



# SECURING LAND RIGHTS IN GUATEMALA: A COMPREHENSIVE BRIEFING ON CURRENT CHALLENGES AND LEGAL REFORMS

Enhancing Legal Security for Land Rights in Guatemala

## Abstract

This report aims to provide a comprehensive analysis of land rights issues in Guatemala, focusing on the precarious nature of these rights and the efforts to enhance legal security. The document is structured into two main sections: a general background and detailed case studies.

The general background section offers an overview of the historical and socio-political context of land rights in Guatemala, highlighting the systemic challenges and inequalities faced by Indigenous and rural communities. It examines the legal framework, the role of governmental and private actors, and the impact of these factors on land tenure security.

By presenting a thorough analysis of both the general context and individual cases, this report aims to inform and guide stakeholders in their efforts to secure land rights and promote justice for all communities in Guatemala.

David Jere  
[Email address]

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## Background

Key points include:

1. **Land Adjudication Process:** The government promoted land adjudication for lands considered ownerless (baldíos). The process involved reporting vacant land, surveying, legal approval, and final adjudication through a Governmental Agreement.
2. **EL TRIÁNGULO IXIL:** From 1880, land in this region was assigned to municipalities like Nebaj and Chajul, and large tracts were awarded to individuals.
3. **Land Conflict:** The land holdings in the conflict between Finca La Perla y Anexos S.A. and the indigenous communities of Chajul and Nebaj were adjudicated during this period. The indigenous communities claim their fertile land was taken by La Perla, leaving them in poverty, while La Perla asserts ownership based on registered property titles and defends their rights with armed guards.

**The current situation** of “The La Perla Case” highlights the ongoing agrarian conflict in Guatemala. Key points include:

1. **Stalemate:** As of September 2008, the case remains unresolved, affecting four indigenous communities in Chajul and Nebaj who claim their lands were illegally taken by landowners associated with La Perla y Anexos, S.A.
2. **Dispossession and Poverty:** These communities have lost their fertile lands, leading to extreme poverty. Many families have become tenants or laborers for La Perla, producing coffee for export at low cost.
3. **Historical Land Conflicts:** The conflict stems from historical land adjudication processes that often-ignored indigenous land rights, leading to numerous land disputes in Guatemala.
4. **Resistance and Advocacy:** Despite efforts by indigenous communities and various organizations, the conflict remains unresolved. La Perla’s representatives maintain their claim to the land and refuse to negotiate.
5. **Impact of Past Policies:** Forced displacement during the 1980s military government’s scorched earth policy has also played a significant role in the current situation.

The case underscores the deep-rooted issues of land rights and the ongoing struggle of indigenous communities in Guatemala.

## Forms of Land Tenure and Their Regularization

### 1. Tenure:

- **Definition:** The relationship between people regarding access, use, possession, and transfer of land and natural resources. Land tenure security Appreciation of holding land continuously and secure of its right of ownership, which is free from unreasonable interference by outsiders. That it generates the ability to profit from labor and capital invested, either when in use or when leased or rented to others
- **Tenure System:** Includes rules, authorities, institutions, and land administration rights (maps, titles, registries).
- **Customary Land Tenure:** Practices accepted at the community level, even if not recognized by national law.
- **Elements of Land Tenure:**
  - Integral to social, political, and economic structures.
  - Multidimensional, involving social, technical, economic, institutional, legal, and political aspects.
  - Relationships can be well-defined and enforceable or poorly defined and ambiguous.
  - Land use does not necessarily imply ownership; it can be leased, rented, usufruct, or under protection.

#### **Legal Basis:**

- Found in national laws and international conventions, such as:
  - Political Constitution of the Republic of Guatemala
  - Convention 169
  - Agreement on Socioeconomic Aspects and Agrarian Situation
  - Land Fund Law and its Reform Decree No. 24-99

## 2. Possession of the Land:

- **Definition:** Exercising control over land, either fully or partially.
- **Elements of Possession:**
  - Good faith
  - For a legally established period
- **Legal Basis:** Articles 612 to 641 of the Civil Code, Political Constitution of Guatemala, Convention 169.

