

al term agreements for *ejidal* land now may extend up to thirty years.<sup>228</sup> In order for the *ejidal* group to obtain credit by effectively mortgaging the land, it may authorize a usufruct in favor of a commercial institution.<sup>229</sup> Individual landowners may also authorize a usufruct with their own property.<sup>230</sup> In the case of breach of a guaranteed obligation, the creditor may foreclose on the property.<sup>231</sup> At the conclusion of the usufructary term, the property appropriately reverts to either the *ejido* or the individual.<sup>232</sup>

No individual within an *ejido* can hold more than five percent of the total *ejidal* property.<sup>233</sup> The state is committed to promoting activities which protect community life, facilitate free development, and improve conditions.<sup>234</sup> Finally, self-management is encouraged, subject to imposed limits, to guard against fraud or dispossession.<sup>235</sup>

*Latifundios* are still illegal under the Mexican Constitution.<sup>236</sup> The new legislation covers inheritance of rural property rights.<sup>237</sup> In order to avoid the formation of *minifundios*, the law requires that land pass to a single beneficiary.<sup>238</sup> There is a three-month survivorship requirement.<sup>239</sup> If the *ejidal* member dies without a will or any surviving heirs, the property now passes to the *ejido*, rather than to the state.<sup>240</sup>

*Ejidal* rights can be extinguished in the following manner: (1) the land may be transferred to another person; (2) the *avecinado* may

<sup>228</sup> *Id.* art. 45.

<sup>229</sup> *Id.* art. 46.

<sup>230</sup> *See id.*

<sup>231</sup> *See* Ley Agraria, art. 46 D.O. 920811 (1991) (Mex.).

<sup>232</sup> *See id.*

<sup>233</sup> *See* MEX. CONST. art. 27; Ley Agraria, art. 47 D.O. 920811 (1991) (Mex.).

<sup>234</sup> *See* Ley Agraria, art. 7 D.O. 920811 (1991) (Mex.).

<sup>235</sup> *See id.* art. 14.

<sup>236</sup> MEX. CONST. art. 27. *Latifundios* are land holdings owned by an individual that exceed the limits of a small property. *See* Ley Agraria, art. 115 D.O. 920811 (1991) (Mex.). Small property includes agricultural land encompassing up to one hundred hectares. *See id.* arts. 120-33. Excluded from this category are: cotton farms up to 150 hectares; up to 300 hectares of land used for bananas, sugarcane, coffee, henequen, rubber, palm, vine, olives, quinine, vanilla, cacao, agave, prickly pear, or fruit trees, and up to 800 hectares of commercial forestland. *See id.* arts. 117, 119. Similarly, limits on property used for cattle depend on the number of livestock and other variables. *See* Ley Agraria, arts. 120-33 D.O. 920811 (1991) (Mex.).

<sup>237</sup> *See* Ley Agraria, art. 17 D.O. 920811 (1991) (Mex.) (discussing wills); *id.* art. 18 (discussing intestacy). Article 18 establishes the following priority order among survivors: (1) the spouse, (2) the concubine, (3) one of the children, (4) one of the other relatives, and (5) any other economic dependent.

<sup>238</sup> *See* Ley Agraria, art. 18 D.O. 920811 (1991) (Mex.).

<sup>239</sup> *See id.*

<sup>240</sup> *See id.* art. 19.

renounce his rights, in which case the land passes to the *ejido*; or, (3) the land may be lost on account of adverse possession.<sup>241</sup> *Ejidal* land dedicated to housing may not be mortgaged, transferred, or sold, nor can the land be lost on account of possession.<sup>242</sup> This rule does not apply, however, to the individual members' housing lots, which are fee-simple properties.<sup>243</sup> In general, *ejidal* common land may not be sold, mortgaged, transferred, or lost because of adverse possession, unless there is approval by both the assembly and the Special Attorney General for Agriculture.<sup>244</sup>

In order to promote productivity and development, *ejidos* now may form corporations, partnerships, unions, or associations.<sup>245</sup> *Ejidal* members now may obtain certificates of private property ownership.<sup>246</sup> These certificates enable the *ejidatarios*, without authorization from the assembly, to either use, rent, or sharecrop the land.<sup>247</sup> *Ejidatarios* may also sell their interest to other members of the same *ejido*, provided that neither the wife nor the children of the *ejidatarios* challenge the sale.<sup>248</sup>

Once properties have been divided and marked, the assembly may give members fee-simple ownership (*dominio pleno*).<sup>249</sup> Once fee-simple ownership is assigned, members may request a registered title from the local public registry.<sup>250</sup> This grant of a fee-simple interest for a single piece of property does not change the status or organizational structure of the entire *ejidal* community.<sup>251</sup> Similarly, if a member sells his land to a non-member, the seller retains his member status with the *ejidal* group, as long as the member still owns at least one other property within the *ejido*.<sup>252</sup>

New reforms to Mexico's *ejido* system also included the appointment of an Attorney General for Agriculture office which functions as an alternative dispute resolution mechanism.<sup>253</sup> This office also

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<sup>241</sup> *Id.* art. 20. The period for adverse possession in good faith is five years; if the occupation is in bad faith, the period is 10 years. *Id.* art. 48.

<sup>242</sup> Ley Agraria, art. 64 D.O. 920811 (1991) (Mex.).

