Restitution Process. The people interviewed were on a number of 15, been 3 per each organization. The selected people were from the top or middle manager level and from the operational level.

3.4.2.3. Focus Group Methodology

Qualitative data derived from Focus Groups is extremely valuable when draw and reach descriptions that are needed. Focus Group is a way to learn from communities and/or institutions about their opinions and their attitudes. Focus groups consist in qualitative interviews with a small number of people selected carefully that are brought together to discuss a host topic. Unlike to the interview, focus group generates data through the exchange of opinions and discussion. Listening the way people share their opinions and compare their different points of view provides rich information, not only about what they think but also allows us to know why they think the way they do.

The idea behind a focus group is to get together with the participants and start a kind of open discussion around a certain topic, in an informal atmosphere that make the participants comfortable to express their opinions without any restriction. The composition of a focus group is usually based on the homogeneity or similarity of the group members and should not be less than 6 participants and not more than 12 with avoiding that in the discussion the group splits in sub groups.

The objective of the focus group conducted in Guatemala with peasant organizations was to know their point of view in the topic of restitution of communal lands, which is their opinion on the institutions and organizations carrying out this policy; how accessible and comprehensive are the processes, and what recommendations for improvement can make.

3.4.3. Secondary Data Collection

Secondary data collection is complementary information in the form of reports, legislation or any other data. After each interview that was applied, the interviewer ask for some official documents,
which would be a good source of information for the research and that could complement and support the information gathered during the interview. The kind of documents and data collected is:

<table>
<thead>
<tr>
<th>Organization</th>
<th>Document</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>SEGEPLAN General Secretary of Planning</td>
<td>2. National System of Territorial Strategic Planning Guidelines</td>
<td>2004</td>
</tr>
<tr>
<td></td>
<td>3. Territorial Strategic Planning Methodology</td>
<td>2004</td>
</tr>
<tr>
<td>CONTIERRA Presidential Dependency for Land Conflict</td>
<td>1. Governmental Agreement 152-97 for the creation of CONTIERRA</td>
<td>1997</td>
</tr>
<tr>
<td>Resolution</td>
<td>2. Governmental Agreement 136-2004 modifications</td>
<td>2004</td>
</tr>
<tr>
<td></td>
<td>4. Contierra Attention Strategy</td>
<td>2004</td>
</tr>
<tr>
<td></td>
<td>2. Specific Regulations related to Access to Land</td>
<td>2003</td>
</tr>
<tr>
<td></td>
<td>3. Regulations Related to Tenure of Lands deliver by the State</td>
<td>2003</td>
</tr>
<tr>
<td></td>
<td>4. Regulations for beneficiaries of FONTIERRA</td>
<td>2002-2003</td>
</tr>
<tr>
<td></td>
<td>5. Annual Report of Activities</td>
<td>2003</td>
</tr>
<tr>
<td>RGP General Registry of Property</td>
<td>1. “Manual de Jurisprudencia”</td>
<td></td>
</tr>
<tr>
<td>UTJ PROTIERRA Legal and Technical Unit</td>
<td>1. Technical Norms and Procedures of Cadastre</td>
<td>2001</td>
</tr>
<tr>
<td></td>
<td>3. Operational Plan</td>
<td>2004</td>
</tr>
<tr>
<td></td>
<td>4. Quarterly Report April-June</td>
<td>2004</td>
</tr>
<tr>
<td>INE National Statistic Institute</td>
<td>1. IV National Farming Census</td>
<td>2004</td>
</tr>
<tr>
<td>CENOC National Coordinating committee of peasants</td>
<td>1. Proposal for a Rural Land Development</td>
<td>2002</td>
</tr>
<tr>
<td>organizations</td>
<td>2. Actual situation of Land workers and Work Reforms</td>
<td>2004</td>
</tr>
</tbody>
</table>

Table 3.2 Secondary Data collected

3.5. Pitfalls and Problems in the Fieldwork

- The change of government, year and a half ago, caused changes in administrative procedures of the main public organizations under new administration; the provision of documents was very difficult because they were just in process of elaboration and in other cases in process of formulation.

- Interviews had to be rescheduling in more than one time, due to busy agendas of key persons of the organizations or last minute meeting. In order to realize the interview or obtain some documents, the institutions and/or organizations were visited in more than two times.

- The questionnaires were delivered in advance in digital format and hard copy but people were reluctant to fill them arguing in many cases overlaboured agenda and lack of time. So for practical reasons they were conducted as part of the interviews.
3.6. **Fieldwork Results**

The Fieldwork results are presented in three major groups: Stakeholders at Policy Level, Results of questionnaires and interviews conducted to stakeholders at Organizational Level and results of the Focus Group realized with representatives of peasant organizations.

### 3.6.1. Stakeholders at Policy Level

The stakeholders at the policy level identified in Guatemala are the Ministry of Agriculture (MAGA) and General Secretary of Planning (SEGEPLAN). What follows is a summary of the policy that each organization has prepared for the years 2004 to 2007. This summary of the major actions lines and objectives are based on the review of the documents provided by each organization and available in their web pages.

#### 3.6.1.1. Ministry of Agriculture MAGA

The Ministry of Agriculture has designed the land policy for the years 2004 to 2007 this Land Policy has as its main objective:

To contribute to the maintained improvement of the quality of life of the population that depends directly and indirectly on agriculture, through the promotion of the competitiveness, the attention to agriculture farmer and the handling and protection of the natural resources, in a coordinated action with the different involved actors.

Further more the Guatemalan Land Policy for 2004-2007 outlines its major action lines:

1. **Productive and Commercial development of Agriculture**: Promotion of the productive and commercial development of the sector framed in competitiveness, promoting and increasing the investments and the technological innovation throughout the Commercial Agro productive Chains with competitive potential.
2. **Offer services to farmers and pheasants of limited resources**: This area this focused to help populations and territories with high levels of poverty, with insecurity and environmental vulnerability, impelling programs of development with sort fairness, considering the cultural diversity of the rural population.
3. **Use and sustainable handling of renewable natural resources in agriculture**: In this area, the actions of the MAGA will be directed to promote the conservation of renewable the natural resources, through a use and sustainable advantage of such.
4. **Enforcement of the Institutions related to the Agricultural Sector**: In this area, the efforts will be directed to the creation of a favourable institutional climate that facilitates the action and interaction of the different actors public and private.

#### 3.6.1.2. SEGEPLAN General Secretary of Planning and Programming

The Peace agreement compels the government to impel the farming development by means of delivery of land to families of farmers and the social compensation to the families who qualify for this benefit. In order to achieve the access to Land with productive aims, the Land Fund (FONTIERRAS) will support the families of farmers with credit and technical advice. SEGEPLAN has three major tasks:
Peace: The knowledge and meaning in the Peace agreement, allows to understand that to construct Peace implies to make transformations in the democratic process, in the system of defence and security, in the budgetary public prosecutor and, in the mechanism of resolution of conflicts, in the patterns of public investment, the electoral system and the one of justice, in the construction of the multicultural nation and in the modernization and fortification of the State.

Social development: For this purpose the Law of Social Development was created and the main objective for it is: The present Law intends the creation of a legal frame that allows to implement the legal procedures and of public policies to carry out the promotion, planning, coordination, execution, pursuit and evaluation of the governmental actions and the State, directed to the development of the human person in the social, familiar, human aspects and their surroundings, with emphasis in the groups of special attention. It also outlines the principles for social development: Equality, fairness, freedom and right to development between others.

Poverty reduction: The strategy is based on the analysis of poverty conditions and the Peace Agreements. This strategy delves deep into reforms of the Peace Agreements and gives special importance to those that have greater impact on poverty, such as food security, primary education, literacy, and the reduction of mother-child mortality. These Agreements provide a general setting for the modernization of the public sector and the reassignment of public expense. There are two especially important goals: to increase expense in social sectors and basic infrastructure, and improve the efficiency and equity of public services. Three vital pillars will be the bases that allow to increase the wellbeing and living standards of Guatemalans, especially the poorest and most excluded, in the short and medium term, and to comply with the Peace Agreements. These pillars are:

- Economic growth with equity
- Investment in human capital
- Investment in physical capital

SEGEPLAN takes in account the peace agreements as the frame under which develops its policy, but also does not say anything about the improvement of tenure security and land restitution as a way to achieve economic growth, reduce poverty and obtain social stability.

3.6.2. Organizations Level: Questionnaire / Interview Results

As it was explained in point 3.5 the questionnaire was conducted as part of the interview due to many reasons explained before. The topics discussed and the relevance of them is shown in table 3.3. It has been made also a summary of the mandate, objectives and strategies for each one the organizations involved in the Land Restitution Process.
### Table 3.3 Interview/Questionnaire Results

<table>
<thead>
<tr>
<th>Organization</th>
<th>Topic Address</th>
<th>Relevance</th>
</tr>
</thead>
<tbody>
<tr>
<td>CTEAR: Technical Commission</td>
<td>Mandate of the Organization</td>
<td>To Identify the way the organization is involved in the land restitution process</td>
</tr>
<tr>
<td>for the resettlement of uprooted</td>
<td>Role of the organization in Land Restitution</td>
<td>To identify the direct or indirect participation of the organization in the land restitution</td>
</tr>
<tr>
<td>populations</td>
<td>Institutional arrangements</td>
<td>To identify any agreement for data exchange</td>
</tr>
<tr>
<td>FONTIERRA: Land Fund</td>
<td>Description of the process</td>
<td>To be able to identify how the process is conducted, how long it takes and how many people participate</td>
</tr>
<tr>
<td>CONTIERRA: Land Conflicts</td>
<td>Products and services</td>
<td>To identify what services or products they provide or exchange</td>
</tr>
<tr>
<td>UTJ PROTIERRA: Technical</td>
<td>Information Requirements</td>
<td>Identify what is the information requirements and who provides it</td>
</tr>
<tr>
<td>and Judicial Unit</td>
<td>Gaps and Bottlenecks</td>
<td>Identify the nature of them to look for the level of improvement measure</td>
</tr>
<tr>
<td>RGP: General registry of Property</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### 3.6.2.1. CTEAR

The Technical Commission CTEAR was created with the purpose to execute the Peace Accord on Resettlement of the Populations Uprooted by the Armed Conflict. The main activities of CTEAR are related to facilitate, process and derive the claims of internal displace people to the appropriate charged to solve those claims.