## 3. Land Ownership:

- **Definition:** The right to enjoy and dispose of property within legal limits.
- **Legal Basis:** Civil Code, Political Constitution of Guatemala, Universal Declaration of Human Rights, Convention 169, Expropriation Law.

## 4. Types of Property:

- **Individual Property:** Grants the right to enjoy and dispose of property within legal limits.
- **Collective Property:** Includes cooperatives and indigenous communities, with special constitutional protection.
- **Public Property:** Owned by the Central Government or Municipalities, divided into common public use and special use.

### **Legal Basis:**

- Civil Code, Political Constitution of Guatemala, Convention 169, Universal Declaration of Human Rights, Expropriation Law.

## 5. Regularization:

- **Process:** Analyze, review, and update files on land adjudication and tenure to ensure compliance with relevant laws.
- **Inheritance Succession:** Can be by will or by law, with procedures outlined in the Civil Code.

# Overview of Land Rights in Guatemala

**Status of Land Rights:** In Guatemala, land rights are extremely complicated and contested, especially for rural and Indigenous groups. Land inequality has long existed in the nation, with a small number of wealthy landowners owning most of the agricultural land. Significant social and economic inequality have resulted from this discrepancy.

## Reasons for Precarious Land Rights:

1. **Poor Definition and Legal Recognition:** Current legislation in Guatemala does not adequately recognize Indigenous communities as legal entities, making it difficult to enforce land rights.
2. **Threats from Private and Governmental Actors:** Indigenous and rural communities often face threats from both private companies and government actions. For example, mining projects have led to conflicts and violence, as seen in the case of the Fenix nickel mine.
3. **Inadequate Legal Framework:** The lack of specific legislation to resolve land conflicts and regulate Indigenous lands exacerbates the issue. The state's information system on land tenure is inadequate, complicating the processes for communities needing to access, regulate, or resolve land conflicts.

**Project to Increase Legal Security:** Efforts to increase legal security for land rights in Guatemala include:

1. **Legal Reforms:** Advocates are pushing for new laws that recognize Indigenous property rights and provide mechanisms for conflict resolution.
2. **International Advocacy:** Indigenous communities have taken their cases to international courts, such as the Inter-American Court of Human Rights, to seek justice and set precedents for land rights.
3. **Community Empowerment:** Projects aim to empower local communities through education and legal support to better defend their land rights.

**Status of the Process:** Indigenous land rights have won major triumphs recently, thanks to verdicts like the one rendered by the Inter-American Court of Human Rights. Without obtaining community approval, the court mandated that Guatemala enact new legislation

and stop mining. Nevertheless, there are still many obstacles to overcome before these decisions can be put into effect and more extensive legislative changes may be made

## The complex issue of land ownership and tenure in Quiché,

### highlighting several key points:

1. **Dispossession and Land Use:** Communities are being dispossessed of their land for coffee, cardamom, cattle ranching, and African palm cultivation, especially in Zona Reina and Ixcan. Mining and hydroelectric projects are also causing conflicts.
2. **Land Distribution:** There is a significant disparity in land ownership. Over 87% of farms are small (1 cuerda to 1 manzana) but cover only 30% of the land, while larger farms (10 manzanas to more than five caballerías) make up just over 12% of farms but occupy nearly 70% of the land.
3. **Public Policy and Conflict:** Policies aimed at linking territories to the market often clash with local communities' views on land use and management, leading to conflicts.
4. **Peace Accords and Agrarian Program:** The rural agenda includes measures to provide legal certainty on land ownership, prevent land concentration, resolve agrarian conflicts, and improve access to land for peasants.
5. **Legal and Institutional Challenges:** There is a lack of legal certainty and adequate institutional frameworks to address agrarian issues, leading to conflicts over land rights, boundaries, and access.
6. **Economic and Cultural Significance:** Land is not just an economic asset but also has deep cultural significance for indigenous and peasant communities.
7. **Need for Institutional Reform:** Effective resolution of land conflicts requires a more appropriate institutional framework that ensures equity and includes marginalized rural, indigenous, and mestizo populations.
8. **Agricultural Support:** The state has reduced support for agricultural institutions, affecting technical and financial assistance for peasant production.

