icy conditions for the private sector. The LAC Bureau also seeks to promote economic diversification, accelerated opportunities for the historically disadvantaged, and sound use of the environment. Liberalization of land law, like that which has occurred in Mexico and Honduras, is designed to end paternalistic, restrictive economic practices. In theory, liberalization of these laws will lead to increased opportunities in the market in terms of income, investment, and employment. The disadvantaged were the primary beneficiaries under the agrarian reform programs of these four countries.

These changes in property law could potentially impact the environment. The LAC Bureau’s strategic guidelines for programming assistance in agriculture and natural resource management emphasize 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 the primary beneficiaries of such reform. Accordingly, 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.


A. Background

After the most recent Nicaraguan presidential election, the outgoing Sandinista government passed legislation that “legalized” informal confiscations and expropriations that took place under prior land reforms before February 25, 1990. A coalition led by the Unión Nacional Opositora (UNO) then took power. The coalition

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85 See id. at 572.
86 See AID Presentation, supra note 81, at 572.
87 See id.
88 See id.
89 See id. at 10.
90 See infra text accompanying notes 378–400.
92 See J. David Stanfield, An Analysis of the Current Situation Regarding Land Tenure in Nicaragua 9 (Oct. 21, 1994) (unpublished manuscript, on file with author) [hereinafter Stanfield, Analysis]; see also Hendrix, supra note 2, at 11.
allowed property to be converted from agrarian reform community-held property to fee-simple private property.93

1. Laws 85 and 86

Laws 85 and 86 allow present occupants to maintain possession of property received under prior land reallocation schemes. Law 85 applies mainly to residences and occasionally requires the occupant to pay, over a twenty-year period at three percent interest, for the unit received.94 The government retains a mortgage on the property to guarantee payment.95 Law 86 applies primarily to vacant lots where possessors wish to build housing.96 While often criticized in the press, these laws remain in force 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 has even referred to the decrees as the *piñata*, drawing an analogy to the children’s game in which an object is destroyed to obtain candy.97 Because of these negative allegations, the decrees have not been well received.

2. Law 88

Law 88 protects the property of agrarian reform property owners and authorizes civil registrars to convert “provisional” titles, those issued under the agrarian reform, to “definitive” titles.98 The law also eliminates restrictions on alienability, setting aside the requirement of government authorization before transfer or sale of agrarian reform land.99 Under Law 88, agricultural land can be freely transferred by ordinary registrars without governmental interference.100

94 See OFFICIAL GAZETTE art. 1, law 85 (Mar. 30, 1990); Hendrix, supra note 2, at 11.
95 See OFFICIAL GAZETTE art. 1, law 85 (Mar. 30, 1990); Hendrix, supra note 2, at 11.
96 See OFFICIAL GAZETTE art. 1, law 86 (Apr. 3, 1990); Hendrix, supra note 2, at 11.
97 See Hendrix, supra note 2, at 11.
98 The Agrarian Reform Law of 1981 allowed the state to assign, hand over, and title land inscribed in favor of the state. Yet, most land was never initially assigned to the state. Consequently, the agrarian reform beneficiaries did not have a document which they could use as collateral for commercial credit. Therefore, the government issued “provisional titles” with basic information while it inscribed land to the state. Then, once the land had been inscribed, the provisional titles could be converted into definitive titles. By the 1990 election, the Sandinista government still had not completed this conversion. See Mireya Molina, Legislación Agraria y su Vigencia Actual 13-14 (July 2, 1992) (unpublished manuscript, on file with author) [hereinafter Molina, Vigencia].
100 Id.
3. Decree Number 35–91

On August 19, 1991, President Violeta Barrios de Chamorro signed a new decree affecting property rights.101 This decree recognized that the concertación, or social pact, was taking place in Nicaragua.102 The decree also created the Oficina de Ordenamiento Territorial (OOT), or Territorial Regulation Office, under the auspices of the Ministry of Finance, for the purpose of normalizing property following existing law.103 The OOT reviewed land acquired under Laws 85 and 86, as well as under the agrarian reform.104 Additionally, OOT, coupled with Decree No. 35–91, functioned as an action to quiet title, on a case-by-case basis, for the entire country. Interestingly, it was also given the power to draft the “territorial regulation receipt,”105 a new document which was broken down into revisions and dispositions.106

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.107 The law, however, did not allow for unrestricted sale or transfer of the land108 and described the ownership interest as merely a “use right.” The law asserted that property belonged to whomever worked the land.109 Rental was also controlled by Sandinista legislation.110 The present law allows for unrestricted transfer of property, and rental agreements are common.

