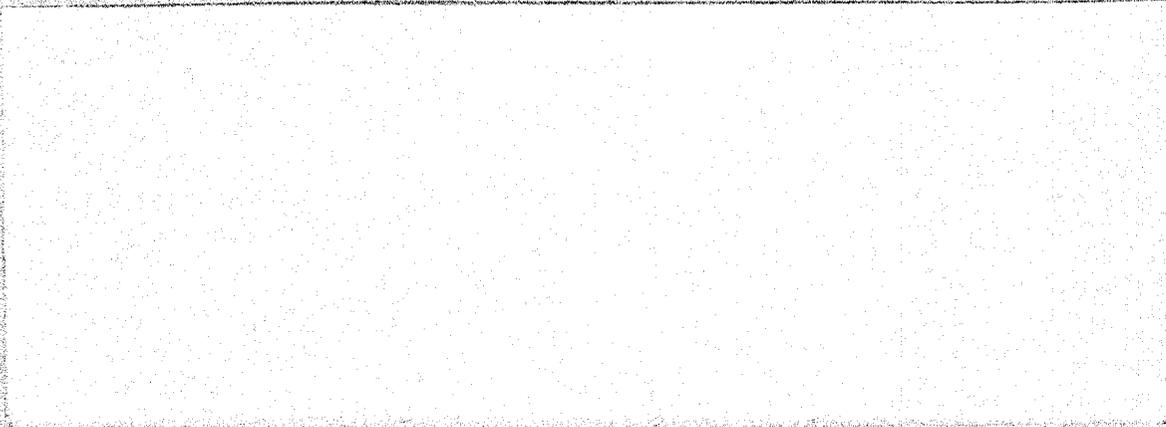


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LAND TENURE CENTER

An Institute for Research and Education
on Social Structure, Rural Institutions,
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Land Tenure Center
1300 University Avenue
University of Wisconsin-Madison
Madison, Wisconsin 53706

PROPERTY LAW INNOVATION IN LATIN AMERICA WITH RECOMMENDATIONS

by

Steven E. Hendrix

Prepared for the Agency for International Development, Latin America Bureau, Rural Development Office. This is an expanded version of a paper originally prepared for the Inter-American Bar Association Annual Conference, in Santiago, Chile, 19-24 April 1993. Steven E. Hendrix is the Land Tenure, Legal, and Policy Advisor to the LAC TECH and ACCESS II Projects from the Land Tenure Center of the University of Wisconsin-Madison. He is also an Honorary Fellow of the Institute for Legal Studies, University of Wisconsin Law School.

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EXECUTIVE SUMMARY

In most Latin American agrarian reforms, governments created restrictions on rural landownership. Often this took the form of restricting the size of the property and the ability to mortgage, inherit, sell, and rent as well as mandating some sort of land use (i.e., agriculture). Governments took these measures to prevent a reconsolidation of landholdings and a return of large estates (latifundios).

Mexico, Honduras, Nicaragua, and Peru have each radically changed their old agrarian reform legislation since 1990. In short, each has eliminated at least some restrictions on agrarian reform properties.

The Latin American agrarian reform laws were designed to address landownership questions and social policy. More specifically, these laws were conceived as a means to transform agrarian structure from latifundios to small, producer-owned plots.

Latin American agrarian reform programs usually provide land grants subject to certain conditions. They do not give out fee simple titles. What they do provide is akin to a use right (usufruct) or a determinable life estate with a restraint on alienation. The beneficiary has the right to use the land so long as the s/he works the land. If the land is abandoned (or not used to promote "social policy"), it can revert to state control and ownership. The beneficiary usually cannot place a mortgage on the land, since the beneficiary is not the fee owner. Sometimes the land also can be passed to heirs in wills or through intestacy, assuming subsequent holders continue to use the land in conformity with the government's social objectives.

The US Agency for International Development (USAID) has stated it will support economic and political reforms that generate employment; promote broadly based, sustainable, and environmentally sound economic growth; and encourage political freedom and good governance. The reforms in Mexico, Peru, and Honduras were engineered to achieve these goals. It is hoped they will have this effect in Nicaragua as well.

The experiences of the four jurisdictions examined suggest that the removal of restrictions on agrarian reform properties should be undertaken with care. The exact impact of this legislation is impossible to quantify at this point, since the reforms are new and their impact will continue for decades to come. Nevertheless, plausible causal associations are evident. The special needs of women, the poor, and indigenous groups, for example, should be taken into account. Further, governments may have to balance private sector needs against the needs of the historically disadvantaged and the goals of a sustainable environmental policy.

Removal of restrictions on agrarian property is a logical part of economic modernization. Yet, elimination of restrictions, by itself, may not guarantee economic progress. Elimination of ownership restrictions, therefore, may be one element of a broader development strategy for economic revitalization.

In short, property law modernization efforts might consider the following operational guidelines suggested by the experiences of Nicaragua, Peru, Mexico, and Honduras:

1. Restrictions on rights to mortgage could be removed.
2. Rather than mandate a specified tenure form, such as individual ownership, reforms may allow the farmers themselves to decide in what legal form they would like to hold property.
3. Countries may examine establishment of an unrestricted right to sell or transfer land.
4. Governments may consider recognition of forestry as an appropriate land use, in conformity with the social function of land.
5. Governments might explore the feasibility and practicability of giving mineral and subsoil rights to indigenous communities, where subsoil wealth is located on their land.
6. Governments should identify areas for monitoring and evaluating the impact of legislative modernization, especially regarding the historically disadvantaged, trade and investment, and the environment.

GLOSSARY OF TERMS

- adverse possession** This is a method of acquiring complete title to land as against all others, including the recorded owner, through certain acts over an uninterrupted period of time. Most jurisdictions require that the possession be actual, visible, open, notorious, hostile, under claim of right, definite, continuous, exclusive, and so on. The purpose of these requirements is to provide notice that this possession is not subordinate to the claims of others.
- baldía* land** rural land that has no owner and is not ejido land. This land can be sold and can be assigned by the government to municipalities, at which point it becomes ejido land.
- cadastre** originally only a tax inventory and assessment of real property. More recently the term has been expanded to include a mapping of land parcels for multiple purposes. The terms "multipurpose cadastre" and "multipurpose land information system" are often used interchangeably, though not usually by the same author.
- determinable estate** This right of ownership exists only as long as a condition described in it continues to exist. For example, it may be the right to land so long as it is farmed. Once the limitation ceases, the estate ends automatically. In this regard, it is similar to the Latin American concept of a *dotación* of agrarian reform land, which often requires continued use of the land to maintain ownership.
- ejido land** land that belonged to the municipalities at the time of colonization, along with other lands acquired by the municipalities. It generally cannot be sold or mortgaged. Ejido land in certain countries (e.g., Mexico and Venezuela) is defined as land given to an agrarian population group or center to be directly used by the group's members. The land cannot be attached, transferred, mortgaged, divided, or sold.
- fee simple** an estate of complete ownership, which can be sold by the owner or devised to the owner's heirs. The word "fee" itself notes that the property can be inherited. "Simple" refers to the fact there are no restrictions. The fee simple estate is a freehold estate.
- freehold estate** Freehold estates, in the common law system, include the fee simple, the fee tail, and the life estate. The existence of freehold estates continues until death, as opposed to nonfreehold estates, which terminate on or before an ascertainable date. Owners of a freehold estate are said to have "seisin," an obligation to compensate the government (originally the king) for the privilege of landownership. Today the equivalent of seisin is land taxation.

life estate	a right to possess land for a certain lifetime, that of the possessor or of some other person.
nonfreehold estates	Nonfreehold estates include tenancy for years and periodic tenancy (e.g., a month-to-month lease). They terminate on or before an ascertainable date. Holders of a nonfreehold estate lack seisin, that is, they are not seised of the land, though they do have possession.
real property	(as distinguished from personal property and intellectual property) consists of land and buildings, along with the rights connected to the land.
reversion	In common law jurisdictions, reversion rights exist whenever an owner transfers or gives away anything less than the owner's entire estate. For example, if an owner in fee simple gives a life estate to someone else, upon the death of that person, the land is said to "revert" to its original owner. In the Latin American context, reversion is often applied to agrarian reform land. If the land is not used, or if the beneficiary dies, the land reverts to the government.
title	One who holds vested rights in property is said to have title. An owner can have "title" to the land, even if the property is not registered. A registered title is called a "marketable title."
absolute title	an exclusive title, or at least a title which excludes all others not compatible with it.
clear title, good title, merchantable title, marketable title	are all synonyms. Clear means that it is free of encumbrances. Good means that it is free of litigation or doubts.
onerous title	in civil law, title to property acquired by the giving of a valuable consideration, usually money.
usucaption	civil law concept similar to adverse possession.
usufruct	civil law concept for the right to use and enjoy the property of another. The user may not alter the substance of the property, but may use it for profit, utility, and advantage.

I. INTRODUCTION

Property law is a fundamental policy instrument for achieving economic and social advancement in Latin America. All kinds of questions come into play: the environment, democratization, free markets, debureaucratization and professionalization of governmental institutions, investment, export promotion, and urban and rural development. So what is the status of property law today in the region?

In Latin America, the national civil codes are the traditional documents governing property ownership. The codes are modeled after the French and Italian civil codes. As such, they recognize standard property rights, including the right to buy, sell, trade, mortgage, and inherit property. However, Latin American agrarian reforms changed much of the conventional property law in rural areas. Thus, the agrarian reforms are also focal points for any discussion of tenure rights and related policy issues.

In most Latin American agrarian reforms, governments created restrictions on rural landownership. Often this took the form of limiting the size of the property and the ability to mortgage, inherit, sell, and rent as well as mandating some sort of land use (i.e., agriculture). These measures were taken to prevent a reconsolidation of landholdings and a return of latifundios.

This preoccupation with latifundios is typical of Latin American agrarian reform legislation. However, today there is a great movement in the world toward individualization of ownership. In the developing world, this has translated into a movement away from paternalistic controls which have regulated property use and restricted property rights.¹ Consequently, government policy often tries to establish private landholding possibilities that eliminate restrictions and allow free transferability.² Land reform, at least in the popular media and politics, is being overtaken by efforts to "privatize" and make agricultural land use more efficient.³

Latin America is very much caught up in this movement. Mexico, Honduras, Nicaragua, and Peru have each radically changed their old agrarian reform legislation since 1990. Each has moved to eliminate at least some of the restrictions placed on agrarian reform properties. Further, with the (possible) exception of Cuba, most other Latin American and Caribbean countries are reevaluating their land law and past agrarian reforms and looking to these four experiences for guidance.⁴

This study will compare and critique these four cases and provide recommendations for those four countries and for other countries on the important crosscutting theme of property ownership. Already, proposals are on the table in Ecuador⁵ and Bolivia.⁶ The recommendations for changes in property law in this paper will attempt to assist drafters of

legislation in the promotion of broadly based, sustainable, environmentally friendly economic growth.

By way of information, it should be noted that changes parallel to those in land are being proposed or enacted in water law in many parts of Latin America. Controls over water have often tended to be as or even more limiting than controls over land. Relaxation of restrictions in both land and water law could have major impacts on agriculture and the rural economies of many countries.

A. ORIGINAL LATIN AMERICAN AGRARIAN REFORM POLICIES AND LEGISLATION

In general, ancient Rome imposed no limits on property ownership.⁷ This model was picked up in the Napoleonic Code, which grants property owners absolute rights of ownership in conformity with law,⁸ and was carried forward to Latin America. Interestingly, however, Latin American legal doctrine often establishes relative, rather than absolute rights to property.⁹ The jurisprudence often views property ownership as involving a social function.¹⁰

With the Napoleonic Code, Latin Americans also carried forward Italian and German notions of relative rights in property involving a social function, born in the legislation following World War I.¹¹ For example, the Venezuelan definition of "property" set forth in its Civil Code states, "[it is a] right to use, enjoy and dispose of an item in an exclusive manner in accordance with the restrictions and obligations imposed by law,"¹² dropping the word "absolute" contained in the definition of property in the French Civil Code.¹³

1. DEFINITIONS AND TERMS

In general, Latin American property is legally divided into real property and personal property.¹⁴ Property belonging to the country, states, or municipalities can be characterized as public or private property.¹⁵ "Public property," as defined by civil codes, usually includes roads, lakes, rivers, property held for national defense purposes, coasts, ports, and so on.¹⁶ "Public property" usually cannot be sold or given away, and cannot be subject to a mortgage or lien.¹⁷

In contrast, private property belonging to the country, states, or municipalities is defined most easily as whatever is not covered as public property. These properties usually can be mortgaged, given away, or sold, provided the formalities are followed.¹⁸

Public land is either ejido¹⁹ or *balda*. In general terms, ejidal land is land that belonged to the municipalities at the time of colonization,²⁰ though it also consists of other municipal lands acquired since then.²¹ This land generally cannot be sold or mortgaged.²² *Balda* land consists basically of land belonging to the government which is not ejidal land and which has no other legal owner.²³ This land can be sold or assigned by the govern-

ment.²⁴ If, for example, the government assigns the land to a municipality, it becomes ejido land.²⁵

2. SOCIAL FUNCTION, POSSESSION, AND LAND

Latin America has been influenced by many countries in terms of social policy and ownership issues. The ancient Greeks and Romans, revolutions in Russia and China, and other more recent social conflicts point to the interrelationship of land and social policy.²⁶

The agrarian reform laws were designed to address landownership questions and social policy.²⁷ More specifically, these laws were conceived as a means to transform the agrarian structure from large estates (*latifundios*) to small, producer-owned plots.²⁸ The struggle against *latifundios* is of such national importance that it was often included in the constitution.²⁹ Further, social policy dictated that whoever worked the land should also own it as a means of promoting equality of landownership and elimination of peasant worker exploitation.³⁰ In fact, it can be safely said that agrarian law in general was structured to protect farmers, rural workers, and *campesinos*.³¹

"Social function," as used in Latin American agrarian law, is a shorthand, catchall term meaning that land should be used to promote social and economic development,³² not viewed or used simply as a market commodity.

This approach to land policy is typical in Latin America. Social policy and social concerns were behind the "land to the tiller" land reform programs in the 1960s. Implicit in this is a suspicion by Latin Americans that market forces will act against the interest of the lower classes if left unchecked. Thus, they have written social function concerns into the law.³³

3. THE *DOTACIÓN* AND LIMITATIONS ON RURAL PROPERTY RIGHTS

Latin American agrarian reform programs usually provide land grants (*dotaciones*) subject to certain conditions. They do not give out fee-simple titles. What the agrarian reform programs usually provide is akin to a use right or usufruct, or a determinable life estate with a restraint on alienation.³⁴ The beneficiary has the right to use the property while s/he works the land. If the land is abandoned (or not used to promote "social policy"), it can revert to state control and ownership.³⁵ The beneficiary usually cannot place a mortgage on the land, since the s/he is not the fee owner.³⁶ Sometimes the land can also be passed to heirs in wills or through intestacy, assuming that subsequent holders continue to use the land in conformity with the government's social objectives.³⁷ For example, prior law in Peru required governmental authorization before the mortgage, transfer, or sale of agrarian reform property.³⁸

The *dotaciones* are distinct from other forms of landholdings contemplated in the civil codes.³⁹ First, *dotaciones* should not be confused with usufructs. A usufruct is a civil code equivalent to a right to use and enjoy the property of another, referred to in Spanish as a

usufructo.⁴⁰ While a usufruct can be bought, sold, inherited, or transferred, a *dotación* cannot. Further, the *dotación* has only one owner and no one else can use the land; with a usufruct, one person owns the land while another has the right to use it. Second, the *dotación* should be distinguished from the emphyteusis, which is basically a long-term lease with a requirement to improve the land, allowing the right to use and enjoy the land as if it were owned outright.⁴¹ Third, the *dotación* is different from an antichresis, or a loan in which the creditor is given access and permission to use the good held as collateral, usually a house.⁴² Finally, the *dotación* should also be distinguished from a rental agreement and from sharecropping.⁴³

Most civil code property regimes allow for limitations on rural property rights. These limitations include the usufruct, the right of habitation, and the right of housing.⁴⁴ Servitudes are likewise contemplated in most jurisdictions.⁴⁵

The agrarian reform laws often imposed additional restrictions on landownership rights in accordance with the notion of land and social policy. The *dotaciones* under the agrarian reforms often cannot be sold, rented, or inherited without the express approval of the national agrarian institute or at least subject to regulation and control.⁴⁶ This limitation on ownership was imposed quite deliberately. The *dotaciones* were seen as a way to transform the agrarian structure, and legislatures often imposed these restrictions to prevent a return to a latifundio system.⁴⁷

The agrarian reform laws often provide for a size limitation, though limits also may be set through administrative rule-making.⁴⁸ Thus, the laws try to prevent large land estates from being held by a single owner.⁴⁹ Laws may try to prevent parcelization of property (*minifundios*), too.⁵⁰

Most agrarian reform packages recognized that land alone would not bring the *campesinos* into the economy.⁵¹ Thus, policymakers contemplated rural credit and technical assistance as well.⁵² To provide for these needs, the governments created agriculture credit institutes, funds, and banks.

Frequently, technical assistance was also included in each *dotación*. As a result, the government, through its agriculture ministry, created an extensive system of agricultural extension.⁵³ Further, each agricultural center often provided additional extension and outreach services.⁵⁴

4. LIMITATIONS ON OWNERSHIP OF THE SUBSOIL

Mineral rights and mining are often governed by special law.⁵⁵ In general, Latin American law differentiates between the soil and the subsoil, with soil belonging to the owner, and subsoil, to the government.⁵⁶ The soil consists of the depth necessary to work the land or to construct buildings. Subsoil and the extraction of mineral substances are

regulated by this special legislation.⁵⁷ In some cases, even trees cannot be cut without official permission.⁵⁸

Obviously, this means that "owners" of the land do not possess what is beneath the surface of the land. Property owners will thus have little incentive to invest in the exploitation or preservation of these resources. And, in many indigenous reserves where the quality of the land itself may be marginal, lack of subsoil rights also means that the indigenous community is denied access to a potentially important source of self-sustaining revenue.

5. COLLECTIVE OWNERSHIP UNDER AGRARIAN REFORMS

When land is given to collective or cooperative organizations, the governments have often organized "agrarian centers"⁵⁹ to provide the superstructure for coordinating the efforts of individual members. Curiously, however, these agrarian institutions lack the legal personality common to corporations or other lawfully constituted and recognized organizations.⁶⁰ The agrarian centers should not be confused with agricultural cooperatives, which do possess legal personality and are composed of individual members.