<sup>243</sup> *Id.* arts. 64, 68.

<sup>244</sup> *Id.* art. 73 *et seq.*

<sup>245</sup> *Id.* art. 50.

<sup>246</sup> *Id.* arts. 56, 78.

<sup>247</sup> Ley Agraria, art. 79 D.O. 920811 (1991) (Mex.).

<sup>248</sup> *Id.* art. 80.

<sup>249</sup> *Id.* art. 81.

<sup>250</sup> *Id.* art. 82.

<sup>251</sup> *See id.* art. 83.

<sup>252</sup> Ley Agraria, art. 83 D.O. 920811 (1991) (Mex.).

<sup>253</sup> Ley Agraria, art. 134 D.O. 920811 (1991) (Mex.); *see* Thome Memorandum, *supra* note 211. The duties of the Attorney General include overseeing dispute resolution involving

has elements of a national, rural legal services program because it offers legal assistance to poor rural populations.<sup>254</sup>

### C. Implementation and Impact

#### 1. The Historically Disadvantaged

Historically in Mexico, land has caused controversies such as protest marches, allegations of abuse, and violent conflicts.<sup>255</sup> Thus, by proposing the most sweeping agricultural reforms since the Mexican Revolution, then-President Salinas challenged the country's deepest sensitivities.<sup>256</sup> Salinas received widespread support for his reform proposal from many important *campesino* groups.<sup>257</sup> Former presidential candidate Cuauhtémoc Cárdenas, however, has been critical of the new measures.<sup>258</sup>

Under prior law, title to the *ejido* belonged to the state, with community *ejidatarios* possessing only usufructary-like rights.<sup>259</sup> Under the new legislation, however, the *ejido* will receive title.<sup>260</sup> Once authorized by the *ejido* assembly, each *ejidatario* will receive a *derecho ejidal*, or *ejidal* right.<sup>261</sup> This right may be converted into a full freehold title (*dominio pleno*) if the *ejido* assembly decides, by a

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agricultural and *ejidal* lands. *Id.* In addition to the main Mexico City office, delegations throughout the country ensure general access to agrarian justice. *See* Ley Agraria, art. 137 G.O. 920811 (1991) (Mex.). Although the law specifies certain required credentials, the Attorney General need not speak Maya or be a licensed attorney. *See id.* art. 140. The Assistant Attorneys General, however, must be lawyers with at least two years of experience. *Id.* art. 141. The Attorney General and the Assistant Attorneys General are appointed by the President. *Id.* arts. 142-47.

<sup>254</sup> *See* Thome Memorandum, *supra* note 211 (noting comments made by Arturo Warman, Director to the *Procuraduría Agraria*, at the Presidential Palace in Mexico City on July 27, 1992).

<sup>255</sup> *See, e.g.*, Mario de Cautin, *Mexico: Farmworkers to March on Capital*, INTER PRESS SERV., Apr. 8, 1985, available in LEXIS, News Library, Inpres File; John Hurst, *Baja's Mixtecs: Life Amidst Squalor*, L.A. TIMES, June 29, 1986, at A1.

<sup>256</sup> *See* David Clark Scott, *Mexican Agricultural Reforms Set Stage for a New Revolution*, CHRISTIAN SCI. MONITOR, Nov. 21, 1991, at 1.

<sup>257</sup> *Manifiesto Campesino*, JORNADA (Mexico City), Dec. 2, 1991, at 26-27.

<sup>258</sup> Cárdenas fears that commercial land markets created by the reforms will lead to a reconsolidation of landholdings, greater poverty in the countryside, and eventual social explosion. *See* Cuauhtémoc Cárdenas, *En Defensa de la Constitución*, JORNADA (Mexico City), Feb. 7, 1992, at 30-31; *Mexico: Agriculture & Politics*, LATIN AM. WKLY. REP., Nov. 21, 1991, available in LEXIS, News Library, LAN File.

<sup>259</sup> *See* Thome Memorandum, *supra* note 211, at 7.

<sup>260</sup> *See id.*

<sup>261</sup> *See id.*

two-thirds majority, that all *ejido* members may convert their right.<sup>262</sup> This conversion will most likely occur in urban areas, where property values have greatly increased.

The new laws allow the *ejidal* members to decide for themselves how to manage and administer their land.<sup>263</sup> Similarly, the titling process under the new legislation is voluntary.<sup>264</sup> Arguably, therefore, the law transfers political power in the countryside from the executive to the individual.<sup>265</sup>

The law distinguishes between common and parcelized areas of an *ejido*.<sup>266</sup> For example, the new law does not permit common areas to be the subject of commercial transactions.<sup>267</sup> Furthermore, the *ejido* group determines communal property uses while individuals decide personal property uses.<sup>268</sup> The law also recognizes that many people living on the *ejido* are not *ejidatarios*, but rather descendants of *ejidatarios* and *avecindados*.<sup>269</sup> Although these individuals often rent and work on the *ejido*, they did not have, under previous law, access rights to commons or housing and usually did not participate in decision-making.<sup>270</sup> Conversely, the new law allows rental by non-*ejidatarios* on *ejidos* and participation in decision-making.<sup>271</sup>

Additionally, women are recognized as both *ejidal* participants and owners.<sup>272</sup> *Ejidal* assemblies may give women, for their protection and development, special rights to an "industrial farm unit" within the housing area of the *ejido*.<sup>273</sup>

After conversion to a fee-simple interest, the first sale of an *ejidal* lot generally can be vetoed by family members, persons who have worked on the land for at least a year, other *ejidatarios* and *avec-*

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<sup>262</sup> See *id.*

<sup>263</sup> See *Nueva Legislación Agraria*, GRACETA DE SOLIDARIDAD (Mexico City), Apr. 1992, at 9; Salinas Address, *supra* note 219.