C. Implementation and Impact

1. The Historically Disadvantaged

Beginning in July 1979, Sandinista legislation aimed to support organized labor and campesinos, especially in the area of agrarian

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101 See Decretos del Ejecutivo Sobre la Propiedad, Decree No. 35–91 (1991) (Nicar.).
102 See id. pmb. §§ III, IV.
103 See id. art. 1.
104 See id. art. 2.
105 See id. art. 6.
106 See Decretos del Ejecutivo Sobre la Propiedad, Decree No. 35–91 (1991) (Nicar.).
107 See Hendrix, supra note 2, at 8.
108 Ley de Reforma Agraria, arts. 31–32 (Nicar.) (available at the National Assembly in Managua, Nicaragua).
109 Id. art. 1.
This legislation achieved the most equal land distribution system in Latin America. Nevertheless, it also had a negative impact on the indigenous communities of Nicaragua.

Indigenous areas were further imperiled by the subsequent movement away from Sandinista reforms. The communities of these areas, 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. In the problem of Agro-Industria del Valle de Sebaco, the government proposed to use community property for compensation. The state-held company to be used as compensation was located on indigenous land. To date, however, traditional lands have been inalienable and nontransferable.

Another historically disadvantaged group is women. The Agrarian Reform Law and the Cooperatives Law, or Ley de Cooperativas, from the Sandinista era, recognized the legal equality of women and men. This equality is still recognized.

Despite the changes in agrarian law in Nicaragua, several major obstacles 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 agreements on land ownership and compensation to the owners, how can an indebted nation pay for this? (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 reform. The law itself designated the title

111. See DORNER, supra note 8, at 43-46.
112. J. David Stanfield & Steven E. Hendrix, Ownership Insecurity in Nicaragua, 22 CAP. U. L. REV. 939, 953-54 (1994); see also STANFIELD, supra note 58, at 22-23.
113. J. David Stanfield & Steven E. Hendrix, Ownership Insecurity in Nicaragua, 22 CAP. U. L. REV. 939, 953-54 (1994); see also STANFIELD, supra note 58, at 22-23.
114. J. David Stanfield & Steven E. Hendrix, Ownership Insecurity in Nicaragua, 22 CAP. U. L. REV. 939, 953-54 (1994); see also STANFIELD, supra note 58, at 22-23.
115. J. David Stanfield & Steven E. Hendrix, Ownership Insecurity in Nicaragua, 22 CAP. U. L. REV. 939, 953-54 (1994); see also STANFIELD, supra note 58, at 22-23.
granted under agrarian reform as a use right. As defined in the Civil Code, however, these titles did not strictly conform to the requisites of a use right. Thus, the legislation implicitly changed the existing definition of use right. Further, the agrarian reform legislation also made the formal transfer of land illegal, thus forcing sales into the informal sector and discouraging formal market participation.

A potentially grave problem involves allegations of abuse of power, especially regarding land. Conservatives claim that the Sandinistas took properties under agrarian reform legislation without following the formalities of their own decree, let alone the expropriation law. They also argue that the expropriation law should have been applied because it was neither repealed nor amended; thus, it would appear to govern these cases. Conservatives conclude that the Sandinistas are guilty of "arbitrary confiscation of property."

Until these political and economic matters are resolved, landholders will continue to feel insecure about their land. Moreover, the legal system will suffer from accusations of illegitimacy. Normally, title to land provides the holder with a reasonable degree of legal certainty of ownership. In Nicaragua, however, legal title does not necessarily convey property ownership security. Thus, the expected benefits of the removal of ownership restrictions—increased access to credit, liberated land markets and increased investment—are difficult to obtain, even if the property is duly titled and recorded.