The agrarian centers have an organizational structure which allows for member participation. There is an assembly and an administrative committee which provide direction for the association.⁶¹ The centers also provide courses and seminars on agricultural production for their members.

The agrarian centers or cooperatives furnish a number of additional services to *campesinos*; they operate under a democratic organizational structure, with certain formalities; and they usually have a goal of furthering education among members.⁶² Other forms of collective enterprise among producers include agrarian businesses, credit unions, and the *campesino* social companies, which receive property collectively from the agrarian reform institute on behalf of their members.

6. WOMEN UNDER AGRARIAN REFORM LEGISLATION

Agrarian reform laws often make special provision for women within their framework. While the laws usually fail to recognize that women can be the "head of household" by granting land to the father figure, they do allow for women to show that the father has abandoned the family. In this case, the woman can receive benefits as the main breadwinner, as if she were the head of household.⁶³

In civil code jurisdictions, women usually have equal inheritance rights to men. However, local groups that decide disputes often give all the real property to the sons, irrespective of the law.⁶⁴ Also, upon marriage in many societies under customary tenure systems, sons often receive the real estate assets while daughters get personal property, which they can take with them to their husband's land.

More thought needs to be given to women and their special needs. A specific gender analysis of tenure policy might be an appropriate way for the government to identify what factors inhibit women's participation in the economy, especially in rural areas.

B. THE MODERN POLICY AGENDA

The US Agency for International Development (AID) congressional presentation for 1992 stated that the objectives of foreign aid include (1) the promotion and consolidation of democratic values, and (2) the promotion of market principles.⁶⁵ Efforts to liberalize land laws directly affect the administration of justice and the legal system, and hence impact immediately on democratic values. Similarly, the elimination of barriers to trade in land (like restrictions on sale, mortgage, inheritance, etc.) promotes market principles advanced by AID.

AID will support economic and political reforms that generate employment, promote broadly based, sustainable, and environmentally sound economic growth, and encourage political freedom and good governance.⁶⁶ The reforms in Mexico, Peru, and Honduras were at least nominally engineered to achieve these goals. In order to evaluate their efforts, it is now important to look at what has been accomplished.

Further, AID will invest in human resources development,⁶⁷ which is not financially sustainable without providing support for projects that promote child survival, health, and education. Property taxation is an important element in a strategy for financing such projects, and reforming land policy, especially land registry systems, is a prerequisite to having an effective system for property taxation.

Finally, AID will "strengthen the institutions . . . necessary to expand the production of goods and services."⁶⁸ With regard to land, legal institutions and infrastructure need to be developed to promote market-based principles. A review of land policy is therefore in order.

Within AID's Latin America and Caribbean Bureau, the Agency concentrates on promoting favorable policy conditions for the private sector, investment, employment, economic diversification, accelerated opportunities for the historically disadvantaged, and sound use of the environment.⁶⁹ Liberalization of land law, as has occurred at least in Mexico and Honduras, is designed to end paternalistic, restrictive economic practices, which in theory will lead to increased opportunities in the market in terms of income, investment, and employment. The reforms in all four countries have their greatest impact on the disadvantaged, who were the primary beneficiaries under the various agrarian reform programs. Finally, the potential impact of this legislation on the environment should be examined.

The strategic guidelines for programming assistance in agriculture and natural resource management for AID's Latin America and the Caribbean Bureau emphasize broadly based,

sustainable, environmentally friendly economic growth. Not only do the reforms address these concerns on a nationwide basis, they also target their impact most directly on rural citizens engaged in agriculture who were beneficiaries under agrarian reform programs.

In recent meetings of the Inter-American Development Bank's board of governors, the issues of poverty reduction, environment, and investment were all given renewed emphasis.⁷⁰ Certainly land law and land policy address each of these concerns directly, as discussed above.

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II. NICARAGUA: LAWS 85, 86, AND 88 (MARCH 1990) AND DECREE 35-91 (AUGUST 1991)

A. BACKGROUND

After the last Nicaraguan presidential election, the outgoing Sandinista government passed legislation that "legalized" informal confiscations and expropriations that took place before February 25, 1990, under prior land reforms. After the UNO (*Unión Nacional Opositora*) -led coalition took power, it acted to allow property to be converted from agrarian reform to fee-simple property.

1. LAWS 85 AND 86

Law No. 85 applies mainly to housing and sometimes requires the beneficiary to pay for the unit received over a twenty-year period at 3 percent interest. The government retains a mortgage on the property as guarantee of payment. Law No. 86 applies primarily to vacant lots where possessors wish to build housing. In short, the decrees allow present occupants to maintain possession of property received under prior land reallocation schemes. While often criticized in the press, these laws remain in Nicaragua, with minor amendments.

There have been a number of allegations of corruption surrounding the legalization of landholdings under Laws 85 and 86, the press even referring to the decrees as the *piñata*, drawing an analogy to the children's game in which an object is destroyed to obtain candy. Because of this, the decrees have not been received as warmly as they might have been otherwise.

2. LAW 88

This law protects the property of agrarian reform beneficiaries, and authorizes civil registrars to convert "provisional" titles (issued under the agrarian reform) to "definitive" titles.⁷¹ The law also eliminates restrictions on alienability, removing the requirement of government authorization before transfer or sale of agrarian reform land. With this law, agricultural land can be freely transferred by ordinary registrars without governmental interference.

3. DECREE NO. 35-91

On August 19, 1991, President Violeta Barrios de Chamorro signed a new decree affecting property rights.⁷² The decree noted the *concertación* (social pact) taking place in the country.⁷³ It then went on to create a new public office, called the "Territorial Regulation Office" (*Oficina de Ordenamiento Territorial*, OOT) under the auspices of the

Ministry of Finance, to normalize property following existing law.⁷⁴ That office was then placed in charge of reviewing land acquisitions made under Laws 85 and 86 as well as the agrarian reform.⁷⁵ In short, Decree No. 35-91 and the OOT functioned as an action to quiet title, on a case-by-case basis, for the entire country.

Interestingly, the OOT was given power to emit a new document, the "territorial regulation receipt."⁷⁶ This document is then broken down into two classes, revisions and dispositions.⁷⁷

B. COVERAGE OF LAWS 85, 86, AND 88, AND DECREE 35-91.

Agrarian reform law under the Sandinista government allowed "inheritance" of agrarian reform property as well as its use as "commercial collateral." The law, however, did not allow for unrestricted sale or transfer of the land⁷⁸ and described the ownership interest as a "use right." The law asserted that property belonged to whomever worked the land.⁷⁹ Rental was controlled under Sandinista legislation.⁸⁰ The present law allows for unrestricted transfer of property, and rental agreements are common.

SUMMARY AND SIMPLIFICATION OF CHANGES FOR NICARAGUA

Inheritance	Allowed, as before.
Mortgage	Allowed, as before.
Land usage requirements	None, as before. But the threat of expropriation remains for unused land.
Sale or transfer	Restrictions removed. No government approvals now needed.
Land size	Latifundios still subject to the threat of expropriation, as before.
Rental	Controlled. Old law unchanged.
"Social function"	Remains in the law. New interpretation? Meaning unclear.

C. IMPLEMENTATION AND IMPACT

1. THE HISTORICALLY DISADVANTAGED

The main thrust of Sandinista legislation beginning in July 1979 was to support organized labor and *campesinos*, especially in the area of agrarian reform. Independent of

any judgment on the Sandinista agrarian reform and how it was carried out, an astonishing fact is that it achieved the most equal land distribution system in Latin America, though it did impact negatively on indigenous communities.

Indigenous areas have been further imperiled with the movement away from Sandinista reforms. These communities, located in the Central, Pacific, and Atlantic regions of the country, are threatened by government attempts to use traditional native land to compensate former owners of agrarian reform land. The case of *Agro-Industria del Valle de Sebaco* is perhaps one of the more famous situations in which the government proposed to use community property for compensation. In that case, the state-held company to be given away as compensation is located on indigenous land. In short, the question is how much to respect historical claims to land by indigenous groups. To date, traditional lands have been inalienable and nontransferable.

The Agrarian Reform Law and the Cooperatives Law (*Ley de Cooperativas*) from the Sandinista era recognized the legal equality of women and men.⁸¹ New legislation has not changed this.

Despite the changes in agrarian law in Nicaragua, several major constraints to economic participation remain: (1) Where should the government place former "contras" so they will not again take up arms? (2) Where should the government locate thousands of still landless *campesinos*? (3) Assuming that there is agreement on who should own the land, and assuming compensation to the present (or past) owners, how can an indebted nation pay for it? (4) Should the present occupants be evicted and, if so, how? The current law has not conclusively addressed these issues.

2. TRADE AND INVESTMENT

Original agrarian reform legislation prohibited the sale of land received under the agrarian reform.⁸² The law itself designated the title as a "use right." Still, as defined in the Civil Code, the titles did not conform to the requisites of a use right in the strict sense. Thus, implicitly, the legislation changed the existing definition of use right. It also made the formal transfer of land illegal, thus forcing sales into the informal sector and discouraging formal market participation.

Perhaps more grave is the allegation of abuse of power, especially with regard to land. Conservatives claim that the Sandinistas took many properties under agrarian reform legislation without following even the formalities of that decree, let alone the expropriation law. They also argue that instead of the agrarian reform legislation, the expropriation law should be applied—that since it was neither repealed nor amended, it would appear to govern these cases. Consequently, say conservatives, the Sandinistas are guilty of "arbitrary confiscation of property."

Regardless of the politics, landholders will continue to be uncertain about their security on the land until these political, democratic, and economic matters are resolved, and

the legal system will suffer from accusations of illegitimacy. Normally, having a title would provide the landholder with a reasonable degree of legal certainty of ownership. However, the situation in Nicaragua is such that legal title does not necessarily convey property ownership security. Thus, the expected benefits of the removal of ownership restrictions—increased access to credit,⁸³ liberated land markets, increased investment, and so on—will be difficult to obtain, even if the property is duly titled and recorded.

3. THE ENVIRONMENT

With the effective dismantling of the agrarian reform and the formal land market in disarray, the poor are forced to invade fragile forests. They are expanding the agricultural frontier at an alarming rate, causing environmentally disastrous deforestation. Newly deforested land is exposed to soil erosion, which in turn is affecting water supplies as rivers become silted. Again, the urgency of creating an effective land market is clear.

III. PERU: LEGISLATIVE DECREE NO. 653 "LEY DE PROMOCIÓN DE LAS INVERSIONES EN EL SECTOR AGRARIO" (AUGUST 1, 1991)

A. BACKGROUND

The study of Peruvian agrarian reform is generally divided into three periods: the military government of General Velasco (1968-1975), the military government of General Morales Bermúdez (1975-1980), and the period since 1980. Morales Bermúdez greatly slowed down the redistributive process.

Peru has been contemplating "reforming" the agrarian reform law for a number of years. In 1980, Congress passed the "Ley de Promoción y Desarrollo Agrario" to bring the old agrarian reform law more into conformity with actual social and economic practice.⁸⁴ An agrarian code was proposed in 1985 to further harmonize written law with perceived rural reality.⁸⁵ Additional modifications were introduced in 1988.⁸⁶ In 1991, the *Cámara de Diputados* published a bill to reform the reform. The new 1991 Fujimori law reverses much of the early agrarian reform law that has been constitutionally fundamental to the nation.⁸⁷

In essence, the new legislation liberalizes farm credit and agricultural property ownership, effectively dismantling the two-decades-old agrarian reform.⁸⁸ With food production levels dropping and farm credit almost nonexistent, the law allows farm property to be owned by anyone (including a corporation), provides for equal access to credit, and allows farmers to use their land as collateral.⁸⁹

B. COVERAGE

The 1991 law allows the buying, selling, mortgaging, inheriting, and renting of land, including land received from the agrarian reform.⁹⁰ No authorizations for the transfer of land are required from the government.⁹¹ Land has become, in a legal sense, a commercial asset.⁹²

Size restrictions are still included.⁹³ Maximum sizes are 250 hectares of land under *riego* (irrigation) on the coast; and 60 hectares of irrigated, cultivated land in the mountains (sierra) (120 hectares if dryland; 5,000 hectares if natural pastureland). Breaking property into smaller pieces is also allowed, but subject to minimum size regulation.⁹⁴ This means that at least 3 hectares (6 hectares in the sierra; 10 hectares in the jungle or *selva*) remain in each resulting plot at the moment of subdivision.

In cases of land invasion, the new law creates an opportunity for a judicial inspection of the land, usually within 48 hours.⁹⁵ The judge can order the disoccupation of the land within 24 hours, and, if this order is not obeyed, can call for the removal of the invaders by use of public force.⁹⁶

Abandoned land (land left unutilized) still reverts to the state if left unattended for two years or more.⁹⁷ This is true even if the fallow period for the land is greater than two years.

The notion of "land to the tiller" has now been dropped.⁹⁸ This constitutional concept supported the idea of a social function of land. Still, given the entrenched doctrine in Latin American law of the social policies and functions of land, it is likely that some social policy remains. However, its new meaning is unclear.

SUMMARY AND SIMPLIFICATION OF CHANGES FOR PERU

Inheritance	Restrictions eliminated.
Mortgage	Now allowed. Special conditions if lot is less than 5 hectares.
Land use requirements	No particular requirements. Land not used remains subject to the threat of expropriation.
Sale or transfer	Restrictions eliminated.
Land size	Restrictions remain.
Rental	Restrictions eliminated.
"Social function"	Land treated as an economic good, not a social good. "Social function" of land eliminated or simply a new interpretation? New meaning unclear.

C. IMPLEMENTATION AND IMPACT

1. THE HISTORICALLY DISADVANTAGED

The new legislation omits a clear explanation of how state and abandoned lands can be distributed to beneficiaries.⁹⁹ However, it does expound additional steps that must now be taken, including a performance bond, in order to solicit land. Presumably a performance bond is required to show that the land will actually be used. This requirement seems entirely inappropriate for landless or land-poor populations.¹⁰⁰

The law does not refer to the sierra, community, or *campesino* groups when establishing size limits. In fact, it introduces several elements which cut against the disadvantaged. Unutilized land is given to the state rather than to indigenous groups.¹⁰¹ Native and *campesino* groups are specifically excluded from access to credit through mortgages.¹⁰² This is the case because the law did not change the Constitution, and Art. 163 of the Constitution specifically states that native and *campesino* community lands are inalienable and unmortgageable.¹⁰³ Unfortunately, this exclusion applies to about a third of all rural plots, or approximately 600,000 communal smallholders, whose rights remain only informally recognized.¹⁰⁴

The decree provides for land sales only in the formal sector, as was the case under prior law. A sale is recognized only if inscribed by the registry. But the decree allows unrestricted sale, transfer, mortgage, and titling for property larger than 3 hectares. Although many landholders are well under this limit, 30 percent of all rural properties and the majority of the property holders are duly included.¹⁰⁵ However, the informal sector has to date functioned outside legal restraints, and can be expected to continue in the same fashion. Thus, the ultimate impact of the legislation may be modest and we can expect a continuation of legal "informality."

Interestingly, the Peruvian government has already modified the prohibition against titling any land under 3 hectares. Supreme Decree 018-91-AG (published May 5, 1991) and Art. 16 of Legislative Decree 653 contemplate the titling of land less than 3 hectares in existence on the date of promulgation of the new law, that is, May 3, 1991. It approaches the matter as a *fait accompli* and thus recognizes the existence of such plots. Yet, the law will not permit registration of lots less than 3 hectares which came into being after the cutoff date. Presumably, the government assumes that giving property owners one chance to register small parcels will deter these same owners from parcelizing further.

The original law stated that the minimum-sized plot to obtain a registered mortgage under the decree was 5 hectares. Subsequent administrative rules for Legislative Decree 653 now allow such credit to be given to landholders of less than 5 hectares in some cases.¹⁰⁶ If the Agrarian Bank of Peru denies credit, and credit is given by third parties, then the smallholder can mortgage the land.¹⁰⁷ In practice, it appears this has led to nearly free mortgage of land for registered smallholders who are not members of native or indigenous communities.¹⁰⁸

Unfortunately, the Peruvian government has withdrawn funding for both the *Banco Agrario* and the *Cajas Rurales de Ahorro y Crédito*. Consequently, rural farmers have no access to government credit. Commercial banks are not lending, either. The only sources of credit are commercial intermediaries and brokers, for whom secured mortgage lending is impractical. As a result, the law has had little impact on availability of credit.

New procedures for simplifying the parcelization of agrarian associations and cooperatives were subsequently announced. This allows these organizations to register land to each of their individual members. Unfortunately, old restrictions and red tape reappeared

in the government application of the law, generating prohibitive transfer costs in many cases.¹⁰⁹

It is unclear what specific impact the legislation is likely to have on women. In Peru, the International Fund for Agricultural Development (IFAD) has found that women are engaged in agricultural work in 86 percent of rural households.¹¹⁰ Thus, the implications for this group should be monitored and studied over time.

2. TRADE AND INVESTMENT

Despite the new law, it remains to be seen whether the government can actually protect landholdings from terrorists and drug traffickers.¹¹¹

In theory, legal access to mortgages will increase the availability of credit, resulting in greater investment. If investment increases, productivity should increase.

Art. 159 (1 and 2) of the Constitution prohibits latifundios and proposes to eliminate *minifundios* gradually.¹¹² The new law defines these maximum and minimum size limits. However, the new maximum size restriction may turn out to be ineffectual. Size limitations are based on a per-person acreage. It may well be possible for individuals to get together and form companies, which have no "per person" limit. After all, the law states that companies, too, may own land, reversing Art. 157 of the old agrarian reform law which contemplated only individual ownership.

Restrictions on foreign ownership included those contained in Decision 24 of the Cartagena Agreement (more commonly known as the "Andean Common Market"). This decision acquired statutory force in Peru as of July 1971 under Decree Law No. 18900. Prior to this new Presidential Decree, aliens could not directly or indirectly acquire or hold lands, waters, mines, or combustibles within a 50-kilometer zone along the frontiers. Similarly, aliens could not acquire rural property in the border provinces or hold lands in the immediate vicinity of military posts. Otherwise, aliens in general had the same civil rights and duties as citizens, with respect to both persons and property.

Foreign investment was allowed to take the form of assets, though prior authorization is normally required. All direct foreign investment must be registered at the National Commission of Foreign Investments and Technology (CONTE). This registration has been necessary for the validity of the foreign investor's rights.

The new decree, while stating explicitly that foreign ownership will be allowed, does not appear to change the existing law on the subject.

