

INSTITUTIONAL REFORM OF AGRICULTURE UNDER NEOLIBERALISM: The Impact of the Women's and Indigenous Movements*

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Abstract: This article reviews recent neoliberal agrarian legislation in Latin America in terms of the advances and setbacks for women's and indigenous movements. Institutional reform of the agricultural sector has been heterogenous in part because of the role of these movements. In the twelve countries studied, the new legislation favors gender equity except in Mexico. The indigenous movement scored notable successes in Ecuador and Bolivia but suffered apparent setbacks in Mexico and Peru in the defense of collective land rights. The article also explores why the slightest progress toward gender equality was made in some of the countries with large indigenous populations and strong indigenous movements.

We will consider here how new social actors in Latin America have shaped the content of neoliberal agrarian policies dealing with institutional reform of the agricultural sector. The aim of neoliberal agrarian policies in most countries has been to get "prices and institutions 'right'" (Carter and Barham 1996, 1142). Although the economic reforms have been fairly homogenous in intent if not outcome (Weeks 1995), we argue that the institutional reforms have been heterogenous partly because of the roles played by the women's and indigenous movements.

The rise and consolidation of the women's movement in Latin America coincided with the United Nations Decade on Women, 1975–1985. This period also witnessed the beginning of the debt crisis, the proliferation of structural adjustment programs, and the rise to prominence of neoliberal economic models and political regimes in the region. In this generally unfavorable economic milieu, a number of significant gains were achieved by the women's movement.

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At the international level, the most notable achievement of the decade was the 1979 Convention to End All Forms of Discrimination against Women, an international treaty that went into effect in 1981.¹ In addition, the international women's conferences in Mexico City (1975), Copenhagen (1980), Nairobi (1985), and Beijing (1995) all took up the issue of women's property and land rights and committed nation-states to taking specific steps toward gender equality. Over this period, thinking about the importance of women's access to and control over resources evolved steadily. Women's ownership of land passed from being solely an element in efficiency arguments focused on raising women's productivity to being treated as an economic right, with clear recognition of the importance of landownership to rural women's empowerment and pursuit of economic autonomy.²

The most immediate impact of the 1979 Women's Convention and the growing presence of the women's movement was that as some Latin American states revised their constitutions in the late 1980s and 1990s, they incorporated the goals of gender equality and an end to discrimination based on sex. Another factor favoring gender equality was the proliferation and consolidation of national women's offices.³ While they varied in stature and importance, these offices usually took the lead in revising civil codes to make them compatible with the new constitutional goal of gender equality. A key revision covered the property rights of married women. Previously, most Latin American civil codes had specified that the husband was the head of household, charged with its representation in external affairs and the administration of marital property. Now most provide for dual-headed households, where both husband and wife may represent the household and manage its common property.

Our earlier research has demonstrated that one reason rural women were excluded as beneficiaries of agrarian reforms in Latin America in previous decades was because these reforms privileged household heads, most of whom were male (Deere 1985; León et al. 1987). One objective of this article is to evaluate the content of the neoliberal agrarian legislation of the 1990s from the standpoint of gender equity. To what extent do these laws promote gender equality as a combined result of the changes in Latin American constitutions and civil codes and the demands of the women's movement? The article will also consider whether more gender-equitable legislation has resulted in rural women's increased ownership of land.

1. Sixteen Latin American countries had ratified the Women's Convention by 1985. Chile and Paraguay followed suit on returning to democratic rule, as did Bolivia in 1990. At that point, all nineteen Latin American countries had ratified this convention (Valdés and Gomariz 1995, 139).

2. This proposition is developed in detail in Deere and León (n.d., chap. 1).

3. For the various years in which Latin American states incorporated gender equality into their constitutions and revised their civil codes, see Valdés and Gomariz (1995, 138, 141). Their tables are updated in Deere and León (n.d., chap. 2).

Another important new social actor in Latin America in the 1980s and 1990s was the indigenous movement. A major thrust behind its rise to prominence in national debates over the new neoliberal agrarian codes was the series of events leading up to the 1992 Quincentennial, which this movement renamed as “The Five Hundred Years of Indigenous Resistance Campaign.” As with the women’s movement, international support was crucial in validating indigenous rights, particularly the passage in 1989 of International Labour Office Accord 169 on Indigenous and Tribal Peoples in Independent Countries. This accord represents a fundamental change in approach to indigenous issues in being based on recognition and respect for cultural diversity rather than on the previous approach of integration. With respect to land, the accord recognized the special relation of indigenous people to the land and territory that they occupy or use, the collective aspects of this relation, and their right to property and possession of such land (Sánchez 1996, app., art. 13.1 and 14).

Another objective of this article is to evaluate the gains and losses of the indigenous movement in the defense of peasant and indigenous communities and communal land rights. The article will also explore the tension between the women’s and indigenous movements regarding individual versus collective rights to land and how this tension has been resolved in the neoliberal agrarian codes.

This study is based on field research carried out in twelve Latin American countries in 1997 and 1998.⁴ The next section will present an overview of the main features of the neoliberal agrarian codes adopted in Latin America during the 1990s. The gender content of this legislation is then analyzed in the following section, including measures to adjudicate jointly and title land to couples.⁵ The available data on recent land distributions and titling by gender is presented in the next section. The following section will consider how the defense of collective land rights has fared in various agrarian codes. The concluding section summarizes the main institutional changes promoted by the women’s and indigenous movements under neoliberalism and offers some thoughts on the future direction of agrarian reform.

INSTITUTIONAL CHANGE UNDER NEOLIBERALISM

For most Latin American countries following the neoliberal model, “getting agricultural institutions right” has entailed a twofold process:

4. A one-day seminar on gender and land rights, usually sponsored by a feminist NGO, was held in each country. They were attended by policy makers, leaders of rural women’s organizations, and researchers. In addition, over two hundred individual interviews were undertaken in the twelve countries.

5. For lack of space, we cannot go into detail on the process of how gender-progressive legislation was achieved, but it usually involved a coalition encompassing the national women’s offices and the urban and rural women’s organizations (see Deere and León n.d., chap. 6).

the one hand, undoing the agrarian reform of previous decades, and on the other, creating the conditions to enliven the land market. As table 1 shows, of the twelve countries studied here, agrarian reform efforts have now come to a close in seven—Chile, Ecuador, El Salvador, Honduras, Mexico, Nicaragua, and Peru—in Mexico and Peru through the promulgation of new agrarian codes officially ending the process. Under the neoliberal agrarian legislation in Ecuador and Honduras, land may still be subject to expropriation, but under such restrictive conditions that the agrarian reform has for all effective purposes ended. El Salvador and Nicaragua undertook land distribution programs in the 1990s as part of peace processes ending civil wars. Both governments now consider agrarian reform efforts concluded. New agrarian codes have not yet been promulgated, however, and remain in contention.

In two of these seven countries, Nicaragua and Chile (the pioneer in the current counterreform, which was initiated in the 1970s), an important component of the counterreform was restoring land to former owners. A more common feature of the neoliberal counterreforms has been privatization, or the individualization of land rights. For a variety of reasons, the agrarian reforms carried out in Latin America in previous decades ended up favoring the creation of collective landholdings of different kinds (Thiesenhusen 1989, 495–97). The neoliberal model favors individual over collective land rights as more conducive to profit-maximizing behavior and economic efficiency. State farms have been privatized and support withdrawn from production cooperatives and other group farming activities that were favored under the previous model. In the new agrarian legislation, the reformed sector (properties that had been expropriated) may be divided up among the beneficiaries and may eventually be sold, usually on payment of the agrarian debt. In Mexico and Peru, privatization has included parceling and possible renting or selling of land previously held collectively by indigenous and peasant communities.