**Mandate**

CTEAR has the mandate to facilitate, cooperated and provide guidance to Internal Displaced People in all the areas they might be concerned. It has the mission to mediate between the agencies and request a priority attention for them. The final task of this agency is to achieve the incorporation of these populations to the productive system of the country.

**Objectives**

CTEAR has as main objective for indigenous people, the design, execution, monitoring and supervision of the global strategy. At the same time it is in charged to ensure the assignation of enough economic resources that will allow the successful settlement of displaced people.

**Strategy**

The strategy designed in order to achieve those objectives and satisfy the requirements of displaced people, the Technical Commission CTEAR was created in six major commissions: Land and Compensation, Productive Integration, Health, Education, Housing and Personal Identification.
Land and Compensation:
This sub commission is charged to evaluate and provide solutions on land matters. The major concerns of this commission are:

- Compensation: Provision of compensation for the land lost in the internal conflict. The agency charge for this purpose is FONTIERRA.
- Regularization: Formalization of property rights, conclusion of unﬁnished process of adjudication of land delivered by the state in various Land programs of access to land. The Organization responsible is FONTIERRA.
- Access to Land: Mediate with FONTIERRA the priority of displaced people and communities in the programs of access to land they conduct.
- Land Conﬂicts: Help the Land Conﬂict agency in provide a solution in cases of land conﬂicts.

3.6.2.2. FONTIERRA: Land Fund

FONTIERRA, Land Fund Organization, was created by law 24-99 and ruled by means of Governmental agreement No. 199-2000 the 24 of June of 1999, been an independent entity to serve the Country.

Mandate
The main role of FONTIERRA is to facilitate the access of land to peasants who do not have land or not enough land, in individual way or collective, credit facilities for purchasing or renting land, access to productive projects, and technical assistance. At the same time, it has the role to regularize the legal situation of possessor of State Land re adjudicate those state lands that were given in an irregular way.

Objectives of Access to Land

- To deﬁne and execute the public policy related to access to land, in coordination with the State rural Land Policy
- To manage the programs of public funding oriented to facilitate the access to productive lands to peasants, as individuals or as organized groups, with out land or nor enough
- To facilitate the access to land as property to peasants, as individuals or as organized groups, using funding appropriate mechanisms, as well as the use of the natural resources of those lands, under concepts of economic and environmental sustainability
- To promote the accessibility to resources for the funding for purchasing land to the beneficiaries groups, ensuring the financial sustainability of FONTIERRA
- To coordinate with other dependencies of the State the development of other complementary investments to the ones of access to land
- To deﬁne the policy and promote programs to facilitate access of woman to credit to purchase land

Objectives of Regularization of tenure

- To solve, speed and start an adequate process to the requests of adjudication not yet solve, ensuring that the beneficiaries full ﬁll the legal requirements
- To establish and execute the administrative, technical and procedures required for the regularization of the land tenure given by the State
To request and deal with registry procedures and the emission of property titles pending to be given
- To charge the remnant payments that the beneficiaries have still with the State on what refers to the land that they have purchased
- To charge the payments for the credits provided to the beneficiaries of the land funds

Regularization Definition

Regularization is the process of analysis, revision and update files in which it is outlined the adjudication and tenure of land delivered or in process of delivery by the State in accordance of land programs conducted by the Ministry of Agriculture. The beneficiaries can formalize their adjudications and make use of the property acquired.

The activities conducted under the process of regularization are ruled by Law and in general are as follow:

1) Regularization of Files
2) Regularization of Lands
   - If previous to the present rule, a land that was adjudicated or in process of adjudication, was declared voluntary abandoned and the original holder states that the abandonment was forced or as consequence of the arm conflict, Fontierra will make the legal and technical analysis in order to:
     - Establish if the holders of the adjudication qualify as beneficiaries of the land programs conducted by the Ministry of Agriculture.
     - Establish if the first holders of the adjudication qualify as uprooted population.
3) Recovery of Lands
4) Adjudication of State Lands by means of Regularization
5) Administrative Resolutions

Definition stated in the “Reglamento de Regularización de la Tenencia de la tierra” FONTIERRA 2001.

Description of the Land Regularization Process

1. Submission of request to Manager of FONTIERRAS and Delivery of request to the area of Regularization
2. Cadastral and Registry analysis
3. Verification of documents with the local Municipality where the land is located
4. If the documentation is correct and there is no objection by the local authority a census of the community is made.
5. Final Real State and physical analysis
6. Preparation of the adjudication resolution and registry documents
7. Request for approval to the registry camera
8. Inscription of the property in the General Registry of Property
### Table 3.4 FONTIERRA Land Restitution Process

<table>
<thead>
<tr>
<th>Sub Processes</th>
<th>Area</th>
<th>Time</th>
<th>N. of People</th>
</tr>
</thead>
<tbody>
<tr>
<td>Request / Regularization</td>
<td>Front Desk</td>
<td>1 days</td>
<td>1</td>
</tr>
<tr>
<td>Data compilation pre analysis</td>
<td>Technical area</td>
<td>30 days</td>
<td>1</td>
</tr>
<tr>
<td>Municipality report</td>
<td>Municipality</td>
<td>20 days</td>
<td>1</td>
</tr>
<tr>
<td>Census</td>
<td>Technical area</td>
<td>10 days</td>
<td>2</td>
</tr>
<tr>
<td>Final studies / registry and</td>
<td>Technical &amp; Legal area</td>
<td>90 days</td>
<td>2</td>
</tr>
<tr>
<td>cadastre</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Adjudication &amp; Registry</td>
<td>Legal department</td>
<td>5 days</td>
<td>1</td>
</tr>
<tr>
<td>Resolution</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Check Conformity</td>
<td>Legal department</td>
<td>5 days</td>
<td>1</td>
</tr>
<tr>
<td>Registry</td>
<td>Registry</td>
<td>30 days</td>
<td></td>
</tr>
</tbody>
</table>

#### Figure 3.1 Fontierra process time

3.6.2.3. CONTIERRA: Land Conflict

CONTIERRA, The Presidential Dependency of Legal Attendance and Resolution of Land Conflicts, was created by means of Governmental Agreement no. 452-97 the 25 of June of 1997 and began its workings the 15 of July of the same year.
Mandate
The mandate of Contierra is to facilitate and support the legal conciliation as solution of all those situations in where two or more people claim simultaneously the right of use, possession or property of Land. Also to prevent the generation of new conflicts. Contierra has identified the following as possible causes of land conflicts:

1) Lack of certainty on the right of property of the Land
2) Irregularity in the rights of property of the Land
3) Absence of a national cadastre
4) Lack of an inventory of national and municipal earth;
5) Insufficient resources to take care of the demand of access to Land by the route of the market and insufficiency available Land
6) Inadequate territorial ordering
7) Limitations in the Registry of the Property
8) Unjustified application of the "voluntary abandonment of parcels"

Land Conflict Types

1. **Dispute over property rights**: when two or more people simultaneously dispute rights of the property or possession of the same land. Between these classifications the following ones are included:

   a) Lack of defined boundary
   b) The double titling
   c) The historical right against the registry right

   This type of conflicts can appear between individuals, these and the State and communities; and between communities between if.

2. **Territorial boundaries**: in this type, we found the existence of conflicts derived from the lack of establishment of communal, municipal or departmental limits.

3. **Regularization**: the regularization of the possession of property or land property rights over land that was adjudicated by the State through their agrarian programs. Due to the emerging of conflicts and war original beneficiaries were forcibly evicted from their lands or displaced by the war, in many cases these lands were defined as uncultivated land or abandoned land. New people occupied this land and claim the rights over it. Regularization is the restitution of land to its original owners and regularization of the unfinished process of adjudication.

4. **Illegal settling**: in this type of cases we will cluster them, in where people or communities are occupying lands that are registry by another one, the State, an individual or a legal person. For the best boarding and definition of the strategy of attention of this type of conflicts, CONTIERRA subdivides the illegal settling according to the following causes:
1) Necessity of access to land
2) Occupation of not delimited national or uncultivated property
3) Occupation of Land with the legal qualification of protected area
4) By claim of the payment of labour benefits
5) Dispute of rights, when it is considered the existence of overlap, double or multiple titles, problems of limits and problems of registry.

Description of the process
The intervention of Contierra to solve the conflicts can be done only if there is not already a process on court and also if the parties are agree with the intervention of Contierra to find a way to solve the land conflict with out starting a civil process in court. What follows is the methodology used for the analysis of a case.

1) Revision of the file of - to merit to know the information and arguments presented/displayed by the parts, as well as means of test in that they are sustained.
2) Generation of the information that is considered pertinent in each case (examples: registry, historical, cadastral studies), in effect to count on the presented/displayed total information of the problematic one.
3) Legal Analysis of the case, based on means of test contributed by the parts and those successfully obtained by CONTIERRA.
4) Legal Uprising, which consists in present the legal situation and the legal alternatives that exist for a definitive solution.
5) Actions to follow depending on the nature of the case.

Table 3.3 shows the sub processes made by CONTIERRA in order to evaluate and find a solution for the Land conflict. It also shows the information required and the organizations responsible in the provision of it, the time used in each process and the number of people working on it.
In Figure 3.2 we can see that the major time consuming processes are the one referred to the provision of information and the one referred to the negotiations.