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118 See Official Gazette art. 28, law 14 (1986); Administrative Rules Agreement 22, arts. 21–22 (1986).
119 See C. Civ. arts. 1473–82 (Nicar.). Under the Civil Code, "use rights", or usufructuary interests, allow an individual to mortgage, buy, sell, trade or give away his interest. The individual cannot, however, change the form or substance of the land because, in actuality, the land belongs to someone else. In contrast, the Nicaraguan agrarian reform properties did not belong to anyone other than the beneficiary, but still could not be bought or sold on the market. See id.
120 See Official Gazette art. 28, law 14 (1986); Administrative Rules Agreement 22, arts. 21–22 (1986).
121 Hendrix, supra note 2, at 11–12, 14, 20.
122 Id.
123 Id.
124 Id.; Interview with Oscar Herdocia Lacayo, President of the León Bar Association, in León, Nicaragua (Aug. 18, 1992).
125 See Stanfield & Hendrix, supra note 112, at 941.
126 Credit sources over the past ten years have preferred crops to land as collateral.
3. The Environment

With the effective dismantling of the agrarian reform and the formal land market in disarray, the poor have been forced to invade fragile forests.\textsuperscript{127} They are expanding the agricultural frontier at an alarming rate, causing environmentally-disastrous deforestation.\textsuperscript{128} Newly deforested land is exposed to soil erosion, which, in turn, affects water supplies as rivers become silted.\textsuperscript{129} Clearly, an effective land market in Nicaragua must be created.


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 from 1980 to the present.\textsuperscript{130} For many years, Peru has contemplated amending its agrarian reform law.\textsuperscript{131} In 1980, Congress passed the \textit{“Ley de Promoción y Desarrollo Agrario”} to more closely align the old agrarian reform law with actual social and economic practice.\textsuperscript{132} An agrarian code was proposed in 1985 to further harmonize written law with perceived rural reality.\textsuperscript{133} Additional modifications were introduced in 1988.\textsuperscript{134} In 1991, the \textit{Cámara de Diputados} published a bill to amend the reform. The new 1991

\textsuperscript{127}See Stanfield, Analysis, \textit{supra} note 92, at 29–30; Memorandum from Steven E. Hendrix to Chief Brian Rudert, USAID/Nicaragua Agriculture and Development Office 4 (Mar. 15, 1993) (on file with author) [hereinafter Rudert Memorandum]; Telephone Interview with Marisol de la Cadena, Researcher, University of Wisconsin (Madison) Land Tenure Center (Feb. 16, 1993) [hereinafter de la Cadena Interview].

\textsuperscript{128}See Stanfield, Analysis, \textit{supra} note 92, at 29–30; Rudert Memorandum, \textit{supra} note 127, at 4; de la Cadena Interview, \textit{supra} note 127.

\textsuperscript{129}See Stanfield, Analysis, \textit{supra} note 92, at 29–30; Rudert Memorandum, \textit{supra} note 127, at 4; de la Cadena Interview, \textit{supra} note 127.

\textsuperscript{130}See José Manuel Mejía, Propiedad de la Tierra y Ley Agraria, Presentation at the Legislación Agraria y Desarrollo Económico 1 (June 20, 1991) (unpublished manuscript, on file with author) [hereinafter Mejía Presentation].

\textsuperscript{131}See \textit{id.}

\textsuperscript{132}See \textit{id.}; Ley de Promoción y Desarrollo Agrario, Decreto Legislativo 02 (1980) (Peru).

\textsuperscript{133}See Mejía Presentation, \textit{supra} note 130, at 1.