In the other five countries studied (Bolivia, Brazil, Colombia, Costa Rica, and Guatemala), agrarian reform efforts continue but at different paces and in different modes. Costa Rica has not modified its 1961 agrarian reform legislation, a law so weak that it did not provide for land to be expropriated for purposes of social justice (Barahona 1980), the only Alliance for Progress agrarian reform with this limitation. The Costa Rican agrarian reform was in many ways the prototype for current projects of state-assisted land transactions. The agrarian reform agency, the Instituto de Desarrollo Agropecuario (IDA), was charged with redistributing state lands but also with purchasing land offered voluntarily to it for sale by private owners at market prices for redistribution. IDA continues to carry out this function in the 1990s, but with less enthusiasm.⁶

6. Under the Oscar Arias government, between 1986 and 1989, IDA benefited an average of 1,189 beneficiaries per year. Between 1990 and 1992, the average annual number of bene-

TABLE 1 Institutional Change under Neoliberalism in the 1990s

Country (Year of Law)	End of State Distribution	Restitution	Parceling of Collectives	Land Titling	State-Assisted Land Transactions
Bolivia (1996)	No	No	No	Yes	Yes
Brazil (1985)	No	No	No	Yes	Yes (1995)
Chile (1974)	Yes	Yes	Yes	Yes	No
Colombia (1994)	No	No	No	Yes	Yes
Costa Rica (1961)	No	No	No	Yes	Yes
Ecuador (1994)	Yes	No	Yes	Yes	No
El Salvador (1995)	Yes	No	Yes (1991)	Yes	Yes (1991)
Guatemala (1964)	No	No	No	Yes	Yes (1999)
Honduras (1992)	Yes	No	Yes	Yes	No
Mexico (1992)	Yes	No	Yes	Yes	No
Nicaragua (1997)	Yes	Yes (1990)	Yes (1990)	Yes	No
Peru (1995)	Yes (1991)	No	Yes (1980, 1995)	Yes	No

Source: Deere and León (n.d., t. 5.1).

Note: Year of law refers to the most recent agrarian code; no year in this column means that the agrarian reform legislation has not yet been replaced by a comprehensive agrarian code. The dates in the body of the table refer to the year that specific policies were adopted.

Guatemala has not yet promulgated a comprehensive new agrarian code to supersede its weak and ineffective Ley de Transformación Agraria of 1964. Nonetheless, the government pledged to attend to the agrarian question in the various peace accords signed in the mid-1990s (Guatemala Presidencia 1997). In 1999 legislation was finally passed to create a new land bank, FONTIERRA, to coordinate subsidized financing for land acquisition by the population displaced by the civil war and other poor peasant groups (Guatemala 1999).

Brazil replaced its 1964 agrarian reform legislation with stronger new legislation in 1985, which was then modified by the new Constitution of

ficiaries dropped to 460 and has continued at this lower level. Data compiled by the authors based on internal memos of IDA dated October 1997.

1988 and subsequent implementing legislation (Fernandes 1996). Although land may still be expropriated for purposes of social justice, land expropriations are limited to nonproductive latifundia. The pace of agrarian reform has nonetheless stepped up in the 1990s, primarily as result of pressure from the landless movement.⁷ Brazil currently exhibits the most intense ongoing agrarian reform efforts, although land redistributions represent only a drop when compared with the demand for land in this country.⁸ Agrarian reform efforts in Brazil continue alongside several neoliberal initiatives under the Cardoso government, including an experimental land bank program of state-assisted land transactions and a controversial effort to decentralize the agrarian reform program from the federal level to the state and municipal levels (Cardoso 1997; Deere and León 1999a).

The new agrarian codes of Colombia and Bolivia combine a commitment to land distribution for social justice with various market mechanisms in implementation. In 1988 Colombia strengthened its original agrarian reform legislation and stepped up efforts to redistribute land.⁹ Then in 1994, Agrarian Law 160 introduced a new modality to the traditional functions of INCORA (Instituto Colombiano de Reforma Agraria) of expropriating and purchasing land for redistribution (known as direct intervention). Under land-market purchases, peasant groups buy land in the regular land market, with INCORA intervening only to mediate the terms of the sale. Under either approach, beneficiaries receive a state grant equal to 70 percent of the value of the property. The remaining 30 percent must be acquired on commercial terms through the banking system (INCORA n.d.). By 1996, land adjudicated via land-market purchases exceeded that by direct intervention. By 1998, however, the pace had slowed down considerably and almost halted by 1999 due to internal turmoil in Colombia, a product of the violence engendered by drug traffickers, guerrillas, and paramilitary groups.¹⁰

Bolivia's 1996 Ley INRA (Ley del Servicio Nacional de Reforma

7. During the twenty-one years of military rule in Brazil (1964–1984), the number of beneficiary households of agrarian reform and colonization efforts averaged 5,476 per year (Cardoso 1997, 22). Under the presidency of Fernando Henrique Cardoso (1995–1998), the annual pace of land distribution increased to 59,634 households (NPDC 1999, 67). On the role of the landless movement, the *Movimento dos Trabalhadores Rurais sem Terra* (MST), see Hammond (1999).

8. The number of landless Brazilian households who could potentially benefit from agrarian reform has been estimated to be 2.5 to 7 million (Cardoso 1997, 38).

9. Under the initial Colombian agrarian reform legislation (1961–1987), the annual number of beneficiary households averaged only 1,818. In contrast, under Ley 30 (1988–1994), the average annual number of beneficiaries increased to 5,020. Data compiled by the authors based on internal INCORA memos, "Adjudicaciones de Tierras F.N.A. 1962–1996," 1997; and "Beneficiarios por sexo y hectáreas asignadas por modalidad," 1998.

10. The annual number of beneficiary households between 1995 and 1998 averaged 4,684, slightly below the previous annual average of 5,020 for 1988–1994. Data compiled by the authors based on internal memos of INCORA dated 1999, "Beneficiarios por sexo y hectáreas asignadas por modalidad," for 1995–1998.

Agraria) represents an unusual combination of neoliberal and social justice principles. Overall, it gives more attention to the issue of equitable access to land than to land-market liberalization (Muñoz and Lavadenz 1997). The outstanding feature is that the state continues to play a role in land expropriation and redistribution. The state can expropriate land previously titled to private parties that has been abandoned without indemnization and can also expropriate land that does not meet a socioeconomic function with indemnization (Bolivia 1996). Land expropriated by the state as well as remaining public land is to be either distributed collectively and free of charge in favor of indigenous or peasant communities or sold at market value at a public auction. The former process has priority over the latter. The possibility of the state fostering the development of a land market constitutes the neoliberal element of the Bolivian legislation.

In this heterogenous overall picture, the one commonality of institutional reform under neoliberalism has been the commitment by Latin American states to efforts at land titling, as shown in table 1. Almost all Latin American governments are currently involved in efforts to modernize their national land registries and rural cadastre systems, with most of these projects funded in part by the World Bank and the Inter-American Development Bank. The aims of these comprehensive land titling programs are to enhance security of land tenure, to promote investment, and to rejuvenate the land market. These efforts have been directed primarily toward new landowners emerging from the previous reformed sector but have also included former squatters on state lands as well as the many smallholders who lack formal land titles.

GENDER-PROGRESSIVE CHANGE

Table 2 summarizes the main gender-progressive changes in Latin American agrarian legislation over the last decade. In the new codes following strict neoliberal principles (in Ecuador, Honduras, Mexico, and Peru), potential landownership is vested in all natural or juridic persons (for example, corporations), implicitly establishing that both men and women may own land and be beneficiaries of state programs. This recognition represents a step forward compared with the agrarian reform legislation of previous decades in which beneficiaries were designated as household heads, most of whom were male. These new agrarian codes, however, are still less favorable than legislation stipulating explicitly that men and women have equal rights to own land or be beneficiaries of state programs independent of their marital status (as in Bolivia, Brazil, Costa Rica,¹¹ Guatemala, and

11. Costa Rica does not have a new agrarian code, but its 1990 Ley de Promoción de Igualdad Social de la Mujer established explicit equality between men and women in all state programs involving the distribution of assets.

TABLE 2 Gender-Progressive Change in Agrarian Legislation of the 1980s and 1990s

Country (Year of Law)	Explicit Equality	Nonsexist Language	Joint Titling	Priority for Female Heads	Special Groups
Bolivia (1996)	Yes	No	No	No	No
Brazil (1988)	Yes	No	Optional	No	No
Chile	No new code			Land titling project	No
Colombia (1994)	Yes	No	Yes (1988)	Yes	Unprotected women
Costa Rica (1990)	Yes	No	Yes	No	Women in consensual unions
Ecuador (1994)	Natural or juridic persons	No	PRONADER project	No	No
El Salvador	No new code				Women combatants PTT
Guatemala (1999)	Yes	Yes	Yes	Women refugees	No
Honduras (1992)	Yes	Yes	Optional	No	No
Mexico (1992)	Natural or juridic persons	No	No	No	No
Nicaragua (1981)	Yes	No	Yes (1993, 1997)	Yes (1993)	No
Peru (1995)	Natural or juridic persons	No	No	No	No

Source: Deere and León (n.d., t. 6.1).

Nicaragua¹²) or in which male and female household heads have equal right to be adjudicated land (Colombia). The Honduran legislation follows both modalities, vesting landownership in natural and juridic persons while specifying that men or women older than sixteen may be beneficiaries of state programs regardless of their marital status.