### 3.6.2.4. UTJ PRO TIERRA Technical Juridical Unit

The Technical and Juridical Unit Pro Tierra of the Institutional Commission for the Development and Reinforcement of Land Property, attached to the Ministry of Agriculture, is responsible of the establishment of the Cadastral Information Registry. It is in charge of the Establishment, Maintenance and Update of the Cadastre in the whole Territory. The national cadastre should become a powerful technical instrument of high accuracy and precision that contributes to the regularization of Land Tenure. This will allow achieving one of the objectives stated under the peace agreements.

**Functions:**

Regularize and Define Standard for the cadastre activities for their three main components: Establishment, Maintenance and Update at a National Level. The main purpose for this is to generate a unique base for cadastral information and further geographic Information System. This will be a powerful instrument for the provision of land and tenure security.

**Objectives:**

- Standardization and regulation of each one of the activities of the cadastral process.
- Direction to the understanding of the Guatemalan cadastral model, oriented to give support to the regularization of the Earth possession.
- Establishment of the basic idea of uniformity in studies related to the distribution of the national territory.
- Standardization of procedures in the compilation of information related to the Earth and its holders.
- To standardize the procedures of analysis of registry and cadastral information oriented to the formulation of useful products to support decision making in the regularization of the Land Tenure.
- To contribute to the development of a unique platform of cadastral information, that will be useful for all the components of the Guatemalan society.
- To provide a system to register the changes generated by the dynamics of the real estate market through the Cadastral Maintenance.

**Process 1: Land Tenure Data Compilation**

This process is referred to the compilation and investigation of documents related to the land tenure. This research is not only made on registered information but also with other sources such as Municipality, Ministry of Agriculture and Archive of Central America within others. The detailed process is as follows:

1. Elaboration of formats for Land Tenure data survey
2. Compilation of land tenure survey results
3. Generation minimum acceptable products

<table>
<thead>
<tr>
<th>Process</th>
<th>Area/Department</th>
<th>Time</th>
<th>N. of People</th>
</tr>
</thead>
<tbody>
<tr>
<td>Area Selection</td>
<td>Juridical Area</td>
<td>1 or 2</td>
<td></td>
</tr>
<tr>
<td>Registry data compilation</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• RGP*</td>
<td>Land Regularization crew</td>
<td>Every 15 days/1 day</td>
<td>5 persons</td>
</tr>
<tr>
<td>• General Archive from Central America</td>
<td>Juridical Area</td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>• INTA</td>
<td>Juridical Area</td>
<td>2 days</td>
<td>**</td>
</tr>
<tr>
<td>• ING</td>
<td>Juridical Area</td>
<td>2 days</td>
<td>**</td>
</tr>
<tr>
<td>• OCRET</td>
<td>Juridical Area</td>
<td>2 days</td>
<td>**</td>
</tr>
<tr>
<td>• INE</td>
<td>Juridical Area</td>
<td>2 days</td>
<td>**</td>
</tr>
<tr>
<td>Elaboration of Final Registry Investigation</td>
<td>Juridical Area</td>
<td>1 day</td>
<td>1</td>
</tr>
<tr>
<td>Final Graphic Information (maps, Pictures etc)</td>
<td>GIS department</td>
<td>1 day</td>
<td>1</td>
</tr>
<tr>
<td>Digitalization of Information</td>
<td>Data processing department</td>
<td>1 day</td>
<td>1</td>
</tr>
</tbody>
</table>

*By assisting the activities stated above UTJ has considered necessary steps to set up to the Land Tenancy Regularization crew with coordination with the Property Registry which is hired by cadastre and financially supported by UTJ. The ‘Land Regularization’ program intends to establish*
the mechanisms of systematic and continuous attention to the land tenancy conflicts. This organization provides them with legal security and endowing them of titles to strengthen their rights. Recognizing the traditional forms (customary) that have been put in practice for the indigenous communities and keeping in mind women’s access to land.

** These activities are organized by three people. However one person could manage a specific group of parcels, region or area.

** Process 2: Land Survey
This process is related to the compilation of data from the field. It involves physical and descriptive data of the land and identifies the holder, tenant or owner. The information compiled during this phase will have to be the faithful reflection of the reality found in the field. The summary of the process is as follows:

1. Definition of the area of survey
2. Awareness campaign to advice holders
3. Fieldwork interview and survey
4. Demarcation and Geo reference of corner of land
5. Data Processing
6. Generation of products

<table>
<thead>
<tr>
<th>Mapping and Surveying Step 2</th>
<th>Process</th>
<th>Area/Department</th>
<th>Time</th>
<th>N. of People</th>
</tr>
</thead>
<tbody>
<tr>
<td>Planning and selection of area</td>
<td>Technical Area (Survey Department)</td>
<td>1 or 2 weeks</td>
<td>The entire Communication department goes out in order to carry out with these tasks. (6 to 8 persons)</td>
<td></td>
</tr>
<tr>
<td>Advise to owners</td>
<td>This activity takes place at least two weeks before the Survey Department starts the surveying activities. The Communication Department is in charge of these activities.</td>
<td>1 or 2 weeks</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interviews and field work</td>
<td>Survey Department</td>
<td>***</td>
<td>Crews of 3 persons.</td>
<td></td>
</tr>
<tr>
<td>Identification of parcel and corners</td>
<td>Survey Department</td>
<td>***</td>
<td>Crews of 3 persons.</td>
<td></td>
</tr>
<tr>
<td>Data Process and Analysis Graphical</td>
<td>GIS/Survey Department</td>
<td>1 day</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Data Process and Analysis Descriptive</td>
<td>Data processing/Survey Department</td>
<td>1 day</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Table 3.7 Mapping and Surveying Process

<table>
<thead>
<tr>
<th>Process</th>
<th>Area/Department</th>
<th>Time</th>
<th>N. of People</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reception of information (Legal and Cadastral)</td>
<td>Survey and Juridical Area</td>
<td>Constantly 2</td>
<td>2</td>
</tr>
<tr>
<td>Check Completeness of information</td>
<td>Quality Control</td>
<td>1 day</td>
<td>2</td>
</tr>
<tr>
<td>Identifier parcel-fieldwork-real state</td>
<td>GIS/Data processing</td>
<td>1 day</td>
<td>2</td>
</tr>
<tr>
<td>Final report for analysis</td>
<td>Data processing</td>
<td>1 day</td>
<td>1****</td>
</tr>
<tr>
<td>Conform</td>
<td>****</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No conform</td>
<td>****</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Final report</td>
<td>****</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Generation of statistics</td>
<td>****</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 3.8 Integration of Reports Process

**** These activities are automated by the regional information system. It could be generated in short time; however the data collection and data input are the most time-consuming tasks.

*** It is not possible to measure directly the time for these activities. The way to measure the time for these activities is indicated, by the measured parcels per day. This is in average between 4-8 parcels per day per crew. The method for cadastral measurement, the weather conditions, the distance between the area and the regional office and the terrain influences the productivity in time.

### Process 3: Land Survey and Land Tenure Analysis

A comparative analysis between the Tenure and land survey is made, in order to identify the similarities or differences between them. The final result of the Cadastral analysis is a detail report that will be submitted to the legal unit for juridical analysis and investigation.
3.6.2.5. RGP General Registry of Property

Mandate
Under Civil Code, Article 1124, the purpose of the RGP is to provide legal security to property holders by publicly recording their rights and interests. This institute is responsible for; the inscription, notation, cancellation of all acts, contracts, and rights pertaining to real property. Guatemala’s registry system consists of declarative system in which the RGP records rights are located, but does not create them. “For property rights and interests to be enforceable against third parties they must be recorded. In addition, any right or interest inscribed at the RGP is presumptively valid, and may be relied upon by third parties” (Trackman, 1999). The “first in time, first in right” rule has been adopted and means that rights described in documents that are presented to an officially accepted by the RGP have priority over rights and interests described by documents present subsequently.

Included among the types of titles expressly, allowed are those confer or accredit ownership of real property. As well those that constitute, recognize, modify, extinguish rights of usufruct, use habitation, familial patrimony, mortgage, servitude and any other rights or interests in real property.

Previously the public was permitted to review the original registry records - a practice that created opportunities for fraud (e.g., changing or removing records) and also contributed to the deterioration of the records. Currently visitors are only permitted to see copies of registry records, many of which have been converted to microfilm. In some instances digital (computerized) forms are provided” (Trackman, 1999).

Functions
The Guatemalan Registry performs a variety of functions. Inscription; entails the recording alteration and termination of rights of interests. Certification; used to verify ownership rights and information management are the main functions carried out by the registry.

Ownership can be established in three ways: Acquisition of supplementary title, acquisition of government-granted title and acquisition of existing title. The RGP is also charged with the duty of keeping such records current and accurate, track changes in ownership rights and other interests in land. Such changes may be occasioned by purchase-sale agreements, inheritances, the creation or cancellation of mortgage liens, government decrees, the granting of use rights and abandonment (Donovan, 2002).

Process
1. Presentation of documents for inscription of property and payment rights for inscription
2. Reception of request and deliver to operator for electronic copy of the file and documents presented
3. Verification of the conformity of the documents for inscription. If everything is correct it is delivered to the auxiliary registrar, if it is incorrect it will be returned for correction.
4. Analysis of the file for inscription done bye the auxiliary registrar
5. Final verification done by the registrar, electronic and analogue signature of the register.
6. Inscription of the property
7. Account manager verifies if the tax paid was correct otherwise necessary action has to be taken.
8. Delivery of Registry is due.