<sup>264</sup> See Thome Memorandum, *supra* note 211, at 7.

<sup>265</sup> See *id.* at 6. The *Procuraduría General* will facilitate implementation of the new laws and promote understanding in the communities. It is difficult to predict, however, whether the *Procuraduría* will simply inform communities of their options or exert influence over their decisions.

<sup>266</sup> See Salinas Address, *supra* note 219.

<sup>267</sup> See *id.*

<sup>268</sup> See *id.*

<sup>269</sup> See *id.*

<sup>270</sup> See Salinas Address, *supra* note 219.

<sup>271</sup> See *id.*

<sup>272</sup> See *Ley Agraria*, art. 12 D.O. 920811 (1991) (Mex.).

<sup>273</sup> See *id.* arts. 63, 71. The law also allows the *ejidal* assemblies to grant children land within the housing area dedicated for their special use. See *id.* arts. 63, 72.

*nados*, and the *ejidal* group.<sup>274</sup> Although the previous law did not require that sales be publicly registered, Mexican law did not prejudice third parties who had no notice of the transaction.<sup>275</sup>

The new laws, however, provide for registry formalities<sup>276</sup> and informal agrarian dispute resolution.<sup>277</sup> Therefore, the reforms provide greater and more efficient access to justice for the historically disadvantaged.

The new legislation was intended to drastically erode the established power base of the *Partido Revolucionario Institucional* (PRI), which is comprised of the traditional *ejidal* presidents and local *caciques*.<sup>278</sup> It is anticipated that the PRI will lose influence over the agrarian bureaucracy and *campesino* organizations which previously helped deliver the vote.<sup>279</sup>

## 2. Trade and Investment

The most important elements of then-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, are the changes in tenure and titling included in Article 27 of the Constitution and the provisions of the North America Free Trade Agreement (NAFTA).<sup>280</sup> Unlike NAFTA, however, Salinas could have implemented the Constitutional changes without the coordination of foreign governments.<sup>281</sup> Salinas single-handedly opened up the countryside to foreign investment and corporate ownership for the first time in seventy years.<sup>282</sup> Salinas stated that his purpose was to transform Mexico into a more efficient and modern country.<sup>283</sup> Accordingly, Salinas averred that the new law would promote tenure security and therefore increase and sustain investment and credit, generating employment and higher standards of living.<sup>284</sup>

<sup>274</sup> See *id.* art. 150. This veto must be made within 30 days of the notice of sale. *Id.* art. 84.

<sup>275</sup> Ley Agraria, art. 150 D.O. 920811 (1991) (Mex.).

<sup>276</sup> See *id.* arts. 148-56.

<sup>277</sup> See *id.* arts. 163-200.

<sup>278</sup> See Damian Fraser, *Salinas Prepares to Do Battle with Old Allies*, FIN. TIMES, Nov. 8, 1991, available in LEXIS, News Library, Fintme File [hereinafter Fraser, *Salinas Prepares*].

<sup>279</sup> See Scott, *supra* note 256.

<sup>280</sup> Daniel James, *Salinas Reforms Agrarian Reform*, WASH. TIMES, Dec. 4, 1991, at F2.

<sup>281</sup> See Thome Memorandum, *supra* note 211, at 2.

<sup>282</sup> See *Mexico Frees Its Farms, Too*, Economist, Nov. 16, 1991, at 49.

<sup>283</sup> See Fraser, *Salinas Prepares*, *supra* note 278.

<sup>284</sup> Salinas Address, *supra* note 219.

As a direct result of the amendment to Article 27, the Mexican Department of Agriculture and Water was able to enlist 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.<sup>285</sup> This market is to be modeled after the Chicago Mercantile Exchange.<sup>286</sup> This amendment may facilitate the conversion of the *ejidos* to private property which may lead to the formation of partnerships with both domestic and foreign investors.<sup>287</sup>

Joint ventures between private investors and *ejidatarios* have sprung up throughout Mexico. One such venture is the \$12 million *Vaquerías* Project with Pepsico, which brought irrigation to 8,750 acres of staple grains.<sup>288</sup> Over 350 producers, including *ejidatarios* and small-scale farmers, have benefitted from this project.<sup>289</sup> Other projects, valued at \$68 million, are currently under way.<sup>290</sup> In addition, the Bank of Mexico has established a US\$5.3 billion fund for the agricultural sector in anticipation of a greater demand for credit.<sup>291</sup>

Large commercial producers, however, may not be interested in acquiring *ejidal* land or participating in joint ventures.<sup>292</sup> For this group, contract farming—where commercial entities purchase produce from small farmers in exchange for seed, technical assistance and fertilizer—may be more desirable.<sup>293</sup> On the other hand, local farmers with medium-sized properties seeking more land may be interested in the availability of *ejidal* property.<sup>294</sup>

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<sup>285</sup> Alejandro Junco, *The Birth of New Markets*, WALL ST. J., Sept. 22, 1992, at B13 (Special Advertising Section).