While the new agrarian legislation establishing formal equality is an important step forward, almost all of these new laws continue to be written in sexist language that still privileges men. Men appear as the agriculturalists and peasants (*agricultor*, *campesino*) as well as the beneficiaries of land distribution or titling efforts, leaving it only implicit in the detailed provisions

12. In Nicaragua, explicit equality between men and women independent of marital status was established in the 1981 agrarian reform law, which still has not been officially rescinded.

of the legislation that such categories pertain to both women and men.¹³ The exceptions to this trend are Honduras's 1992 Ley de Modernización Agropecuaria and Guatemala's 1999 land-bank legislation, in which beneficiaries are referred to explicitly as *campesinos* and *campesinas* (Honduras 1995; Guatemala 1999).

The most important advance in gender equity is legislation that contains explicit mechanisms of inclusion: providing for the joint adjudication and titling of land to couples or giving priority to female household heads or both. Joint titling represents an advance for gender equity because it establishes explicitly that property rights are vested in both the man and the woman who make up a couple. In countries that have reformed their civil codes in a more gender-equitable direction, this provision reinforces the concept of a dual-headed household where both husband and wife represent the family and may administer its property. In countries that have not instituted such reforms of their civil codes, a provision of this kind would serve to protect women from losing access to what is often the household's most important asset in case of separation or divorce. Because the provisions of different marital codes vary considerably, in either case, joint titling guards against one spouse making decisions with which the other spouse does not agree—such as sale, rental, or mortgage of the farm. It also protects women who are widowed from being disinherited through a will. Moreover, joint titling increases the bargaining power of women by enhancing their role in household and farm decision making.¹⁴ To the extent that joint titling promotes family stability, it has been favored by conservative governments otherwise enamored of neoliberal principles that privilege individuals.

Another mechanism that should facilitate women's increased land-ownership and security of tenure is the priority that some laws give to female household heads. This requirement is a proactive mechanism of inclusion in seeking to overcome the discrimination to which female household heads have been subjected in the past, and it gives special protection to the potentially most vulnerable rural households.

As table 2 shows, joint titling was first adopted in Colombia and Brazil in 1988, then in Costa Rica, Honduras, and Nicaragua.¹⁵ But in Brazil and Honduras,¹⁶ joint titling is an option only if requested by the couple. In the other three countries, it is mandatory for adjudicating or titling of lands

13. On why it is a sexist practice to assume that the male plural includes women and how this practice has led to the exclusion of women and their invisibility, see Thomas (1997).

14. These propositions are developed in detail in Deere and León (n.d.).

15. In Nicaragua, mandatory joint titling was first instituted in 1993 by administrative decree of the Violeta Chamorro government. It became law in 1997.

16. In Honduras, 1991 legislation amending the agrarian reform law had made joint titling mandatory. In the 1992 Ley de Modernización Agropecuaria, joint titling was made an option that couples could request, a change that weakened potential application.

distributed by the state. Since the 1995 Beijing Conference on Women, mandatory joint titling has also been adopted in Peru, Ecuador, and Guatemala.¹⁷

Colombia and Nicaragua give priority to female household heads in distributing or titling agrarian reform or public land. In addition, Colombia's 1994 law gives priority to all rural women who find themselves in a state of "unprotection" due to the violence ravaging the country. Colombia's law is thus the most inclusive of women because unprotected single women may constitute a priority group for land distribution whether or not they are also mothers. Guatemala, under the 1994 Peace Accord on the displaced population, prioritized the land rights of female household heads in resettlement schemes for refugees of the Guatemalan civil war. Female household heads among the displaced population will continue to receive priority under the 1999 land-bank legislation. In a different context, Chile also gave priority to female household heads in its land-titling program for smallholders.

A few other countries have given special attention to women's land rights within certain groups, such as El Salvador's priority under the peace accords for women combatants in the civil war and female squatters in the zones of conflict. Under the Programa de Transferencia de Tierra (PTT), women's land rights were honored independently of their marital status, resulting in the adjudication of land plots on an individual basis to men and women who formed couples.

One of the most innovative experiments was Costa Rica's short-lived attempt to apply the principles of affirmative action to land distributed through the agrarian reform. The 1990 Ley de Promoción de Igualdad Social de la Mujer established that such land would be jointly titled if adjudicated to a married couple. In consensual unions, however, land was to be titled in the name of the woman alone. The reasoning behind this provision was that titling land to the woman would give more stability to the union and be more beneficial to the children. This experiment was short-lived, however. A group of peasant men brought suit against the agrarian reform agency on grounds of discrimination, and the Costa Rican Supreme Court ruled in their favor in 1994.¹⁸

In summary, as a result of the changes in Latin American constitutions, civil codes, and the demands of the women's movement, the agrarian legislation under neoliberalism is more gender-equitable than that of the

17. In Peru and Ecuador, joint titling was established through changes in the administrative regulations governing their respective land-titling programs. In Peru, joint titling is applicable only to married couples. The same is true in Ecuador, but couples in consensual unions can be titled land as co-owners under commercial law. Administrative regulations do not carry the force of law and are thus weaker measures than the inclusion of joint titling in specific legislation (as in Guatemala's 1999 legislation creating a new land bank) or in comprehensive agrarian codes.

18. On the lawsuit, see Voto No. 0345-94, No. 1237-90, *Boletín Judicial*, no. 75, 20 Apr. 1994, pp. 2-3.

past. The next question to be considered is whether landownership is becoming more egalitarian in practice as a result of these legal changes.

GENDER GAINS IN RECENT LAND ADJUDICATIONS AND TITLING

Table 3 presents the available quantitative data by gender and form of titling for recent programs of land adjudication and titling.¹⁹ In Colombia, Nicaragua, Costa Rica, and El Salvador, women have constituted a much larger proportion of beneficiaries in recent land adjudications than they did in the agrarian reforms of past decades. In Colombia in the entire period of agrarian reform from 1961 to 1991, women accounted for only 11 percent of the beneficiaries (León et al. 1987, 49; Durán Ariza 1991). Once joint adjudication to couples was mandated (1988) and enforced (1995)²⁰ and priority was given to female-headed households and unprotected single women, this share increased to 45 percent (1995–1998).

The Sandinista agrarian reform in Nicaragua was intended to benefit women irrespective of their marital status, but women accounted for only 10 percent of the direct beneficiaries (INRA-INIM 1996, 10). Once specific mechanisms of inclusion were implemented (joint adjudication to couples and priority to female heads of households), this figure increased to 31 percent (1994–1998).²¹ Costa Rica also has a mandatory policy of joint titling, but recent data are not available.²² The data available are for 1990–1992, the years in which land distributed to couples in consensual unions was to be

19. Peru and Brazil, countries with provisions for joint adjudication or titling of land to couples, do not collect beneficiary data disaggregated by sex. Interviews in Brazil revealed considerable resistance on the part of the land reform agency to titling couples (Deere and León 1999a). A recent census of beneficiaries in the *asentamientos* (agrarian reform settlements) revealed that women made up only 12.6 percent (INCRA, CRUB, UnB 1998, t. 1.7). Also missing from table 3 is Bolivia, which has no specific mechanisms for including women in its agrarian legislation.

20. On the difficulties of implementing joint titling in Colombia, see Deere and León (1997).

21. The policy of titling couples jointly went awry at first. Local-level functionaries initially interpreted the ruling to title land jointly (*mancomunado*) as pertaining to any two people, such as a father and son. From 1992 to 1996, the majority of joint titles issued were to pairs of men rather than to couples. Only in 1997 did the Instituto Nicaragüense de Reforma Agraria (INRA) realize that the ruling had been misunderstood and step up training efforts with functionaries as well as beneficiaries to ensure that wives and women in consensual unions were included on land titles. Interviews with Sonia Agurto, FIDEG (Fundación Internacional para el Desafío Económico), 22 Jan. 1998, Managua; and with Patricia Hernández, INRA, 23 Jan. 1998, Managua.