<table>
<thead>
<tr>
<th>Sub Process</th>
<th>Area</th>
<th>Time</th>
<th>N. of people</th>
</tr>
</thead>
<tbody>
<tr>
<td>Request and payment of rights for registry</td>
<td>Front door</td>
<td>1 hour</td>
<td>1 receptionist</td>
</tr>
<tr>
<td>Scan copy of documents</td>
<td>Registry</td>
<td>1 hour</td>
<td>1 technical</td>
</tr>
<tr>
<td>Check conformity of documents</td>
<td>Registry</td>
<td>10 days</td>
<td>1 operator</td>
</tr>
<tr>
<td>Analysis of request and acceptance for inscription</td>
<td>Registry</td>
<td>5 days</td>
<td>1 second registrar</td>
</tr>
<tr>
<td>Verification of conformity, electronic and physical signature of document</td>
<td>Registry</td>
<td>5 days</td>
<td>1 registrar</td>
</tr>
<tr>
<td>Validation of payment</td>
<td>Account Manager</td>
<td>5 days</td>
<td>1 account manager</td>
</tr>
<tr>
<td>Front door for delivery of registry</td>
<td>Front door</td>
<td>1 hour</td>
<td>1 receptionist</td>
</tr>
</tbody>
</table>

Table 3.9 Source: Registry Process

3.6.3. Focus Group Results

The organization of the focus group was made with the cooperation of the Agronomy Faculty of the San Carlos University of Guatemala. A total of eight representatives of Peasant and Indigenous organizations participate in the focus group. The details of the organization, participants and pictures of the realization of the event, can be seen in the annex 3. The main topics gathered in the focus group where taken and the observations where made as showed in table 3.7:

- Identification of Land Conflicts Types
- Recognition of Indigenous rights
- Awareness of Beneficiaries
- Awareness of the existence of a Land Restitution Process
- Identification of Organizations and process involved in Land Restitution
- Possible Improvements

<table>
<thead>
<tr>
<th>N.</th>
<th>Topic address</th>
<th>Observations</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Identification of Land Conflicts Types</td>
<td>Recognition of Property Rights</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Forced evictions</td>
</tr>
<tr>
<td>2</td>
<td>Recognition of Indigenous rights</td>
<td>Not recognized</td>
</tr>
<tr>
<td>3</td>
<td>Awareness of Beneficiaries</td>
<td>Not clear, confusion with access to land. Language problems</td>
</tr>
<tr>
<td>4</td>
<td>Awareness of the existence of a Land Restitution Process</td>
<td>They know a process called regularization</td>
</tr>
<tr>
<td>5</td>
<td>Identification of Organizations and process involved in Land Restitution</td>
<td>Identify clearly CONTIERRA and FONTIERRA</td>
</tr>
<tr>
<td>6</td>
<td>Possible Improvements</td>
<td>Reduction of Time</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Clear process and legal documents for the purpose</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Improve performance of CONTIERRA Y FONTIERRA</td>
</tr>
</tbody>
</table>

Table 3.10 Focus Group Results
3.7. Validation of Fieldwork Data Collected

The information collected in the fieldwork comes from Interviews, Focus Group, and Documents provided by the organizations. The data collected in the fieldwork was evaluated for completeness, accuracy and reliability.

Completeness:
The participation in the Focus Group was of 80% of what was expected. Each one of the participants had the agenda of the focus group and the opportunity to write their opinions. Before finishing the meeting the main conclusions where read in order to verify and correct them. In the case of the Interviews only 50% of the target group gave a respond. Interviews were conducted in order to retrieve information of how the process takes place. Further contacts via mail were necessary in order to look for the validation of the results of the interview.

Accuracy:
The accuracy of the data collected was compared with available information and researches conducted by international organizations as Norway Global Data Base. The interviews were conducted in most of the cases to top and middle level managers, in case of the organizations. The opinion given in the Focus Group where compared also with a publication Peasant and Indigenous Organizations has published and is available on Internet.
4. Analysis of the Land Restitution Process

4.1. Introduction

The previous chapter provided a summary of primary and secondary data collected regarding to the land restitution process in Guatemala. This chapter will answer question number five referred to how the Land Restitution Process in Guatemala is taking place. First, the lands for restitution are identified and the land policy and objectives are identified. Secondly, the roles of the stakeholders and there responsibilities as well the information requirements will be analyzed. Finally, the user’s point of view will be analyzed based on the Focus Group results.

4.2. Land to be Restituted via Regularization

The Land to be restituted in Guatemala as it is shown in figure 4.1 is of two different natures:
1. Indigenous land lost via colonization and privatization (historical property)
2. Land delivered by the State in land programs conducted by the Ministry of Agriculture. In this case land property was lost because of war (internal displace people) or forced removals

Figure 4.1 Land Restitution in the Peace Agreements Context
The current land restitution process that is taking place in Guatemala implemented by FONTIERRA is only for land delivered by the State. The land claims for private land is not implemented jet by the government and is solved in the Civil Court. As it was stated in Chapter one, this research will only analyze the land restitution process of land owned and delivered by the State.

**Land delivered by the State**

The National Institute for Agrarian Transformation INTA was given the mandate of legalizing national lands to the landless. Criticism arose to extreme corruption in titling procedures; INTA files mysteriously disappeared leaving great confusion as to land claims. Finally INTA was shut down and a special commission was created to review the enormous backlog of files (89,000 files) then its mandate was transferred to FONTIERRAS, which now issues titles and is charged to conduct the process called regularization.

Land restitution is referred to the land delivered by the State, in land access programs conducted by The National Institute for Agrarian Transformation. INTA was shut down due to criticism of extreme corruption in the titling procedures. INTA files mysteriously disappeared leaving great confusion as to land claims. FONTIERRAS was created to provide access to land and to conduct the process of regularization. This regularization process is referred to 3 main cases, as it is outlined in the Governmental Agreement 386-2001:

- The first category of lowest legitimacy is, that of persons who lack documents and claim land by tender. They entered into negotiations with the National Institute of Agrarian Transformation INTA for title recognition which were left pending.
- The second category is composed of those have attained provisional titles from INTA, final titles to be issued upon full payment by INTA. Many of these people suffered usurpation of their land during their struggle as INTA declared the lands to be abandoned under Decree 1551 (now revoked) and granted title to other groups.
- The third group is those who have attained full title from INTA also it happens this group to suffer from corruption. INTA was accused of rendering invalid titles to rural peasants and illegally transferring private property to rural peasants (Bailliet, 2002).

The process called regularization is not only referred to unfinished processes of land delivered by the state. But also the restitution of property rights to the original beneficiaries of the land. Who where forcibly removed through eviction or by displacement.

The disappearance of the original files makes it very difficult to identify the beneficiaries of the State land access programs. This lack of information has a direct impact in the process. In order to verify the claimants are from the original beneficiaries an extra hard work was done to analysis the provision of different kinds of information. On the other side, many of the claimants for restitution are displaced people due to civil war or forcibly remove from their property. In order to accept the claim for restitution of their land, they must prove this condition. For such purpose CTEAR the Technical Commission for Resettlement of Internal Displace People was created. These condition makes that CTEAR participates in the Land restitution Process carry out by CONTIERRA.
4.3. Analysis Criteria

The analysis of the land restitution process in Guatemala is based on the literature reviewed and the country case studies done in chapter two. Figure 4.1 shows the findings of the country case study done in chapter two. The implementation of a land restitution policy is based on three levels of intervention:

- **Policy Level**: where the policy is formulated and the definition of legal framework is implemented to support it.
- **Organizational Level**: at this level the creation or reinforcement of the organizations who is charged to conduct the policy.
- **Process Level**: this is the level where the processes are defined, it has to do with a number of procedures that have to take place. In order to achieve the final objective it is directly related with the land administration instruments as cadastre and registry.

![Diagram showing the three levels of intervention: Formulation, Policy Level, Organizational Level, Process Level]

Figure 4.2 Analysis Criteria based on country case studies

4.4. Policy Level

Three major aspects for analysis have been identified based on the finding of the country case study done in Chapter 2:

1. **Driving forces for Land Restitution**: Land restitution is a social claim with association of unsatisfied demand. Ending in the case of Guatemala in a civil war and social insecurity. This situation has a direct impact in the development of the country. A clear understanding of the driving forces will show the importance of the implementation of it and will be the criteria for the design of the Land restitution process.

2. **Stakeholders at Policy Level**: The formulation of a Land Restitution is a governmental task. It can only be done at the highest level of decision makers. In the case of Guatemala two Organizations have the responsibility for it: the Ministry of Agriculture (MAGA) and General Secretary of Planning (SEGEPLAN).

3. **Legal Framework**: Organizations carrying out the Land restitution Process must have legal mandate. The activities that they perform must be on the bases of the current legislation. Creation of new legislation or modification of the existing one, must be made in order to avoid gaps and overlaps.
4.4.1. Guatemala Land Restitution Driving Forces

It has been identified three major driving forces for land restitution in Guatemala. Figure 4.2 illustrates the major driving forces for Land Restitution in Guatemala and the organization responsible for providing a solution.

![Figure 4.3 Guatemala Driving Forces for Land Restitution](image)

There are three organizations charged for the restitution of land, each of them following their own process. In the case of CTEAR the process they conduct ends with the qualification of a group or individual as Internal Displace People. CONTIERRA on its side ends with the identification of the type of conflict and the mediation to avoid this conflict reaches levels of violence. CTEAR and CONTIERRA have their own process but they do not end with a final solution. In the case of FONTIERRA, is the only organization whose process ends up with the restitution of Land. In spite that there are three major driving forces as was explained before, the process run by FONTIERRA does not articulate in one single process all of them.

### 4.4.2. Stakeholders

The two major stakeholders in formulating Land Policies are the Ministry of Agriculture (MAGA) and the General Secretary for Planning (SEGEPLAN).