Fujimori law reverses much of the early agrarian reform law that has been constitutionally fundamental to the nation.\textsuperscript{135}

In essence, the 1991 legislation liberalizes farm credit and agricultural property ownership, effectively dismantling the twenty years of agrarian reform.\textsuperscript{136} Under the prior law, food production levels had dropped and farm credit was almost nonexistent.\textsuperscript{137} In response, this reform law allows farm property to be owned by anyone, provides for equal access to credit, and allows farmers to use their land as collateral.\textsuperscript{138}

B. \textit{Coverage}

The 1991 law permits the buying, selling, mortgaging, inheriting, and renting of land, including land received under the agrarian reform.\textsuperscript{139} No governmental authorization is required for the transfer of land.\textsuperscript{140} In a legal sense, land has become a commercial asset.\textsuperscript{141}

Size restrictions on land transfers, however, are still maintained.\textsuperscript{142} The maximum size for coastal land is 250 hectares of irrigated land. The maximum size for irrigated, cultivated land is sixty hectares in the mountains; 120 hectares in dryland; and 5,000 hectares in natural pastureland.\textsuperscript{143} Fragmenting property into smaller pieces is also


\textsuperscript{138}See Peru Liberalizes, supra note 135; Farm Credit, supra note 136; Interest Rates Freed, Foreign Banks OK’d, LATIN AM. WKLY. REP., May 16, 1991, available in LEXIS, News Library, LAN File.

\textsuperscript{139}See Ley de Reforma Agraria, arts. 2, 5–7 (1991) (Peru).

\textsuperscript{140}Id. art. 16.


\textsuperscript{142}See Ley de Reforma Agraria, arts. 7, 12–15 (1991) (Peru).

\textsuperscript{143}Id. arts. 7, 16.
allowed, subject to a minimum size regulation. The minimum size for land transfers in each resulting plot at the moment of subdivision is at least three hectares.

In cases of land invasion, the new law creates an opportunity for a judicial inspection of the land, usually within forty-eight hours. A judge can order the disoccupation of the land within twenty-four hours. If this order is not obeyed, the judge can order the removal of the invaders by public force. Abandoned land reverts to the state if left unattended for two or more years, even if the land is left fallow.

The constitutional concept of "he who works the land owns the land" has been dropped. Because of the entrenched doctrine in Latin American law of the social policies and functions of land, however, it is likely that some social function of this "land to the tiller" policy remains.

C. Implementation and Impact

1. The Historically Disadvantaged

The new legislation does not clearly delineate how state and abandoned lands can be distributed to new owners. It does, however, require additional steps in order to acquire land, including a performance bond. Presumably, a performance bond is required to demonstrate that the land will actually be used by its occupant. This requirement seems entirely inappropriate for landless or land-poor populations.

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144 Id.
145 Id. art. 11.
146 Ley de Reforma Agraria, art. 11 (1991) (Peru).
147 Id.
148 Id. art. 22.
149 See Mejia Presentation, supra note 130.
150 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 Fiallo A., Aspectos Inconstitucionales de la Ley de Promoción de las Inversiones en el Sector Agrario (undated, unpublished manuscript, on file with author).
151 See Mejia Presentation, supra note 130.
152 Letter Opinion from Rolando Eyzaguirre, Instituto Libertad y Democracia, to Steven E. Hendrix, Legal Advisor, University of Wisconsin (Madison) Land Tenure Center (Jan. 8, 1993) (on file with author) [hereinafter Eyzaguirre Letter Opinion].
153 See id.
Furthermore, the new law introduces several elements which may harm the disadvantaged.\textsuperscript{154} For instance, this law does not refer to the \textit{sierra}, community, or \textit{campesino} groups in establishing size limits.\textsuperscript{155} Unutilized land is taken by the state rather than given to indigenous groups.\textsuperscript{156} Native and \textit{campesino} groups are specifically excluded from obtaining mortgages.\textsuperscript{157} These groups are excluded because the law failed to amend Article 163 of the Constitution, which explicitly states that native and \textit{campesino} community lands are inalienable and unmortgageable.\textsuperscript{158} Unfortunately, this exclusion applies to one-third of all rural plots, or approximately 600,000 communal small landholders, whose land rights remain only informally recognized.\textsuperscript{159}

Similar to prior law, the new law provides for land sales in the formal sector.\textsuperscript{160} A sale is recognized, therefore, only if inscribed by the registry.\textsuperscript{161} The new law allows, however, unrestricted sale, transfer, mortgage, and titling of property larger than three hectares.\textsuperscript{162} Although many landholders easily satisfy this limit, thirty percent of all rural properties and the majority of the property holders are restricted.\textsuperscript{163} However, the informal sector has ignored, in the past, and can be expected to continue to ignore legal restraints. The legislation’s impact, therefore, may be modest.