# The impact of natural resource exploitation and mega projects in Guatemala,

## focusing on several key areas:

1. **Land Grabbing:** Policies from international financial organizations have promoted monoculture plantations (e.g., African palm, sugar cane) through various means, including coercion and psychological violence. This has led to significant land concentration and agrarian conflicts, particularly in Petén, Izabal, Alta Verapaz, Quiché, Suchitepéquez, and Retalhuleu.
2. **Mining:** The 1997 mining law, which favors foreign ownership and reduces royalties and taxes for mining companies, has led to increased mineral extraction. This has caused environmental and social issues, including conflicts over water usage and inadequate legal reforms.
3. **Electric Power Generation:** The shift towards hydroelectric and other energy sources has led to conflicts, especially when communities' access to water and landscapes are affected. Privatization of electricity services has also caused disputes due to increased charges and loss of community-owned infrastructure.
4. **Post-Conflict Challenges:** Despite the Peace Accords aiming for a more democratic and inclusive society, progress has been limited. Indigenous peoples and marginalized communities continue to face violence, economic precariousness, political confrontation, and social conflict, exacerbated by unresolved historical issues and climate change.



# Case File: Land Access in San Miguelito, Uspantán

## Location:

- **Community:** San Miguelito
- **Municipality:** Uspantán
- **Type:** Land Access

## Background:

- The families in the community are descendants of individuals displaced during the armed conflict, resulting in their lack of land ownership.
- For the past three years, these families have been occupying a farm with the intention of purchasing it to secure a living space and produce their own food, aiming to improve their living conditions.

## Case Description:

- **Property Name:** Tres Cruces
- **Jurisdiction:** Municipality of Uspantán
- **Registry Details:** Number 16,150, Folio 12, Book 73 of Quiché
- **Farm Size:** 4.84 caballerías
- **Current Owner:** FUNDAECO
- **Ownership History:** Neither the previous nor the current owners have visited the property, and it is believed they are unaware of its boundaries and adjoining properties.

## Actions Taken:

- **2020:** Community leaders approached Mr. Francisco Mauricio Capuano Puccini in the first semester of 2020 to express their intention to purchase the farm. Mr. Capuano Puccini promised to consider their request and respond, but he sold the farm to another party without informing the community.
- **September 2020:** The community sought assistance and advice from Asociación Unidos por la Vida to help facilitate the purchase of the farm. The association began internal processes to support the families.

- **March 2021:** The association decided to accompany the families in their efforts. They worked with community leaders to identify the current owner and analyze the legal status of the property.
- **Field Verification:** Before contacting the new owners, the community conducted geopositioning to confirm the farm's boundaries and advised members not to damage the forest to avoid legal issues.
- **End of 2021:** A virtual meeting was held with a consultant and a FUNDAECO technician. A follow-up meeting was scheduled for January 2022 but was postponed due to scheduling conflicts.
- **High-Level Meeting:** It was decided that a high-level meeting with an intermediary body would be necessary to obtain concrete answers and address the issue.

**Actions to be Taken:**

- **Approach CODEPADEH:** Establish a high-level table at the national level to initiate a dialogue process with FUNDAECO.

# Case File: Regularization in Nueva Esperanza, Uspantán

## Location:

- **Community:** Nueva Esperanza
- **Municipality:** Uspantán
- **Type:** Regularization

## Background:

- The families of the Nueva Esperanza community have obtained the land as co-ownership through the ECA (empresa campesina asociativa), awarded by FONTIERRA, which makes all updating and paperwork very complicated.
- In the first quarter of this year, they requested support from the Association to provide them with accompaniment and advice to dissolve the ECA and allocate the land individually to each of its members. The current legal structure has many limitations, so most of the land would become individual private property.

## Case Description:

- **Legal Representative:** The term of office for the legal representative of the ECA has expired.
- **Board of Directors:** The assembly agreed to reelect the same board of directors. However, FONTIERRA rejected the documentation due to an impediment in the reelection statutes. The assembly insists on maintaining the same board of directors.
- **Statutes Review:** The statutes have been reviewed and confirmed to have these impediments.
- **Next Steps:** Once the registration of the new ECA board of directors is resolved, the resolution will be requested to make the respective awards to the members and dissolve the ECA.