22. Even though Costa Rica has some of the most advanced legislation and plans on the land rights of rural women in Latin America, IDA does not systematically collect data by gender, a practice that makes assessing its efficacy impossible. Following the Ley de Promoción de Igualdad Social de la Mujer, Costa Rica adopted the Plan para la Igualdad de Oportunidades entre Mujeres y Hombres (PIOMH) in 1996–1998 (CMF 1996) and an addendum for rural women (CMF 1997). One goal of the latter plan was to meet all the requests for land or land titling presented by women who qualify for IDA programs. Our interviews in Costa Rica sug-

TABLE 3 Comparative Share of Beneficiaries by Sex and Form of Title in Land Adjudications and Titlements in the 1990s

Country Years	Beneficiaries		Titles	
Land Adjudications				
Colombia				
1995–1998 ^a	Men	55%	Individual	43%
	Women	45%	Joint	57%
Nicaragua				
1994–1998 ^b	Men	69%	Individual	41%
	Women	31%	Joint	52%
			Other	7%
Costa Rica				
1990–1992 ^c	Men	55%		
	Women	45%		
El Salvador				
1993–1996 ^d	Men	66%	Individual	100%
	Women	34%		
Land-Titling Programs				
Chile				
1993–1996 ^e	Men	57%	Individual	100%
	Women	43%		
Ecuador				
1992–1996 ^f	Men	51%	Individual	30%
	Women	49%	Joint	70%
Honduras				
1995–1997 ^g	Men	75%	Individual	100%
	Women	25%		
Mexico				
1993–1998 ^h	Men	79%	Individual	100%
	Women	21%		

Sources: On Chile, survey data tapes provided to the authors by the Ministerio de Bienes Nacionales, 1996. On Colombia, data provided to the authors by INCORA, 1999; excludes titling on national lands. On Costa Rica, data provided to the authors by IDA, 1998. On Ecuador, data provided to the authors by CONAMU, 1997, for PRONADER land-titling program only. On El Salvador, Alvarez (n.d.), for PTT. On Honduras, data provided to the authors by INA, 1998, refers to nonreform sector only. On Mexico, “Estadísticas,” *Estudios Agrarios, Revista de la Procedaria*, no. 10 (1998) at (<http://www.pa.gob.mx/publica/pu071011.htm>) for PROCEDE. On Nicaragua, data provided to the authors by INRA, 1998, and the Ministerio de Hacienda and Crédito Público, 1999.

^an = 27,292 beneficiaries and 17,372 titles

^bn = 40,332 beneficiaries and 23,305 titles

^cn = 1,279 beneficiaries

^dn = 20,432 beneficiaries and titles

^en = 1,474 (survey data)

^fn = 21,101 beneficiaries and 12,416 titles

^gn = 54,904 beneficiaries and titles

^hn = 1,900,000 beneficiaries and titles

adjudicated in the name of the woman. In this period, women represented 45 percent of the beneficiaries, a significant increase over the 11.8 percent benefited through 1988 (Brenes Marin and Antezana 1996, 2). In El Salvador, women made up 34 percent of the FMLN beneficiaries of the PTT program (Alvarez n.d.). In the earlier Salvadoran agrarian reform of 1980–1991, women made up between 10.5 to 11.7 percent of the beneficiaries.²³

Land-titling programs potentially benefit women who are already landowners. Our research shows that most women landowners in Latin America have acquired their land through inheritance rather than through state programs of distribution or the market (Deere and León n.d., chap. 9). Countries that have adopted mandatory measures of inclusion in support of gender equity are benefiting relatively more women than those countries that assume that titling programs are gender-blind.

In 1992 Chile began a major effort to title its large smallholding sector, giving priority to titling poor peasant households and those headed by women. According to a sample survey carried out to evaluate this program in 1996, women represented 43 percent of those titled land (see table 3). A rural development program in Ecuador, PRONADER (Programa Nacional de Desarrollo Rural), gave priority to titling couples, irrespective of their marital status.²⁴ In this program, women totaled 49 percent of the beneficiaries.

Such high proportions of female beneficiaries would not have been possible in either case had it not been for underlying inheritance practices that were favorable. The adoption of mandatory mechanisms of inclusion in these programs allowed institutional sexism and the opposition of male relatives to be overcome. This interpretation is supported by comparing the results of these programs with titling programs in Honduras and Mexico, which have no mandatory mechanisms of inclusion. In Honduras women represented only 25 percent of land-titling beneficiaries,²⁵ and in Mexico only 21 percent (see table 3).²⁶ But in both countries, the proportion of

gest that this goal has not been met, partly because agrarian reform efforts have been semi-paralyzed.

23. The range represents women adjudicated land individually under Phase III of the agrarian reform and collectively under Phase I (Fundación Arias 1992, 34).

24. Ecuador at that time did not have national legislation or other regulations favoring formal gender equality in its agrarian reform program. Joint titling was instituted at the project level as a result of efforts to incorporate a component for women and development (Deere and León 1999a).

25. Although Honduras's 1991 Ley de Modernización Agropecuaria provides for the joint titling of land, this provision is not mandatory. In this period, only 26 joint titles were registered out of a total 54,904 titles issued in the nonreformed sector. Data given to the authors by the Departamento de la Mujer y los Jóvenes of the Instituto Nacional Agrario, 15 Jan. 1998, Tegucigalpa.

26. The Mexican land-titling program exhibits significant differences in the share of women, depending on their form of access to land. Data for 1993–1998 revealed that women represent only 17.6 percent of the *ejidatarias*, those with voice and vote in ejido decision making on the

women titled land also exceeded by far that of female beneficiaries of agrarian reform in previous decades.²⁷

The available data suggest that the recent changes in agrarian legislation in favor of gender equity have made a significant difference in certain countries with respect to women's landownership, particularly when compared with the share of women beneficiaries in the agrarian reforms of the past. The data also suggest the importance of making joint adjudication and titling of land a mandatory policy rather than an option left up to individual couples and agrarian reform functionaries. Even with mandatory joint titling, a significant training effort is required for agrarian reform functionaries and beneficiaries so that gender-equitable policies are actually implemented.

COLLECTIVE LAND RIGHTS UNDER NEOLIBERALISM

One of the main demands of the indigenous movement in Latin America has been recognition of their historic land claims, including recognizing indigenous territories and recognizing or affirming collective land rights. It is important to distinguish the demand for recognition of indigenous territories from that for indigenous land claims. Territories are defined here "as a geographic area or natural space under the cultural influence and political control of a people" (de la Cruz 1995, 8). This concept implies the right to self-determination and self-government, which is related to the notion of nation and nationhood (Hvalkof 1998, 8).²⁸ It also covers the right to control use of the subsoil (including mineral rights), one of the most controversial points. Most Latin American governments have been willing to recognize indigenous land claims but have rejected recognition of indigenous territories as a breach of national sovereignty. Nevertheless, most governments signed ILO Accord 169, which recognizes "the special relation of indigenous people to the land and territory which they occupy" and their "right of property and possession" of such lands (Sánchez 1996, articles 13.1, 14). The exceptions among the countries studied here are Brazil, Chile, El Salvador and Nicaragua (see table 4).

fate of ejidos. They represent 22.4 percent of those who have access to ejido land but no rights of membership. Women were represented best among those who had access to a house plot in the urban nuclei of the ejido, constituting 29.8 percent of those titled land in this form (Estudios Agrarios 1998).

27. In Honduras women represented only 3.7 percent of the agrarian reform beneficiaries (Callejas 1983, 3). In Mexico in the mid-1980s, they approached 15 percent (Arizpe and Botey 1987, 71), up from 1.3 percent in 1970 (Valenzuela and Robles 1996, 36), primarily as a result of favorable inheritance provisions for women.

28. On the issue of granting indigenous peoples autonomy in self-government, see the essays in Sánchez (1996) and Van Cott (1994).

TABLE 4 Ratification of ILO Convention 169 and Collective Land Rights in New Constitutions and Agrarian Codes

Country	Year of Ratification of ILO 169	Recognition of Indigenous Land Claims	Recognition of Collective Property Rights	Recognition of Customary Law	Possibility of Privatizing Collective Land	
		Constitution	Code			
Bolivia	1991	1994	1996	Yes	Yes	No
Brazil	No	1998		No	No	No
Chile	No			Yes (1993)	No	Yes (1979) No (1993)
Colombia	1991	1991	1994	Yes	Yes	No
Costa Rica	1993					
Ecuador	1998	1998	1994	Yes	Yes	Yes (1994) No (1998)
El Salvador	No					
Guatemala	1996	1998		Yes	Yes	No
Honduras	1995		1992	Yes	No	No
Mexico	1990	1992		Yes	Partial	Yes
Nicaragua	No	1987		Yes	Yes	No
Peru	1994	1993	1995	Yes	Yes	Yes

Sources: On ratification of ILO 169, Norms Department, International Labour Office, Geneva, Feb. 1999, made available to the authors by Jorge Dandler, ILO, San José. On Latin American constitutions, Van Cott (1999); and Deere and León (n.d.).

The main gains and losses of the indigenous movement in recent Latin American constitutions and agrarian legislation are also summarized in table 4. Significant gains have been made in recognition of historic indigenous land claims and collective property rights. Brazil appears to be an exception. The Constitution of 1988 granted indigenous groups the right to collective use in perpetuity of the lands that they have traditionally occupied, but ownership rights over such land belong to the federal government (Van Cott n.d.).