The new law permits rental of land on terms to be agreed upon by the parties. Prior law had prohibited rental. This liberalization is important for several reasons. First, it provides access to land that might otherwise not be available for cultivation. Second, it eliminates a barrier to the land market economy, since land rental is an important element of

this market. Third, it allows for the exploitation of the land so that it is not taken away under provisions for "abandoned" land.¹¹³

Still, liberalization of rental controls was not complete. The decree states that rental is allowed only in cases specified by law. Plots under 3 hectares cannot be rented. The original law required action of the judicial police, rather than normal forces, to evict a tenant, though the procedures were subsequently relaxed. And, due to drafting ambiguities in the law, it was uncertain whether the rental term could be less than six years. This problem, at least, has been corrected, and it is now clear that the term of rental can be as long as the parties wish.¹¹⁴

3. THE ENVIRONMENT

The law could potentially have unfortunate and unintended environmental effects. The law repeals Art. 71 of the Environment and Natural Resources Code,¹¹⁵ which prohibited development activities from taking advantage of nonrenewable energy and natural resources. The new law also opens these lands to construction of oil pipelines, gas pipelines, and mining and petroleum installations.¹¹⁶

Perhaps an even greater threat to the environment is found in Art. 20 of Law 653, which allows the executive to reclassify land use. Under prior law, the legislature had to act to convert parks and reserves to commercial use. Now this can be done with a simple executive order, without public debate or input.

IV. MEXICO: ARTICLE 27 OF THE CONSTITUTION (JAN. 3, 1992), "LEY AGRARIA" AND "LEY ORGÁNICA DE LOS TRIBUNALES" (APRIL 1992)

A. BACKGROUND

In the late 1800s, the hacienda system in Mexico led to displacement of *campesinos* by large estate holders who were able to formally buy up land.¹¹⁷ Communities were pushed from their traditional lands onto marginal and less productive properties. The agrarian reform, following the 1910 Mexican revolution and codified in Art. 27 of the 1917 Constitution, allowed these *campesinos* to recover their former lands. The agrarian reform was extended not only to the formerly dispossessed communities, but also to *peones* who had worked on the large haciendas. Thus, even if peasants could not prove that they personally had been dispossessed, they could still have access to land.

The way peasants were afforded access to land is often referred to as the ejido system.¹¹⁸ All peasants claiming land had to be connected with a "population nucleus." It was this nucleus that was recognized by the state and given a grant of land for its members. This land could not be transferred, sold, mortgaged, or rented. Ejidos could be worked individually (in small, private farms) or by groups, in accordance with the government's determination.¹¹⁹ Inheritance was allowed if the property passed to the ejidatario's widow, children, or dependents. Most ejidos (common or village lands) have been distributed through the agrarian reform process since 1930.¹²⁰

As early as 1961, the academic debate was under way on whether Mexico needed a "reform of the reform" of the ejido structure to favor the private sector.¹²¹ The recent constitutional changes now allow ejidos to be bought and sold on the private market and remove restrictions on merchant (commercial or for-profit) ownership of rural property.¹²²

There are approximately 29,000 ejidos and agrarian communities, which include 3.5 million ejidatarios and *comuneros* holding 4.6 million parcels (these are commonly divided into two or more smaller plots) and 4.3 million house or urban plots. In total, the ejidal lands represent 50 percent of all national territory and roughly a quarter of the national population. From 1930 to date, only about 600 of the 29,000 ejidos received any type of legal certificate of possession.¹²³ Thus, the vast majority of ejidatarios have less than complete formal documentation of their ownership interests. Consequently, implementation of the new law will require not only a change in legal status for these persons but also a massive documentation campaign to evidence these new rights.

According to President Carlos Salinas de Gortari, the purpose of the new reforms is effective social justice in terms of employment, production, and training; an equal sharing among beneficiaries; and the right to decide how to use property.¹²⁴

The new measures include: (1) a constitutional amendment to Art. 27; (2) a new agrarian law, which establishes market principles for agricultural land; (3) a law to regulate the newly created agrarian courts; and (4) the creation of a special Attorney General for Agriculture.

There is good reason that the United States should take note of the activity in Mexico. First, if President Salinas is correct, Mexico will become a much more competitive producer of agricultural products in an expanded North American market. Second, success in creating employment in Mexico will have a direct impact on the level of Mexican legal and illegal immigration to the United States and affect the US labor market.¹²⁵ However, if the law is a failure, large segments of the rural population may be displaced; urban centers like Mexico City will be expected to absorb the population surplus, and the United States also might see renewed illegal immigration. Thus, the Mexican law has a direct impact on the United States.

The new agrarian law provides:¹²⁶

- (1) The government no longer will be obligated to provide land to peasants.
- (2) Risk of expropriation to large estate holders is eliminated, allowing these owners to invest more in their land.
- (3) Agrarian tribunals will settle land disputes between ejidatarios or between ejidatarios and private holders of land.
- (4) Ejidatarios can legally sell, rent, sharecrop, or mortgage their land. In most instances, if the transaction involves individuals from outside the ejido, a two-thirds majority of the ejidal general assembly must approve the transaction.
- (5) The requirement personally to work the land is eliminated. Rental or sharecropping is acceptable. This frees up labor to work in the United States (ejidatarios previously risked losing their land for doing so if that meant not personally utilizing the land).
- (6) Maximum property limits will still be enforced to prevent a return to latifundios.
- (7) Joint ventures and associations with ejidatarios are now possible.
- (8) Foreigners can own up to 49 percent of equity capital in production associations with ejidatarios.

B. COVERAGE

As a general rule, foreigners do not have the legal capacity to own land in Mexico unless specifically authorized by the government.¹²⁷ Similarly, churches are forbidden from holding real estate.¹²⁸ Businesses, nonprofit organizations, and banks can own property, but only to the extent that the landownership is justified to meet recognized needs of the business, as determined by law.¹²⁹

The new law clearly recognizes the legal status of indigenous communities and ejidal populations.¹³⁰ Indeed, they are constitutionally protected for the first time by the amendment.¹³¹ The ejidos are governed by a group assembly,¹³² an ejidal board (which includes a president, treasurer, secretary, and so on, each with certain administrative duties),¹³³ and an enforcement advisory group.¹³⁴

Rental agreements for ejidal land are now possible for terms up to thirty years.¹³⁵ The ejidal group, by collective decision, can authorize a usufruct for a specified number of years in favor of a commercial institution to obtain credit,¹³⁶ in effect, mortgaging the land. Individuals can do the same with their own property.¹³⁷ In case of breach of a guaranteed obligation, the creditor can foreclose on the property. After the usufructuary term has come to a end, the property reverts to the ejido or the individual, according to the case.¹³⁸

Within an ejido, no single person can hold more than 5 percent of the total property.¹³⁹ The state is committed to promoting and carrying out activities to protect community life, facilitate free development, and improve conditions.¹⁴⁰ Finally, within limits imposed to guard against fraud or dispossession, self-management is encouraged.¹⁴¹

Latifundios, defined as holdings that exceed the limits of a small property yet belong to a single individual,¹⁴² remain illegal under Art. 27.¹⁴³ Small property includes agricultural land up to 100 hectares, except for farms used for cotton (which can be up to 150 hectares) or land used for bananas, sugarcane, coffee, henequen (a species of hemp), rubber, palm, vine, olives, quinine, vanilla, cacao, agave, prickly pear, or fruit trees (which can be up to 300 hectares).¹⁴⁴ Commercial forestland can reach 800 hectares.¹⁴⁵ Limits on property used for cattle depend on the number of livestock and other variables.¹⁴⁶

Inheritance of rural property rights, even on ejidos, is permitted under the new legislation.¹⁴⁷ Yet, to avoid *minifundios*, the law declares that land should pass to a single beneficiary,¹⁴⁸ the survivorship requirement being three months.¹⁴⁹ If the ejidal member dies without a will and with no surviving heirs, the property passes to the ejido, no longer to the state.¹⁵⁰

Ejidal rights can be extinguished in several ways: (1) the land can be transferred to another; (2) the *avecinado* can renounce his rights, in which case the land passes to the ejido; or (3) the land can be lost due to adverse possession.¹⁵¹

Ejidal land dedicated to housing cannot be mortgaged, transferred, or sold and cannot be lost due to adverse possession.¹⁵² This does not apply to the housing lots of individual members,¹⁵³ which are the fee-simple property of their owners, having been individually assigned by the assembly.¹⁵⁴

Ejidal commons normally cannot be sold, mortgaged, or transferred, nor can they be lost due to adverse possession, unless there is approval from the assembly, a favorable opinion from the Special Attorney General for Agriculture, and other formalities.¹⁵⁵

Ejidal members or the ejidos themselves can now form corporations, partnerships, unions, or associations to promote productivity and ejidal development.¹⁵⁶

Individual certificates of private ownership of property can be issued to the ejidal members.¹⁵⁷ With these certificates, the ejidatarios can use the land, rent it out, or have someone sharecrop it, without authorization from the assembly.¹⁵⁸ Similarly, ejidatarios can sell off their interest, but only to other members of the same ejido and provided that certain formalities are followed, with neither the wife nor the children challenging the sale.¹⁵⁹

The assembly can decide that, once properties have been divided and marked, the members shall receive fee-simple (unrestricted) ownership.¹⁶⁰ After such a decision, members can request a registered title from the local public registry.¹⁶¹ Still, giving a fee-simple interest for a single piece of property does not mean that the entire ejidal community loses its status or organizational structure.¹⁶² Similarly, if a member sells off his ejidal land to a nonmember, this does not mean that s/he loses status with the group, as long as s/he retains at least one other property within the ejido.¹⁶³

For the first time the law creates an Attorney General for Agriculture, who is a member of the executive branch of government.¹⁶⁴ This individual will oversee the resolution of disputes involving agricultural and ejidal lands. While the main office will be in Mexico City, there will be delegations throughout the country to assure general access to agrarian justice.¹⁶⁵ Interestingly, although the law specifies the credentials for the incumbent, it does not require that person either to speak Maya or to be a licensed attorney.¹⁶⁶ Yet, the assistant attorneys general must be lawyers with at least two years of experience.¹⁶⁷ Both the Attorney General for Agriculture and the assistant attorneys general are presidential appointees.¹⁶⁸

The Office of the Special Attorney General for Agriculture is really a kind of alternative dispute-resolution mechanism like an ombudsman. It also has elements of a national rural legal-services program since it offers legal assistance to poor rural populations.¹⁶⁹

SUMMARY AND SIMPLIFICATION OF CHANGES FOR MEXICO

Inheritance	Restrictions eliminated. Inheritance now permitted, with safeguards against <i>minifundios</i> .
Mortgage	Prohibitions remain for ejidal commons or housing. Individual property can now be mortgaged.
Land use requirements	As before, unused land reverts to the state.
Sale or transfer	Prohibitions remain for ejidal commons or housing. Individual property can now be sold or transferred.
Land size	Limits remain, although they are relaxed. Lati-fundios remain illegal.
Rental	Restrictions eliminated for individual land. Most but not all restrictions removed for ejidal land.
"Social function"	Concept remains, though implementation has changed.

C. IMPLEMENTATION AND IMPACT

1. THE HISTORICALLY DISADVANTAGED

Land has historically been a contentious subject in Mexico. Protest marches, allegations of abuse, and violent conflicts have surrounded the issue.¹⁷⁰ In this context, President Salinas has challenged the country and its deep sensitivities by proposing the most sweeping agricultural reforms since the Mexican revolution.¹⁷¹ Interestingly, the president received a great deal of support from many important *campesino* groups,¹⁷² though former presidential candidate Cuauhtémoc Cárdenas has been critical of the measures. (Cárdenas fears that commercial land markets will lead to a reconsolidation of landholdings, greater poverty in the countryside, and eventual social explosion.)¹⁷³

Under prior law, the title to the ejido belonged to the state, with community ejidatarios having only usufructuary rights. Under new legislation, title will be given to the ejido.¹⁷⁴

Under the new program, once authorized by the ejido assembly, each ejidatario will receive a *derecho ejidal* or ejidal right. This document can be converted to a full freehold title, but only if the ejido assembly confirms, with a two-thirds majority, that all of the ejido members can select this option.¹⁷⁵ This will most likely occur in urban areas, where property values have increased greatly.

The changes in the law do not force anyone to do anything.¹⁷⁶ Instead, the statute allows the ejidal members to decide for themselves how to manage and administer their land.¹⁷⁷ Similarly, the entire titling process envisioned by the legislation is voluntary.¹⁷⁸ In fact, it could be said the law transfers political power in the countryside from the executive to the individual.¹⁷⁹

It is clear that the *Procuraduría General* will facilitate implementation of the new laws and promote their understanding with the communities. It will be difficult to predict, however, whether the *Procuraduría* will simply inform communities of their options or will exert influence to sway them to decide one way or another.

The law distinguishes between common areas of an ejido and parcelized areas. The reform does not permit common areas to be the subject of commercial transactions.¹⁸⁰ The ejido group decides how to use communal property, and individuals decide how to use their own property.¹⁸¹

The law recognizes that many people living on the ejido are not ejidatarios, but rather descendants of ejidatarios and *avecindados*. While these individuals often rent and work on the ejido, they do not always have access rights to commons or housing and do not usually participate in decision-making, making their situation precarious. The new law recognizes and legalizes this activity.

Women are clearly recognized as ejidal participants and owners.¹⁸² The law allows the ejidal assemblies to give women special rights to an "industrial farm unit" within the housing area of the ejido for their protection and development.¹⁸³

The law allows the ejidal assemblies to grant children land within the housing area dedicated for their special use.¹⁸⁴

The very first time an ejidal lot is sold after being converted to a fee-simple interest, family members, persons who have worked on the land for at least a year, other ejidatarios and *avecindados*, and the ejidal group generally can veto the sale, if the objection is raised within thirty days of the notice of sale.¹⁸⁵

The law does not require that sales be conducted only through the public registry. Yet, as in many jurisdictions, Mexican law will not prejudice third parties who have no notice of a transaction documented privately.¹⁸⁶

The law provides for many registry formalities,¹⁸⁷ and assures access to informal agrarian justice and procedure to settle disputes.¹⁸⁸ In this sense, it provides greater, more efficient access to justice and the courts for the historically disadvantaged.

The law is drafted to drastically erode the power base of the traditional ejidal presidents and local caciques, the established power base of the *Partido Revolucionario*

Institucional (PRI).¹⁸⁹ It is anticipated that the PRI will lose influence over the agrarian bureaucracy and *campesino* organizations that previously helped deliver the vote.¹⁹⁰

2. TRADE AND INVESTMENT

The changes in tenure and titling included in the new Constitutional Art. 27, along with the North America Free Trade Agreement (NAFTA), are the most important elements of President Salinas's strategy to modernize Mexico, eliminate paternalism and protectionism, bring the country into the world economy, and promote economic development in rural areas.¹⁹¹ Unlike NAFTA, however, President Salinas can implement these changes without coordination with foreign governments, and has done so.¹⁹² Single-handedly, President Salinas has opened up the countryside to foreign investment or corporate ownership for the first time in 70 years.¹⁹³ His stated purpose is no less than to transform Mexico into a more efficient and more modern country.¹⁹⁴

Businesses that own property are subject to size limitation regulation. First, the total area owned cannot exceed 35 times the area that any individual could have under the law,¹⁹⁵ and there must be at least as many shareholders as the number of times the property exceeds this limit.¹⁹⁶ Further, no shareholder can hold more shares than would correspond to the amount of land that any one individual could possess.¹⁹⁷

President Salinas has averred that the new law will promote tenure security and therefore increased and sustained investment and credit, generating employment and higher standards of living.¹⁹⁸

According to one report, the Mexican Department of Agriculture and Water, as a direct result of the amendment to Art. 27, brought in the Chicago Board of Trade, Merrill Lynch, Spatts, and several other brokerage houses and Mexican financial institutions as consultants to create a new agricultural commodities market modeled after the Chicago Mercantile Exchange.¹⁹⁹ That report contended that the changes made in Art. 27 will enable the ejidos to be converted to private property. This in turn will lead to the formation of partnerships with both domestic and foreign investors. Also, the changes will allow the communities to sell or transfer land rights.

Thus, joint ventures between private investors and ejidatarios have sprung up in Mexico. One example is the \$12 million Vaquerías Project (with Pepsico), which brought irrigation to 8,750 acres of staple grains. This project has benefited over 350 producers, including ejidatarios and small-scale farmers. Other projects under way are valued at \$68 million. More than 1,000 joint venture projects between agricultural producers have been contracted, 400 of which are currently in process. The Ministry of Agriculture reported that 150 joint ventures between private investors and small landowners were planned to begin in 1992, doubling the total for 1991, as a direct result of the new legislation. The Bank of Mexico has established a US\$5.3 billion fund for the agricultural sector in anticipation of stepped-up demand for credit.²⁰⁰

Still, large commercial producers may not be interested in acquiring ejidal land or commercial joint ventures. For this group, contract farming (where commercial entities purchase the produce from small farmers and supply the farmers with seed, technical assistance, fertilizer, and so on) may be the preferable route. On the other hand, local, medium-sized farmers looking to obtain more land may be interested in the availability of ejidal property.²⁰¹

Some of the ejidal lands are now within urban or industrial areas. Consequently, these lands may have a tremendous economic value. For example, 50 percent of the Federal District (metropolitan Mexico City) is ejido land. Also, much of the land near the US border is ejidal.²⁰²

As noted above, a two-thirds majority vote by ejidal community members can transform the ejidatarios into private property holders. Ejidos can also form joint ventures with the private sector and can use their lands as collateral for private-sector loans. Further, private property holders may decide to form joint-stock companies, in effect, partly avoiding constitutional limits on property size and helping them raise money in the capital markets.²⁰³

As part of the modernization process, Mexico hopes to reduce subsidies to agriculture, replacing this assistance to smallholders with investment from the private sector. The new law is designed to allow corporate investment in agriculture by creating a legal structure for joint ventures and by permitting informal rental arrangements to be brought within legal boundaries.²⁰⁴ Luís Téllez, Undersecretary of Agriculture, predicts that the proportion of agricultural workers to total workers in Mexico will fall from 26 percent to 16 percent over the next decade as a direct result of increases in productivity due to the new legislation and investment.²⁰⁵

The old agrarian law had been blamed for Mexico's food insecurity. Steven Nagourney, of Sharson Lehman Brothers, said that the old law was "the basic reason Mexico [was] importing 10 million tons of grain per year to feed itself, while preventing the trickle down so necessary to sustain and complete its current privatization program. . . . Without a growth-oriented agricultural sector, and a form of private land ownership that can be collateralized, Mexico [would have never grown] beyond the 'emerging market' stage into a true 'free market.'²⁰⁶

3. THE ENVIRONMENT

Ejidal land use can usually be converted from rural to urban.²⁰⁷ This is particularly important, for example, near Mexico City, where a large portion of the land is presently ejidal but can be used for urban housing. However, the law prohibits this conversion if the land is located in an environmentally protected zone,²⁰⁸ and the government has established certain zones where it wishes to preserve or conserve environmental resources.