## Actions Taken:

- **Bylaws Verification:** The bylaws have been verified, indicating the need to address the issue directly with FONTIERRA at the national level.
- **Legal Solution:** It is considered appropriate to address the issue with a body that can contribute to finding a legal solution.

**Actions to be Taken:**

- **Approach COPADEH:** Raise the situation of the community before COPADEH, requesting support in resolving the matter for the registration of the same board of directors before the ECA registry in FONTIERRA.

# Case File: San Pablo II El Senzontle

**Location:** San Pablo II El Senzontle

**Municipality:** Uspantán

**Type:** Access to Land

## Background

- **Community History:** The families of the community, affected by the armed conflict, have been living on the farm since 1992. The National Institute of Agrarian Transformation (INTA) allowed them to reside there, as the farm belonged to the Nation.
- **Current Status:** Despite living there for over 30 years, the community has not been awarded the property. Initially, the group consisted of 40 people, but it has now been reduced to 11 families.

## Case Description

- **Legal Certainty:** The families have been striving to obtain legal certainty of the land to improve their living conditions, which are marked by vulnerability and extreme poverty.
- **Process Requirements:** To secure land ownership documents, the community must complete the process mandated by FONTIERRA.
- **Conflict with CONAP:** The National Council of Protected Areas (CONAP) proposed declaring the entire farm a protected area, which would adversely affect the families. After intervention by the CPD, an agreement was reached to resolve the issue.
- **Community Goal:** The aim is to obtain legal certainty of the land.

## Actions Taken

- **Agreement Reached:** Through the intervention of a technical committee chaired by CPD, an agreement was reached between CONAP and the community.
- **Field Work:** Field work was conducted to delimit the area corresponding to the parties involved.
- **Administrative Error:** FONTIERRA made an error in entering the farm number and community name, delaying the process by approximately one year.

- **Process Monitoring:** Progress was monitored via telephone with the institution's delegation in Uspantán.
- **Recent Notification:** On July 28, FONTIERRA notified the community about updating family data and conducting a real and physical study of the farm.

#### **Actions to Be Taken**

- **Documentation Compilation:** Joint efforts with community leaders, FONTIERRA, and the Association are underway to compile the necessary documentation to update the file.
- **Upcoming Visit:** FONTIERRA is planning a visit to conduct a family census, actual and physical study of the farm, and a land use change study.
- **Follow-Up Request:** Requesting CODEPADEH to follow up on the process initiated by CPD to ensure timely responses.

# Case File: Land Access in San Malandran, Uspantán

## Location:

- **Community:** San Malandran
- **Municipality:** Uspantán
- **Type:** Land Access

## Background:

- Families made up of settlers have been living in the area for more than 50 years.
- The families are settled on a part of the San Balandran farm.
- Approximately 60 families, some of whom were born on the farm, have been living there for over 100 years.
- The farm is co-owned by individuals who live in the capital city and have not visited it for more than 40 years, leaving it abandoned. The resident families have been taking care of the farm.
- In 2016, Mr. José Enrique Cabrera A. received approximately Q.971,813.00 from the families, not including the work done in planting and harvesting cardamom.
- The families aim to obtain the deed to the land they occupy.

## Case Description:

- **Farm Location:** Jurisdiction of Uspantán
- **Farm Details:** Farm No. 2541, Folio 196, Book 13, of El Quiché, known as San Balandran
- **Area:** 7,750,196.943800 m<sup>2</sup>
- **Co-Owners:** Carlos Cabrera Antolinez, José Enrique Cabrera Antolinez, Ana Marina Cabrera Antolinez de Pelaez, and María del Carmen Cabrera Antolinez de Aron (one co-owner is deceased)
- **Payments:** Approximately Q.971,813.00 deposited to account 3183024137 in the name of José Enrique Cabrera Antolinez. Mr. José promised to provide the deeds but has not done so.

- **Measurements:** In 2018 and 2019, lots and plots were measured, covering approximately 4 caballerías.
- **Conflicts:** Other groups, including Tres Ríos and Poma Rosal, have occupied parts of the farm, causing conflicts and injuries to the resident families.

