TO: William C. Doherty, Jr.
   Executive Director, AIFLD

FROM: Mary Temple
      The Land Council

In the course of implementing the application and title processes of Decree 207, FINATA has avoided taking applications on farms where the owner has less than 10 manzanas. Until now, this policy has been informal, de-facto, case-by-case, which is how it should be, taking into consideration all the various factors.

However, at the meeting on Friday, January 20, Galileo Torres appeared to be saying that there are some 39,000 potential beneficiaries on farms of 10 manzanas or less who would not be included in the process during the extension period. Furthermore, it seems that FINATA decides almost automatically in favor of any owner who files an opposition, claiming to own less than 10 manzanas.

In effect, this is establishing what is known technically as a "retention limit" of 10 manzanas. Historically, such retention limits have been used by landlords as "loopholes" to avoid losing their land. Decree 207 was written deliberately with no retention limit, or a 0 manzana retention limit, because such a limit creates endless opportunities for corruption and favoritism by administrators, as well as for owners to divide their land among relatives and friends in order to avoid expropriation. This policy was discussed thoroughly at the time the decree was adopted, and approved by Rodolfo Viera and the UCS board of directors.

To cut 39,000 families out of the total of 124,000 reduces the program by one third.

There are some who say that most of these beneficiaries do not want to apply for their land because the owner is a relative or a friend or neighbor.

This is an important, but delicate policy question for the UPD political committee. To seek a "clarification" of the policy could result in a clear exclusion of these beneficiaries. Yet, it is certainly not in our interest to allow even "de facto" exclusion of all these potential beneficiaries from the process.
It seems important that the mass exclusion of 39,000 potential beneficiaries should not be accepted by the campesino organizations and that they should insist that the case by case approach continue, with decisions made as close as possible to the canton level, where the facts are known and fair and just decisions are more likely, reducing the opportunities for corruption.

Giving priority to compensation to small farm owners could alleviate greatly their opposition to the land reform. Currently the policy of AID and PINATA is to pay the larger owners first, because it is easier to administer one large payment than many small ones. This is not an equitable policy.
TO: William C. Doherty, Jr.
Executive Director, AFLD

FROM: Mary Temple
The Land Council

March 15, 1984

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Giving priority to compensation to small farm owners could alleviate greatly their opposition to the land reform. Currently the policy of AID and FINATA is to pay the larger owners first, because it is easier to administer one large payment than many small ones. This is not an equitable policy.

This is not the reason that FINATA is trying to settle with the larger land owners now, but rather because they are trying to keep as many beneficiaries in the programme as possible before June 30 by adding them gradually. They are more beneficiaries on the larger properties.
February 1, 1984

William C. Doherty, Jr.
American Institute for Free Labor Development
1015 20th Street N.W.
Washington, D.C. 20036

Dear Bill:

I have several points of deep concern with Dick Hough's memo to you of January 24, and wanted to be sure you were aware of them. These include the possible setting of too low a goal for title applications between now and June 30; an apparent acquiescence in the illegal exclusion of tens of thousands of beneficiaries by applying a "10-manzana" cut-off on landlords affected; a failure to emphasize the highly preferable alternative of redistributing the vast majority of this land and simply compensating the under-10-manzana ex-landlords more adequately -- an alternative which I had thought that Dick, Mary, Jeff and I had all agreed on at our January 13th New York meeting; also, what seems a fairly basic misunderstanding of both the moral position and the political potential of the beneficiaries, including the apparent failure to recognize that the campesino beneficiaries are much more numerous than the ex-landlords (even than the under-10-manzana ex-landlords); and, finally, what seems to be a misapprehension of both the legal and political significance of the June 30 termination date that could lead to a very undesirable diversion of administrative resources away from the currently all-important application process. Specifically:

(1) Given that the beneficiary families who have filed applications - 60,733 - represent only 52% of the most conservative (PERA) estimate of potential beneficiary families - 117,000 - a goal of an additional "30,000" title applications by June 30 represents, I would say, absolute minimum performance. If they fall significantly short of that, they must extend at least another six months (and even if they reach that minimum goal, they must, as you have already suggested, give an "amnesty" or extension to those in zones of conflict or of guerrilla control, including those who are refugees). A far more appropriate goal to push for is that which I am informed was sought by UCS and UPD -- 48,000 applications.
Of very deep concern is Dick's statement, "we do not expect FINATA to reach the goal [of 30,000] by trying to distribute land on property holdings under 10 manzanas." Such an approach, if accepted, could exclude more than 39,000 potential beneficiary families from the program -- one-third or more of all beneficiaries -- including well over 10,000 who have already filed their applications. Decree 207 very deliberately does not permit landlords to keep "5" or "10" manzanas, and this was a policy decision thoroughly supported by Rodolfo Viera, Mike Hammer, and the UCS executive board in 1980. Experience around the world demonstrates that such small or "petty" landlords are often the most vicious and exacting, and also demonstrates that the importation of any such "retention limit" into a land-to-the-tiller program vastly complicates the administrative task of identifying land subject to the program. As a matter of Salvadoran law, such holdings have already been expropriated under Decree 207, as of May 6, 1980, and merely await identification of an appropriate beneficiary. If there is to be any administrative forebearance for the handful of very small (ex-)landlords who are genuine campesinos (as distinct from those who are local officials, moneylenders, or city people holding land as a speculation or an inheritance), it can only come through close involvement of the campesino organizations in the administrative process and a free determination by the campesinos themselves as to whether it is appropriate or not under local standards of the culture to claim a particular piece of land. The surveys and interviews we did in 1980 (at a time when Dick was not involved in the program) made it quite clear that potential beneficiaries of their own volition would not claim land belonging to a poor widow, an incapacitated neighbor, or a close relative. What must not be allowed to continue -- nor be reinforced or legitimized by anything we say or hint at -- is the wholly illegal FINATA practice of allowing distant, corruptible, and generally pro-landlord FINATA officials to "determine" that a particular (ex-)landlord is to be exempted from the program because he claims, or because their inadequate "records" indicate that he owned less than 10 manzanas.

As the accompanying footnote reflects, the number of beneficiary families who would be excluded by such a generally applied 10-manzana cut-off or "retention limit" would apparently be at least 39,000, or one-third of PERA's estimate.
of the total beneficiary universe, but more likely would be over 40% of the total universe. */

*/ As presently administered, as I understand it, the FINATA administrators will not knowingly accept an application from a beneficiary whose (ex-)landlord is considered by them to have had less than 10 manzanas; and if an application is inadvertently accepted from such a beneficiary -- or was previously made -- any "opposition" filed by the (ex-)landlord based on that ground will be almost automatically accepted.

FINATA presently estimates there are 39,000 beneficiary families on land of (ex-)landlords who have 10 manzanas (7 hectares) or less. The "39,000" figure seems consistent with (and quite possibly derives from) the PERA eviction survey of June-July 1983 with its breakdown of the "strata" of holdings on which applications have been received. If accurate, however, that estimate is then almost certainly too low to reflect the percentage of beneficiaries who would be excluded in practice under a generally applied 10-manzana (7 hectare) "retention limit."

By itself, "39,000" represents one-third the PERA estimate of 117,000 in the total beneficiary universe. But this estimate derives from review of records or survey data; when administrators -- who are often likely to be pro-landlord or even landlord-related -- confront actual (ex-)landlord claims to have owned "less" than 7 hectares, it is overwhelmingly likely that the proportion of actual exclusions will be even higher. Starting with FINATA's 39,000 figure, my own rough estimate is that not "just" one-third, but over 40% of all intended beneficiaries will be excluded by the general (and wholly illegal) application of "10 manzanas" as the cut-off point for landlords affected. This is precisely why Viera, Hammer, and the executive board strongly opposed any such cut-off.

It might also be noted that the PERA eviction study showed, as of July 1983, 9,767 applications previously made by beneficiaries on the strata of holdings roughly up to 6 hectares (those containing 5 or fewer beneficiary families, with an average upper-limit holding size of 5 times 1.22 hectares, or 6.1 hectares). This means that well over 10,000 existing applicants -- or over one out of six of the 60,000 families who have applied to date -- would have to be denied title to a parcel of land they have already applied for because their (ex-)landlord had 7 hectares or less.

Moreover, as we know, as the program moves [cont'd]
(3) I might add that the appropriate policy -- and one with which we had thought Dick was in full agreement after our New York meeting -- is that more adequate and more liquid compensation might be made available to the smaller (ex-) landlords. That is, we should be pressing the Administration to repeal the Helms Amendment and seek funds for compensation, not encouraging FINATA to illegally exclude a massive number of beneficiaries just because their landlord happens to have had less (or claims he had less, or corrupts an official to agree he had less) than "10 manzanas."