<sup>286</sup> *Id.*

<sup>287</sup> *See id.*

<sup>288</sup> *See id.*

<sup>289</sup> *See id.*

<sup>290</sup> *See Junco, supra* note 285. Additionally, more than 1,000 joint venture projects between agricultural producers have been contracted. The Ministry of Agriculture reports that 150 joint ventures between private investors and small landowners were scheduled to begin in 1992, doubling the total for 1991. *See id.*

<sup>291</sup> *See Mexico Increases Farm Loans in Anticipation of Private Investment*, 1 U.S.—MEXICO FREE TRADE REP. 2 (May 4, 1992); Henry Tricks, *Mexico Moves to Put Farming Back in Business*, REUTERS BUS. REP., Dec. 26, 1991, available in LEXIS, News Library, Rebus File.

<sup>292</sup> *See Thome Memorandum, supra* note 211, at 8.

<sup>293</sup> *See id.*

<sup>294</sup> *See id.* Some *ejidal* lands may have tremendous economic value because they are located within urban or industrial areas. *See id.* at 2. For example, 50% of Mexico City is *ejidal* land. *See id.* In addition, a large percentage of the land near the U.S. border is also *ejidal*. *See id.* at 8.

By a two-thirds vote, *ejidal* community members may transform the *ejidatarios* into private property holders. *Ejidors* may also form joint ventures with the private sector and use their lands as collateral for loans.<sup>295</sup> Furthermore, private property holders may form joint-stock companies in order to avoid constitutional limits on property size and also to raise money in the capital markets.<sup>296</sup>

As part of the modernization process, Mexico hopes to replace agricultural subsidies to small landholders with investment from the private sector.<sup>297</sup> 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.<sup>298</sup> Luís Téllez, then-Undersecretary of Agriculture, predicted that, as a direct result of increases in productivity due to the new legislation and investment, the proportion of agricultural workers to total workers in Mexico would fall from twenty-six percent to sixteen percent over the next decade.<sup>299</sup>

### 3. The Environment

In most cases, *ejidal* land can be converted from rural to urban.<sup>300</sup> This is particularly important near Mexico City, where a large portion of the land is presently *ejidal* but can also be used for urban housing.<sup>301</sup> The law prohibits this conversion, however, if the land is located in an environmentally-protected zone.<sup>302</sup>

Prior to the changes to Article 27, the administration had the authority to grant forest concession rights on *ejidal* property without

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<sup>295</sup> Damian Fraser, *Mexican Farm Laws Face Radical Reform; Millions of Farmers Will Win Right to Own Private Property*, FIN. TIMES, Feb. 11, 1992, available in LEXIS, News Library, Fintme File [hereinafter Fraser, *Mexican Farm*].

<sup>296</sup> *Id.*

<sup>297</sup> See Cornelius, *supra* note 220, at 5.

<sup>298</sup> *Id.*

<sup>299</sup> See *id.* Commentators have blamed the old agrarian law for Mexico's food problems. Steven Nagourney of Shearson Lehman Brothers notes 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."

See *General Developments: Mexico*, INT'L TRADE REP. (BNA), (Nov. 13, 1991), available in LEXIS, BNA Library, Intrad File.

<sup>300</sup> See Ley Agraria, art. 87 D.O. 920811 (1991) (Mex.).

<sup>301</sup> *Id.*

<sup>302</sup> *Id.* art. 88. The Mexican government has established certain zones where it wishes to preserve or conserve environmental resources. *Id.*

consulting the *ejidatarios* or the assembly.<sup>303</sup> Under the new agrarian law, the *ejidos* may decide for themselves how to best use their lands.<sup>304</sup> Some critics have attacked the new legislation on environmental grounds, arguing that a policy of commercialization of land will promote the profit-making exploitation of agricultural production.<sup>305</sup> This commercialization has been associated with increased agricultural productivity.<sup>306</sup> Traditional concepts of efficiency, however, ignore potential destructive effects on the environment. If sustainable, environmentally-friendly, agricultural production is the goal, then commercialization may not be the most productive method for growing crops. The *ejidal* system seems the more productive method because it maintains an acceptable level of output without allowing irreparable damage to the natural resource base.

Critics argue that the 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 semi-arid areas.<sup>307</sup> These commentators also maintain that the productivity of commercial farming is inflated because it receives soft loans and subsidies from the government, and it over-utilizes energy and water supplies.<sup>308</sup>

There are several reasons why the changes in Mexican legislation are important to the United States. On the one hand, if former President Salinas is correct, Mexico will become a competitive producer of agricultural products in an expanded North American market. Mexico's success in creating domestic employment will directly lower the level of Mexican legal and illegal immigration into the United States, thereby negatively affecting the supply of labor in the American market.<sup>309</sup> On the other hand, if the changes in Mexico fail, large segments of Mexico's rural population may be displaced; urban centers like Mexico City will be expected to absorb

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<sup>303</sup> See Salinas Address, *supra* note 219.