<table>
<thead>
<tr>
<th>Stakeholder</th>
<th>Policy Action Lines</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>MAGA Ministry of Agriculture</td>
<td>Development of Agriculture</td>
<td>Increase the investment and reduce poverty</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Promote technological innovation</td>
</tr>
<tr>
<td></td>
<td>Provide services to peasants</td>
<td>Focus on populations with high levels of poverty</td>
</tr>
<tr>
<td></td>
<td>Sustainable Agriculture</td>
<td>Conservation of natural resources</td>
</tr>
<tr>
<td></td>
<td>Enforcement of Institutions</td>
<td>Facilitate communication between organizations</td>
</tr>
<tr>
<td>SEGEPLAN General secretary of Agriculture</td>
<td>Peace</td>
<td>Provide mechanisms for land conflict resolution</td>
</tr>
<tr>
<td></td>
<td>Social development</td>
<td>Equality, fairness, freedom and protection of rights</td>
</tr>
<tr>
<td></td>
<td>Poverty reduction</td>
<td>Provide food security, education and reduce mortality</td>
</tr>
</tbody>
</table>

Table 4.1 Stakeholders policy Level Action Lines
Table 4.1 shows a summary of the Policy developed by the two major stakeholders in charged of the formulation of Land Policies. None of the two organizations policy are related to the formulation of a land restitution policy. Although both organizations are concern with the reduction of poverty and the increase of investment in agriculture, nothing is mentioned about the provision of tenure security as a way to reduce poverty. At the same time it is recognized the need to solve land conflicts, but nothing is said about the way to solve them. Not even is mentioned land Restitution as a way to solve land conflicts. Referred to the enforcement of institutions related to land matters and facilitating communications between them, there is not an clearly agreement for data sharing between them, although the major part of the organizations are attached to the Ministry of Agriculture,

The policy action lines of the two organizations as they are formulated don’t show specific solutions for the demands of indigenous people. There are only recommendations, good intentions and desires. That’s the reason peasant and indigenous organizations do not thrust them. They are perceived as bureaucratic organizations without commitment for solving or hearing their needs and demands as expressed in the Focus Group.

4.4.3. Legal Framework

The Guatemalan Government previous to sign The Peace Agreements sponsored by the United Nations, signed different agreements in an effort to end with the armed conflict. The agreements address land restitution under different scopes.

1) Comprehensive Agreement on Human Rights (03-29-1994): This agreement addresses the restitution of land as a Human Right.

2) Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict (06-17-1994): States that Land Restitution is a way to ensure the return to home of internal displaces people.

3) Agreement on Identity and Rights of Indigenous People (03-31-1995): Under this agreement Land Restitution is a way to recognize and protect indigenous rights.

4) Agreement on Socio-economic Aspects of Agrarian Situation (05-06-1996): Land Restitution as a way to ensure tenure security and promote economic development.

In such context the Guatemalan Government create different organizations in an effort to honour the agreements stated before. The ending results are many organizations dealing with Land Restitution but, only one organization carrying the Land restitution process that fulfils its one requirement.

In 1996 a final Peace Agreement was signed sponsored by the United Nations. Establishing the rights relating to land of the indigenous peoples;

- Regularization of the land tenure of indigenous communities
- Land tenure and use and administration of natural resources
- Acquisition of land for the development of indigenous communities
- Restitution of communal lands and compensation for rights
- Legal protection of the rights of indigenous communities
In the Peace Agreement again a commitment for Land Restitution is made by the Government of Guatemala.

Based on the results of the country case study, the starting point for implementing Land Restitution is a legal mandate for it. This mandate is included in the Constitution of the Country. What follows to this mandate is a number of laws, rules and procedures that ensures the development of the task. This includes the creation or enforcement of organizations to perform the process and the provision of a legal framework that will ensure the legality of their activities.

In the case of Guatemala the Peace Agreement is the only framework under which Land restitution is taking place. The Government of Guatemala has not made of Land Restitution a Constitutional mandate. Instead the Guatemalan Government has created several Organizations charged to implement the peace agreements, but with out a clear legal framework that can support their activities and decisions.

4.5. **Organizationas Level**

At organization level two major aspects for evaluation are going to be analyzed are. The stakeholders, with the purpose to assess their role and responsibility in the land restitution process. The second aspect to analyze the level of communication between organizations, the objective is to identify if there is any agreement for data sharing.

4.5.1. **Stakeholders**

Figure 4.4 show the organizations involve in the land restitution process. It has been identify in two groups of Stakeholders at the organization level involved in the land restitution.

1) Organizations involved in Land Restitution Process
2) Organizations providing information

![Figure 4.4 Stakeholders in Land Restitution](image-url)
Organizations involved in Land Restitution Process

It has been identified three organizations involved in the land restitution process. Each one of the organizations follows different driving forces but pursuing the same task. Table 4.3 shows the organizations that have interest in land restitution.

<table>
<thead>
<tr>
<th>Organization</th>
<th>Description</th>
<th>Role</th>
</tr>
</thead>
<tbody>
<tr>
<td>CONTIERRA</td>
<td>Land Conflict Resolution Organization, attached to the Ministry of Agriculture. Special Execution.</td>
<td>Identification of land conflict Type, Land Restitution as Conflict resolution and Mediation for solution</td>
</tr>
<tr>
<td>CTR</td>
<td>Technical commission for the resettlement of internal displaced people. Attached to the Peace secretary</td>
<td>Restitution of property rights. Facilitate the access of internal displaced people to organizations involve in access to land, restitution and conflict resolution.</td>
</tr>
</tbody>
</table>

Table 4.2 Stakeholders in land restitution at Organizational level

The purpose for the analysis of the stakeholders at the organizational level is to highlight there are three organizations obeying to different driving forces for land restitution. Each one of the organizations has a main task, land restitution. Two of the organizations do not conclude with the restitution of land due to a lack of legal instruments to perform it. FONTIERRA is seen as the only organization that has the legal mandate and has implemented a process for Land restitution.

Organizations providing information

Information related to land is required in the Land restitution Process. Cadastral and Registry information is required in order to analyze the claim and deliver a result. The information held by General Registry of Property (RGP) is accessible via internet. In the case of the parcel information held by UTJ the cadastral organization, cannot be shared due to there is not a cadastral law that will give a legal value to the information they hold. In other words, the information UTJ generate cannot be used because it lacks of legal value.
### 4.5.2. Institutional Arrangements

Three of the main organizations involved in Land Restitution although they are decentralized organization in one case (FONTIERRA) and special execution in the other (CONTIERRA and UTJ PROTIERRA). The three of them are attached to the Ministry of Agriculture as it is showed in Figure 4.5. Despite this condition they do not have any agreement for data exchange as it was describe in the summary results of the fieldwork shown in chapter 3.

![Figure 4.5 Organization Frame of Ministry Of Agriculture](image)

The current structure of the Ministry of Agriculture shows that there is no direct coordination with the organizations dealing with land restitution. Further more it also shows that it is not established any communication between organizations participating in the restitution process. Although organizations dealing with land restitution are decentralized or special execution, they should have a direct coordination with the head of the Ministry who is charged for outlining the Land Policies. At the same time should be define a level of coordination between them. The lack of coordination and communication between them has ended in duplication of efforts for data collection and duplication of the analysis process.
4.6. Process Level

The analysis made at the process level is based on a comparison of the process of two of the main organizations involved in Land Restitution, CONTIERRA and FONTIERRA.

<table>
<thead>
<tr>
<th>PROCESS</th>
<th>CONTIERRA</th>
<th>FONTIERRA</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.</td>
<td>Request for intervention</td>
<td>Request / Regularization</td>
</tr>
<tr>
<td>B.</td>
<td>Fieldwork data compilation</td>
<td>Data compilation pre analysis</td>
</tr>
<tr>
<td>C.</td>
<td>Existing data compilation</td>
<td>Municipality report</td>
</tr>
<tr>
<td>D.</td>
<td>Strategy</td>
<td>Census</td>
</tr>
<tr>
<td>E.</td>
<td>Final studies / registry and cadastre</td>
<td>Final studies / registry and cadastre</td>
</tr>
<tr>
<td>F.</td>
<td>Persuasion</td>
<td>Adjudication &amp; Registry Resolution</td>
</tr>
<tr>
<td>G</td>
<td>Final Proposal</td>
<td>Check Conformity</td>
</tr>
<tr>
<td>H</td>
<td>Agreement</td>
<td>Registry</td>
</tr>
</tbody>
</table>

Table 4.3 Comparison Process Time CONTIERRA/FONTIERRA

The purpose of the comparison of the processes shown in Table 4.4 is to identify similarities and identify duplication of processes. The observations that can be drawn from the process comparison between FONTIERRA and CONTIERRA are:

1. There is a duplication of processes and both related to the provision of data, sub process B and E.
   - The sub process B is conducted by the two organizations. It is important to explain that this process has the purpose to collect the data that the claimants have. This information will provide a first analysis of the kind of conflict or claim and decide if the claim fits with the mandate of the organization.
   - Sub process E is the provision of Cadastre and Registry information. Based on this information a final decision is made.

2. The final output of the process conducted by FONTIERRA is a Land Title registered in the General Property Registry (RGP). In the case of CONTIERRA the final output of the conflict is an agreement. There is nothing said about the registration of the conflict resolution, this unfinished process could generate another land conflict in the future.
It has been done also a time comparison between the two processes as it is shown in Figure 4.6. The main observations that can be made from this time comparison are:

1. Sub Process E that is related with the provision of information for the final analysis is one of the most time consuming for both organizations.
2. In the case of CONTIERRA sub processes F and G that are related to the pace of negotiations and finding an agreement are the most time consuming. This is because CONTIERRA only can act as mediator, they don’t have legal mandate solve the land conflict.

4.7. Users Needs Analysis

The beneficiaries of the land restitution in the context of the peace agreements of Guatemala are Indigenous people. A Focus Group was conducted with Peasant representatives. The purpose for it was know their opinion on the way they perceive the performance of the Organizations and Institutions charged to implement the peace agreements on the matter of Land Restitution. Also it was request to suggest recommendations to improve the performance of the organizations and for the process.
Organization Performance
It was a general opinion that the low performance of the organizations conducting the land restitution is a matter of lack of governmental decision to fully implement the peace agreements, what referred to land. It was found in the focus group that what they really want is an Agrarian reform, not only restitution of land but also redistribution. Even though this are the recommendations made for the organizational level.