(4) In attempted support of this ill-conceived exclusion proposal, Dick's memo adds, "We do not want to give votes to ARENA or to have the Phase III program precipitate undue violence in the rural areas of El Salvador." This statement contains, in my view, two fundamental misunderstandings of the entire land-reform process.

First, if campesinos are regarded as non-persons, and their vote is simply ignored, any land reform will "give" votes to the most extreme-right groups. But the whole political point of land reform, in addition to its basic rightness and morality, is that there are more campesino "votes" out there than there are landlord "votes." Given the average-size parcel being claimed, a 10-manzana (ex-) landlord has six beneficiary families on his former land, and a 5-manzana (ex-) landlord has three beneficiary families on his former land; in the east, these figures are probably closer to eight and four beneficiary families, respectively. The immediate political point is not what ARENA stands to gain (the votes of one family), but what the parties of reform and moderation stand to lose (the votes of three, or five, or eight, beneficiary families) by taking the position that the "small landlord" should be exempted from the program. A subsidiary misunderstanding in the memo is the implicit assumption that ARENA doesn't already have substantially all the (ex-) landlord votes, or that any significant number of those votes might somehow go to the

[Footnote continued]

east, both the average size of beneficiary holdings and the average size of (ex-) landlord holdings declines significantly: for the east alone, the impact of a "10-manzana" cut-off could well be the exclusion of half or more of intended beneficiaries. To do this in the areas where the greatest guerrilla-recruiting efforts are likely represents virtual self-immolation in the name of preserving the petty landlords.
parties of reform and moderation -- that is a wholly unrealistic assumption. The fact is, ARENA already has those votes, and has had them since the land reform was promulgated; the only thing that can happen now is that, by equivocating on such questions as the "10-manzana" issue, the parties of moderation might well lose the campesino vote -- and indeed they appear to be on the verge of doing precisely that.

Second, as to "undue violence," I am reminded of what Rodolfo Viera once said after the land reform was promulgated: "They are still killing us, but now at last we are dying for something -- our land." Campesinos who are intended beneficiaries and who want their land should get their land. We have no moral right nor warrant to quietly acquiesce in the illegal disallowance of the land-ownership rights of tens of thousands of campesinos, nor to rationalize, support, or cheer on that disallowance. If we don't clearly and unequivocally take the part of the campesinos, who will? Even Dick's threshold assumption is questionable, since giving in to the extreme right on the "10-manzana" issue may not so much propitiate them as constitute a classic gesture of appeasement: after all, if they can undo 40% of the land reform through the threat of violence, why not 100%? Moreover, it is not just that the campesinos have more votes than the (ex-)landlords -- they also represent the people who, by their support or non-support of the forces of moderation versus the violent left will determine the ultimate result. If "violence" is the concern, tens of thousands of campesino families denied their land rights don't represent the removal of an incentive for violence by the far right, nearly so much as they represent thousands of new recruits for the violent left. By destroying a large part of the land reform, acquiescence in or support of the "10-manzana" limit will move El Salvador one giant step closer to the day when the guerrillas will win.

As I said above, I thought that Dick had understood and agreed with this analysis at our meeting in New York, and with the use of more liquid forms of compensation to pay for small (ex-)landlords' land, which would be given to the beneficiaries farming that land, and whose applications for that land would meanwhile be sought and accepted.* I was apparently mistaken about Dick's position.

* As things presently stand, of course, if these beneficiaries are not permitted to apply between now and June 30, they will never be able to apply.
(5) The memo says "I would emphasize the imperative of resolving as many of the landlord oppositions to campesino title claims as possible before June 30" (emphasis is his). In fact, it is not "imperative" at all. The real point is that as many applications as possible must be initiated by June 30 -- after that, we have ample time to deal with the "oppositions" (if the moderates are elected), or else we have no program at all (if ARENA is elected). No resources should be diverted from a maximum effort on receiving applications between now and June 30 in order to process "oppositions" -- anything that can be done without diversion of resources from the application process, fine; otherwise, no. Again, I had thought this point was agreed on in New York.

In short, I have to register my profound disagreement with much that is in Dick's memo.

Sincerely,

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cc: M. Temple
    R. Hough