<sup>304</sup> See Victor Manuel Toledo, *Ecological Objections to the Reforms to Article 27*, 24 THE OTHER SIDE OF MEXICO 7 (Jan./Feb. 1992).

<sup>305</sup> See *id.*

<sup>306</sup> See *id.*

<sup>307</sup> See *id.* at 7-8.

<sup>308</sup> See *id.* Another critic, Demetrio Sodi de la Tijera, has attacked the new legislation, arguing that it will drive the poor to cities because when the state cuts its ties with the *campesinos*, these people will have to become economically viable enough to migrate to urban areas, which are environmentally-ill-prepared to absorb them. Christopher Moscarella, *Environmental Issues Omitted from Agrarian Reform*, NOTIMEX MEX. NEWS SERV., Feb. 24, 1992, available in LEXIS, News Library, Notimx File.

<sup>309</sup> Fausto Fernandez Ponte, *Ejido, Inmigración y El Mercado de Mano de Obra en E.U.*, JORNADA (Mexico City), Dec. 2, 1991, at 26-27.



the population surplus; and the United States may face renewed illegal immigration.

#### IV. HONDURAS: DECREE 31-92 (1992)<sup>310</sup>

##### A. Background

The Honduran history of land reform is similar to that of many countries in the hemisphere.<sup>311</sup> The main beneficiaries of the land reform program were large farms which were worked in common.<sup>312</sup> Profits were divided among the members of the group farm.<sup>313</sup>

The original Honduran agrarian reform program did not allow for the unrestricted transfer of land received.<sup>314</sup> New legislation such as "*La Ley para la Modernización y el Desarrollo del Sector Agrícola*," however, which permits the titling and transfer of land held by peasant groups as a result of their participation in the agrarian reform, has been passed.<sup>315</sup>

The new law derived from a 1989 inter-institutional, governmental commission report<sup>316</sup> which examined methods of modernizing the old agrarian reform.<sup>317</sup> The government reviewed the existing legislation, noting problems in equity, efficiency, and sustainability.<sup>318</sup> The draft legislation received the support of President Rafael Callejas and most major *campesino* groups with the exception of the *Central Nacional de Trabajadores del Campo* (CNTC).<sup>319</sup>

<sup>310</sup> *Ley para la Modernización y el Desarrollo del Sector Agrícola*, D.O. 31-92 (1992).

<sup>311</sup> See generally Randy Stringer, *Honduras: Toward Conflict and Agrarian Reform*, in SEARCHING FOR AGRARIAN REFORM IN LATIN AMERICA 358 (William C. Thiesenhusen ed., 1989).

<sup>312</sup> See *id.*

<sup>313</sup> See *id.*

<sup>314</sup> See *Ley de Reforma Agraria*, Decree 170 D.O. (1975) (Hond.).

<sup>315</sup> See *Ley de Reforma Agraria*, art. 41(a) D.O. 21-482 (1975) (Hond.), amended in part by *Ley para la Modernización y el Desarrollo del Sector Agrícola*, art. 65 D.O. 31-92 (1992).

<sup>316</sup> See Roger Norton, *Cronología del Anteproyecto de Ley Para la Modernización y el Desarrollo del Sector Agrícola I* (Nov. 29, 1991) (unpublished manuscript, on file with author) [hereinafter Norton, *Cronología*].

<sup>317</sup> See Mario Nufio Gamero, *El Nuevo Programa para la Modernización y el Desarrollo del Sector Agrícola Nacional I* (Fall 1991) (unpublished manuscript, on file with author).

<sup>318</sup> See Secretaría de Recursos Naturales, *Una Nueva Política de la Tenencia de la Tierra: Hacia la Dinamización de Toda la Agricultura Hondureña I* (May 1991) (unpublished manuscript, on file with author) [hereinafter *Una Nueva Política*].

<sup>319</sup> See *Centrales Campesinas dan luz verde a la Ley de Modernización Agrícola*, *EL HERALDO* (Mexico City), Dec. 17, 1991. Those who view restrictions on the sale or transfer of property as a violation of the new ideals of the free market support the legislation. See Norton, *Cronología*, *supra* note 316, at 1.

## B. Coverage

### 1. Size Limits Remain

A *minifundio* is characterized as a plot of land comprising less than one hectare.<sup>320</sup> A *latifundio* is defined as property one hundred to two thousand hectares in size, depending on location, availability of irrigation, and slope.<sup>321</sup> The President of Honduras, however, through the Office of the Secretary of Natural Resources, may grant exceptions to this maximum size limit.<sup>322</sup>

### 2. Rental

Rental of agrarian reform land is now legally permitted, unless the land has not yet been paid for.<sup>323</sup> There are no limitations on rental of nonagrarian reform land. Sharecropping, however, is not permitted, even under the new law.<sup>324</sup> The International Fund for Agricultural Development (IFAD) reports that fifty-six percent of the land in Honduras is rented under terms often most favorable to landowners.<sup>325</sup>

### 3. Buying and Selling Property and Appropriate Land Use

Under the Honduran land reform, the beneficiaries must pay for the land they receive.<sup>326</sup> The new law establishes a twenty-year term for payment.<sup>327</sup> Until this obligation is settled, the state holds a first mortgage on the land for the amount of the adjudication.<sup>328</sup>

Beneficiaries may inherit, mortgage, or sell the property.<sup>329</sup> Until they discharge their debt, however, beneficiaries can sell their land

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<sup>320</sup> Ley de Reforma Agraria, art. 34 D.O. 21-482 (1975) (Hond.), as amended by Ley para la Modernización y el Desarrollo del Sector Agrícola, art. 50 D.O. 31-92 (1992).