Prior to the changes to Art. 27, the administration could grant forest concession rights on ejidal property without consulting the ejidatarios or the assembly.²⁰⁹ Now the law states that the ejidos will decide for themselves how to best use their lands.

Still, some critics have attacked the new legislation on environmental grounds,²¹⁰ arguing that a policy of commercialization of land will promote the profit-making exploitation of agricultural production. Traditionally, this has been considered to increase agricultural productivity. However, traditional concepts of efficiency ignore destruction of the environment. If sustainable, environmentally friendly agricultural production is the goal, then commercialization may not be the most productive manner of growing crops. Indeed, according to the argument, the ejidal system is more productive since it maintains an acceptable level of output without allowing so much damage to the natural resource base.

The critics allege that systems of extensive agriculture (which now utilize half of Mexican land) have caused most of the country's loss of tropical forests and have degraded large tracts of farmland, especially in the northern arid and semiarid areas.²¹¹ They also maintain that the productivity of commercial farming is inflated because it receives soft loans and subsidies from the government, and that it has overutilized energy and water supplies. Consequently, questions remain surrounding the environmental impact of the new legislation.

Demetrio Sodi de la Tijera attacks the new legislation on the grounds that it will drive the poor to cities: with the state cutting its ties with the *campesinos*, these people will have to become sufficiently viable economically to sell out and/or migrate to the big cities, which are ill prepared to absorb them in terms of environmental considerations. Thereform, the legal reform has direct urban environmental consequences, de la Tijera asserts.²¹²

**V. HONDURAS: DECREE 31-92, "LEY PARA LA MODERNIZACIÓN
Y EL DESARROLLO DEL SECTOR AGRÍCOLA" (MARCH 5, 1992)
(DIARIO OFICIAL "LA GACETA," APRIL 6, 1992)**

A. BACKGROUND

The Honduran history of land reform is similar to that of many countries in the hemisphere,²¹³ that is, the main beneficiaries of the program were large farms worked in common, with profits being divided among the members of the group farm.

The original Honduran agrarian reform program, like most in Latin American, did not allow for the unrestricted transfer of land received. New legislation ("La Ley para la Modernización y el Desarrollo del Sector Agrícola") has been passed to permit the titling and transfer of land held by peasant groups as a result of their participation in the agrarian reform.

The new law sprang from a 1989 report from an interinstitutional, governmental commission looking into modernizing the old agrarian reform.²¹⁴ The government decided to examine the existing legislation, noting problems in equity, efficiency, and sustainability.²¹⁵ Despite the controversial nature of agrarian law, the draft legislation received the support of President Rafael Callejas and most major *campesino* groups (except the *Central Nacional de Trabajadores del Campo* or CNTC).²¹⁶

The legislation is considered quite exciting by many who view restrictions on the sale or transfer of property as violating the new ideals of the "free market." Now, as in the US model, property can be held individually or by any legal entity. However, it is not yet clear how beneficiaries will decide that they would like their property to be held.

B. COVERAGE

1. SIZE LIMITS REMAIN

Minifundio is characterized as less than 1 hectare;²¹⁷ *latifundio* is defined as property up to 100-2,000 hectares, depending on location, availability of irrigation, and slope.²¹⁸ The executive of the country, however, through the Office of the Secretary of Natural Resources, can now grant exceptions to the maximum size limit.²¹⁹

2. RENTAL

Rental of agrarian reform land is now legally permitted, unless the land has not yet been paid for.²²⁰ There are no limitations on rental of nonagrarian reform land. However, in no case is sharecropping permitted, even under the new law. IFAD reports that 56 percent of the land in Honduras is rented, adding that across Latin America, the terms under which the land is rented are often most favorable to the landowners.²²¹

3. BUYING AND SELLING PROPERTY AND APPROPRIATE LAND USE

The land received under the Honduran land reform is not free to the beneficiaries—they must pay for it. The new law establishes a twenty-year term for payment. Until this obligation is settled, there is a first mortgage on the land in favor of the state for the amount of the adjudication.²²²

Beneficiaries can inherit the property, mortgage it, or sell it. However, until they discharge their debt, they can sell their land only to another individual who would qualify for ownership under the agrarian reform legislation.²²³ Once they have paid for the land, the property becomes freely transferable. While this solution compromises free marketability and commercialization of title, it is perhaps an ingenious solution to avoid the return of latifundios. The law also imposes another condition: the owner must work the land.²²⁴

As a disincentive for agrarian cooperatives to sell land, Art. 70 of the Modernization Law imposes a tax. If the cooperative chooses to sell land in excess of 100 hectares to an entity who/which is not an agrarian reform beneficiary, the sale of that land will be taxed at 20 percent of the value of the sale. This is meant to discourage the sale of lands by cooperatives and to prevent a reconsolidation of landholdings. Unfortunately, because the tax is levied on the value of the sale, the law leaves open the possibility of an "official" transaction price for purposes of tax evasion.

When a beneficiary dies, any debt outstanding on the property is forgiven.²²⁵ Thus, the new law combines land access with a species of life insurance to assure that heirs receive the real estate free of economic encumbrances.

The period for adverse possession of national and ejidal land is now three years, provided the land is occupied and used.²²⁶ Prior law required ten years. Thus, the new law is much more beneficial to the possessor of property.²²⁷

SUMMARY AND SIMPLIFICATIONS OF CHANGES FOR HONDURAS

Inheritance	Restrictions eliminated.
Mortgage	Restrictions eliminated.
Land use requirements	Owner must work or use the land. But threat of expropriation is much less.
Sale or transfer	Many restrictions eliminated. But still must sell or transfer land only to individuals who meet the criteria of the agrarian reform until the land is fully paid for.
Land size	Latifundios still subject to the threat of expropriation, as before. Amended limitations on size remain, as before.
Rental	Restrictions eliminated, except that the owner must have fully paid for the land prior to renting it out.
"Social function"	Remains in the law. New interpretation? New meaning unclear.

C. IMPLEMENTATION AND IMPACT

1. THE HISTORICALLY DISADVANTAGED

A stated purpose of the new legislation was to promote land access for the historically disadvantaged.²²⁸ Roughly three-quarters of the *campesino* groups participated in the *concertación* and in drafting the legislation. Interestingly, however, the measure has been opposed by certain other *campesino* groups, which earlier had elected not to participate in the *concertación*²²⁹ and which claim to represent the majority of workers in rural areas.²³⁰ Juan Ramón Martínez, president of the National Agrarian Institute (*Instituto Nacional Agrario*, INA), resigned in opposition to the law.²³¹ Two days before the law's enactment, 40,000 peasants protested the bill.²³² The Roman Catholic Church has stated that the former agrarian reform was far from complete.²³³ After enactment, there were clashes between peasants and public forces;²³⁴ since that time, however, the country has calmed.

For the first time, new Honduran legislation allows for equal access to land for men and women.²³⁵ In squatter settlements in Honduras, a study found that women are the primary income earners in 50 percent of households.²³⁶ Yet, only 30 percent of the women received title to the property they occupied.²³⁷ After these findings were released, a publicity campaign was initiated, encouraging women to value their contributions to household production and reproduction as worthy of recognition with land titles.²³⁸ Still,

only 4 percent of all agrarian reform beneficiaries are women.²³⁹ It is also hoped that the new law will assist in addressing these concerns.

While the new legislation allows for the uninhibited transfer of land, the only remaining incentive to redistribution would be to penalize the practice of holding land idle through a proposed taxation.²⁴⁰ Yet, for a land tax to be effective, the nation must have an adequate cadastre.²⁴¹ Such a comprehensive, national cadastre is not in place in Honduras. Thus, land market activation may be difficult to achieve through this means. Further, government credit to historically disadvantaged groups has been discontinued.²⁴² Loans will be available only through the private sector, offered at market rates to creditworthy borrowers. Consequently, the law has its detractors among peasant group advocates.

Critics worry about consolidation in the land market. The new law makes it easier for cooperatives to sell land. These organizations are under pressure to pay off large commercial debts, and, in 1991, at least ten cooperatives sold land to multinational companies, mainly Standard Fruit and Tela Railroad (both banana companies).

To give a further boost to the land market, the Honduran government has announced the formation of a new land bank. It is hoped that this establishment might counter some of the complaints concerning the modernization law and land access for the resource poor.²⁴³

Specifically with regard to agricultural credit, the new legislation takes away the authority of INA to assist small farmers in obtaining official credit from the National Agricultural Development Bank (*Banco Nacional de Desarrollo Agrícola*, BANADESA).²⁴⁴ In the past, INA had helped *campesinos* with loan applications and other documentation for BANADESA. Now, presumably, the farmers will apply directly to BANADESA.

With regard to indigenous groups, it remains unclear what impact the legislation may have. Indigenous groups in Honduras have historically used their lands communally, making individual ownership inappropriate.²⁴⁵

2. TRADE AND INVESTMENT

The threat of expropriation under the new law is less than under former law. Farms in excess of the landholding ceilings and lands abandoned for more than eighteen months (or two years in certain cases of natural disaster) will still be subject to the threat of expropriation,²⁴⁶ otherwise, it appears less likely. This is especially true since landholders can now rent out land that is not currently being used,²⁴⁷ which brings idle land into production while avoiding the risk of expropriation.

By making land a commodity which can be bought and sold, but by restricting its sale to qualified beneficiaries, Honduras is trying to prevent a return to latifundios and promote an active land market tailored to the historically disadvantaged.

Beyond land issues, the new legislation also eliminates price controls on agricultural products and privatizes the storage facilities of the Honduran Agricultural Marketing Institute (*Instituto Hondureña de Mercado Agrícola, IHMA*). Restrictions on foreign investment for timber production have also been eliminated.²⁴⁸

3. THE ENVIRONMENT

Although the new legislation states that property will be held with fee-simple interests, property holders cannot freely take advantage of timber resources. A special provision says that any commercial cutting of trees, whether on public or private land, requires the approval of the State Forest Administration.²⁴⁹ The way this is structured is curious, however. Owners receive full ownership over forest assets located on their land, provided they voluntarily agree to a forest management plan approved by the government.²⁵⁰

The new legislation eliminates the state's participation in the processing and marketing of wood and wood products,²⁵¹ and dismantles the log export ban.²⁵² It also provides for a phased elimination of export commissions paid to the government and requires that stumpage fees reflect the true cost of reforestation.²⁵³ In general terms, unused, privately held land is subject to expropriation under the agrarian reform and can be sold to beneficiaries.²⁵⁴ However, the law stipulates that forested areas do not signify disuse of land.²⁵⁵ Thus, the new legislation removes an incentive for deforestation simply to preserve property rights.²⁵⁶

VI. COMPARISONS BETWEEN THE FOUR JURISDICTIONS

A. COVERAGE

Below is a summary of what each country has done on each of the major restrictions on property rights.

SUMMARY AND SIMPLIFICATION OF CHANGES ON INHERITANCE

Nicaragua	Allowed, as before.
Peru	Now allowed.
Mexico	Restrictions removed. Inheritance now permitted, with safeguards against <i>minifundios</i> .
Honduras	Now allowed.

SUMMARY AND SIMPLIFICATION OF CHANGES ON MORTGAGES

Nicaragua	Allowed, as before.
Peru	Now allowed. Special conditions if the lot is less than 5 hectares.
Mexico	Prohibitions remain for ejidal commons or housing.
Honduras	Restrictions eliminated.

SUMMARY AND SIMPLIFICATION OF CHANGES ON LAND USE REQUIREMENTS

Nicaragua	None, as before. But the threat of expropriation remains.
Peru	No particular requirements. Land not used remains subject to the threat of expropriation.
Mexico	As before, unused land reverts to the state.
Honduras	Owner still must work or use the land.

SUMMARY AND SIMPLIFICATION OF CHANGES ON THE SALE OR TRANSFER OF PROPERTY

Nicaragua	Restrictions removed, no government approvals now needed.
Peru	Restrictions removed.
Mexico	Prohibitions remain for ejidal commons or housing. Individual property can now be sold or transferred.
Honduras	Many restrictions eliminated. But still must sell or transfer land only to individuals who meet the criteria of the agrarian reform until the land is fully paid for.

SUMMARY AND SIMPLIFICATION OF CHANGES ON LAND SIZE

Nicaragua	Latifundios still subject to the threat of expropriation, as before.
Peru	Restrictions remain.
Mexico	Limits remain, although are relaxed. Latifundios remain illegal.
Honduras	Amended limitations on size remain, as before.

SUMMARY AND SIMPLIFICATION OF CHANGES ON THE RENTAL OF LAND

Nicaragua	Controlled, old law unchanged.
Peru	Restrictions removed.
Mexico	Rental of individual property now permitted. Most but not all restrictions removed for ejidal land.
Honduras	Restrictions eliminated, except the owner must have fully paid for the land prior to renting it out.

SUMMARY AND SIMPLIFICATION OF CHANGES ON THE SOCIAL FUNCTION OF LAND

Nicaragua	Remains in the law. New interpretation? Meaning unclear.
Peru	Land treated as a commodity, an economic good, not a social good.
Mexico	Concept remains, although implementation has changed.
Honduras	Concept remains, although implementation has changed.

It should be noted none of the four jurisdictions gave property owners rights to the subsoil or minerals.

SUMMARY OF CURRENT STATUS OF AGRARIAN PROPERTY LAW

COUNTRY	INHERITANCE	MORTGAGES	LAND USAGE RULES	PROPERTY ALIENATION	SIZE LIMITS	RENTAL	SOCIAL FUNCTION
NICARAGUA	allowed	allowed	none; threat of loss of land if unused	freely transferable	limits remain	rental control	remains; new meaning?
PERU	allowed	allowed if greater than 5 hectares	none; threat of loss of land if unused	freely transferable	limits remain	no restrictions	land as an economic good, not a social good
MEXICO	allowed, provided no <i>mini-fundios</i>	only for individual property; not ejidal land	unused land reverts to the state	individual property transferable/ejidal land not freely transferable	limits remain	most restrictions removed on ejidal land	remains; application has changed
HONDURAS	allowed	allowed	owner must work the land	transferable only to qualified individuals until paid for	limits remain	no restrictions if not mortgaged	remains; application has changed

B. IMPLEMENTATION AND IMPACT

1. THE HISTORICALLY DISADVANTAGED

Privatization or individualization of property rights may be the natural evolution of an economy toward market-based principles. Alternatively, it may be the fruit of an imposed legal change.²⁵⁷ In either case, land policies try to strike a balance between security of private ownership and social needs which may limit that security.²⁵⁸ Social policy, deeply rooted in Latin American legislation, is still an important factor, especially among the historically disadvantaged.

Creation of individual ownership means both the ending of group rights and the elimination of many use rights held by other persons. This places the new owner in a position of power with regard to the other community members. For example, in Kenya, such a process usually made the husband the owner of the land, eliminating protections which wives had enjoyed in their use of family land under indigenous systems.²⁵⁹ As land becomes a commodity, it can be sold out from under the families even though women and children continue to do a large part of the agricultural labor.²⁶⁰ For these groups, privatization of tenure actually creates tenure insecurity.

The development community has a great deal of knowledge and experience in Africa with countries seeking to renovate indigenous land tenure systems using modern legal concepts. In English-speaking West Africa, particularly in Nigeria and Ghana, the courts developed a common law of "family land" out of a variety of tribal lineage-ownership systems. How was custom reinstitutionalized in this case? Judges seeking to recognize such a system generally fell back on analogies to the English concept of joint ownership and ownership in common. The courts permitted transactions in family land, with the consent of all those interested. This required a clear definition of the "family," those persons whose participation was required for an effective transaction. Even if the definition had been so lucid as to be free of any ambiguity in application—and it was not—as a practical matter it was difficult to pull together all the necessary signatures. Again, resort was made to a Western legal concept, the trust. Several persons would be registered as trustees for the lineage, clan, or other group. This model was introduced in Western Nigeria in 1959 and adopted in Kenya in 1968.²⁶¹

In a project working with lowland, forest-dwelling indigenous people in Brazil, the World Bank found that "land regularization in and of itself will not be sufficient to protect indigenous peoples' land security. Thus, even in those projects where large amounts of land were set aside, indigenous people remained vulnerable to the destruction of their resource base and their cultural integrity."²⁶²

Formal land markets with commercial titles may present difficulties for indigenous populations. For example, the most common method of acquisition of property—purchase—is problematic for lowland South American Indians because the native peoples are

subsistence producers and not yet fully integrated into the market economy.²⁶³ Similarly, indigenous populations may have different notions of occupancy and ownership than the formal law. Many lowland South American indigenous groups perceive themselves as "occupying" large areas of land, but do not claim to be "owners" of the land in the sense that they do not claim exclusive use.²⁶⁴ In contrast, colonists may view occupation as an entitlement to exclusive use in conformity with formal law.²⁶⁵

The majority of indigenous and tribal groups in Latin America were dispossessed of their land long before the agrarian reforms. Many are now landless rural workers, tenants, or small farmers on lands often too small in size to meet their minimum subsistence needs. Agrarian reform laws and programs, often begun in the 1960s and 1970s, aimed to assist the communal arrangements of indigenous peasant agriculture, but these efforts have received little support over the past two decades and redistribution of land has generally ended. For these individuals, any steps to promote equality of land rights with the rest of the national population may actually be an advancement.²⁶⁶ For the indigenous communities still occupying traditional lands, legislation could recognize and protect these rights if greater security for these peoples is a policy objective.²⁶⁷

Making property freely transferable means that consolidation of landholdings would be possible. Still, if there is not an automatic economic benefit via efficiency for consolidation of landholdings, this may not be likely to occur. After all, the granting of freehold interests allows the market to determine ownership. Property will flow to its most productive use, assuming the market functions properly. In general, the large estates are not necessarily more productive than the small ones. Thus, it may be unlikely that property will automatically be consolidated by the large holders,²⁶⁸ even though the governments would be allowing such a possibility to exist legally.

The conclusion that consolidation of landholdings is unlikely depends, however, on the assumption that the market is functioning properly and smallholders can take better advantage of economies of scale. Unfortunately, this may not be the case. For example, Latin American smallholders may have less capacity to absorb risk than persons with larger estates. They may also have less access to capital. If these are true, we might expect consolidation to occur.