More varied among Latin American countries are the issues of whether peasant and indigenous community land is inalienable and whether collective land may be privatized. The extreme positions here are represented by Chile, Mexico, and Peru at one end and Bolivia and Ecuador at the other. Chile, the vanguard of the neoliberal model, was the first country to change its long-standing policy of recognizing the collective land rights of indigenous peoples, a policy that safeguarded collective land by prohibiting its sale. This policy was reversed by a 1979 law under the Augusto Pinochet regime that authorized individual land titling of usufruct plots in indigenous communities and allowed these plots to be bought and sold. It is estimated that between 1979 and 1987, 70 percent of the twenty-one hundred

indigenous communities divided up their collective holdings, resulting in some seventy thousand titled farms (Echenique 1996, 86).

Although Chile pioneered in privatizing collective holdings in the name of promoting efficiency, the 1990s brought a resurgence of the indigenous rights movement among the Mapuche. Its main accomplishment was passing in 1993 the Ley Indígena that vindicates collective rights to land. This law also prohibits the sale of indigenous land—whether collectively or individually owned—to nonindigenous persons (CONADI 1995).

The 1992 reform of Article 27 of the Mexican Constitution was also considered a setback for collective land rights. Under the Mexican agrarian reform, the *ejidos* had been ceded as collective property by the Mexican state to communities in perpetuity. The basic principles governing ejido and indigenous community land were that land could not be used as collateral, could not leave the family (although the status of *ejidatario* was inheritable), could not be sold to a non-ejido member, and could not be rented to outsiders.²⁹ In most ejidos constituted under the Lázaro Cárdenas administration (1934–1940), the first period of massive land redistribution, lands were worked collectively and resembled production cooperatives. The ejidos also received considerable state support in this period in subsidized credit and technical assistance. Under subsequent administrations, support to collective production was deemphasized, and most land in the ejido sector came to be farmed under individual family usufruct with only grazing land and forests used collectively (Thiesenhusen 1995, 40–41).

Under the counterreform that began in 1992, on a simple majority vote of ejido members, individuals holding usufruct rights may acquire title to this land and subsequently rent or sell it. But land may be sold to non-ejido members only if the ejido as a whole (by majority vote) decides to change to being full private property (*dominio pleno*). As of January 1999, more than 18,000 (66 percent) had completed the PROCEDE program (Programa de Certificación de Derechos Ejidales y Titulación de Solares), the first step toward full privatization of ejido land rights (Robles et al. 2000, 19).³⁰

In Peru, although the counterreform was initiated in 1980 under the government of Fernando Belaúnde Terry, the officially recognized peasant and native communities (Comunidades Campesinas and Comunidades Nativas) were exempt from the law on parceling. The 1987 Ley de Comunidades Campesinas also guaranteed the integrity of communal property. It was the Peruvian Constitution of 1993 that first established that peasant

29. In Spanish, these principles are *inembargabilidad*, *intrasmisibilidad*, *inalienabilidad*, and *imprescriptibilidad*.

30. These data refer only to ejidos and do not include indigenous communities, the other collective form of landholding resulting from the Mexican Revolution. Indigenous community lands are still inalienable, but indigenous communities may now request a change in status to an ejido, which would then open up the possibility for privatization.

and native communities could dispose of their land freely, opening up the possibility of parceling and sale. As refined by the 1995 Ley de Tierras, these communities may now choose any form of “entrepreneurial organization” that they please, without permission of the state. Peasant communities on the coast, by a vote of 50 percent of the *comuneros*, may acquire their parcels as individual private property. The community assembly is also empowered to give, rent, sell, or mortgage community lands. Communities in the sierra or selva have the same options as those on the coast, although decisions must be made by a two-thirds majority of the qualified *comuneros* (del Castillo 1996).

Neither Mexico nor Peru experienced strong organized opposition to the neoliberal land laws, largely reflecting the weakened state of national peasant organizations at that point and their failure to build strong ties to the growing indigenous movement in various regions of both countries.³¹ But as a result of the Chiapas uprising in Mexico, the government signed the 1996 San Andrés Accords with the Ejército Zapatista de Liberación Nacional (EZLN), which gives autonomy to indigenous communities in their “internal forms of living and social, economic, political and cultural organization” (Article 4 of the proposed reform, in Van Cott 1999). This proposed reform of the Mexican Constitution, however, has yet to be presented by the government to the legislature.

In contrast, in Ecuador and Bolivia, organized groups of indigenous Amazonians built strong organizations during the 1980s, and Amazonian and highland peasant and indigenous organizations managed to form an all-encompassing organization or a strong alliance. In these countries, attempts to weaken collective forms of property were beaten back, and collective land rights were strengthened and extended in scope in the neoliberal land laws.

In Ecuador the initial land legislation of the neoliberal government of Sixto Durán Ballen had envisioned the breakup of indigenous and peasant communities. But peasants and indigenous people mounted the *Mobilización por la Vida* in June 1994, which included demonstrations in all major cities in the highlands and the takeover of the major oil wells in the Amazon region. Then the state was forced to negotiate the issue with the Confederación de Nacionalidades Indígenas del Ecuador (CONAIE).³² As

31. Under the leadership of the Consejo Agrario Permanente (CAP), the umbrella group for eleven national peasant organizations, various national forums were held and an alternative peasant agrarian law was drafted and presented to the Mexican Congress. President Carlos Salinas de Gortari was not willing to compromise, however. He used his skill to “divide and conquer” and offered tangible concessions on other issues to convince most of the CAP leadership to endorse the drastic changes in Mexico’s agrarian law (Fox 1994, 262–64).

32. CONAIE was formed in 1986 by the fusion of Ecuarrunari (the organization of highland peasant federations) and CONFENIAE (Confederación de Nacionalidades Indígenas de la Amazonia Ecuatoriana).

a result, the 1994 land law recognized the right of indigenous, Afro-Ecuadorian, and Montubian communities to their ancestral lands.³³ Moreover, some of the forms of organization of production recognized were communal forms. Although communal land may be parceled and sold, CONAIE succeeded in requiring that the individualization of land rights be based on a two-thirds vote of community members rather than on the simple majority proposed by the government. A two-thirds vote is also required to transform peasant or indigenous communities into any other form of association. Communal pastures at high elevations and forest land cannot be subdivided, and attempts to privatize water rights in the legislation were defeated (Ecuador 1994; Macas 1995). CONAIE continued to lobby for the inalienability and indivisibility of collective land rights in the debates over Ecuador's constitutional reform and secured these issues in the Constitution of 1998 (Ecuador 1998, art. 84).

A similar process occurred in Bolivia. Under the neoliberal government of Víctor Paz Estenssoro, considerable discussion was held in 1985 on the need for a new land law that would focus on making land a commodity that could be bought and sold without impediment and the need to tax all rural property. Both ideas met with tremendous peasant opposition. Peasant land had been exempt from taxes since the 1953 agrarian reform, which had also made peasant community land inalienable and unusable as collateral (Urioste 1992).

The land issue exploded in 1990. The first indigenous march, the forty-day *Marcha Indígena por la Dignidad y Territorio* proceeded from Trinidad to La Paz in the context of the campaign entitled *500 Años de Resistencia Indígena*. Until that time, the Bolivian state had not recognized the rights of Amazonian indigenous peoples and communities to their original territory. This point became the main demand of the increasingly vocal association of indigenous peoples, the *Confederación Indígena del Oriente, Chaco y Amazonia de Bolivia* (CIDOB). In response, the government of Jaime Paz Zamora was forced to issue four *decretos supremos* in September 1990 recognizing the major indigenous peoples of the Amazonian region and their right to their original lands. The following year, this administration also ratified ILO Accord 169. But the government refused to recognize these lands as indigenous territories, calling them "original communal land" and reserving the right to dispose of the subsoil. Several years went by without the government preparing the necessary regulations to implement the decrees.

Bolivia's new land law developed during a contentious national discussion involving peasants, indigenous peoples, medium and large landowners, and the political parties. The main accomplishment of the 1996 *Ley INRA* was that it guaranteed indigenous communities and peoples the land to which they traditionally had access. Land titles were to be issued imme-

33. Montubian refers to those situated in the selva region on the western coast of Ecuador.

diately to indigenous peoples and communities recognized by previous supreme decrees. These lands cannot be sold, subdivided, used as collateral, or expropriated by the state. Similarly, the peasant highland communities were reaffirmed along with these same rights (AOS, AIPE, and TIERRA 1996). As noted, agrarian reform efforts in Bolivia are to continue, with peasant and indigenous groups to be given priority in any further distribution of state or expropriated land. All told, the Bolivian land law goes further than any other in the neoliberal period in affirming both collective rights to land and the continuance of state involvement in land expropriation and distribution.