1. Improve the impact of FONTIERRAS by allocation of more funds
2. Improve Resolution of land conflicts CONTIERRA, by the creation of a Land Court that will solve the land conflicts

Process Performance
The improvements suggest for the process of the Land Restitution Process are as follow in order of priority:

1. Reduction of time: The current process for restitution takes between one to two years and that does not mean they have their land back.
2. Transparency of the process: Due to the intervention of various organizations, the process is not perceived clear enough; many beneficiaries don’t know exactly which organization is responsible and could give a response to their claims.
3. Identification of Beneficiaries: There is not a clear lecture of who are the beneficiaries for the restitution of lands; it is confused with access to land.
4. Requirements: is not clear which the documents valid to qualify for land restitution are.

4.8. Findings and Concluding Remarks
The major objective of this chapter was to analyze the current situation of the land restitution process. There is no policy that guides the land restitution process in Guatemala. There is no legislation that can support and reinforce the activities performed by the organizations involved in Land restitution. The Peace agreement was the framework for the creation of organizations, responsible of land matters. There are no channels of communication and coordination between organizations that could facilitate exchange of information. The end result is overlapping in activities and duplication of efforts for data collection. This is the main reason for delays in the response time, which originates the major dissatisfaction of the beneficiaries of the land restitution process.
5. Improvements of the Land Restitution Process

5.1. Introduction
The analysis done in chapter 4, highlight the inter relation between policy, organizations and process in the Land Restitution Process of Guatemala. This chapter proposes improvements at the three levels identified: Policy Level, Organizational Level and Process Level.

5.2. Improvements Criteria
Any improvement to the land restitution process can not be done in isolated; they need to follow a higher level objective which the implementing organization needs to achieve. At the same time, the organizations can not perform their activities if they are not based on a clear formulated Land Restitution Policy that lies on a legal framework.

The criteria used to formulate the improvements of the land restitution process are based on the requirements of the organizations and the demands of the beneficiaries of the process and follows a three level approach.

Policy Level: Clear formulation of Land Restitution Policy
Organizational Level: Improve the provision of information and creation of products for exchange
Process Level: Improve the current process to fit the demands of other organizations

5.3. Improvements: Policy Level
Land Policies are very much related to country development agenda and with the priorities the politicians may wish to focus (Dale & McLaughlin, 1990). Land Restitution in Guatemala follows the Peace Agreements as the framework for intervention in land matters. Although many actions such as the creation of several organizations have taken place within the Peace Agreements, there is no policy that guides Land Restitution Process in Guatemala. There for the possible improvements at the policy level is the formulation of a Land Restitution Policy.

Three major aspects to consider in the formulation of a land restitution policy where found in the country case study: The formulation of the policy, Legal and Economic Aspects.

Policy Aspects:
The policy should be formulated at Governmental level; it should be included in the constitution of the Country. The Land restitution policy should include:

- Policy Aspects:
Definition of objectives: state the driving forces for land restitution and the benefits for the country for running this policy.
Beneficiaries: Identification of who can access to land restitution, who is the target group
Definition of time: since when the policy is going to implemented and when is the dead line

**Legal Aspects:** A revision of the current legislation should be made in order to assess the feasibility of the implementation of Land Restitution Process.
Modification or creation of new legislation and regulations avoiding overlaps and in agreement with the constitution
Creation of a Land Court to solve possible land conflicts
Formal recognition of property rights under customary and statutory law
Legal framework that supports the activities of the organizations implementing the land restitution policy

**Economic Aspects:** An estimation of costs and the provision of funds for running the policy should be made in advance. This will ensure the sustainability of the restitution process.

### 5.4. Improvements: Organizations Level

Land Restitution in Guatemala is a Process that requires the participation of five organizations. FONTIERRA is the organization responsible for conducting the process and the other four organizations holding the required information. In such context, communication between organizations becomes a key element in the ending result.

In the analysis done in Chapter 4, it was identified that the most consuming time in the process is the provision of information required for the analysis. This is the main reason for the process taking so long time and originating the major dissatisfaction between the beneficiaries as it was identified in the Focus Group.

The provision of the required information is only possible if the organizations holding it have products for exchange and if there is any agreement between organizations for data sharing. The improvements at the organizations level are based on the creation of products for exchange and in the organizational agreements for data sharing, cooperation and coordination and the legal framework that supports the organizations activities.

**Organizational agreements**

Organizations involved in land restitution are working as isolated entities. This is one of the reasons why the processes they conduct take so long time. Agreements between organizations to join efforts to improve performance are necessary. Two major agreements should be made:

- **Data Sharing:** Agreement for data sharing will have an impact in the reduction of the time process. This will avoid the duplication of the data for analysis collected by the organizations.
Coordination and cooperation: Coordination to join efforts for the collection of field data. This will have an impact of the amount of data collected.

Products to exchange
Organizations involved in land restitution should identify what data that they hold is required for the process, so they are able to provide or exchange it as products. Table 5.1 shows the possible data that organizations hold enable to be exchange. Emphasis is made in the data required for land restitution purposes.

<table>
<thead>
<tr>
<th>Organization</th>
<th>Product</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>CTEAR</td>
<td>Certificate of Internal Displace People</td>
<td>• Area of Displacement</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Individual or Community</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Cause of Displacement</td>
</tr>
<tr>
<td>CONTIERRA</td>
<td>Conflict Type</td>
<td>• Dispute over rights</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Undefined Boundaries</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Regularization</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Illegal settling</td>
</tr>
<tr>
<td>UTJ</td>
<td>Parcel Information</td>
<td>• Code</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Type of property</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Area</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Number of parcels</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Location</td>
</tr>
<tr>
<td>RGP</td>
<td>Cadastral Owner</td>
<td>• Personal Identification</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Gender</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Marital status</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Occupation of holder</td>
</tr>
<tr>
<td></td>
<td>Tenancy without registration</td>
<td>• Holder name</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Time holding possession</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Type of possession</td>
</tr>
<tr>
<td></td>
<td>Owner</td>
<td>• Personal Identification</td>
</tr>
<tr>
<td></td>
<td>Copy of registered title</td>
<td>• Gender</td>
</tr>
<tr>
<td></td>
<td>Positive/Negative property certificate</td>
<td>• Marital status</td>
</tr>
<tr>
<td></td>
<td>Certificado de gravamenes</td>
<td>• Occupation of holder</td>
</tr>
</tbody>
</table>

Table 5.1 Organizations Products to Share

Legal Framework
Laws, rules and procedures, must be clearly outlined. This will avoid overlaps between activities performed by the organizations and provide of legality to the activities performed by the organizations dealing with the land restitution process.
5.5. Improvements: Process Level

A process may be defined as a collection of activities that takes one or more kinds of input and creates an output that is of value to the customer (Hammer, 1993). Land Restitution Process follows several actions with the only end purpose of restoring property rights. In the Guatemala context, FONTIERRA is the organization charged for the restitution of land delivered by the state. The analysis of information is a key element for the restitution process.

The current restitution process in Guatemala is not much different to others conducted in other parts of the world. The main problem identified in FONTIERRA process is that the analysis is done twice. This happens due to the uncertainty to knowing what kind of data is available for the analysis and to ensure that the claim can be solved by FONTIERRA. Figure 5.2 shows a proposed process that avoids this double analysis.

![Diagram of Proposed Land Restitution Process]

**Description of the process**

1. Reception of Request: This is the starting point of the process where the claimant submits the request to the Regularization Area.
2. Evaluation: At this level the claim is evaluated, it must fulfill the following conditions. The claim should be referred to Land delivered by the state that the claimant is qualified as Internal displace People (CTEAR) and/or if it is a conflict resolution should be of Regularization Type (CONTIERRA).
3. Analysis: If the claim fulfils any of the conditions stated before, a legal and physical analysis is made. In this face cadastre and registry data is required.
4. Resolution: Based on the evaluation and analysis done, a decision for restitution is made.
5. Adjudication: State Land is delivered to claimant and a bill of adjudication and registration is prepared.
6. Registry: Registration of the property
The impact of the new process is a reduction of time in the total process by conducting only one pace of analysis.

5.6. Discussion

The logic for the in the implementation of a Land Restitution Policy goes; First: Formulation of the policy; Second: Creation or enforcement of organizations that will implement the policy and Third: design of the processes required to pursue the task. Although the analysis conducted shows a top down approach. The logic for implementing the improvements suggested in this chapter goes bottom up. This is based on what requires less time and is more feasible.

Short Term Improvement:
New Land Restitution Process with only one pace of analysis. This modified process integrates the information produced by CTEAR and CONTIERRA, certificate of displace people and qualification of conflict type. The feasibility of this improvement is based on the integration of information that already exists and is not used in the face of analysis. The impact is the reduction of time of the current process.

Middle Term Improvement:
Achieve Organizational agreements for share and exchange information. This will facilitate the exchange of information required in the pace of analysis in the restitution process. This exchange can be able only when the organizations have created their products for exchange. The feasibility of this improvement is based in that all organizations holding information for the restitution process are governmental. In almost all the cases are attached to Ministry of Agriculture. This condition will facilitate the achievement of the improvement. The impact is also a reduction in time in the process.

Long Term Improvement:
A formulation of a Land Restitution Policy stated in the constitution; the creation and modification of current legislation to support the implementation and enforce the performance of the activities conducted by the organizations conducting the process; is the main improvement to the process.
6. Implementation Requirements

6.1. Introduction

In the previous chapter a number of improvements at the three levels of intervention have been suggested; Policy Level, Organizational Level and Process and Products Level. This Chapter seeks to discuss the requirements for the implementation of the Improvements at the three levels identified: Policy, Organizations and process and products.