Individualization of tenure can have a very negative impact on the rights of women. Under a traditional form of ownership, all members of a given community have an interest in the land held collectively. In Kenya, individualization of tenure led in at least some cases to women being dispossessed, with all property rights passing to the men. In that case, the women in greatest peril were those without off-farm income, widows, and women with only daughters.²⁶⁹

Rural women in particular have special needs as property rights change. Women may need greater access to collateral if governments hope to make commercial credit available to them.²⁷⁰

Property law liberalization could be an element of a broader program for democratization of the political economy. However, liberalization itself is not likely to be a sole instrument for social reorganization. Reform could be linked to changes in the banking sector to provide greater participation in the political economy, and possibly the development of banks specifically capable of dealing with small-scale agriculture.

2. TRADE AND INVESTMENT

While most Latin American countries have addressed issues of barriers to trade in the input, capital, and foreign trade markets, the land market remains the most imperfect economic market, even more so than the labor market. Still, activation of land markets is often recommended to provide access to land for the historically disadvantaged, relieve pressures on fragile lands, enhance agricultural productivity, and promote a sustainable environmental policy.

Traditionally, land reform has been used where market mechanisms fail to allocate land resources effectively due to barriers of trade. In contrast, activation of land markets seeks to work within the market structure by removing the barriers, or working around them, rather than seeking a reallocation of resources through the political process. So what is needed for an effective land market and what are the steps involved?

There is a growing body of case-study data regarding how land markets in fact function, along with new theoretical literature.²⁷¹ The three major constraints to the formal land market are: (1) insufficient demand (small farmers' lack of equity to purchase land, and high transfer costs), (2) insufficient supply of land (at prices affordable to small farmers), and (3) government administration (legal, fiscal, and bureaucratic red tape, including lack of adequate registries).

Latin America really has two land markets: a formal market, characterized by recorded titles and lower utilization rates; and an informal market, characterized by undocumented landholdings, usually among the historically disadvantaged. Often, economic development policy aims to integrate the markets, providing the historically disadvantaged with access to land from the formal market. There are tools to accomplish this in addition to making titles marketable.

These tools include land taxation, land and mortgage banks, titling and cadastre systems (linked via a multipurpose land information system or MPLIS), extension and education, land purchase programs, elimination of subsidies for cattle and capital equipment, land-for-infrastructure programs, and other policy instruments.²⁷² Elimination of restrictions on land and titling by themselves probably will not lead to land market activation. However, they will be much more likely to succeed if they form part of a more comprehensive approach to the land market problem involving other policy instruments.²⁷³

USAID/Guatemala's *Fundación del Centavo* (FUNDACEN) project highlighted at least two problems in land markets and land purchase programs, in addition to the registry and title

marketability difficulties.²⁷⁴ First, there is a general lack of start-up capital for nongovernmental organization (NGO) projects like FUNDACEN. Second, local NGOs are more likely to already possess many of the qualities that larger organizations like FUNDACEN had to acquire at great cost. For example, smaller, local NGOs have knowledge of soil quality and use, roads, markets, and so on. Thus, these may be the preferred organizational structure and level for future land-purchase programs.

Highly successful land bank programs have been documented by USAID/El Salvador (rental program with option to purchase) and USAID/Dominican Republic (temporary, reversible foreclosure mechanism).²⁷⁵ In both cases, the USAID mission has been able to use private sector initiative to implement the program, with nearly 100 percent collection rates and little or no collection costs. And, when program users pay, the programs become sustainable in the long term without continued donor financial support.

In some instances, however, elimination of restrictions on property ownership and barriers to trade may not produce the desired outcome. In Kenya, the privatization of tenure to promote land markets did not appear to result in purchases of "economically viable" properties.²⁷⁶ Instead, sellers sold only a portion of their property, keeping the other part as security against landlessness.²⁷⁷ Many purchasers bought land as an investment, to use as security for loans, to be farmed under tenancy, to be held for speculative purposes, or with the eventual needs of the buyer's children in mind. Most purchases have been made by persons with nonagricultural sources of income, not by successful farmers hoping to expand their holdings.²⁷⁸ While this might be very positive for the macro economy in terms of rewarding productivity, providing retirement homes and retreats for urban citizens, or giving risk diversification for traditional nonfarmers, the practice may negatively impact local farmers.

In the Kenya case, the landholders were not economically secure even though restrictions on their property ownership were removed. Thus, the benefits of liberalization in the land market have not appeared. This underscores the need to make property rights liberalization an element in a broader strategy to promote economic development and opportunities, especially among vulnerable groups.

3. THE ENVIRONMENT

The "stakeholder interest" literature is relevant to the changes occurring in these four countries. Land titling also provides incentives to individual landowners to engage in environmentally and agriculturally sound practices.²⁷⁹ Further, people who have security in their land tenure may depend less on reserves, and may be more willing to plant trees and other long-term crops.²⁸⁰ Conversely, if landholders lose security in landownership, they lose an incentive to plant trees.²⁸¹ We might postulate that this may be especially true on agrarian reform land, where owners cannot freely transfer their property without government authorization. An empirical study of this could prove very interesting and eminently valuable.

The recent changes in land rights in the four countries examined convert agrarian reform beneficiaries into fee owners of property, giving them a stronger interest in defending the land and not damaging it. Thus, a more environmentally friendly land use can be anticipated.

Still, Latin American government-sponsored colonization and agrarian reform programs are often in direct conflict with objectives to conserve natural resources.²⁸² They often require all property owners to "use" their land or risk losing it. This often means that property owners deforest the land to prove utilization.²⁸³ Interestingly, Honduras has acted to make forestry an accepted land use under its new law. Policies such as this should remove the incentive to cut trees as a method of guarding against having the land taken away, provided that there is open access to markets achieving full value for the wood cut.

Perhaps most importantly, governments have the option of exploring policies that promote a land market within existing land supplies rather than relying on extending the agricultural frontier into forested areas,²⁸⁴ such as the creation of marketable titles as was done in Nicaragua, Peru, Mexico, and Honduras. Governments can also examine the repeal of restrictions on leasing and mortgaging, restraints that chill the market for land.²⁸⁵ Making land titles marketable from a legal standpoint is a prerequisite for an active, formal market in real estate, which in turn may remove incentives for deforestation. It would also allow individuals to purchase land where it is appropriate for agriculture, not where the government wants to put the beneficiaries.²⁸⁶

Nevertheless, no tenure system, not even one providing registered freehold interests, is fail-safe against destructive land use. For example, farmers may at some time need to maximize short-term production in order to survive, despite long-term resource costs.²⁸⁷ Communal tenure arrangements may break down if there is overpopulation or poor technical support.²⁸⁸ And formal government ownership has not led to environmental management or sustainable resource use.²⁸⁹

Finally, security of access and tenure to forested areas, whether it be by a formal concession system, usufruct rights, or ownership interests, will encourage use of the lands in a more commercially and environmentally sustainable manner. Normalization of tenure in forested areas can positively lead to increased investment in long-term, sustainable forestry practice, leading to higher-valued land usage and increased planting of trees.

VII. CONCLUSIONS AND RECOMMENDATIONS FOR IMPROVING LEGISLATIVE REFORMS

A review of the experiences from Nicaragua, Peru, Mexico, and Honduras suggests that the time has come in Latin America to graduate from past land reforms and enter the market. The landless may be treated as potential small farmers in market economies rather than as permanent political beneficiaries dependent on government agencies, which are often underfunded and paternalistic.²⁹⁰ Still, removal of restrictions on agrarian properties may present complications. Women, the poor, and indigenous groups have special needs. Further, the government may have to balance the needs of the private sector against the needs of the historically disadvantaged and the goals of a sustainable environmental policy.

Removal of restrictions on agrarian property is a logical part of economic modernization. Indeed, it is often viewed as a prerequisite to economic development. Yet, elimination of restrictions, by itself, may not be a guarantee of economic progress. While this measure may give increased security of ownership, other factors may make investment less attractive: inappropriate banking policies, the lack of an effective property registry and cadastre system, the overall availability of credit and technical assistance,²⁹¹ produce markets, and pricing of products all play a role. Elimination of ownership restrictions, therefore, may be one element of a broader development strategy for economic revitalization.

Transaction costs with group structures in landownership have led to criticisms of agrarian reform laws and agrarian centers, in particular. A great deal of literature has discussed this weakness in agrarian reform legislation, noting specifically the trouble of securing group consent to undertake land improvements, free-rider problems, and hassles with government bureaucracies. This paper does not try to summarize these economic difficulties, but rather concentrates more on a legal analysis of the problems. However, because of this legal emphasis, the study may appear to be biased against the new reform laws in terms of social and environmental impacts. These factors should, of course, be included in the final analysis.

In conclusion, in terms of policy guidance for Latin American governments and the foreign donor community, a number of issues emerge from the discussion of property rights liberalization. A property law modernization effort might consider the following operational guidelines suggested by the experiences of Nicaragua, Peru, Mexico, and Honduras:

1. Restrictions on rights to mortgage can be reevaluated. No amount of foreign donor money, projects, or technical assistance can create asset-based, secure, private-sector lending in agriculture as long as commercial lenders lack a reasonable assurance of repayment. This means access to collateral, now prohibited in most jurisdictions.

Although Peru originally set a minimum holding limit of 5 hectares for a mortgage, it has since backed off this position. The market is in a better position than the government to determine the minimum size of property for a mortgage. The experience of the other three jurisdictions suggests that having no minimum size limit is a valid option.

2. Rather than mandate a specified tenure form, such as individual ownership, reforms may allow the farmers themselves to decide how they would like to hold property. If market principles are used and the goal is increased productivity, the market represented by the individual farmers—and not the government—is in the best position to determine whether collective or private ownership is most productive. In Mexico and Honduras, governments give the people the choice of form of ownership. Also, as in Mexico, indigenous communities receive special protection, unless the communities themselves democratically decide to individualize their holdings.
3. Countries may examine establishing the right to sell or transfer land freely. In Mexico, a maximum size on individual holdings helps avoid a return of large estates. Other steps to encourage activation of the land market can be encouraged to prevent consolidation of landholdings.
4. In Honduras, the government recognizes forestry as an appropriate land use in conformity with the social function of land. This prevents deforestation simply to prove usage of the land to avoid expropriation.
5. Governments might explore the feasibility and practicability of giving mineral and subsoil rights to indigenous communities, where subsoil wealth is located on their land. This would transfer wealth from the central government to the communities, providing benefit at the community level. None of the four countries took this step in their property modernizations. However, in keeping with the spirit of removal of restrictions and the notion of government support for traditionally disadvantaged groups, this concept may be a logical next step for some countries.
6. Governments should identify areas for monitoring and evaluating the impact of the legislative modernization, especially with regard to the consequences on the historically disadvantaged, trade and investment, and the environment. It is unlikely to be cost-effective to monitor the impact of legislation on an entire national economy. However, sampling and survey techniques can be used to provide policymakers with a reliable degree of information on the results of legislative changes.

Other development research suggests that these measures will likely be most effective if combined with other means to ensure an active land market, a sound environmental policy, and increased opportunities for the historically disadvantaged.

ENDNOTES

1. John Strasma, "Los problemas de la tenencia de la tierra en el mundo de hoy," presentation at the seminar, "Tenencia de la Tierra," in Quito, Ecuador, Feb. 5, 1992.

2. Venezuela: Interview with Johnny Guarenas Borges, Director General of the Ministry of Agriculture, Dec. 12, 1991.

3. Interestingly, the liberal reforms introduced in virtually all South American countries after independence in the nineteenth century converted communal ownership by indigenous populations to private ownership, which in many cases led to these communities' being dispossessed. The customary tenure forms that exist today in the Andes and Meso-America are, in general, accommodations and modifications of some of the precolonial tenure structures. See Eric B. Shearer, Susana Lastarria-Cornhiel, and Dina Mesbah, *The Reform of Rural Land Markets in Latin America and the Caribbean: Research, Theory, and Policy Implications* (1991) at p. 11; Roger Plant, *Land Rights for Indigenous and Tribal Peoples in Developing Countries* (1992) at p. 2. Thus, it is easy to understand why many indigenous groups are nervous about attempts once again to "privatize" landholdings.

4. It should be noted that Guatemala's "Ley de Reforma Agraria" (Decreto 900 of 1952) from the Arbenz government was reversed by a coup in 1954. See Guillermo Pedroni Donnett, "La problemática agraria guatemalteca" (manuscript, 1989?) at p. 4. Nevertheless, Guatemala may still be interested in reviewing its property legislation with a view toward providing greater access to land for the historically disadvantaged through market mechanisms.

5. See Mónica Naves, "Marco de referencia para una nueva estructura legal de tenencia de predios rústicos" (Feb. 2, 1992, manuscript from the Tenure Issues Conference, Quito, Ecuador); and Mónica Naves, "Futuro de comunas y cooperativas" (Feb. 2, 1992, manuscript from the Tenure Issues Conference, Quito, Ecuador).

6. See Miguel Urioste F. de C., "Segundo borrador: anteproyecto de ley de comunidades y de nacionalidades" (March 1, 1990), in *Seminario: Comunidad Campesina y Legislación Agraria 1990*, Honorable Cámara de Diputados-República de Bolivia, pp. 335-382 (May 1990); José Luis Roca, "Resumen de la exposición," in *Debate Agrario 18: Propuesta de Ley Agraria*, Instituto Latinoamericano de Investigaciones Sociales, pp. 15-26 (April 1992); "Texto de la 'Propuesta de Ley Agraria,'" in *Debate Agrario 18: Propuesta de Ley Agraria*, Instituto Latinoamericano de Investigaciones Sociales, pp. 103-44 (April 1992).

7. José Luis Aguilar Gorrondona, *Cosas, Bienes y Derechos Reales* (1991) at 171; Ramón Vicente Casanova, *Derecho Agrario* (1990) at 39.

8. José Luis Aguilar Gorrondona, *Cosas, Bienes y Derechos Reales* (Caracas, 1991) at 171. Interestingly, Spanish doctrinists Colin and Capitant assert that the absolute nature of property under the French Civil Code is antisocial and antijudicial. See Colin and Capitant, *3 Curso Elemental de Derecho Civil* (1942) (2nd ed.) at 543, as cited in Ramón Vicente Casanova, *Derecho Agrario* (1990) at 39.

9. For example, the case of Venezuela is discussed in Ramón Vicente Casanova, *Derecho Agrario* (1990) at 39.
10. Venezuela: Art. 99, Constitution of the Republic of Venezuela (Jan. 23, 1961); see also Congreso Nacional, *La Ley de Reforma Agraria en las Cámaras Legislativas* (1960) (vol. 1) at 32-3.
11. Ramón Vicente Casanova, *Derecho Agrario* (1990) at 41.
12. Venezuela: Art. 545 of the Civil Code (translated by the author). NB: Art. 99 of the Constitution of the Republic of Venezuela (Jan. 23, 1961) guarantees the right of property. However, it also subjects property to a social function, allowing for restrictions on the rights of property holders.
13. José Luis Aguilar Gorrondona, *Cosas, Bienes y Derechos Reales* (1991) at 170-1.
14. Argentina: Arts. 2311-4 of the Civil Code. Bolivia: Art. 74 of the Civil Code (1976). Ecuador: Art. 603 of the Civil Code of 1970, as amended (1984). Honduras: Art. 600 of the Civil Code (1989). Peru: Arts. 885-6 of the Civil Code (1984).
15. Venezuela: Art. 539 of the Civil Code.
16. Venezuela: Art. 539 of the Civil Code; José Luis Aguilar Gorrondona, *Cosas, Bienes y Derechos Reales* (Caracas, 1991) at 77-81.
17. Venezuela: Art. 543 of the Civil Code; José Luis Aguilar Gorrondona, *Cosas, Bienes y Derechos Reales* (Caracas, 1991) at 81.
18. Referring to Venezuela, see José Luis Aguilar Gorrondona, *Cosas, Bienes y Derechos Reales* (Caracas, 1991) at 83-4.
19. The history of ejidal land in Venezuela is discussed in Lufs González Vale, *Ensayo sobre Derecho Agrario y Reforma Agraria en Venezuela* (1963) at 58-74.
20. Venezuela: Art. 3, Ley de Tierras Baldías y Ejidos (Aug. 19, 1936).
21. Venezuela: Art. 3(1) through (4), Ley de Tierras Baldías y Ejidos (Aug. 19, 1936).
22. Venezuela: Art. 32 of the Constitution of the Republic of Venezuela (Jan. 23, 1961).
23. Ecuador: Art. 1, Ley de Tierras Baldías y Colonización (Sept. 22, 1964) (Ley No. 2172, Registro Oficial No. 342 de 28-IX 64). Venezuela: Art. 1, Ley de Tierras Baldías y Ejidos (Aug. 19, 1936).
24. Ecuador: Art. 6, Ley de Tierras Baldías y Colonización (Sept. 22, 1964) (Ley No. 2172, Registro Oficial No. 342 de 28-IX 64). Venezuela: Art. 136, Constitution of the Republic of Venezuela (Jan. 23, 1961).
25. Venezuela: Art. 30, Ley de Tierras Baldías y Ejidos (Aug. 19, 1936).
26. Ramón Vicente Casanova, *Derecho Agrario* (5th ed., 1990) at 41, 113-17.

27. Regarding Argentina, Angel Ossorio defines the social function of property as "el derecho de usar, disfrutar y disponer de las cosas con arreglo a su naturaleza, en servicio de la sociedad y para provecho del propietario." This concept of property is contrary to the one established in several codes, in which the owner can use and enjoy the property according to his wishes, even if that means destroying it, degrading it, or ruining it. See definition of "función social," in Manuel Ossorio, *Diccionario de Ciencias Jurídicas, Políticas y Sociales* (1981) at 330. For a discussion of the "psychological liberation" of the peasant with the agrarian reform in Bolivia, see Edmundo Flores, *Un Año de Reforma Agraria en Bolivia* (1956). Venezuela: Art. 1 of the Agrarian Reform Law, *Gaceta Oficial* No. 611 (extraordinario), March 19, 1960.

28. In Bolivia, Dwight Braley Heath, *Land Reform in Bolivia* (1959), argues that feudalism was virtually abolished. But, as of that date, few other respects of the objectives of the reform had been achieved. See also Bolivia: Art. 213 of the Civil Code (1976); Venezuela: Arts. 1, 19, and 20 of the Agrarian Reform Law, *Gaceta Oficial* No. 611 (extraordinario), March 19, 1960; Ramón Vicente Casanova, *Derecho Agrario* (5th ed., Caracas, 1990) at 42.