<sup>321</sup> Ley de Reforma Agraria, art. 25 D.O. 21-482 (1975) (Hond.).

<sup>322</sup> Ley de Reforma Agraria, art. 25 D.O. 21-482 (1975) (Hond.), as amended by Ley para la Modernización y el Desarrollo del Sector Agrícola, art. 54 D.O. 31-92 (1992).

<sup>323</sup> See Ley Para la Modernización y el Desarrollo del Sector Agrícola, art. 54 D.O. 31-92 (1992).

<sup>324</sup> *Id.*

<sup>325</sup> *Latin America: 76 Million Poor in Rural Areas, IFAD Says*, INTER PRESS SERV., Nov. 23, 1992, available in LEXIS, News Library, Inpres File.

<sup>326</sup> See Ley de Reforma Agraria, art. 89 D.O. 21-482 (1975) (Hond.), as amended by Ley Para la Modernización y el Desarrollo del Sector Agrícola, art. 65 D.O. 31-92 (1992).

<sup>327</sup> *Id.*

<sup>328</sup> *Id.*

<sup>329</sup> See Ley de Reforma Agraria, art. 93 D.O. 21-482 (1975) (Hond.), as amended by Ley para la Modernización y el Desarrollo del Sector Agrícola, art. 65 D.O. 31-92 (1992).

only to individuals who themselves would qualify for ownership under the agrarian reform legislation.<sup>330</sup> Once the beneficiaries have paid for the land, the property becomes freely transferable.<sup>331</sup> While this solution compromises free marketability and commercialization of title, it does avoid the return of *latifundios*.<sup>332</sup>

As a disincentive for agrarian cooperatives to sell their land, Article 70 of the Modernization Law imposes a tax on sales.<sup>333</sup> If the cooperative sells land exceeding one hundred hectares in size to an entity which is not itself an agrarian reform beneficiary, the sale will be taxed at twenty percent of its value.<sup>334</sup> In addition to discouraging the sale of land by cooperatives, this tax is also designed to prevent a reconsolidation of landholdings.<sup>335</sup> Because the tax is levied on the value of the sale, the law may leave open the possibility of an "official" transaction price for tax evasion purposes.<sup>336</sup>

When a beneficiary dies, any debt outstanding on the property is forgiven.<sup>337</sup> The new law, therefore, combines land access with a form of life insurance, assuring that heirs receive the real estate to which they are entitled free of economic encumbrances.

While prior law required a ten-year period for adverse possession of national and *ejidal* land, the requisite period is now three years, provided the land is occupied and used.<sup>338</sup> The new law is, therefore, much more beneficial to possessors of property.<sup>339</sup>

### C. Implementation and Impact

#### 1. The Historically Disadvantaged

The new legislation strived to promote land access for the historically disadvantaged.<sup>340</sup> Roughly three-quarters of the *campesino* groups

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<sup>330</sup> The language of the statute, at this point, is contradictory. While it explicitly states that beneficiaries receive "*dominio pleno*," or fee-simple absolute, the statute, in the very next sentence, imposes a restriction. See *id.* In effect, the result is a fee-simple conditional estate.

<sup>331</sup> See Ley de Reforma Agraria, D.O. 21-482 (1975) (Hond.), as amended by Ley para la Modernización y el Desarrollo del Sector Agrícola, art. 64 D.O. 31-92 (1992).

<sup>332</sup> *Id.* The law also requires the owner to work the land. *Id.*

<sup>333</sup> Ley para la Modernización y el Desarrollo del Sector Agrícola, art. 70 D.O. 31-92 (1992).

<sup>334</sup> See *id.*

<sup>335</sup> See Norton, Cronología, *supra* note 316, at 1.

<sup>336</sup> See *id.*

<sup>337</sup> Ley de Reforma Agraria, art. 84 D.O. 21-482 (1975) (Hond.), as amended by Ley Para la Modernización y el Desarrollo del Sector Agrícola, art. 64 D.O. 31-92 (1992).

<sup>338</sup> Ley Para la Modernización y el Desarrollo del Sector Agrícola, art. 15 D.O. 31-92 (1992) (Hond.).

<sup>339</sup> Interview with Ricardo Arias, APAH Project, in Tegucigalpa, Honduras (June 16, 1992).

<sup>340</sup> See Una Nueva Política, *supra* note 318, at 55.

participated in the *concertación* and in drafting the legislation.<sup>341</sup> Other *campesino* groups,<sup>342</sup> who had elected not to participate in the *concertación*, and who purportedly represent the majority of workers in rural areas, have opposed the legislation.<sup>343</sup> Other individuals and groups, including the Catholic Church, have also opposed the law.<sup>344</sup>

The new Honduran legislation allows, for the first time, equal access to land for both men and women.<sup>345</sup> In fifty percent of squatter settlement households in Honduras, women are the primary income earners.<sup>346</sup> Only thirty percent of these women, however, received title to the property they occupied.<sup>347</sup> After these findings were released, a publicity campaign was initiated which encouraged women to value their contributions to household duties and reproduction as worthy of land titles.<sup>348</sup> Nonetheless, women comprise only four percent of all agrarian reform beneficiaries.<sup>349</sup>

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<sup>341</sup> See Norton, *Cronología*, *supra* note 316.