INDIVIDUAL AND COLLECTIVE LAND RIGHTS: THE CLASH OF GENDER AND ETHNIC INTERESTS

As explained, the countries with the largest indigenous populations (in descending order, Mexico, Peru, Guatemala, Bolivia, and Ecuador) have had heterogenous outcomes in defending collective land rights. They have been strengthened in Bolivia and Ecuador and potentially in Guatemala³⁴ but weakened in Mexico and Peru. Yet these countries have experienced the slimmest gains in gender rights. Ecuador's 1994 and Peru's 1995 land laws make no mention of gender rights at all. Both profess to be gender neutral in that land rights are vested in natural or juridic persons. Although the 1996 Bolivian Ley INRA features a strong preamble guaranteeing formal gender equality in land rights, no specific provisions of the law guarantee women's access to land on the same terms as men. The 1992 Mexican agrarian code represents a significant setback for women's land rights in that what was the family patrimony in the ejidos has become in privatization the individual private property of the household head, most of whom are male. Of the countries with large indigenous populations, only Guatemala has professed to guarantee gender equity in future land distributions and has enacted mechanisms inclusionary of women in recent legislation.³⁵

This section considers the tensions between the demand for recognition of collective land rights and the demand for gender equity. We will consider Ecuador and Bolivia first because in these two countries, the neoliberal land laws represented the greatest victories for the indigenous movement in the defense of collective property rights. We will then turn to Mexico and Peru as examples of what might happen when collective land rights are lost or weakened without provisions for gender equity in individual land rights.

34. See the 1995 "Acuerdo sobre la Identidad y Derechos del Pueblo Indígena" in Guatemala Presidencia (1997, 39–57).

35. As noted, Peru and Ecuador adopted mandatory joint titling of land for married couples through recent changes in the administrative regulations of their respective titling programs, but gender equity measures were entirely absent in their neoliberal agrarian codes.

Ecuador and Bolivia

Gender and land rights have not been concerns of organized indigenous women in Ecuador and Bolivia. In the negotiations leading to the new agrarian codes in both countries, gender and land rights were not raised as issues by the national peasant and indigenous organizations or by organized indigenous women leaders.³⁶

The main demand of CONAIE in the debates leading to Ecuador's 1994 Ley de Desarrollo Agrario centered on securing government recognition of indigenous territories and guaranteeing collective property rights. A national female leader of CONAIE, Nina Pacari, went so far as to say that the whole topic of gender and land rights was irrelevant because "the indigenous people have not taken up the individual demand [for land], it has always been collective, from the perspective of the community" (Torres Galarza 1995, 79). The topic seems irrelevant in that the very preservation of indigenous communities—their identity as indigenous people—is seen as based on collective access to land. To question how that collective land is going to be distributed—by what rules it will be allocated to families and to the men and women within them, and who will participate in determining those rules—is considered divisive and a threat to indigenous unity.

It has been argued that issues of class and ethnicity, which unite peasants and indigenous peoples, must take precedence over all other issues because it has been as peasants and indigenous people that men and women in Ecuador have been exploited over the centuries. Blanca Chancoso, former Secretary General of ECUARUNARI in the 1980s, explained the position of organized indigenous women: ". . . indigenous women do not have their own revindications as women, for we are not separate from the people. Our indigenous people are doubly exploited, doubly discriminated against, and together with the people, we women suffer this same discrimination" (Chancoso n.d.).

In indigenist discourse, the primary demand of indigenous women must be the defense of the community, which these women view as being based on defending collective access to land, the factor that gives cohesion and meaning to indigenous identity. Hence arose one of the principal demands in the 1994 Foro de Mujeres Indígenas, which preceded the debate on Ecuador's agrarian law: "Ask the leaders of our cabildos, of the provinces, regions, and nationally, that communal lands not be divided nor sold. They are for the benefit of all and were acquired through great sacrifice. They should be maintained communally, for the family. Our compañeros have to assume responsibility for the care of land and women because to divide the land is the same as dismembering a woman" (CONAIE 1994, 41).

The defense of land (*la tierra madre*) is thus equated with the defense

36. In Bolivia it was largely due to the efforts of an NGO that any recognition at all was made of gender issues in the proposed agrarian legislation. See Deere and León (1998).

of women, who are identified more closely with nature and culture. According to Ruth Moya, "one of the characteristics of the organization of indigenous women is that it is based in the valorization of the indigenous movement regarding the important role of women in the reproduction of indigenous culture and as the main agent of socialization" (Moya 1987, n.p.).

The defense of culture is based in turn on an appeal to a mythical ancestral culture in which women were venerated as the source of life, along with land. This viewpoint is evident in the following CONAIE testimony: "Land and the woman are one and the same mother, both produce, give life, they feed us and clothe us. We say that it is one and the same mother, because for us indigenous women, land is what gives us life. . . . We women are like land for we give life, we are the reproducers. Because land is our mother, it cannot be divided. It would be like dividing our own mother" (CONAIE 1994, 38).

CONAIE is made up of diverse indigenous cultures ranging from the majority Quechua populations of the highlands to heterogenous tribal groups in the Amazon Basin. Yet this theme of the relation between woman and land and the centrality of both to the reproduction of indigenous culture is often generalized as "the essence" of indigenous culture. In Andean indigenist discourse, this mythical ancestral culture was based on the complementarity of male and female roles. Its basis was the alleged equality between men and women, linked to the essential role that each played in production and reproduction. Each gender had authority derived from these complementary roles, and each participated in decision making. According to this line of thinking, it was colonialism or capitalism or both that were responsible for introducing gender inequality: "Before in our culture, when our society was free, Aymara men and women had the same rights. Women had authority. . . . The current system tries to impose [the notion] that 'men are superior to women.' In the traditional system, men and women both participated and made decisions. This traditional system has been under attack for over four centuries. Our objective is to defend it and protect it. It is colonialism that has created conditions that privilege only the masculine side" (ISIS International 1987, 45).

Whether such an ancestral culture ever existed is beyond the scope of this inquiry. Our concern is with how, within this discourse, gender equality is to be attained. According to a Bolivian indigenist women leader, "Once we are able to break with colonial structures, we can live in complementarity. . . ." ³⁷ In other words, because patriarchy is a European import and because men and women complement each other in the division of labor, there is no need for gender-specific demands in current struggles. ³⁸ Class and ethnic solidarity

37. Interview with Clara Flórez, Congressional Deputy and indigenous leader, 12 July 1997, La Paz.

38. Interview with researcher Gloria Ardaya, 13 July 1997, La Paz.

must come foremost, for what is necessary in the present context is collective access to land and autonomy for indigenous communities so that they can eventually return to the ways of the past. In this past, complementarity in the gender division of labor was synonymous with gender equality, in contrast with today's inequality.

According to Emma Cervone, one reason indigenous female leaders promote the belief that "in complementarity there is equality" is that indigenous women leaders have to defend two spaces simultaneously: first, the ethnic space for the defense of difference and equality of rights before white and mestizo society; and second, their space as women leaders within the indigenous movement, where they must be validated by male indigenous leaders (Cervone 1998, 185–86). Cervone has argued that the equality ideology in "highlighting the feminine in the symbolic order of the value system" can be seen as a strategy by women leaders to defend their space as women.

This position contains a number of contradictions, including the fact that the revaluation of the position of women is taking place more at the symbolic level than at the political level. For example, organized indigenous women leaders themselves recognize that they suffer discrimination within the mixed indigenous organizations. They are underrepresented in numbers in both the membership and the leadership (CONAIE 1994, 7).

Female indigenous leaders are also aware of the difficulties of women participating in community organizations on the same terms as men. In Bolivia and Ecuador, local-level organizations of women have proliferated over the past two decades, but participation in exclusively female groups has been slow to result in women's greater participation in male-dominated local institutions.

In Ecuador the primary local-level organizations in the highlands are the *comunas* associated with collective access to landholdings and local governance. By law, membership in *comunas* is open to all men and women over eighteen. In practice, however, households are represented by the male household head. It was estimated that in the mid-1980s, less than 10 percent of the members were women, most of whom were widows or abandoned women (FIDA 1989, 166). *Comuna* leadership has traditionally been all male. Although recent years have brought an apparent increase in the number of women in leadership positions,³⁹ it has been estimated that women make up less than 1 percent of the elected leaders in mixed base-level organizations.⁴⁰

The main form of local government in the Bolivian highlands has been

39. Interview with Dolores Casco, Director of the División de Desarrollo Campesino of the Ministerio de Agricultura and Ganadería (MAG), 23 July 1997, Quito.