6.2. Policy Level

It cannot be improved something that does not exist. In the analysis made in Chapter 4 at Policy level, it was found that there is not a land Policy related to Land Restitution. The Peace Agreements signed by the Guatemalan Government and the United Nations is not enough. A formal Land Restitution policy should be formulated in accordance with the commitment that the government has to honour made with the United Nations.

Political Williness and Consensus
Governments should fulfill the demands of their societies. Politicians have the responsibility to guide the development of the country and satisfy the social demands. Improving tenure security in Guatemala is related to the protections of rights of Indigenous People, poverty alleviation and social stability. The key words for Land Restitution are: political decision and the consensus. Political and legislative debate should incorporate participation of peasant and indigenous organization at the moment of design the policy.

Legal Framework
A review of the current available legislation on what is referred to land tenure is required; existing of formal recognition and legal definition of land tenure. This revision of current legislation is done in order to implement the Land restitution policy. Modification or creation of new legislation is required for that purpose. Avoid overlaps between statutory and customary law.

Financial Aspects
The Implementation of a Land Policy is critical. Many land reform programmes have faltered at the implementation stage. The expenses and the long-term nature are the possible causes of implementation failure (Toulmin and Quan, 2000). Provision of enough economic resources is of main importance for the formulation of the Land restitution Policy.
6.3. Organization Level

The improvement of the Restitution Process relies very much on the participation and coordination between the organizations. The ICT plays a main role in facilitating the communication and the exchange of information. To improve the current process, at the organizations level, it is not necessary for the organizations to perform new activities or assume new roles or functions. It is required to perform a performance beyond the organizational boundaries. A clear identification of the role they play in the process and that the information they hold is a key element in the process.

Figure 6.1 Alignment between Process and Organizations

The information required by FONTIERRA in the Land Restitution Process is provided by four different organizations. Based on the main steps of the Land Restitution Process, Figure 6.1 shows the relation between the organizations and the process in which they participate. The way these organizations contribute to FONTIERRA, participate in the process is in the provision of the information they had produce. The process includes information related to the type of conflict and qualification of the claimant as Internal Displace people. The implementation of the improvements requires:

Definition of Roles and Responsibilities

The organization charged for the Land Restitution is FONTIERRA. The participation of CONTIERRA is referred on the analysis and definition of the type of conflict. Remaining in FONTIERRA only the ones referred to Regularization. One of the conditions for claiming restitution is to certify that the land was not voluntarily abandoned but forced because of the civil war. CTEAR is the organization charged to verify and provide the category of Internal Displaced People. UTJ and RGP, provide the physical and legal information of the parcel.

Institutional Agreements

The provision of the required information is only possible if the organization has products and if they agree in sharing them. This could only be possible if there is an agreement for data sharing between organizations. The possibilities for this agreement are high due that almost all the organizations are
attached to the Ministry of Agriculture and Governmental Organizations. This condition could facilitate the exchange of information.

Legal Frame
In the case of Guatemala the lack of Cadastral Law makes impossible the use information that UTJ produces. It is important to say that this does not mean that they don’t share information, it means that it has not legal value. For such reason a Cadastre law is required.

6.4. Process Level
In general terms the Land Restitution Process has three major steps: Evaluation, Resolution and Implementation. The resolution can only be made if there was the required information. In order to improve the process, the provision of information must be improved. Organizations that hold complementary information, CONTIERRA and CTEAR, should provide their information as products the same as UTJ. The General Property Registry offers their services already via internet.

Definition of Products
Based on the required information for the restitution process and on the information the organizations produce. The following are the products required in the process:
- CONTIERRA: Conflict Type: Regularization
- CTEAR: Qualification of Internal Displaced People
- UTJ Cadastre: Parcel Information
- RGP Registry: Positive/Negative certification of property
  Copy of Property registered

Information Communication Technology
The exchange of information that is done between organizations is done in the traditional way using diskettes and CD. This is a problem for the provision and exchange of information. The establishment of a digital connection among organizations is feasible using internet technology.

6.5. Concluding Remarks
This Chapter has proposed several improvements measures, as has been stated throughout the research, at three Levels: Policy, Organizations and Process. Any improvement can not be made if there is not a need and human decision for it. In the Guatemala context not only a decision is required, but also a new way of thinking from the side of the organizations, work beyond their boundaries. This new way of thinking will allow the creation of products, input data, required in the Land Restitution Process. This exchange of information can be done if there is an agreement between organizations for such purpose. This exchange of information can only be done if there is the appropriate technology that will facilitate it. This will improve the performance of the organizations and reduce the response time, major cause of dissatisfaction between the beneficiaries of the restitution of land.
7. Conclusions and Recommendations

7.1. Conclusions

The main objective of this research was to analyze the Land Restitution Process in Guatemala and identify bottlenecks and make recommendations for improvement. For that purpose the research had to answer a number of research questions. The following are the major findings of the research.

1. The Peace Agreement is the legal framework under which land restitution in Guatemala is conducted. On what is related to land and indigenous rights it is mentioned Protection, Recovery, Restitution and Compensation. The lack of a land policy that compiles the peace agreements drives to several gaps and overlaps in the activities performed by the organizations created to implement them.

2. The Land restitution process taking place in Guatemala is limited only to land delivered by the state, process known as “regularization”. In such circumstances the organizations created to deal with land matters, between others land restitution, are CTEAR Technical commission for resettlement of internal displaced people, displaced by war or forcibly removed from their land; FONTIERRA Land Fund organization charged to provide land and carry out the process of restitution and CONTIERRA Conflict Resolution Organization charged to mediated, classify and analyze the conflict in order to provide a solution or conduct it to the organization responsible for further analysis an solution.

3. Land Restitution in Guatemala is called by the governmental agencies “regularization” and is only related to land delivered or owned by the state. The major problem that faces the governmental organizations charge with land restitution is the provision of information and lack of agreements for data sharing. The major bottleneck identified by the stakeholders of land restitution is the provision of information which ends in long time process. They depend on the information of Registry and Cadastre; in the case of the Registry they offer a number of products via internet. In the case of the Cadastre, the information they have can not be exchanged due that it has no legal value, the y don’t have a legislation that recognizes this information as reliable. Due to this circumstance UTJ can not supply this information via internet and can not provide any product or services. This ends up that the organizations can use the cadastral information as base information, but they have to verify and produce its own data as it is required. At the same time, information form the type of land conflict and qualification of claimants as internal displaced people is required. This information is hold by CONTIERRA and CTEAR, this organizations should provide these information as products in order to exchange it.
4. The recommendations for improvement can be made at three levels:

- **Policy Level:** The Formulation of the Land Restitution Policy should include the formulation of the organizations to implement it. Review of the legislation available for the purpose, if necessary create new or modify the existing one. Provision of enough economic resources is key factor that will ensure the sustainability of the organizations running the land restitution process.

- **Organizations Level:** Organizations involved in restitution process should provide their information as products in order to facilitate the exchange. Agreements for data sharing between organizations are key element for provision of information. Provision of a Legal framework will enforce the performance of the organizations and validate the products they generate.

- **Processes Level:** The improvement of the current process is limited to eliminate a redundant pace that is made in to different moments. The information provided by CTEAR and CONTIERRA in the process of analysis also will have an impact in the response time of FONTIERRA.

7.2. **Recommendations**

- The existence of three organizations involve in land restitution in Guatemala obey to different driving forces. This research has found similar activities conducted by different organizations. The improvement of the Land restitution Process is based in the participation and information provided by three organizations. Future investigation should address the possibility to integrate the three organizations in order to concentrate activities and provide one stop solution to the beneficiaries of the current Land restitution Process.

- The improvement to the Land Restitution Process relies in the provision of information, exchange of products that organizations generate. Future research should address the most suitable technical solution to make feasible the exchange of information in the Guatemala context.
References


http://www.procesodepaz.gob.gt/

http://www.fontierras.gob.gt/

http://www.segeplan.gob.gt/spanish/main.html

http://www.fonapaz.gob.gt/

http://www.maga.gob.gt/

http://www.utjprotierra.gob.gt/


Appendices

Focus Group

A. Objetivo:
El Objetivo principal del focus group es conocer de boca de los directos beneficiarios sobre el proceso y efectividad del programa de restitución de tierras y la claridad de los procesos administrativos en Guatemala.

B. Selección de Lugar y Hora:
El criterio de selección del lugar y hora para la realización del evento es la disponibilidad de tiempo de los participantes. Se llevará a cabo el focus group en un ambiente neutral. Por ello se realizará en un ambiente aparente provisto por un Hotel el cual también proveerá de un pequeño ágape a los participantes. La hora sugerida es al empezar la mañana (7:00a.m. a 9:00a.m.) o (6:00p.m. a 8:00p.m.) y/o cualquier otra sugerida por la mayoría de los participantes.

C. Selección de los participantes:
Los participantes en el evento son representantes de las principales organizaciones campesinas y organizaciones que agrupan de alguna forma a beneficiarios (campesinos refugiados, desplazados y grupos étnicos) del programa de restitución de tierras en Guatemala.

1. Coordinadora Nacional de Organizaciones Campesinas / CNOC
   Telf. (502) 2202957
   Dirección: 5 calle 1-61 zona 1

2. Comité de Unidad Campesina / CUC
   Telf. (502) 434954
   Dirección: 31 av. "A" 14-46 zona 7 Ciudad de Plata II

3. Comisión Nacional Permanente sobre derechos relativos a la tierra de los pueblos indígenas / CNP Tierra.
   Telf. (502) 4716804
   Dirección: 14 av. 7-57, Interior, Colonia Carabanchel zona 11

4. Federación Campesina y Popular / FEDECAMPO
   Telf. (502) 2329234
   Dirección: 3 av. 12-22 zona 1

5. Coordinadora Nacional Indígena y Campesina / CONIC
   Telf. (502) 5102278
   Dirección: 8 calle 3-18 zona 1 3er. Nivel of. H.