<sup>342</sup> The main group opposed to the legislation is the Consejo Coordinador de Organizaciones Campesinas de Honduras (COCOH). See Interview with Dr. J. David Stanfield, Researcher at the University of Wisconsin (Madison) Land Tenure Center (Nov. 18, 1992) [hereinafter Stanfield Interview].

<sup>343</sup> *Agrarian Reform Overtaken by Modernization*, 19 CENT. AM. REP. 23, 24 (Jan. 31, 1992) [hereinafter *Agrarian Reform Overtaken*].

<sup>344</sup> For instance, Juan Ramón Martínez, president of the *Instituto Nacional Agrario* (INA), or National Agrarian Institute, resigned in opposition to the law. See *id.* In addition, two days before the law's enactment, 40,000 peasants protested the bill. See *Despite Protests, New Law Is Passed: End to Agrarian Reform and Subsidized Credit*, LAT. AM. WKLY. REP., Mar. 19, 1992, available in LEXIS, News Library, LAN File [hereinafter *Despite Protests*]. The Roman Catholic Church has also stated that the former agrarian reform was incomplete. Indeed, while the Agrarian Reform Law has benefitted 400,000 families, it still has left 200,000 peasant families without land. See *id.* Although there were initial clashes between peasants and public forces upon enactment, the mood of the country has since calmed considerably. See *Army Ultimatum to Peasant Squatters; Major Confrontation Arises from New Agrarian Law*, LAT. AM. WKLY. REP., June 11, 1992, available in LEXIS, News Library, LAN File.

<sup>345</sup> See *Agrarian Reform Overtaken*, *supra* note 343; Roger Norton, *Aspectos a Favor de los Beneficiarios de la Reforma Agraria* (Nov. 28, 1991) (unpublished manuscript, on file with author) [hereinafter Norton, *Aspectos*]. Actually, Decree 129-91 of Oct. 31, 1991 amended articles 79(a) and 84 of the Agrarian Reform Law to recognize that women may gain title to property. See Decree of Oct. 31, 1991, L.G. 920125 (1992) (Hond.). Executive Decree 12-92 of Jan. 27, 1992, created the *Comité de Integración de la Mujer a la Reforma Agraria*, a committee with a two-year life span. See Executive Decree of Jan. 27, 1992, L.G. 920307 (1992) (Hond.).

<sup>346</sup> See Nancy Sheehan, *Proceedings for Gender and Natural Resources Tenure Workshop 24* (paraphrasing comments made by J. David Stanfield, University of Wisconsin (Madison) Land Tenure Center) (Oct. 1991) (unpublished manuscript, on file with author).

<sup>347</sup> *Id.*

<sup>348</sup> *Id.*

<sup>349</sup> See Candy Gourlay, *Development: "Invisible Women" Bear Brunt of Poverty*, INTER PRESS SERV., Nov. 23, 1992, available in LEXIS, News Library, Inpres File. The new law should address these concerns.

While the new legislation allows for the uninhibited transfer of land, the only remaining incentive to redistribute would be to tax the practice of holding land idle.<sup>350</sup> For a land tax to be effective, however, the nation must have a comprehensive *cadastre*, a mechanism which is not presently in place in Honduras.<sup>351</sup> Because of this deficiency, land market activation thus may be difficult to achieve through this procedure.

In addition, government credit to historically disadvantaged groups has been discontinued.<sup>352</sup> Loans are available only through the private sector, offered at market rates to credit-worthy borrowers.<sup>353</sup> Peasant group advocates have expressed concerns over these matters.<sup>354</sup>

Another concern is consolidation in the land market.<sup>355</sup> Because the new law makes it easier for cooperatives to sell land, it has been utilized by organizations facing pressure to pay off large commercial debts.<sup>356</sup> In 1991, for example, at least ten cooperatives sold land to multinational companies, mainly banana companies like Standard Fruit and Tela Railroad.<sup>357</sup>

To further boost the land market, the Honduran government has announced the formation of a new land bank.<sup>358</sup> Observers hope that this establishment will counter complaints regarding the modernization law and land access for the resource-poor.<sup>359</sup>

The new legislation strips INA of its authority to assist farmers with small plots in obtaining official credit from the *Banco Nacional de Desarrollo Agrícola* (BANADESA), or National Agricultural Development Bank.<sup>360</sup> In the past, INA had helped *campesinos* with loan applications and other documentation for BANADESA.<sup>361</sup> Now, presumably, these farmers must apply directly to BANADESA.

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<sup>350</sup> See *Despite Protests*, *supra* note 344.

<sup>351</sup> See John Strasma, Land Issues and Land Tax Reform in Central America, Address at the Meeting of the Agency for International Development (Nov. 13, 1992) [hereinafter Strasma, AID Address].

<sup>352</sup> See *Despite Protests*, *supra* note 344.

<sup>353</sup> See *id.*

<sup>354</sup> See *id.*

<sup>355</sup> See *New Law Annuls Agrarian Reform*, 19 CENT. AM. REP. 70, Mar. 13, 1992 [hereinafter *New Law Annuls*].