40. This calculation was made by Julia Almeida of the Dirección de Organización Campesina of the Ministerio de Agricultura y Ganadería, based on a review of the data on executive committees reported to the ministry by 2,253 *comunas*, 1,985 cooperatives, and 1,382 other base-level organizations. These data are not gender-disaggregated, however, so the affirmation is based on evaluating the gender according to first names.

located in the peasant syndicate structure, where representation is based on one member per household, again usually the male household head (Sostres and Carafa 1992). As in Ecuador, although indigenous women are participating more in their own women's groups, this trend has not necessarily led to greater representation in traditional structures of governance and power within their communities.

The gender-equality discourse is therefore often at odds with the lived experience of indigenous women at the base, particularly with respect to such issues as domestic violence. Such incongruence could lead to a rupture between female leadership at the national and local levels over issues of inequality (Cervone 1998, 186–87). It is primarily within women's organizations at the local or regional level that women are beginning to address not only practical but strategic gender issues. For example, in these meetings, concerns are often raised about women's lack of access to land and the associated problems. The preparatory activities of nongovernmental organizations (NGOs) in Bolivia for the 1995 Beijing Conference on Women included five regional meetings of indigenous and peasant women in different parts of the country. Women's land rights emerged as an issue in three of these meetings, as illustrated in the following closing statements:

"The agrarian syndicates prefer men when it comes to distributing lands and property rights. We women don't have our own lands. Many times if the husband dies our lands are returned to the community. Parents give preference to male sons, discriminating against women."

"Among our proposals to enhance our situation are the following: access to education for women at all levels; technical training and credit; the right to landed property."

"Women have a right to land, and we want this to be legalized for we are the ones that work the land: land belongs to anyone who works it."

"Families own the land, although we don't have formal titles. Nonetheless, we women suffer because we don't have the right to our own land, to plant our own crops, which is what we need for economic survival." (Salguero 1995, 23, 25, 28, 35)

The problems associated with women's lack of legal access to land become most apparent in the case of male migration. Often, access to credit or technical assistance depends on individuals being landowners or having land in their own name. Moreover, when seasonal migration by the spouse turns into permanent migration, women are left behind without secure land rights and thus suffer great insecurity in providing for their families.

When these concerns of indigenous women at the local and regional level were taken to the national level meeting, however, what was privileged was the general demand for recognition of indigenous territories and defense of communal land. Of the various concerns about women's land rights expressed earlier, only one regarding inheritance was preserved in the final recommendations: "We indigenous and originating people have been the owners of our lands and territories, and we shall continue struggling to leave

our children free lands and territories. . . . When it comes to inheritance of these territories from parents and spouses, we want to have property rights over them" (Salguero 1995, 48). According to the coordinator of these meetings, "Many indigenous women highlighted the role of complementarity and how in the complementarity of roles there is no discrimination. . . . Nonetheless, no topic is clearer in terms of breaking down the idea that in complementarity there is no discrimination than the topic of inheritance of land rights."⁴¹

The foregoing analysis suggests three main points. First, traditional patterns of inheritance based on customary law and practices often discriminate against women.⁴² Second, indigenous women are becoming more aware of this discrimination. And third, a great gap is often evident between the concerns of indigenous women expressed at the base and what is said by their leaders in national-level meetings, particularly when the male leaders of the mixed associations are present.

Expanding the Argument: The Counterreforms in Mexico and Peru

Perhaps the best case that can be made as to why it is important to specify women's land rights within collective forms of access to land is to consider what is happening to women's land rights under the counterreforms underway in Mexico and Peru. In both countries, neoliberal agrarian legislation now allows for collective landholdings to be divided up and eventually sold.⁴³ Before the counterreform, women's rights to collective land were much more explicit in Mexico and Peru than in either Bolivia or Ecuador. In Mexico, the first country to establish legal equality between men and women in its agrarian legislation, since 1971 either men or women could become ejidatarios and enjoy equal rights within ejido decision-making structures. Yet following traditional practice as embodied in the regulations established by each ejido, each household was represented by only one ejidatario, customarily the male household head. Thus while the Mexican state had granted all adult women the legal right to participate in ejido decision-making, the ability to practice this right was limited by local and traditional practice to female household heads only. Nevertheless, usufruct rights on the ejido were considered to be the family patrimony, entitling each member in the household to access to land and other resources. Inheritance

41. Mercedes Urriolagoitia, NGO National Coordinator for Beijing, intervention at the Seminar on Rural Women and Land Tenure, organized for the authors by CEDLA, CIDEM, and the Consultora rym "ac," 11 July 1997, La Paz.

42. Inheritance patterns in indigenous communities are reviewed in Deere and León (n.d., chap. 8).

43. In Peru the decision to divide the peasant communities into parcels requires a simple majority vote in the coast and a two-thirds vote in the highlands and selva. In Mexico this decision requires only a simple majority vote.

provisions on the ejidos protected the family patrimony by restricting testamentary freedom of ejido parcels to the spouse or partner or a child. If an ejidatario died intestate, first preference was given to the spouse or partner and second preference to a child.

In the current counterreform, all major decisions regarding the future of the ejido (such as whether to divide into parcels or dissolve the ejido) are to be made by recognized ejido members. This requirement means that spouses of ejido members are excluded from decision making, which in effect excludes most women (less than a fifth of total ejido membership) from participating directly in determining the future of their communities. Moreover, on a vote of ejido members, individuals holding usufruct rights may acquire a title to the family parcel and dispose of it as they see fit, either renting it or selling it. If an ejidatario decides to sell his parcel, his spouse and children have what is called "right of the first buyer" (*derecho de tanto*). But they have only thirty days to make arrangements to purchase the land. Given the low wages and incomes of rural women, few would be able to exercise this right, should their husbands decide to sell the family plot (Esparza et al. 1996, 38).

In addition, changes in inheritance provisions no longer assure that access to the parcel will remain within the family. Now the ejidatario may decide the order of preference and may designate the spouse or partner, one of the children, or any other person.⁴⁴ Only in instances in which the ejidatario dies intestate does the previous order of preference hold, granting first priority to the spouse or partner or in that person's absence, one of the children. The salient point is that in the Mexican counterreform, what was a family resource (*el patrimonio familiar*) has given way to a process of individualization of land rights that has largely excluded women. This outcome reflects the fact that traditional norms and practices granted household representation to only one gender.

In Peru, men and women have had equal rights to be members of the officially recognized peasant communities since 1987. But the Ley de Comunidades Campesinas, which pledged the state to respect and protect "the customs, uses, and traditions of the community," also distinguished between community membership and the category of *comunero calificado* (Peru 1987, art. 1). This designation requires being of legal age and a registered voter, having lived in the community for at least five years in a stable manner, being listed in the community registry, and meeting whatever other pre-

44. It has yet to be determined whether this situation will be found contrary to the Mexican civil code, as argued by Botey (2000, 154). Under the *sociedad conyugal* marital regime, each spouse is entitled to 50 percent of the common property of the household in case of separation or divorce or death of the other spouse. But whether an ejido parcel forms part of the couple's common property depends on how it was acquired, by purchase or through inheritance. E-mail communication to the authors from lawyer Martha Torres Blancas, El Colegio de México, 11 Apr. 2000.

requisites might be established in the community statutes (Peru 1987, art. 5). While all comuneros have the right to use the goods and services of the community, one must be a qualified comunero to participate with voice and vote in the community assembly and to be elected as a leader in the community. Although in theory the qualified comunero can be a man or woman, in customary practice, there is only one qualified comunero per family, normally the man who as head of the household represents the family before the community. Traditionally, the only women who participate in making communal decisions are widows (Bourque and Warren 1981, 157; del Castillo 1997).

As in Mexico, decisions on the future form of association of peasant communities and the disposition of communal land are being made only by qualified comuneros. Married women will not be participating in this crucial decision-making process on the future of their communities, and if the individualization of land rights takes place, women may see the family usufruct parcel transformed into male private property. A recent report by the Grupo de Trabajo sobre Comunidades y Titulación did not even consider the participation of married women or women in consensual unions to be a problem in its discussion on measures to be taken to determine the community registry (*padrón comunal*), one of the first steps necessary in deciding whether land will be divided into parcels. Concern was expressed, however, over whether the rights of widows would be honored: "Although traditionally the rights of widows to maintain a usufruct plot, in order to maintain herself and her children, is respected, one can also find cases where they are assigned lesser rights, restricting their access to small plots and marginal lands, and even where their right to possess a parcel is not recognized" (Coordinadora Nacional 1997, 3).