6. Asamblea Consultiva de las Poblaciones Desarraigadas / ACPD
   Telf. (502) 2326070
   Dirección: 14 calle 1-26 zona 1

El número de participantes por organización es de una persona representativa, en el caso de la coordinadora nacional de organizaciones campesinas y de la Federación Campesina y Popular se espera la participación de dos miembros.

D. Invitación:
Los primeros contactos para la realización del focus group y la invitación a las organizaciones campesinas se han hecho vía telefónica. La fecha propuesta es el 22 de Octubre de 2004. La hora para la realización del evento será definida de acuerdo a la sugerencia de la mayoría de organizaciones. Para la coordinación del evento se cuenta con la colaboración del Ing. Hugo Tobías.

E. Temas a tratar:
Los temas a tratar en el presente focus group giran alrededor del proceso de restitución de tierras creado por el Gobierno de Guatemala como parte de los acuerdos de paz y reivindicación de los derechos de los campesinos. Los temas a tratar son:

- Localización de las áreas de conflicto
- Tipos de conflictos en la restitución de tierras presentes en el área de estudio
- Tipos de población beneficiaria (individuos, grupos familiares, comunidades, etc.)
- Reconocimiento de los derechos campesinos (grupos o individuos, ley estatutaria o constitucional)
- Existencia, claridad y efectividad en los procesos administrativos
- Recomendaciones para mejorar el proceso (vacíos administrativos, cuellos de botella, tiempo de los procesos)
Guatemala Fieldwork Plan:

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<td>Morning</td>
<td>Contact H. Tobías G. Santos / verify fieldwork plan</td>
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<td>Afternoon</td>
<td>Prepare and contact org. for focus group</td>
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ANALYSIS AND POSSIBLE IMPROVEMENTS OF THE LAND RESTITUTION PROCESS IN GUATEMALA

Tuesday
Morning Interview/Questionnaire Minugua representative
Afternoon Interview/Questionnaire Summary, submit for conformity

Wednesday
Morning Interview/Questionnaire International organizations
Afternoon Interview/Questionnaire NGO
Summary, submit for conformity

Thursday
Morning Review Information
Afternoon Review Information

Friday
Morning Review Information
Afternoon Review Information

Saturday secondary data collection

Questionnaire apply to organizations and Institution involved in Land Restitution in Guatemala

Cuestionario Instituciones

1. Existe alguna política de tierras u ordenamiento territorial?
   Si                           No
   Que parte esta referida a restitución de tierras? Menciónela
   1.1 Mencione tres objetivos de dicha reforma
   1.2 Queda de alguna forma explicita los beneficiarios de esta reforma? Menciónelos

2. Esta reconocida por la legislación vigente la tenencia de la tierra bajo derecho consuetudinario? Explique
3. Cuales son las formas de tenencia de tierra definidas por la legislación? Enumere
4. Están reconocidos y pretejidos por la legislación los derechos de propiedad de los grupos étnicos y campesinos? Explique
5. En la practica, se aplican estos derechos? Explique
6. A su parecer, cuales son las diferencias y/o vacíos de la actual política de tierras?
7. En su opinión que mejoras se podrían hacer a corto y mediano plazo?
8. Que beneficios trae para la sociedad la restitución de tierras? Mencione tres

Cuestionario Organizaciones

1. Cuales son las funciones de su organización en lo que se refiere a restitución de tierras y cuales es el mandato legislativo para dichas funciones?
2. Cuales son los servicios y productos que su organización ofrece?
   2.1 A otras organizaciones relacionadas con la administración de tierras
   2.2 A publico en general
3. Existe algún servicio, producto y/o procedimiento especifico relacionado con la restitución de tierras?
   3.1 Describa el procedimiento
4. Cuales son los documentos necesarios para iniciar el proceso de restitución de tierras y que mandato legal lo respalda? Explique
5. Como es el sistema de comunicación e información entre las organizaciones relacionadas con restitución de tierras? Explique
6. Cuales son los recursos con los que cuenta su institución para realizar sus funciones?
6.1 Recursos Humanos
6.2 Recursos tecnológicos
6.3 Recursos económicos
7. de que manera su organización controla el éxito de los procedimientos de restitución de tierras en relación a:
7.1 Tiempo
7.2 Efectividad
8. Como cree usted que los grupos de interés en su organización perciben su rendimiento?
9. Cuales son las deficiencias vacíos y/o cuellos de botella en los procesos administrativos relacionados con la restitución de tierras? Explique
10. De que manera cree usted que un sistema de administración de tierras influiría en el desarrollo de las actividades de su organización con respecto al proceso de restitución de tierras?
11. Que medidas correctivas propone usted a corto y mediano plazo para mejorar el proceso administrativo existente de restitución de tierras?

Guatemala Field Work Report

Activities Week 1 (13 Oct. – 15 Oct.)
- Establish contact with members of the San Carlos University (Hugo Tobias and Guillermo Santos)
- Verification of main actors involved in the Land Restitution Process in Guatemala
- Arrange appointments with major actors in the Land Restitution Process in Guatemala
- Identification of relevant indigenous organizations, organization and delivery of invitations to attend the Focus Group with Indigenous Organizations
- Conduct interviews with Lecturers of the Agronomy Program
- Collect relevant documents from San Carlos University Library

Activities Week 2 (18 Oct. – 22 Oct.)
- Office visits to public organizations involved in the Land Restitution Process and Conflict Resolution in Guatemala.
- Deliver questionnaires to representatives of major actors
- Conduct Interviews and Focus Group
- Record Interviews and take pictures
- Collect relevant documents of the visited Organization/Institution

Organizations/institutions visited
1. IGN Instituto Geográfico Nacional (National Geographic Institute)
2. UTJ Protierra (Guatemalan Cadastre Organization)
3. CONTIERRA (Conflict Resolution Organization)
4. CNOC Coordinadora Nacional de Organizaciones Campesinas (Indigenous Organizations)

Activities Week 3 (25 Oct. – 29 Oct.)
- Office visits to public organizations involved in the Land Restitution Process and Conflict Resolution in Guatemala.
- Deliver questionnaires to representatives of major actors
- Conduct Interviews and Focus Group
- Record Interviews and take pictures
- Collect relevant documents of the visited Organization/Institution

Organizations/institutions visited
1. RGP Registro General de la Propiedad (General Property Registry)
2. FONTIERRA Fondo de tierras (Land Funds)
3. SEPAZ Secretaria por la Paz (Peace secretary)
4. CTEAR Comisión Técnica para la ejecución del acuerdo sobre el Reasentamiento de las Poblaciones Desarraigadas por el enfrentamiento armado
<table>
<thead>
<tr>
<th>Organization / Institution</th>
<th>Data / Information</th>
<th>Relevance</th>
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| IGN Instituto Geográfico Nacional | • Mandate of the Organization  
• Products and services they provide (Public and Private sector) | • To identify the role IGN plays in conflict resolution and what information provides for land restitution  
• Identification of channels of communication (between public organizations) |
| UTJ Unidad Tecnico Jurídica Protienda (Cadastre Organization) | • Mandate of the organization (Mission, vision, objectives etc)  
• Legislation that rules the organization  
• Identification of information they generate: Products and Services  
• Administrative procedures for surveying and/or register properties  
• Ways of regularization land tenure (legislation available)  
• Land Tenure forms (Individual, collective or other forms) Legislation that rules and defines the ways of tenure and the law under which it is ruled  
• Ways that indigenous people hold land | • To define the way UTJ supports the land restitution process (information provider)  
• To generate the activity diagram of survey and registry  
• To identify the way communal lands are recognized, protected and/or recognized (main group of beneficiaries of land Restitution)  
• To compare if they are legal holdings |
| CONTIERRA (Conflict Resolution Organization) | • Mandate of the Institution (Mission, Vision, Objectives etc.)  
• Legislation that rules the institution  
• Conflict Resolution Methodology  
• Types of conflicts  
• Administrative procedures for solving conflicts  
• Human resources involved in the conflict resolution  
• Time that last a process  
• Other Organizations that participate with Contierra in solving conflict  
• Roles that those organizations play in the process | • To Identify the responsibility of the organization in the land restitution agreement  
• To make an activity diagram of the land conflict and the possible land restitution solution  
• To identify the requirements to access to the services of Contierra  
• To obtain information to verify and model the existent Land Restitution Process |
| CNOCC Coordinadora Nacional de Organizaciones Campesinas | • Ways of land tenure by Indigenous Communities  
• Beneficiaries of Land Restitution  
• User point of view of the restitution process | • To analyze recommendations for improvement |
| RGP Registro General de la Propiedad | • Mandate of the Institution (Mission, Vision, Objectives etc.)  
• Legislation that rules the institution  
• Administrative processes of registration of properties  
• Products and services the provide  
• Channels for delivery information | • To Identify the responsibility of the organization in the land restitution agreement  
• To generate the activity diagram of registry  
• To define the role they play in the provision of information |
## Preliminary Findings

1. Inexistence of a Land Restitution Process, understood as a whole. The process is partially done by many organizations. Each one of them makes a part of the whole process.
2. Lack of channels of communication that will allow the sharing of information required to successfully implement the peace agreements in what is related to Land Restitution. This ends in duplication of information and efforts and time consuming.
3. Unclear definitions of indigenous rights on what is related to property rights, although they are recognized by law it is not ruled yet, there are no specifications.
4. Overlaps between customary law and statutory law which originate land conflicts and double registration of the same property.
5. Land Restitution is not the word Guatemalan Organizations use they call it “regularization” it is clear they also understand that involves other processes as compensation and access to land. Till this moment the there is few processes under restitution the mayor activity they make is the compensation.
6. It is also recognized and classified the forms of land tenure, individual and communal.
7. Lack of legislation or unclear mandate of some organizations, which unable them to offer any product or service which could facilitate the access of information required for a Land Restitution Process.