<sup>356</sup> See *id.*

<sup>357</sup> See Stanfield Interview, *supra* note 342.

<sup>358</sup> *Id.*

<sup>359</sup> See *Agrarian Reform Overtaken*, *supra* note 343, at 23-24.

<sup>360</sup> *Id.*

<sup>361</sup> See Stanfield Interview, *supra* note 342.

With regard to indigenous groups, the impending impact of the legislation remains unclear. Because indigenous groups in Honduras have historically used their lands communally, individual ownership previously has been inappropriate.<sup>362</sup>

## 2. Trade and Investment

The new law reduces the threat of expropriation.<sup>363</sup> Although farms exceeding the landholding ceilings and lands abandoned for more than eighteen months—or two years in cases of natural disaster—will still be subject to expropriation, in all other cases, this threat appears less likely.<sup>364</sup> Because landholders may now rent idle land, this land will be brought into production, thus avoiding the risk of expropriation.<sup>365</sup>

By transforming land into a commodity which can be bought and sold to qualified beneficiaries, Honduras is attempting to both prevent a return to *latifundios* and to promote an active land market tailored to the historically disadvantaged.<sup>366</sup> In addition to dealing with land issues, the new legislation also eliminates price controls on agricultural products and privatizes the storage facilities of the *Instituto Hondureña de Mercado Agrícola* (IHMA), or Honduran Agricultural Marketing Institute.<sup>367</sup> Furthermore, the law also eliminates restrictions on foreign investment for timber production.<sup>368</sup>

## 3. The Environment

Although the new legislation allows property to be held with fee-simple interests, property holders cannot freely utilize timber resources.<sup>369</sup> A special provision requires State Forest Administration approval before cutting trees for commercial purposes, whether on public or private land.<sup>370</sup> The structure of this provision is unusual,

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<sup>362</sup> Lisa Swenarski, *Hondurans Stake Their Claim*, CHRISTIAN SCI. MONITOR, Dec. 28, 1990, at 12-13.

<sup>363</sup> See Roger D. Norton, *The Law for Agricultural Modernization and Development* 2-3 (Nov. 18, 1991) (unpublished manuscript, on file with author) [hereinafter Norton, *Modernization and Development*].

<sup>364</sup> *Id.*

<sup>365</sup> See *New Law Annals*, *supra* note 355, at 70.

<sup>366</sup> See Norton, *Modernization and Development*, *supra* note 363.

<sup>367</sup> See Norton, *Cronología*, *supra* note 316.

<sup>368</sup> See *id.*

<sup>369</sup> See *Ley para la Modernización y el Desarrollo del Sector Agrícola*, art. 73 D.O. 31-92 (1992) (Hond.).

<sup>370</sup> *Id.*

however, because owners receive full ownership of forest assets located on their land, provided they voluntarily agree to a forest management plan approved by the government.<sup>371</sup>

In addition, the new legislation eliminates state participation in the processing and marketing of wood and wood products,<sup>372</sup> while, at the same time, dismantling the log export ban.<sup>373</sup> The legislation also provides for a phasing out of export commissions paid to the government and requires that stumpage fees reflect the true cost of reforestation.<sup>374</sup> In general, unused, privately-held land is subject to expropriation under the agrarian reform and may be sold to beneficiaries.<sup>375</sup> Land which remains forested is not necessarily "unused" under the new legislation.<sup>376</sup> The new law, therefore, removes any incentive for deforestation simply to preserve property rights.<sup>377</sup>

## V. COMPARISONS BETWEEN THE FOUR JURISDICTIONS

### A. Coverage

The Appendix contains summaries of what Nicaragua, Peru, Mexico and Honduras have done on each of the major restrictions on property rights.

### B. Implementation and Impact

#### 1. The Historically Disadvantaged

Privatization or individualization of property rights may be the natural evolution of an economy moving toward market-based principles. It also may be the product of an imposed legal change.<sup>378</sup> In either case, land policies attempt to strike a balance between security of private ownership and social needs which may limit that secu-

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<sup>371</sup> See Norton, *Modernization and Development*, *supra* note 363, at 5.

<sup>372</sup> *Id.*; see Nufio, *supra* note 317, at 8.

<sup>373</sup> See Nufio, *supra* note 317, at 8.

<sup>374</sup> See Norton, *Modernization and Development*, *supra* note 363, at 5; Secretaría de Recursos Naturales, *Proyecto de Ley Para la Modernización y el Desarrollo del Sector Agrícola: Documentos de Apoyo* (Sept. 9, 1991) (unpublished manuscript, on file with author).

<sup>375</sup> See *Ley para la Modernización y el Desarrollo del Sector Agrícola*, art. 51(b) D.O. 31-92 (1992) (Hond.).

<sup>376</sup> *Id.*

<sup>377</sup> See *id.* Previously, because forests were considered vacant lands, trees were cut to avoid expropriation. INA required that 90% of the land be covered in permanent crops. None of the regulations or procedures, however, addressed land suitability. See GEORGE JOHNSTON ET AL., *HONDURAS NATURAL RESOURCE POLICY INVENTORY* 5 (1990).

<sup>378</sup> See Bruce, *African Experience*, *supra* note 8.