The Peruvian government has already modified this prohibition against titling any land under three hectares and has recognized the existence of such plots.\textsuperscript{164} This law, nonetheless, does not permit registration of lots less than three hectares which were created after

\textsuperscript{154} See Ley Reforma Agraria, art. 23 (1991) (Peru). The legislation’s impact on women is unclear. The International Fund for Agricultural Development (IFAD) has found that, in Peru, women are engaged in agricultural work in 86% of rural households. Candy Gourlay, \textit{Development: “Invisible Women” Bear Brunt of Poverty}, INTER PRESS SERV., Nov. 23, 1992, available in LEXIS, News Library, Inpres File.
\textsuperscript{155} See Ley de Reforma Agraria, art. 23 (1991) (Peru).
\textsuperscript{156} Id.
\textsuperscript{157} Id. art. 9.
\textsuperscript{158} Rafael Ravetino F., 6–7 (July 1991) (untitled, unpublished manuscript, on file with author).
\textsuperscript{159} See Eyzaguirre Letter Opinion, supra note 152.
\textsuperscript{161} See id.
\textsuperscript{162} See Eyzaguirre Letter Opinion, supra note 152.
\textsuperscript{163} See id.
\textsuperscript{164} See Decreto Supremo No. 018–91–AG (1991) and Decreto Legislativo No. 653, art. 16, which cover the titling of land holdings less than three hectares in existence on May 3, 1991, the date of promulgation of the new law.
the cutoff date. Presumably, the government felt that allowing property owners the chance to register small parcels would deter them from subdividing their land in the future.

The original law stated that in order to register a mortgage, the property owner needed, at a minimum, a five hectare plot. Legislative Decree 653’s administrative rules now allow landholders of less than five hectares, in certain cases, to register a mortgage. Even if the Agrarian Bank of Peru denies credit, credit may be obtained through a third party, thereby allowing the small landholder to mortgage the land. It appears that this practice has led to nearly free mortgage of land for registered small landholders who are not members of native or indigenous communities.

The Peruvian government has withdrawn funding for both the Banco Agrario and the Cajas Rurales de Ahorro y Crédito. Additionally, commercial banks are not extending loans. Consequently, the only sources of credit for small landholders are commercial intermediaries and brokers, who rarely deal in secured mortgage lending. As a result, the law has had little impact on availability of credit for rural farmers with small landholdings.

New procedures subsequently were announced for simplifying the parcelization of agrarian associations and cooperatives. These procedures allow the organizations to register land to each of their individual members. Despite these new procedures, in many instances prohibitive transfer costs have reappeared.

2. Trade and Investment

Despite Legislative Decree 653’s new procedures regarding parcelization of land, several obstacles to increasing trade and invest-

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165 See id.; Steven E. Hendrix, Interplay Among Land Law and Policy, the Environment, the War on Drugs, Narcoterrorism, and Democratization: Perspectives on Peru’s Upper Huallaga Valley, 150 LAND TENURE CENTER PAPER 14 (1993) [hereinafter Hendrix, Interplay].
168 Id. art. 8.
169 See Eyzaguirre Letter Opinion, supra note 152.
171 Id.
172 Id.
173 See Eyzaguirre Letter Opinion, supra note 152.
174 See id.
175 See id.
ment remain. First, it is unclear whether the government can protect landholdings from terrorists and drug traffickers. Second, as discussed above, it is still difficult for many Peruvians to obtain mortgages. In theory, though, legal access to mortgages will increase the availability of credit, resulting in greater investment. If investment increases, then productivity should increase.

Article 159 of the Constitution also effects trade and investment by prohibiting latifundios and proposing to gradually eliminate mini-fundios. Although the new law defines maximum and minimum size limits, these restrictions may prove ineffective because size limitations are based on a per-person acreage. Individuals, therefore, may combine to form a company which is not restricted by a “per person” limit.