29. Bolivia: Art. 165 of the Bolivian Constitution (Feb. 2, 1967) states that all land is of original state ownership ("dominio originario de la Nación"). The Bolivian Constitution goes on to declare that it is through work that one obtains ownership of property (see Art. 166 of the Bolivian Constitution). For Chile, the second paragraph of Art. 24 of the Constitution (Oct. 21, 1980) states that the social function of property includes all the requirements of the nation's general interests, security, public use, and health, and the conservation of the environmental patrimony. See also Chile: January 1967 amendment to Art. 10, Sect. 10 of the 1925 Constitution. For a commentary, see Joseph R. Thome, "Agrarian Reform Legislation: Chile," in *Land Reform in Latin America*, ed. Peter Dorner (1971) at 81. Colombia: Art. 58 of the Constitution (1991). NB: Colombia's Constitution states that the social function of land includes an ecological mission. Dominican Republic: Art. 13(a) of the Constitution (1966). Ecuador: Constitución de la República, Art. 48 (Registro Oficial No. 763: 12-VI-84, June 4, 1984). El Salvador: Art. 103 of the Constitution. Nicaragua: Art. 103 of the Constitution (1987). Honduras: Art. 97 of the Constitution. Mexico: Para. XV of Art. 27 of the Constitution, as amended (1991). For the importance of land in the popular debate in Mexico, see such works as "Nos han dado la tierra," by Juan Rulfo; and *Los de Abajo*, by Mariano Anzuela. Uruguay: Art. 32 of the Constitution (1970) recognizes property as an inviolable right, but subject to laws advancing the general interest. Venezuela: Art. 105 of the Constitution; see also Ali José Venturini and Román José Duque Corredor, *La Usucapión Especial Agraria* (1991) at 28; and Ali José Venturini, *Derecho Agrario Venezolano* (1976) at 57.

30. Social policy in Brazil includes an environmental focus. See Brazil: Decree 433 of Jan. 24, 1992, and Decree 432 of Jan. 27, 1992, both in *Diario Oficial*, Jan. 27, 1992-920127. Ecuador: Constitución de la República, Art. 51 (Registro Oficial No. 763: 12-VI-84, June 4, 1984). Honduras: Art. 24 of the "Ley de Reforma Agraria" (Dec. 30, 1974) (*Diario Oficial "La Gaceta"* No. 21-482, Jan. 8, 1975) [later amended in part and repealed in part by the Decree 31-92, "Ley para la Modernización y el Desarrollo del Sector Agrícola" (March 5, 1992) (*Diario Oficial "La Gaceta,"* April 6, 1992)]. Peru: Art. 1 of the Ley de Reforma Agraria, Decreto Ley No. 17716, Decreto Supremo No. 265-70-AG (law prior to Decreto Supremo 011-91-AR), stated that "la tierra constituya para el hombre que la trabaja, base de su estabilidad económica, fundamento de su bienestar y garantía de su dignidad y libertad." For Venezuela, see Ramón Vicente Casanova, *Derecho Agrario* (5th ed., 1990) at 48.

31. Ecuador: Constitución de la República, Art. 51 (Registro Oficial No. 763: 12-VI-84, June 4, 1984). Haiti: Decree of July 14, 1989 (L.M., July 27, 1989-890727), authorizes the Ministry of Economy and Public Finances to carry out a systematic survey of all arable land owned by the state for distribution to needy rural families. For Venezuela, see Ali José Venturini, *Derecho Agrario Venezolano* (1976) at 56-8.

32. Dominican Republic: Decree 2960 of May 11, 1985 (Gaceta Oficial, May 15, 1985-850515), discusses which lands ought to be and can be seized under laws related to quotas, untilled land, large rural estates, and recovery of state lands. Spain recognized the concept of the "función social." An equivalent concept ("Bonner Grundgesetz") was found in Germany: Art. 14-2 of the Constitution. The notion of social function is found in Italy: Art. 832 of the Civil Code. See Raul Romero Sandoval, *Derechos Reales* (1991) at 83-7. In Guatemala, where the 1952 Arbenz land reform was quickly reversed, the constitutional provision on property does not mention the words "función social." However, it does state that property owners can use and enjoy their property in a way that promotes "el progreso individual y el desarrollo nacional en beneficio de todos los guatemaltecos." Guatemala: Art. 39 of the Constitution (1985).

33. Ecuador: Constitución de la República, Art. 48 (Registro Oficial No. 763: 12-VI-84, June 4, 1984).

34. The idea of a use right or lease is common throughout agrarian reforms, not only in Latin America but in Africa as well. In Africa, a leasehold system is commonly thought to be more consistent with indigenous tenure models which recognize tribal or other community interests in land. The state is viewed as the successor to the tribe, exercising its land allocation prerogatives. Where the state consists of a single tribe or ethnic group and the chief or king of the group is the head of state, the lease may simply be a new legal instrument for exercising traditional powers to allocate land. See John Bruce, *The Variety of Reform: A Review of Recent Experience with Land Reform and the Reform of Land Tenure, with Particular Reference to the African Experience* (Sept. 1989) at 9. The Latin American "dotación" may also be compared to the English common law concept of a "determinable life estate with a restraint on alienation," in which a beneficiary owns the property for life (and thus cannot pass the property on through a will or through intestacy), so long as s/he farms or uses the land, and may not sell or transfer the land. Compare with the case of Zaire: Art. 80 of the General Property Law (1973) states that land is owned by the government, which in turn can grant concessions, even perpetual concessions (the right to enjoy the land indefinitely) as long as certain legal conditions are satisfied. See James C. Riddell, Jeswald W. Salacuse, and David Tabachnick, *The National Land Law of Zaire and Indigenous Land Tenure in Central Bandundu, Zaire* (1987) at 13.

35. Ecuador: Art. 48 of the "Ley de Reforma Agraria," (July 10, 1979) (Registro Oficial No. 877-18-VII-1979). Honduras: Art. 41(a) of the "Ley de Reforma Agraria" (Dec. 30, 1974) (Diario Oficial "La Gaceta" No. 21-482, Jan. 8, 1975) [later amended in part and repealed in part by the Decree 31-92, "Ley para la Modernización y el Desarrollo del Sector Agrícola" (March 5, 1992) (Diario Oficial "La Gaceta," April 6, 1992)]. Peru: Arts. 7, 8, and 15 of the Ley de Reforma Agraria, Decreto Ley No. 17716, Decreto Supremo No. 265-70-AG (law prior to Decreto Supremo 011-91-AR).

36. Peru: Art. 86(c) of the Ley de Reforma Agraria, Decreto Ley No. 17716, Decreto Supremo No. 265-70-AG (law prior to Decreto Supremo 011-91-AR). Venezuela: Art. 15 of the Agrarian Reform Law, Gaceta Oficial No. 611 (extraordinario), March 19, 1960.

37. Venezuela: Art. 73 of the Agrarian Reform Law, Gaceta Oficial No. 611 (extraordinario), March 19, 1960.

38. Texto Unico Concordado de la Ley de Reforma Agraria, Decreto 17716 (Peru), Decreto Supremo No. 265-70-AG, Art. 86 (a, b, and c).

39. Ramón Vicente Casanova, *Derecho Agrario* (5th ed., 1990) at 254-55.

40. Ecuador: Arts. 796-842 of the Civil Code of 1970, as amended (1984). El Salvador: Arts. 769-812 of the Civil Code (1986). Honduras: Arts. 745-89 of the Civil Code (1989). Peru: Arts. 999-1005 of the Civil Code (1984). For a general discussion of the usufruct in Venezuela, see Emilio Calvo Baca, *Manual de Derecho Civil Venezolano* (1984) at 177-82; for a historical perspective, see Anibal Dominici, 1 *Comentarios al Código Civil Venezolano* (1896) (reprinted 1962) at 634-90.

41. For a historical perspective of Venezuela, see Anibal Dominici, 4 *Comentarios al Código Civil Venezolano* (1896) (reprinted 1962) at 10-16.

42. Peru: Arts. 1091-6 of the Civil Code (1984).

43. The concept of rental agreements is discussed in Ramón José Duque Corredor, *Contratos Agrarios* (1986) at 56-60. For a historical perspective of Venezuela, see Anibal Dominici, 4 *Comentarios al Código Civil Venezolano* (1896) (reprinted 1962) at 17-79. Both sharecropping and rental of agricultural land are illegal in Bolivia. See Bolivia: Art. 214 of the Civil Code (1976).

44. Bolivia: Arts. 216-254 of the Civil Code (1976). Guatemala: Arts. 703-51 of the Civil Code (1963). Peru: Arts. 1026-9 of the Civil Code (1984). Venezuela: Art. 582 of the Civil Code.

45. Bolivia: Arts. 255-290 of the Civil Code (1976). Ecuador: Arts. 876-88 of the Civil Code of 1970, as amended (1984). El Salvador: Arts. 822-33 of the Civil Code (1986). Guatemala: Arts. 752-59 of the Civil Code (1963). Honduras: Arts. 799-867 of the Civil Code (1989). Peru: Arts. 1035-54 of the Civil Code (1984). Venezuela: Arts. 709 et seq. of the Civil Code. For a historical perspective, see Anibal Dominici, 1 *Comentarios al Código Civil Venezolano* (1896) (reprinted 1962) at 713-812.

46. Smallholder and *campesino* land in Bolivia is indivisible and cannot be the subject of a mortgage (see Art. 196 of the Bolivian Constitution). Land in excess of certain size limits may be the subject of encumbrances and mortgages (see Arts. 15, 32-33 of the Bolivian Agrarian Reform Law). Cuba: Resolution 2491 of March 19, 1991 (Gaceta Oficial, April 8, 1991-910408). Dominican Republic: Arts. 9-12 of the Colonization Law (Law No. 1783 of 1948) specify that land received cannot be rented or otherwise passed to others before final issuance of a permanent title. Under that law, eight years of occupation and use are required to be considered for permanent title in colonies along the border, while under the post-Trujillo Agrarian Reform Law of 1962, and subsequent amendments, the period of provisional title, either individual or collective, is undefined. See David Stanfield, Carlos Dore y Cabral, Pablo Rodriguez, Benito Ferreiras, Virginia Lambert, Luis Suarez, and Randy Stringer, *Evolving Property Relations in the Agrarian Reform of the Dominican Republic* (1986). El Salvador: Art. 5 of the "Ley del Regimen Especial de la Tierra y de los Derechos y Obligaciones de los Beneficiarios de la Reforma Agraria" (1988). Peru: Art. 127 of the Ley de Reforma Agraria, Decreto Ley No. 17716, Decreto Supremo No. 265-70-AG (law prior to Decreto Supremo 011-91-AR), made rental of agrarian reform land illegal. For Venezuela, see Ramón José

Duque Corredor, *Derecho Agrario: Instituciones* (1985) at 213; Venezuela: Arts. 15 and 74 of the Agrarian Reform Law, Gaceta Oficial No. 611 (extraordinario), March 19, 1960. Compare the Latin American legislation with Portugal: Decree-Law 63-89 of Feb. 9, 1989 (D.R., Feb. 24, 1989-890224); Law 109-88 of Sept. 7, 1988 (D.R., Sept. 26 1988-880926; D.R., Nov. 19, 1988 (errata)-881119); and Decree-Law 199-88 of May 31, 1988 (D.R., May 31-880531).

47. For Venezuela, see Ramón Vicente Casanova, *Derecho Agrario* (5th ed., 1990) at 260. In Chile, the military government moved to reverse the agrarian reform. According to Jarvis, "Restrictions imposed on land transactions were gradually removed to permit the subdivision and sale of all private properties. The rental or sale of reform-sector parcels was initially prohibited, but the government covered its eyes from the illegal sales that occurred. In 1979, free transaction in such parcels was legalized." Lovell S. Jarvis, "The Unraveling of Chile's Agrarian Reform," in *Searching for Agrarian Reform in Latin America*, ed. William C. Thiesenhusen (1989) at 240, 244.

48. Ramón Vicente Casanova, *Derecho Agrario* (5th ed., 1990) at 47, notes that Yugoslavia imposes a maximum size limit of 10 hectares. Cuba sets the limit at 5 caballerías. Also, for the case of Peru, meeting with Ing. Manuel Cristobal Nuñez, Program Director for Cadastres and Titling, Department of Agriculture, Office of Titling (Lima, Peru) and Ing. Carlos Mendoza Mejía, also of the Peruvian Department of Agriculture, Office of Titling (Lima, Peru) (June 28, 1991).

49. El Salvador sets a limit on agricultural land at 245 hectares. See El Salvador: Art. 105 of the Constitution. Venezuela does not provide for size limitations in its agrarian reform legislation. Lots can be of any size, provided these parcels meet the social policy criteria, as specified in Venezuela: Art. 19 of the Agrarian Reform Law, Gaceta Oficial No. 611 (extraordinario), March 19, 1960.

50. Ecuador: Art. 98 of the "Ley de Reforma Agraria" (July 10, 1979) (Registro Oficial No. 877-18-VII-1979). Honduras: Art. 100 of the "Ley de Reforma Agraria" (Dec. 30, 1974) (Diario Oficial "La Gaceta" No. 21-482, Jan. 8, 1975) [later amended in part and repealed in part by the Decree 31-92, "Ley para la Modernización y el Desarrollo del Sector Agrícola" (March 5, 1992) (Diario Oficial "La Gaceta," April 6, 1992)]. Peru: Art. 1 of the Ley de Reforma Agraria, Decreto Ley No. 17716, Decreto Supremo No. 265-70-AG (law prior to Decreto Supremo 011-91-AR).

51. For Venezuela, see Salvador de la Plaza, Wenceslao Mantilla, and Ramón Losada Aldana, *Reforma Agraria Venezolana: Concepción, Evaluación y Perspectivas* (1968) at 56.

52. Colombia: Art. 64 of the Constitution (1991). Honduras: Art. 126 et seq. of the "Ley de Reforma Agraria" (Dec. 30, 1974) (Diario Oficial "La Gaceta" No. 21-482, Jan. 8, 1975) [later amended in part and repealed in part by the Decree 31-92, "Ley para la Modernización y el Desarrollo del Sector Agrícola" (March 5, 1992) (Diario Oficial "La Gaceta," April 6, 1992)]. For a Venezuelan example, see Banco Agrícola y Pecuário, *El Crédito Agrícola en los Sistemas de Riego* (1971) at 1, which discusses the role of agricultural credit as an element in the plan for economic development.

53. Dominican Republic: Art. 13(a) of the Constitution (1966). Venezuela: Arts. 125-127 of the Agrarian Reform Law, Gaceta Oficial No. 611 (extraordinario), March 19, 1960.

54. Venezuela: Art. 80 of the Agrarian Reform Law, Gaceta Oficial No. 611 (extraordinario), March 19, 1960.

55. Bolivia: Law 1297 of Nov. 27, 1991 (Gaceta Oficial, Jan. 13, 1992-920113), updated the Mining Code, "Ley de Hidrocarburos," found in Law 1194 of Nov. 1, 1990 (Gaceta Oficial, Nov. 8, 1990-901108). Costa Rica: Decree 19789-MIRENEM of June 25, 1990 (L.G., Aug. 3, 1990-900803). Ecuador: "Ley de Hidrocarburos" (Registro Oficial 711: 15-XI-78, Nov. 6, 1978); "Ley Especial de la Empresa Estatal Petróleos del Ecuador (Petroecuador) y Sus Empresas Filiales" (Registro Oficial 283: 26-XI-89, Sept. 18, 1989). Paraguay: Law 1182 of Dec. 23, 1985 (CONAC, Dec. 31, 1985, Congreso Nac. 851231), updated "Petroleos Paraguayos." Peru: General Mining Law, Legislative Decree 109 of June 12, 1981; Sup. Decree 040 of Dec. 29, 1981, as amended by Sup. Decree 002 of Jan. 15, 1982; Regulations Sup. Decree 025 of July 30, 1982, as amended; Resolution 212 of July 30, 1982. Venezuela: The Mining Law of Dec. 28, 1944; Dec. 2039 of Feb. 15, 1977; Res. 528 of Dec. 17, 1986; and Res. 429 of Nov. 11, 1982.

56. Argentina: The Code of Mining, enacted by Law 1919 of Dec. 8, 1886, as amended; Law No. 10,273 of 1917; hydrocarbons are governed by Law 17319 of June 23, 1967, as amended. For Bolivia, see Raul Romero Sandoval, *Derechos Reales* (1991) at 123-134. Brazil: Art. 20 VIII, IX, 176 of the Constitution (Oct. 4, 1988). Chile: Mining Code, Law 18248 of Sept. 26, 1983, as amended; Law 18097 of Jan. 7, 1982, as amended on mining concessions. Colombia: Art. 360 of the Constitution (July 18, 1991); Mining Code Decree 2655 of Dec. 23, 1988; Petroleum Code, Decree 1056 of April 20, 1953, as amended. Costa Rica: Art. 6 of the Constitution (Nov. 7, 1949). Dominican Republic: Art. 100 of the Constitution (Nov. 28, 1966). El Salvador: Art. 103 of the Constitution. Panama: Decree-Law 23 of 1963, as amended by Law 3 of 1988. Paraguay: Art. 100 of the Constitution (1967). Uruguay: Mining Code, Law 15242 of Jan. 8, 1982, as amended, with its regulation, Decree 110/982 of Mar. 26, 1982; Law 14,181 of Mar. 29, 1974, as amended. Compare with the case of Zaire: Art. 10 (as amended in 1971) of the Constitution states: "The Zairian soil and subsoil belong to the State. The conditions for their concession shall be fixed by law." See James C. Riddell, Jeswald W. Salacuse, and David Tabachnick, *The National Land Law of Zaire and Indigenous Land Tenure in Central Bandundu, Zaire* (1987) at 8.

57. Chile: Para. 5 of Art. 24 of the Constitution (Oct. 21, 1980) proclaims that the state has absolute, exclusive, inalienable, and imprescriptible domain over all mines, deposits, and other fossil substances, despite the ownership held by individuals or legal entities over the land in which the deposits are contained.

58. Haiti: Decree of July 7, 1987 (L.M., Oct. 12, 1987-871012).

59. Venezuela: Art. 58 of the Agrarian Reform Law, Gaceta Oficial No. 611 (extraordinario), March 19, 1960.

60. For Venezuela, see Ramón Vicente Casanova, *Derecho Agrario* (5th ed., 1990) at 249.

61. *Ibid.*

62. Venezuela: MAC, "Ref. Arg.," Informe de la Subcomisión Agrotécnica, vol. 3, p. 182; Ramón Vicente Casanova, *Derecho Agrario* (5th ed., 1990) at 280.