**Actions Taken:**

- Community leaders have filed several complaints against those causing injuries.
- Communication with Mr. Cabrera Antolinez to obtain land documents has been ongoing, but he has not resolved the issue and demands cardamom production, which is hindered by other groups occupying the land.
- The association has been asked to accompany the families to resolve the situation and obtain land documents.

**Actions to be Taken:**

- Request a dialogue process through COPADEH to convene the co-owners of the farm and mediate the dialogue process to resolve the situation.



# Case File: Land Access in Caserío Las Pilas, Uspantán

## Location:

- **Community:** Caserío Las Pilas
- **Municipality:** Uspantán
- **Type:** Land Access

## Background:

- In 1939, a group of 15 families settled on the farm and named it Pilas due to a stream-like water source that flows into the river, forming a basin.
- In 1944, the families sought the owner to express their interest in purchasing the farm.
- In 1948, Mr. José Enrique Cabrera Antolinez visited the families, acknowledged the farm belonged to his family, and abandoned it after the visit.
- During the internal armed conflict, the families formed a civil self-defense patrol to protect the farm.
- In 1997, the families organized a pro-land committee and sought support from Caritas to negotiate with Mr. Cabrera Antolinez, who demanded money but did not provide documents.
- In 2001, the families collected Q.100,000.00 as an advance payment for the land.
- In 2002, a topographic study was conducted with Mr. Cabrera Antolinez's authorization, costing each family Q.60,000.00.
- The community has developed infrastructure, including a road, school, drinking water, soccer field, and churches, through their efforts.
- The families seek land documents to secure their long-term settlement.

## Case Description:

- The families have approached co-owners to purchase the farm but have faced delays and challenges.
- The farm, known as El Triunfo, is co-owned by the Cabrera Antolinez family and registered under number 1657, folio 54, book 9 of Quiché, with an area of 3,041,003.445000 m<sup>2</sup>.

- Owners include Carlos Cabrera Antolinez, José Enrique Cabrera Antolinez, Ana María Cabrera Antolinez de Pelaez, and María del Carmen Cabrera Antolinez de Aragón. José Enrique Cabrera Antolinez’s rights were donated to José Enrique Cabrera Pivaral.

**Actions Taken:**

- Several approaches have been made to the co-owners since 2021.
- The community has struggled to engage all co-owners in a negotiation dialogue.
- The association has been asked to assist in resolving the situation to obtain legal certainty for the land.

**Actions to be Taken:**

- Request support from COPADEH to form a high-level roundtable to mediate the process and resolve the land ownership issue.

# Case File: Easement for Electric Transmission Towers in Trapichitos, Nebaj

## Location:

- **Community:** Trapichitos
- **Municipality:** Nebaj
- **Type:** Easement for Electric Transmission Towers

## Background and Description of the Situation:

- **Community:** 61 families from Trapichitos, owners of the Buena Vista farm, obtained the land through a loan from the AGROS Foundation.
- **Legal Certainty:** In 2017, the land was legally secured in the names of two leaders representing the group.
- **Easement Issue:** Upon reviewing the documentation, it was discovered that the plan from Hidro Xacbal indicated the installation of 6 towers, but 9 towers were found on the ground.
- **Meeting:** On November 14, 2017, the land committee, Engineer José Alberto Brito, and the farm owners met with Engineer Edgar Caal and Byron Herrera, the supervisor of the transmission line. The community highlighted the discrepancy between the documented and actual number of towers.
- **Ownership:** The farm was previously under the AGROS Foundation due to a loan, which has since been repaid. The farm is now in the names of two representatives.
- **Negotiations:** The hydroelectric engineers acknowledged the discrepancy. They had negotiated with Mr. Jacinto de Paz Solis for 5 towers and Mr. Jesús Natividad for the remaining towers.
- **Further Meetings:** Additional meetings with Xacbal hydroelectric company representatives confirmed the need to resolve the issue of the three extra towers built without compensation to the property owners.

## Actions Taken:

- **Dialogue:** Several meetings between the community and Hidro Xacbal representatives have been held, but no resolution has been reached.

- **Community Request:** The community has requested assistance from the association to help resolve the situation.

**Actions to be Taken:**

- **COPADEH Intervention:** Request COPADEH's intervention to facilitate dialogue with the decision-makers at the Xacbal hydroelectric plan to resolve the issue.