Decision 24 of the Cartagena Agreement (commonly known as the “Andean Common Market”) includes restrictions on foreign ownership of land. Decision 24 became effective in Peru in July 1971. Prior to this Presidential Decree, aliens could not directly or indirectly acquire or hold lands, waters, mines, or combustibles within a fifty kilometer zone along the frontiers. Aliens also could not hold or acquire rural property in the border provinces or in the immediate vicinity of military posts. With the aforementioned exceptions, aliens generally had the same civil rights and duties as citizens.

Foreign investment in assets is now permitted, subject to prior authorization. In order to validate the foreign investor’s rights, all

176 But see Ley de Reforma Agraria, Decreto Legislativo No. 653, art. 11 (1991) (Peru), which sets up a procedure for removal of trespassers.
177 See Ravettino F., supra note 158, at 5–6.
179 Id. According to the new law, companies may own land. This law reverses article 157 of the old agrarian reform law which contemplated only individual ownership.
180 See Agreement for Subregional Integration, May 26, 1969, Bol.—Colom.—Chile—Ecuador—Peru [hereinafter Cartagena Agreement]; GALO PICO MANTILLA, DERECHO ANDINO 21 (1989); see also Eyzaguirre Letter Opinion, supra note 152; Ravettino F., supra note 158.
181 Decree Law No. 18900 (1971) (Peru).
182 See Cartagena Agreement, supra note 180; Pico, supra note 180, at 21; see also Eyzaguirre Letter Opinion, supra note 152; Ravettino F., supra note 158.
183 See Cartagena Agreement, supra note 180; Pico, supra note 180, at 21; see also Eyzaguirre Letter Opinion, supra note 152; Ravettino F., supra note 158.
184 See Cartagena Agreement, supra note 180; Pico, supra note 180, at 21; see also Eyzaguirre Letter Opinion, supra note 152; Ravettino F., supra note 158.
foreign investment must be registered at the National Commission of Foreign Investments and Technology (CONITE). 186

While prior law had prohibited rental of land, the new law permits rental on terms agreed upon by the parties. 187 This liberalization is important for several reasons. First, it provides access to land that might otherwise not be available for cultivation. 188 Second, it eliminates a barrier to the land market economy because land rental is an important element of this market. 189 Third, it allows for the exploitation of the land so that it is not removed under provisions for “abandoned” land. 190

Liberalization of rental controls, however, is incomplete. The decree states that rental is allowed only in cases specified by law. 191 Plots under three hectares cannot be rented. 192 The original law required judicial police action to evict a tenant, although the procedures subsequently have been relaxed. 193 Because of drafting ambiguities in the original law, it was uncertain whether the rental term could be less than six years. It is now clear, however, that the term of rental can be as long as the parties desire. 194

3. The Environment

The new Peruvian land law potentially could have unintended and unfortunate environmental effects. This law repeals Article 71 of the Environment and Natural Resources Code, 195 which prohibited development activities from taking advantage of nonrenewable energy and natural resources. The new law also opens these lands to construction of oil and gas pipelines, and mining and petroleum installations. 196

186 See Cartagena Agreement, supra note 180; Pico, supra note 180, at 21; see also Eyzaguirre Letter Opinion, supra note 152; Ravettino F., supra note 158.
187 See del Castillo, supra note 135, at 49-53.
188 Eyzaguirre Letter Opinion, supra note 152, at 3.
189 Id.
190 Id.
191 See Decree Law No. 18990 (1971) (Peru); see also Pico, supra note 180, at 21; Eyzaguirre Letter Opinion, supra note 152; Ravettino F., supra note 158.
192 See Decree Law No. 18990 (1971) (Peru); see also Pico, supra note 180, at 21; Eyzaguirre Letter Opinion, supra note 152; Ravettino F., supra note 158.
193 See Decree Law No. 18990 (1971) (Peru); see also Pico, supra note 180, at 21; Eyzaguirre Letter Opinion, supra note 152; Ravettino F., supra note 158.
195 See Ley de Reforma Agraria, Decreto No. 613 (1991) (Peru).
196 See id.
Article 20 of Law 653, which allows the executive to reclassify land use, potentially threatens the environment. Under prior law, a legislative act was required to convert parks and reserves to commercial use. Conversion now may be accomplished by executive order, without public debate or input.