63. For Venezuela, see Ramón José Duque Corredor, *Derecho Agrario: Instituciones* (1985) at 261-2; see also Venezuela: Arts. 73 and 93 of the Constitution.

64. In Bolivia, interview with Dr. Santiago Pozo, inspector from Cochabamba (July 8, 1992).

65. See Agency for International Development, *Congressional Presentation: Fiscal Year 1993* (1992) at 10 (hereinafter, the *AID Presentation*).

66. *AID Presentation* at 12.

67. *Ibid.*

68. *Ibid.*

69. *Ibid.* at 572.

70. Carlos Brezina, "Annual Meeting: A Go-ahead for Growth," *The IDB* 4 (June 1992).

71. The distinction between definitive and provisional titles requires explanation. Mireya Molina, "Legislación agraria y su vigencia actual" (July 2, 1992) at 13-14, discusses this difference. The Agrarian Reform Law of 1981 allowed the state to assign, hand over, and title (*asignar, entregar y titular*) land inscribed in favor of the state. Yet most land was never assigned to the state originally. Consequently, the agrarian reform beneficiaries did not have a document which they could use as collateral for commercial credit. Therefore, the government decided to issue "provisional titles" with basic information while it inscribed land to the state. Then, once the land had been so inscribed, the provisional titles could be converted to definitive titles. By the time of the 1990 election, the Sandinista government still had not completed converting provisional titles to definitive ones.

72. Decree No. 35-91, Aug. 19, 1991.

73. III and IV whereas clause of the preamble to Decree No. 35-91, Aug. 19, 1991.

74. Art. 1, Decree No. 35-91, Aug. 19, 1991.

75. Art. 2, Decree No. 35-91, Aug. 19, 1991.

76. Art. 6, Decree No. 35-91, Aug. 19, 1991.

77. Art. 7, Decree No. 35-91, Aug. 19, 1991.

78. Decree 782, Arts. 31 and 32.

79. Art. 1, Ley de Reforma Agraria, Decree No. 782 (July 19, 1981).

80. Decree 230 (Jan. 5, 1980); Decree 263 (Jan. 31, 1980); Decree 293 (Feb. 13, 1980); Decree 671 (March 11, 1981); Art. 40 of the Agrarian Reform Law, as amended (Jan. 11, 1986). This remains current law.

81. Mireya Molina, "Leyes de reforma agraria" (April 23, 1991) (manuscript) at 11.

82. Decree 782, Arts. 31 and 32.

83. Anecdotal evidence in conversations I have had during my visit to Nicaragua indicates that

credit sources over the past ten years have not wanted land as collateral. Interestingly, creditors have preferred crops as collateral. An empirical study of this phenomenon would be quite interesting.

84. Peru: "Ley de Promoción y Desarrollo Agrario," Decreto Legislativo 02 (Nov. 17, 1980). See José Manuel Mejía, "Propiedad de la tierra y ley agraria," presented at the seminar, "Legislación Agraria y Desarrollo Económico" (June 20, 1991, Lima, Peru) at 1.

85. José Manuel Mejía, "Propiedad de la tierra y ley agraria," presented at the seminar, "Legislación Agraria y Desarrollo Económico" (June 20, 1991, Lima, Peru) at 1.

86. Proyecto Especial Desarrollo Agrario, Cooperativo y Comunal, D.S. 029-88-AG (March 1988); D.L. 17716.

87. Reuter Library Report, "Peru Liberalizes Farm Credit, Private Property Laws" (March 31, 1991). Indeed, some have questioned the constitutionality of the new law. See José Manuel Mejía, "Propiedad de la tierra y ley agraria," presented at the seminar, "Legislación Agraria y Desarrollo Económico" (June 20, 1991, Lima, Peru) at 2; Laureano del Castillo, "Virtudes, errores y vacíos del Decreto Legislativo 653; una visión jurídica," in *La Nueva Ley Agraria en Debate*, ed. Epifanio Baca Tupayachi (1992) at 49, 50.

88. "Farm Credit, Ownership Liberalized in Peru," *J. of Comm.* (April 2, 1991); "Government Suspends the Power of the Central Bank to Set Interest Rates," *Andean Group Regional Report (LARA)* (June 27, 1991) at 3; "New Agrarian Reform," *Latin American Weekly Report* (May 23, 1991) at 2.

89. Reuter Library Report, "Peru Liberalizes Farm Credit, Private Property Laws" (March 31, 1991); "Farm Credit, Ownership Liberalized in Peru," *J. of Comm.* (April 2, 1991); "Interest Rates Freed, Foreign Banks OK'd," *Latin American Weekly Report* (May 16, 1991) at 9; Peru: Arts. 2 and 4 of Decreto Supremo No. 011-91-AG (Diario Oficial El Peruano Nos. 95553 and 95554, March 31, 1991).

90. Arts. 2, 5, 6, 7, and 8 of Decreto Legislativo No. 653 (Aug. 1, 1991).

91. Art. 16 of Decreto Legislativo No. 653 (Aug. 1, 1991).

92. Javier Escobal, "Mercado de tierras, rentabilidad y desarrollo agrario," in *La Nueva Ley Agraria en Debate*, ed. Epifanio Baca Tupayachi (1992) at 11.

93. Arts. 7, 12-15 of Decreto Legislativo No. 653 (Aug. 1, 1991).

94. Arts. 7 and 16 of Decreto Legislativo No. 653 (Aug. 1, 1991).

95. Art. 11 of Decreto Legislativo No. 653 (Aug. 1, 1991).

96. *Ibid.*

97. Art. 22 of Decreto Legislativo No. 653 (Aug. 1, 1991).

98. José Manuel Mejía, "Propiedad de la tierra y ley agraria," presented at the seminar, "Legislación Agraria y Desarrollo Económico" (June 20, 1991, Lima, Peru) at 4. The phrase "land to the tiller" is translated from the Spanish "la tierra para que la trabaja." Reversal of the social function of land and the "land to the tiller" concept by legislative action has been criticized on constitutional grounds. See Guillermo Figallo A., "Aspectos inconstitucionales de la Ley de Promoción de las Inversiones en el Sector Agrario" (photocopy, undated).

99. José Manuel Mejía, "Propiedad de la tierra y ley agraria," presented at the seminar, "Legislación Agraria y Desarrollo Económico" (June 20, 1991, Lima, Peru) at 5.

100. Letter Opinion from Rolando Eyzaguirre of the Instituto Libertad y Democracia to Steven E. Hendrix, dated Jan. 8, 1993, at 3.

101. Art. 23 of Decreto Legislativo No. 653 (Aug. 1, 1991).

102. Art. 9 of Decreto Legislativo No. 653 (Aug. 1, 1991).

103. Rafael Ravettino F., untitled and unpublished manuscript, dated July 1991.

104. Letter Opinion from Rolando Eyzaguirre of the Instituto Libertad y Democracia to Steven E. Hendrix, dated Jan. 8, 1993, at 6.

105. *Ibid.* at 2.

106. Reglamento de la Ley de Promoción de las Inversiones en el Sector Agrario: Decreto Supremo 0048-91-AG/OGA-OAD.UT (Nov. 11, 1991).

107. Art. 8 of the Decreto Supremo 0048-91/OGA-OAD.UT.

108. Letter Opinion from Rolando Eyzaguirre of the Instituto Libertad y Democracia to Steven E. Hendrix, dated Jan. 8, 1993, at 4.

109. *Ibid.* at 6.

110. Candy Gourlay, "Development: 'Invisible Women' Bear Brunt of Poverty," *Inter-Press Serv.* (Nov. 23, 1992).

111. Art. 11 of Decreto Legislativo No. 653 (Aug. 1, 1991) sets up a procedure for removal of trespassers.

112. Rafael Ravettino F., untitled and unpublished manuscript, dated July 1991.

113. Letter Opinion from Rolando Eyzaguirre of the Instituto Libertad y Democracia to Steven E. Hendrix, dated Jan. 8, 1993, at 3; Laureano del Castillo, "Virtudes, errores y vacíos del Decreto Legislativo 653; una visión jurídica," in *La Nueva Ley Agraria en Debate*, ed. Epifanio Baca Tupayachi (1992) at 49, 53.

114. Letter Opinion from Rolando Eyzaguirre of the Instituto Libertad y Democracia to Steven E. Hendrix, dated Jan. 8, 1993, at 4.

115. Legislative Decree No. 613.
116. Second "Final Disposition" of Decreto Legislativo No. 653 (Aug. 1, 1991).
117. For a more ample discussion of the history of the Mexican agrarian reform movement, its roots, the revolution, and its impact on the Mexican peasantry and the economy in general, see Celso Furtado, *Economic Development of Latin America* (1985) at 254-64; Gerardo Otero, "Agrarian Reform in Mexico: Capitalism and the State," in *Searching for Agrarian Reform in Latin America*, ed. William C. Thiesenhusen (1989) at 276 et seq.; Merilee S. Grindle, "Agrarian Reform in Mexico: A Cautionary Tale," in *Agrarian Reform and Grassroots Development: Ten Case Studies*, ed. Roy L. Prosterman, Mary N. Temple, and Timothy M. Hanstad (1990) at 179 et seq.
118. An excellent overview of ejidal systems, their history, social importance, and productive capacity is found in Rogelio Ramos Oranday, 40 *Comercio Exterior* (No. 9, Sept. 1990) at 838. See also Ignacio Ovalle Fernández, "El ejido y sus perspectivas: un enfoque jurídico," 40 *Comercio Exterior* (No. 9, Sept. 1990) at 845; "Resultados de la Encuesta Nacional Agropecuaria Ejidal 1988," *El Mercado de Valores* (No. 15, Aug. 1, 1990) at 7.
119. Art. 130 of the former Federal Agrarian Reform Law. For a general discussion of the ejidos and their production problems prior to the constitutional reform, see Alan Riding, *Distant Neighbors* (1986) at 260 et seq.
120. Memorandum from Joseph R. Thome, University of Wisconsin Law School, to John Bruce, Land Tenure Center et al., dated August 24, 1992, at 2.
121. For example, see Thomas F. Carroll, "The Land Reform Issue in Latin America," in *Latin American Issues: Essays and Comments*, ed. Albert O. Hirschman (1961) at 175.
122. Claudia Luengas, "Restoring Constitutional and Legal Orders for Empowerment and Participation: A View from Mexico," 2 *Beyond L.* (No. 4) 11, 14 (March 1992).
123. Memorandum from Joseph R. Thome, University of Wisconsin Law School, to John Bruce, Land Tenure Center et al., dated August 24, 1992, noting comments made by Arturo Warman, Director to the *Procuraduría Agraria*, at the Presidential Palace, Mexico City, July 27, 1992.
124. Carlos Salinas de Gortari, "Diez puntos para libertad y justicia al campo mexicano" (Nov. 14, 1991) (presentation at the Official Residence at Los Pinos) at 1-2. See also "Nuevo horizonte para el campo," 67 *Examen de la Situación Económica de México* (No. 793, Dec. 1991) at 550; Salvador Martínez García, "Transformación integral al ejido sin privatizarlo: CSG," *Excelsior* (Jan. 7, 1990) at 1; "En marcha, la reforma que necesita el campo mexicano," *Excelsior* (Nov. 10, 1991) at 1.
125. Fausto Fernández Ponte, "Ejido, inmigración y el mercado de mano de obra en EU," *Financiero* (Nov. 13, 1991) at 36.
126. The summary presented here is a revision of the summary presented in Wayne A. Cornelius, "The Politics and Economies of Reforming the *Ejido* Sector in Mexico: An Overview and Research Agenda," 23 *LASA Forum* No. 3 (Fall 1992) at 3. This is similar to a summary by Wesley R. Smith, "Salinas Prepares Mexican Agriculture for Free Trade," *Heritage Foundation Rep.* (Oct. 1, 1992).

127. Para. I of Art. 27 of the Constitution, as amended (Jan. 3, 1992, published in the Diario Oficial on Jan. 6, 1992).
128. Para. II of Art. 27 of the Constitution (Mexico).
129. Paras. III, IV, and V of Art. 27 of the Constitution (Mexico).
130. Para. VII of Art. 27 of the Constitution (Mexico); Art. 9 of the "Ley Agraria."
131. Carlos Salinas de Gortari, "Diez puntos para libertad y justicia al campo mexicano" (Nov. 14, 1991) (presentation at the Official Residence at Los Pinos) at 2.
132. Para. VII of Art. 27 of the Constitution (Mexico); Arts. 21-42 of the "Ley Agraria."
133. Art. 32 of the "Ley Agraria" et seq.
134. Art. 35 of the "Ley Agraria" et seq.
135. Art. 45 of the "Ley Agraria."
136. Art. 46 of the "Ley Agraria."
137. Ibid.
138. Ibid.
139. Para. VII of Art. 27 of the Constitution (Mexico); Art. 47 of the "Ley Agraria."
140. Art. 7 of the "Ley Agraria."
141. Art. 14 of the "Ley Agraria."
142. Art. 115 of the "Ley Agraria."
143. Para. XV of Art. 27 of the Constitution (Mexico).
144. Art. 117 of the "Ley Agraria."
145. Art. 119 of the "Ley Agraria."
146. Art. 120 et seq. of the "Ley Agraria."
147. Art. 17 of the "Ley Agraria" deals with wills; Art. 18 deals with intestacy, establishing the following ordering of priority among survivors: (1) the spouse, (2) the concubine, (3) one of the children (the concept of progenitor), (4) one other relative, and (5) any other economic dependent.
148. Art. 18 of the "Ley Agraria."
149. Final para. of Art. 18 of the "Ley Agraria."

150. Art. 19 of the "Ley Agraria."

151. Art. 20 (Paras. I, II, and III, respectfully) of the "Ley Agraria." The period for adverse possession is 5 years if the occupation is in good faith, and 10 years, if in bad faith. See Art. 48 of the "Ley Agraria."

152. Art. 64 of the "Ley Agraria."

153. Para. 3 of Art. 64 of the "Ley Agraria."

154. Art. 68 of the "Ley Agraria."

155. Art. 73 et seq. of the "Ley Agraria."

156. Art. 50 of the "Ley Agraria."

157. Arts. 56 and 78 of the "Ley Agraria."

158. Art. 79 of the "Ley Agraria."

159. Art. 80 of the "Ley Agraria."

160. Art. 81 of the "Ley Agraria."

161. Art. 82 of the "Ley Agraria."

162. Art. 83 of the "Ley Agraria."

163. Para. 2 of Art. 83 of the "Ley Agraria."

164. Art. 134 of the "Ley Agraria"; Memorandum from Joseph R. Thome, University of Wisconsin Law School, to John Bruce, Land Tenure Center et al., dated August 24, 1992, at 2.

165. Art. 137 of the "Ley Agraria."

166. Art. 140 of the "Ley Agraria."

167. Para. II of Art. 141 of the "Ley Agraria."

168. Art. 142 et seq. of the "Ley Agraria."

169. Memorandum from Joseph R. Thome, University of Wisconsin Law School, to John Bruce, Land Tenure Center et al., dated August 24, 1992, noting comments made by Arturo Warman, Director to the *Procuraduria Agraria*, at the Presidential Palace, Mexico City, July 27, 1992.

170. See, for example, Mario de Cautin, "Mexico: Farmworkers to March on Capital," *Inter-Press Serv.* (April 8, 1985); John Hurst, "Crushing Poverty; For Mixtecs, Life in Baja Is Bitter Harvest," *Los Angeles Times* (June 29, 1986), Foreign Desk; UPI AM cycle article (June 6, 1982) notes that "disputes over land have been the source of hundreds of killings in Mexico during the past decade."

171. David Clark Scott, "Mexican Agricultural Reforms Set Stage for a New Revolution," *Christ. Science Monitor* (Nov. 21, 1991).

172. "Manifiesto campesino," *Jornada* (Dec. 2, 1991).

173. Cuauhtémoc Cárdenas, "En defensa de la constitución," *Jornada* (Feb. 7, 1992); "Mexico; agriculture & politics," WR-91-45, *Lat. Am. Week. Rep.* 2 (Nov. 21, 1991).

174. Memorandum from Joseph R. Thome, University of Wisconsin Law School, to John Bruce, Land Tenure Center et al., dated August 24, 1992, noting comments made by Arturo Warman, Director to the *Procuraduría Agraria*, at the Presidential Palace, Mexico City, July 27, 1992.

175. *Ibid.*

176. *Gaceta de Solidaridad, Nueva Legislación Agraria* (April 1992) at 9.

177. Carlos Salinas de Gortari, "Diez puntos para libertad y justicia al campo mexicano" (Nov. 14, 1991) (presentation at the Official Residence at Los Pinos) at 3.

178. Memorandum from Joseph R. Thome, University of Wisconsin Law School, to John Bruce, Land Tenure Center et al., dated August 24, 1992, noting comments made by Arturo Warman, Special Attorney General for Agriculture (*Director de la Procuraduría Agraria*) at the Presidential Palace, Mexico City, July 27, 1992.

179. *Ibid.* at 6.

180. Carlos Salinas de Gortari, "Diez puntos para libertad y justicia al campo mexicano" (Nov. 14, 1991) (presentation at the Official Residence at Los Pinos) at 3.

181. *Ibid.*

182. Art. 12 of the "Ley Agraria."

183. Arts. 63 and 71 of the "Ley Agraria."

184. Arts. 63 and 72 of the "Ley Agraria."

185. Art. 84 of the "Ley Agraria."

186. Art. 150 of the "Ley Agraria."

187. Art. 150 et seq. of the "Ley Agraria." The text of the internal regulation of the National Agrarian Registry is found in the *Diario Oficial* of August 11, 1992, no. 920811.