Moreover, in the major land-titling program currently underway in Peru, no attention was given until recently to the joint titling of land to couples, resulting in most land titles up through 1997 being issued to men.⁴⁵ A major offensive is now underway to redress this situation, under the leadership of the Red Nacional de la Mujer Rural (Deere and León n.d., chap. 9).

In Mexico, where privatization of communal land is most advanced, indigenous women have been most vocal in demanding land rights explicitly for women. As expressed at the 1994 NGO Preparatory Meeting for Beijing, the changes made in Article 27 of the Mexican Constitution opened the way for privatization of the ejido. This modification "affects us indige-

45. This imbalance was partially corrected in 1997, when it was realized that land titles could not be registered in the Public Registry unless the marital status of the owner was reported. If the owner was married, land had to be registered in the name of the couple in conformity with the civil code. But couples in consensual unions, a high proportion of highland couples, are not covered by this provision.

nous women because we cannot decide on the fate of our lands; it allows that land be sold, when previously it was inalienable and could not be mortgaged or rented. Now they can take away our lands. Besides, this article does not take us into account, women are not allowed to *hacer negocios*, we do not count. . . . Parallel to the struggle for land must be the struggle for women's rights . . ." (CEIMME 1995, 52–53).

In meetings in Chiapas, indigenous women have been very specific about their demands for land rights: "women have the right to property of land and to inherit it"; "in granting land titles, women should be co-owners"; and "if a man abandons his family, the parcel should automatically pass to the woman" (Rojas 1995, 203, 209). Of all the indigenous movements, the EZLN has been the first to recognize in position papers that "land should be redistributed in an egalitarian form to men and women" and "women must be included in tenancy and inheritance of land" (Rojas 1995, 251).

Perhaps as a result of the Mexican experience, attitudes among indigenous women leaders in other countries are beginning to change. Nina Pacari, now the first indigenous vice-president of the Ecuadorian Congress, reportedly played a major role in the adoption of a gender perspective in preparing Ecuador's 1998 Constitution (Fempres 1999). As a result of effective lobbying by the Consejo Nacional de la Mujer (CONAMU), the new constitution guarantees women's land rights for the first time, and administrative changes were made to implement joint titling in Ecuador's land-titling program.⁴⁶

CONCLUSIONS

In this article, we have demonstrated that Latin American women's and indigenous movements have had considerable impact in shaping institutional change in the neoliberal era in most countries in the region. As a result of the women's movement, the new agrarian legislation is more inclusive of women than the agrarian reform legislation of previous decades in all countries reviewed here except Mexico. As a result of the indigenous movement, attempts to privatize collective holdings were beaten back in Bolivia and Ecuador and modified in Chile.

Mexico and Peru stand out as the retrogrades in this study. In these two countries, collective landholdings may now be divided into parcels, and gender equity has been trampled in the individualizing of land rights. This situation has come about in both countries because traditional customs and practices within peasant and indigenous communities privilege men in terms

46. According to Article 34 of the Constitution, "the State will guarantee the equality of rights and opportunities of women and men in access to resources for production and in economic decision making with respect to the administration of the joint ownership of property by husband and wife and the management of property" (Ecuador 1998).

of household representation within the community. Thus it is primarily male household heads who are making the crucial decisions on the future of their communities and transforming the family patrimony of land into their own private property.

This outcome may have served as a warning to organized indigenous women elsewhere, such as in Ecuador. It is one thing to defend collective property rights but quite another to defend traditional customs and practices that discriminate against women. At a minimum, it is important for indigenous women to defend their right to representation within indigenous and peasant communities so that representation is independent of marital status and inclusive of all adults. Similarly, if collective land titles are to be truly collective, then adult women should appear alongside the men in the community registry. This requirement would seem to be the necessary if not sufficient condition to guard against the dispossession of women, particularly in cases of separation or divorce.

The neoliberal agrarian codes are much more progressive than the agrarian reform laws of the past precisely because most have done away with the notion that only household heads may be beneficiaries. Yet vesting land rights in all natural or juridic persons is insufficient to guarantee gender equality, as has been shown. Another necessary but insufficient condition for establishing gender equality is that land legislation must explicitly recognize the right of women to own land independent of their marital status and must provide specific and mandatory mechanisms of inclusion.

We have argued that one of the key steps in favor of gender equity has been the provision that land be jointly adjudicated and titled to married couples and those in consensual unions. Establishing joint titling in practice has not been easy, however, even where it is mandatory. This goal requires a major effort at consciousness-raising among functionaries as well as intended beneficiaries because joint titling goes against patriarchal norms and is sometimes resisted by both men and women. Where joint titling has been successfully implemented, primarily in Colombia and Nicaragua, it has required a major effort by strong national organizations of rural women.

Several Latin American countries have taken affirmative action with respect to women's land rights, prioritizing female household heads in the allocation and titling of land, as in Colombia and Nicaragua. These steps, along with joint titling, have significantly increased the share of women beneficiaries in these two countries. Affirmative action seems particularly called for to reverse the pattern of discrimination against women that characterized the majority of Latin American agrarian reforms.

Agrarian reform efforts based on the expropriation and redistribution of land have now ended in most Latin American countries, the current exceptions being Brazil and potentially Bolivia. Efforts to address the agrarian question, however, may continue through state-assisted programs of land acquisition or land banks for the rural poor. Such an effort has been legis-

lated recently in Guatemala and is proposed as the future model for Brazil. But even though these programs are favored under the neoliberal model, they remain stalled in Colombia and El Salvador.

Following the end of agrarian reform in many countries, it is primarily through inheritance that rural women may gain access to land. Data from recent land-titling programs among smallholders show that inheritance practices are more egalitarian than often thought and more gender-equitable than state-sponsored agrarian reforms of the past (Deere and León n.d., chap. 9). Nonetheless, relatively little research has been carried out on inheritance practices in most countries, particularly inheritance by wives, a pressing topic for future research. Another challenge facing the women's movement is that most Latin American agricultural censuses still do not provide data disaggregated by gender on the country's farmers or landowners.⁴⁷

The land-titling programs currently underway may well be the defining moment in terms of women's property rights. These programs promise to be much more broadly based than any past programs of land redistribution because most include the traditional smallholding sector in addition to former squatters on national lands. In these programs, titling land jointly and giving priority to female household heads can be expected to increase significantly the number of women who are formal landowners and assure their security of tenure. For countries that have not already taken these steps, they are some of the major ones that can help achieve gender equity and should be among the top priorities of the women's movement.

47. In our research for Deere and León (n.d.), we attempted to examine every agricultural census published since 1960 for the nineteen Latin American republics. The only countries that have published data on the share of women farmers are the Dominican Republic, Guatemala, Paraguay, and Peru for two census periods. To get some idea of the share of women among rural property owners and how they obtained their land, one must rely on survey data and case studies.

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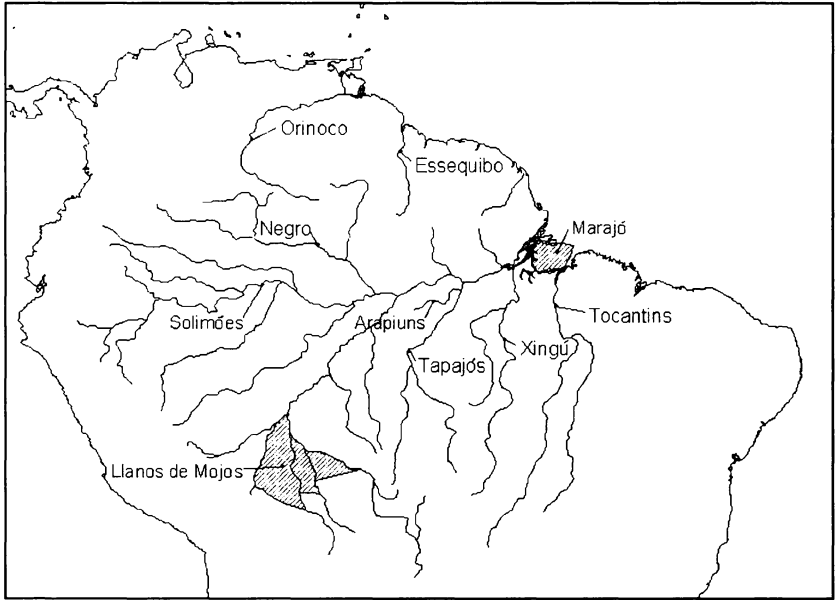


Figure 1. The Main River Systems of “the Amazon”