A. Background

In the late 1800s, the hacienda system in Mexico allowed large estate holders to displace campesinos by formally purchasing land. As a result, communities were forced from their traditional lands onto marginal and less productive properties. Following the 1910 Mexican Revolution, the Mexican government instituted agrarian reforms. These reforms, which were codified in Article 27 of the 1917 Mexican Constitution, allowed 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. This policy allowed peasants access to land under the ejido system, even if they could not prove that they personally had been dispossessed.
Pursuant to the *ejido* system, all peasants claiming land had to be connected with a "population nucleus." Each population nucleus was recognized by the state and given a grant of land, or *ejido*, for its members. This land could not be transferred, sold, mortgaged, or rented. Inheritance was allowed if the property passed to the widow, children, or dependents of the *ejidatario*. *Ejidos* could be worked individually in small private farms or by groups, according to the government’s determination. Since 1930, most common or village lands have been distributed through the agrarian reform process.

Presently, there are approximately 29,000 *ejidos* and agrarian communities in Mexico. These include 3.5 million *ejidatarios* and *comuneros*, or collective owners, holding 4.6 million parcels and 4.3 million houses or urban plots. In total, the *ejidal* lands represent fifty percent of all national territory and roughly twenty-five percent of the national population. Since 1930, only about 600 of the 29,000 *ejidos* have received any type of legal certificate of possession. The overwhelming majority of *ejidatarios*, therefore, do not possess documentation of ownership interests.

As early as 1961, academics debated whether Mexico needed a "reform of the reform" of the *ejido* structure in order to benefit the private sector. Recent constitutional changes allow *ejidos* to be bought and sold on the private market and also remove restrictions on commercial ownership of rural property.

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*Elementos para la Discusión Sobre el Ejido en México, 40 COMERCIO EXTERIOR 838, 838-44 (Sept. 1990).*

*206* A population nucleus is the group of individuals living together on a single piece of land, the *ejido*. See Ovalle, supra note 205, at 845-48. See generally Ramos, supra note 205, at 838-44.

*207* See Ovalle, supra note 205, at 845-48. See generally Ramos, supra note 205, at 838-44.

*208* See Ovalle, supra note 205, at 845-48. See generally Ramos, supra note 205, at 838-44.

*209* See Ovalle, supra note 205, at 845-48. See generally Ramos, supra note 205, at 838-44.

*210* See ALAN RIDING, DISTANT NEIGHBORS 260 (1986).

*211* Memorandum from Joseph R. Thome, Professor of Law, University of Wisconsin Law School, to John Bruce, Director, University of Wisconsin (Madison) Land Tenure Center (Aug. 24, 1992) (on file with author) [hereinafter Thome Memorandum].

*212* Id.

*213* Parcels are commonly divided into two or more smaller plots. Id.

*214* Id.

*215* Id.

*216* Thome Memorandum, supra note 211.


forms include: effective social justice in employment, production, and training; an equal sharing among beneficiaries; and, the right to decide property uses.\textsuperscript{219}

The new reforms to Mexico's \textit{ejido} system include: (1) a new agrarian law which establishes market principles for agricultural land; (2) a constitutional amendment to Article 27; (3) a law which regulates the newly created agrarian courts; and, (4) the creation of a special Attorney General for Agriculture.\textsuperscript{220}

\textbf{B. Coverage}

In general, neither foreigners nor churches may own land in Mexico unless specifically authorized by the government.\textsuperscript{221} Businesses, nonprofit organizations, and banks are permitted to own property, but only to the extent permitted by law.\textsuperscript{222} The new agrarian law in Mexico clearly recognizes the legal status of indigenous communities and \textit{ejidal} populations.\textsuperscript{223} For the first time, these groups are constitutionally protected.\textsuperscript{224}

In addition, the \textit{ejidos} themselves are governed by a group assembly,\textsuperscript{225} an \textit{ejidal} board,\textsuperscript{226} and an enforcement advisory group.\textsuperscript{227} Rent-