188. Arts. 163-200 of the "Ley Agraria."

189. Damian Fraser, "Salinas Prepares to Do Battle with Old Allies," *Fin. Times* (Nov. 8, 1991).

190. David Clark Scott, "Mexican Agricultural Reforms Set Stage for a New Revolution," *Christ. Science Monitor* (Nov. 21, 1991).
191. Daniel James, "Salinas Reforms Agrarian Reform," *Wash. Times* (Dec. 4, 1991).
192. Memorandum from Joseph R. Thome, University of Wisconsin Law School, to John Bruce, Land Tenure Center et al., dated August 24, 1992.
193. "Salinas Promises Cattle Ranchers Protection under NAFTA," *Notimex Mexican News Serv.* (May 21, 1992); "Mexico Frees its Farms, Too," *The Econ.* (Nov. 16, 1991) at 49.
194. Damian Fraser, "Salinas Prepares to Do Battle with Old Allies," *Fin. Times* (Nov. 8, 1991).
195. Art. 126 of the "Ley Agraria."
196. Para. I of Art. 126 of the "Ley Agraria."
197. Art. 129 of the "Ley Agraria."
198. Carlos Salinas de Gortari, "Diez puntos para libertad y justicia al campo mexicano" (Nov. 14, 1991) (presentation at the Official Residence at Los Pinos) at 5.
199. Alejandro Junco, "The Birth of New Markets," *Wall St. J.* (Sept. 22, 1992) (advertisement).
200. "Mexico Increases Farm Loans in Anticipation of Private Investment," 1 *US-Mexico Free Trade Rep.* (No. 22, May 4, 1992) at 2; Dudley Althaus, "Mexico Woos Seed Money Back to Farm," *Business Sect.* (Nov. 24, 1991) at 1; Henry Tricks, "Mexico Moves to Put Farming Back in Business," *Reuter Bus. Rep.* (Dec. 26, 1991); "Pepsico Continues to Grow in Mexico," *Notimex Mex. News Serv.* (Feb. 18, 1992).
201. Memorandum from Joseph R. Thome, University of Wisconsin Law School, to John Bruce, Land Tenure Center et al., dated August 24, 1992, noting comments made by Arturo Warman, Director to the *Procuraduría Agraria*, at the Presidential Palace, Mexico City, July 27, 1992.
202. *Ibid.* at 2.
203. Damian Fraser, "Mexican Farm Laws Face Radical Reform; Millions of Farmers Will Win Right to Own Private Property," *Fin. Times* (Feb. 11, 1992).
204. Wayne A. Cornelius, "The Politics and Economies of Reforming the *Ejido* Sector in Mexico: An Overview and Research Agenda," 23 *LASA Forum* No. 3 (Fall 1992) 3, 5.
205. *Ibid.*
206. Bureau of National Affairs, "General Developments: Mexico," *Int'l Trade Rep.* (Nov. 13, 1991).
207. Art. 87 of the "Ley Agraria."

208. Art. 88 of the "Ley Agraria."
209. Carlos Salinas de Gortari, "Diez puntos para libertad y justicia al campo mexicano" (Nov. 14, 1991) (presentation at the Official Residence at Los Pinos) at 2.
210. Víctor Manuel Toledo, "Ecological Objections to the Reforms to Article 27," *The Other Side of Mexico* (No. 24, Jan.-Feb. 1992) at 7.
211. *Ibid.* at 7-8.
212. Christopher Moscarella, "Environmental Issues Omitted from Agrarian Reform," *Notimex Mexican News Serv.* (Feb. 24, 1992).
213. For an overview discussion, see Randy Stringer, "Honduras: Toward Conflict and Agrarian Reform," in *Searching for Agrarian Reform in Latin America*, ed. William C. Thiesenhusen (1989) at 358 et seq.
214. Mario Nufio Gamero (Minister of Natural Resources), "El nuevo programa para la modernización y el desarrollo del sector agrícola nacional" (Fall 1991) at 1; Roger Norton, "Cronología del anteproyecto de Ley para la Modernización y el Desarrollo del Sector Agrícola" (Nov. 29, 1991) at 1.
215. Secretaría de Recursos Naturales, "Una nueva política de la tenencia de la tierra: hacia la dinamización de toda la agricultura hondureña (sinopsis)" (May 1991) at 1.
216. "Centrales campesinas dan luz verde a la Ley de Modernización Agrícola," in *El Herald* (Dec. 17, 1991).
217. Art. 34 of the "Ley de Reforma Agraria" (Dec. 30, 1974) [Diario Oficial "La Gaceta" No. 21-482, Jan. 8, 1975, as amended by Art. 50 of Decree 31-92, "Ley para la Modernización y el Desarrollo del Sector Agrícola" (March 5, 1992) (Diario Oficial "La Gaceta," April 6, 1992)].
218. Art. 25 of the "Ley de Reforma Agraria" (Dec. 30, 1974) (Diario Oficial "La Gaceta" No. 21-482, Jan. 8, 1975).
219. Art. 39 of the "Ley de Reforma Agraria" (Dec. 30, 1974) [Diario Oficial "La Gaceta" No. 21-482, Jan. 8, 1975, as amended by Art. 50 of Decree 31-92, "Ley para la Modernización y el Desarrollo del Sector Agrícola" (March 5, 1992) (Diario Oficial "La Gaceta," April 6, 1992)].
220. Art. 54 of Decree 31-92, "Ley para la Modernización y el Desarrollo del Sector Agrícola" (March 5, 1992) (Diario Oficial "La Gaceta," April 6, 1992).
221. "Latin America: 76 Million Poor in Rural Areas, IFAD Says," *Inter-Press Serv.* (Nov. 23, 1992).
222. Art. 89 of the "Ley de Reforma Agraria" (Dec. 30, 1974) [Diario Oficial "La Gaceta" No. 21-482, Jan. 8, 1975, as amended by Art. 65 of Decree 31-92, "Ley para la Modernización y el Desarrollo del Sector Agrícola" (March 5, 1992) (Diario Oficial "La Gaceta," April 6, 1992)].

223. The statute is drafted in a contradictory fashion at this point. It clearly says that beneficiaries receive "dominio pleno" (fee-simple absolute), but in the next sentence, it imposes a restriction. See Art. 93 of the "Ley de Reforma Agraria" (Dec. 30, 1974) [Diario Oficial "La Gaceta" No. 21-482, Jan. 8, 1975, as amended by Art. 65 of Decree 31-92, "Ley para la Modernización y el Desarrollo del Sector Agrícola" (March 5, 1992) (Diario Oficial "La Gaceta," April 6, 1992)]. In effect, what results is a fee-simple conditional estate.

224. Art. 82(a) of the "Ley de Reforma Agraria" (Dec. 30, 1974) [Diario Oficial "La Gaceta" No. 21-482, Jan. 8, 1975, as amended by Art. 64 of Decree 31-92, "Ley para la Modernización y el Desarrollo del Sector Agrícola" (March 5, 1992) (Diario Oficial "La Gaceta," April 6, 1992)].

225. Art. 84 of the "Ley de Reforma Agraria" (Dec. 30, 1974) [Diario Oficial "La Gaceta" No. 21-482, Jan. 8, 1975, as amended by Art. 64 of Decree 31-92, "Ley para la Modernización y el Desarrollo del Sector Agrícola" (March 5, 1992) (Diario Oficial "La Gaceta," April 6, 1992)].

226. Art. 15, para. 2 of Decree 31-92, "Ley para la Modernización y el Desarrollo del Sector Agrícola" (March 5, 1992) (Diario Oficial "La Gaceta," April 6, 1992).

227. Meeting with Ricardo Arias, APAH Project (June 16, 1992, Tegucigalpa).

228. Secretaría de Recursos Naturales, "Una nueva política de la tenencia de la tierra: hacia la dinamización de toda la agricultura hondureña" (Sept. 9, 1991) at 55.

229. The main group opposed to the legislation is the *Consejo Coordinador de Organizaciones Campesinas de Honduras* (COCOH).

230. "Agrarian Reform Overtaken by Modernization," 19 *Cent. Am. Rep.* (No. 3, Jan. 31, 1992) at 23, 24.

231. *Ibid.*

232. "Despite Protests, New Law Is Passed; End to Agrarian Reform & Subsidized Credit," *Lat. Am. Weekly Rep.* (March 19, 1992) at 4.

233. Indeed, while the Agrarian Reform Law has benefited 400,000 families, it still has left 200,000 peasant families landless. See *ibid.*

234. "Army Ultimatum to Peasant Squatters; Major Confrontation Arises from New Agrarian Law," *Lat. Am. Weekly Rep.* (June 11, 1992) 9.

235. "Agrarian Reform Overtaken by Modernization," 19 *Cent. Am. Rep.* (No. 3, Jan. 31, 1992) at 23, 24. Roger Norton, "Aspectos a favor de los beneficiarios de la reforma agraria" (Nov. 28, 1991). Actually, Decree 129-91 of Oct. 31, 1991 (L.G., Jan. 25, 1992-920125), amended Arts. 79(a) and 84 of the Agrarian Reform Law to recognize that women may gain title to property. Executive Decree 12-92 of Jan. 27, 1992 (L.G., March 7, 1992-920307), created the *Comité de Integración de la Mujer a la Reforma Agraria*, a committee with a two-year life span.

236. Comments by J. David Stanfield in *Workshop Proceedings for Gender and Natural Resources Tenure Workshop*, by Nancy Sheehan (1992) at 24.

237. Ibid.
238. Ibid.
239. Candy Gourlay, "Development: 'Invisible Women' Bear Brunt of Poverty," *Inter-Press Serv.* (Nov. 23, 1992).
240. "Despite Protests, New Law Is Passed; End to Agrarian Reform & Subsidized Credit," *Lat. Am. Weekly Rep.* (March 19, 1992) at 4.
241. Presentation by Prof. John Strasma, "Land Issues and Land Tax Reform in Central America" (at the Agency for International Development, Nov. 13, 1992).
242. "Despite Protests, New Law Is Passed; End to Agrarian Reform & Subsidized Credit," *Lat. Am. Weekly Rep.* (March 19, 1992) at 4.
243. "Agrarian Reform Overtaken by Modernization," *19 Cent. Am. Rep.* (No. 3, Jan. 31, 1992) at 23, 24.
244. Ibid.
245. Lisa Swenarski, "Hondurans Stake their Claim," *Christ. Science Monitor* (Dec. 28, 1990).
246. Roger D. Norton, "The Law for Agricultural Modernization and Development" (Nov. 18, 1991) (photocopy) at 2-3.
247. "New Law Annuls Agrarian Reform," *19 Cent. Am. Rep.* (No. 9, Mar. 13, 1992) at 70.
248. Ibid.
249. Art. 73 of Decree 31-92, "Ley para la Modernización y el Desarrollo del Sector Agrícola" (March 5, 1992) (Diario Oficial "La Gaceta," April 6, 1992).
250. Roger D. Norton, "The Law for Agricultural Modernization and Development" (Nov. 18, 1991) (photocopy) at 5.
251. Roger D. Norton, "The Law for Agricultural Modernization and Development" (Nov. 18, 1991) (photocopy) at 5; Mario Nufio Gamero (Minister of Natural Resources), "El nuevo programa para la modernización y el desarrollo del sector agrícola nacional" (Fall 1991) at 8.
252. Mario Nufio Gamero (Minister of Natural Resources), "El nuevo programa para la modernización y el desarrollo del sector agrícola nacional" (Fall 1991) at 8.
253. Roger D. Norton, "The Law for Agricultural Modernization and Development" (Nov. 18, 1991) (photocopy) at 5; Secretaría de Recursos Naturales, "Proyecto de Ley para la Modernización y el Desarrollo del Sector Agrícola: documentos de apoyo" (Sept. 9, 1991) at 23.
254. Art. 51(b) of Decree 31-92, "Ley para la Modernización y el Desarrollo del Sector Agrícola" (March 5, 1992) (Diario Oficial "La Gaceta," April 6, 1992).

255. Second para. of Art. 51(b) of Decree 31-92, "Ley para la Modernización y el Desarrollo del Sector Agrícola" (March 5, 1992) (Diario Oficial "La Gaceta," April 6, 1992).

256. Previously, trees were cut to avoid expropriation since forests were considered vacant lands. INA required that 90 percent of the land be covered in permanent crops. None of the regulations or procedures addressed land suitability. See George Johnston, José Flores Rodas, Magdalena Garcia U., Ernesto Bondy, Catherine Castaneda, and Wilberto Aquilar, *Honduras Natural Resource Policy Inventory* (vol. 1) (May 1990) at 5.

257. John Bruce, *The Variety of Reform: A Review of Recent Experience with Land Reform and the Reform of Land Tenure, with Particular Reference to the African Experience* (Sept. 1989) at 18.

258. See, for example, John A. Humbach, "Law and a New Land Ethic," *J. of the Land Trust Alliance* (Fall 1990) at 13-15, 24.

259. John Bruce, *The Variety of Reform: A Review of Recent Experience with Land Reform and the Reform of Land Tenure, with Particular Reference to the African Experience* (Sept. 1989) at 19.

260. *Ibid.*

261. *Ibid.*, at 22.

262. Alaka Wali and Shelton Davis (Environment Division, Latin America and Caribbean Region, The World Bank), *Land Regularization in Special Ameriindian Components of Bank-Funded Projects in the LAC Region* (Washington, 1991) at ii.

263. *Ibid.*, at 4.

264. *Ibid.*, at 5.

265. *Ibid.*

266. Roger Plant, "Land Rights for Indigenous and Tribal Peoples in Developing Countries" (1992) at 1-2.

267. *Ibid.*, at 1.

268. Ecuador is moving away from the latifundio via the market. See Carlos Camacho, *Evaluación del Proceso de Cambio en la Tenencia de la Tierra en la Sierra Norte y Central (1964-1991)* (Quito, 1991).

269. Joy K. Green, *Evaluating the Impact of Consolidation of Holdings, Individualization of Tenure, and Registration of Title: Lessons from Kenya* (Feb. 1987) at 7.

270. One study found that in Zimbabwe, women were denied access to credit because they lacked control over assets. See Ruvimbo Chimedza, *Savings Clubs: The Mobilization of Rural Finances in Zimbabwe* (prepared for the International Labour Organization) (1984).

271. For a comprehensive review, see Eric B. Shearer, Susana Lastarria-Cornhiel, and Dina Mesbah, *The Reform of Rural Land Markets in Latin America and the Caribbean: Research, Theory and Policy Implications* (April 1991).

272. Michael Carter and Dina Mesbah, "Economic Theory of Land Markets and Its Implications for the Land Access of the Rural Poor" (June 1990).

273. For the role of land banks, see Randy Stringer, *Farmland Transfers and the Role of Land Banks in Latin America* (April 1989); for the role of titling, see J. David Stanfield, "Rural Land Market Implications of Titling and Registration Programs in the Latin America and Caribbean Region" (1991).

274. For an overview of the FUNDACEN Project in Guatemala, see Elizabeth G. Dunn, *The FUNDACEN Experience: Factors for Success and Failure in a Guatemalan Land Purchase-Sale Program* (May 1992).

275. John Strasma, "Making Land Banks Viable: Two Successful Approaches to Collecting Loans Made to Small Farmers in Central America and the Caribbean" (1990). New land bank programs have begun in Panama (Gaceta Oficial, August 5, 1991-910805) and Costa Rica (L.G., February 5, 1991-910205; L.G., August 8, 1991-910808).

276. John Bruce, *The Variety of Reform: A Review of Recent Experience with Land Reform and the Reform of Land Tenure, with Particular Reference to the African Experience* (Sept. 1989) at 19.

277. Ibid.

278. Ibid.

279. William C. Thiesenhusen, "Implications of the Rural Land Tenure System for the Environmental Debate: Three Scenarios" (March 1991) at 21-23. For Haiti, see Peter C. Bloch et al., *Land Tenure Issues in Rural Haiti* (April 1988).

280. John W. Bruce and Louise Fortmann, *Agroforestry: Proprietary Dimensions* (San Francisco, 1989). For the African case regarding forestry, fuelwood, and resource conservation projects, see John W. Bruce, *Land Tenure Issues in Project Design and Strategies for Agricultural Development in sub-Saharan Africa* (Madison, 1985) at xix.

281. Agriculture Policy Analysis Project, Phase II, "Policy Taxonomy and Analysis of Policies Affecting Natural Resources and the Environment" (project paper presented to the Agency for International Development) (Oct. 1992) at 55 et seq. For Honduras, see Gerald Murray, *Mountain Peasants of Honduras: Guidelines for the Reordering of Smallholding Adaptation to the Pine Forest* (AID, 1981).

282. For an overview discussion, see Agriculture Policy Analysis Project, Phase II, "A Policy Taxonomy and Analysis of Policies Affecting Natural Resources and the Environment" (project paper presented to the Agency for International Development) (Oct. 1992) at 55 et seq.

283. George Johnston, Hilary Lorraine, Tom Wittenberg, and Greg Michaels (Regional Environmental and Natural Resources Project of the Regional Office for Central American Programs, US Agency for International Development), "The Green Book" (draft, May 1992) at 1-3-7 et seq.; see also Theresa Bradley, Thomas Divney, Marcelino Losilla Penon, Dennis McCaffrey, Francisco Rodriguez Vega, and Joseph Tosi, *Costa Rica Natural Resource Policy Inventory* (vol. 3) (Oct. 1990) at A-6.

284. For an overview discussion on the importance of land markets to natural resource management, see Agriculture Policy Analysis Project, Phase II, "A Policy Taxonomy and Analysis of Policies Affecting Natural Resources and the Environment" (project paper presented to the Agency for International Development) (Oct. 1992) at 55 et seq.

285. George Johnston, Hilary Lorraine, Tom Wittenberg, and Greg Michaels (Regional Environmental and Natural Resources Project of the Regional Office for Central American Programs, US Agency for International Development), "The Green Book" (draft, May 1992) at 1-3-7 et seq.; George Johnston, José Flores Rodas, Magdalena Garcia U., Ernesto Bondy, Catherine Castaneda, and Wilberto Aquilar, *Honduras Natural Resource Policy Inventory* (vol. 1) (May 1990) at 5.

286. In Costa Rica, the government has sometimes placed beneficiaries on land unsuitable for agriculture. See Theresa Bradley, Thomas Divney, Marcelino Losilla Penon, Dennis McCaffrey, Francisco Rodriguez Vega, and Joseph Tosi, *Costa Rica Natural Resource Policy Inventory* (vol. 3) (Oct. 1990) at A-6.

287. John Bruce, *Land Tenure Issues in Project Design and Strategies for Agricultural Development in sub-Saharan Africa* (Madison, 1985) at ix. This observation can be directly applied to the Haitian case.

288. George Johnston, José Flores Rodas, Magdalena Garcia U., Ernesto Bondy, Catherine Castaneda, and Wilberto Aquilar, *Honduras Natural Resource Policy Inventory* (vol. 1) (May 1990) at 5.

289. Ibid.

290. John D. Strasma and Rafael Celis, "Land Taxation, the Poor, and Sustainable Development," in *Poverty, Natural Resources, and Public Policy in Central America*, by Sheldon Annis and contributors (1992) at 143, 144.

291. Randy Stringer argues convincingly that establishing a land-financing system in Latin American countries may represent a viable institutional mechanism to assist some landless in overcoming difficulties caused by land market imperfections. See Randy Stringer, *Farmland Transfers and the Role of Land Banks in Latin America* (April 1989) at 11; Randy Stringer, "A Profile of Land Markets in Honduras" (April 1989).